The Limitations Period for Title I of the LMRDA: Protection of the Union Member's Civil Rights

I. Introduction

The Labor-Management Reporting and Disclosure Act of 1959 (LMRDA)[1] was created in response to Congressional concern over growing internal union misconduct.[2] Title I, labelled the union member's "Bill of Rights," provides protection of individual union member rights

---

[1]Labor Management Reporting and Disclosure Act (LMRDA) § 101, 29 U.S.C. § 411 (1982). The LMRDA is popularly known as the Landrum-Griffin Act. It provides in relevant part:

> (a)(1) Equal rights—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.
>
> (2) Freedom of speech and assembly—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings . . . .
>
> (3) Dues, initiation fees, and assessments—Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization . . . shall not be increased and no special assessment shall be levied upon such members . . . .
>
> (4) Protection of right to sue—No labor organization shall limit the right of any member thereof to institute an action in any court . . . *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof . . . .
>
> (5) Safeguards against improper disciplinary action—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

Id.

[2]LMRDA § 101, 29 U.S.C. § 411 (1982); *See* S. Rep. No. 187, 86th Cong., 1st Sess. 2 (1959) *reprinted in* 1 NLRB, *LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959*, at 398-401 (1959) [hereinafter Leg. Hist.]; *see also* Local No. 82, Furniture & Piano Moving, Furniture Store Drivers, Helpers, Warehousemen & Packers v. Crowley, 467 U.S. 526, 536 (1984); United Steelworkers v. Sadlowski, 457 U.S. 102, 109 (1982); Finnegan v. Leu, 456 U.S. 431, 435 (1982).

considered necessary for union democracy.[3] The Act is designed to guarantee every union member equal rights protection, freedom of speech and assembly, rights involving dues, initiation fees and assessments, protection of the right to sue and safeguards against improper disciplinary action.[4] The LMRDA also allows union members to seek redress in federal court when unions encroach upon those enunciated rights.[5]

Although Congress provided aggrieved union members with a private cause of action, it failed to enact a statute of limitations for these actions. This has led courts to apply various inconsistent statutes of limitations when confronted with Title I cases.[6] Given this diversity in the selection of limitations periods, the federally created right of a union member to file suit could be upheld or summarily denied, depending on the jurisdiction in which the action was instituted.

In 1983, the Supreme Court in *DelCostello v. International Brotherhood of Teamsters*[7] applied a federal six-month statute of limitations to an action in which an employee sued his employer for breach of a collective bargaining agreement and his union for breach of the union's duty of fair representation.[8] This type of action is typically called a "301 hybrid."[9] As a result of *DelCostello*, some federal courts adopted the Supreme Court's reasoning and selected the same six-month statute of limitations for Title I cases.[10] Other courts have expressly refused to

---

[3]Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 HARV. L. REV. 851 (1960); Atleson, *A Union Member's Right of Free Speech and Assembly: Institutional Interests and Individual Rights*, 51 MINN. L. REV. 403 (1967); Beaird & Player, *Free Speech and the Landrum-Griffin Act*, 25 ALA. L. REV. 577 (1973); Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 MICH. L. REV. 819 (1960); Smith, *The Labor-Management Reporting and Disclosure Act of 1959*, 46 VA. L. REV. 195 (1960); *see supra* note 2.

[4]*See supra* note 2.

[5]LMRDA § 102, 29 U.S.C. § 412 (1982). The statute provides:

> Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

Id.

[6]*See infra* notes 35-51 and accompanying text.

[7]462 U.S. 151 (1983).

[8]*Id.* at 163.

[9]*See infra* notes 12-16 and accompanying text. *See also* DelCostello v. International Bhd. of Teamsters, 462 U.S. 151, 165 (1983), Bowen v. United States Postal Serv., 459 U.S. 212, 235 (1983) (White J., dissenting); United Parcel Serv., Inc. v. Mitchell, 451 U.S. 56, 66 (1980) (Stewart, J., concurring); Rogers v. Lockheed-Georgia Co., 720 F.2d 1247, 1249 (11th Cir. 1983); Storch v. International Bhd. of Teamsters, Local Union No. 600, 712 F.2d 1194, 1195 (7th Cir. 1983) (per curiam).

[10]*See infra* notes 67-73 and accompanying text.

apply the federal limitations period, thereby rejecting the analogy between 301 hybrids and Title I cases.[11]

Part II of this note analyzes the rights protected by statutes and reviews the treatment of Title I claims before and after the *DelCostello* decision. Part III discusses the balance between the interests in preserving the collective bargaining arrangement and the interest in preserving the union member's federally created rights in Title I claims in view of *DelCostello*. Part IV examines the various alternatives available to a Title I plaintiff. Part V concludes that courts should select state limitations periods for personal injury actions in the absence of Congressional direction.

II. Background of Court Treatment of LMRDA Claims

A. Characterization of Rights Protected by Statutes

In order to determine the effect of the *DelCostello* decision on Title I claims, it is necessary to examine the different types of actions that are involved in 301 hybrid and Title I suits. While 301 hybrid claims focus primarily on protecting a worker's economic rights, the Title I suit is designed to protect non-economic interests.

1. The 301 Hybrid—Protection of Economic Rights.—The Labor-Management Relation Act (LMRA) provides a process in which a worker can secure his or her economic rights through negotiations between a union and employer that culminate in a collective bargaining agreement.[12] Through use of grievance and arbitration proceedings, a typical agreement provides for private settlement of issues involving the worker's economic loss.[13] If these procedures fail, section 301 of the LMRA allows a union as representative of the employee to bring an action against an employer for breach of a collective bargaining agreement for the purpose of protecting the worker's economic interests.[14]

Although dispute settlement procedures will usually be final, a union member may further pursue his economic rights if the union has failed

---

[11]*See infra* notes 74-84 and accompanying text.

[12]Labor Management Relations Act (LMRA) § 301, 29 U.S.C. § 185 (1982). *See also DelCostello*, 462 U.S. at 163.

[13]*DelCostello*, 462 U.S. 163.

[14]LMRA § 301(a), 29 U.S.C. § 185(a) (1982). The statute provides in relevant part:

> Suits for violation of contracts between an employer and a labor organization . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Id.

to fairly represent the member in his grievance against the employer.[15] In this instance, the employee sues both the employer for breach of the collective bargaining agreement and the union for breach of its duty to fairly represent him.[16] This action, the 301 hybrid, provides the employee with an effective method to protect his economic interests in the employment context. Although an employee's complaint may not directly allege an economic loss through employer misconduct in every case, employer misconduct will likely have an economic effect because it affects the employee's livelihood at the very least indirectly.

2. Title I—Protection of Non-Economic Rights.—Unlike the 301 hybrid economic claims, Title I suits are viewed primarily as civil rights matters.[17] The basis of the 301 hybrid claim is the labor-management relationship; in contrast, the core of a Title I suit is the individual's interest in union democracy.[18] The Act was designed to protect the non-economic rights of the worker. The emphasis on civil rights is evidenced by the legislative history of the Act.

Enactment of the LMRDA stemmed from Congressional concern with widespread abuses of power by union leadership.[19] Allegations of union wrongdoing and apparent tensions between union leadership and its members prompted extended congressional inquiry.[20] The first leg-

---

[15]There is no explicit statutory imposition of a duty of fair representation. Rather, the duty has judicially evolved as a way of ensuring that individual employees are not injured by a federal labor policy which condones collective representation of groups of employees by a single bargaining unit. *See DelCostello*, 462 U.S. at 163; Bowen v. United States Postal Serv., 459 U.S. 212 (1983); United Parcel Serv., Inc. v. Mitchell, 451 U.S. 56 (1981); Hines v. Anchor Motor Freight, Inc., 424 U.S. 554 (1976); Vaca v. Sipes, 386 U.S. 171 (1967); *see generally* R. GORMAN, BASIC TEXT ON LABOR LAW 695-728 (1976); Cox, *The Duty of Fair Representation*, 2 VILL. L. REV. 151 (1957); Grenig, *The Duty of Fair Representation: The Statute of Limitations in Fair Representation Cases*, 33 LAB. L.J. 483 (1982); Lehmann, *The Union's Duty of Fair Representation - Steele and Its Successors*, 30 FED. B.J. 280 (1971); Sachs & Gurewitz, *Union's Duty of Fair Representation*, 61 MICH. B.J. 526 (1982); Note, *A New Federal Statute of Limitations for Section 301/ Fair Representation Claims: Should It Have Retroactive Application?*, 12 FORDHAM U.L.J. 591 (1984); Note, *Fair Representation by a Union: A Federal Right in Need of a Federal Statute of Limitations*, 51 FORDHAM L. REV. 896 (1983); Note, *Statutes of Limitations When Section 301 and Fair Representation Claims are Joined: Must They be the Same?*, 49 FORDHAM L. REV. 1058 (1981); Note, *Statute of Limitations Governing Fair Representation Action Against Union When Brought with Section 301 Action Against Employer*, 44 GEO. WASH. L. REV. 418 (1976).

