CHAPTER 7

PUBLIC REVIEW BOARDS: THEIR PLACE IN THE PROCESS OF DISPUTE RESOLUTIONS

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As even the casual reader knows, the signing of an accord between the Ford Motor Co. and the United Auto Workers made national headlines late last year. The three-year agreement followed basically the pattern set earlier with the Chrysler Corporation; and the union, the public was informed, won limited acceptance for its demand that overtime work become voluntary with the employee. The more diligent reader probably picked up later articles that reported that the proposed Ford-UAW contract was accepted by a three-to-one margin by production workers, but at the same time was rejected four to one by Ford skilled trades employees.[1] Nevertheless, the union's international executive board declared the contract ratified. That was the end of the account—or so it seemed.

But as probably only the most intrepid follower of labor-management relations is aware, the story had a sequel. And among the central cast of characters in the narrative of events which followed was the public review board of the International Union, UAW, the institution with which this presentation is concerned. Its function in the events which succeeded the declaration of ratification is an illustrative demonstration of the proposition that is propounded here: that is, that there is a role for the arbitral process in the internal decision-making process of labor and perhaps of other organizational structures.

Shortly after the UAW announced that the Ford agreement had been ratified and placed into effect, several skilled tradesmen from Local 228 brought an action in the U. S. District Court for

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[1]The results of the ratification vote were: nonskilled workers, yes—112,154, no—38,684; skilled trades workers, yes—5,943, no—20,089.

the Eastern District of Michigan challenging the union's action on the ground that under the organization's constitution, a proposed contract must be ratified independently by skilled tradesmen before it can be given effect. At approximately the same time, a different group of skilled trades employees from the Rouge plant in Dearborn filed a challenge to the contract implementation decision with the UAW's public review board, asserting the same constitutional provisions in support of their claim that the contract had improperly been declared to have been ratified.

The legal proceeding was then terminated following agreement by the parties that the case would also be submitted to the public review board. Under the union's constitution, the board's decisions are final and binding. Its judgment was announced two weeks ago today (April 14, 1974).

It would serve no purpose to go into detail concerning the decision here. At issue was whether a provision in the constitution providing for a separate voting procedure required that a contract must be independently ratified by each group before it might legally be given effect. Suffice it to say, the question was close enough that members of this Academy, who are also members of the public review board, voted on opposite sides of the question. The majority, by a five-to-two vote, sustained the international executive board's decision that the agreement had been ratified.

What, then, is this public review board in which the union's membership has reposed authority to decide issues of utmost importance to the organization? I thought it would be useful to take a look at the organization, examine its purposes and functions, and then examine briefly how well it fulfills its mandate and whether it is suitable for adaptation to other situations. These are at least the questions that I conceive to be of interest to this organization of neutrals, for the public review board is itself an organization of neutral individuals. Historically, it has included among its members preeminent arbitrators, students of the labor movement, and other persons closely connected with the labor relations area in various neutral roles.

This concept of public review, of course, did not originate with the UAW. In the final analysis, it is simply an extension of the judicial process—the interjection of neutral individuals

whose judgment is respected and whose honesty is unquestioned into the dispute resolution process. In the context of UAW governance, the public review board represents essentially a group of arbitrators in whom the union has reposed ultimate authority to interpret its constitution and ethical practices codes and to decide disputes arising thereunder.

The membership of the UAW amended the body's constitution in 1957 to charter a public review board that had as its stated purpose to ensure a continuation of high moral and ethical standards in the administrative and operative practices of the international union and its subordinate bodies and to further strengthen the democratic processes and appeal processes within the union as they affect the rights and privileges of individual members or subordinate bodies. The board was granted broad jurisdiction over virtually all types of appeals that can arise under the constitution and ethical practices codes of the union, with the important exception that it is prohibited from reviewing questions of union bargaining policy and decisions relating to the processing of grievances unless it is alleged that the processing was affected by elements of fraud, discrimination, or collusion with management.

The board has seven members. Current members are: Rt. Rev. Msgr. George G. Higgins, Secretary for Research, United States Catholic Conference, Washington, D.C., chairman; Professor Harry W. Arthurs, Dean, Osgoode Hall Law School, York University, Toronto, Ont.; Professor James E. Jones, Jr., Law School, University of Wisconsin, Madison, Wis.; the Hon. Frank W. McCulloch, School of Law, University of Virginia, Charlottesville, Va.; Professor Jean T. McKelvey, New York State School of Industrial and Labor Relations, Cornell University, Ithaca, N.Y.; Rabbi Jacob J. Weinstein, Rabbi Emeritus, K.A.M. Isaiah Israel Congregation, San Francisco, Calif.; and Theodore J. St. Antoine, Dean, Law School, University of Michigan, Ann Arbor, Mich. They are appointed for a period of two years between conventions of the union. The union may fill vacancies occurring in the membership of the board only from among candidates submitted by its remaining members. It has also chosen to fill vacancies occurring at the end of a term by the same method, and it has never refused to reappoint any incumbent willing to serve another term.

Board members are compensated on an annual basis and also by each case in which they participate. Originally, members served without compensation, but at the insistence of the then president, Walter Reuther, who felt that no person should be prevented from serving because it might constitute a financial hardship, a compensation arrangement was adopted whereby each member received an annual stipend of $1,000 plus $200 for each case which he or she hears and $200 for each executive session of the board attended.

The board normally meets on the first Saturday of each month, at which time it will hear oral argument on one or more appeals as well as review the files in all cases submitted since the previous meeting. Each board member is supplied with a complete record in each appeal.

Any member of the union may present a claim for review by the public review board. Involved essentially is a three-step operation commencing with initiation of the claim before the member's local union, an appeal to the international executive board, and then a final appeal to the public review board or to the appeals committee of the constitutional convention. The convention appeals committee, which meets semiannually, has concurrent jurisdiction with that of the public review board. However, it is not foreclosed from hearing grievance appeals on their merits or from reviewing questions of union bargaining policy. Despite its broader jurisdiction, only about one appellant in 15 elects resort to the convention appeals committee.

The internal appellate procedure is not complicated. A member may appeal any "action, decision or penalty" of his local union. He can initiate an "action" himself simply by placing a motion before the local membership which, if lost, can be appealed to the international executive board. The constitution does place stringent time limits for the initiation of such actions, however; the member must institute his remedial effort within 60 days of the date of the event that aggrieved him. Appeals must be in writing and taken within 30 days of the date a claim is decided.

The procedure is designed to operate efficiently and at no cost to the member. The short limitations period is supposed to keep a case from getting old, although the theory sometimes falls short of

the reality. No fees or charges are made to any member and, indeed, when his case reaches the public review board, he is supplied with a free copy of the record. In the event there is oral argument and it is held away from the member's home locale, the board will pay his out-of-pocket expenses incurred in connection with his attendance at the hearing. All decisions of the board are reduced to writing and mailed to the parties. Any other person wishing to receive decisions of the board may have his name placed upon the board's mailing list free of charge. Most major libraries and newspapers throughout the country receive copies of the board's decisions in this way. The decisions also are digested and indexed for reference purposes. Finally, the board annually publishes a report to the membership of the union in which it describes its procedures and summarizes all cases that it has handled during the year. At the same time the board provides the membership with a detailed breakdown of its expenditures.

The annual cost of operating the board varies substantially, depending upon the board's caseload. The budget has ranged from $40,000 to close to $100,000. The average annual cost per member has been about five cents—a low premium for the insurance provided.

To assist it in its work, the board maintains a small professional staff consisting of an executive director and an office secretary. All three executive directors who have served since the establishment of the board have been attorneys specializing in the practice of labor law. It is the responsibility of the executive directors to process the appeals, to prepare and summarize the records for member consideration, and to draft opinions following determination of appeals.

There you have the nuts and bolts of the board's operation. It is designed to provide protection to the individual member of the UAW, to assure him that the constitutional covenant into which he has entered with his fellow auto workers and the authority that he has thereby ceded to the government he has created will not be subverted or abused by the union's leadership, and to further assure him that the union will continue to operate democratically with due regard to the rights and privileges of each of its members individually and to all of its membership collectively. So much for the theory. How about performance and practice?

It is very difficult for an insider objectively to supply answers to these questions. An outside study of the effectiveness of the board was performed by Michael Harrington, Jack Stieber, and Walter Oberer for the Fund for the Republic of the Ford Foundation about three years after the board had commenced operation, but there has been no follow-up since.[2] The board itself meets periodically with what is called the public review board relations committee, staffed by international officers, to discuss problems and to search for solutions to the problem of narrowing the gap between what is seen as the potential of the board and the performance that it delivers.

Among other things, the board's membership is concerned with the relevance of the public review board to the real problems of the membership of the union. If it is fair to generalize in this respect, in the normal grievance situation the arbitrator will be dealing with two adversaries who, at a minimum, possess some sophistication and savvy concerning the administration of their collective bargaining agreement. While it certainly is not always the case, nevertheless grievances clearly lacking in merit will be withdrawn by the proponent party, and many other cases are settled before they actually reach arbitration. But what about the individual whose grievance has been withdrawn or compromised on a basis unsatisfactory to him? As it happens, there is a concurrent Academy session dealing in depth with this subject, but in the UAW, at least, these members frequently appeal to the public review board.

Statistics show that of the 330-odd appeals that have been filed with the board since its inception, approximately 30 percent have been filed by members dissatisfied with the disposition of their grievance claims. But grievance processing, it may be recalled, is one of the areas in which the union has seen fit to restrict the jurisdiction of its public review board. That is, unless a member is able to show that elements of fraud, discrimination, or collusion with management affected the processing of his grievance, he cannot prevail. Furthermore, the test is jurisdictional, so that unless one or more of the elements is established, the board must dismiss the case on what surely must appear to most members of the

[2] "Democracy and Public Review—An Analysis of the UAW Public Review Board" (Santa Barbara, Calif.: Center for the Study of Democratic Institutions, Fund for the Republic, 1960).

union as a garden-variety legal technicality—in short, an impediment to justice. The member, in this observer's view at least, is interested in having his independent, impartial tribunal examine the merits of his claim to determine whether the grievance was not, in fact, meritorious and to tell the union that it should have arbitrated the individual's claim or settled it on some basis other than that which it did.

