be outside the terms of the act, *i.e.*, neither protected nor prohibited, the state court would have jurisdiction to hear the employer's plea for state relief.

JOSEPH D. BERMINGHAM, JR.

Labor Law—LMRDA Civil Enforcement Section—Local Union Officer Has No Cause of Action in Tort Against District Union Officials in Their Individual Capacities.—*Tomko v. Hilbert*.[1]—Tomko, appellant, commenced an action under Title I ("bill of rights") of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA)[2] against Hilbert and Kreheley, appellees, for damages and an injunction, alleging that appellees assaulted, libeled, and, by means of threats, force and disorderly conduct, interfered with his rights as a local union member and president by disrupting the conduct of regular business meetings and regular business. Appellees are both officials of the district union of which Tomko's local is a part, but the complaint merely charged the appellees in their individual capacities and did not allege that any labor organization, or any officer or agent thereof acting in his official capacity, had violated the appellant's rights under the "bill of rights." The United States District Court for the Western District of Pennsylvania[3] dismissed the action on the ground that the appellant had failed to exhaust his internal union remedies. On appeal the Court of Appeals for the Third Circuit affirmed. HELD: A local union member and officer has no cause of action for damages and/or an injunction against (district) union officials in their individual capacities absent diversity jurisdiction. The majority of the Court of Appeals reached the conclusion that the LMRDA deals exclusively with the union-member relationship after considering the language of the LMRDA, its purpose, the evils it was intended to cure, and its legislative history. Judge Hastie concurred on the ground that, although the record was not very clear, the conclusion of the district court was warranted. Judge Hastie suggested that if the district court were wrong the appellant should merely be given leave to plead over.

There was no National Labor Relations Board (NLRB) jurisdiction of this case because there were no facts alleged which would put it within the ambit of the Labor-Management Relations Act of 1947 (LMRA), sections 8(b)(1), 8(b)(2), or 8(b)(5).[4] The LMRA is operative in the area of employer-employee-union relationships and concerns the action of these groups as they affect wages, hours and conditions of employment.

Title I of the LMRDA, more popularly known as the Landrum-Griffin Act, grants to every member of a labor organization the fundamental rights to nominate candidates for election, to vote in organization elections, to attend and participate in meetings, subject to reasonable rules and regulations;[5] to speak and assemble freely with other members and to express

[1] 288 F.2d 625 (3d Cir. 1961).

[2] 73 Stat. 522 (1959), 29 U.S.C.A. § 411 (Supp. 1960).

[3] 46 L.R.R.M. 2853 (W.D. Pa. 1960).

[4] 65 Stat. 601 (1951), 29 U.S.C. § 158 (1958).

[5] 73 Stat. 522 (1959), 29 U.S.C.A. § 411(a)(1) (Supp. 1960).

any arguments, views, and opinions in and out of organization meetings, subject to reasonable organization rules regarding member responsibility to the organization as an institution;[6] to be free from increased dues, initiation fees, and assessments except those enacted by a specified procedure;[7] to be free from any labor organization limitation on the member's right to sue provided that reasonable internal hearing procedure (not to exceed a four month lapse of time) is exhausted;[8] and to be free from improper disciplinary action as defined in general terms by the act.[9] These rights are enforcible by a civil action in a United States district court.[10] Title I of the act further provides that none of the provisions of the act shall limit the rights and remedies of any member of a labor organization under any state, federal, or union law.[11] Title I concludes by guaranteeing the right of any labor organization member to receive a copy of any collective bargaining agreement under which the organization is working[12] and by requiring every labor organization to inform its member about the provisions of the act.[13]

The Court of Appeals paraphrased Title I of the LMRDA as set out above and quoted two sections of the "Declaration of Findings, Purposes, and Policy" to the effect that "Congress declared that 'the enactment of the act is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants and their officers and representatives . . . .'"[14] These two elements the court considered in conjunction with the statements of various Congressmen similar to that made by Representative Derwinski:

> . . . A bill of rights giving the rank-and-file union member full protection of his rights as a union member must be adopted. The purpose of the bill of rights is to protect union members against the rules and practices of some unions which effectively stifle all expression of opposition to union bosses.[15]

The court compared the Title I civil enforcement section with the Title II civil enforcement section and concluded that "there is no indication here that the substantive provisions of the bill of rights can be enforced against any *person* as that term is defined in subsection 3(d)"[16] of the act. In con-

6 73 Stat. 522 (1959), 29 U.S.C.A. § 411(a)(2) (Supp. 1960).

7 73 Stat. 522 (1959), 29 U.S.C.A. § 411(a)(3) (Supp. 1960).

8 73 Stat. 522 (1959), 29 U.S.C.A. § 411(a)(4) (Supp. 1960).

9 73 Stat. 522 (1959), 29 U.S.C.A. § 411(a)(5) (Supp. 1960).

