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The Labor Bill of Rights and the Doctrine of Exhaustion of Remedies--A Marriage of Convenience

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NOTES

THE LABOR BILL OF RIGHTS AND THE DOCTRINE OF EXHAUSTION OF REMEDIES—A MARRIAGE OF CONVENIENCE

Plaintiffs were longshoremen seeking nomination for a forthcoming union election. Defendants were officers of a local branch of the International Longshoremen's Association. Prior to the union meeting which would nominate candidates to run for union offices presently held by the defendants, the local's executive board had recommended special eligibility requirements for prospective nominees. This recommendation amounted to a bylaw amendment for which the union's bylaws required notice at three consecutive meetings prior to a vote by mail. Nevertheless, the recommendation was adopted immediately by a vote of the members present at the nomination meeting.

The plaintiffs qualified for union office under the original bylaws but not under the amended bylaws. Nonetheless, plaintiffs Gatto and Libutti were nominated for the offices of local president and executive board member respectively. Gatto's nomination made him incumbent Di Brizzi's only opponent in the election for union president. After his nomination, and as he left the speaker's podium, Gatto was assaulted by one of defendant Di Brizzi's political allies.

The local's bylaws specified that a board of elections must be established by vote of the general membership. Defendant Di Brizzi appointed a committee of his own choosing to pass on the nominations. This board ruled that plaintiffs were ineligible for office under the requirements recommended by the executive board and adopted by those present at the nomination meeting. The net result was that Di Brizzi was unopposed in his bid for re-election as president and that there were seven candidates for the six positions on the executive board.

The plaintiffs sued for injunctive relief under 29 U.S.C. § 411(a)(1), that section of the labor bill of rights[1] that guarantees union members "equal rights and privileges . . . to nominate candidates . . . ." The district court directed defendants to afford each of the local's members a fair opportunity to nominate the candidate of their choice in accordance with the local's bylaws.[2] The defendants were enjoined from conducting any election until this nominating process was completed.[3] The circuit court of appeals affirmed.[4]

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[1] The "bill of rights" Section of the Labor Management Reporting and Disclosure Act (Landrum-Griffin Act) § 101, 73 Stat. 522, 29 U.S.C. § 411 (1959) guarantees rank-and-file union members equal rights in the union organization, freedom of speech and assembly, freedom from capricious assessment of dues, protection of the right to sue, and safeguards against improper disciplinary action. The next section (29 U.S.C. § 412) provides that any person whose rights are secured by the bill of rights "may bring a civil action in a U.S. District Court for such relief (including injunctions) as may be appropriate."

[2] Libutti v. Di Brizzi, 233 F. Supp. 924 (E.D.N.Y. 1964).

[3] The positive relief granted here was probably made impossible in any future case on the same subject by a decision of the Supreme Court handed down about a month after *Libutti* was decided. In Calhoon v. Harvey, 379 U.S. 134 (1964), the Court ruled

Prior to bringing suit, the plaintiffs made no attempt to utilize intraunion appellate procedures. Consequently the defendants argued that relief should have been denied on the ground that plaintiffs failed to exhaust their union remedies. The district court sustained plaintiff's argument that any intraunion appeal would be a futility in this case; the circuit court held that no recourse to the union tribunals would be required because the initial union proceedings were void.

Libutti v. Di Brizzi[5] is the latest offspring of a marriage of convenience performed by the Second Circuit when it united an oft-criticized common law doctrine with an ambiguous statute. The marriage occurred in 1960 with the court's decision in *Detroy v. American Guild of Variety Artists.*[6] The oft-criticized common law doctrine is the doctrine of exhaustion of remedies. The highly ambiguous statute is the exhaustion proviso of 29 U.S.C. § 411(a)(4), a part of the labor bill of rights. This note will examine the net effects of this merger upon the labor community.

