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LABOR RELATIONS REPORTER®

October 28, 1974
Vol. 87, No. 17

Summary of Developments

Work Stoppage Over Alleged Unsafe Conditions

An employer's discharge of four employees who refused to work additional overtime assertedly because of unsafe working conditions violated the Taft-Hartley Act, the NLRB holds, even though the work stoppage may have been motivated by a desire to avoid overtime or as a protest against working overtime.

In finding that they were engaged in a protected activity, the Board points out that the employees, who had been cleaning a 160-foot-high silo, were concerned over safety conditions resulting from bad weather and poor visibility. The purported failure of the employees to complain expressly to management about the safety conditions does not render their action unprotected, the Board declares, "if, as we find, safety was their reason for refusing to continue the job."

The Board also concludes that even if some of the employees may have had personal reasons for not wanting to work additional overtime, this does not negate the concerted nature of the walkout. "More fundamentally," the Board continues, even if the walkout had been primarily a protest against the previously unscheduled assignment of overtime, "such protest was not conducted in a manner suggesting a plan or pattern of intermittent action and therefore would also have been protected activity." (Union Boiler Co., 87 LRRM 1268)

September Rise in Cost of Living; Third-Quarter Drop in GNP

Prices continued their relentless advance in September, with the Consumer Price Index moving up by a seasonally adjusted 1.2 per-

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cent to 151.9 percent of the 1967 average, according to the Bureau of Labor Statistics. Disregarding seasonal allowance, the index was up 1.1 percent, bringing the year-to-year gain to 12.1 percent.

During the third quarter, the all-items CPI rose at a seasonally adjusted annual rate of 14.2 percent, compared with a second-quarter pace of 10.9 percent. Prices for food at home climbed at an annual rate of 12.0 percent a dramatic contrast with the rise of 1.0 percent in the second quarter. Prices for nonfood commodities shot up at an annual rate of 16.5 percent—the fastest quarterly rise since BLS began this seasonally adjusted series in 1956. (87 LRR 197)

GNP Figures—Real Gross National Product fell at an annual rate of 2.9 percent in the third quarter, following declines of 1.6 percent in the preceding period and 7.0 percent in January-March. In current-dollar terms, output was up $27.8 billion, or 8.3 percent, to an annual $1,411.6 billion, but prices climbed 11.5 percent, outweighing that gain.

Final sales—GNP minus inventories—were up $35.5 billion in the July-September span, with gains in consumer spending, fixed investment, and government purchases outweighing heavy declines in residential construction and net exports. Inventory investment, on the other hand, was down $7.7 billion and was 80 percent under fourth-quarter 1973. (87 LRR 199)

'Zipper Clause' as Waiver of Union's Right To Bargain

union sellout

Relying primarily on the existence of a "zipper" clause in the parties' collective bargaining contract, the NLRB holds that an employer was not guilty of an unlawful refusal to bargain when it withheld an annual wage dividend from unit employees while granting it to nonunit employees, since the union "clearly waived" its right to bargain over the bonus.

The union participated in the bargaining leading to the contract with the full knowledge that employees had been receiving an annual wage dividend, the Board notes, but the union made no request for bargaining over this bonus during the extensive negotiations. Instead, the Board says, the union agreed to a contract which specified wages and other terms and working conditions and which also stated that the parties had bargained fully with respect

Labor Relations Reporter, published three times weekly by The Bureau of National Affairs, Inc., 1231 Twenty-fifth Street, N.W., Washington, D.C. 20037 telephone (202) 452-4200. Subscription rate: $710 a year new subscription, $690 renewal subscription, payable in advance. Labor Relations section only: $400 new subscription, $380 renewal. Second-class postage paid at Washington, D.C., and at additional mailing offices. Printed in U.S.A.

to these matters and that all "wages and other benefits to be received by employees were contained in this agreement." The Board concedes that at the time the management rights clause was agreed to, the employer in effect stated that there was no company-wide policy that did not apply in the bargaining unit, but it concludes that even if this was an assurance against future changes which would affect the bargaining unit, "such assurance was obviously not meant to survive such changes in existing policies as were made by the contract itself."

Dissenting Member Jenkins asserts that to find a waiver, in the face of the employer's "clear assurance to the contrary," renders the bargaining "meaningless." (Bancroft-Whitney Co., 87 LRRM 1266)

Recognition of Minority Union on Basis of Dual Cards

No matter that an employer believed in good faith that a union represented a majority of its employees, the U.S. Court of Appeals at Chicago says, the employer, as well as the union, violated the Taft-Hartley Act by executing a union-security contract, since the union did not actually represent a majority. Eight of the employees whose authorization cards were presented to the employer to demonstrate that the union had been chosen by 46 of the 86 unit employees also signed authorization cards for a rival union. The court accepts the NLRB's rejection of those eight dual cards in determining the union's status.

The employer and the union argued that the eight cards should be counted because the employer did not know of the rival union's organizing campaign, but recognized the union and agreed to a contract in good faith. In a case of this sort, the court says, the employer's good faith is of no significance, "because it is employer support of a minority union that the Act condemns."

When a minority union is recognized in violation of the Act, the court observes, "and in accordance with union-security and check-off provisions employees are forced to support and contribute to that union to retain their jobs, we believe the employees' freedom to select and support a collective bargaining representative of their own choosing is . . . defeated, regardless of the employer's intention." Accordingly, the court enforces the Board's order directing the union and the employer jointly to reimburse the employees for all dues and fees paid pursuant to the contract. (NLRB v. Hi-Temp, Inc., 87 LRRM 2437)

Executive Compensation Wage Restitution Order

In the first remedial order stemming from Phase IV controls on executive compensation, the Treasury Department's Office of Eco-

nomic Stabilization directs Kimberly-Clark Corp., Neenah, Wis., to recover from 27 of its top executives nearly $467,000 in bonuses paid last February. This was the amount in excess of allowable incentive compensation under Phase IV regulations, OES says, in recommending assessment of civil penalties of $2,500 per violation.

OES orders restitution by November 30 of the excess bonus payments, saying that it is the company's job—not the government's—to determine the sums to be collected from each of the 27 individual members of the executive control group. The company also is directed "not to reimburse or compensate" the affected executives for the restitution they must make.

The company argued in part that restitution at this late date would be inappropriate and that the affected employees would suffer "untenable economic hardship" if required to return the bonus compensation. (87 LRR 205)

NLRB Split on Validity of Representation Election

Despite its findings of employer unfair labor practices and testimony that an employee was paid to picket the employer's premises with a "vote no" sign during the month preceding a representation election, the NLRB refuses to set the election aside. The decision is by the full five-member Board, with Members Fanning and Jenkins dissenting.

The Board majority finds that the employer engaged in two instances of unlawful interrogation of employees. However, it says, these instances involved only two of the 272 eligible voters, each of the interrogated employees was "maintaining a highly visible profile" as a union supporter and organizer, the last instance of unlawful interrogation occurred some five months before the election, and the union lost the election by a substantial margin. Even assuming that the employee who testified that he was paid to carry the "vote no" sign was "rewarded for participating in a demonstration," the Board majority concludes that this did not interfere with the election.

The dissenters say that they are unable to understand how the majority "can discount or explain away so many instances of misconduct." The union was "overwhelmingly defeated" in the election, the dissenters note, but they argue that "no one would advocate a 'head count' policy" under which the number of employees directly affected by objectionable conduct is to be compared with the number of votes cast against the "victimized party." (Stouffer Restaurant & Inn Corp., 87 LRRM 1263)

Local Union's Disaffiliation After International's Merger

An employer's collective bargaining contract bars its petition for a representation election at one of its plants, the NLRB decides,

despite a contention that two competing unions claim to represent the plant's employees. The Board's Hershey Chocolate (42 LRRM 1460) decision sets forth certain conditions that must be complied with before an election will be directed in situations such as this, it says, and these conditions have not been met.

The dispute involved in the case grew out of the merger of the Brewery Workers (UBW) with the Teamsters. Prior to the merger, UBW Local 293, which represented the employees of the plant in question, voted both to oppose the merger and "conditionally" to disaffiliate from the UBW if the merger was approved. At a special convention on November 5, 1973, the membership of the UBW approved a merger/affiliation agreement providing that all UBW locals would become Teamster locals. On February 10, 1974, the membership of UBW Local 293 voted to disaffiliate from the UBW and to become a directly affiliated local of the AFL-CIO, and on March 11, 1974, the general president of the Teamsters appointed a trustee "over the affairs of Local Union No. 293."

No "schism" within the meaning of Hershey Chocolate has occurred in this case, the Board finds, since Local 293's disaffiliation from the UBW did not take place "in the context of a basic intraunion conflict over policy at the highest level." Moreover, the Board says, Local 293's disaffiliation action was "untimely" in view of the "unjustified and unreasonable" delay between the UBW special convention of November 1973 and the meeting of Local 293's membership in February 1974. Finally, the Board notes that the disaffiliation action was not coextensive with the existing bargaining unit, which is nationwide in scope. (Standard Brands, Inc., 87 LRRM 1261)

Other News and Background Information

Economists present views on inflation to Joint Economic Committee. (87 LRR 200) • • • Machinists ratify Lockheed contract. (87 LRR 203) • • • Supreme Court acts in labor-law cases. (87 LRR 204) • • • FMCS has a successful year despite a "record level of strikes," mediation director Moffett says. (87 LRR 206) • • • Senate passes farm labor bill. (87 LRR 208) • • • Bill to require notice before plant closings or relocations is endorsed at Detroit hearing. (87 LRR 208) • • • Coverage of multi-employer pension plans grew extraordinarily during 1950-1973. (87 LRR 209) • • • Pension law receives more analysis. (87 LRR 209) • • • Pre-retirement aid offered by employers is surveyed. (87 LRR 213) • • • Federal Bar Association, New York State Bar Association, and BNA to sponsor institute on current problems and issues in labor law. (87 LRR 213)

Other developments . . .

