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THE CASE FOR NEW LABOR ORGANIZATION REPORTING FORMS

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INTRODUCTION

Labor organizations¹ like all non-profit corporations enjoy the ability to conduct their affairs without income tax liability to either the federal or state government. This privilege of tax exemption comes with responsibilities – namely the filing of certain required reports to show that the organization has been responsible in the handling of its finances.

Voluntary membership organizations are naturally inclined to be responsible with their members' dues because they face the loss of members if the organization misappropriates their resources. The same incentive in many cases does not exist for labor organizations. Because of current labor law, workers in many states must continue to pay fees to their union regardless of whether they agree with how the union spends their dues and regardless of whether the member desires to remain a member of the labor organization.²

On Friday, December 20, 2002, the U.S. Department of Labor announced its intention to revise the current the annual reporting form for large labor organizations. The purpose of this paper is to show the need for this revision, to examine current reporting requirements, and historical analysis of the reasons Congress used for creating the *Labor Management Reporting and Disclosure Act*.

BACKGROUND

One of the foundational principles of a membership organization such as a labor union is the ability of its members to be able to effectively engage their rights within the organization in such areas as election of leaders and monitoring of financial conditions. Unlike voluntary organizations, many members of labor unions are not members by choice, but are required to

¹ For the purposes of this paper, labor unions are also referred to as labor organizations following the terminology used in the *Labor Management Reporting and Disclosure Act*.

² For the purposes of this paper, union members and “fee payers” (those who resign their membership but are still required under law to pay “fees” to a union) are placed in the same category.

become members due to the nature of their employment and the protections for labor unions under federal and state law. With this in mind Congress passed legislation to enable individual union members to be better informed regarding the financial operations of their union.

LABOR ORGANIZATION REPORTING REQUIREMENTS

Congress enacted Title 29, Chapter 11 of the United States Code, the *Labor Management Reporting and Disclosure Act of 1959*, 29 U.S.C. § 431, *et seq.* (LMRDA), based upon their finding of a need for supplemental legislation³ to eliminate or prevent improper practices on the part of labor organizations which distort and defeat the policies of the *Labor Management Relations Act*⁴, 29 U.S.C. § 141 *et seq.* John F. Kennedy, then Senator from Massachusetts, presented the report of the Senate Committee on Labor and Public Welfare upon the ir passage of Senate Bill 1555, the bill creating the LMRDA. The report stated, “The committee reported bill is primarily designed to correct the abuses which have crept into labor and management and which have been the subject of investigation by the Committee on Improper Activities in the Labor and Management Field for the past several years.”⁵ The LMRDA “was a product of Congressional concern with the widespread abuses of power by union leadership.”⁶ The intent of Congress in enacting the LMRDA was to provide union members with “all the vital information necessary for them to take effective action in regulating affairs of their organization” and to insure that:

A union treasury should not be managed as the private property of union officers, however well intentioned, but as a fund governed by fiduciary standards appropriate to this type of organization. The members who are the real owners of the money and property of the organization are entitled to a full accounting of all transactions involving their property. S.Rep. 187, 86th Cong., 1st Session, p. 8, 9 (1959); 1959 U.S.Code Cong. & Adm.News p. 2324.⁷

The purpose of Congress in enacting the LMRDA “as a whole is not only to stop and prevent outrageous conduct by gangsters but also to stop lesser forms of objectionable conduct by those in positions of trust and to protect democratic processes within union organizations.”⁸ The leaders of a labor organization occupy positions of trust and have fiduciary responsibilities to the members of the organization concerning the dues

³ 29 U.S.C. § 401(b) Protection of rights of employees and the public

The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.

⁴ 29 U.S.C. § 401(c) Necessity to eliminate or prevent improper practices

The Congress, therefore, further finds and declares that the enactment of this chapter is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act.

⁵ S.Rep. 187, 86th Cong., 1st Sess., p. 2. *See also* Robert F. Koretz, ed. *Statutory History of the United States: Labor Organization*, 721, (McGraw-Hill 1970).

⁶ *Finnegan v. Leu*, 456 U.S. 431at 435 (1982). *See also*, *Sheet Metal Workers v. Lynn*, 488 U.S. 347 (1989).

⁷ *See also* *U.S. v. Haggerty*, 419 F.2d 1003 (1970); *Rekant v. Rabinowitz*, 194 F.Supp. 194 (1971).

⁸ *Id.*, *see also* *United Brotherhood of Carpenters and Joiners of America v. Brown*, 343 F.2d 872. at 882, 883.

collected from their members.⁹ Government oversight of labor organizations is provided not only to protect the public interest involved but because, “[t]he primary purpose of the reporting provisions of the LMRDA is to insure disclosure of financial operations of the unions to their members.”¹⁰ Only through full, accurate, detailed, and public disclosure of labor organization financial information can its members and the public at large be assured that they have faithfully performed their fiduciary duties with regard to the member dues collected.

The LMRDA sets forth reporting and record keeping requirements for labor organizations and the Department of Labor.