The Common Law Doctrine

It has generally[7] been true from the earliest court intervention in the affairs of non-profit organizations that a suit is doomed to failure if the plaintiff-member cannot prove either that he has exhausted all available appeals within the association or that his situation is one that falls within some exception to the exhaustion of remedies rule.[8]

The exhaustion doctrine as applied to unions is based on three underlying policies. First, it is desirable to reduce the burdens placed on the courts by allowing unions to correct their own internal difficulties. Second, it is desirable to give the courts the benefit of the supposedly expert judgment of union tribunals. Third, it is desirable that courts allow the union full latitude in correcting its own mistakes.[9]

The chief difficulty in applying the exhaustion doctrine stems from the many exceptions created by the courts.[10] The first major exception to the rule is the concept of futility of appeal. If the proceedings to which the aggrieved member must have recourse promise to be fruitless or manifestly unfair, the member need not resort to them.[11] This exception is invoked if the member can show a lack of impartiality on the part of the union tribunal. A second concept is delay of ap-

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that disputes relating to election of candidates for union office are not to be decided in a suit brought by union members under the labor bill of rights.

[4] Libutti v. Di Brizzi, 337 F.2d 216 (2d Cir. 1964).

[5] *Ibid.*

[6] 286 F.2d 75 (2d Cir.), *cert. denied,* 366 U.S. 929 (1961).

[7] There is some authority at common law that exhaustion of remedies is not necessary to the bringing of an action for damages. See Underwood v. Maloney, 152 F. Supp. 648, 658 (E.D. Pa. 1957).

[8] Falsetti v. Local 2026, UMW, 400 Pa. 145, 154 & n.2, 161 A.2d 882, 886 & n.2 (1960).

[9] Summers, *The Law of Union Discipline, What the Courts Do in Fact,* 70 YALE L.J. 175, 207 (1960).

[10] *Ibid.* See generally Comment, *Exhaustion of Remedies in Private Voluntary Associations,* 65 YALE L.J. 369 (1956); Annot., 87 A.L.R.2d 1099 (1963).

[11] Madden v. Atkins, 4 App. Div. 2d 1, 162 N.Y.S.2d 576 (1957).

peals. Usually, a delay of over a year is held to be too long;[12] this exception is often used when the disciplined member is barred from his job. A third exception is the doctrine of void proceedings.[13] This is a catch-all exception. If the union disciplines a member after a procedurally imperfect hearing or if the local's or member's violation of the bylaws is not punishable, the entire union proceeding may be deemed without jurisdiction and void.[14] These broadly phrased exceptions, especially the third, have allowed courts to use the doctrine of exhaustion as a make-weight. A case seldom arises in which a court cannot find grounds for invoking one of these exceptions if plaintiff has valid grounds for a lawsuit.[15] Studies made in 1951[16] and 1959[17] by an eminent labor law authority revealed that an exception was found in the majority of the cases where the defense of exhaustion was raised. The compiler of these studies found few cases where relief was refused solely for lack of exhaustion.[18] Possibly because most courts have not really trusted union tribunals,[19] the judicial application of the exhaustion at common law has amounted to a repudiation of the doctrine through the liberal invocation of its exceptions.

Therefore, it is not surprising that the common law doctrine of exhaustion has long been criticized[20] and is generally thought to be in need of overhaul.

The Statutory Provision

In 1959, the Labor Management Reporting and Disclosure Act[21] was enacted into law. This act contains a "bill of rights" for labor which makes reference to the exhaustion of intraunion remedies. This reference is contained in the paragraph that guarantees union members the right to sue the union[22] and is phrased in terms of a qualification placed upon that right. The statute says that the right to sue will be upheld

> *provided* that any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four month lapse of time) before instituting legal or administrative proceedings against any such organization or any officer thereof.[23]

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[12] Madden v. Atkins, 4 N.Y.2d 283, 151 N.E.2d 73 (1958).

[13] Tesoriero v. Miller, 274 App. Div. 670, 88 N.Y.S.2d 87 (1949); Summers, *supra* note 9, at 209.

[14] See Summers, *Legal Limitations on Union Discipline*, 64 HARV. L. REV. 1049, 1089-91 (1951).