[16]*See supra* note 15.

[17]*See* Doty v. Sewall, 784 F.2d 1 (1st Cir. 1986); Rodonich v. House Wreckers Union Local 95, 624 F. Supp. 678, 682 (S.D.N.Y. 1985); McQueen v. Maguire, 122 L.R.R.M. 2449 (S.D.N.Y. 1986).

[18]*See supra* note 2.

[19]*See supra* note 2.

[20]*See* Finnegan v. Leu, 456 U.S. 431, 435 (1982).

islation that was introduced focused on specific aspects of union affairs by establishing disclosure requirements and rules governing union trusteeships and elections.[21] Because legislators feared that the bill did not adequately protect union members who spoke against union leadership, they proposed various amendments aimed at enlarging protection for union members.[22]

Senator McClellan proposed the amendment he referred to as a "Bill of Rights" for union members. This amendment was the forerunner of Title I provisions designed to guarantee each union member equal voting rights, rights to free speech and assembly, and a right to sue.[23] He emphasized the civil rights aspect of the amendment when he stated that he hoped the amendment would "bring to the conduct of union affairs and to union members the reality of some of the freedoms from oppression that we enjoy as citizens by virtue of the Constitution of the United States."[24] He also said, "[T]he rights which I desire to have spelled out in the bill are not now defined in the bill. Such rights are basic. They ought to be basic to every person, and they are under the Constitution of the United States."[25] Other senators made similar statements regarding the bill of rights provision.[26] Representative Griffin stated, "These basic guarantees are hardly new or novel—they are essential and fundamental rights that every American citizen is guaranteed in the Bill of Rights of the Federal Constitution."[27]

The amendment ultimately enacted emphasized the rights of union members to freedom of expression without fear of union sanctions often as harsh as loss of union membership and resulting loss of livelihood.[28] Congress determined that such protection was essential in order to further

---

[21]*Id. See also* United Steelworkers v. Sadlowski, 457 U.S. 102, 110 (1982). Senator McClellan introduced the original amendment on the floor of the Senate. The Senate adopted it by a vote of 47-46. 105 CONG. REC. 6469-6493 (1959), 2 Leg. Hist. 1096-1119. Senator Kuchel introduced a compromise version of the amendment which was substituted shortly thereafter. 105 CONG. REC. 6716-6727 (1959), 2 Leg. Hist. 1229-1239. This version was approved by the House of Representatives as part of the Landrum-Griffin bill, H.R. 8400, 86th Cong., 1st Sess. (1959), 1 Leg. Hist. 628-633.

[22]*See supra* note 21.

[23]105 CONG. REC. 6469-6493 (1959), 2 Leg. Hist. 1096-1119.

[24]105 CONG. REC. 6472 (1959), 2 Leg. Hist. 1098.

[25]105 CONG. REC. 6478 (1959), 2 Leg. Hist. 1104-1105.

[26]*See* 105 CONG. REC. 6483 (1959) (Senator Curtis); *id.* at 6488 (Senator Goldwater); *id.* at 6489 (Senator Mundt); *id.* at 6490 (Senator Dirksen); *id.* at 6726 (Senator Javits); 2 Leg. Hist. 1109, 1115, 1116, 1238.

[27]105 CONG. REC. 14, 193 (1959); *see also* Local No. 82, Furniture & Piano Moving, Furniture Store Drivers, Helpers, Warehousemen & Packers v. Crowley, 467 U.S. 526 (1984).

[28]*Finnegan*, 456 U.S. at 435. *See also supra* note 2-3.

the Act's primary goal of union democracy and union responsiveness to the union member's will.[29]

The history of the Act reveals that a Title I claim is primarily a civil rights matter, unlike a 301 hybrid suit that allows workers to remedy economic loss flowing from union acquiesence to management misconduct. Although Title I claims have economic implications, the emphasis of the act is protection of civil rights similar to those protected by the Federal Constitution rather than protection of economic rights such as those protected by the LMRA as well as the National Labor Relations Act (NLRA).[30]

B. Judicial Treatment of Title I cases Prior to DelCostello

Because Congress failed to enact a federal statute of limitations for Title I cases, it created a void which often occurs in federal labor legislation.[31] When Congress has remained silent on the issue of statutes of limitations, courts have generally concluded that Congress intended that a limitation period exist, due to policy considerations that are protected by use of limitations of actions.[32] In the absence of a federal statute of limitations, the established practice of courts has been to borrow or adopt the most suitable statute or rule from another source.[33] Typically, courts have determined that Congress intended that they should select the most similar limitations period under state law unless application

---

[29]*Finnegan*, 456 U.S. at 435.

[30]National Labor Relations Act (NLRA), 29 U.S.C. § 158 (1982). *See also supra* note 17.

[31]*See* DelCostello v. International Bhd. of Teamsters, 462 U.S. 151, 158 (1983); Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696, 703 (1966).

[32]Wilson v. Garcia, 471 U.S. 261, 266 (1985); DelCostello v. International Bhd. of Teamsters, 462 U.S. 151, 159 (1983); Holmberg v. Armbrecht, 327 U.S. 392, 395 (1946); Runyon v. McCrary, 427 U.S. 160, 180-182 (1976); Chevron Oil Co. v. Huson, 404 U.S. 97, 101-105 (1971); Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696, 703 (1966); Chattanooga Foundry v. Rankin, 197 U.S. 154, 158 (1905); Campbell v. Haverhill, 155 U.S. 610, 617 (1895).

[33]*See DelCostello*, 462 U.S. at 159. For general discussion and various approaches to statutes of limitations, see Mishkin, *The Variousness of "Federal Law": Competence and Discretion In the Choice of National and State Rules of Decision*, 105 U. PA. L. REV. 797, 810-814 (1957) (discusses factors which are relevant to federal courts' selection of state laws); Note, *Developments in Law, Statutes of Limitations*, 63 HARV. L. REV. 1177, 1192-98 (1950) (discusses principles used by courts to select statutes of limitations for various actions); Note, *A Limitation On Actions For Deprivation of Federal Rights*, 68 COLUM. L. REV. 763, 764-68 (1968) (examines approaches to selection of limitations period where federal statute does not prescribe a specific period); Note, *Limitation Borrowing in Federal Courts*, 77 MICH. L. REV. 1727 (1979); Note, *Federal Statutes Without Limitation Provisions*, 53 COLUM. L. REV. 68, 69-72 (1953).

of state law would be inconsistent with the federal policy underlying the pending action.[34]

Following this rationale, courts applied various state statutes of limitations when confronted with Title I claims. Some courts applied state statutes of limitations for contract violations.[35] In *Crowley v. Local No. 82, Furniture and Piano Moving, Furniture Store Drivers, Helpers, Warehousemen, and Packers*,[36] union members sued their union for a Title I violation, alleging that the union denied their rights to attend union meetings, to nominate candidates on an equal basis with other Local members and to speak freely on union business matters without reprisal. They also alleged union violations with respect to payment of dues. The court applied Massachusetts law and reasoned that because the essential nature of the plaintiffs' claim was contractual, the six-year statute of limitations for contract actions applied, rather than the three-year statute of limitations for tort violations.[37]

Other courts rejected the contract analogy, favoring the use of statutes of limitations for tort violations.[38] In *Sewell v. Grand Lodge of the International Association of Machinists and Aerospace Workers*,[39] the Fifth Circuit Court of Appeals held that an action against a union by a union representative alleging that he was wrongfully discharged by reason of having exercised his right to free speech and assembly was essentially in the nature of a tort; thus, the action for violation of his rights under Title I was barred by Alabama's one-year statute of limitations for tort violations.[40] In *Berard v. General Motors Corp.*,[41] the court used a tort limitations period by comparing the Title I claim to an action based on infringement of rights arising under the first amendment.[42]

---

[34]*See supra* note 32.

[35]*See* Dantagnan v. I.L.A. Local 1418, 496 F.2d 400 (5th Cir. 1974); Crowley v. Local No. 82, Furniture and Piano Moving, Furniture Store Drivers, Helpers, Warehousemen, and Packers, 521 F. Supp. 614 (D. Mass. 1981), *aff'd*, 679 F.2d 978 (1st Cir. 1982), *rev'd on other grounds*, 467 U.S. 526 (1984).

[36]521 F. Supp. 614 (D. Mass. 1981), *aff'd*, 679 F.2d 978 (1st Cir. 1982), *rev'd on other grounds*, 467 U.S. 526 (1984).

[37]*Id.* at 631. Plaintiff's allegation that an increase in dues violated 29 U.S.C. § 411 (a)(3) was analogized to a quasi-contractual action because plaintiffs sought only declaratory relief.