Employer Free Speech

An employer that is charged with committing an unfair labor practice is not entitled to a preliminary injunction enjoining the NLRB from considering a complaint issued against the employer, despite a contention that the portion of the Taft-Hartley Act dealing with the free-speech rights of employers and union organizers is unconstitutional, a federal district court rules. The court says it lacks the authority to issue such an injunction. Nor is the employer entitled to have a three-judge federal district court convened, the court holds, since the argument that the free-speech provision is unconstitutional is not substantial. (Sprys v. Shore, 87 LRRM 2410)

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Refusal To Bargain

An employer was not required to bargain with an incumbent union before changing its method of operation from a "sit-down" bar to a "service" bar, the NLRB holds, since the Taft-Hartley Act leaves "basic management decisions" of this kind to the employer. The employer was obligated to bargain upon request with respect to the alleged adverse effect that the change in method of operation had on employee tips, the Board says, but the union never requested such bargaining. (Vegas Vic, Inc., 87 LRRM 1269)

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Nonprofit Hospital

Parties to a proceeding before the Connecticut State Board of Labor Relations are advised by the NLRB that it would assert jurisdiction over the operations of a nonprofit hospital having gross annual revenues in excess of $60 million. Although the NLRB leaves to "subsequent adjudication" the determination of the precise monetary jurisdictional standard to be applied to nonprofit hospitals, it notes that the hospital involved in the state board proceeding meets the basic NLRB jurisdictional standard and has gross revenues which exceed any of the NLRB's existing monetary standards. (Yale-New Haven Hospital, 87 LRRM 1271)

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FLSA Counterclaim

An employer that is being sued by the Secretary of Labor for failure to comply with the minimum-wage, overtime, and record-keeping provisions of the Fair Labor Standards Act may not counterclaim for an injunction against the Secretary's disruption of the employer's business in investigating the complaint, a federal district court rules. The Secretary brings suit under the Act in his official capacity; therefore, the suit is considered as being brought by the United States, the court reasons. No suit may be brought against the United States, the court continues, without specific statutory consent. This applies to all suits, the court says, including counterclaims, and no statute authorizes counterclaims against the United States in suits brought by the Secretary under the Act. (Brennan v. Joski Construction Co., 21 WH Cases 1041)

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FLSA and Sovereign Immunity

Former residents of a Tennessee hospital may bring a state court action against the hospital for unpaid minimum wages under the Fair Labor Standards Act, according to the Tennessee Supreme Court. The hospital, as a state agency, asserted the doctrine of sovereign immunity as a defense to the action, but the court rejects the defense. The U.S. Supreme Court, it points out, held in Employees v. Missouri Public Health Dept. (20 WH Cases 1254)

that the doctrine of sovereign immunity bars an FLSA action in federal court by employees against a state institution, but the Court left open the question whether such a suit might be maintained in a state court. The Tennessee Supreme Court indicates its belief that the U.S. Supreme Court, when it considers the question again, will agree with Mr. Justice Marshall's concurring opinion that sovereign immunity will not defeat a claim in state court. (Clover Bottom Hospital v. Townsend, 21 WH Cases 1044)

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Fund Contributions

Employees may not maintain an action to force their employer to make contributions to a profit-sharing plan, a federal district court holds, since the employees have not exhausted their remedies under contract grievance-arbitration procedures. The profit-sharing plan and the employer's contributions to it are mentioned in the union contract, the court observes. It holds that the dispute is covered by the contract's grievance and arbitration provisions, since there is no language excluding such a dispute. (Hayes v. Schmidt & Sons, 87 LRRM 2466)

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Fire Fighters' Bargaining

The bargaining requirements of the Taft-Hartley Act, and the cases interpreting those requirements, are applicable by analogy to a California city charter that grants city employees the right to bargain as to "wages, hours and working conditions," but withholds that right as to matters involving the "merits, necessity or organization of any government service," according to the California Supreme Court. Accordingly, the court rules that the city is required to enter into compulsory arbitration with a Fire Fighters local regarding (1) schedule of hours, (2) vacancies and promotions, (3) the union's manning proposals, and (4) the union's personnel reduction proposal. (Fire Fighters v. City of Vallejo, 87 LRRM 2453)

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Union Button

An employer unlawfully discharged an employee for an alleged violation of the employer's no-solicitation rule when he passed a union button to a fellow employee, the U.S. Court of Appeals at New Orleans holds in enforcing an NLRB order. The discharge violated the Taft-Hartley Act, the court says, since the discharged employee passed the button during non-working time. Even if the alleged solicitation occurred in a working area, the court remarks, the two employees had not yet received their work assignments, and there was no evidence that the passing of the button resulted in any disruption of work. (NLRB v. Muller Brass Co., 87 LRRM 2461)

GRIEVANCE SETTLEMENT

Problem: No-Distribution Rule as Invasion of Basic Rights

A hospital promulgated a work rule that prohibited employees from passing out unauthorized literature in the hospital. The rule was put into effect following incidents of distribution in the hospital of literature from unknown sources challenging hospital policies, which prompted the hospital to answer the literature. The hospital employees' union subsequently formed an education committee and distributed literature that also was critical of hospital policies.

The hospital sent a letter to the union characterizing the distribution of such materials to employees and to patients as a violation of hospital rules. The letter said that members of the education committee would be subject to discharge if literature were distributed in the future.

The union filed a grievance in which it claimed that the hospital action interfered with the freedom of speech and press, and with the activity required for effective functioning of the union. It claimed that the hospital action changed the working conditions in violation of the collective bargaining agreement and it argued that the hospital's position discriminated against the membership for union activity. The hospital argued that the management rights clause of the collective bargaining agreement, which provided that the employer shall retain the exclusive right to direct and schedule the working force, and to plan, direct, and control operations, permitted it to enforce a no-discrimination work rule.

AWARD: Arbitrator George T. Roumell, Jr. finds the contract does not prohibit limiting the distribution of union material in the hospital. Noting that the hospital is private property, Roumell says that on the basis of the U.S. Supreme Court's decision in Central Hardware (80 LRRM 2769), the constitutional rights alleged by the union are not applicable. In the arbiter's view, the hospital acted reasonably in promulgating a no-distribution work rule designed to prevent patients from becoming involved in internal hospital affairs. The arbitrator notes that the union made no showing that it lacked alternative means of communication. (Metropolitan Hospital and Health Centers., 63 LA 379)

PRIOR RULING: Another arbitrator found that an employer did not have the right to establish a plant rule subjecting employees to disciplinary action including discharge for "conducting union business on company time without advance permission," since the rule as written was too broad and constituted an invasion of basic rights of the employees as expressed under the collective bargaining agreement. (53 LA 883)

Committee Member Gilbert: Mr. Chairman, or Brother Chairman, I recommend that this Convention concur with this recommendation from the Constitution Committee.

Vice President Woodcock: Is there support for the motion?

. . . The motion was supported.

Vice President Woodcock: The motion has been duly made and seconded to amend Article 32, Section 7. Let me please explain it. Our present procedure under the Constitution is that the International Executive Board creates three-man appeal teams. Each one of these three-man appeal teams has a given geographic area, and that team is responsible to hear the appeals that come from that particular geographic area.

What happens is that in one area you may get a lot of appeals and in another area you may get very few appeals. The range last year, for example, in 1969, ran from a low of five in the whole year to a high of 42. What is being proposed here is to change the three-man teams to two-man teams, and that is all that the constitutional change calls for. However, if this is adopted, it would be our intention to set up a rotation system so that as the appeals came into the president's office, then the next appeal team of two that was on top of that list would be given that case wherever it came from in the United States or Canada, and they would proceed to that locality to hear the case and come back and report under our system to the International Executive Board.

This brother here at Mike No. 6.

Delegate Bert E. Henson, Local Union No. 653: Brother Woodcock, the only thing I am asking, it is so noisy you can't hear that information on this reading of those changes in there.

Vice President Woodcock: Well, I think the point Brother Henson makes is very well taken. We are, you know, tonight amending the basic body of law by which the million and one-half men and women who constitute the membership of this Union live day by day. Although they may seem to be simple, sometimes boring, housekeeping items, they can be of tremendous importance to any given individual. So I would like to ask that you try to cooperate with the entire Convention and to keep the noise level down as much as may be possible. This isn't exciting, it isn't very glamorous, but it is tremendously important because our societies in both the United States and Canada are based upon a simple proposition, and that is that we are based upon a society of law and not of men. What we are acting on tonight, or beginning to act on tonight is our basic body of law.

Now, I have explained this particular amendment before you. Are you ready to vote? This brother over here at Mike No. 7.

Delegate Marvin Maberry, Local Union No. 592: Just a few moments ago the president of my Local, Norman Geary sat up and made some remarks as to this particular Constitution change. So obviously it is a sore spot to us.

I'd like to read just a couple of lines here. It says "would be served by a hearing, in which event the committee, in its discretion, may make recommendations on the appeal without a hearing."

Now, there is nothing more ridiculous as far as I am concerned for somebody to sit in Detroit after the recording secretary sends all this information to Detroit and the president writes his opinions as to what the hearing of the Trial Committee may be about, and then somebody sits up in Detroit and decides that we're going to have a trial at our Local. And its costs us $10,000, because you've got a couple or three guys who sat on the Appeals Committee last year, they didn't want to journey out to Rockford, Ill., and have a hearing, they wanted us to take the full Board over there. This is very wrong. You are paying these guys. Why in the hell should our Local stand the full cost of this? This is absolutely wrong.

Now, we're talking about law for the membership. I'd like to know where in this Constitution—maybe it's in there, but I can't find this—I'd like to know what law do you have that protects me or my president as officers against the wild ravings of some of the members we have in our Local Union. A member can stand up and call my president or me a crook or a thief and there's not a damn thing I can do about it. I was just before the NLRB in Chicago last week and I was told to keep my hands off these members, we can't touch them. Yet they can

drum me out of the Local if I am found guilty of something. Now, it's about time you started giving your support to the local union officers. You support your local sheriffs, now support your local officers because they are the guys that make this Convention.

Vice President Woodcock: Let me try to bring to the attention of the Convention that the only matter before you is whether the appeals team from the International Union shall consist of three members or two members. There is nothing else before you.

But let me also remind you this Union was built to protect the democratic rights of the least individual, and this section, sometimes as inconvenient as it may be to us at the local level or the International Union level, guarantees that the least individual in this Union shall have his or her rights protected. And if we ever forget that then we have forgotten what made this Union begin.

But the only thing before this Convention is whether the appeals team shall consist of three members or two members. And again it is not a world-shaking matter.