[15] See Vorenberg, *Exhaustion of Intraunion Remedies*, 2 LAB. L.J. 487 (1951).

[16] Summers, *supra* note 14.

[17] Summers, *The Law of Union Discipline; What the Courts Do in Fact*, 70 YALE L.J. 175, 210 (1960).

[18] *Ibid.*

[19] See Vorenberg, *supra* note 15, at 493.

[20] See, *e.g.*, Vorenberg, *Exhaustion of Intraunion Remedies*, 2 LAB. L.J. 487 (1951); Comment, *Exhaustion of Remedies in Private Voluntary Associations*, *supra* note 10.

[21] Labor Management Reporting and Disclosure Act (Landrum-Griffin Act) § 101, 73 Stat. 522, 29 U.S.C. § 411 (1959).

[22] Labor Management Reporting and Disclosure Act (Landrum-Griffin Act) § 101(a)(4), 73 Stat. 522, 29 U.S.C. § 411(a)(4) (1959).

[23] *Ibid.* (Italics in original.)

This "bill of rights" is an enumeration of rights granted to the union member with respect to the union and its officers. The proviso is a qualification of one of those rights. When rights exist between two parties, insofar as one party's right is qualified, the other party has a privilege.[24] Therefore, the apparent meaning of this proviso is that it vests in the union the privilege of requiring exhaustion of reasonable remedies not to exceed four months' duration.[25] However, contrary interpretations had been made by persons supposedly in a position to know the true legislative intent. Some of the legislators whose support led to its enactment interpreted it as a codification of the common law doctrine of exhaustion of remedies with a four month time limit superimposed.[26]

The Marriage

Detroy v. American Guild of Variety Artists[27] was the first exhaustion of remedies case to go to a court of appeals under the labor bill of rights. *Detroy* involved an animal trainer suing his union because he had been placed on the organization's "unfair list." His appearance on this list had made it impossible for his act to find employment. Without any recourse whatever to the union's appellate procedures, Detroy brought suit under the labor bill of rights. The trial court denied relief for lack of exhaustion.[28] The Second Circuit reversed on appeal.[29]

The facts of this case convinced the court that to require exhaustion would work undue hardship upon this plaintiff. In *Johnson v. International Bhd. of Electrical Workers*,[30] a district court had already shown how relief might be granted in such a "hard" case without placing any strain on the statutory language. In *Johnson* the court simply found that the union's hearing procedures were not "reasonable"[31] and therefore, not to be required. The Second Circuit in *Detroy* chose

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[24] See HOHFELD, FUNDAMENTAL LEGAL CONCEPTIONS 7, 38-39 (1923) on the concept of the "no-right" and its correlative, the privilege.

[25] This is substantially the meaning that was attached to it in the numerous law journal articles written subsequent to the bill's passage. See, *e.g.*, Sherman, *The Individual Member and the Union, The Bill of Rights Title in Labor Management Reporting and Disclosure Act of 1959*, 54 Nw. U.L. Rev. 803, 818 (1960). See generally Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 MICH. L. REV. 819, 839-41 (1960) discussing the ambiguity of the statutory language.

[26] Rep. Griffin said "existing decisions which require, or do not require exhaustion of such remedies are not to be affected except as a time limit of four months is superimposed." 105 CONG. REC. 18152 (1959).

[27] 286 F.2d 75 (2d Cir.), *cert. denied*, 366 U.S. 929 (1961).

[28] Detroy v. American Guild of Variety Artists, 189 F. Supp. 573 (S.D.N.Y. 1960).

[29] Detroy v. American Guild of Variety Artists, 286 F.2d 75 (2d Cir.), *cert. denied*, 366 U. S. 929 (1961).

[30] 181 F. Supp. 734 (E.D. Mich. 1960).