[38]*See* Howard v. Aluminum Workers Int'l Union, 589 F.2d 771 (4th Cir. 1978): Sewell v. Grand Lodge of Int'l Ass'n of Machinists and Aerospace Workers, 445 F.2d 545 (5th Cir. 1971), *cert. denied*, 404 U.S. 1024 (1972); Berard v. General Motors Corp., 493 F. Supp. 1035 (D. Mass. 1980).

[39]445 F.2d 545 (5th Cir. 1971), *cert. denied*, 404 U.S. 1024 (1972).

[40]*Id.* at 550.

[41]493 F. Supp. 1035 (D. Mass. 1980), *cert. denied*, 451 U.S. 987 (1981).

[42]*Id.* at 1043.

In *Harrison v. American Federation of Labor and Congress of Industrial Organizations*,[43] the District Court for the Eastern District of Pennsylvania analogized a Title I claim by a former local president against his union for unlawful suspension and expulsion to the tort action for interference with business associational ties.[44] It applied a six-year statute of limitations applicable to "actions of trespass" and "upon the case."[45]

Still another court chose to use a state statute of limitations for liability created by statute, other than a penalty or forfeiture.[46] In *Copitas v. Retail Clerks International Association*,[47] the Ninth Circuit Court of Appeals held that the three-year limitations period for liability created by statute, other than penalty or forfeiture was most appropriate in a Title I claim.[48] The plaintiff in *Copitas* alleged that he was fired as business representative of the local union because he criticized those who managed the local union.[49]

As a result of the various characterizations made by courts regarding Title I claims, a wide disparity developed in the amount of time given to plaintiffs in order to file claims in different jurisdictions.[50] The amount

---

[43]452 F. Supp. 102 (E.D. Pa. 1978).

[44]*Id.* at 106.

[45]*Id.* at 107. After the court drew the analogy to interference with business associational ties, it did not discuss in depth its reasoning for choosing a statute of limitations applicable to trespass actions. Rather, it simply referred to the reasoning in Meyers v. Pennypack Woods Home Ownership Ass'n, 559 F.2d 894, 899-903 (3d Cir. 1977), which involved a claim under the 1866 Civil Rights Act. The *Meyers* court rejected the analogy of a civil rights claim to a personal injury action and instead chose the statute which governed all actions in trespass not involving personal injury. *Id.*

[46]Copitas v. Retail Clerks Int'l Ass'n, 618 F.2d 1370 (9th Cir. 1980).

[47]618 F.2d 1370 (9th Cir. 1980).

[48]*Id.* at 1373. The court rejected the contract analogy promoted by the defendants. *Id.* at 1372. The court stated:

> We do not find appellant's claims under the LMRDA to be analogous to claims for relief based upon contract law. A given set of facts may give rise to a claim for relief under both contract law and the LMRDA, but the elements of the two are not the same. An essential element of an action under contract principles is the existence of an agreement between the parties. The existence of an agreement is not required to make out a claim under the LMRDA. In fact, the members rights and union obligations exist independently of any contractual provisions embodied in the union constitution or bylaws. The absence of a constitution or bylaws will not preclude a union member from enforcing his statutory rights. Nor does the lack of a constitution permit a union to ignore its statutory obligation to refrain from interfering with a member's exercise of his LMRDA rights.

Id.

[49]*Id.* at 1371.

[50]*See, e.g.*, Copitas v. Retail Clerks Int'l Ass'n, 618 F.2d 1370 (9th Cir. 1980) (three-

of time depended solely on how a court chose to characterize the claim. A plaintiff could not anticipate what the court would consider the most appropriate analogy to his particular set of circumstances.[51] This lack of consistency exemplified the need for some type of uniformity.

C. *The* DelCostello v. International Brotherhood of Teamsters *Decision*

In 1983, the Supreme Court addressed the same type of problem in *DelCostello v. International Brotherhood of Teamsters*[52] when it directly confronted the inconsistent application of statutes of limitations to 301 hybrid actions. In *DelCostello*, the court consolidated two cases, each of which involved an employee or employees who sued the employer for breach of a collective bargaining agreement and the union for breach of its duty of fair representation.[53] Because no federal statute of limitations expressly applied to these actions, the Supreme Court was asked to determine which statute of limitations should apply to such suits.[54] It held that the six-month limitations period contained in the National Labor Relations Act for filing unfair labor practice charges with the National Labor Relations Board[55] was the appropriate limitations period for employees' actions against the employer and union.[56]

The Court concluded that a borrowed state statute of limitations period for actions to vacate arbitration awards was not consistent with the underlying policies of section 301.[57] The Court's rejection was based on the idea that in a commercial arbitration setting, parties are expe-

---

year period); Howard v. Aluminum Workers Int'l Union, 589 F.2d 771 (4th Cir. 1978) (two-year limitations period); Dantagnan v. I.L.A. Local 1418, 496 F.2d 401 (5th Cir. 1974) (ten-year period); Sewell v. Grand Lodge of Int'l Ass'n of Machinists and Aerospace Workers, 445 F.2d 545 (5th Cir. 1971); Crowley v. Local No. 82., Furniture and Piano Moving, Furniture Store Drivers, Helpers, Warehousemen, and Packers, 521 F. Supp. 614 (D.C. Mass. 1981), *aff'd*, 679 F.2d 978 (1st Cir. 1982), *rev'd on other grounds*, 467 U.S. 526 (1984) (six-year limitations period); Berard v. General Motors Corp., 493 F. Supp. 1035 (D. Mass. 1980) (three-year period).

[51]*See supra* note 50.

[52]462 U.S. 151 (1983).

[53]*Id.* at 155-156.

[54]*Id.*

[55]National Labor Relations Act (NLRA) § 10(b), 29 U.S.C. § 160(b) (1976). The statute provides in relevant part:

> Provided . . . no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made . . . .

29 U.S.C. § 160(b) (1976).

[56]*DelCostello*, 462 U.S. at 169.

[57]*Id.*

rienced in matters of contract negotiation and business affairs.[58] Nevertheless, in the labor context, a worker will be prejudiced by his lack of knowledge and experience in labor matters. Moreover, the typical statute of limitations period for suits to vacate arbitration awards is unreasonably brief and preclusive, thereby failing "to provide an aggrieved employee with a satisfactory opportunity to vindicate his rights under § 301 and the fair representation doctrine."[59]

Although the Court rejected the application of state statutes of limitations to 301 hybrid suits, it by no means totally rejected their use in other labor matters. Instead, the Supreme Court acknowledged its previous endorsement of the selection of a six-year period from state law to a union suit against an employer only for breach of a collective bargaining agreement in *Auto Workers v. Hoosier Cardinal Corp.*[60] Although labor-management relations, which is ordinarily an area in need of uniformity, was the issue in *Hoosier*, the Court stated:

> [N]ational uniformity is of less importance when the case does not involve "those consensual processes that federal labor law is chiefly designed to promote—the formation of the collective agreement and the private settlement of disputes under it."[61]

The Court further observed that although use of state law may be objectionable for various reasons, it should be tolerated if there was no express federal limitations period "designed to accommodate a balance of interests very similar to that at stake here—a statute that is, in fact, an analogy to the present lawsuit more apt than any of the suggested state law parallels."[62] Drawing an analogy between 301 hybrid suits and charges brought under the NLRA, the Court found substantial similarities between unfair labor practices, union breaches of fair representation and employer breaches of collective bargaining agreements.[63] It also empha-

---

[58] *Id.* at 166-67.

[59] *Id.* at 167-68.

[60] *Id.* at 162 (citing Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696 (1966)).

[61] *Id.* at 162 (quoting Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696, 702 (1966)).

[62] *Id.* at 169-70. Justice Brennan discussed Justice Stevens' suggestion in United Parcel Service, Inc. v. Mitchell, that in a claim against the union, the state limitations period for legal malpractice should be applied. *DelCostello*, 462 U.S. at 167 (citing *Mitchell*, 451 U.S. 72-75 (Stevens, J., concurring in part and dissenting in part)). Justice Brennan rejected this approach, stating that an aggrieved employee would still be required to file his action against the employer in a timely manner in order to secure relief. *Id.* at 168. Moreover, a lengthy time bar would continue to undermine "the relatively rapid final resolution of labor disputes favored by federal law . . . . " *Id.* at 168.

[63] *Id.* at 170. The Court noted, "Even if not all breaches of the duty are unfair labor practices, however, the family resemblance is undeniable, and indeed there is a substantial overlap." *Id.*

sized the strong similarities between underlying considerations of unfair labor practice charges and 301 hybrid actions—" 'stable bargaining relationships and finality of private settlements.' "[64] The Court concluded that because an express federal limitations period existed that accommodated the balance of interests at stake, there was no need to apply state law.[65]

Although the Supreme Court departed from the general practice of borrowing state limitations periods, it stressed that its holding did not signal a departure from the general borrowing norm; it merely carved out a narrow exception to the norm in the 301 hybrid context.[66] The Court stated:

> We stress that our holding today should not be taken as a departure from prior practice in borrowing limitations periods for federal causes of action, in labor law or elsewhere. We do not mean to suggest that federal courts should eschew use of state limitations periods any time state law fails to provide a perfect analogy . . . . On the contrary, as the courts have often discovered, there is not always an obvious state law choice for application to a given federal cause of action; yet resort to state law remains the norm for borrowing limitations periods.[67]

Thus the Court condoned a flexible approach and cautioned future courts not to interpret its holding as advocating a practice of uniformly applying federal limitations periods whenever state law did not provide a precise analogy to the pending action.

