



SUPA

Stop Union Political Abuse

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Hon. Victoria A. Lipnic
Assistant Secretary for Employment Standards
U.S. Department of Labor
220 Constitution Avenue, NW
Room N-5605
Washington, DC 20210

Via email to: FormLM2-comments@dol-esa.gov
Hard Copy Via Federal Express

Dear Ms. Lipnic:

These comments are submitted pursuant to the U.S. Department of Labor's notice of proposed rulemaking regarding labor organization annual financial reports published in the Federal Register on December 27, 2002.¹

INTRODUCTION

Stop Union Political Abuse (SUPA) is an organization dedicated to protecting union² members'³ rights by insuring that the political activities of labor unions are freely made and open to public scrutiny. Because of the nature of our work and the impact that the proposed regulations will have on the issues of concern to us we hereby submit the following comments. The comments below are focused primarily on the change in regulation adding "Schedule 17—Political Activities" to require reporting of political expenditures by labor organizations.

SUPA appreciates the historical analysis included by the Department in the notice of proposed rulemaking. Understanding the intent of Congress in enacting the *Labor Management*

¹ Labor Organization Annual Financial Reports, 67 Fed. Reg. 79,279 *et seq.*, (2002) (to be codified at 29 C.F.R. pt. 403, 408).

² For the purposes of these comments, "labor organization" and "labor union" are synonymous.

³ For the purposes of these comments, "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.

Disclosure and Reporting Act of 1959 (LMRDA) is crucial to insuring that the regulations promulgated by the Department to enforce the LMDRA achieve that intent.

Labor organizations, like all non-profit corporations, enjoy the ability to conduct their affairs without income tax liability. This privilege of tax exemption comes with responsibilities – namely financial accountability to show that the corporation 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 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.

BACKGROUND

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 legislation⁴ to eliminate or prevent improper practices on the part of labor organizations which distort and defeat the policies of the *Labor Management Relations Act*⁵, 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 their 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.”⁶ The LMRDA “was a product of Congressional concern with the widespread abuses of power by union leadership.”⁷ 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. 2324.⁸

⁴ 29 U.S.C. § 401(b).

⁵ 29 U.S.C. § 401(c).

⁶ 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).

⁷ *Finnegan v. Leu*, 456 U.S. 431 at 435 (1982). *See also*, *Sheet Metal Workers v. Lynn*, 488 U.S. 347 (1989).

⁸ *See also* *U.S. v. Haggerty*, 419 F.2d 1003 (1970); *Rekant v. Rabinowitz*, 194 F.Supp. 194 (1971).

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.”⁹ The leaders of a labor organization occupy positions of trust and have fiduciary responsibilities to the members of the organization concerning the dues collected from their members.¹⁰ 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.”¹¹ 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.¹² Labor organizations with annual receipts in excess of \$200,000.00 are required to file a LM2 report.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 the information reported on the LM2 form falls within 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 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

⁹ *Id.*, see also *United Brotherhood of Carpenters and Joiners of America v. Brown*, 343 F.2d 872. at 882, 883.

¹⁰ See generally *Johnson v. Nelson*, 212 F.Supp. 233; *aff.* 325 F.2d 646 (1963).

¹¹ *U.S. v. Budzanoski*, 462 F.2d 443 at 450 (1972).

¹² 29 U.S.C. § 431(b).

¹³ 29 C.F.R. 403.1 *et seq.*

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:	\$23,842,204 ¹⁵

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
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

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

¹⁵ *Id.*, at 147.

¹⁶ *Id.*, at 12.

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. Under the current reporting requirements labor organizations are not providing sufficient information for the average union member to accurately know how his or her dues are being spent.

UNION MEMBERS CANNOT LEGALLY BE REQUIRED TO FUND UNION’S POLITICAL ACTIVITIES

The United States Supreme Court in *Aboud v. Detroit Board of Education*¹⁷ was called upon to decide whether a union could legally expend its members’ dues in furtherance of political purposes. The Court held that the union could spend members’ dues for political purposes, but such expenditures may only be made from dues “paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of loss of governmental employment.”¹⁸ Later, the Court in *Communications Workers v. Beck*¹⁹ extended this holding to include union members in the private sector – holding that members could withhold from the union every part of their dues except that part which went to documented costs involved in collective bargaining.

Under current reporting requirements, a member has no way of ascertaining what portion of his or her dues were expended for political purposes. It is illogical to give an absolute right to withhold dues without giving the ability to ascertain what part of those dues may be withheld. Because the current regulations do not require the itemization of political expenditures, members are unable to exercise their right to withhold that part of their dues spent for political purposes without 1) working through an adversarial administrative proceeding within the union, or 2) resort to expensive and cumbersome litigation. Neither of these is an attractive alternative. As a result, the vast majority do not exercise their rights in this area.

This places the union member in a difficult situation. The member cannot recover those dues expended on politics or withhold future dues without knowing what percentage has been and will be spent for political purposes. The only feasible way for a member to become informed enough to know whether they are entitled to recover part of their dues is to initiate a lawsuit and use the discovery process to ascertain what percentage of their dues was rightfully charged to them. As stated above, this proves very expensive, a fact that discourages most lawsuits. The lack of information found in the current forms helps to prevent members from exercising their right to withhold dues which are not legally chargeable to them. Giving members more information will place them in better position to protect their rights.

CONCLUSION

The major labor organizations currently 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 member who requests such information. The member is also empowered with the ability to file suit to examine the books,²⁰ however, an individual member should not be subjected to an adversarial process to obtain this information. Rather, the

¹⁷ *Aboud v. Detroit Board of Education*, 431 U.S. 209 (1977).

¹⁸ *Id.* at 236.

¹⁹ *Communication Workers v. Beck*, 487 U.S. 735 (1998).

²⁰ 29 U.S.C. 431(d).

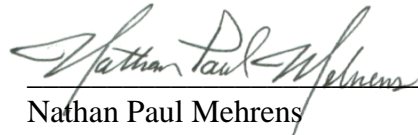
forms submitted by a labor organization should contain “all the vital information necessary for them [members] to take effective action in regulating affairs of their organization.”²¹ By revising its reports to require more complete reporting, the Department of Labor will better implement the language and intent of the LMRDA.

The purpose of federal labor law is to protect workers’ rights. Members have the right to know how the union spends their money. They currently cannot obtain this information without resort to extreme measures. Therefore, the changes proposed by the Department requiring the reporting of political expenditures are overdue. The Department’s proposed rule change requiring the itemization of political expenditures will go a long way to protecting the rights of the member who seeks to recover the parts of their dues spent on politics.

The LMRDA was enacted to give average union members a clear idea into the financial condition and practices of the union. The present reporting forms fail to give sufficient detail into the union’s financial condition and practices. Therefore, the current requirements do not fully implement the intent of the LMRDA and the changes proposed by the Department are absolutely necessary.

Respectfully submitted,


Linda Chavez


Nathan Paul Mehrens

²¹ 29 U.S.C. 431(b).