Are you ready to vote? All those in favor of the amendment to Article 32, Section 7, signify by raising your right hand.

Down hands.

Opposed.

The motion is adopted overwhelmingly. The chairman of the Committee.

Committee Chairman Lacayo: To present the Committee's motion as it relates to Article 32, Section 9, I will now call upon Brother Tom Maples.

. . . Committee Member Thomas Maples read the following:

ARTICLE 32
Appeals

Section 9 (Present)

Any subordinate body or member thereof wishing to appeal from any decision of the International Executive Board or an International Trial Committee may, in all cases, take such appeal to the Constitutional Convention of the International Union. The appellant shall, however, have the alternative of appealing such decision of the International Executive Board or an International Trial Committee to the Public Review Board established in Article 31 of this Constitution in the following cases:

(a) Any case arising under the procedure set forth in Articles 10 (Section 13), 12 (Sections 2 and 3), 29, 30, 32 (Sections 10 and 13), 35 (Sections 9 and 10), 37 (Sections 1 and 12), 47 (Section 5) of this Constitution, or

(b) Those cases decided by an administrative arm of the International Executive Board, pursuant to Article 12, Section 18, or by the International Executive Board, which concern action or inaction relative to the processing of a grievance, in which the appellant has alleged before the administrative arm or the International Executive Board that the grievance was improperly handled because of fraud, discrimination, or collusion with management.

(c) In any other case in which the International Executive Board has passed upon an appeal from the action of a subordinate body.

Section 9 (New)

Any subordinate body or member thereof wishing to appeal from any decision of the International Executive Board or an International Trial Committee may, in all cases, take such appeal to the Constitutional Convention of the International Union. **THE 22ND CONSTITUTIONAL CONVENTION, AND EACH REGULAR BIENNIAL CONSTITUTIONAL CONVENTION THEREAFTER, SHALL SELECT A CONVENTION APPEALS COMMITTEE. THE CONVENTION APPEALS COMMITTEE SHALL HAVE THE AUTHORITY TO CONSIDER AND DECIDE ALL APPEALS SUBMITTED TO IT FROM DECISIONS OF THE INTERNATIONAL EXECUTIVE BOARD AND INTERNATIONAL TRIAL COMMITTEES UNDER THIS SECTION. ALL DECISIONS OF THE CONVENTION APPEALS COMMITTEE SHALL BE FINAL AND BINDING. THE COMMITTEE SHALL BE SELECTED AT EACH REGULAR CONVENTION AS FOLLOWS: THE DELEGATES FROM EACH REGION, WHEN THEY ELECT**

If I am going to see justice, if I want justice, I would much sooner see a Grievance Committee handle it because I know they would do it.

Thank you.

Vice President Woodcock: I will recognize the brother in the pink shirt by Mike No. 4.

Delegate Pat Clancy, Local Union No. 707: Brother Chairman, I am not rising on this issue, but what I would like to do, I have a point of special privilege I would like to talk upon. I have been trying to get your eye. I haven't been able to do it, so this was the only means I could see to catch your eye, and I would appreciate it after the debate has ceased on this resolution if you would recognize me.

Vice President Woodcock: I will.

Delegate Clancy: Thank you.

Vice President Woodcock: I would like to call upon the chairman of the Committee to comment on this amendment.

Committee Chairman Lacayo: Brother Woodcock, the previous speaker on behalf of the resolution before you stated more or less what I thought I would have to say on behalf of the recommendation that the Committee is making to this Convention.

Again, I think it ought to be crystal clear that the proposed amendment is talking about an appeals procedure, not a trial procedure.

I certainly hope that the delegate that spoke first against the amendment did not imply that this Convention is composed of imbeciles, because I certainly believe that the deleagtes here are qualified to be able to sit as an Appeals Committee to speed up the procedures of our International Union on behalf of the members that we are privileged to represent.

Again, on behalf of the Constitution Committee, I hope that the delegates here uphold the Committee's recommendation and vote this amendment as a new constitutional amendment.

Vice President Woodcock: I might also add that the International Union, of course, would provide professional help that would be available in the entire process to either side and, of course, to the Appeals Committee.

The brother over here in the blue shirt.

A Delegate: I will call for the previous question.

Vice President Woodcock: The previous question has been called for. All those in favor of closing debate signify by raising your hands.

Now the hands of those in oppoistion.

The motion to close debate has been carried.

The motion before the house is to amend Article 32, Section 9, to establish by a lottery system an International Appeals Committee of 18, one to be drawn from each region of this International Union, who would act at six-month intervals on appeals that would otherwise come to the International Convention.

All those in favor of the motion to amend signify by raising your hands.

Those opposed.

The motion is carried by an overwhelming majority.

And I promised to recognize the brother at Mike No. 4.

Delegate Pat Clancy, Local Union No. 707: Brother Chairman, I understand that the resolution submitted to amend Article 37, Section 10, will not be coming before this Convention. I would just like to find out if this is true, from the chairman of the Constitution Committee.

Vice President Woodcock: Brother, would you be good enough to come to the platform and identify the particular resolution to the Committee, and we will check it out and let you know precisely.

Delegate Clancy: I understand, Brother Chairman, that it is not, and this is the one that is going to amend Article 10, Section 7. I am sorry. I was reading wrong. It is Article 10, Section 7, and I understand it is not coming in front of the Convention.

I would like to say, Brother Chairman, that I feel it is important that it does come in front of the Convention. This is a resolution that has been passed by the

THEIR REGIONAL DIRECTOR, SHALL SELECT, BY LOT, THREE (3) DELEGATES; ONE (1) TO SERVE AS A MEMBER OF THE COMMITTEE AND TWO (2) AS FIRST AND SECOND ALTERNATES. THE CONVENTION APPEALS COMMITTEE SHALL MEET SEMI-ANNUALLY, AT INTERNATIONAL UNION HEADQUARTERS, TO ACT UPON ALL APPEALS THAT HAVE BEEN SUBMITTED UNDER THIS SECTION AT LEAST THIRTY (30) DAYS PRIOR TO THE DATE ESTABLISHED FOR THEIR MEETING. THE ADMINISTRATIVE PROCEDURES FOR THE CONVENTION APPEALS COMMITTEE SHALL BE ESTABLISHED BY THE INTERNATIONAL EXECUTIVE BOARD, SUBJECT TO REVIEW BY SUBSEQUENT REGULAR CONSTITUTIONAL CONVENTION.

The appellant shall, however, have the alternative of appealing such decision of the International Executive Board or an International Trial Committee to the Public Review Board established in Article 31 of this Constitution in the following cases:

(a) Any case arising under the procedure set forth in Articles 10 (Section 13), 12 (Sections 2 and 3), 29, 30, 32 (Sections 10 and 13), 35 (Sections 9 and 10), 37 (Sections 1 and 12), 47 (Section 5) of this Constitution, or

(b) Those cases decided by an administrative arm of the International Executive Board, pursuant to Article 12, Section 18, or by the International Executive Board, which concern action or inaction relative to the processing of a grievance, in which the appellant has alleged before the administrative arm or the International Executive Board that the grievance was improperly handled because of fraud, discrimination, or collusion with management.

(c) In any other case in which the International Executive Board has passed upon an appeal from the action of a subordinate body.

Committee Member Maples: Mr. Chairman, on behalf of the Committee I move adoption.

Vice President Woodcock: Motion has been duly made and seconded.

First of all, let me apologize to the Convention for blowing my top, but I do feel most strongly and most fervently about the protected rights of individuals.

Now let me try to explain in more level terms what this amendment is all about. Currently when an individual has an appeal case which he or she takes to the International Executive Board, still not being satisfied with the decision of the International Executive Board—and it can be, let me remind you, an appeal brought by a local union against the International Executive Board—then that individual or subordinate body has the right in certain circumstances to go to the Public Review Board. There are some cases on which the Public Review Board does not have constitutional right to act.

The individual, on the other hand, or the subordinate body, has the right to appeal to the International Convention. Now, that convention can be as much as two years away. When the grievance comes to the International Convention a Grievance Committee hears the case and gives a very lengthy and fair hearing to both parties, the appellant and those who have a contrary interest, and makes a considered recommended judgment to the Convention. But then the appellant body becomes this whole huge gathering of more than 3,000 human beings who in a very few minutes act upon what is before them. And normally everything goes properly, but sometimes on some emotional and unrelated issue it may go haywire, plus the fact it is a lengthy procedure.

So what this amendment—and it is a basic substantive amendment—proposes is that we substitute for the basic action of the convention an International Appeals Committee of 18 individuals, one individual to be chosen from each separate region of our total International Union. Now, how should we do that? Obviously, if we elect those individuals they take on a political coloration. So this amendment provides that they would be chosen by lot from among the delegates who are registered in that region for that convention. When that region meets in its convention to elect its regional director there would also be a process set up where by lot one individual was chosen—obviously it would be one non-partisan, non-political—and if that individual were willing to serve, that individual then

Delegates Asking for the Floor

would become that region's representative on the International Appeals Committee.

In addition, there would be two alternates chosen, the first name being the first alternate, the second name being the second alternate, who would serve in the event of the inability at any given time of the appeals committee member to serve or in the event he should leave our Union for any reason whatsoever.

That Committee would meet every six months, at the International Headquarters, and be the final judge and their decision would be final and binding upon any cases coming to them.

Obviously it would speed up the procedure and it would be a judgment by a panel in the very best sense of the word of the peers of the appellant and also of the peers of those who have the contrary point of view.

Is there any discussion?

The brother at Mike 6.

Delegate Donald Johnson, Local Union No. 596: Brother Woodcock, delegates: I rise to speak against this. A lot of you have presumably been sitting in this great auditorium and have never taken the time to go through the Constitution and read it and try to get the interpretations out of it and get the explanations of what it really means.

Let's take for instance what we are saying here.

You are saying that we shall make a lot draw; that the person, if I read this right, it says shall select, by lot, three delegates; one to serve as a member of the Committee and two as first and second alternates. Presumably the first person chosen will be a member of this Committee. It don't say anything about him being qualified, what his past practice or record is, where he comes from or not a god-blessed thing. It don't say anything about this, but you take this Constitution, you take it home with you and you sit in the dining room or living room and try to read it, and I will tell you one thing; it gets pretty complicated.