D. Judicial Reaction to DelCostello *in Title I Cases*

Some federal courts have failed to heed the Supreme Court's words of caution by inappropriately applying the six-month statute of limitations to Title I actions.[68] Courts have analogized the economic interests at stake in a 301 hybrid suit to the civil rights type interests of Title I cases in order to uniformly apply the six-month period applied in *DelCostello*.

Although some federal courts have ignored *DelCostello* or have not yet addressed *DelCostello*'s applicability to Title I cases,[69] a widening number of courts have used the *DelCostello* decision as a springboard

---

[64]*Id.* at 171 (quoting *Mitchell*, 451 U.S. at 70-71 (Stewart, J., concurring)).
[65]*Id.* at 169.
[66]*Id.* at 171-172.
[67]*Id.* at 171.
[68]*See infra* note 70 and accompanying text.
[69]*See, e.g.*, Taschner v. Hill, 589 F. Supp. 127 (E.D. Pa. 1984).

for application of the six-month limitations period.[70] In *Local Union 1397, United Steelworkers v. United Steelworkers*, a local union and its officers, after being targeted for union disciplinary action, sued the national union for violation of their due process rights, as protected by section 101(a)(5) of the LMRDA.[71] The Third Circuit Court of Appeals held that the six-month period endorsed in *DelCostello* was the most appropriate limitations period for Title I claims.[72] The Court applied the Supreme Court's reasoning in *DelCostello* and found that Title I claims resembled 301 hybrid claims so closely that the federal statute of limitations was more appropriate than state law.[73]

Similarly, in *Davis v. UAW*,[74] a union member's action under Title I was barred by the six-month statute of limitations borrowed from section 10(b) of NLRA.[75] In *Davis*, the union member alleged that he was expelled from his union in retaliation for exercising his statutory right of free speech protected under Title I. Although the Eleventh Circuit Court of Appeals was not quite as convinced of the similarities between Title I actions and 301 hybrid actions, it stated that it felt "constrained by the analysis employed in *DelCostello* to apply the same limitations period to the present lawsuit."[76]

Other federal courts have not felt bound to follow *DelCostello*.[77] Indeed, they have expressly rejected the use of the six-month period and asserted that the federal limitations period is inappropriate in the Title

---

[70]*See* Davis v. UAW, 765 F.2d 1510 (11th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986); Local Union 1397, United Steelworkers v. United Steelworkers, 748 F.2d 180 (3d Cir. 1984); Vallone v. Local Union No. 705, Int'l Bhd. of Teamsters, 755 F.2d 520 (7th Cir. 1984); Gordon v. Winpisinger, 630 F. Supp. 1276 (E.D.N.Y. 1986); McConnell v. Chauffeurs, Teamsters and Helpers Local 445, 606 F. Supp. 460 (S.D.N.Y. 1985); Turco v. Local Lodge No. 5, Int'l Bhd. of Boilermakers, 592 F. Supp. 1293 (E.D.N.Y. 1984).

[71]748 F.2d 180 (3d Cir. 1984). *See also supra* note 1.

[72]*Id.* at 184. The court rejected its previous practice of borrowing the state statute of limitations for interference with business associational ties. *Id.*

[73]*Id.*

[74]765 F.2d 1510 (11th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986).

[75]*Id.* at 1515.

[76]*Id.* at 1514. The court stated:

> In *DelCostello*, the Supreme Court found a strong connection between the national interest in labor peace and the necessity of a short time period in which to bring an action based on a labor union's duty of fair representation to its members. We believe we are bound to find a similar connection between labor peace and an action based on a union's alleged mistreatment of its members by the denial of statutorily protected rights.

Id.

[77]*See* Doty v. Sewall, 784 F.2d 1 (1st Cir. 1986); Rector v. Local Union No. 10, Int'l Union of Elevator Constructors, 625 F. Supp. 174 (D. Md. 1985); Rodonich v. House Wreckers Union Local 96, 624 F. Supp. 678, 682 (S.D.N.Y. 1985); McQueen v Maguire, 122 L.R.R.M. 2449 (S.D.N.Y. 1986).

I context.[78] In *Rector v. Local Union No. 10, International Union of Elevator Constructors*,[79] a union member alleged that he was expelled from his union for non-payment of dues in violation of Title I. He claimed that he relied on a union representative's assurances that payment was not necessary and that the representative knew he would rely on those representations.

In *Rector*, the District Court of Maryland rejected the *DelCostello* application to Title I cases and chose instead a state three-year statute of limitations for contract actions.[80] The court analyzed the *DelCostello* decision in view of Title I claims and rejected analogies drawn by courts that adopted the six-month period.[81] The court concluded that plaintiff's claim resembled an action for promissory estoppel, thus making the contract period appropriate.[82]

In *Doty v. Sewall*,[83] a union member sued two local unions under Title I. He charged that he was denied membership because of his active opposition to union actions and policies. The First Circuit Court of Appeals held that the Massachusetts civil rights statute, rather than the NLRA, was the appropriate source of limitations period.[84]

The *Doty* court reasoned that Title I claims are analogous to civil rights actions; therefore, the appropriate limitations period would be that used for the state civil rights statute.[85] The court observed that civil rights actions essentially state a claim lying in tort; thus, the three-year state statute of limitations for tort actions applied.[86] It further noted that the Supreme Court approved the use of tort statutes of limitations in civil rights actions in *Wilson v. Garcia*.[87] In *Wilson*, the plaintiff sued a police officer and chief of state police under the Civil Rights Act of 1871. The Supreme Court found that these types of actions are best characterized as personal injury actions, and held that all civil rights suits brought under section 1983 should be governed by state statutes of limitations for personal injury actions.[88]

As shown, courts have used a variety of limitations periods based on their characterization of each plaintiff's particular circumstances in

---

[78]*See supra* note 74.

[79]625 F. Supp. 174, 174-75 (D. Md. 1985).

[80]*Id.* at 179.

[81]*Id.* at 177-79.

[82]*Id.* at 179.

[83]784 F.2d 1 (1st Cir. 1986).

[84]*Id.* at 8.

[85]*Id.* at 11.

[86]*Id.*

[87]*Id.* (citing Wilson v. Garcia, 471 U.S. 261 (1985)).

[88]*Wilson*, 471 U.S. 261, 276-80 (1985). For a detailed discussion, see *infra* notes 172-193 and accompanying text.

Title I cases despite the fact that each claim arose under the same statute.[89] In an effort to provide some consistency in this area, some courts used the *DelCostello* decision as a springboard for uniform application of the federal six-month limitations period.[90] Yet, other courts have rejected this logic as flawed and have instead continued to select similar state statutes of limitations.[91]

III. Analysis of Title I Claims In Light of *DelCostello*: The Balance of Interests

In *DelCostello*, the Supreme Court determined that the federal six-month statute of limitations was appropriate because it created a proper balance "between the national interests in stable bargaining relationships and finality of private settlements, and an employee's interest in setting aside what he views as an unjust settlement under the collective bargaining system."[92] As in *DelCostello*, the relevant interests and policies must be balanced to determine whether the federal limitations period is also appropriate in Title I cases.

A. Impact on Collective Bargaining Agreements

Title I claims do not arise from the labor-management relationship. They arise out of the union member's relationship with his union; thus these suits do not implicate the collective bargaining process in the same manner as 301 hybrid claims.[93] Because Title I claims are concerned with internal operation and discrimination by unions,[94] they affect slightly, if at all, the union's bargaining relationship with the employer.[95]

---

[89]*See supra* notes 35-51 and accompanying text.

[90]*See supra* notes 70-76 and accompanying text.

[91]*See supra* notes 77-86 and accompanying text.

[92]*DelCostello*, 462 U.S. at 171 (quoting *Mitchell*, 451 U.S. at 70 (Stewart, J., concurring)). The court further stated:

> That is precisely the balance at issue in this case. The employee's interest in setting aside the "final and binding" determination of a grievance through the method established by the collective-bargaining agreement unquestionably implicates "those consensual processes that federal labor law is chiefly designed to promote—the formation of the . . . agreement and the private settlement of disputes under it."

Id. (quoting Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696, 702 (1966)).

[93]*See Doty*, 784 F.2d at 6-7; *Rodonich*, 624 F. Supp. at 682. *See also supra* notes 23-29.

