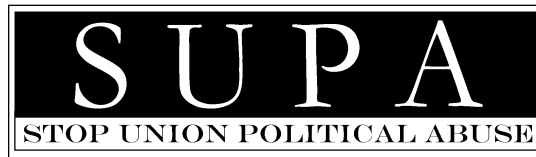


Linda Chavez
President



January 3, 2005

Lary Yud
Deputy Director, Office of Labor-Management Standards
U.S. Department of Labor
200 Constitution Avenue NW
Room N 5605
Washington, DC 20210

Via email to: OLMS-REG-1215-AB48@dol.gov

RE: Comments on Notice of Proposed Rulemaking, RIN 1215-AB48

Dear Mr. Yud:

These comments are submitted pursuant to the Department's notice of proposed rulemaking published in the Federal Register at Vol. 69, No. 212 at 64226 on November 3, 2004.

The notice of proposed rulemaking asked for comments regarding several specific areas of the proposed regulation and its impact both on unions and the rights of union members.

In the course of our organization's work we are in position to receive feedback from union members who contact us looking for information regarding their individual unions. These comments are based both on the information we receive from these workers as well as our general observation of the field of labor management. Rather than give answers to all the Department's queries we have tailored our response to those that most closely match our experience and expertise.

The notice of proposed rule making asked for responses on the following questions:

1. Are all union member democratic rights stated with accuracy and clarity in the Department of Labor's publication Union Member Rights and Officer Responsibilities under the Civil Service Reform Act? If not, what specific changes to the language would improve its accuracy or clarity?

The statement of rights contained in the publication referenced above does clearly delineate the rights and responsibilities of union members and union officers. However, the publication does not inform workers that they cannot be forced to become a member of the union. It also does not inform workers that they cannot be forced to subsidize the financial expenditures of the union for political purposes, and does not provide any information about exercising these rights. We propose the following language to be inserted as indicated in the statement of rights:

Under the subheading, "Bill of Rights – Union members have:" insert the following:

"The right to decline union membership. No person can be forced to join or pay dues to a union as a condition of employment. You may be responsible for payment of fees if you decline union membership."

"The right to exercise their religious convictions by redirecting an equivalent

dues amount to charity instead of paying dues pursuant to Title VII, Sec. 701(j) of the Civil Rights Act of 1964, 42 U.S.C. 2000e(j)."

Under the bullet point, "freedom of speech and assembly" insert the following:

"The right to not financially support union political activity."

"The right to only be charged fees for 'core' union purposes, e.g., contract negotiation, grievance adjustment."

"The right to clear, concise, and accurate financial information regarding a union's receipts and expenditures, especially for those expenditures on 'non-core' activities."

2. Would the purposes of the proposed rule be served in whole or in part by requiring the inclusion of a statement of members' rights as an appendix to the union's constitution or bylaws?

Requiring inclusion of the statement of rights as an appendix to a union's constitution or bylaws would be beneficial to those union members who receive copies of these documents. However, our experience has shown that many union members are not aware of these documents in the first place and that they have difficulty in obtaining the documents from their union representatives. Thus, the purpose of the rule would be served, but this is not the best method for insuring that all members are adequately informed of their rights.

3. Should the inclusion of a statement of members' rights as an appendix to the union's constitution or bylaws and proof that each member has received a copy of the constitution and appendix fully satisfy a labor organization's obligations, i.e., provide a "safe harbor" for labor organizations?

No, for the reasons given in the answer to the previous question.

4. Should notification by e-mail be considered an acceptable means of apprising union members of their rights where a member has provided an e-mail address to receive communications from the union or the union is permitted to utilize agency e-mail systems for similar communications with members?

Yes, provided that the member retain the ability to ask for a physical copy of the statement of rights.

5. Should enforcement of violations of the Proposed Rule be vested in individual members or OLMS?

We believe violations should be actionable both by the OLMS as well as individual members. In other areas of labor management law both the appropriate Office within the Department as well as the aggrieved individual are vested with the ability to sue to remedy violations, typically upon a showing of "just cause". For instance, union members belonging to a union under the jurisdiction of the Labor Management Reporting and Disclosure Act (LMRDA) are empowered with standing to bring suit in U.S. District Court to obtain financial information upon a showing of just cause. 29 U.S.C. § 431(c).