Now, they say here is a boy that don't have no education. They are going to put him on a Committee that have trials for your members, like that fellow brother said; they have spent over $10,000 and I will bet you if you check it, there was a political bombshell of some lu-lu that wanted to get some prestige that had a Trial Committee.

Brother Woodcock, we have got lu-lus in our Local, too. We have had a few nuts; we have had some Trial Committees and these people wear you out.

The other thing, this member is allowed to bring a legalized lawyer into your Union Hall to represent him. You try to get the Union to give you a legalized lawyer to sit on that Trial Committee Board in opposition to a man that has a

legal education and well read in the law, and he is here representing a man. This man has paid him anywhere from $150 to $500 to come into your local union and represent him. You are spending money out of your funds to have a Trial Committee and they will tell you bluntly that they run the Trial Committee, they spend their funds, and set up their meetings.

I am opposed to this whole-heartedly and I am making the point real plain.

Let's say, for instance, you pick one man. This man says, "I will serve." Like I say, Brother Woodcock, you don't even know whether that man is qualified; don't know what his education is, his background is, and we have them in this Union that would take the job. They may not be qualified to do it.

I know some brothers that say, and I understand this very well, "If you are a delegate to this Convention, you are supposed to be qualified to do the duties of this Convention."

Well, this may not be the whole truth of the matter because within our own Union we have politics within our own ranks right here in this Convention, we have politics and I thank God when I go to a convention that at least I have a voice to speak in opposition of what is tried to be brought up on this floor.

I would wish that you or some of the people would take time to explain to these people in here—you raise your hand and you vote for something to get it off the floor. It is all right, but I will tell you one thing: When you have to put it in practice, when you have to put it in force, when you have to spend seven days a week, 15 or 16 hours a day fighting these lulus in the Union Hall, like the brother over there said, they will come in and draw a knife on you. They can draw a gun on you. It is all right. But don't you say a damn thing to a brother.

The reason I say this, Brother Woodcock, and I am not proud of it, but I am under an injunction right now and the man is suing me for $10,000 because I hit him in the mouth, because he told me how no good I was. I would do it again.

Is this the kind of Constitution and justice I get because I am a president? They uphold this guy. But when it comes to giving me recognition to uphold me, I don't get that recognition. I have been in court six times on this case and I am in court now and probably will be fighting it another two years and spending my money. I don't ask the International for a penny. But do you think I would take this member to a Trial Committee Board? Hell, no. It would cost my Local $10,000 or $15,000 for me to tell him what a no good punk he is, and I hope the delegates vote this thing down.

Delegate William Polakowski, Local Union No. 174: I rise to speak in favor of this resolution. I can't understand why the previous brother would not consider his Union members as being qualified to sit there on a board and judge the other Union members. I don't give a damn if he doesn't have a college education. This man works in a shop. He knows what the problems are. He should be the one to judge us.

This gives us equal representation in the plant. I don't like charges brought against me and I had them. But everybody here is entitled to judge another Union member.

We talk about speeding up the grievance procedure. If we won't speed up our own, how the hell can we go to General Motors and tell them to do it?

I think we should vote for this and everybody that is at the Convention is qualified. I don't care if he went to college or not. He is a Union member and he knows what the problems are in the plant, and if you don't like him, he can still make an honest and good decision.

Vice President Woodcock: The brother at Mike No. 8.

Delegate Kenneth Blosser, Local Union No. 211: It has been my honor in the past to have served on two Grievance Committees under this International Constitution during the past nine conventions. I will say this: I would much sooner my fate would be left to a representative out of each region than left to 3,000 delegates who are in one hell of a hurry to go home.

Every time the Grievance Committee reports out, it is at the last of the Convention. Believe me, there are not a third of the people here at that time and they are not even interested in what is going on.

an unsupervised election did not deprive the Secretary of his right to a court order declaring the earlier challenged election void and directing a new election under his supervision, if he proved a statutory violation that might have affected the outcome of the challenged election.

MARSHALL, J., took no part in the consideration or decision of the case.

HEADNOTES

Classified to U. S. Supreme Court Digest, Annotated

Appeal and Error § 1662 — election of union officers — action by Secretary of Labor — mootness

1. An action to set aside an election of union officers and to require a new election under the supervision of the Secretary of Labor, which action was instituted in a Federal District Court by the Secretary under the provisions of the Labor-Management Reporting and Disclosure Act of 1959 authorizing such an action where the Secretary, after investigating the complaint of a union member who had exhausted his internal union remedies, has probable cause to believe that the election of officers had not been conducted in compliance with statutory standards (29 USC § 482), is not rendered moot by the fact that while the Secretary's appeal from an adverse decision of the District Court was pending, the union conducted its next regular biennial election, which was unsupervised, and the Court of Appeals should decide the merits of the Secretary's appeal.

Labor § 13 — invalid election of union officers — ordering supervised election

2. No exceptions are admitted by the unambiguous provision of the Labor-Management Reporting and Disclosure Act of 1959 (29 USC § 482 (c)) that when a violation of the statutory standards for an election of union officers may have affected the outcome of the election, the District Court, in an action instituted by the Secretary of Labor upon investigation of a union member's complaint, "shall" declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary.

TOTAL CLIENT SERVICE LIBRARY REFERENCES

5 AM JUR 2d, Appeal and Error §§ 761–769; AM JUR 2d, Labor and Labor Relations (Rev ed, Labor § 29)

US DIGEST ANNO, Appeal and Error § 1662; Labor § 13

ALR DIGESTS, Appeal and Error § 954.5; Labor § 13

L ED INDEX TO ANNO, Moot Questions; Labor and Employment

ALR QUICK INDEX, Moot Case; Labor and Labor Unions

ANNOTATION REFERENCE

Resort to constitutional or legislative debates, committee reports, journals, etc., as aid in construction of constitution or statute. 70 ALR 5.

Labor § 47; Statutes §§ 102, 145.4, 167.5 — interpretation — labor legislation

3. The proper construction of labor legislation, including the Labor-Management Reporting and Disclosure Act of 1959 (29 USC §§ 401 et seq.), which type of legislation is often the product of conflict and compromise between strongly held and opposed views, frequently requires consideration of its wording against the background of its legislative history and in light of the general objectives that Congress sought to achieve, and a literal reading of labor legislation is cautioned against.

Labor § 13 — invalid election of union officers — action by Secretary of Labor — effect of subsequent election

4. In light of the objectives that Congress sought to achieve in enacting the provisions of the Labor-Management Reporting and Disclosure Act of 1959 which authorize the Secretary of Labor, after finding—upon investigation of a union member's complaint—probable cause to believe that an election of union officers was not conducted in compliance with statutory standards, to institute an action in a Federal District Court to set aside the election and to require a new election under the Secretary's supervision (29 USC § 482), the statute may not properly be construed to terminate the Secretary's cause of action upon the fortuitous event of another unsupervised election before final judicial decision of the suit.

Labor §§ 8, 13 — elections of union officers — Reporting and Disclosure Act

5. The special function of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (29 USC §§ 481–483), in furthering the overall goals of the Act relating to the public interest in the objective that labor organizations and their officials adhere to the highest standards of responsibility and ethical conduct in administering the organizations' affairs, is to insure free and democratic elections of union officers, Congress having weighed how best to legislate against revealed abuses in union elections without departing needlessly from its long-standing policy against unnecessary governmental intrusion into internal union affairs.

Labor § 8 — Reporting and Disclosure Act — policy

6. The Labor-Management Reporting and Disclosure Act of 1959 evidences a general congressional policy to allow unions great latitude in resolving their own internal controversies, and, where that fails, to utilize the agencies of government most familiar with union problems to aid in bringing about a settlement through discussion before resort to the courts.

Labor § 13 — election of union officers — suit by Secretary of Labor

7. Under the provisions of the Labor-Management Reporting and Disclosure Act of 1959 (29 USC § 482 (a)) requiring that a union member who contests the validity of an election of union officers exhaust his internal union remedies before filing a complaint with the Secretary of Labor, who must investigate the challenged election and find probable cause that a violation of statutory standards occurred before instituting an action against the union, and who may attempt to settle the matter without a lawsuit, the objective is not a lawsuit, but to aid in bringing about a settlement through discussion before resort to the courts, although the provisions circumscribing the time and basis for the Secretary's intervention do not condition his right to relief once his intervention has been properly invoked.

Labor § 13 — election of union officers — suit by Secretary of Labor — effect of subsequent election

8. Under the provisions of the Labor-Management Reporting and Disclosure Act of 1959 which authorize the Secretary of Labor to institute an action to set aside an election of union officers after finding, upon

Canadian Region, the District Council of the Canadian Region. It is a resolution passed by my Local Union. It deals with that part of the Constitution that does not allow certain people to become officers of local unions.

We have in my Local Union gone through a procedural trial that was upheld in favor of one of our members and the Local Union's position was rejected and so was the position of the International Executive Board.

I feel that it is important now that this come out of the Constitution.

In the case of my Local, Brother James Bridgewood, who is a member of my Local, ran for office in the Communist Party in Canada. The Local Union took him out of office. The International Executive Board upheld that position. It was then reversed by the Public Review Board.

I'd say, Mr. Chairman, that with the position that the Public Review Board took, that Section should now come out of the Constitution, and if we cannot get that type of position from the Resolutions Committee, then I think that at least the interpretation of the Constitution in the case, 202, in front of the Public Review Board should be included in the interpretations of the Constitution so that anybody looking at that Section of the Constitution and looking for an interpretation of it would then be knowledgeable that the Public Review Board has dealt with this matter in Canada and that they have reversed this decision of the Local Union and the International Executive Board in favor of a member of our Union.

Thank you, Brother Chairman.

Vice President Woodcock: The Chair now has clearly in his mind the matter that the brother is bringing to our attention. Article 10, Section 8, of our Constitution says, and has said ever since 1941, that no member of any local union shall be eligible to hold any elective or appointive position in this International Union or in any local union in this International Union if he is a member of or subservient to any political organization such as the Communist, Fascist or Nazi organizations, which owes its allegiance to any government other than the United States or Canada, directly or indirectly.

In the Local Union of which the brother is a representative delegate in this Convention, there was a proceeding brought against an individual alleging that he was a member of an organization and prohibited from holding office by this provision of the Constitution. They so declared, and the International Executive Board supported them.