[94]*Doty*, 784 F.2d at 7. Types of discrimination which may occur within the union include depriving an individual of the right to vote on certain union matters, refusing access to records and books, disciplining or expelling a union member without due process or in retaliation for protected speech activities.

[95]*Id.*

Unlike Title I suits, 301 hybrid claims directly challenge the grievance/arbitration mechanism in the collective bargaining agreement.[96] The union member's claim in a 301 hybrid relates to matters directly affecting the employment relationship.[97] Although an employee may sue a union in an action which does not directly implicate the employment relationship under the NLRA,[98] the nexus between unfair labor practices and Title I claims is minimal.[99] Section 8(b)(1)(A) of the NLRA allows an employee to sue a union for unfair labor practices, which may include actions outside the employment relationship.[100] Nevertheless, the mere existence of an overlap between section 158(b)(1)(A) and Title I does not establish that Title I and the NLRA share the same underlying interests.[101]

In *Doty v. Sewall*, the First Circuit Court of Appeals discussed the difference in focus between the Title I claims and 301 hybrid suits.[102] It then noted numerous obvious differences between the two types of suits:

> A Title I suit cannot be brought against the employer. It in no way challenges the "stable relationship" between the employer and the union. It does not affect any interpretation or effect any reinterpretation of the collective bargaining agreement and so, unlike the hybrid actions, a Title I claim does not attack a compromise between labor and management. Moreover, another factor in the *DelCostello* equation is lacking. There is no erosion of the finality of private settlements, for in free standing LMRDA cases the union member is not attempting to attack any such settlement. As in *Auto Workers v. Hoosier Cardinal Corp.*, this case does not involve either "'the formation of the collective agreement [or] the private settlement of disputes under it.'"[103]

---

[96]*Rodonich*, 624 F. Supp. at 682. *See also supra* notes 12-16 and accompanying text.

[97]*See DelCostello*, 462 U.S. at 170; *see also* R. GORMAN, BASIC TEXT ON LABOR LAW 699-701 (1976).

[98]NLRA § 8(b)(1)(A), 29 U.S.C. § 158(b)(1)(A) (1982). The statute provides in relevant part:

> It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein . . . .

29 U.S.C. § 158(b)(1)(A).

[99]*Doty*, 784 F.2d at 7.

[100]*See supra* note 98. *See also Doty*, 784 F.2d at 7.

[101]*Doty*, 784 F.2d at 7.

[102]*Id.*

[103]*Id.* at 7 (quoting Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696, 702 (1966)).

In *Rector v. Local Union No. 10, International Union of Elevator Constructors*,[104] the District Court of Maryland acknowledged that although LMRDA claims may divert resources of a union due to litigation costs, which in turn may reduce its effectiveness in the collective bargaining process, the Title I claim rarely affects the strength of a union as a bargaining unit.[105] It further noted that Title I actions cannot overturn union certification election results, nor overturn elections of union officials.[106]

As *Doty* and *Rector* indicate, Title I claims have little, if any, impact on the interests in stable labor-management relationships and finality in privately grieved and arbitrated settlements.[107] In *DelCostello*, the Supreme Court's emphasis on the strong collective bargaining interests at stake prompted it to select the federal limitations period.[108] The absence of this vital factor in Title I claims implies that the six-month limitations period is inappropriate.

B. Impact on Union Member's Interest

Unlike 301 hybrid claims which focus on the labor-management relationship rather than any specified, individualized right, Title I suits concentrate on interests of the union member. Based upon a national policy of protection of individual rights, Title I specifically identifies and seeks to protect these fundamental rights in the union context.[109] The legislative history of the LMRDA illustrates the emphasis on rights similar to those protected by the Federal Bill of Rights.[110] The parallels between the Federal Bill of Rights and the union member's "Bill of Rights" causes the Title I claim to resemble a civil rights action.[111]

In *Doty*, the court also examined the legislative history and concluded that the union member's interests were the primary consideration of Congress when it created the Act.[112] After analogizing Title I claims to civil rights matters, the court also noted that the legislative history supported the conclusion that Congress intended to give union members

---

[104]625 F. Supp. 174 (D. Md. 1985).

[105]*Id.* at 178.

[106]*Id.*

[107]*Id.*; *Doty*, 784 F.2d at 7.

[108]462 U.S. 151, 169 (1983).

[109]*See supra* notes 2, 3, 23-26 and accompanying text.

[110]*See supra* notes 2, 3, 23-26 and accompanying text.

[111]Doty v. Sewall, 784 F.2d 1, 7 (1st Cir. 1986); Rodonich v. House Wreckers Union Local 95, 624 F. Supp. 678, 681 (S.D.N.Y. 1985); Bernard v. Delivery Drivers, 587 F. Supp. 524, 525 (D. Colo. 1984).

[112]*Doty*, 784 F.2d at 8.

a period longer than six months to file suit.[113] The bill was originally introduced in the Senate with a three-month period for exhaustion of internal procedures with a union.[114] The Senate changed the period to six months and returned it to the House.[115] In the House, legislators expressed concern that union members who used the full six months to exhaust remedies would be barred from bringing NLRA claims at the end of the period due to the NLRA's six-month statute of limitations.[116] The period was finally reduced to four months.[117]

The *Doty* court found no indication of similar concern about union members losing their Title I suits because of a time bar.[118] Although the court recognized that this history did not illustrate an express intent that the period for Title I suits be longer, it did conclude that the history supported the argument that Congress expected that union members would be given more time to file suits.[119]

The practical problems faced by the union member in bringing a Title I suit, as opposed to an unfair labor practice claim, also illustrate the adverse impact a short statute of limitations could have on the union member's interest. In *DelCostello*, the Supreme Court expressed concern about the practical difficulties faced by an employee in bringing a 301 hybrid suit.[120] The Court noted the difficulties an employee may have in evaluating the adequacy of union representation, retaining counsel and investigating a 301 hybrid claim.[121] Because the focus of Title I claims is primarily on the union member's interests, the practical obstacles which concerned the *DelCostello* Court become magnified when considered in the Title I context.

Procedurally, the union member faces more difficulty in filing a Title I suit than in filing an unfair labor practice charge.[122] When filing

---

[113]*Id.* The court also noted:

> We also see some significance in the fact that Title IV of the LMRDA, 29 U.S.C. § 482, set a short time for resolving issues concerning the election and removal of union officers—a three-month internal exhaustion period, a member's complaint within one month thereafter, and a suit by the Secretary of Labor within the next 60 days. There is an obvious need for dispatch in resolving a question of union leadership. The fact that Congress acted in this instance suggests that its silence as to Title I implies a lack of special concern about expedition.

Id. at 8 n.7.

[114]*Doty*, 784 F.2d at 8 (citing 105 CONG. REC. 5,810 (1959)).

[115]*Id.* (citing 105 CONG. REC. 9,108 (1959)).

[116]*Id.* (citing 105 CONG. REC. 13,880 (1959)).

[117]*See supra* note 1.

[118]*Doty*, 784 F.2d at 8.

[119]*Id.*

[120]DelCostello v. International Bhd. of Teamsters, 462 U.S. 151, 165-166 (1983).

[121]*Id.*

[122]*Doty*, 784 F.2d at 8.

an unfair labor practice charge, the employee merely needs to file a one-page charge form with the NLRB.[123] In contrast, Title I claims are civil actions filed directly in federal court.[124] Thus, Title I actions are subject to the Federal Rules of Civil Procedure, which would be totally unknown to most union members.

Aside from these procedural difficulties, the initial obstacle faced by a union member is the lack of awareness that a violation of his Title I rights has occurred. Many violations are subtle and not easily detectable.[125] A union member may realize that his union is acting unfairly; however, he may not know that it is acting illegally.

Assuming that a union member does realize that his rights have been violated by the union, he may be deterred from pursuing his claim by the risks of suing his union. The typical Title I case involves a union member who has lost his membership status but wishes to remain a member.[126] In contrast, the employee suing under an unfair labor practice claim ordinarily wants the court to restore economic benefits directly related to his job with the employer.[127] In the Title I context, a member may be hesitant to sue co-workers and superiors who could affect his future fate, even if he is successful.[128] A member may feel that suing his union would have not only financial risks, but also risks to health and family due to an idea among some union members that union officers have legal and illegal means of "taking care" of a troublesome union member.[129]

Even if the union member does decide to sue, he still faces the pressures of collecting facts and retaining an attorney. This could be a substantial burden since the worker is probably totally unfamiliar with the law and has little, if any, contact with attorneys.[130] Already confronted with the burden of challenging a union to which he may have very strong ties, a worker may be hesitant to involve himself with legal proceedings.[131] If he does wish to pursue his claim, he could face

---

[123]*Id.* at 8-9.

[124]*See supra* note 5.

[125]*Doty*, 784 F.2d at 8-9.

