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THE DEMOCRATIC RIGHTS FOR
UNION MEMBERS ACT OF 1998
(DRUM)

HON. HARRIS W. FAWELL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 13, 1998

Mr. FAWELL. Mr. Speaker, I rise to introduce the Democratic Rights for Union Members Act of 1998. I am gratified that one of my last acts as a member of Congress, and as Chairman of the Employer-Employee Relations Subcommittee, is to present and discuss legislation which I trust is a first step in amending one of the nation's most important labor laws.

Four decades have passed since the enactment of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), also known as the Landrum-Griffin Act. The LMRDA is the only law governing the relationship between labor leaders and their rank-and-file membership. When my Subcommittee began hearings in May on the issue of union democracy, our purpose was to determine the status of union democracy under the LMRDA and to see if the democratic principles guaranteed by federal law are being upheld in union activities throughout the United States. We also wanted to identify possible legislative remedies to improve the law if it were falling short in protecting the rights of hardworking men and women who belong to unions.

Since May, the Subcommittee has held four hearings in the union democracy series. In May, we heard from a variety of local union officials and rank-and-file, including those from the Carpenters, Laborers, and Boilermakers unions. We were also privileged to hear from one of the country's foremost expert in union democracy law, Professor Clyde Summers. It was Summers, who, forty years ago, at Senator John F. Kennedy's request, fashioned a "bill of rights" for union members which became Title I of the LMRDA.

Our June hearing featured Herman Benson, a founder and enduring leader of the Association of Union Democracy, as well as the Carpenter's union rank-and-file and their president, Douglas McCarron. This hearing centered on the right to a direct vote which was abrogated by the implementation of a nationwide restructuring of the union resulting in unilateral dissolution and merging of locals.

Hearings in August and September focused on election irregularities and the lack of financial disclosure in the American Radio Association, a small union illustrating the ease with which democratic principles can be lost.

Union democracy is a bi-partisan issue. Even in 1959, the LMRDA was passed because two sides without much in common

came together for the good of the rank and file. My Subcommittee has conducted the union democracy hearings in a bi-partisan manner. I hope Congress can repeat history by passing another bill to amend the LMRDA and further strengthen its principles.

In 1959, labor leaders opposed the LMRDA. In the vanguard of those who led the successful effort to pass the Act were Professor Summers and Herman Benson. Both of these men have been outstanding advocates for unions and the labor movement. Both recognize that you cannot have a strong, healthy labor movement unless rank-and-file members have democratic rights within that movement. As Professor Summers has written, "workers gain no voice in the decision of their working life if they have no voice in the decisions of the union which represents them."

If I had to draw a conclusion from the union democracy hearings held so far this year, I would assume that labor leaders would once again oppose any changes to the Act. It would seem that labor leaders have found the "Loop-holes" in the LMRDA and have not voiced, as of yet, any concerns about how the law operates in practice. Rather, it is the rank-and-file members who have recounted endless accounts of violence, intimidation, abuse and other examples of an erosion of democratic principles in this country's unions.

The next Congress has much work to do on this issue. However, the bill I introduce today is a good start. This legislation makes two necessary amendments to the LMRDA, important first steps, proposed by Professor Summers and Mr. Benson. As I have indicated, these men are pioneers in the field of union democracy law and I implore members from both sides of the aisle to recognize the wisdom of their proposals.

Professor Summers began studying and writing about the rights of union members in 1945 after receiving his law degree. In 1952, he wrote "Democracy in Labor Union," a policy statement adopted by the American Civil Liberties Union. He has been teaching, writing, and lecturing on union democracy law ever since, always with an emphasis on employee rights and industrial democracy. His writings include more than 100 law review articles. To this day, Professor Summers is a tireless advocate of union democracy and served on the board of directors for the Association of Union Democracy.

The Subcommittee also received testimony and assistance from Herman Benson, another of the nation's foremost experts in this field. Mr. Benson is a retired toolmaker and machinist and member of various unions over the years, including United Auto Workers, International Union of Electricians, and United Rubber Workers. From 1959 to 1972, he edited and published "Union Democracy in Action." He co-founded the Association for Union Democracy and continues to serve as editor of "Union Democracy Review." Mr. Benson has devoted his professional career to battling against corruption or authoritarianism in unions. I request that their written statements in support of the bill be placed in the record following the bill and my remarks.