It is and has been the view of many of the board's members—a view which I certainly share—that for a member to have his case dismissed on what he regards as a technical ground is indeed a frustrating, alienating, and disillusioning experience. Various efforts have been made to convince the union's leadership that it would be in the best interests of making the union's public review board more meaningful to its membership to substitute for the current jurisdictional restriction a standard couched in terms of a duty of fair representation. While the dialogue continues, nevertheless the leadership has not been willing to cede to the public review board any authority that might, in its view, involve the board in second-guessing it on its grievance processing decisions. To come to grips partially with the problem, the board has, through the device of judicial invention, involved itself in at least a limited review of the merits of appellants' claims in that it will regard as one of the indicia that fraud, collusion, or discrimination was not present in the determination to withdraw or to settle a grievance on a basis unsatisfactory to the aggrieved, that the grievance was clearly lacking in merit under the collective bargaining agreement.

A second problem has to do with the matter of accessibility. While the internal remedies procedures are simple enough, the prospect of initiating and processing a claim may be simply overwhelming to many of the members of the union who may be entirely unprepared by way of education or training for the assumption of such a burden. Additionally, the constitution and ethical practices codes of the UAW comprise some 96 pages of rather fine print, in addition to which there are 32 additional pages of official interpretations of the constitution adopted by the union's international executive board. Again, many members of the union simply do not possess the ability to digest and understand the rights that are theirs under the constitution. There is, however, the National Labor Relations Board to which the member

may be able to turn with his claim of breach of duty of fair representation and where he may repose his problem in the lap of a trained professional who not only is schooled in the intricacies of the law which he administers but, in addition, has the power and authority to make an investigation in much greater depth than the member himself probably would be able to do.

Similarly, in election contests which comprise the second greatest number of cases received by the public review board, trained Department of Labor personnel are available to process a member's protest to an election. Title I and Title VII claims are cognizable both by the NLRB and by the courts. Increasing resort by the membership to the courts in these areas has been observed recently. Again, expert counseling and handling is of decisive importance, and the problem of the legal fee, formerly a formidable obstacle has been eased, if not eliminated, by generous fee allowances for successful counsel payable from the treasury of the defendant. My belief is that if the member's internal remedy system is to be truly effective, similar expert counseling and advice must be available to the member of the union as regards the rights guaranteed him under the constitution and the means by which realization of those rights may be effected.

There is, in the union, a considerable resource of talented individuals who could act as law counselors to fellow members, and many of them undoubtedly would be willing to serve without compensation, as do many other officers of the union. Or perhaps retirees, who now make up a considerable percentage of the auto worker union membership population and who are now a substantially younger group than they once were, might find such a post a useful and rewarding occupation. In any case, an essential ingredient of the successful operation of a system of internal remedies is diffusion of information to those for whose benefit it operates concerning the procedures pursuant to which it operates and the substantive rights that it guarantees.

Third, it is essential that the system operate in a reasonably expeditious fashion. This has been a problem that has plagued the operation of the public review board since its inception. There have been instances where the passage of time consumed in processing of the appeal has obviated the possibility of affording effective relief to the aggrieved party. This is particularly true in election cases where terms of office are for two years, and there have

been instances where appeals reaching the public review board occupied all or a substantial portion of the two-year term of office. The union has insisted upon strict statutes of limitations for the initiation and processing of appeals by its members, but it has not imposed like requirements upon itself for the processing of these appeals. It should be possible to conclude an appeal, processed with reasonable dispatch, within a six-month period. Nevertheless, the last time we undertook a study of the subject in 1969, examining the most recent 150 appeals, it was found that the average elapsed time for the processing of all cases during the period was 13.2 months, and the median figure was 11 months. The procedure has since been accelerated by a constitutional amendment permitting the international president's office to process an appeal submitted to the international executive board rather than, as formerly, using appeals committees composed of international officers.

An effective internal remedies system should perhaps also incorporate some type of supersedeas procedures whereby a member can obtain a form of injunctive relief where such relief would be appropriate. For example, in one case which ultimately reached the board, a member had been prevented from running for office on a clearly erroneous ruling that he was not eligible to be a candidate. He attempted to remedy the situation prior to the election, but was unable to secure administrative relief. Left to his postelection remedy, he ultimately secured a ruling from the public review board that he was, in fact, eligible to run for office, but the damage had been done. By the time the time the case was processed, heard, and decided, much of the term had expired. Had he been able to seek immediate relief before the election, his rights would have been secured in a much more meaningful fashion.

Despite these problems, some of which are certainly soluble, the union's membership seems well enough satisfied with its public review board. There has been no audible demand for its abolition, nor has the cost of its operation provided cause for complaint. While the appellants have prevailed in only about 15 percent of the cases considered, this factor has not proved a deterrent to the further submission of appeals. The caseload of the board, never high, has fluctuated between 10 and 35, the latter number representing perhaps close to the maximum that could

be processed effectively by the board using its present system for handling appeals involving, as it does, all of its members on every case. It is difficult for the board to gauge membership sentiment concerning the board as an effective guarantor of individual membership rights, but perhaps it is, at worst, indifferent and, at best, willing to utilize the services of the agency when circumstances require. The leadership, for its part, appears to retain its original enthusiasm for the board and seems well satisfied with its contribution to the union.

Given these assessments, it is then somewhat puzzling that the institution, regarded as a success by the leadership of the UAW, has not been widely copied. The American Federation of Teachers had a board closely modeled after the UAW's and, indeed, used two of its members. But last year it abolished the institution and substituted therefor a tripartite arbitral process involving the selection of two "neutrals" (from an American Arbitration Association panel) who, in turn, are required to select yet a third neutral (perhaps this person should be designated a "super-neutral"), also from an AAA panel. It remains to be seen how this procedure will work or whether the union's leadership will be more satisfied with the decisions derived than it was with those of its public review board which, postabolition, it has rather caustically criticized. Both the Packinghouse Workers and the Upholsterers once had public review boards, but these have long since apparently fallen into disuse. In fact, the only other active public review board in the labor movement is that of the Association of Western Pulp and Paper Workers of which Professor David Feller was, until recently, a member. That board appears to have been involved in several cases of considerable importance to the union and, to an outsider at least, appears to be well accepted by both membership and leadership. Unlike the UAW board, where relatively little publicity attends its functions, the decisions of the Western Association board receive prominent play in the organization's newspaper.

Factors other than mere lethargies seem to militate against the adoption of the institution by other labor organizations. Even a reform leadership such as that of the Mine Workers, which might be expected to consider seriously the establishment of a public review institution as a hedge against repetition of past events, recently quickly dismissed consideration of the proposal—requiring

that the UAW president, Leonard Woodcock, who had been invited to speak to the union's leadership in favor of adoption of the institution, revise his remarks when informed that a proposal had already been rejected.

Many years ago I believed that the institution would be copied widely and would become a permanent fixture on the American labor scene. Now I am not so sure, and it may be that the institution will remain an idiosyncratic phenomenon of the UAW and one or two other iconoclast labor organizations. It is impossible at this point to foretell.

There may be other applications, however, to which the institution would be particularly well suited. The Warren Commission, of course, constitutes a classic example. But there are also many decisions made by various corporate boards of directors that perhaps could be subject to impartial public review. Many of these decisions have substantial public or consumer impact, but for the individuals adversely affected thereby there is usually no effective remedy. I am thinking, for example, of a decision recently made by the directors of the Detroit Edison Co., an institution that supplies much of the southeastern Michigan area with its electricity, to retain former Secretary of State William Rogers to appeal a decision of the district court holding that the company's hiring and promotion policies had deprived minority persons in the community of their civil rights.

Those of us who, if we want electricity, must purchase it from Detroit Edison and thus must bear the cost of the appeal have no effective means of challenging the company's decision in this respect, even though we may believe it is not in the public interest to pursue the appeal. Might not the principle of public review have application here? Could not a public utility vest in a public review board limited jurisdiction to render advisory, or perhaps even binding, decisions on corporate decisions directly affecting public interest? It may be argued that to impose such an institution on a corporate structure would hamstring it in its ability to make effective business decisions. Yet, on the other hand, might not such a board, composed of locally respected persons, enhance the ability of the company to withstand challenges to controversial corporate decisions as respects, say, the location of a nuclear power generating plant or fluoridation of a municipality's water supply?

Not many years ago in Michigan, a former partner of mine was called upon by the governor of the state to arbitrate a long-standing dispute among various communities concerning the location of a freeway. His role was to serve as sort of arbitrator of the public interest. Perhaps state highway commissions should have public review boards to resolve disputes over the location of freeways, or perhaps even over the question as to whether they should be built at all. Shall an area be strip-mined? Shall a river be dammed? Shall a forest be cut? These decisions are often made without effective public input or without effective public recourse, since often there are no realistic remedies at law. Would not Reserve Mining Company still be dumping tailings into Lake Superior had not asbestos particles been discovered in the water taps of Duluth and Superior? Those who initially challenged the company's action did so on entirely different grounds. These grounds might not have been adequate to secure a judgment against the company, and yet were these not grounds that involved vital questions of public interest?

There is nothing new or revolutionary in the concept of public review. It is based on the postulate that people will more readily accept a decision if they have faith in the impartiality, judgment, wisdom, and honesty of those who make it. There are countless people who could fill such a role in our society today. Special training is not required. Reputation will suffice. The principle has manifold possibilities for application, limited only by the horizons of our imaginations.

Comment—

JOHN A. FILLION *

I want to state very clearly that I am not an arbitrator; I am not a member of the Academy; and I don't even do a lot of arbitrating as a lawyer. I am deeply fascinated by arbitration as an institution. I am fascinated also by the body of law dealing with arbitration, which began wth the *Steelworkers* trilogy (courtesy of Dave Feller) and continues to grow.