[31] In *Johnson*, the court found that the union hearing procedures were both unreasonable per se, and unreasonable as to the plaintiffs because the local's acts were not forbidden by union bylaws. Though this case has been distinguished in a few cases where the question of reasonableness has been raised, it has not been followed in any subsequent case where exhaustion of remedies has been waived. In the trial court decision of Sheridan v. United Bhd. of Carpenters & Joiners, 191 F. Supp. 347 (D. Del. 1961) the court first squarely followed *Johnson* on the unreasonableness per se point (at 350) and then retracted this holding (rendered in the earlier opinion

not to follow such an analysis; instead, it held that the exhaustion provision was a requirement which "may be" imposed by a court. In other words, even if a union satisfactorily showed that it had reasonable internal procedures capable of taking corrective action within four months, it still might be possible for the aggrieved member to obtain immediate judicial relief without any resort to these procedures. A court might or might not require exhaustion, depending upon the facts of each individual case.

Once the statute is tortured into a legislative direction to the federal courts that they may (or may not) require exhaustion as they see fit, the rest of the *Detroy* opinion follows logically. Since the federal courts will be requiring (or not requiring) exhaustion of remedies under the mandate of a federal statute, no state law on exhaustion of remedies will be binding. *Erie R.R. v. Tompkins*[32] does not apply, and the federal courts may find their own exceptions to the rule. In effect we have a codification of the common law doctrine of exhaustion of remedies with one exception to the rule made specific, that of unreasonable delay, and the others totally discarded, at least for the time being. Whether any of the other exceptions currently prevalent in the states should furnish cause for non-exhaustion would have to be determined by the "facts of each case."[33] *Detroy* is somewhat unclear as to what considerations would actually be material in this determination. First, the court sets forth the underlying policies of the doctrine of exhaustion and states why none of these policies would be served by postponing intervention in the case at bar. Next the court lists at least three requisites that had been met in Detroy's situation and states that, had any one of these been lacking, relief might have been denied. The requisites were: (1) the facts revealed a clear violation of the labor bill of rights; (2) immediate and irreparable injury was threatened; (3) the wrong complained of could not adequately be redressed by the union's tribunals.[34]

By mid-1964, *Detroy* had become the leading case on exhaustion of remedies under the labor bill of rights.[35] In approximately fifteen cases in the years 1961, 1962, and 1963, eleven denied relief squarely on grounds of non-exhaustion while four waived the requirement.[36] Ten of the opinions requiring exhaustion distinguished the case at hand from *Detroy* by making some application of the three requisites mentioned previously.[37] The eleventh contained a concurring opinion

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granting a restraining order) in the part of the opinion which later grants a preliminary injunction (at 353). Goldberg v. Amarillo General Drivers, 214 F. Supp. 74 (N.D. Tex. 1963) follows *Johnson* in finding a union's hearing procedures to be unreasonable but does so in construing an entirely different area of the LMRDA.

[32] 304 U. S. 64 (1937).

[33] 286 F.2d 75, 79 (2d Cir. 1961).

[34] 286 F.2d 75, 81 (2d Cir. 1961).

[35] *Cf.* Calhoon v. Harvey, 379 U.S. 134, 145 & n.4 (1964) (concurring opinion of Mr. Justice Stewart, citing *Detroy*).

[36] Associated Orchestra Leaders v. Philadelphia Musical Soc'y, 203 F. Supp. 755 (E.D. Pa. 1962); Baron v. North Jersey Newspaper Guild, 224 F. Supp. 85 (D.N.J. 1963) (not citing *Detroy* but adopting the "court may or may not require" interpretation); Harvey v. Calhoon, 224 F. Supp. 800 (S.D.N.Y. 1963); Parks v. IBEW, 314 F.2d 886 (4th Cir.), *cert. denied*, 372 U. S. 978 (1963).

[37] Harris v. ILA, 321 F.2d 801 (3d Cir. 1963); Borunica v. United Hatters, 321 F.2d 764, 767 (8th Cir. 1963); Edsberg v. IUOE, 300 F.2d 785, 787 (9th Cir. 1962);

that made no direct reference to *Detroy* but roundly criticized the "court may require" interpretation made by the Second Circuit.[38] Of the four decisions that waive exhaustion, three find that the three requisites of *Detroy* are met, and the fourth[39] turns entirely upon a delay in the union's proceedings of more than four months.