Two basic rights, rooted in democracy, are addressed by my bill. The two provisions address voting rights and trusteeships. Both Professor Summers and Herman Benson strongly believe these steps should be taken. As to the first amendment, the LMRDA permits election

of local union officers by a direct vote, but officers of district councils and other intermediate bodies can be elected by delegates. My bill, DRUM, provides that in instances where an intermediate union body assumes the basic responsibilities customarily performed at the local union level—such as collective bargaining and the running of hiring halls, for example—in these instances, the members would have the right to a direct, secret ballot vote to elect officers of that intermediate body. This is the same right members currently have with respect to electing their local union officers. It is important that officers be elected by direct vote if the vitality of democratic control is to be preserved.

As to the second amendment, the LMRDA intended that local unions could be placed under trusteeship in the event of corruption or other abuse. Unfortunately, trusteeships are sometimes used to eliminate local dissidents and to destroy local autonomy, contrary to the democracy ensured by LMRDA. Moreover, once the trusteeship is imposed, the trusteeship is presumed valid for 18 months. Litigation to remove the trusteeship can take months or year longer. DRUM provides for the removal of this 18 month presumption of the trusteeship's validity. Removal of this presumption opens the door to legitimate challenges to the imposition of a trusteeship. This is the kind of due process any decent union would provide before destroying the local autonomy upon which LMRDA is founded.

These basic individual liberties embody the democratic principles on which this country is founded. These are rights that should be enjoyed by all Americans, and certainly American union workers. I urge all of my colleagues, Republicans and Democrats alike, to join me in supporting these important amendments to the LMRDA, and I urge members of the 106th Congress to build upon this small, but important beginning.

STATEMENT OF CLYDE W. SUMMERS

My name is Clyde W. Summers, and I am Professor of Law at the University of Pennsylvania Law School.

In considering the proposed bill, we must first set out the underlying premises on which it must rest.

When the Wagner Act was passed in 1935, one of the basic purposes of the statute was to give workers an effective voice, through collective bargaining, in decisions which govern their working lives. In the words of that time, to provide for a measure of industrial democracy.

Collective bargaining, however, can serve the purpose of industrial democracy only if the unions which represent the workers are democratic. For workers to have an effective voice in the decisions of the workplace, they must have an effective voice in the decisions of the union which speaks for them. For collective bargaining to serve fully its social and political function in a democratic society, unions must be democratic.

This was the basic premise of the Landrum-Griffin Act. Its fundamental purpose is to guarantee union members their democratic rights within their union and an effective voice within their union. The union would then be responsive to the felt needs and desires of those for whom the union spoke.

The Landrum-Griffin Act has served this purpose in substantial measure. It has provided members a Bill of Rights; it has increased transparency and responsibility in union finances; it has established standards

for fair elections; and it has articulated the fiduciary obligations of union officers. It has enriched the democratic processes in union government, has encouraged union members to make their voices heard.

This does not mean that the statute is without its flaws, or that it has fully realized its purposes. Forty years of experience under the statute has revealed limitations of foresight and unforeseen gaps that permit practices which can defeat its purposes.

I will discuss only the two problems which the proposed bill addresses, both of which focus on substantial gaps and defects. I fully support these proposals because I believe that they are needed for the statute to fulfill its purposes.

Section 4 proposes a modest but important change in Title III dealing with trusteeships. At the outset, it must be recognized that when an international union imposes a trusteeship over a local union, the officers elected by the local union members are removed from office and replaced by a trustee appointed by the international officers. Local union meetings may be suspended, union members may have little or no voice in the decisions of the union, and the local union loses all control over local union funds. In short, a trusteeship is a total denial of the democratic process in the local union.

Title III sets out the standards for imposing a trusteeship and the procedures for challenging the trusteeship in the courts. The Title has been visibly inadequate almost from the time the statute was passed.

Section 403(g) presently provides that during the first 18 months, the trusteeship should be presumed valid, and after 18 presumption of validity has meant, for practical purposes, that trusteeships are immune from challenge for the first 18 months. Indeed, the likelihood of succeeding in such a suit is so slight that suits are seldom brought during this period.

Where the trusteeship has its roots in political differences between local and international officers, the officers elected by the local union members are ousted and replaced by those chosen by the international officers. After 18 months the trustee appointed by the international and his supporters have solidly entrenched themselves in control of the administrative structure of the local union and have the great advantage of incumbency, if and when an election is held. The originally elected officers may be permanently displaced.

In view of the serious impact of trusteeship on the democratic rights of local union members, a presumption of validity can not be justified. In those cases where suspending the democratic process is justified, the international officers should be able to prove the need by at least a preponderance of the evidence. After 18 months, the need for the continuation of the trusteeship should be proved by clear and convincing evidence.