[126]*See Doty*, 784 F.2d 1 (1st Cir. 1986) (denial of union membership); Davis v. UAW, 765 F.2d 1510 (11th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986) (expulsion from union); Local Union 1397, United Steelworkers v. United Steelworkers, 748 F.2d 180 (3d Cir. 1984) (imposition of disciplinary action); Gordon v. Winpisinger, 630 F. Supp. 1276 (E.D.N.Y. 1986) (imposition of disciplinary action); Rodonich v. House Wreckers Union Local 95, 624 F. Supp. 678 (S.D.N.Y. 1985) (imposition of disciplinary action).

[127]*See supra* text accompanying notes 12-16.

[128]*Doty*, 784 F.2d at 9.

[129]*See* Atleson, *A Union Member's Right of Free Speech and Assembly: Institutional Interests and Individual Rights*, 51 MINN. L. REV. 403, 489 (1967) [hereinafter Atleson].

[130]*See id.* 488-89.

[131]*See id.*

overwhelming litigation costs. Moreover, lawyers may decline these claims if there is little chance for compensation.[132]

These practical problems faced by the union member are relevant when weighing the union member's interests because they affect the time it takes to make a decision to sue the union. Given the many obstacles the union member faces, it is clear that he is not likely to make the decision lightly or quickly. This suggests that a very short limitations period would not give the union member adequate time in which to make a decision even if he is aware of possible union misconduct.

When the interests of the union member are weighed against the interests in preserving the collective bargaining process in Title I cases, the balance tilts in favor of protecting the union member's vital rights.[133] This contrasts to 301 hybrid claims which emphasize the collective bargaining arrangement. The Title I claim does not impinge on labor-management relationships or the finality of private settlements. Furthermore, the importance of the interests protected by Title I makes limiting these suits without a compelling reason inappropriate.[134]

IV. An Analysis of Various Statute of Limitations Alternatives

A. Enactment of an Express Statute of Limitations

Congressional enactment would provide the best means for determining Congress' intent when it enacted Title I; however, the Act has remained substantially unaltered since enactment in 1959. Thus, the possibility that Congress will expressly adopt a statute of limitations is remote.[135]

B. Federal Six-Month Statute of Limitations

The federal six-month statute of limitations has been adopted by a growing number of federal courts.[136] Nevertheless, its use is inappropriate in Title I actions. Such a short period of time within which to bring an action under LMRDA thwarts Congressional purpose and procedurally disposes of otherwise meritorious claims. Reasons used to support adoption of the federal limitations period do not properly address the interests at stake in a Title I claim. Rather, policy considerations and practical problems illustrate the inappropriateness of the six-month period.

---

[132]*Id.*

[133]*Doty*, 784 F.2d at 9.

[134]*Id.*

[135]*See supra* notes 1, 2, and 5 and accompanying text.

[136]*See supra* note 70.

In *Local Union 1397 v. United Steelworkers*,[137] the Third Circuit Court of Appeals stated that Title I suits bear a "family resemblance" to unfair labor practice charges because both actions are concerned with protecting individual workers from arbitrary action by unions.[138] It refused to distinguish "internal" Title I concerns such as ensuring a union member's freedom to speak against union leadership from an "external" NLRA based claim such as processing of grievances.[139] In an effort to find similarities between Title I claims and unfair labor practice claims, the court unduly emphasized only one part of the *DelCostello* opinion.[140] The conclusion that the NLRA and LMRDA bear a "family resemblance" simply because they both seek to protect workers from unfair treatment ignores the policy considerations relating to the balance of interests emphasized in *DelCostello* and its relationship to the facts of that particular case.[141]

The First Circuit, in *Doty*, further uncovered the flaws of the "family resemblance" analysis.[142] The *Doty* court rejected the nexus between the two types of claims and further stated, "[T]he fact that some day, in some ways, a plaintiff's claim may affect collective bargaining falls short of the nexus required to invoke 'family resemblance' reasoning."[143]

Even the Eleventh Circuit, in *Davis v. UAW*,[144] recognized the important distinction between Title I claims and the 301 hybrid situation in *DelCostello*.[145] Although the *Davis* court felt constrained to adopt the six-month limitations period, it noted that Title I cases involve a different balance of interests than 301 hybrids.[146] The court acknowledged that the union member's interest in protecting against the infringement

---

[137]*Local Union 1397*, 748 F.2d 180 (3d Cir. 1984).

[138]*Id.* at 183.

[139]*Id. See supra* note 93-108 and accompanying text.

[140]748 F.2d at 183.

[141]*Doty*, 784 F.2d at 10; *Rector*, 625 F. Supp. at 179. In *Rector*, the court discussed the "family resemblance" argument:

> It is true that plaintiff's claims might also be characterized as an "unfair labor practice". But here defendant's "family resemblance" argument proves too much; virtually all LMRDA claims and § 185 claims against unions could be characterized the same way. Applying defendant's argument to its logical extreme, defendant is arguing that the "family resemblance" language in *DelCostello* supports a uniform six-month limitations period for all lawsuits against unions by their members.

625 F. Supp. at 179.

[142]*Doty*, 784 F.2d at 10.

[143]*Id.* The court noted that *Local Union 1397* overlooks the fact that *DelCostello* did not overrule *Auto Workers*.

[144]765 F.2d 1510 (11th Cir. 1985).

[145]*Id.* at 1514.

[146]*Id.*

of his rights of free speech was of greater importance than an employer's interest in setting aside an individual settlement under a collective bargaining agreement.[147]

In addition to finding a "family resemblance" between Title I cases and 301 hybrid actions, the *Local 1397* court concluded that a similarity in policy considerations between Title I claims and unfair labor practice charges dictated use of the six-month limitations period.[148] It reasoned:

> [R]apid resolution of internal union disputes is necessary to maintain the federal goal of stable bargaining relationships, for dissention within a union naturally affects that union's activities and effectiveness in the collective bargaining arena.[149]

This reasoning has been rejected in subsequent Title I cases.[150] Indeed, even the *Davis* court found this analysis rather weak.[151] In *Rector*, the court stated, "Federal labor law should not be procedurally determined to resolve LMRDA claims quickly in a vain attempt to protect unions from diversity. Congress had precisely the opposite intent in mind when it wrote the LMRDA."[152] The federal interest in speedy resolutions of disputes should not preclude consideration of important issues raised by a Title I claim.

Aside from policy issues raised as a result of use of the six-month statute of limitations, practical difficulties also exist which encourage the use of a longer limitations period. This short period could easily create a "Catch-22" situation for a union member who is required to exhaust internal remedies before filing suit in federal court.[153] An action under section 101 accrues when a union member discovers, or in the exercise of reasonable diligence should have discovered, the alleged mis-

---

[147]*Id.*

[148]Local Union 1397 v. United Steel Workers, 748 F.2d at 182 (3d Cir. 1984).

[149]*Id.* at 184.

[150]*See Doty*, 784 F.2d at 9; McQueen v. Maguire, 122 L.R.R.M. 2449, 2453 (S.D.N.Y. 1986) ("a very short limitations period [for Title I claims] would be justified only in the face of a [sic] overwhelming national interest in speedy resolution of the dispute"); Rodonich v. House Wreckers Union Local 95, 624 F. Supp. 678, 682 (S.D.N.Y. 1985) ("Although the rapid resolution of labor disputes serves an important national policy, its urgency is not so great when the result of applying the six-month statute might be to thwart the Congressional purpose in enacting the LMRDA, which was to provide union members with a 'bill of rights'").

[151]Davis v. UAW, 765 F.2d 1510, 1514 n.11 (11th Cir. 1985), *cert. denied*, 475 U.S. 1057 (1986). The court noted, "This link appears rather tenuous in the situation of a single dispute between an individual union member and the union." *Id.*

[152]*Rector*, 625 F. Supp. at 178.

[153]*See supra* note 1. *See also Davis*, 765 F.2d at 1515 n.13.

treatment by the union.[154] Under section 101(a)(4), a union member may be required to exhaust reasonable internal union procedures before suing under section 102.[155] This creates a situation in which the union member's suit could be barred if he waits to sue for more than six months while trying to exhaust union procedures. However, his claim also could be dismissed for failure to exhaust internal remedies if he files within the limitations period without first following that course.[156]

A trial judge may exercise discretion and allow the plaintiff union member to forego the exhaustion procedure after an analysis of whether the available union remedies are adequate and reasonable under the particular circumstances of a case.[157] Nevertheless, the union member is still at great risk of being denied his rights because the limitations period is short and the period for processing internal grievances can last up to four months. Furthermore, this situation could easily occur often due to the brief period open to the plaintiff to sue.

Contributing to the "Catch-22" problem is the fact that unlawful activity by the union is often latent.[158] Title I violations often involve non-open, non-obvious denials of membership which could be perceived only gradually by the union member.[159] As stated previously, a Title I claim accrues upon discovery of the alleged misconduct.[160] If courts using the federal statute of limitations decide to read the statutory language literally instead of following the discovery principle, they will construe the statute to begin running when the illegal act occurs.[161] This means that the time in which a union member is allowed to sue will be even further reduced.