Thus, until the beginning of 1964, the weight of authority clearly substantiated the rule that if a union could show non-exhaustion of reasonable hearing procedures capable of providing relief in four months, a plaintiff who could not bring himself within the three requisites of *Detroy* could have no relief. In 1964, the Second Circuit decided *Farowitz v. Associated Musicians*[40] and *Libutti v. Di Brizzi*.[41] In each of these the requirement of exhaustion was waived for seemingly different reasons—both different from each other and different from *Detroy*.

In *Farowitz*, exhaustion was waived solely due to futility of appeal. The plaintiff had been involved in a great deal of prior litigation with his union, both local and national, and had finally been expelled from the organization. The district judge ruled that any appeal to union tribunals would be futile due to prejudice of the union hierarchy. The Second Circuit affirmed with little comment on the exhaustion issue. It merely held that, on the facts of this case, where a temporary injunction was sought, the district court had not exceeded its sound discretion in waiving exhaustion on grounds of futility.

One of the "three requisites" set forth in *Detroy* was that the wrong complained of could not adequately be redressed by the union's tribunals. Thus, in *Detroy* and the three district court decisions following it in waiving exhaustion it might also be said that the union member's appeal was futile, not because of prejudice in the union tribunals, but because the internal proceedings were incapable of providing adequate relief. Viewed in this light, the decisions still retained the common denominator of futility after *Farowitz* had been decided.

However, after the Second Circuit's decision of *Libutti*, any reconciliation of the exception-finding cases on the grounds of futility is impossible. The trial court, relying on *Farowitz* and *Detroy*, waived exhaustion on grounds of futility. The circuit court opinion says nothing about futility; rather it says that the proceedings were void. This inconsistency is understandable. It does not appear that there was anything futile in an appeal to the union hierarchy by these plaintiffs. It does appear that the proceedings which denied them the right to run for union office were arbitrary, unfair, contrary to union bylaws, and therefore void. But this holding is rather surprising when we consider that this same court once said that it

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McKeon v. Highway Drivers, 223 F. Supp. 341, 345 (D. Del. 1963); Webb v. Donaldson, 214 F. Supp. 142, 144 (W.D. Pa. 1963); Deluhery v. MCS, 211 F. Supp. 529, 535 (S.D. Cal. 1963); Harris v. ILA, 205 F. Supp. 45, 47 (E.D. Pa. 1962); Salzhandler v. Caputo, 199 F. Supp. 554, 556 (S.D.N.Y. 1961); Deluhery v. MCS, 199 F. Supp. 270, 273 (S.D. Cal. 1961); Acevedo v. Bookbinders Local 25, 196 F. Supp. 308, 313 (S.D.N.Y. 1961).

[38] Sheridan v. United Bhd. of Carpenters & Joiners, 306 F.2d 152, 159 (3d Cir. 1962) (concurring opinion of Hastie, J.). *But see* Harris v. ILA, 321 F.2d 801 (3d Cir. 1963) (later opinion of Hastie, J. relying, in part, on *Detroy*).

[39] Parks v. IBEW, 314 F.2d 886 (4th Cir.), *cert. denied*, 372 U.S. 978 (1963).

[40] 330 F.2d 999 (2d Cir. 1964).

[41] 337 F.2d 216 (2d Cir. 1964).

would not and should not apply the criteria of "voidness" in determining whether exhaustion would be waived.[42]

In rather ambiguous language the court in *Libutti* says:

> When conceded or easily determined facts show a serious violation of the plaintiff's rights, the reasons for requiring exhaustion are absent: the commitment of judicial resources is not great; the risk of misconstruing procedures unfamiliar to the court is slight; a sufficient remedy given by the union tribunal would have to approximate that offered by the court. Where, as in this case, conceded facts show a serious violation of a fundamental right, we hold that plaintiffs need not exhaust their union remedies.[43]