I believe that these changes in the burden of proof provided in the proposed bill will appropriately reduce the stifling of the democratic process at the local union level.

Frequently, when the trusteeship is declared ended and union meeting resumed, the person named as trustee continues as the presiding officer and in effective control of the local union until the next scheduling election, which may be a year or more later. During that period, the members do not have officers of their choosing, and during that period the trustee is able to more solidly entrench himself in control so that the originally elected officers or others will be at a substantial disadvantage.

In my view, it would be preferable to provide that the elected officers should be reinstated in office unless they have been tried and found guilty of conduct justifying their

removal from office. If they are not reinstated, then a new election should be held as promptly as possible.

Section 5 of the proposed bill fills a gap which was overlooked when the statute was drafted. Title IV governing elections provided in Section 401 that local union officers should be elected by direct vote of the members, as contrasted with election by delegates which was permitted for international officers. Direct election was required even in so-called amalgamated local unions which had separate sections in a number of separate establishments.

The requirement of direct elections recognized traditionally that the representative functions in most unions of negotiating collective agreements and handling grievances was carried on primarily at the local level. It was here that members could most effectively exercise their voice; it was here that members most actively participated; it was here that the union should be most responsive. Direct elections gave the employees a more effective voice than indirect election by delegates.

In the drafting of Landrum-Griffin, little attention was given to the intermediate bodies such as general committees, system boards, joint boards and joint councils. In part, this was because many of them did not perform functions which directly impacted on the members' working lives. With little reflection, section 401 (d) of title IV provided that such intermediate bodies could elect their officers by indirect vote of delegates.

In the intervening years, the trend toward centralization in unions has led to giving some of these intermediate bodies increased functions in negotiating collective agreements, appointing business agents, and handling grievances, with an inevitable increase in control of union funds. In some cases, these intermediate bodies have, for practical purposes, supplanted the local unions, leaving the local unions little more than empty shells.

It would be futile to set our faces against centralization because it may be necessary for effective representation. However, this should not deprive union members of a direct and effective voice in electing officers performing these functions. Election by delegates significantly muffles the members' voice and makes these bodies less responsive to the needs and desires of the members.

Where an intermediate body performs the traditional functions of a local union, negotiating collective agreements, naming business agents, and administering agreements, then they should be treated as local unions for purposes of election of officers. The officers of such intermediate bodies should be elected by direct membership vote. Section 5 of the proposed bill accomplishes this purpose.

In closing, I would like to emphasize that the proposed amendments here make no basic changes in the statute. They do, however, preserve and reinforce the democratic process at the point where the union most directly affects the members' working lives.

Historically, the democratic process of unions has had its greatest vitality at the local or base level of the union structure. It has been at this level that union members have looked to the union for representation; and it has been at this level that union members have been most active in making their voices heard. It is this level where the law should give primary attention to protecting and promoting the democratic process.

I am a founder and secretary treasurer of the Association for Union Democracy, established in 1969 to promote the principles and practices of internal union democracy in the American labor movement; including free speech, fair elections, and fair trial proce-

dures, precisely the kind of rights written into federal law in the Labor-Management Reporting and Disclosure Act of 1959. We believe that strong labor unions are essential to democracy in the nation. I, myself, have been a toolmaker by trade and at various times a member of the United Auto Workers, the United Rubber Workers, and International Union of Electrical Workers. I still am a member of the UAW.

In the course of the last 50 years, I have been in touch with tens of thousands of unionists, individual rank and filers, organized caucuses, and elected officers in most major unions in the United States.

The adoption of the LMRDA in 1959 has, over the years, effected a sea change in the state of union democracy in the United States. Before LMRDA, members were expelled for criticizing their officers—usually on charges of slander; they could be expelled for suing the court or for complaining to authorized government agencies. In some unions they could be expelled for organized campaigning for union office or even for circulating petitions on union business within their own unions. Now all that is illegal because the basic rights of civil liberties in unions are written into federal law. The LMRDA has strengthened the labor movement by strengthening the rights of members in their unions.

In time, however, some union officials have discovered certain weaknesses, or more precisely loopholes, in the law which have enabled them to evade or circumvent its aims and, in some respects, to turn the clock back to the days before LMRDA. The proposed amendments are intended to strengthen the effectiveness of the law by closing two of the most egregiously abused loopholes.