The Public Review Board reversed the position of both the International Executive Board and the Local Union on a technical matter. I emphasize that it was on a technical matter.

We were then requested by the Canadian District Council to remove this Section from our Constitution.

The Constitution Committee—the International Executive Board also considered the matter—strongly took the position that in this stage of the proceedings, particularly in the United States, to remove a Section which would seem to indicate that we are welcoming Communists, Fascists, and Ku Kluxers into positions of leadership in our Union would be very detrimental to us. It is not a Section that has been used very much in the 29 years we have had it and therefore the Constitution Committee, for those very obvious, sensible and eminently political reasons, did not report this matter out to this Convention, based upon a technical matter involving just one individual.

If the Convention wishes to demand that the Constitution Committee shall report out the deletion from the Constitution of a provision which forbids leadership positions to Communists, Fascists, Nazis or whatever, then it takes—I am trying to find out the exact number of hands. If that many people want to do it, the Constitution Committee will, of course, be ordered to do so.

President Reuther: I would like, while they are looking for that specific rule, just to say this. The International Executive Board gave this matter very serious consideration and, as Brother Woodcock has said, we have not been on red baiting, witch hunting expeditions. The first case that came up was a case that arose in a Canadian Local Union. The Local Union denied a known member of the Communist Party the right to seek local office. We upheld the decision of the Local Union. The member in question appealed to the Public Review Board.

investigation of a union member's complaint, probable cause to believe that the election was not conducted in compliance with standards prescribed in the Act, and which require that if the court finds that a violation of such standards may have affected the outcome of the election, it shall declare the election to be void and direct the conduct of a new election under supervision of the Secretary of Labor (29 USC § 482), the statutory scheme is not satisfied by the happenstance intervention, after the Secretary's filing of an action, of a subsequent unsupervised union election, since Congress concluded that in the public interest, a supervised election would best prevent the unfairness in the first election from infecting, directly or indirectly, the remedial election.

Labor § 13 — election of union officers — suit by Secretary of Labor — public interest

9. The provisions of the Labor-Management Reporting and Disclosure Act of 1959 authorizing the Secretary of Labor, after investigation of a union member's complaint, to institute an action to set aside an election of union officers because of violations of statutory standards, and directing the court, if it finds that a violation may have affected the election, to declare the election void and order a new election under the Secretary's supervision (29 USC § 482), are not designed merely to protect the right of a union member to run for a particular office in a particular election, since Congress emphatically asserted a vital public interest in assuring free and democratic union elections that transcends the narrower interest of the complaining union member.

Labor § 13 — election of union officers — suit by Secretary of Labor — effect of subsequent election

10. In a suit against a union instituted under the provisions of the Labor-Management Reporting and Disclosure Act of 1959 authorizing the Secretary of Labor, after investigation of a union member's complaint, to institute an action to set aside an election of union officers because of violations of statutory standards, and directing the court, if it finds that a violation may have affected the election, to declare the election void and order a new election under the Secretary's supervision (29 USC § 482), when the Secretary of Labor proves the existence of a statutory violation that may have affected the outcome of the challenged election, the fact that the union has already conducted another unsupervised election does not deprive the Secretary of his right to a court order declaring the challenged election void and directing the conduct of a new election under his supervision.

APPEARANCES OF COUNSEL

Louis F. Claiborne argued the cause for petitioner.
Albert K. Plone argued the cause for respondent.
Briefs of Counsel, p 1502, infra.

OPINION OF THE COURT

*[389 US 464]

*Mr. Justice **Brennan** delivered the opinion of the Court.

Petitioner, the Secretary of Labor, filed this action in the District Court for the Western District of Pennsylvania seeking a judgment declaring void the election of officers conducted by respondent Local Union on October 18, 1963, and directing that a new election be conducted under the Secretary's supervision.

Section 402(b) of the Labor-Management Reporting and Disclosure Act of 1959, 29 USC § 482(b), authorizes the Secretary of Labor, up-

on complaint by a union member who has exhausted his internal union remedies, to file the suit when an investigation of the complaint gives the Secretary probable cause to believe that the union election was not conducted in compliance with the standards prescribed in § 401 of the Act, 29 USC § 481. If the court finds that a violation of § 401 occurred which "may have affected the outcome of an election," it "shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary."[1] The alleged illegal-

*[389 US 465]

ity in the *election was a violation of the provision of § 401(e), 29 USC § 481(e), that in a union election subject to the Act every union member "in good standing shall be eligible to be a candidate and to hold office (subject to . . . reasonable qualifications uniformly imposed)

*[389 US 466]

. . . ." *A Local bylaw provided that union members had to have attended 75% of the Local's regular meetings in the two years preceding the election to be eligible to stand for office.[2] The union member

1. LMRDA § 402, 29 USC § 482:

"(a) A member of a labor organization—

"(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

"(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

"(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. . . .

"(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

. . . .

"(2) that the violation of section 401 may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. . . .

"(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal."

The complaining union member invoked his internal union remedies on October 24, 1963, and, not having received a final decision within three calendar months, filed a timely complaint with the Secretary.

2. Article IX, § 1, of the International Constitution provided that:

"All candidates for office, before nomination, must have attended 75 per cent of the meetings for at least two years prior to the election."

Article 4, § 12, of the Local's bylaws provided:

"No member may be a candidate unless said member is in good standing and has attended seventy-five per cent (75%) of the regular local meetings since the last local election."

And § 13 further provided:

They did not challenge the rights of our Union to have this provision in our Constitution. They reversed our decision on a procedural technicality.

If we take this Section out of our Constitution, there will be headlines in places all over this country, and we are organizing the unorganized in many parts of this country where they put out vicious handbills, because they say that we take in black workers and they try to confuse the workers and prejudice them against our Union. They will also say that at Atlantic City we changed the Constitution and welcomed members of the Communist Party and Fascists and other people who have loyalties to countries other than the United States and Canada, and we think we would be doing a great disservice to this Union and to the membership of this Union if we made such a move at this time.

Now, if the brother is formally asking—

(Applause)

We do not try to interfere in the political beliefs of any member of our Union. That is a matter of individual conscience. But, when someone seeks a postion in the leadership of this Union and he belongs to organizations who are committed to the overthrowing of our governments, then we believe we have got a right to say that kind of person should not be trusted with leadership responsibilities in this Union.

(Applause)

So, we felt that the sensible thing to do was not to bring this up, because we did not believe this was the kind of pressing issue that we ought to take the time of the Convention. But, since the brother has raised this and he has a perfect right to raise it—his Local Union took a very firm position and we supported them, but we were reversed on a procedural technicality.

Now, under the rules of the Convention, Section 9 says that:

"Resolutions or Constitutional changes submitted by local unions shall be reported out by the Committee as the first order of business in the next report, when requested by 450 delegates. The Chair will ask for a show of hands, when requested."

So, we will dispose of this in accordance with the rules of the Convention.

Are there 450 delegates wanting to report this matter out? Let me see your hands.

All right, there are, I think, five or six, so we will rule that it is not the will of the Convention for the Committee to report out this Section.

Thank you.

Vice President Woodcock: To proceed for the Constitution Committee, its chairman.

. . . Committee Chairman Lacayo read the following:

ARTICLE 32

Appeals

Section 13 (Present)

It shall be the duty of any member or subordinate body who feels aggrieved by any action, decision, or penalty imposed upon him or it, to exhaust his or its remedy and all appeals therefrom under the laws of this International Union prior to appealing to a civil court or governmental agency for redress. Failure to comply with this duty shall be cause for suspension or expulsion, or for revocation of charter, by a two-thirds (2/3) vote of the International Executive Board insofar as imposition of any such penalty is not inconsistent with any applicable laws.

Section 13 (New)

It shall be the duty of any member or subordinate body who feels aggrieved by any action, decision, or penalty imposed upon him or it, to exhaust his or its remedy and all appeals therefrom under the laws of this International Union prior to appealing to a civil court or governmental agency for redress.

Committee Chairman Lacayo: The Constitution Committee recommends the deletion of the last sentence in this Article and Section to conform with the present practices and requirements of the laws of the land and the various governmental agencies that may be affected.

whose complaint invoked the Secretary's investigation had not been allowed to stand for President at the 1963 election because he had attended only 17 of the 24 regular monthly meetings, one short of the requisite 75%; under the bylaws, working on the night shift was the only excusable absence and none of his absences was for this reason.

[1] The District Court held that the meeting-attendance requirement was an unreasonable restriction upon the eligibility of union members to be candidates for office and therefore violated § 401(e),[3] but dismissed the suit on the ground that it was not established that the violation "may have affected the outcome" of the election. 244 F Supp 745. The Secretary appealed to the

*[389 US 467]

Court *of Appeals for the Third Circuit. The appeal was pending when the Local conducted its next regular biennial election in October 1965. The Court of Appeals held that the Secretary's challenge to the 1963 election was mooted by the 1965 election, and therefore vacated the District Court judgment with the direction to dismiss the case as moot. In consequence, the court did not reach the merits of the question whether the unlawful meeting-attendance qualification may have affected the outcome of the 1963 election. 372 F2d 86.[4] Because the question whether the intervening election mooted the Secretary's action is important in the administration of the LMRDA, we granted certiorari, 387 US 904, 18 L ed 2d 621, 87 S Ct 1686, and set the case for oral argument with No. 58, Wirtz v Local 125, Laborers' Int'l Union, 389 US 477, 19 L ed 2d 716, 88 S Ct 639. We reverse.

[2] The holding of the Court of Appeals did not rest on any explicit statutory provision that on the happening of another unsupervised election the Secretary's cause of action should be deemed to have "ceased to exist." California v San Pablo & T. R. Co. 149 US 308, 313, 37 L ed 747, 748, 13 S Ct 876.[5] Indeed a literal reading of § 402(b) would more rea-

*[389 US 468]

sonably *compel the contrary conclusion. For no exceptions are admitted by the unambiguous wording that when "the violation of § 401 may have affected the outcome of an election, the court *shall* declare the election, if any, to be void and

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"In cases where members have to work at the time of meetings, and so notify the Recording Secretary, they shall be marked present at such meetings, provided they notify the Secretary in writing within seventy-two (72) hours following the meeting. . . ."