It is possible to read the last sentence of this passage as the "rule" of the case. It is also possible to construe this sentence as meaning that whenever the conceded facts show a violation by the union of the labor bill of rights, exhaustion will not be required. If the court intended this latter meaning, it is difficult to see why they would bother to discuss voidness of proceedings and the difficulties in application of this exception to the common law doctrine. Further, it is difficult to believe that a court that has gone to such pains to minimize the effect of broadly phrased exceptions to the common law doctrine would coin a new exception to the exhaustion requirement that is at least as broad as any common law exception. Therefore, it is more reasonable to read the first and last sentences of the quoted passage as referring to the union member's right to have the union act only in accordance with its own bylaws. Under this interpretation the "holding" of the court would be that when conceded facts show a gross disregard of union bylaws, the plaintiffs need not exhaust their remedies. This statement drives us back to the initial query; if the common law exception of voidness can be applied validly in some cases and not in others, how is one to differentiate the valid cases from the invalid ones?

One answer is that the exception is applicable only where the violation of rights is serious. Since this answer is hardly adequate, we must return to the initial statement of the court in *Detroy* that "it is preferable to consider each case on its own facts . . . ."[44] This statement suggests an equitable balancing of rights. This kind of balancing process was the basis for *Detroy* and is the manner in which the common law exceptions, void proceeding included, have been applied. For this reason, the sentence "When conceded facts show a serious violation . . . we hold that plaintiffs need not exhaust . . ."[45] can no more be labeled the rule of *Libutti* than can the three requisites be labeled the rule of *Detroy*. Both of these "holdings" are conclusions that, when taken out of context, do not reflect the analysis this court has pursued in deciding whether the facts of a case furnish grounds for immediate judicial intervention.

Immediately after its first statement on "conceded or easily determined facts" the court states why the reasons for requiring exhaustion are absent. In this statement of reasons lies the essence of the *Libutti* opinion. It is a balancing of the facts of the case against the policies of the doctrine of exhaustion. This is the only

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[42] Detroy v. American Guild of Variety Artists, 286 F.2d 75, 79 (2d Cir. 1961).

[43] 337 F.2d 216, 219 (2d Cir. 1964).

[44] 286 F.2d 75, 79 (2d Cir. 1964).

[45] 337 F.2d 216, 219 (2d Cir. 1964).

feature that this decision has in common with the *Detroy* opinion. If we re-read the latter after reading *Libutti,* the rationale behind the Second Circuit's decisions in these exhaustion cases becomes clear.

In *Detroy* the court analyzed the facts in detail to demonstrate that no policy of the doctrine could be served by requiring exhaustion in the case at bar. The statement of "three requisites" was merely a part of its analysis of why the policy of union autonomy would not be served in requiring exhaustion. Though it is possible to read this statement of three requisites as the rule of the case, the court never intended that these requisites be lifted out of context in which they were set forth and given the status of an absolute rule of law.

With *Libutti,* it is now plain that the application of the exhaustion doctrine that has been made by the Second Circuit is more like an equitable balancing of relative rights than any cut-and-dried rule concerning exceptions to the requirement. As interpreted by this court, the labor bill of rights, while giving members certain rights with respect to their union, also gives the union the right to settle its own internal disputes free from court intervention. However, when the member's complaint cannot possibly be redressed by the union, his claim to immediate judicial relief is enlarged and strengthened; when the union tribunals are extremely prejudiced or disregard their own bylaws, the union's right to autonomy is diminished and weakened. The balance may then be tipped in favor of the aggrieved member if, and only if, the other policies of the doctrine would not be served by requiring exhaustion.

Conclusion

The Second Circuit has molded a section of the LMRDA into a special exhaustion of remedies doctrine for the labor bill of rights cases. It has been followed in this construction by the overwhelming majority of federal courts. *Libutti v. Di Brizzi,* when read with *Detroy v. American Guild of Variety Artists,* makes the nature of this doctrine rather clear. Once a union has shown that its procedures in vacuo satisfy the statute[46] (and practically all union procedures so tested have satisfied it)[47] the court has it within its sound discretion whether or not to require utilization of these procedures. In exercising this discretion, the court makes an enlightened application of the common law doctrine. This enlightened application makes none of the common law exceptions conclusive grounds for im-

[46] See Harris v. ILA, 321 F.2d 801 (3d Cir. 1963).