The direct election of officers of certain "intermediate" bodies:

The central aim of the LMRDA was to protect the basic right of union members to choose their own leaders and to enable them to correct abuses by strengthening their right to elect or to replace those officers. Since the local union has generally been the main source of grassroots power, the place where collective bargaining agreements were negotiated and enforced, the union unit which impinged most directly on the life of workers, the LMRDA was careful to establish explicit measures to assure the rights of members in their locals. Terms of office were limited to three years. Local officers had to be elected by direct secret ballot of the membership. In short, union members were assured direct control over their own officers.

However, in this respect, the law is being evaded in wide sections of the labor movement, particularly in the building trades. Locals are being consolidated into district councils. The councils take over all the collective bargaining rights and responsibilities formerly the province of the locals: the councils, not the locals, negotiate and sign agreements with the employers, appoint the business agents, implement and enforce the contracts and grievance procedures, control hiring halls and job referrals. By losing control over the collective bargaining process, locals are reduced to mere administrative shells. The members continue to elect local officers, but these officers are essentially powerless. Real power passes into the hands of district officers.

But the district council setup permits officers to evade the provisions of the law for direct elections because the law now permits officers by such "intermediate" bodies to elect their officers, not by direct membership vote, but by vote of council delegates ("Intermediate" bodies are those units above the local level but below the international level.)

Under this structure, the officers of a district council with, say, 10,000 members could be subject to election by a council consisting of perhaps 100 delegates from locals, which means that anyone who could control the votes of at least 51 delegates could dominate the affairs of 10,000 members. The reality of union politics (and perhaps most politics) is that an international union has ample powers and resources to control, win over, some might even say to buy off, a handful of delegates by a myriad of means: union staff jobs, favored treatment, junkets, moral and practical support in their locals, etc.

Direct election by local members allows the rank and file to control their officers. Election by council delegates, allows the international to control the delegates and the officers; the LMRDA is eviscerated.

One proposed amendment would simply restore the rights originally intended by the LMRDA. In essence it means that the officers of those intermediate bodies which have taken over the rights and functions of locals in collective bargaining will be elected by direct membership vote, just as in the locals, thereby restoring the right of members directly to control their own officers. However, where intermediate bodies still exist essentially as administrative units outside the collective bargaining process, they will continue to have the right to elect offices by delegate vote.

Union spokesmen and others argue that it is necessary to centralize power in the hands of district organizations in order to strengthen the unions in their dealing with employer conglomerates and to make them more efficient in organizing the unorganized. I would not quarrel with that contention. However, the aim of "modernizing" unions does not justify the proposed restrictions on membership rights, especially the right to elect officers by direct membership vote. Quite the contrary. The more centralization becomes necessary, the more necessary it becomes to strengthen democratic rights as a counterweight to the bureaucratic tendencies inevitable in all centralization. The adoption of a new U.S. Constitution was necessary to strengthen the United States by giving powers to a central national authority. But precisely because that move was essential to national welfare, it was necessary, at the same time, to bolster democratic rights by adding the Bill of Rights to the new Constitution. Some of our union officers want the authority and the centralization but without the saving salt of democracy.

Recourse against improper trusteeships

One of the glaring abuses revealed at hearings of the McClellan Committee in the late fifties was the practice by various international unions of arbitrarily lifting the autonomous rights of locals and other subordinate bodies and subjecting them to control by appointed trustees. In many instances, international officials used the trusteeship device to loot local treasuries, to eliminate independent-minded critics, even to prevent the replacement of corrupt officials by reformers, and to manipulate the votes of locals in referendums and at conventions.

Title III of the LMRDA aimed to provide recourse against these abuses. At the time, this section of the law was considered so important that it was one of the few major provisions that allowed for alternate means of enforcement: either by private suit or by a complaint to the Labor Department.

As written, the provision has had some positive effect. At the time the LMRDA was adopted in 1959, the Labor Department reported, 487 trusteeships were current. In June 1998, thirty-nine years later, 311 trusteeships were reported. [see *Union Democracy Review*, No. 120]. The law has made it much

more impossible. The law does restrict the ability to manipulate the local's votes. But it has not succeeded in preventing an international union from misusing the trusteeship device to undermine and repress members rights, to discredit and destroy critics of the top officials. The trouble is that, as time passed, those who use trusteeships for devious aims have learned how to thwart and evade the purposes of Title III, which is why it needs strengthening.

Title III permits trusteeships to be imposed for certain legitimate reasons; and, if unions actually obeyed the law, there would be little problem. However, to evade the requirements of Title III, a union officialdom need only learn how to fill out the required reporting form. If the real purpose of a trusteeship is illegitimate, the international can easily conceal that fact simply by listing a legitimate, but vaguely formulated, purpose permitted by the law. Over the years, union officials have discovered that they can do this with impunity because the enforcement provisions of Title III are ineffective.