3. As a consequence of the meeting-attendance requirement, only 11 of the 500-member Local were eligible to run for office in 1963. The Vice President and Financial Secretary ran for re-election unopposed and there were no candidates for Recording Secretary and for three Trustee positions. These positions were filled by appointment of members who could not have qualified as candidates under the meeting-attendance requirement.

4. Pending decision on the appeal, the Court of Appeals, on the Secretary's application, remanded the case to the District Court to permit the Secretary to make a post-judgment motion to have the 1965 election declared invalid. The District Court denied the motion. That denial was also appealed to the Court of Appeals, which affirmed on the ground that "absent a complaint by a union member challenging the 1965 election, the Secretary had no authority to sue to establish the invalidity of that election." 372 F2d, at 88. Our decision makes unnecessary any consideration of the correctness of that holding.

5. The Court of Appeals adopted the holding of the Court of Appeals for the Second Circuit in Wirtz v Local 410, IUOE, 366 F2d 438. The Court of Appeals for the Sixth Circuit in No. 58, Wirtz v Local 125, Laborers' Int'l Union, supra, also followed the Second Circuit.

direct the conduct of a new election under supervision of the Secretary . . . ." (Emphasis supplied.)

[3] Nonetheless, this does not end the inquiry. We have cautioned against a literal reading of congressional labor legislation; such legislation is often the product of conflict and compromise between strongly held and opposed views, and its proper construction frequently requires consideration of its wording against the background of its legislative history and in the light of the general objectives Congress sought to achieve. See, e.g., National Woodwork Mfrs. Assn. v NLRB, 386 US 612, 619, 18 L ed 2d 357, 363, 87 S Ct 1250. The LMRDA is no exception.[6]

[4] A reading of the legislative history of the LMRDA, and of Title IV in particular, reveals nothing to indicate any consideration of the possibility that another election might intervene before a final judicial decision of the Secretary's challenge to a particular election. The only reasonable inference is that the possibility did not occur to the Congress.[7] We turn therefore to the *[389 US 469] question *whether, in light of the objectives Congress sought to achieve, the statute may properly be construed to terminate the Secretary's cause of action upon the fortuitous event of another unsupervised election before final judicial decision of the suit.

The LMRDA has seven subdivisions dealing with various facets both of internal union affairs and of labor-management relations. The enactment of the statute was preceded by extensive congressional inquiries upon which Congress based the findings, purposes, and policy expressed in § 2 of the Act, 29 USC § 401.[8] Of special significance in this case are the findings that "in

6. Archibald Cox, who actively participated in shaping much of the LMRDA, has remarked:

"The legislation contains more than its share of problems for judicial interpretation because much of the bill was written on the floor of the Senate or House of Representatives and because many sections contain calculated ambiguities or political compromises essential to secure a majority. Consequently, in resolving them the courts would be well advised to seek out the underlying rationale without placing great emphasis upon close construction of the words." Cox, Internal Affairs of Labor Unions Under the Labor Reform Act of 1959, 58 Mich L Rev 819, 852 (1960).

7. There are references to the desirability of expeditious determinations of the Secretary's suits, but it is clear from the contexts in which they appear that the concern was to settle as quickly as practicable the cloud on the incumbents' titles to office and not to avoid possible intervention of another election. See S Rep No. 187, 86th Cong, 1st Sess, 21, I Leg Hist 417; 104 Cong Rec 7954, Leg Hist 699 (Dept Labor 1964) (hereafter cited DL Leg Hist) (Senator Kennedy); 104 Cong Rec 11003, DL Leg Hist 710 (Senator Smith); cf. Cox, The Role of Law in Preserving Union Democracy, 72 Harv L Rev 609, 631–634 (1959). The provision of § 402(d), 29 USC § 482(d), that "an order directing an election shall not be stayed pending appeal" is consistent with the concern that challenges to incumbents' titles to office be resolved as quickly as possible.

8. The background and legislative history of the 1959 Act are discussed in Aaron, The Labor-Management Reporting and Disclosure Act of 1959, 73 Harv L Rev 851 (1960); Cox, Internal Affairs of Labor Unions, supra, n. 6; Levitan & Loewenberg, The Politics and Provisions of the Landrum-Griffin Act, in Regulating Union Government 28 (Estey, Taft & Wagner eds. 1964); Rezler, Union Elections: The Background of Title IV of LMRDA, in Symposium on LMRDA 475 (Slovenko ed. 1961). And see Cox, Preserving Union Democracy, supra, n. 7, at 628–634.

Although Senator Kennedy, a principal sponsor of the legislation, counseled against mixing up the interests of providing for internal union democracy and

It was last June when our Executive Board was in Black Lake that individually members of our Education Committee of the Board, of which I'm chairman, came to me and separately made this suggestion. Then finally at an Education Committee meeting in Atlantic City last week, we unanimously went to the Executive Board and made this request. It was at that time that Walter said that he was deeply honored by it but that he would agree to it only if we would say that it would not take effect until after he had ceased to be the president of the UAW.

Are you ready to vote on the resolution and statement? All those in favor signify by raising your right hand.

Down hands.

In opposition?

The resolution and statement is carried unanimously.

President Reuther: I just want to thank you for your very generous action and say that when I started to work and tried to bring into being the Black Lake Family Educational Center, this was the furthest thing from my mind. I do believe that if this is going to be named after me, and this is a great honor, that it should be done, as the statement indicates, only after I have passed on the responsibility of the presidency of this Union to some other person. I thank each of you.

(Applause)

I'm going to ask Pat Greathouse to take the Chair, and that the Grievance Committee come to the platform, because we have to dispose of the grievances before this Convention. I turn the Chair over to Pat Greathouse because he worked with the Grievance Committee and he is familiar with all of the details of each case, and that, I think, will expedite the Convention. Brother Greathouse.

Vice President Greathouse: As was pointed out to you the other day when we discussed the Constitutional change, we now have under the procedures which have been in the Constitution, a Grievance Committee which hears appeals that are made to the Convention. This Committee met in Detroit for a week starting April 6. They held hearings on a number of appeals in the Midwest, and then they came into Atlantic City and held other hearings on appeals that originated in this part of the country, and then they prepared their report and recommendations to the Convention.

It is necessary that the Convention now hear their report and recommendations, and act upon their report, because these are appeals by individuals from the action of the International Executive Board. At this time I call upon the chairman of the Grievance Committee, Gene Keenum, chairman, of Local Union No. 988, Memphis, Tenn.

REPORT OF THE GRIEVANCE COMMITTEE

Committee Chairman Keenum: Thank you, Mr. Chairman.

The Grievance Committee has been meeting since April 6. We met in Detroit and conducted hearings in Solidarity House. We moved to Atlantic City last week and conducted further hearings here, starting April 13. During this time, we held hearings on a total of eight cases.

I want to take this opportunity to thank the Committee members for their hard work and cooperation. Each member of the Committee has been present and punctual at all sessions, and has actively participated in all our deliberations and decisions. I also want to thank the two secretaries from Vice President Pat Greathouse's office, Joan Good and Margaret Meissner, for the assistance they gave this Committee.

I would like to further thank Vice President Greathouse and his administrative assistant, Art Shy, for the assistance they gave the Committee.

Before we begin our report, I would like to introduce the members of the Committee.

First, on my left, is Odell Newburn, who is secretary of the Committee. Brother Newburn is a member of Local Union No. 5 in Region 3; next to Brother Newburn is John Austin, Local Union No. 836, Region 1C; Avery Foster, Local Union No. 31, Region 5; Rudy Gasparek, Local Union No. 1112, Region 2; Dick Johnson, Local Union No. 206, Region 1D; A. G. Sanders, Local Union No. 882,

the public interest" remedial legis- *[389 US 470] lation was necessary to *further the objective "that labor organizations . . . and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations . . . ," 29 USC § 401 (a), this because Congress found, "from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct . . ." requiring "supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations . . . and their officers and representatives." 29 USC § 401(b).

[5, 6] Title IV's special function in furthering the overall goals of the LMRDA is to insure "free and democratic" elections.[9] The legislative history shows that Congress *[389 US 471] *weighed how best to legislate against revealed abuses in union elections without departing needlessly from its long-standing policy against unnecessary governmental intrusion into internal union affairs.[10] The extensive and vigorous debate over Title IV manifested a conflict over the extent to which governmental intervention in this most crucial aspect of internal union affairs was necessary or desirable.

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of enacting measures concerned with relations between labor and management, see 105 Cong Rec 883–885, II Leg Hist 968–969; cf. S Rep No. 187, supra, n. 7, at 5–7, I Leg Hist 401–403, neither the debates nor the Act itself reveals unwavering adherence to this principle. See, e. g., Cox, Internal Affairs of Labor Unions, supra, n. 6, at 831–833.

9. "It needs no argument to demonstrate the importance of free and democratic union elections. Under the National Labor Relations and Railway Labor Acts the union which is the bargaining representative has power, in conjunction with the employer, to fix a man's wages, hours, and conditions of employment. The individual employee may not lawfully negotiate with his employer. He is bound by the union contract. In practice, the union also has a significant role in enforcing the grievance procedure where a man's contract rights are enforced. The Government which gives unions this power has an obligation to insure that the officials who wield it are responsive to the desires of the men and women whom they represent. The best assurance which can be given is a legal guaranty of free and periodic elections. The responsiveness of union officers to the will of the members depends upon the frequency of elections, and an honest count of the ballots. Guaranties of fairness will preserve the confidence of the public and the members in the integrity of union elections." S Rep No. 187, supra, n. 7, at 20; and HR Rep No. 741, 86th Cong, 1st Sess, 15–16, I Leg Hist 416, 773–774. See S Rep No. 187, supra, at 2–5, HR Rep No. 741, supra, at 1–7, I Leg Hist 398–401, 759–765.

10. See S Rep No. 187, supra, n. 7, at 7, I Leg Hist 403:

"In acting on this bill [S. 1555] the committee followed three principles: 1. The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. . . . [I]n establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents. 2. Given the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully competent to regulate union affairs. . . . 3. Remedies for the abuses should be direct. . . . [T]he legislation should provide an administrative or judicial remedy appropriate for each specific problem."