10 73 Stat. 523 (1959), 29 U.S.C.A. § 412 (Supp. 1960).

11 73 Stat. 523 (1959), 29 U.S.C.A. § 413 (Supp. 1960).

12 73 Stat. 523 (1959), 29 U.S.C.A. § 414 (Supp. 1960).

13 73 Stat. 523 (1959), 29 U.S.C.A. § 415 (Supp. 1960).

14 288 F.2d 625, 626 (3d Cir. 1961).

15 Id. at 628. 105 Cong. Rec. 15700, 86th Cong., 1st Sess. (1959).

16 Id. at 626. Title I, § 102, 73 Stat. 523 (1959), 29 U.S.C.A. § 412 (Supp. 1960), provides: "Any person whose rights secured by the provisions have been infringed . . . may bring a civil action for such relief . . . as may be appropriate." Title II, § 210, 73 Stat. 530 (1959), 29 U.S.C.A. § 440 (Supp. 1960), provides: "Whenever it shall appear that any person has violated . . . the Secretary may bring civil action for such relief as may be appropriate."

trast, noted the court, the Title II civil enforcement can be enforced by a civil action against *any person*.[17]

The Court of Appeals cited *Strauss v. International Brotherhood of Teamsters*,[18] *Jackson v. Martin*[19] and *Allen v. Armored Car Chauffers Union*[20] as recent decisions, which although involving different facts, fully supported its interpretation of the LMRDA. (The *Jackson* and *Allen* cases both cite and rely on the authority of the *Strauss* case.) But a later federal district court case, *Serio v. Liss*,[21] took issue with the express holding of the *Strauss* and *Martin* cases and inferentially with the *Allen* case when it held that a federal district court had jurisdiction under the LMRDA to determine whether a local union business agent was improperly threatened with loss of his job under an allegedly erroneous construction of section 504(a) of the LMRDA. The *Strauss* case reached the conclusion that a local union business agent has rights under the LMRDA against the union on facts substantially the same as those in the *Serio* case. The court which decided the *Strauss* case based its result on the fact that the status of the parties was that of employee-employer and that the LMRDA did not cover such a situation. The *Strauss* court construed the act to a greater extent than was necessary to reach the decision it did. Therefore, the instant case must rest its validity on its own construction of the LMRDA and on other facts in its legislative history which the court did not consider.

The LMRDA emerged in its final form after a tortuous legislative history which began before consideration of the so-called Kennedy-Erwin bill in 1958.[22] Every thread leading to the enactment of the Title I civil enforcement section shows that Congress was primarily interested in preventing continuous misdeeds by labor organizations and their officials against organization members. Each stage in the evolution of this section has reference to an injunctive form of relief against the wrongdoers.[23] At one stage in the evolution of the act, the Secretary of Labor was to be empowered to seek injunctions against violators of the act.[24] But the forthright Senator Johnston from South Carolina quickly pointed out that this would mean that the federal government would be in position to enforce racial integration in labor organizations in the South and that the act

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17 See Rekant v. Rubinowitz, 194 F. Supp. 194 (E.D. Pa. 1961), which indicates that the court correctly construed this clause.

18 179 F. Supp. 297 (E.D. Pa. 1959). A federal district court does not have jurisdiction under LMRDA § 102 of action by union business agent against union for wrongful discharge, where business agent alleges that union misconstrued LMRDA § 504.

19 180 F. Supp. 475 (D. Md. 1960).

20 185 F. Supp. 492 (D. N.J. 1960).

21 189 F. Supp. 358 (D.N.J. 1961). Federal district court has jurisdiction under LMRDA (presumably § 102) to determine whether local union business agent has right to continue in office under LMRDA § 504. This case is directly contrary to a statement made by Senator Kennedy during debate on the LMRDA.

22 See generally Rothman, Legislative History of the "Bill of Rights" for Union Members, 45 Minn. L. Rev. 199, 201 (1960).

23 Legislative History of Labor-Management Reporting and Disclosure Act of 1959, National Labor Relations Board, Washington, D.C. 521, 631-32, 700-01, 879-80 (1959).

24 Id. at 308, 1102(2).

would become a pervasive Fair Employment Practice Code.[25] Northern liberals who did not wish to see labor under the heel of the federal government and southern Senators made common cause to modify the bill to provide for civil enforcement by individuals harmed by violators of the act.[26] During debate following the modification it was noted that the injured parties would have the right to injunctions and to whatever slight damages they had suffered.[27] The original conception of Congress was that the injury was being inflicted on the public and that were it not for the pervasive effect of federal enforcement power, the enforcement power would have been lodged there.

The Title I retention of existing rights section was added to the act to make it clear that the LMRDA was not to supplant existing federal or state civil action rights, but that the act was designed to add new rights and to clarify federal law on this issue.[28] Congress realized that individuals were well protected by local law, but the status of the individual in the group was unclear.