[47] The International Brotherhood of Electrical Workers seems to be the only union that has failed the initial test of the statute. In Johnson v. IBEW, 181 F. Supp. 734 (E.D. Mich. 1960) their procedures were labelled unreasonable. In Parks v. IBEW, 314 F.2d 886 (4th Cir.), *cert. denied,* 372 U. S. 978 (1963), their procedures were labelled incapable of rendering decision in four months.

Two possible reasons why more cases have not involved waiver of exhaustion due to "unreasonableness" or "four months" are: (1) once a union's procedures are labelled unreasonable or incapable of rendering decision in four months, no member of that union need utilize them before resorting to the courts with a labor bill of rights complaint; (2) the procedures of unions have been tailored to fit the LMRDA since its enactment. Some support for the latter proposition may be found in Previant, *Have Titles I-VI of Landrum-Griffin Served the Stated Legislative Purpose?* 14 LAB. L.J. 28, 32 (1962).

mediate intervention, but relegates these broadly phrased exceptions to the status of factors to be weighed in balancing the plaintiff's need for immediate relief against the policies underlying the doctrine. In this way the courts are committed to the philosophy of the doctrine without being forced to use it in a way that would work hardship upon any union member.

After considering the difficulties inherent in abolishing the exhaustion doctrine entirely or in enforcing it absolutely by finding no exceptions whatever, a recent and comprehensive article on non-profit associations[48] came to the conclusion that the optimum application of the doctrine would be "a flexible rule, shaping exhaustion to the facts at hand."[49] The cases reviewed here, especially *Libutti* and *Detroy*, represent that type of application.

The line of cases reviewed by this note serve as binding precedent only in the narrow area of suits brought in federal courts for infractions of the labor bill of rights.[50] However, the trend of these decisions may have a much wider influence. Professor Summers of Yale has stated that the standards enforced under the LMRDA respecting exhaustion would be most influential in the state courts because of the previous confusion that has existed in this area.[51] Solicitor General Cox wrote immediately after the act was passed that if the proviso set forth a requirement to be imposed by the courts (which, he thought, it did not) it would overturn state law on exhaustion of remedies in unions.[52] Despite these learned predictions, the LMRDA has received sparse citation in state court exhaustion cases.[53] Perhaps one of the reasons for this has been the lack of definite standards under the LMRDA. If this be true, the case of *Libutti v. Di Brizzi* may have far-reaching effects as a clarification of those standards.

*Thomas Boyle**

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[48] *Judicial Control of Actions of Private Associations*, 76 HARV. L. REV. 983 (1963).

[49] *Id.* at 1078.

[50] *But see* Holdeman v. Sheldon, 204 F. Supp. 890, 896 (S.D.N.Y. 1962) which refuses to apply *Detroy* in a case brought under a section of the LMRDA outside of the "bill of rights."

[51] Summers, *The Impact of Landrum-Griffin in State Courts*, 13 N.Y.U. CONFERENCE ON LABOR 333, 351 (1960).

[52] Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 MICH. L. REV. 819, 839-41 (1960).

[53] See Rensch v. General Drivers, 268 Minn. 307, 129 N.W.2d 342 (1964); Mamula v. United Steelworkers, 414 Pa. 294, 200 A.2d 306 (1964); Kopke v. Ranney 16 Wis. 2d 269, 114 N.W.2d 485 (1962); Falsetti v. Local 2026, UMW, 400 Pa. 145, 161 A.2d 882 (1960). These four are the only state court decisions which make reference to the LMRDA exhaustion requirement. *Falsetti* and *Kopke* contain inferences that the LMRDA has given new life to the doctrine of exhaustion.

* Member, Second Year Class.