See also ibid.: "The bill reported by the committee, while it carries out all the major recommendations of the [McClellan] committee, does so within a general philosophy of legislative restraint."

The election title of the Senate bill referred to in the Committee Report was enacted virtually as drafted by the Senate.

In the end there emerged a "general congressional policy to allow unions great latitude in resolving their own internal controversies, and, where that fails, to utilize the agencies of Government most familiar with union problems to aid in bringing about a settlement through discussion before resort to the courts." Calhoon v Harvey, 379 US 134, 140, 13 L ed 2d 190, 194, 85 S Ct 292.

But the freedom allowed unions to run their own elections was reserved for those elections which conform to the democratic principles written into § 401. International union elections must be held not less often than once every five years and local union elections not less often than once every three years. Elec-

*[389 US 472]

tions must be *by secret ballot among the members in good standing except that international unions may elect their officers at a convention of delegates chosen by secret ballot. 29 USC §§ 481(a), (b). Specific provisions insure equality of treatment in the mailing of campaign literature; require adequate safeguards to insure a fair election, including the right of any candidate to have observers at the polls and at the counting of ballots; guarantee a "reasonable opportunity" for the nomination of candidates, the right to vote without fear of reprisal, and, pertinent to the case before us, the right of every member in good standing to be a candidate, subject to "reasonable qualifications uniformly imposed." 29 USC §§ 481 (c), (e).

[7] Even when an election violates these standards, the stated commitment is to postpone governmental intervention until the union is afforded the opportunity to redress the violation. This is the effect of the requirement that a complaining union member must first exhaust his internal union remedies before invoking the aid of the Secretary. 29 USC § 482(a). And if the union denies the member relief and he makes a timely complaint to the Secretary, the Secretary may not initiate an action until his own investigation confirms that a violation of § 401 probably infected the challenged election. Moreover, the Secretary may attempt to settle the matter without any lawsuit; the objective is not a lawsuit but to "aid in bringing about a settlement through discussion before resort to the courts." Calhoon v Harvey, supra. And if the Secretary must finally initiate an action, the election is presumed valid until the court has adjudged it invalid. 29 USC § 482 (a). Congress has explicitly told us that these provisions were designed to preserve a "maximum amount of independence and self-government by giving every interna-

*[389 US 473]

tional *union the opportunity to correct improper local elections." S Rep No 187, 86th Cong 1st Sess 21, I Leg Hist 417.

But it is incorrect to read these provisions circumscribing the time and basis for the Secretary's intervention as somehow conditioning his right to relief once that intervention has been properly invoked. Such a construction would ignore the fact that Congress, although committed to minimal intervention, was obviously equally committed to making that intervention, once warranted, effective in carrying out the basic aim of Title IV.[11] Congress deliber-

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11. See, e. g., S Rep No. 187, supra, n. 7, at 34, I Leg Hist 430:

"The committee bill places heavy reliance upon reporting and disclosure to union members, the Government and the public to effect correction of abuses where they have occurred. *However, the bill also endows the Secretary of Labor with*

Region 8; Paul Speth, Local Union No. 75, Region 10; Roy Stroud, Local Union No. 453, Region 4.

At this time, to get immediately into the grievances in Case No. 1, I would like to ask Rudy Gasparek to come and read the case.

Vice President Greathouse: While Brother Gasparek is coming out here, I would like to say to the delegates that we know that people are anxious to get away today, so it is the intent of the officers, if you will bear with us, that we will not have our regular noon recess, but we will run right through this report and the other necessary reports and complete the business of the Convention so that you can get away early this afternoon. So if you stay here, we will complete these reports and we won't have to have the noon break and can get away early.

. . . Committee Member Rudy Gasparek presented the following:

CASE NO. 1

Elijah Carter (Local Union No. 22) Versus UAW International Executive Board

The Appellant, Elijah Carter, is appealing the decision of the International Executive Board which upheld the decision of his Local Union No. 22 and denied Appellant's appeal.

Appearances before the Grievance Committee:

For the Appellant: Elijah Carter, Charlie McCullum, Jr., Milton Lewis.

For the Local Union: Gomer Goins, Plant Chairman; Larry Webb, district committeeman; Ivory Jackson, alternate committeeman.

For Region 1E: William Moshimer, International Representative.

For the International Executive Board: Vice President Leonard Woodcock.

Facts

Brother Carter is employed by the General Motors Corporation, Cadillac Division, in Detroit, Mich. On June 25, 1969, he was discharged by management at Cadillac for alleged violation of Shop Rule No. 30—Fighting on Company Premises.

The record discloses that, on June 25, 1969, a physical encounter took place between the Appellant, Elijah Carter, and Jimmie L. Shepard. Brother Carter alleged that Brother Shepard was the aggressor. Brother Shepard, on the other hand, asserted that Brother Carter began the fight. This incident took place in Brother Shepard's work area and, since Brother Carter was in that work area from a different floor, two different sets of Union representatives were involved.

On June 25, 1969, both individuals were discharged and each sought and was given the assistance of his respective Union representative. The Appellant charges that Committeeman Larry Webb, who was the Appellant's committeeman, did not properly represent him in connection with his discharge.

Committeeman Webb testified that he spoke alone with Appellant and then had the Appellant sign a blank grievance on June 25. Brother Webb did not want to file a grievance until the facts had been investigated because two Union members were involved and were making contradictory assertions. After a full investigation of the two cases had been completed, Webb then filled in the grievance on Monday, June 30, signed it himself, dated it, and processed the case through the grievance procedure. Management, in the following week, agreed to reduce the discharges of both Carter and Shepard to 2½ weeks' disciplinary layoff and notified both men to return to work. The Local Union Committee accepted these reduced penalties as a satisfactory settlement of the grievances.

On August 19, 1969, the Appellant, Elijah Carter, appealed to the membership of the Local Union requesting back pay and that his record be cleared. At the Local Union No. 22 membership meeting of October 1969, after hearing from all parties and a full discussion of the case, the membership voted to deny the appeal. The Appellant appealed this decision to the International Executive Board.

The Region 1E Appeals Committee of the International Executive Board heard the case on February 18, 1970, in Solidarity House. Both Brothers Carter and Shepard appeared before the Committee. In its report, the Committee found that, while it is not clear who was the aggressor, the record establishes that there was

ately gave exclusive enforcement authority to the Secretary, having "decided to utilize the special knowledge and discretion of the Secretary of Labor in order best to serve the public interest." Calhoon v Harvey, supra. In so doing, Congress rejected other proposals, among them plans that would have authorized suits by complaining members in their own right.[12] And Congress

*[389 US 474]

unequivocally declared that *once the Secretary establishes in court that a violation of § 401 may have affected the outcome of the challenged election, "the court *shall* declare the election . . . to be void and direct the conduct of a new election under supervision of the Secretary . . . ." 29 USC § 482(c). (Emphasis supplied.)

[8] We cannot agree that this statutory scheme is satisfied by the happenstance intervention of an unsupervised election. The notion that the unlawfulness infecting the challenged election should be considered as washed away by the following election disregards Congress' evident conclusion that only a supervised election could offer assurance that the officers who achieved office as beneficiaries of violations of the Act would not by some means perpetuate their unlawful control in the succeeding election. That conclusion was reached in light of the abuses surfaced by the extensive congressional inquiry showing how incumbents' use of their inherent advantage over potential rank and file challengers established and perpetuated dynastic control of some unions. See S Rep No. 1417, 85th Cong, 2d Sess. These abuses were among the "number of instances of breach of trust . . . [and] disregard of the rights of individual employees . . ." upon which Congress rested its decision that the legislation was required in the public interest.[13] Congress chose the alternative of a supervised election as the remedy for a § 401 violation in the belief that the protective presence of a neutral Secretary of Labor would best prevent the unfairness in the first election from infecting, directly or indirectly, the remedial election. The choice also reflects a conclusion that union members made aware of unlawful practices could not adequately protect their own interests through an unsupervised election. It is clear, therefore, that the intervention of

*[389 US 475]

an election *in which the outcome might be as much a product of unlawful circumstances as the challenged election cannot bring the Secretary's action to a halt. Aborting the exclusive statutory remedy would immunize a proved violation from further attack and leave unvindicated the interests protected by § 401. Title IV was not intended to be so readily frustrated.

Respondent argues that granting the Secretary relief after a supervening election would terminate the new officers' tenure prematurely on mere suspicion. But Congress, when

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broad power to insure effectuation of its objectives. . . .

. . . . . .

". . . "He has power to— . . . (e) investigate violations of the election provisions and bring court actions to overturn improperly held elections and supervise conduct of new elections . . . .

"The committee believes that the *broad powers granted to the Secretary* by this bill combined with full reporting and disclosure to union members and the public *provides a most effective combination of devices by which abuses can be remedied.*" (Emphasis supplied.)

12. S 748, 86th Cong, 1st Sess, I Leg Hist 84, 118–134; HR 8342, 86th Cong, 1st Sess, I Leg Hist 687, 727–729. See HR Conf Rep No. 1147, 86th Cong, 1st Sess, 35, I Leg Hist 939.

13. See, supra, at 711–712.

it settled on the remedy of a *supervised* election, considered the risk of incumbents' influence to be substantial, not a mere suspicion. The only assurance that the new officers do in fact hold office by reason of a truly fair and a democratic vote is to do what the Act requires, rerun the election under the Secretary's supervision.

[9] The Court of Appeals concluded that it would serve "no practical purpose" to void an old election once the terms of office conferred have been terminated by a new election. We have said enough to demonstrate the fallacy of this reasoning: First, it fails to consider the incumbents' possible influence on the new election. Second, it seems to view the Act as designed merely to protect the right of a union member to run for a particular office in a particular election. But the Act is not so limited, for Congress emphatically asserted a vital public interest in assuring free and democratic union elections that transcends the narrower interest of the complaining union member.

[10] We therefore hold that when the Secretary of Labor proves the existence of a § 401 violation that may have affected the outcome of a challenged election, the fact that the union has already conducted another unsupervised election does not deprive the Secretary of his right to a court order declaring the chal-
*[389 US 476]
lenged election void *and directing that a new election be conducted under his supervision.[14]

The judgment of the Court of Appeals is reversed and the case remanded to that court with direction to decide the merits of the Secretary's appeal.

It is so ordered.