But let me get to what I understand to be one of the principal thrusts of President Rock's remarks, and that is that arbitration as an institution seems to be in a decline, that the most heroic

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days of arbitration are the days of yore. I don't want to overstate this, but I sense that there is a feeling, perhaps prevalent in the Academy itself, that your greatest days are behind you and that you are looking forward, hopefully, to a sort of golden autumn, or what may turn out not to be such a golden autumn after all. I was astonished by these remarks because my own perceptions over about the past five years are just exactly the opposite. I really have come to look upon arbitrators as the inheritors of the world. I think the institution has become one of the most significant institutions in American society, certainly in American industrial society. It's difficult for me to overemphasize the significance of the role I think arbitration has come to play.

One of the things that impresses me very deeply is the fact that we have what is essentially a private institution (that is, private law—the labor contract and private judges—the arbitrators) that is being handed important areas of public law in huge globs. It started with the courts, under the trilogy, saying that we want questions of labor contract interpretation to be decided not by the courts, but wherever possible by arbitrators. Then came the National Labor Relations Board, saying that wherever conduct that is arguably an unfair labor practice may also be resolved as a contract matter in arbitration, we want all such disputes to go to arbitration.

In a sense, areas of public concern are being contracted out by the government to this private institution of arbitration. Arbitrators today, because of these developments, must pay attention to, if not actually apply, public law. They must keep an eye on Title VII law with respect to sex and race discrimination; they must keep an eye certainly on the National Labor Relations Act and its myriad and constantly changing interpretations. It seems to me, therefore, that arbitrators may be facing their most significant and challenging period. You are being looked to not only for private justice, as before, but for public justice as well. It is a very large order!

With respect to what Dave has said about the public review board (PRB), I would like to flesh in a part of the PRB picture that is of great interest to me: the kinds of cases the board deals with. Let me give you just a few examples of our most interesting cases. I am not going to spell them out in detail, but just give you their flavor.

Back in 1961 one of our Memphis locals was building a new local union hall. In the UAW, when a local doesn't have enough money to pay for its hall, we, the international union, lend them the money and get back a mortgage. That is what happened in the case of the Memphis local. Now, when we do that, we ask to see the blueprints, to take a look at the specifications, and so forth. When the blueprints from the Memphis local came to Solidarity House, lo and behold, the local union hall was to have segregated facilities. So we said to the local, "No, you can't build it that way," and they said, "O yes, we are going to build it that way." Then we said, "Then we are not going to lend you the money," and they said, "You can keep your money. We will get it somewhere else." Then we said, "If you do, we will impose an administratorship, take you over, and see to it that there are not segregated facilities in the local hall."

When the local refused to yield, the international imposed an administratorship. The local fought back, and the matter ultimately ended up before the public review board. The board affirmed the decision of the union's international executive board, holding that the union was correct in administering and trusteeing a local that would engage in conduct of that type—conduct that, of course, was in total disregard and contempt of some of the basic principles upon which the UAW is based.

Another interesting case was that of a fellow by the name of Russ White. This goes back about 15 years, too. He was the president of the Oldsmobile local in Lansing and a personal friend of Walter Reuther. White was appointed commissioner of labor in the State of Michigan by "Soapie" Williams. He submitted his resignation from his job as president of the local.

While the Democrats had elected the governor, they had not elected the senate, and when the senate refused to confirm White, he went back to the local and said, "I am withdrawing my resignation." And the local said, "Not on your life. You resigned, we have your piece of paper, your vice-president has succeeded you in office, and you are not coming back." He challenged that by filing an appeal through the union's internal procedures. The first step in the appeal was to President Reuther; he decided in favor of White and said that White should be reinstated in his job of president.

An appeal was then taken to the international executive board which said that President Reuther was right. An appeal was then taken to the public review board. White's theory was, "I should be reinstated because as of the time that I withdrew my resignation, it had not been accepted and, therefore, it was still open to being pulled back."

The public review board, in a very scholarly decision, decided that White was wrong. Essentially the argument was that the idea that a resignation can be withdrawn before it's accepted applies only to those situations in which there is some danger that there will be no orderly successor. That is, if there is no provision in the constitution of the body for an immediate successor, so that the resignation, if effective immediately, would create a hiatus of leadership, the resignation is not effective until accepted. But this was not the situation. Here, the public review board said, the constitution and bylaws of the local made it clear that when anybody resigns, he is succeeded by A, and if A resigns, then it's B, and so forth, with no possibility of a hiatus. White's resignation, therefore, was effective immediately and could not be withdrawn, the board ruled.

Another extremely interesting case that arose five or six years ago was that of a member in Canada who, after having been elected chairman of a standing committee of his local, ran for office in the Canadian Federal Government as a member of the Canadian Communist party. He lost the election. What's more, the local removed him from his committee chairmanship, relying on the provision of our constitution that says no one can be an officer of a local union if he is a member of "any political organization, such as the Communist, Fascist or Nazi Organization which owes its allegiance to any foreign government."

The international executive board denied the member's appeal. The public review board reversed on the ground that under the constitutional provision the local had the burden of showing that the Canadian Communist party does indeed owe its allegiance to a foreign government. In the absence of such a determination, the provision of the constitution couldn't be applied to remove the man, and he was reinstated in his office.

These are cases that give you some idea, I think, of the scope and the power of the public review board in the life of the union.

When I was getting ready to come out here, I asked myself: Is there anything about the public review board that has application to the institution of arbitration? Possibly there is, and I want to throw this out as a speculation—really nothing more than that. It certainly doesn't represent any thinking on the part of the UAW as an institution, but it occurred to me as a possibility, and I would like to throw it out to you.

There obviously is a great similarity, I think, between our public review board and the institution of labor arbitration. As I indicated at the outset, both are essentially private adjudicative institutions. We call our board a "public" review board. That, of course, does not imply in any way that it is a public body financed by public funds, administered by or existing pursuant to public law. It is public only in the sense that the people who serve on it are not members of the union and aren't connected with the union. It is essentially a private body. And just as you arbitrators do, the public review board applies to the disputes that come before it private law—namely, our constitution. So there is, it seems to me, an essential similarity.

Is there anything that they have that's good that you don't have and that you might take a look at? Well, one thing that occurs to me is that I think the public review board probably has greater acceptability than arbitrators, despite the trilogy. In arbitration, it is becoming more common for the guy or the gal who is the grievant to attack the decision if it's against him or her. There is a law firm in Detroit, as a matter of fact, that is staying fairly busy representing the arbitrator when the grievant sues the union, the company, and the arbitrator.

Now the public review board, as Dave indicated, has had very good luck in this regard. I am aware of only two cases that, after having been decided by the public review board, ended up in court. With but these two exceptions, members who have lost before the PRB have been satisfied that their cases were fairly handled. It seems to me that one reason for this may be that it is a *public* board in the sense that its members are from outside the union—academics, clerics, and so forth. Moreover, the board's membership includes men and women; Catholics, Protestants, and Jews; blacks and whites. These factors, I think, contribute to the acceptability the board and its decisions have achieved.

What about this as far as labor arbitration is concerned? Arbitrators have come to be regarded as a part of the industrial establishment, along with employers and unions. Could we give the arbitrator and his decision greater credibility by making him the chairman of a panel that includes two, three, or four outsiders? Of course, in constituting the panel we would have an eye on racial complement; we would have an eye on sex complement; we would have an eye on people who could be counted on to raise considerations that are humane and compassionate. It seems to me that it's a possibility that might warrant some consideration.

Let me say in closing that the public review board has done a magnificent job in deciding cases. I guess that is its principal mandate. The board has decided a lot of cases and it has decided them very well, but I think it has had an even more important impact on the union. It has, I think, very materially improved the quality of justice the union provides its members.

I came to the UAW at about the time the public review board was just getting into swing, so that I worked on cases in which I could see what the decisions of our international executive board were like before the board and the union really began to understand that it had a public review board sitting as a supreme court. The contrast in the quality of the pre-PRB and post-PRB decisions is dramatic. The board is responsible for this. It has set good examples for the union tribunals with respect to procedures, decisions, opinions, and so forth. And of course these tribunals are very much aware that the board is there, ready to review their decisions if asked to. Just as lower courts are aware of appellate courts, so the UAW tribunals are aware of the PRB. The board has helped us improve the quality of justice at all levels of the UAW's procedures, and we are grateful for that help.

THE AMERICAN FEDERATION OF TEACHERS PUBLIC REVIEW BOARD

JOHN PHILLIP LINN *

"We have in this Country but one security. You may think that the Constitution is your security—it is nothing but a piece of paper.

* Member, National Academy of Arbitrators; Professor of Law, University of Denver College of Law, Denver, Colo.; Chairman, AFT Public Review Board from March 1969 to August 1973.

> You may think that the statutes are your security—they are nothing but words in a book. You may think that an elaborate mechanism of government is your security—it is nothing at all, unless you have sound and uncorrupted public opinion to give life to your Constitution, to give vitality to your statutes, to make efficient your government machinery."
>
> Charles Evans Hughes
> Chief Justice of the United States

The history of the public review board of the American Federation of Teachers should be of special interest to the members of this Academy, because the traditional functions of public review boards can now be said to be a part of the expanding frontier opening to the arbitration profession. The role of public review boards in the review of internal union activities, when shifted to arbitrators, may prove to be one of the greatest challenges that you shall face. I am confident that members of this Academy can and will serve with distinction in this new area of dispute settlement. The kinds of issues to be resolved in internal union controversies demand some special knowledge. The "law" to be applied will be found in new sources, or may have to be woven from new cloth in many instances. The remedies may prove to be unique and call for some degree of inventiveness. It is hoped that this summary of the life and activities of the AFT public review board will provide an insight into the special problems of unions and union members in their effort to protect the rights of individuals in democratic labor organizations.

As you know, the AFT became a particularly important representative of public employees in the early 1960s and experienced a very rapid growth of membership, particularly in large urban school districts. Many new locals were established and new positions of power were assumed. Charles Cogen, AFT president, perceived a need for an impartial public body to guarantee that the rights of individual members of the AFT would not be lost in the flurry of activity experienced by an expanding AFT and its state and local affiliates.