Moreover, a union member may find his suit barred due to a lack of notice of union procedures for exhausting union remedies. If a union

---

[154]Vallone v. Local Union No. 705, Int'l Bhd. of Teamsters, 755 F.2d 520, 522 (7th Cir. 1984); Erkins v. United Steelworkers, 723 F.2d 837, 839 (11th Cir. 1984); Detroy v. American Guild of Variety Artists, 286 F.2d 75 (2d Cir. 1961), *cert. denied* 366 U.S. 929 (1961); Clayton v. International Union, UAW, 451 U.S. 679 (1981); NLRB v. Industrial Union of Marine Workers, 391 U.S. 418 (1968).

[155]*See supra* notes 1 and 3.

[156]*Davis*, 765 F.2d at 1515. The *Davis* court noted two possible solutions to the "Catch-22" problem. It stated:

> First the limitations period might be tolled during the time a union member is exhausting his union remedies. . . . Second, a court could require the filing of the lawsuit within six months, but stay the judicial proceedings pending completion of exhaustion of union remedies.

Id. at 1515 n.13.

[157]*See supra* note 154.

[158]*See supra* note 115.

[159]*Doty*, 784 F.2d at 10. *See also supra* note 115.

[160]*Davis*, 765 F.2d at 1515.

[161]*See supra* notes 1 and 3.

member suspects mistreatment by his union, he may be unaware of the procedures necessary to exhaust internal remedies or unaware of the illegality of the union's conduct. If a union does not respond immediately to his inquiries or requests for those procedural guidelines, it may effectively bar the member's claim. Thus, a short period may not only deprive a member of his nationally recognized rights, it could encourage unions to deny members access to information needed to determine whether he should file suit.

C. Application of Analogous State Statutes of Limitations

The norm of using an appropriate state statute of limitations in the absence of Congressional enactment in the Title I area adheres to the traditional notion that when Congress is silent, it intends that courts should borrow analogous state limitations periods.[162] This practice, however, has caused a great deal of confusion and inconsistency.[163] Given the diversity in the selection of limitations periods, the union member's Title I suit could be granted or summarily denied, depending on the jurisdiction in which the action was instituted.

If courts were to continue following this tradition, they would ignore valid concerns raised by cases following *DelCostello* and thwart Congressional purpose.[164] Title I claims would continue to be analogized to widely variant state actions.[165] Characterization in such a variety of ways would still unfairly limit union members' rights or could unduly expose defendants to liability for a very long time, thereby defeating the labor policy of quick resolutions and peaceful settlements of labor claims.[166]

D. Application of Personal Injury State Statute of Limitations

Of those courts that rejected the federal six-month statute of limitations, many chose a personal injury limitations period instead.[167] These courts analogized the Title I claim to a civil rights matter and used the *Wilson v. Garcia*[168] opinion as a guide for selecting the personal injury period.[169] In that case, the Supreme Court instructed lower courts to

---

[162]*See supra* notes 32-33.

[163]*See supra* notes 31-34 and accompanying text.

[164]*See supra* notes 6-7.

[165]*See supra* notes 70 and 77 and accompanying text.

[166]*See, e.g.*, Doty v. Sewall, 784 F.2d 1 (1st Cir. 1986) (tort); Local Union 1397, United Steelworkers v. United Steelworkers, 748 F.2d 180 (3d Cir. 1984) (unfair labor practice); Rector v. Local Union No. 10, Int'l Union of Elevator Constructors, 625 F. Supp. 174 (D. Md. 1985) (contract).

[167]*See supra* note 77.

[168]471 U.S. 261 (1985).

[169]*See supra* note 86-88.

use state limitations periods for personal injury suits in civil rights matters brought under section 1983.[170] To determine whether courts have selected the most appropriate limitations period, it is necessary to examine the *Wilson* decision and its application to Title I cases.

1. The Wilson v. Garcia *Decision.*—In *Wilson v. Garcia*,[171] the respondent brought an action under section 1983 against a New Mexico state police officer and chief of state police. He alleged that he was unlawfully arrested and beaten viciously by the officer; therefore, he was entitled to damages caused by the deprivation of his constitutional rights.[172] The Supreme Court held that section 1983 civil rights claims "are best characterized as personal injury actions."[173] It endorsed the choice of a state statute of limitations applicable to personal injury actions.[174]

The Supreme Court used an analysis similar to *DelCostello*[175] in reaching its conclusion. It followed the same method of determining how to find an appropriate limitations period.[176] Like *DelCostello*, the Court first explained that in the absence of an express federal statute of limitations, it should consider whether any state limitations period is appropriate in view of the predominance of the federal interests involved.[177] The Court discussed *DelCostello* and noted the similarity in the "federal interest in uniformity and the interest in having 'firmly defined, easily applied rules.'"[178] Unlike *DelCostello*, however, the *Wilson* Court found a close analogy to state rather than federal law.[179] Since the Court found an analogy to state law that was consistent with the federal policies involved, it did not need to search for an analogous federal statute of limitations.

The *Wilson* Court examined the purpose of the Act and found that a broad characterization of section 1983 claims fit the statute's remedial purpose.[180] The Court explained its conclusion by noting the practical problems that arise when a choice of statutes of limitations depends on

---

[170] *Wilson*, 471 U.S. 261, 269 (1985).

[171] *Id.* at 263.

[172] *Id.*

[173] *Id.* at 280.

[174] *Id.*

[175] DelCostello v. International Bhd. of Teamsters, 462 U.S. 151 (1983).

[176] *Wilson*, 471 U.S. at 266-67.

[177] *Id.* The Court noted that it had generally recognized that the problem of characterization "is ultimately a question of federal law." *Id.* at 270 (citing Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696, 706 (1966)).

[178] *Id.* at 270 (citing Chardon v. Fumero Soto, 462 U.S. 650 (1983) (Rehnquist, J., dissenting)).

[179] *Id.* at 271-72.

[180] *Id.* at 272.

characterization of particular facts or legal theories.[181] The Court clearly rejected the practice of choosing a state statute of limitations according to the particular facts or legal theories involved.[182] It stated:

> The experience of the courts that have predicted their choice of the correct statute of limitations on an analysis of the particular facts of each claim demonstrates that their approach inevitably breeds uncertainty and time-consuming litigation that is foreign to the central purpose of § 1983. Almost every § 1983 claim can be favorably analogized to more than one of the ancient common-law forms of action, each of which may be governed by a different statute of limitations.[183]

The Court further stated that the legislative history of the Act supported the conclusion that Congressional intent would be thwarted by uncertainty and confusion wrought by application of diverse statutes of limitations.[184]

The Court concluded that federal interests in uniformity, certainty, and reduction of unnecessary litigation were all served by choice of a state statute of limitations.[185] It stated that "[U]niformity within each State is entirely consistent with the borrowing principles contained in § 1988."[186] It chose a tort action for recovery of damages for personal injuries as the best alternative because this was the closest analogy to civil rights claims.[187] The Court rejected lower courts' analogies to claims such as those for breach of contract or for damages to property, stating that congressional intent supported the analogy of a section 1983 claim to a tort claim for personal injury.[188]

In endorsing the personal injury limitations period, the Court analyzed the nature of the section 1983 remedy and the federal interest in ensuring that the borrowed limitations period does not discriminate against the federal civil rights remedy.[189] This is similar to the *DelCostello*

---

[181] *Id.* at 272-75. This is currently the method used by courts in Title I cases.

[182] *Id.* at 279. The Court stated, "Had the 42d Congress expressly focused on the issue decided today, we believe it would have characterized § 1983 as conferring a general remedy for injuries to personal rights." *Id.*

[183] *Id.* at 272-73. The Court stated:

> If the choice of the statute of limitations were to depend upon the particular facts or the precise legal theory of each claim, counsel could almost always argue, with considerable force, that two or more periods of limitations should apply to each § 1983 claim.

Id. at 273-74.

[184] *Id.* at 275.

[185] *Id.*

[186] *Id.*

[187] *Id.* at 276.

[188] *Id.* at 273, 277.

[189] *Id.* at 276.

Court's analysis of the nature of the interests involved in 301 hybrid claims.[190]

The *Wilson* Court also noted that section 1983 merely provides a remedy and does not in itself create any substantive rights.[191] The Court specifically stated:

> The rights enforceable under § 1983 include those guaranteed by the Federal Government in the Fourteenth Amendment: that every person within the United States is entitled to equal protection of the laws and to those "fundamental principles of liberty and justice" that are contained in the Bill of Rights and "lie at the base of all our civil and political institutions."[192]

Finally, the Court concluded that uniform characterization of all section 1983 suits as involving claims for personal injuries minimized the risk that the choice of a state statute of limitations would not serve adequately the federal interests vindicated by the Act.[193] This eliminated the need for the Court to seek a better analogy to federal rather than state law.