ANNUAL FILING REQUIREMENTS

The LMRDA provides that every labor organization shall file annually with the Secretary of the Department of Labor a financial report signed by its president and treasurer or corresponding principal officers containing information in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year.¹¹ Labor organizations with annual receipts in excess of \$200,000.00 are required to file a LM2 report.¹² The LM2 form filed with the Department of Labor by a labor organization is to include the following:

- (1) assets and liabilities at the beginning and end of the fiscal year;
- (2) receipts of any kind and the sources thereof;
- (3) salary, allowances, and other direct or indirect disbursements (including reimbursed expenses) to each officer and also to each employee who, during such fiscal year, received more than \$10,000 in the aggregate from such labor organization and any other labor organization affiliated with it or with which it is affiliated, or which is affiliated with the same national or international labor organization;
- (4) direct and indirect loans made to any officer, employee, or member, which aggregated more than \$250 during the fiscal year, together with a statement of the purpose, security, if any, and arrangements for repayment;
- (5) direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment; and
- (6) other disbursements made by it including the purposes thereof; all in such categories as the Secretary may prescribe.¹³

The current LM2 form contains fifteen expenditure schedules calling for reporting on assets, liabilities, income, and expenses. The form covers one calendar year (January 1 through December 31.) The bulk of a LM2 form is comprised of schedule 10 which reports disbursements to employees. Other notable schedules include schedule 12, for “Contributions, Gifts, & Grants,” schedule 13, “Office and Administrative Expense,” and schedule 15 “Other Disbursements.” Following is an example of how these three schedules are reported to the

⁹ See generally *Johnson v. Nelson*, 212 F.Supp. 233; *aff.* 325 F.2d 646 (1963).

¹⁰ *U.S. v. Budzanoski*, 462 F.2d 443 at 450 (1972).

¹¹ 29 U.S.C. § 431(b).

¹² 29 C.F.R. 403.1 *et seq.*

¹³ *Id.*

Department of Labor. The chart below is from the LM2 form of the AFL-CIO for the 2001 reporting year.

Schedule 12 CONTRIBUTIONS, GIFTS & GRANTS – Other

Description:	Amount:
STATE AND LOCAL BODIES:	\$1,427,190
OTHER AFFILIATED LABOR ORGS.:	\$5,110,502
LABOR ORGS./CONSTITUENCY GROUPS:	\$3,282,594
CIVIC AND ALLIED ORGS.:	\$3,770,217
INTL. AND HUMAN RIGHTS GROUPS:	\$785,545
TOTAL:	\$14,376,048¹⁴

Schedule 13 OFFICE AND ADMINISTRATIVE EXPENSE – Other

Description:	Amount:
PRINTING:	\$525,103
SUBSCRIPTIONS/ONLINE SERVICES:	\$8,875,531
OFFICE SUPPLIES:	\$1,150,869
SOFTWARE/EQUIPMENT, RENT/ MAINT.:	\$1,446,674
POSTAGE, MAILING, AND DELIVERY:	\$989,107
GENERAL INSURANCE:	\$80,438
HEADQUARTERS BUILDING COSTS:	\$1,501,409
REGIONAL OFFICES RENT:	\$572,243
HDQRTRS SATELLITE OFFICES RENT:	\$3,487,057
FIELD OFFICE OCCUPANCY:	\$140,860
TRAVEL EXPENSES (NON-ALLOCABLE):	\$3,825,748
TELEPHONE:	\$1,247,165
TOTAL:	\$23,842,204¹⁵

Schedule 15 OTHER DISBURSEMENTS – Other

Description:	Amount:
CREDIT CARD ROYALTIES TO UNIONS:	\$24,214,008
LIST USE PAYMENTS PARTIC UNIONS:	\$211,140
DISTRIBUTION OF DALA/CLC ESCROWS:	\$2,592
OTHER EMPLOYEE DEDUCTIONS:	\$4,867,908
CONFERENCES AND MEETINGS:	\$2,171,310
NON-EMPLOYEE TRAVEL/MEETING COST:	\$630,037
DISBURSEMENTS REBILLED:	\$1,375,437
SECURITY AND OTHER DEPOSITS:	\$250

¹⁴ Form LM2, Labor Organization Annual Report submitted by AFL-CIO March 28, 2002, page 146.

¹⁵ *Id.*, at 147.

RELOCATION COSTS FOR TENANTS:	\$100,580
REFUNDS OF OVERPAYMENTS RECEIVED:	\$89
INTEREST:	\$1,603,692
COPE STATE AND LOCAL VOLUNTARY FUND:	\$85,112
COPE TREASURY FUND:	\$330,454
TOTAL:	\$35,592,609 ¹⁶

Even a cursory reading of the above chart shows that the information provided by the AFL-CIO on their LM2 form is not sufficient to give the average union member an accurate picture of how the AFL-CIO spends much of the dues collected from that member. Huge amounts of dues are expended under such broad categories as “Other contributions and subsidies to labor organizations.” This AFL-CIO has reported between three and seven million per year in this category alone going back as far as 1997, that being without any additional explanatory material to describe in further detail how those millions of dollars were spent. Labor organizations have the responsibility to report their expenditures “in such detail as may be necessary accurately to disclose its financial condition and operations for the preceding fiscal year.”¹⁷ Under the current reporting system, many labor organizations besides the AFL-CIO are not providing sufficient information for the average union member to accurately know how his or her dues are being spent.

CONCLUSION

Under the present set of reporting forms labor organizations are able to report massive amounts of expenditures with very little explanation or detail. The major labor organizations report millions of dollars annually in categories which are so vague that no useful meaning can be derived thereby and no clear picture gained as to where that money actually went. Labor organizations are required to keep on file the information which was used to generate their reports to the DOL and this information is to be made accessible upon “just cause” to the union member who requests such information. The union member is empowered with the ability to file suit to examine the books,¹⁸ however, an individual union member should not be subjected to an adversarial process to obtain this information. Rather, the Department of Labor should revise its forms to more accurately reflect the desire of Congress that union members are provided with “all the vital information necessary for them to take effective action in regulating affairs of their organization.”¹⁹ By revising its reports to require more complete reporting, the Department of Labor will better implement the language and intent of the LMRDA.

¹⁶ *Id.*, at 12.

¹⁷ 29 U.S.C. 431(b).

¹⁸ 29 U.S.C. 431(d).

¹⁹ 29 U.S.C. 431(b).