There is both benefit and detriment to dual enforcement abilities. On the one hand it enables the individual to take action themselves, action which can be taken in a much faster time frame than necessary for the OLMS to take action. The problem arises in the cost of such action. Due to the enormous costs associated with private litigation, few if any individuals will have the financial ability to bring an action to enforce their rights under the proposed

regulation. Thus in order to insure that the regulation is fully enforced OLMS as well as the individual members should be vested with standing to enforce the regulation.

One of the largest problems present in modern labor unions is unfortunate habit of these unions using member dues for political purposes. The recent presidential election provided example after example of this problem. Hundreds of millions of dollars in dues were spent to support political candidates and causes with little or no input from union members. One of the great rights held by all citizens is the ability to speak on issues of national concern, especially political issues and to refrain from supporting issues with which they disagree.

Since the founding of our nation, the right of persons to speak freely and to decide individually which individuals and what organizations with which they wish to associate has been firmly rooted. Thomas Jefferson composed the following statement, later codified as a statute, which is as true today as it was then:

[T]o compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical. The Virginia Act for Establishing Religious Freedom, VA. CODE ANN. § 57-1.8

Three years after Virginia passed this statute, the 1st Congress on September 25, 1789, proposed the first set of amendments to the Constitution, of which ten were quickly ratified as the Bill of Rights. First in this list is a statement protecting, *inter alia*, the rights of freedom of speech and freedom of association:

Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. U.S. CONST. amend. I. (Emphasis added.)

Unfortunately, in the 224 years since proposal of the First Amendment, various restrictions on its unequivocally guaranteed rights have been upheld. These First Amendment rights are thus not deemed by the courts to be incapable of restriction, given a "compelling governmental interest." Most unfortunately, limitations on the associational rights of workers by statutes allowing or imposing compulsory unionism have been upheld by the Supreme Court. See, e.g., *Railway Employees' Dept. v. Hanson*, 351 U.S. 225 (1956). This is bad public policy for several reasons.

First, forced association with a union even for purposes of collective bargaining significantly infringes on "an employee's freedom to associate for the advancement of ideas, or to refrain from doing so, as he sees fit," *Abood v. Detroit Bd. of Educ.* 431 U.S. 209, 222 (1977). See *Ellis v. Railway Clerks*, 466 U.S. 435, 455 (1984). Second, the remedy the Supreme Court has devised to protect the right of workers to be free from financially supporting union political, ideological and other non-bargaining activities is a reduction or rebate of monies that may not be lawfully charged to them if they object. As Justice Black long ago recognized, because the unions' accounting records are "voluminous and complex," that remedy "promises little hope for financial recompense to the individual workers whose First Amendment freedoms have been flagrantly violated." *Machinists v. Street*, 367 U.S. 740, 796 (1961) (Black, J., dissenting).

While thus permitting some infringement on workers' First Amendment rights, the Supreme Court has held that only "financial core" activities of a union—*i.e.*, "those germane to collective bargaining, contract administration, and grievance adjustment"—are lawfully chargeable to objecting workers under the First Amendment and the federal labor statutes. Political,

ideological and other activities outside that "financial core" are not statutorily or constitutionally chargeable. *E.g., Communications Workers v. Beck*, 487 U.S. 735 (1988) (under the National Labor Relations Act).

For at the heart of the First Amendment is the notion that an individual should be free to believe as he will, and that in a free society one's beliefs should be shaped by his mind and his conscience rather than coerced by the State. *Aboud*, 431 U.S. at 234-35.

[W]e hold that the State constitutionally may not compel its employees to subsidize legislative lobbying or other political union activities outside the limited context of contract ratification or implementation. *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507, 522 (1991).

The bottom line is this: workers have a fundamental right to decide whom and what causes to support in the realm of politics. However, workers must be informed of this right in order to effectively exercise it. By enabling more workers to exercise their rights the Department's proposed regulation will take a much needed step in securing worker freedom.

Respectfully submitted,

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President

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