In his address to the 1965 convention of the American Federation of Teachers, AFT President Charles Cogen stated:

> "I should like to see a further expansion of democracy in the affairs of our union. This involves the establishment of an impartial 'Public Review Board' to insure that the rights of AFT union members will never be neglected by any of our official AFT bodies.

> The Board should consist of a body of outstanding citizens, completely independent of our union, who will hear and adjudicate any complaint which an individual member may have about union action affecting his rights as a member. Its decisions would be the basis for democratic due process for the national AFT and for every local and state federation. We have had few such complaints. The AFT, at all levels, stands out in contrast to the bureaucratic structure and functioning of the non-union associations. Yet we must be vigilant to preserve our liberties. We should act now, before injustice is done."

Subsequently, a committee was appointed to draft a plan for an AFT public review board. The report of that committee was adopted with two significant revisions. Originally, the plan was to be effected by amendment to the AFT constitution; the revision required only AFT executive council action. Also, the plan's original reference to a "bill of rights" was omitted in revision, but, as President Cogen announced, the term "duly enacted" in Section 2 of the plan permitted appeals on the basis of denial of due process. The plan, as revised, was adopted by the AFT executive council as the AFT Public Review Board Charter on May 27, 1967.[1]

The charter provided that the public review board would consist of five members appointed initially by the AFT president with the approval of the executive council. Thereafter, the public review board would fill its own vacancies, subject to the approval of the executive council. No PRB member could be a member of the AFT at the time of his appointment to the board, nor could he have been an AFT member during any of the five years immediately prior to his or her board appointment.

The original members of the AFT public review board were : Mortimer H. Gavin, S.J., Director, Institute of Industrial Relations, Archdiocese of Boston, and member, National Academy of Arbitrators, Boston, Mass.; Napoleon B. Johnson, II, Director, Labor Education Advancement Program, National Urban League, Inc., New York City; Theodore W. Kheel, arbitrator and mediator, and member, National Academy of Arbitrators, New York City; John Phillip Linn, Professor of Labor Law and Arbitration, University of Denver College of Law, and member; Na-

[1] A copy of Charter—Public Review Board of the American Federation of Teachers, AFL-CIO, adopted by the AFT Executive Council as revised on May 27, 1967, is available from the author on request.

tional Academy of Arbitrators, Denver, Colo.; and Rabbi Jacob J. Weinstein, D.D., member, President's Committee on Equal Employment, member, UAW public review board, and past chairman, War Labor Board, Chicago, Ill.

Acting under their charter, the members of the PRB elected the chairman from among themselves. Mr. Kheel was elected chairman. All members of the newly formed board met in Washington, D. C., and were presented to the delegates assembled there for the 1967 AFT convention at its annual banquet. Mr. Kheel, as guest speaker on that occasion, eloquently applauded the AFT for its demonstration of concern for rights of individuals in its organization, congratulated the AFT for the leadership it had shown in advancing collective bargaining for the benefit of the nation's educators and for education, and recognized the need for the power to strike by teachers to effect meaningful collective negotiations.

The AFT-PRB was prepared to hear complaints from AFT members concerning action by any local, state, or national AFT body or official that the member alleged to affect adversely his status or rights as a member of the AFT. The PRB did *not* have jurisdiction over "any duly enacted policy of the AFT or any of its affiliates, provided that such policy is consistent with appropriate local, state, and national constitutions and convention policy, and with democratic due process." Before bringing a case to the PRB, a complainant must have first exhausted all his remedies provided in the constitution and bylaws of the respective bodies of the AFT. Before the PRB could hear a case, it had to have been granted authority to hear such complaints from the local or state affiliate against whose official or official body the complaint was filed.

During its first year of existence, the public review board did not meet, and it received no communications from its chairman. Mr. Kheel had received some letters and telephone calls, primarily from New York teachers, concerning alleged problems, but these matters were not processed to hearing.

In early 1969, Mr. Kheel submitted his resignation from the PRB to AFT President David Selden. The PRB members appointed Dr. Jean T. McKelvey to fill the vacancy resulting from Mr. Kheel's resignation. Dr. McKelvey was Professor, New York

State School of Industrial and Labor Relations at Cornell University, member of the New 'ork State Board of Mediation, member of the UAW public review board, and president-elect of the National Academy of Arbitrators.

In late March 1969, the PRB members elected John Phillip Linn to serve as PRB chairman, and very soon thereafter the chairman received notice of a complaint filed earlier in the year by Stephen Zeluck, president of the New Rochelle Federation of Teachers, against the New York state body of the AFT—officially, the Empire State Federation of Teachers. In his complaint, Mr. Zeluck alleged that he had been unfairly and unjustly censured and that his character was defamed by the action of the ESFT in passing a resolution of censure against Mr. Zeluck at its 1968 annual convention. The facts of the Zeluck case presented an emotionally charged situation. New York City Local No. 2 of the AFT, known as the United Federation of Teachers, under the presidency of Albert Shanker, had engaged in three separate strikes in the fall of 1968. The first strike was short—September 9-10. The second began September 13 and ended September 29. The third was of five weeks' duration, beginning October 14 and ending November 17. These strikes involved issues largely centered in the Ocean Hill-Brownsville school district.

During the course of the third strike of the UFT in New York City, Mr. Zeluck prepared an article titled "The UFT Strike: A Blow Against Teacher Unionism" for publication in the winter issue of *New Politics*. The article did not appear until December 1968, but advance copies in mimeograph form were circulated among an indeterminate number of people. It was strongly critical of the wisdom of the strike and of the policies of the UFT leadership, and it expressed serious concern that those policies would be gravely detrimental to all teacher unionism. In a related action, Mr. Zeluck, with the approval and encouragement of the executive board of the New Rochelle Federation of Teachers, held an open discussion meeting, during the UFT strike, to which were invited the president of the striking UFT (who did not appear), some UFT officials who disagreed with UFT policies, and representatives and teachers of the Ocean Hill-Brownsville school district.

Both the UFT and the NRFT were affiliates of the Empire State Federation of Teachers, which met for its annual conven-

tion within a week following the strikes. At the convention, a resolution submitted by the UFT proposed censure of Mr. Zeluck for his "anti-union activities." The convention was composed of delegates representing some 40,000 members of the UFT and other delegates representing locals with a total membership numbering about 5,000 teachers. In general convention session, the recommendation to censure was debated. Mr. Zeluck spoke at length to the assembly on his own behalf. A voice vote was called for, was questioned, and a standing vote was taken. By that vote, the body concurred in the resolution to censure.

The procedure of the Zeluck case was also significant for the public review board. Immediately upon receipt of Mr. Zeluck's complaint on March 24, 1969, the PRB chairman sought authorization from the Empire State Federation of Teachers to hear the complaint. That authority was received on May 8, 1969. After further correspondence, the chairman received the name of the ESFT counsel on May 22, 1969. Both Mr. Zeluck and the ESFT were represented by very competent attorneys. Counsel for Mr. Zeluck insisted, among other things, that the UFT strike was racially motivated and that the PRB should make examination of that matter. It became obvious that if the public review board were to serve a useful purpose, a prehearing conference would have to be scheduled to frame the issues to be decided. A meeting of the PRB chairman with counsel for both parties was held on July 17, 1969, in New York City. At that all-day meeting, agreement was reached on the issues to be submitted to the public review board on written briefs to be postmarked August 15, 1969, from the attorneys. The issues were, essentially: (1) Was the censure disciplinary action or merely exercise of free speech by the ESFT? (2) Did the ESFT have a right to discipline Mr. Zeluck on the ground of anti-union activity? If the PRB determined that the censure was discipline and that the ESFT had a right to discipline, it was expressly contemplated that the PRB would then take evidence concerning the procedure followed by the ESFT in imposing censure for the purpose of determining whether due process was afforded Mr. Zeluck.

The briefs of counsel in the Zeluck case arrived in due season and were distributed among the PRB members for study. The full PRB membership discussed the case in an all-day meeting in

Detroit on September 25, 1969, and concluded that a hearing was needed. Thereafter, from September 25, 1969, into November 1970, the PRB chairman sought through letters and telephone communication to set a mutually convenient hearing date. For various reasons, counsel for the ESFT was not available to have the matter heard. Finally, in November 1970, the chairman unilaterally notified the parties that a hearing would be held on January 15, 1971, and a three-person panel was designated to conduct the hearing—Mr. Johnson, Dr. McKelvey, and Father Gavin, chairman. That hearing was held on schedule, and leave was granted to counsel for filing briefs in the matter. After consideration of the evidence and arguments, the panel submitted its findings and opinions to the full PRB. At a special meeting of the board in Detroit on March 5, 1971, the PRB gave further consideration to the case. Subsequently, the PRB's opinion and order were written, circulated among PRB members, rewritten to include suggested changes, recirculated, approved, and ultimately rendered to the parties on May 28, 1971.

The board concluded that the resolution of censure was clearly intended to be a formal and official condemnation of Mr. Zeluck's conduct, constituting discipline and punishment under the applicable provisions of *Robert's Rules of Order.* The PRB expressly did not decide the substantive question of whether cause for discipline existed. It disposed of the case on the procedural ground that Mr. Zeluck had been disciplined without benefit of all essential elements of due process to which he was entitled under the governing *Robert's Rules of Order.* The PRB ordered that the ESFT expunge its resolution of censure against Mr. Zeluck from the record at its next convention and that the substance of the PRB decision be submitted for publication in the *American Teacher,* the official newspaper of the AFT, which is not to be used to promote any individual's personal or political goals, or to advance the partisan views of any political caucus.