While it might be argued that the "bill of rights" section is drafted to give some rights to labor organization members and to withdraw organization power in some circumstances,[29] it must be noted that all granted rights are exercisable in a group and that every clause has a restriction which permits the vesting of considerable power in the group. For example, the equal rights section of the LMRDA grants equal rights only within such labor organization,[30] a clear indication that the provisions are enforcible only against the group under the LMRDA.

The inevitable conclusion is that the court decided this case, which delineates an important title of the LMRDA, correctly. A union member has no rights in a federal court for damages and/or injunctive relief against a violator of the LMRDA who allegedly acted only in his individual capacity and not as the agent of any labor organization or employer. The appellant, by such adverse judgments, is not precluded from bringing a tort action against the appellees in a state court; nor is he precluded from reinstituting his case in a federal district court under the LMRDA, but he

[25] Id. at 1223(3).

[26] Id. at 1294(3).

[27] Id. at 1281(1).

[28] Id. at 1108-19. These pages record a long debate among Senators Kennedy, Clark, Curtis, McClellan, Morse and others which led to the inclusion in the McClellan amendment of a modification (at 1114) which was the beginning of the present Retention of Existing Rights Section. Senator Kennedy was particularly worried that ". . . if the proposal (the McClellan Amendment to the Kennedy-Ervin bill with the civil enforcement rights vested in the Secretary of Labor) were enacted, the present rather exhaustive common law of the various states might be wiped out, and only the rights suggested by the Senator from Arkansas would then be available to union members." The Senators agreed that the solution to the federal preemption problem was the enaction of the Retention of Existing Rights Section.

[29] Compare LMRDA § 101(a)(1), 73 Stat. 522 (1959), 29 U.S.C. § 411(a)(1) (Supp. II, 1958), with LMRDA § 101(a)(4), 73 Stat. 522 (1959), 29 U.S.C. § 411(a)(4) (Supp. II, 1958). The former is phrased "every member" while the latter is phrased "no labor organization shall."

[30] 73 Stat. 522 (1959), 29 U.S.C. § 411(a)(1) (Supp. II, 1958).

must allege that appellees acted in their capacities as union officials. Judge Hastie's concurring opinion seems correct in so far as it would grant the appellant leave to plead over.

DAVID S. WORONOFF

Labor Law—Seniority Rights As Vested Contractual Rights.—*Zdanok v. Glidden Company, Durkee Famous Foods Div.*[1]—In a diversity action in the District Court for the Southern District of New York, five employees sued their former employer for breach of contract. The dispute concerned itself with the seniority provisions of a collective bargaining agreement covering a New York plant which the employer had closed when it transferred its operation to Pennsylvania. Pursuant to the agreement, the employer terminated the contract and offered the employees the chance to apply for similar positions in Pennsylvania, but without seniority benefits. When arbitration failed to resolve the resultant seniority dispute,[2] the employees brought this action alleging a denial of valuable contract rights that had vested in them.

The district court held that the plaintiffs had standing as beneficiaries of the bargaining agreement to enforce provisions made for their benefit, but that the employer was not required to preserve for its employees seniority status acquired under the expired New York agreement.[3] On plaintiff's appeal, this ruling was reversed. HELD: The seniority rights were vested and were not lost when the agreement expired; accordingly, the employees had seniority rights after the employer transferred the plant from New York to Pennsylvania.[4]

The collective bargaining agreement in this case recited, in its preamble, that it was made "for and on behalf of its plant facilities located at Corona Avenue and 94th Street, Elmhurst, Long Island, New York."[5] Judge Madden of the United States Court of Claims, sitting by designation,[6] in speaking for the majority found that this geographical description was nothing more than an identifying address and would not be treated as setting fixed boundaries on the scope of the contract.[7] The court concluded

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1 288 F.2d 99 (2d Cir. 1961), cert. granted, 82 Sup. Ct. 56 (1961) (No. 242).

2 Local 852, the plaintiffs' union, served on the defendant a notice of intention to arbitrate certain designated disputes, pursuant to the arbitration provision in the union's contract with the defendant. Defendants' motion to stay arbitration was granted on the grounds that there was no arbitrable dispute. The court concluded its opinion with the sentence: "It follows from all the foregoing that Glidden's motion to stay arbitration must be granted, whatever other remedies the Union may have with respect to the alleged disputes." Matter of General Warehousemen's Union, 10 Misc. 2d 700, 172 N.Y.S.2d 678 (Sup. Ct. 1958).

3 185 F. Supp. 441 (1960).

4 Supra note 1.

5 Id. at 103.

6 Judge Madden, who not only participated in the 2 to 1 finding but wrote the opinion, was sitting by special designation of Mr. Chief Justice Warren.

7 A rational construction of the contract would seem to require that the statement of location was nothing more than a reference to the then existing situation, and had none of the vital significance which the defendant would attach to it. Contracts must, in all fairness, be construed *ut res magis valeat quam*