2. Application of Personal Injury Limitations Periods in Title I Claims.—Title I claims are closely analogous to civil rights claims.[194] The purpose of LMRDA is to protect a union member's individual rights which have been violated by the union.[195] Similarly, the purpose of the Civil Rights Act is to provide a remedy to individuals whose constitutional rights have been harmed by the conduct of another.[196] Like the civil rights claim, Title I does not create rights to freedom of speech and assembly; rather, Title I ensures protection of these interests in the union context.[197] Moreover, Title I claims do not encompass the wide variety of fact situations giving rise to civil rights suits;[198] Title I

---

[190] *DelCostello*, 462 U.S. at 171; *see also supra* notes 52-68 and accompanying text.

[191] *Wilson*, 471 U.S. at 278.

[192] *Id.* at 278.

[193] *Id.* at 279. The Court further stated:

> General personal injury actions, sounding in tort, constitute a major part of the total volume of civil litigation in the state courts today, and probably did so in 1871 when § 1983 was enacted. It is most unlikely that the period of limitations applicable to such claims ever was, or ever would be, fixed in a way that would discriminate against federal claims, or be inconsistent with federal law in any respect.

Id.

[194] *See supra* notes 17-30 and accompanying text.

[195] *See supra* notes 17-30.

[196] *Wilson*, 471 U.S. at 277.

[197] *See supra* notes 17-30 and accompanying text.

[198] *See supra* note 126.

suits typically involve the denial of union membership or free speech and assembly, which are types of personal injury.[199] Thus, Title I violations are perhaps even more readily categorized as personal injury violations.

This characterization does not conflict with precedent in the labor field. Indeed, the Court in *Wilson* used the same method of analysis as the *DelCostello* Court. It reached a different conclusion because the nature of the claim was better served by a state statute of limitations rather than an analogous federal limitations period. The different interests involved in civil rights matters did not necessitate abandoning the traditional borrowing practice completely, from which the *DelCostello* Court cautioned against departing.[200]

Furthermore, labor policy also comports with the practice of characterizing a type of federal labor claim in a certain manner and uniformly applying to it a specific type of statute of limitations.[201] In *Auto Workers v. Hoosier Cardinal Corp.*,[202] the Supreme Court condoned the characterization of section 301 claims against an employer as sounding in contract.[203] The Court resisted the suggestion that it apply a uniform federal limitations period.[204] It held that Indiana's period for actions on unwritten contracts was appropriate.[205] The Court acknowledged that the subject matter of a 301 suit against the employer was suited to application of uniform law.[206] Nevertheless, it reasoned that national uniformity is of less importance when the suit does not involve "those consensual processes that federal labor law is chiefly designed to promote—the formation of the collective agreement and the private settlement of disputes under it."[207] Thus limited uniformity was achieved while the court still adhered to analogous state law.

This limited uniformity among jurisdictions addresses the relevant concerns raised in *DelCostello* while still protecting the interests of the parties. It recognizes and alleviates the parties' uncertainties when filing suit, thus eliminating the problem of procedural disposal of meritorious claims. A general rule of uniform application of personal injury limitations periods would also guide lower courts in choosing the appropriate period.

---

[199] *See supra* note 126.
[200] *DelCostello*, 462 U.S. at 171.
[201] Auto Worker v. Hoosier Cardinal Corp., 383 U.S. 696 (1966).
[202] 383 U.S. 696 (1966).
[203] *Id.* at 707.
[204] *Id.* at 706.
[205] *Id.* at 707.
[206] *Id.* at 702.
[207] *Id.*

Although the *Wilson* Court endorsed the choice of state statutes of limitations, it did not address how a court should respond when the particular state has no explicit statute for personal injury violations.[208] In this instance, a court should apply the limitations period used for personal injury actions. The practice of selecting the limitations period commonly used for personal injury suits when no express statute exists is important because it will dissuade a court from completely rejecting the rationale behind the Title I analogy to a personal injury action. Without instruction to select the limitations period applicable to personal injury claims, a court could revert back to the method of analysis used prior to *DelCostello* when no explicit statute is available in that jurisdiction.[209] By authorizing use of the limitations period commonly used for personal injury actions, however, a subsequent court is not as likely to abandon the personal injury analogy. This would preserve the limited uniformity created by the analogy. Where more than one personal injury statute of limitations exists, the court should choose the limitations period for actions most similar to the pending action. Although this alternative still has the possibility of creating some uncertainty for plaintiffs, the confusion is at least limited to fewer possible choices.

Aside from providing limited uniformity, the personal injury limitations period also ordinarily provides a longer period within which to file, thus addressing the practical problems facing the union member. This is an important consideration in the civil rights context as shown in the Supreme Court decision, *Burnett v. Grattan*.[210] *Burnett* supports the argument that a six-month period is inadequate when the Title I action is characterized as a civil rights type claim.[211]

In *Burnett*, a section 1983 action, the Supreme Court rejected as inappropriate the use of a six-month statute of limitations applicable to administrative procedures for resolution of employment discrimination complaints.[212] It noted the practical problems confronting a complainant and concluded that a six-month period only frustrated those difficulties.[213] The Court stated that the six-month period failed to "take into account practicalities that are involved in litigating federal civil rights claims and policies that are analogous to the goals of the Civil Rights Act."[214]

Likewise, the Title I plaintiff confronts practical problems which are frustrated by a short limitations period. Since Title I claims are so

---

[208] *Wilson*, 471 U.S. 261 (1985). Justice O'Connor addresses this problem in her dissent. *Id.* at 280-87.

[209] *See supra* text accompanying notes 31-51.

[210] 468 U.S. 42 (1984).

[211] *Id.*

[212] *Id.* at 50.

[213] *Id.*

[214] *Id.*

similar to civil rights claims, they too should not be dismissed summarily due to application of a short limitations period. Moreover, in the labor context, Title I claims do not implicate the collective bargaining process, which was a concern raised by *DelCostello*; therefore, a longer period within which to file a claim would not frustrate national labor policy.[215] Furthermore, a longer period would benefit the union member's rights without unfairly limiting the union's interests. The union member is given a longer period to assess his damages. The union is protected by a definite, predictable time limit.

V. Conclusion

The ideal solution to the question of which limitations period to apply to Title I claims is Congressional enactment expressly specifying the appropriate time limit. Because this is unlikely, or at least until this occurs, courts must determine the appropriate period by examining the interests involved and selecting the limitations period that is most similar. Thus far, courts have chosen a variety of periods, causing a split in authority.[216]

While some courts have adhered to the practice of borrowing analogous state statutes of limitations, others have abandoned this approach. In attempting to provide stability in the application of a limitations period, some courts have condoned a uniform selection of the six-month federal limitations period initially applied in *DelCostello*. This choice of periods is improper as a solution to the problem of discontinuity, because it does not adequately address and protect the vital interests of the union member in Title I cases. The diversity created by the different methods used by courts calls for an answer as to the correct characterization of Title I claims.

Title I claims closely resemble civil rights actions;[217] therefore, they should be governed by the same type of statute of limitations. However, the federal Civil Rights Act has not provided an explicit limitations period.[218] In *Wilson v. Garcia*,[219] the Supreme Court instructed lower courts to use state limitations periods for personal injury actions in civil rights matters brought under section 1983.[220] The *Wilson* decision provides guidance for courts wrestling with this problem in the LMRDA area also. Like civil rights actions, Title I suits should also be governed by

---

[215]*See supra* notes 92-127 and accompanying text.

[216]*See generally supra* notes 69-81 and accompanying text.

[217]*See supra* notes 17-30.

[218]Civil Rights Act of 1871, 42 U.S.C. § 1983 (1982).

[219]471 U.S. 261 (1985).

[220]*Id.* at 278.

personal injury state statutes of limitations.[221] In the absence of a specific state statute of limitations, the court should resort to selection of the limitations period commonly used in personal injury suits.

In the Title I context this selection would be appropriate because it would prevent courts from abandoning the *Wilson* guidelines. It would also preserve the policy considerations underlying the need for limited uniformity.[222] Moreover, this method of selection benefits both union members and unions because it fosters predictability in filing suits. Each party can foresee which limitations period the court is likely to apply to the pending action, thus enabling both plaintiff and defendant to proceed accordingly. A limitations period that promotes predictability and fairness in the length of time within which to file clearly furthers the aims of Congress in enacting Title I.

Use of the personal injury limitations period will not solve all the problems confronted by courts in Title I actions. It will, however, relieve courts from determining the appropriate limitations period on a case by case and issue by issue basis. In the absence of Congressional enactment or Supreme Court mandate, this choice appears preferable to the trend now evidenced by the lower courts in the wake of *DelCostello*.

Ellen Marie White

---

[221]*See supra* notes 194-215 and accompanying text.

[222]*See supra* notes 194-215 and accompanying text.