Although the Zeluck complaint was the first to be filed with the PRB, it was not the first to be heard and decided by the board. It did impress the board with the need to seek broad authority from state and local AFT affiliates in advance of any complaint so that complaints could be processed without undue delay. It also prompted the board to formulate rules of procedure

that would permit it to handle cases as efficiently as possible.[2] The board was operating on an annual budget of $5,000 to meet all expenses and fees of board members, expenses of hearing room facilities, and all secretarial and administrative expenses. It was difficult to anticipate financial needs, but it was obvious that with budgetary limitations, the board had to adopt flexible procedures that would meet particular requisites on a case-by-case basis. One of the new rules provided that the PRB chairman could appoint any PRB member, or a qualified person other than a PRB member, to act as a hearing officer to conduct such hearings and make such determinations and reports in any case before the PRB as would assist the board in the conduct of its official business. The chairman never appointed a person other than a PRB member to hear a case, but under that rule, three cases were heard by a single PRB member in 1970.

The first case in 1970 was heard by Rabbi Weinstein. The complaint had charged that the local's constitution was deficient in that it had no clearly defined provisions safeguarding an indivdual member's right to protest actions of the local's leadership; and that the complainant could not be validly subjected to disciplinary action for crossing a picket line during a two-day strike, called by the local when the employer refused to hold an emergency arbitration hearing in a case involving the transfer of two teachers, because such a strike violated a "no strike" provision in the local's collective agreement with the employer. Certain misunderstandings between the complainant and the local were overcome as a result of the hearing conducted by Rabbi Weinstein, and the remaining issues were left for internal resolution in the first instance. The matter never came back before the PRB.

The second case in 1970 arose out of a complaint filed on April 27, 1970, charging that a local's president exceeded his authority in executing an addendum to the collective agreement with the complainant's employer. Counsel for the local replied by letter of May 11, 1970, that the matter was not properly before the PRB because the complainant had not exhausted his internal remedies. All issues came on for hearing on June 22, 1970, before Dr. Mc-

[2] A copy of the Rules of the AFT-PRB are available from the author on request. In some measure, these rules were fashioned upon the labor arbitration rules of the American Arbitration Association.

Kelvey. Both parties were represented by attorneys. The public review board rendered its opinion in the matter on July 20, 1970, dismissing the complaint for lack of proof that the actions of the local's president were either *ultra vires* or injurious to the rights of the local's membership.

The third case in 1970 was heard by Professor Linn. The complaint, received by the PRB on June 15, 1970, alleged that the process of nominating and electing local delegates to the 1970 AFT convention violated the local's bylaws. The matter was heard on July 18, with no one represented by legal counsel. Soon thereafter, in July 1970, the PRB rendered its opinion, holding that no violation of bylaws had occurred and making an order with respect to the delegates to the convention.

While on the subject of elections, it should be noted that each year the board members elected a PRB chairman and vice chairman by secret ballot directed to the office of the AFT president. Both Rabbi Weinstein and Dr. McKelvey served as vice-chairmen during the life of the board. Professor Linn served as chairman from 1969 until the board's demise in August 1973.

In March 1971, the PRB chairman spoke to the AFT executive council in Washington, D. C., concerning the activities of the board. It was an opportunity for members of the executive council to become better informed about the procedures and cases of the board and to express themselves concerning the board's functions. Only one person on the executive council had been directly involved in a PRB decision and had high praise for the service the members of the PRB provided. At that time, the Zeluck decision had not yet been rendered. Two members of the executive council, the presidents of the Washington Teachers' Union Local No. 6 and of the Philadelphia Federation of Teachers Local No. 3 had recently had complaints filed against their locals. It was also reported that one local union had failed to grant authority to the PRB to hear a complaint filed against its president, vice-president, and executive board. As it turned out, that was the only union that refused the PRB's request for authority during the life of the PRB.

In the Washington Teachers' Union Local No. 6 case, the charge of December 7, 1970, alleged that four teachers had been expelled wrongfully from membership in the local. On January

29, 1971, counsel for the local answered the complaint. The matter was heard on April 5, 1971, by Dr. McKelvey, with all parties represented by attorneys. The PRB was asked to determine whether the complainants had been afforded due process in being expelled from the local on December 8, 1969. All of the complainants were duly elected members of the Shaw School Chapter Advisory Committee, and the charges supporting their expulsion referred solely to their actions as elected officers of the unit. The record in the case was closed on May 24, 1971, and the PRB issued its opinion and order in the matter on June 11, 1971. Subsequently, counsel for the local submitted a motion for reconsideration of the order, alleging that the board's reasoning and conclusions rested upon grounds that had not been asserted at the hearing so that the local had been denied procedural and substantive due process in not being afforded opportunity to respond to these new grounds. Copies of the local's detailed motion and complainant's response thereto were considered by the public review board, which concluded that its decision was substantively correct but that some of the reasoning in the original opinion should be changed in light of the union's legitimate complaint that it was *ultra vires.* In its revised opinion and order, the PRB found that although the local had attempted to carefully comply with disciplinary procedures and afford full due process to the complainants, the form of the final vote (a standing vote counted by tellers appointed by the chair) failed to satisfy the prescription for a secret ballot in *Robert's Rules of Order.* The local argued that *Robert's Rules of Order* could not be imposed upon the actions taken at a regular membership meeting, but would have application respecting a unit of organization or a committee. The PRB believed that the local interpreted the application of Robert's Rules too narrowly because nothing in reason or logic explained why the local's constitution would impose on the organization's unit a requirement from which the organization itself could claim exemption. Because the constitution was silent as to the method of voting and the PRB interpreted the constitution to provide for application of *Robert's Rules of Order* except where in conflict with the local's constitution and bylaws, the PRB held that an essential element of procedural due process was lacking in the act of expulsion. Further, the PRB held that in exercising its constitutional right to expel the complainants to render them ineligible for office in the Shaw Chapter Advisory Com-

mittee, the local had deprived the complainants of substantive due process. The PRB held that even assuming the charges against the complainants were true, for acts of misfeasance, malfeasance, or nonfeasance in office, the proper penalty was suspension, recall, or removal from office, not expulsion from membership. The PRB ordered the local to readmit the complainants to membership in the local and to expunge the resolution of expulsion from the record. The substance of the opinion and order was submitted for publication in the *American Teacher*.

The case involving the Philadelphia Federation of Teachers Local No. 3 arose on complaint dated February 5, 1971, that complainants were denied eligibility to seek elected office within the local because of amendments to the local's constitution, operating *ex post facto*. The amendments in question provided that only members in good standing who "have taken part in any strike—including taking picket duty during any strike—that took place during the preceding 24 months, if in one of the bargaining units at the time," were eligible to serve on the local's executive board or stand for election to the building committee. The complainant alleged, among other things, that the constitutional provisions constituted a wrongful imposition of discipline against him and others who had not participated in an illegal citywide strike conducted by the local. The constitutional amendments were proposed and approved by the local's membership following the conclusion of the strike. No formal disciplinary action was taken by the local against the nonstrikers. The complainant maintained that nonstrikers could not be denied eligibility to hold union office because they declined to perform an illegal act.

The Philadelphia case did not go to hearing until June 8, 1971, because of unusual problems facing the local. A second day's hearing was held on July 16, 1971. The complainant was represented by legal counsel (attorney for the rival Philadelphia City Educational Association); the local was not represented by counsel. The case was heard by Father Gavin. A quorum of the PRB met in Detroit to give special attention to the facts of this case, and the written opinion in original and revised forms was distributed to all members of the board, as was true in every case, before the opinion and order were approved. In the opinion, rendered in December 1971, the PRB expressly made no

determination as to whether the actions of the nonstrikers were punishable.

In determining whether the complainant had in fact been punished by implementation of the constitutional amendments, the PRB noted that the absence of formal disciplinary action is not conclusive in deciding whether discipline was in fact imposed. The PRB then examined the amendments in light of the surrounding circumstances of the case and concluded that the adopted amendments were an intended retaliation or discipline against those who opposed and refused or failed to participate in the strike, which discipline was imposed without benefit of at least procedural due process.

The respondent local had attempted to justify the adopted amendments as reasonable and essential union safeguards. The PRB noted that an important purpose of the 1959 Labor-Management Reporting and Disclosure Act was to establish a balance between the interest of union members in democratic self-government and the interest of labor organizations in protecting themselves against internal subversion of their institutional functions; to promote equal rights among union members; and to protect those rights against all except reasonable union rules and regulations and disciplinary actions. It recognized that the U. S. Supreme Court had stated that "reasonable qualifications uniformly imposed" to govern the conduct of union elections should not be given a broad reach.

The PRB found that underlying the adopted amendments of the respondent was the notion that the rank-and-file members of the local union were unable to distinguish qualified from unqualified candidates for particular offices. It held that such an assumption is unreasonable and no less undemocratic in the election processes of an affiliate of the AFT than in elections of unions covered by the LMRDA. On this point, the PRB relied on the reasoning of the U. S. Supreme Court in *Wirtz* v. *Hotel Employees*[3] wherein the Court noted that Congress's model of democratic elections was political elections in this country which are not based on an assumption that union members are unable to select qualified candidates for offices, but rather on the assump-

[3] 391 U.S. 492, 68 LRRM 2305 (1968).

tion that voters will exercise common sense and judgment in casting their ballots.

The PRB held the amendments void but did not order a new election, as had been requested by complainant, because there was substantial evidence in the record to convince the PRB that nothing could be gained by holding a new election in that the outcome would not be changed.

The editor of the *American Teacher* requested the PRB chairman to furnish a summary of the Philadelphia case for his publication. The chairman honored that request, making no reference to the parties involved. Soon after the case summary appeared in the February 1972 issue of the *American Teacher,* together with a prefatory comment by the editor in which the identity of the local was made known, the AFT president advised the PRB chairman that the AFT executive council had adopted a motion on February 5 to request that the public review board submit its decisions to the executive council before publication. The matter had allegedly arisen because the summary of the case did not mention that while one of the complainant's allegations had been upheld by the PRB, a number of his other allegations had been rejected. The AFT president stated that in his judgment the executive council's motion was a mere procedural matter without intention to interfere in any way with the work of the PRB.

The PRB chairman, in response to the AFT president's letter, forwarded the request to other members of the PRB and advised the president, *inter alia,* that the summary of the Philadelphia case lacked many details, including the names of the parties, because it was intended to speak to only those matters that were considered significant in assisting the readership to understand the nature of the problem and its resolution by the PRB. It was not intended to reflect in any manner upon particular persons or a particular organization, or to have any sort of political overtones.