Mr. Justice **Marshall** took no part in the consideration or decision of this case.

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14. There is much discussion in the briefs of possible alternatives to our conclusion, such as expediting proceedings under § 402 to bring about their final decision before the next regular election, or injunctive relief against the conduct of that election pending final decision in the Secretary's suit. That discussion, however, assumes a construction of the statute contrary to that which we have reached and therefore requires no comment.

*[389 US 463]

*W. WILLARD WIRTZ, Secretary of Labor, Petitioner,

v

LOCAL 153, GLASS BOTTLE BLOWERS ASSOCIATION, etc.

389 US 463, 19 L Ed 2d 705, 88 S Ct 643

[No. 57]

Argued November 8, 1967. Decided January 15, 1968.

SUMMARY

An action by the Secretary of Labor against a labor union to set aside an election of union officers and to require a new election under the Secretary's supervision was instituted in the United States District Court for the Western District of Pennsylvania, pursuant to the provisions of § 402 of the Labor-Management Reporting and Disclosure Act of 1959 which authorize such an action when the Secretary, after investigating a union member's complaint, has probable cause to believe that an election of union officers has not been conducted in compliance with statutory standards, and which direct the court, if it finds that a violation may have affected the election, to declare the election void and order a new election under the Secretary's supervision. The District Court, although finding that the statutory standards had been violated in the conduct of the challenged election, nevertheless dismissed the suit on the ground that it was not established that the violation may have affected the outcome of the election. (244 F Supp 745.) The Secretary appealed to the Court of Appeals for the Third Circuit, and while the appeal was pending, the union conducted its next regular, unsupervised, biennial election. The Court of Appeals held that the intervening election mooted the Secretary's action, and vacated the District Court's judgment with the direction to dismiss the case. (372 F2d 86.)

On certiorari, the Supreme Court of the United States reversed, remanding the case to the Court of Appeals with direction to decide the merits of the Secretary's appeal. In an opinion by BRENNAN, J., expressing the unanimous view of the court, it was held that in light of the objectives that Congress sought to achieve in enacting the pertinent statutory provisions, the statute could not be properly construed to terminate the Secretary's cause of action upon the fortuitous event of another unsupervised election before final judicial decision of the suit, and such

DISCHARGE
Joseph Moran
Wilbur Haddock
Monroe Head

CASE NO. 29,132 - APPEAL NO. 4661

CASE NO. 29,133 - APPEAL NO. 4662

CASE NO. 29,134 - APPEAL NO. 4663
MAHWAH ASSEMBLY PLANT
LOCAL NO. 906

Messrs. Moran, Haddock and Head were discharged on April 28, 1969, for their actions on Friday, April 25. The Company regarded these actions as a violation of Article V of the Master Agreement between the parties. The Union protest of the discharges was appealed to the Umpire. Hearings were held on July 17, 1969, at the Holiday Inn in Paramus, New Jersey. The use of this site, rather than a plant conference room, was at the urging of the Company. The Union's objection to this location for the hearing is noted.

Five witnesses were called during the day-long proceedings: Mr. Richard Healy, Industrial Relations Manager of the Mahwah Plant, the three grievants, and Mr. George Strawn, President of Local No. 906. In addition, the Umpire received numerous exhibits from the Company, viewed two reels of film, and heard tapes of interviews secured from a local radio station. Because of the nature of the case, the Umpire believes that both parties are entitled to an objective statement of the testimony, without early editorial comment. The following summary, though lengthy, is the only way this purpose can be served.

Mr. Healy testified that just prior to the start of the #3 shift on Wednesday, April 23, a bulletin had been observed by members of management announcing a meeting of the United Black Brothers of Mahwah Ford at the Union Hall for that night at the end of the shift. The bulletin had significance because just before this shift was to start an incident had occurred between Superintendent Eskew and employee Arthur Bivins, after which Bivins said he had been racially insulted. On Thursday, April 24, at approximately 9:00 a.m., the facts of the incident were given to Healy by Mr. Nagliari, Supervisor of Hourly Personnel and Labor Relations. Healy decided to call an early meeting with Eskew, Labor Relations Representative

J. Herbert and other salaried people to reconstruct the events of the prior evening. At about the same time he received a call from the Local Union President (who was then at the U.A.W. Regional Office), who reported that the incident between Eskew and Bivins was creating a serious problem, and, that while he had not been at the UBB meeting the night before, he expected that some demonstration would be the consequence. The Local President, Mr. Strawn, also indicated that UBB members had taken over the lower half of the Union hall. Later that morning a #3 shift committeeman reported that he had been ejected from the prior night's meeting on the ground that only UBB members were allowed to attend.

At approximately 1:00 p.m. on April 24, a letter from the UBB addressed to the Plant Manager, was delivered by the #3 shift committeeman to Mr. Nagliari. It expressed as the desire and will of all black workers that "the Superintendent of the Body Shop No. 3 shift be removed from supervision over the workers who were stunned by his action on April 23, 1969 at shift start." The letter went on to urge the immediate acceptance of three demands: (1) the dismissal or transfer of supervisors with records of repeated acts of discrimination and abuse, (2) the reinstatement of workers who were provoked into violations of company rules by supervisors and subsequently fired, and (3) the inclusion of more black representatives in the Labor Relations and Hourly Personnel Departments, given the number of blacks employed in the plant.

That same afternoon, word was received that the UBB was trying to prevent the #3 shift from operating. At 4 p.m., when the shift was scheduled to start, there were more than the usual number of absences, but with extensive use of relief people, the shift was able to operate. Local President Strawn called to ask Healy about the disposition of the Eskew matter and he was told it was still being investigated and no conclusion had been reached. Strawn advised Healy that tensions were very high at the Local Union hall and that he, together with the UAW Regional Director and a Field Representative, were enroute to the plant to discuss the problem. The parties conferred that afternoon.

On Friday, April 25, at 5:45 a.m., approximately 50 black employees, including grievants Head and Moran, plus about 50 non-employees, were on the plant access road handing out bulletins for the apparent purpose of persuading employees not to enter the plant. One bulletin, signed by the UBB of Mahwah Ford, accused supervisors of calling employees by such names as "dirty guinea bastard", "black son-of-a-bitch", and "stinking spick."

It urged employees to stay out and support the UBB in its fight to end this supervisory conduct and to remove those guilty of such harassment. A second bulletin, unsigned, referred in detail to the Eskew-Bivins incident, listed a number of demands, including the removal of Eskew from the Mahwah plant, and concluded with the statement, "If these demands are not met, further action will be taken."

Mr. Healy commented that his investigation revealed no evidence that Superintendent Eskew made racist remarks toward Bivins, as alleged by the UBB. Mr. Eskew, though still employed by the Ford Motor Company, is no longer at the Mahwah plant.

Returning to the events of early a.m. on April 25, the Company witness said that an SDS group formed a human chain at the south entrance to the plant's parking lot. The police broke the chain, arrested one of the SDS picketers, and traffic entered the plant at a slow rate. The shift started at 6:30 a.m. with a high absentee rate. The SDS group was successful in obstructing the area with deliberately stalled cars and urged people to go to the Union hall for a meeting. That same morning a meeting was held between Company representatives and the Union committee plus two black employees to discuss the Eskew-Bivins incident. As Healy understood it, the two blacks, Dent and Scott, were not participating as UBB representatives. They exchanged viewpoints, but no conclusions were reached.

At 3:00 p.m., pickets blocked traffic at the access road to stop the #3 shift from entering. There were approximately 40 SDS present. As the 4 p.m. shift starting time approached, a large number of black employees congregated near the Security Building at the south parking lot entrance gate. Company photographs taken at the time show grievant Wilbur Haddock as one of those in the area. In one, possibly two, of the photographs, Haddock is holding in his hand what undoubtedly were bulletins of the type described above. These people were on the access road located on Company property. By 4 p.m. the group had increased to about 200 people. Witness Healy said that one black employee, J. Belton, began to talk to the gathering in a "disjointed, rambling, disoriented" manner. He appeared to be drunk, and, as the movies show, the people listening were laughing at his antics. But then Haddock moved in to talk to the people shortly after 4 p.m. He urged them to go to the Union hall. The people listened attentively to his comments, and they complied with his request. However, at 5:06 p.m. the #3 shift had to be shut down because of excessive absenteeism. The Company believes that this absenteeism was due in large measure to Haddock's activities in the parking lot. His role at that time was said to be one of the "key charges against him that led to his discharge."

A meeting was held at 6 p.m. on Friday, April 25, involving Company and Union representatives. In addition to the local plant people, representatives from the Company's Automotive Assembly Division's general offices were present. The Company was told that the UBB had taken over the Union hall and appeared to be using the hall as a control center for the dispatching of pickets; pickets would assemble at the hall, be sent to the plant gates just before a shift starting time, and then return to the hall.

On Saturday, April 26, the Commercial Production System was scheduled to start work at 7 a.m. Hourly employees met with some resistance as they entered the access roads. Both black employees and SDS volunteers picketed and tried to discourage people from entering. Nevertheless the shift was able to operate. Later that day there was a news release announcing the operation of the Commercial Production system and stating that normal operations would go forward on Monday, April 28. At 11:00 a.m. on this Saturday a meeting with the Union bargaining committee had been scheduled. Toward the end of the meeting, according to Healy, Haddock and Head entered the plant conference room, uninvited, and placed a list of demands on the Company side of the table. As Haddock left the demands, he said, apparently in response to the Company's refusal to meet with the UBB representatives, "It really doesn't matter. Meet these demands by Tuesday, or else." The two men then left the room. The document left, says the Company, was in the form of a bulletin addressed to "the white brothers at at Mahwah." It referred to the walkout begun by the UBB and again recited the UBB version of the Eskew-Bivins incident. There followed a list of 8 demands, two of which were given special emphasis by the Company in the hearing:

> "4. Establishment of the United Black Brothers as the spokesman of Black Workers in Mahwah.
>
> "5. If management has not met the above demands by April 26, 1969, we shall begin the second phase of direct action and will not be held responsible for any actions taken against the oppressive and racial policies of the Ford Motor Company."

The document concluded with the admonition that employees should "respect the strike ... don't go to work." And then the parenthetical notation, "The plant will be shut down anyway. You can call in sick to protect your job." The Union disputed that the document submitted by the Company