The Labor Department has no incentive for checking the validity of the Title III reporting forms because the law authorizes it to investigate the validity of a trusteeship only upon the complaint of a union member. Moreover, the law presumes a trusteeship valid for 18 months. In no single case known to me has the Labor Department ever challenged a trusteeship in court before the lapse of 18 months, even after union members have submitted persuasive complaints to it. The same problem faces complainants in Federal court, where judges routinely dismiss complaints against trusteeships on procedural grounds before the 18-month period has expired.

It is not difficult for a complaining union member to succeed in lifting a trusteeship once the 18 months is up and the presumption of validity has been removed. At that point, judges and the Labor Department offer recourse, but by that time it is too often too late to revive any momentum for democracy that has been lost.

It is true that sometimes trusteeships are imposed for legitimate reasons: to root out corruption or to restore orderly democratic procedure; and nothing in the proposed LMRDA amendments will eliminate that power. Unfortunately, there are other cases, too many, where trusteeships are imposed, on one pretext or another, to suppress challenge from below to the officialdom above. In such instances, trustees utilize that 18-month period, during which their power is virtually immune from challenge, to undermine their rivals or critics. Elected local officers are usually suspended or removed. Local meetings are often abandoned, sometimes collective bargaining contracts are imposed upon the membership without their consent, local bylaws are revised arbitrarily. Meanwhile, by fear or favor, the power of the trustee is employed to construct a local political machine loyal to the top officialdom. This kind of maneuver is quite possible, because the trustee controls the local's finances, grievance procedures, and—sometimes—hiring hall referrals. He normally has the power to hire and fire paid staff.

After living under these conditions for 18 months, any independent opposition is easily demoralized and tends to disintegrate. At that point, the trustee can call for new elections, supervised by a committee chosen by him or his cronies, fairly confident that no effective challenge is likely to survive.

The proposed amendment will not prevent any fair-minded union leadership, where necessary, from trusteeing a local under conditions specified under Title III. Wide latitude is permitted by the statute which authorizes trusteeships, among other specific condi-

tions, for "otherwise carrying out the legitimate objects of such labor organization."

What the proposed amendment would do is quite simple.

1. It would fill an urgent need by providing, for the first time, the possibility of effective recourse against arbitrary trusteeships. By removing the 18-month presumption of validity, it would encourage the courts and the Labor Department to seriously consider complaints from unionists, look beyond what the union lists on reporting forms, and consider whether the actual operations of any trusteeship are lawful.

2. It provides for a specific additional assurance of fair treatment in the immediate aftermath of an improper trusteeship. If a union resists the lifting of the trusteeship and a complaining unionist or the Labor Department is forced to file suit in Federal court and the court orders the dissolution of the trusteeship, it would be anomalous to permit the trustee to dominate the process of choosing the self-governing local leadership for the post-trusteeship period. The amendment would require either the reinstatement of the local officers previously elected by the membership or a new election under supervision of the court, assuring them of the right to a leadership of their own choosing in a fair election.

In summary, the proposed amendments are modest and clear, they impose no burdens upon the labor movement, and they would substantially strengthen the rights of members in their unions.

TRIBUTE TO LEROY PARMENTER

HON. JO ANN EMERSON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 13, 1998

Mrs. EMERSON. Mr. Speaker, recently I was reminded that some of the best things in life are those things that too often go unnoticed. Leroy Parmenter was that way. A resident of Sikeston, Missouri, he was a man whose spirit of generosity and love for life was a bright sunshine in what these days too often seems like a gray and cloudy world. I wanted to share with all of you a few words from an article in the Sikeston Standard Democrat that recounted this remarkable individual's life.

"Leroy was one of those few who accomplished good deeds quietly. I had known Mr. Parmenter since Little League and graduated from high school with his son. But as a youngster I knew nothing about the selfless devotion and true concern for others that Leroy Parmenter showed every day of his life."

"It is sometimes awkward to know a man when you're a youngster and then to work along side him when you're grown. But it wasn't that way with Leroy. I had the pleasure to work on community projects with Leroy and was always amazed with his enthusiasm and his love of people. And believe me, it was genuine love. There was not a phony bone in his body. He visited veterans' homes and nursing homes because he wanted to let people know that someone cared about them."

This past summer Leroy Parmenter passed away. While he isn't walking and talking with us on a daily basis, I know that his spirit remains with each of us who were touched by his kindness. His good works and thoughtful deeds have not gone unnoticed. And I hope that on those cloudy days, we'll remember others like Leroy Parmenter. You know, those