You can imagine the reaction of the PRB members to the AFT executive council's motion. No one expressed willingness to submit decisions of the PRB to the AFT executive council prior to publication, and the members were prepared to resign immediately if the issue were pressed further. It was not.

The annual report of the PRB to the 1972 AFT annual convention happily noted that not a single complaint had been filed with the PRB during the year. But during the next year, seven complaints were filed and three of them went to hearing. The first two of these cases were to be heard by a panel of three members, but when Mr. Johnson was unavailable for the hearing date and Dr. McKelvey found herself snowbound, the cases were heard by Father Gavin and Professor Linn on April 12, 1973. In the first of these two cases against the same local, the complaint alleged that the local failed in its duty of fair representation when it refused to furnish legal representation, or funds for legal representation, to the complainant to aid in his processing of a grievance against his school board to arbitration. Both the complainant and the local were represented by legal counsel. By its opinion and award, rendered May 31, 1973, the PRB sustained the local's position that its duty of fair representation did not include the duty to furnish legal counsel or funds for private legal counsel. The PRB noted that nothing in the agreement between the local and the school board required that a grievant be represented by legal counsel; that nothing in the local's constitution or bylaws imposed a duty to provide legal representation; that nothing was shown to exist in statutory or common law to impose such an obligation to meet a duty of fair representation; and that nothing in practice or in logic implied such a duty. The PRB further noted that a wide range of reasonableness must be allowed a bargaining representative in serving the unit it represents and where there is sufficient evidence before the bargaining representative to support and justify a good-faith decision not to process a grievance, the courts will not find a failure to represent unless there is overriding evidence to show arbitrary, discriminatory, or bad-faith conduct on the part of the union.

The complaint in the second case, in which the local only was represented by legal counsel, alleged wrongful censure by action of the local president and the local's trustee council. The PRB opinion, rendered July 25, 1973, held that the censure action constituted discipline that could not be imposed validly because the local failed to provide the complainant with written specific charges; failed to set a time for hearing which would give the complainant a reasonable time to prepare her defense; and failed to allow the complainant to appear with counsel before the censure action was taken—all in violation of the complainant's right

to procedural due process. The PRB ordered that the censure be expunged from all records of the local and that the trustee council send the PRB award to all members of the local and to others to whom the trustee council had sent copies of its original letter of censure.

The last case decided by the AFT-PRB concerned a complaint against a local in which two veteran members of the AFT alleged that they were victims of an *ex post facto* ruling of the local officers and house of representatives concerning a mandatory dues check-off system. Hearing of the matter was before Rabbi Weinstein. The local alone was represented by legal counsel. The PRB decision, rendered in July 1973, ordered the local to restore the complainants to their full rights as members of the union, including their right to pay their dues directly to the union rather than through the check-off system, in conformance with the PRB's interpretation of the local's constitution and bylaws.

The remaining complaints that were before the PRB never went to hearing because the AFT public review board was abolished by the AFT convention at its annual meeting in August 1973. The resolution for the abolition of the PRB, and the establishment of an arbitral process for internal review, was prepared by the United Federation of Teachers Local No. 2 of New York City. No reason for this action was ever brought to the direct attention of the PRB. In a recent issue of *Union Democracy Review,* Jules Kolodny, secretary of the United Federation of Teachers, has set forth several reasons for believing that an arbitration process should prove a better way to protect union democracy than the PRB. I shall not take issue with Mr. Kolodny here, although I do quite generally disagree with his conclusions and their factual bases, which are clearly erroneous in many respects. Those interested in reading that article may obtain it from The Association for Union Democracy.[4] Editor H. W. Benson has written a companion article in the same issue of *Union Democracy Review* concerning the AFT-PRB which you also will find interesting.

My understanding of what has happened in the processing of AFT member complaints since last August is quite limited. In the March 1974 issue of the *American Teacher,* it was reported

[4]Address: 22 East 16 Street, New York, N.Y. 10003.

that the AFT executive council has established the AFT Arbitration-Review Board, whose purpose will be the same as the old PRB. The report further states:

"Effective immediately, an AFT member with a complaint who has exhausted all constitutional avenues may notify the AFT secretary-treasurer of his or her desire to have the case heard by the arbitration-review board. If the local union is willing to participate in the process, the secretary-treasurer will notify the American Arbitration Association, which will assign the case to its regional office closest to the geographical area of the local union and/or state federation. The AAA will monitor each step of the procedure.

"The complainant will be asked to name one person to serve on the three-member arbitration-review panel; the local, state, or national federation—whichever is involved in the case—will name a person to serve; and these two, who will serve without cost, will jointly select a third member from a list of professional arbitrators in the region supplied by the AAA. This third person will chair the panel and prepare a report of the decision reached by majority vote of the three panelists. The panel will be directed to add to the decision on the substance of the issue an observation about the responsible nature of the complaint.

"Costs for the arbitrator and the procedure will be borne by the AFT. However, the appellant must post a $250 escrow fund, and if the tripartite panel, by a majority, adds to its decision an observation that the complaint was made 'frivolously or mischievously or utterly without merit,' the fund will be forfeited.

"Once the arbitration review board completes its hearings and renders its decision, copies of the award will be provided to the AFT bodies involved and the appellant.

"The procedure, as outlined, will be presented to the 1974 AFT convention this August in Toronto in the form of an amendment to last year's resolution.

"However, the council has stipulated that should any cases arise before the convention takes action, this same procedure shall be used on an ad-hoc basis."

The new arbitration process should have two distinct advantages over the PRB process. It should permit cases to be resolved in much less time than was required by the five geographically dispersed members of the PRB. And it should reduce the cost of each case to the AFT.

You who will serve as the third, impartial member of the tripartite review boards will not have the satisfaction of "brain-

storming" with other neutrals in the resolution of problems, which was a source of such great satisfaction to me as a member of the PRB, but you will have the opportunity to provide a most significant service. For this I am certain—the rights of the individual union member must be safeguarded, and review of internal union conduct by informed and impartial third parties is imperative to a democratic process.

THE ASSOCIATION OF WESTERN PULP AND PAPER WORKERS PUBLIC REVIEW BOARD

DAVID E. FELLER *

The Association of Western Pulp and Paper Workers also has a public review board which (its constitution says) is composed of "three impartial persons of good public repute." That language apparently was lifted directly from the UAW, but that is about all that was lifted from the UAW. The association's board has distinctive characteristics, most of which derive from the nature of the association.

The association is, in many ways, a unique labor organization. One of its prime characteristics is that it is democratic in the extreme. It is also a rebel organization. Indeed, the name of its newspaper is *The Rebel.* Its membership, which I believe is something under 30,000, consists largely of a group of workers in the western pulp and paper industry who were represented for many years by two international unions, the Paper Workers and the Pulp and Sulphite Workers. These two unions, which are customarily referred to pejoratively in the association as "the internationals," had developed in the western pulp and paper industry a system of collective bargaining that for many years was regarded as a model of stable, mature, and peaceful industrial relations. There was a single uniform labor agreement covering a multiemployer unit, and the system of negotiation and administration of the agreement was often cited as an exemplar of democratic unionism. Over the years, however, the leadership of the international unions grew further and further away from the membership, with the result that in 1964 the membership rebelled. A new

*Member, National Academy of Arbitrators; Professor of Law, University of California School of Law, Berkeley, Calif.

organization, called the Association of Western Pulp and Paper Workers, was formed which petitioned for an election in the multi-employer unit and successfully took out of the AFL-CIO what I believe to be the largest single group of members that has ever successfully seceded to establish an independent labor organization.

That background is essential because it defines the way the association operates. Egalitarian democracy is the name of the game. The leaders of the new union, being rebels against an elaborately structured union organization, set up the simplest kind of organizational structure for their new union. I have a copy of the first constitution of the association, which established the public review board. It is a rather remarkable document. It is a tiny booklet of only 37 pages, in large type with big headings and lots of white space. It sets the president's salary at $10,000 a year plus expenses, and the expenses are modest indeed. The constitution specifies that if he stays away overnight, he shall receive a maximum expense allowance of $20 a day. He is required to travel by coach, and a great deal of language is devoted to specifying that he must use the cheapest possible method of transportation. Vacations are four weeks or such amount as is provided in the current collective bargaining agreement for persons of equal service. The association's executive board is authorized to provide health and welfare benefits for the officers, but it is specified that they shall be no greater than those provided in the uniform labor agreement for the membership. The officers are, as in the case of some other unions, elected by referendum vote. Interestingly, however, the association constitution also specifies in some detail procedures by which they can be recalled by referendum. Democracy is, as I said, the name of the game.

Fresh from their experience with what they regarded as a dictatorial union hierarchy, the founders of the association designed a rudimentary constitution whose principal objective was to protect the members from their officers. Naturally, in such a document, there would be provision for a public review board. But, again as one would expect in such a constitution, the jurisdiction of the board is limited. After all, democracy implies not only freedom from unfair control by union officers, but also freedom from interference by appointed public members. Hence, the provision for a public review board is placed at the end of a section that is

called "Charges and Rights." The provision follows a careful definition of the offenses for which a member may be disciplined and a description of the procedures that must be used in such cases. It says that within 30 days of an appeal decision by the executive board in such a case, a final appeal may be made to an impartial public review board. The board's decision is to be based solely on the question of whether or not the union's constitution and bylaws were faithfully followed and whether or not the trial was conducted and the decision rendered without unfairness to the accused. So the board is, as originally designed, a board that can hear only charge cases, that is, cases of internal union discipline.

This originally described jurisdiction does cover some of the cases we have heard. One of those cases may, perhaps, give you a greater insight into the nature of this rebel organization. After it was formed and took over the collective bargaining function in the western pulp and paper industry, the internationals tried to make a comeback. They filed a petition with the National Labor Relations Board after the expiration of the first association contract, and there was a bitter election campaign which the association won. There were, however, a few members of the association who favored a return to the internationals. One of them, who became an open advocate and organizer for the internationals, was later brought up on charges that he encouraged and supported a rival labor organization in violation of a specific constitutional provision.

Dual unionism is, I suppose, the most heinous of offenses in the trade union tradition. The individual I have described was, however, not expelled. He was found guilty and was fined $250. He took an appeal to the executive board and, when they affirmed his conviction, to the public review board. He argued that punishing him for supporting the internationals was unconstitutional, infringed on his rights of free speech, and was contrary to the National Labor Relations Act. These contentions the board found to be wholly without merit. But, on examining the union's current constitution, we found that at its second convention, which occurred after the campaign took place, the provision making support of a rival labor organization an offense had been removed. The convention proceedings disclosed that the provision was taken out on the ground that the association had been

formed as a rebel organization and, therefore, it was unfair for it to discipline members who, in turn, might rebel against it. When we found this, of course we had to reverse the conviction. The repeal of the constitutional provision on which discipline was based, we said, had to apply to all pending cases.

That decision, I think, received some notice in the press. Those not acquainted with this particular union and its peculiar background and constitution undoubtedly regarded it as noteworthy that a public review board set aside union discipline against a member who supported a rival union. Given the virtual mandate from the union's convention that we do so, however, the action was less a testimonial to the character of the review board than to the rather remarkable democratic notions that characterize the association.

I said that the jurisdiction of the public review board in the association is really limited to the disposition of appeals in cases in which charges have been filed against an individual. The statement is literally correct, but substantively false. One of the listed offenses in the constitution is violation of any provision of the constitution. This being a democratic union, it is therefore possible to convert any claim that the executive board or the officers have acted contrary to the union's constitution into a "charge" case. You simply file charges against the officer or, if it is executive board action against which you complain, against the entire executive board. And this has, indeed, been the principal source of the disputes that have gone to the review board.

The first one we had was almost frivolous, but it indicates what can happen in a union in which members are conscious of their rights and perfectly willing to litigate them within the union structure. This case was brought by a member who was elected as a delegate to one of the union's conventions. (I might say that this union, being very democratic, holds conventions at the drop of a hat. There seems to be at least one each year and sometimes more.) The problem is that the union, again being a democratic one, requires that any dues increase be approved by a referendum vote and is consequently short of money. It takes money to attend conventions. The result is that sometimes the delegates, whose expenses must be paid by the local unions, don't all come.

The first case involved precisely that kind of a situation. A local sent a number of delegates to the convention but discov-

ered, after the delegation had left and participated for a few days, that it didn't have enough money to pay for all of them. The local then voted to recall one of the delegates and sent him a wire telling him to come back. He said he wouldn't, and he didn't. He stayed two more days until the end of the convention, exercising his democratic rights as a delegate. Subsequently, he asked for his expenses, and when the local refused to pay them, he filed charges against the local officers. The case went eventually to the executive board and finally to us on the public review board. We decided that they had a perfect right to tell him to come back if they wanted to, and therefore he had no rights in the matter.

A similar case involved a higher union official. This union does not appoint staff representatives. The constitution provides for what are called area representatives and specifies that they shall be elected for a term of three years. It also specifies the salary—one which, I should add, is modest indeed. Shortly after the organization was formed, a question arose as to what would happen if an elected area representative became ill. Was he, under the circumstances, entitled to continue to receive his salary?

The first time that this question arose, during the term of the first president of the organization, the matter was brought to the executive board. The president argued, in effect, that the constitution said what the salary was to be and specified that the term was three years. An area representative might therefore claim that, being a constitutionally elected officer, he was entitled to his salary as long as he held the office, in the same way that elected representatives in the Federal Government are entitled to their salaries unless they resign. But, the president argued, we may have to hire somebody to perform his functions while he is ill, if the illness continues for a substantial period. He therefore proposed that in such a case the elected representative's salary be continued for only 90 days, with coverage after that period under a sickness and accident policy, to be purchased at a premium cost no greater than the premium cost for the sickness and accident policy for workers in the mills. This seemed a practical arrangement, and the association's executive board agreed to it.

Following this action, there was a new election and a new president. After this election, an area representative who had been elected at the same time got appendicitis, I think, and went to

the hospital. The question came up before the executive board as to whether they should pay him in full for the period when he was in the hospital under the previous policy providing for the continuation of full pay for 90 days. The newly elected board decided that it could not. The constitution provided that the health and welfare benefits for officers should not exceed those provided in the labor agreement. Under the sickness and accident provisions of the labor agreement then in effect, workers in the mills were entitled to 50 percent of 40 hours' pay per week during a period of sickness. It followed, the executive board concluded, that to pay the area representative at 100 percent of pay, for even 90 days, would be a violation of the constitution, and he was therefore not paid.

He, of course, filed charges against the executive board. He argued that when he was elected, the interpretation of the constitution was that he was entitled to pay for 90 days. It was therefore unconstitutional to reduce his pay during the term for which he was elected. The question came to us after the executive board rejected the charges, and we decided that the union could reasonably interpret the constitution one way or the other. However, having interpreted it one way, and the representative having been elected on that basis, we thought he was entitled to be paid for the 90 days.

Our private view, which we intimated somewhat in the opinion, was that the notion of 50-percent pay, based on a 40-hour week, was silly as applied to union representatives who do not work a fixed day, punch no time clocks, and often are not replaced when they are ill. (In the case before us, in fact, it appeared that the representative was not replaced and, indeed, conducted some of his business on the telephone from his hospital bed.) But that was not really our problem, and so we simply concluded that the union could do pretty much what it wanted, but that it couldn't reverse an existing executive board policy during the term of an elected officer. (The problem was subsequently resolved by amending the constitution so that it explicitly provided for the continuation of pay for 90 days.)

I will give you one more case which indicates the kind of decision which the public review board in the association is required to make. Given the nature of this constitution, it does not have any provision at all for the removal of subordinate officers by the

president or the executive board. Such action would be plainly autocratic: The democratic way to remove an elected representative is by a recall election. The absence of any removal provision, however, presented a problem when an elected area representative was indicted on a charge that he was involved in a plot to blow up a plant in which there was a dispute with the union.

The association's officers didn't quite know what to do about the situation. It was obviously not in the union's interest to continue the representative in office while the criminal trial was in progress. On the other hand, they did not wish to prejudice him in any way. They sought to resolve their dilemma by suggesting to him that he take a leave of absence with full pay while the criminal prosecution was pending. In addition, they quietly agreed—quietly because they did not wish to subject the union to any potential liability on the theory that it ratified his alleged actions—to pay his lawyer's fees. (I should add that those fees were relatively modest and not of the size involved in some other, perhaps similar, payments elsewhere.)

The union quickly discovered, however, that it had a problem. The problem was not with an outraged membership that might later object to paying for a temporary area representative to fill the indicted representative's position while on leave, or to the payment of lawyer's fees. To the contrary, the obstacle was immediate: The area representative refused to accept the leave of absence. The executive board then directed that he take leave, with pay, and he filed charges against the board for so acting. When the matter came to the public review board, we looked at the constitution carefully and found no provision that would authorize the executive board's action. Somewhat reluctantly, given the circumstances, we sustained the charges and directed that the area representative be permitted to perform his duties despite the pendency of the criminal proceeding.

One may well wonder what his motivation was; after all, he was going to be paid whether he performed his duties or not. The answer was that there was an election coming up and he wanted to run again. The union's action in putting him on leave status in the period prior to the election would have severely diminished his chances of reelection. The issue was, in short, purely political.

This leads me to what I believe to be one of the serious problems attendant upon the establishment of a public review board. There is, I think, an almost inevitable tendency in a union in which there are political factions for one element or the other to seek to manipulate the public review board for political advantage. As I listened this afternoon to the description of what happened in the AFT, I think it is perfectly clear that the controversy that led, eventually, to the abolition of the board, was precisely that. I believe that this also was the case with respect to many of the cases that have come before the public review board of the association. This seems clearly to have been the case with respect to the issue as to the continuation of pay for an area representative who became temporarily ill. The issue wasn't the money. Rather, one political faction wanted somehow to get something on the record with respect to another.

This leads me to my first conclusion about public review boards derived from my experience with the Association of Western Pulp and Paper Workers. With one reservation which I will describe shortly, it is that those unions that really need public review boards don't have them, and those unions that do have them are precisely those, almost by virtue of the fact that they do have them, that don't need them. If the problem in a given union is the unfair use of power by union leadership, unfair discipline and expulsion from membership or discrimination in referral to jobs, or refusal to process grievances for invidious reasons, you almost by definition have a union leadership that will not establish a public review board. The prime examples, of course, are the building trades unions where membership means the difference between having a job and not having one, the labor law to the contrary notwithstanding. There, where expulsion from membership is really significant in terms of job rights, of course you don't have public review boards. Where you tend to find them is in those unions that are democratic, or want to appear democratic, and in those unions there is little real need for a board. But since the board is there, it will tend to be used more as a way of making political points by one faction or another rather than as a method of redressing genuine grievances.

The question, then, is why these boards exist if they tend to exist only where they are least needed. One answer, of course, is that they provide excellent public relations. If I may say so, I think

this is probably one of the reasons a board was established by the UAW. It is also true that a board can be a great convenience to a union administration. The UAW has succeeded, for example, in persuading the courts that employees can't bring suits for breach of duty of fair representation in failing to process a grievance without first exhausting the internal procedures provided by the board. But, since the board has a limited jurisdiction to review the merits of a grievance, as you have heard, this may end up in a dead end for the grievant, to the advantage of the union administration and to the disadvantage of the employee.

So I think that a public review board does perform a function for union administration in preventing exterior intervention by others. I think a union as strong and as stable as the UAW at least appears to be can afford the political risks of a board, and it may there, on balance, be useful, not so much to the employee or member but to the union administration. I think that a union that is as unstable as the AFT appears to be at the moment may not be able to afford one. Indeed, the description that we have heard about the fellow who was censured and the lengthy process that was involved in determining whether he had been accorded due process, sounded to me like the essence of internal union politics in which the public review board members were really being called upon to decide how they thought the union should be run.

I have a strong disposition toward the view that arbitrators and the public generally should not allow themselves to get into the business of telling unions how to run themselves. They ought to be allowed to run themselves pretty much by themselves, subject to certain limitations. When you throw a man out of the union, or fine him, particularly where his job is at stake, he should have some remedies. But I am skeptical as to whether we can look for effective remedies for individual members through public review boards, since they will tend to exist primarily where they are not needed. Where there should be remedies, they should be provided by public law, and review boards may, in fact, provide a disservice by tending to shut off exterior remedies that might otherwise be available under public law.

This leads me to the one exception I would make as to the utility of the public review board for the Association of Western Pulp and Paper Workers, which I can perhaps generalize into a general feeling about public review boards. The constitution of

the association was constructed with an eye to the problems that the members of the association knew about, and it was carefully drawn to prevent what they had experienced, or thought they had experienced in the way of abuse of union power. There were, as I have indicated, therefore, very carefully detailed provisions about expense accounts and salaries. But there were no provisions dealing with problems of the kind they had not experienced. Apparently they had not had any problems in the old internationals with the stealing of votes in an election. Hence, the constitution of the association had almost no provisions governing the details of the conduct of elections. Elections were to be conducted at each local, and the results were to be forwarded to the international, but there were none of the careful provisions providing safeguards for secrecy and honesty in elections that are found in a great many other union constitutions. Inevitably, problems arose because of the absence of safeguards, and the Labor Department required that an election for one area representative be set aside and rerun.

Having thus faced the problem, the union wrote the most elaborate, strictest, and most democratic election procedures that you have ever seen. The election of officers is by referendum conducted by secret ballot at the local unions, with a carefully controlled system for absentee ballots. The ballots are printed by the national union, however. After they are counted at the locals, each local is required, within a strict time limit, to forward under seal the used and unused ballots to a committee of tellers at the national office, along with a tally of the votes cast, an accounting for the void and unused ballots, and the register showing the signatures of those members who voted. The tellers check the tally submitted by the locals for internal consistency and for compliance with the procedures. The totals shown on the local tally sheets are then added together. If the grand total of votes cast for the candidates for any office are within 5 percent of each other, the tellers then automatically recount all of the original ballots.

In the next election after these new procedures were adopted, there was a contest for national secretary-treasurer. It was a close race, and the total votes counted for the two candidates were within 5 percent of each other. Accordingly, the ballots were all recounted. The problem arose because two of the locals had not precisely complied with the detailed procedures. One had for-

warded its tally sheet by hand rather than, as prescribed in the constitution, by registered mail. Another had filled out the tally sheet to be forwarded to the national, but had neglected to send it with the ballots. When this was discovered, it was duly forwarded to the national tellers, but after the constitutionally specified deadline. The tellers, being good and literal constitutionalists, said that there had been a failure to comply with the procedures prescribed in the constitution and therefore refused to count the votes of these locals. What made the decision crucial was the fact that the votes in the second local made the difference between who won and who lost.

The constitution by this time had been amended so as to specifically allow appeals from the tellers to the public review board, and so the case came to us. We agreed that the local had not complied with the constitution, but we concluded that it was improper to disenfranchise all of the members of that local because some local union official had forgotten to put the tally sheet, which in fact turned out to be precisely accurate when the ballots were recounted, into the mail with the ballots. The failure to comply with the procedures, although in violation of the constitution, we said, was not any basis for refusing to count the votes where the error, demonstrably, had no effect whatsoever on the accuracy of the count. We therefore ordered that the votes be included.

This had a rather startling effect. The secretary-treasurer whom the tellers had certified had won the election had already been installed. After our decision, they had to remove her and install, instead, the candidate who in fact had garnered a majority of all the votes cast.

The same result would, I believe, have occurred without a public review board as a result of action by the Secretary of Labor under Landrum-Griffin. But we did serve a function in short-circuiting action by the Secretary of Labor. The public review board was therefore a convenience—a luxury, if you will—although given the scale of compensation of the members of the public review board, not an expensive luxury.

I do believe, however, that it is a luxury that this union does not really need. It is nice to have the equivalent of a grandfather or an uncle to whom you can refer these little problems so

that they can be disposed of quickly. But I don't think it is necessary or, in the long run, very healthy.

Perhaps because of our feeling that most of the cases referred to the public review board—and I have mentioned only a few of them—do not really require extended consideration, the members of the board in recent years did not even hold hearings in most cases. We would each separately look at the papers and tell Paul Hanlon, the current chairman of the board, our views as to the case, and he would dispose of it in short order. There was some resentment within the union against this kind of summary disposition, and they have now put a provision in the constitution requiring that a hearing be held. Perhaps this is justified because of the necessity of providing for the appearance of due process, even in the most frivolous of cases, but this appearance is purchased at what, for a union of this small size, is a considerable cost. The three members of the public review board are located at widely dispersed places. One member is in Seattle, one in Portland—the headquarters of the union—and one in Berkeley, Calif., and holding a hearing, even of the shortest kind, requires that the members be available at one time and that they travel to one location for the hearing. The hearings themselves were quite brief in the early days becauses the cases, or at least most of them, were essentially easy, and I suspect this may continue to be so in the future. But the requirement that they be held is time-consuming.

The process is, nevertheless, not unduly slow even with the requirement for a hearing. But I do think that, although it is fast and in most cases does no real harm, it has the potentiality of becoming an instrument of manipulation by political factions within the union who want to score a point by winning something from the public review board; and I think that, by and large, that is not a very healthy thing for the union. My conclusion with respect to the Association of Western Pulp and Paper Workers is that these lovely people have by now, I think, almost completely reinvented the wheel and that they would be better off if they allowed themselves to complete the job by themselves.

Discussion—

CHAIRMAN JEAN T. MCKELVEY: We have about five minutes left. We usually don't have enough chance for audience partici-

pation, and although five minutes are not many, does anyone have a question?

PRESIDENT ELI ROCK: I think if you have only a few minutes left, we ought to have a reply from Mr. Klein to Mr. Feller's statement that you don't really need a UAW review board.

CHAIRMAN MCKELVEY: When I heard that Clyde Summers was going to be in the opposite room, I was worried that we wouldn't have any critics here, and I am very glad that Dave Feller took that role, which I believe he honestly espouses, and that we did have a criticism of the whole concept of public review boards.

MR. KLEIN: I think that some of the illustrations that Dave gave about the cases that he handled in the association are perhaps an excellent argument in refutation of his conclusions. It is certainly true that the last case he described, the election case, could have been handled under Title IV, but I suspect that if it had gone the Title IV route, no effective remedy would have been achieved.

When I am not busy with the public review board, they are kind enough to let me practice law. I represent a number of unions in the Detroit area, including some building trades unions, and I want to say that we get Landrum-Griffin Title IV cases, we get Landrum-Griffin Title I cases, we get Title VII cases—particularly the former two types of cases. It is relatively easy to effect the two-year delay in Title IV cases; that takes almost no effort on one's part, so that if the term of office is for two years, we are often at a new election before the case comes up for trial in court.

By the same token, in a Title I case, we're representing an institution that is usually not without resources and is usually willing to spend the money that it takes to win the case. Often it's an unequal contest between an individual with limited resources and an institution with, if not unlimited resources, at least substantial resources that it can bring to bear in the litigation process. You can discover and motion the plaintiff to death sometimes, and we do these things, of course, because we are trying effectively to represent our clients.

But the point is that the UAW, in my opinion at least—and of course I am not unbiased—provides its members with an effective remedy within the union, and I think that's very important. If

more unions did that, I believe you would find the courts making the kind of decisions that they did in the *Steelworkers* trilogy—that is, that the courts will defer to internal procedures in these cases.

Dave indicated that one of the benefits the UAW has derived from its public review board is that courts do defer to the PRB and the courts are often saying very kind things about the PRB-type remedy. I think you have a different situation when the UAW goes into court than when the union that has no meaningful internal remedy goes into court. And so that is why I feel at least that the public review boards do have a role. Neutrals do have a role to play within the internal disputes process of labor organizations.

CHAIRMAN MCKELVEY: All right, we will give Dave the last word.

MR. FELLER: Let me say, in response to Dave Klein, that a union that has the resources and desire to engage a lawyer to represent it effectively in delaying and preventing relief for an individual under Title IV in the way he has described would, almost by definition, not be a union that would provide a public review board to provide that same individual with speedy and effective relief. The Association of Western Pulp and Paper Workers is not such a union. Indeed, before it revised its election procedures, it did not contest a claim by the secretary that an election be rerun. The later case I described, which came to the review board, was one in which all that was required was some advice which the association could have gotten from a good lawyer. There was really no attempt to rig the election. The tellers refused to count the ballots from the noncomplying local because they thought that their constitution required them to do so, and all they needed was someone to tell them that they could allow those votes to be counted even though the tally sheet was not forwarded along with the ballots.

I am prepared to concede, on the other hand, that what John has said is quite right. As he describes the situation in the UAW, the public review board there performs a function very similar to one that Dave Cole once described to me as his function at International Harvester during a period when he decided no cases. Despite the lack of activity, the parties kept sending him a retainer;

and, at one point, he said that he felt that he ought to resign because he had performed no work. They insisted that he stay on and bill the parties because, as they put it, he performed a function by being there: Before, they said, we used to try to figure out in the last step of the grievance procedure who was right and who was wrong under the contract and we frequently disagreed; now all we have to do is to figure out how you will decide the case, and that we can reach agreement on!

So I think that if an organization needs some external force to force it to regularize its own procedures, it may be useful to have it there, not really to decide cases, but to impress upon the union hierarchy that if they don't fairly investigate complaints that come up from local unions, then there will be a remedy before the public review board.

Of course, it's not necessary to have a public review board for that purpose. I dislike making comparisons between the Auto Workers and Steelworkers that relate back to the days when I was associated with the Steelworkers, but I can't refrain from noting that the UAW executive board procedures which John has described as having been instituted as a result of the existence of the public review board are almost identical with the procedures that we had in the Steelworkers, and we didn't have a public review board.