

# 2005 Annual Report



## Office of Labor-Management Standards

Employment Standards Administration

U.S. Department of Labor

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## Introduction

Assuring financial integrity and accountability and safeguarding union democracy for America's union members is the mission of the Department of Labor's Office of Labor-Management Standards (OLMS). In 1959, Congress enacted the Labor-Management Reporting and Disclosure Act (LMRDA) to combat union-related corruption, and OLMS continues today to pursue this important goal through criminal and civil enforcement of the LMRDA.

The LMRDA establishes a bill of rights for union members; reporting requirements for unions, union officers, union employees, employers, and others; rules for establishing and maintaining trusteeships; standards for the election of union officers; and safeguards for protecting union funds and assets. OLMS also administers Executive Order 13201, which requires Federal contractors to notify employees of their rights concerning payment of union dues or fees.

OLMS is the front line agency responsible for enforcing the LMRDA through its criminal investigations of violations such as embezzlement, election fraud, and deprivation of union members' rights. OLMS also conducts audits, maintains a comprehensive compliance assistance program, and provides information and outreach to union officers and members to support further the goals of union democracy and fiscal responsibility.

## Summary Statistics

### Safeguarding Union Assets

As part of its effort to protect and safeguard union funds and assets, OLMS investigates possible embezzlement from unions and violations of other criminal provisions of the LMRDA. OLMS also conducts audits of local and international unions to further ensure their compliance with the LMRDA.

<b>OLMS Enforcement Statistics – Financial Integrity</b>	<b>FY 2005</b>
Criminal Cases Processed	325
Indictments	114
Convictions	97
Court-Ordered Restitution	\$23,244,979
Compliance Audits Conducted – Local Unions (CAP)	612
Compliance Audits Conducted – International Unions (I-CAP)	7

### Financial Reporting and Recordkeeping

OLMS offers extensive compliance assistance sessions for union members and officials on the financial reporting and recordkeeping obligations under the LMRDA. This year, OLMS conducted a special enforcement initiative to encourage labor union officers and employees to file Form LM-30, the Labor Organization Officer and Employee Report. This initiative featured

a grace period during which new filers who voluntarily submitted an initial report without being directed to file by OLMS would not be asked to file reports covering the same transactions for earlier years, absent extraordinary circumstances. OLMS also continued to provide extensive compliance assistance in training unions in the use of electronic filing software and the reporting requirements of the revised electronic Form LM-2, the annual financial report for the nation's largest unions.

<b>OLMS Enforcement Statistics – Reporting and Disclosure</b>	<b>FY 2005</b>
Delinquent Reports Cases Processed	2,048
Deficient Reports Cases Processed	706

### **Union Democracy**

When a union member files a timely complaint protesting a regularly scheduled election of union officers, OLMS initiates an investigation. If the investigation determines that the union has violated the requirements of the LMRDA, the union may agree to allow OLMS to supervise a new election. If the union refuses to agree to remedy the violation, OLMS may take legal action seeking a new election, if warranted.

The agency also conducts investigations to determine the validity of the imposition or continuation of trusteeships imposed by national unions on subordinate bodies. Trusteeship investigations can only be conducted upon receipt of a complaint from a member or subordinate body.

<b>OLMS Enforcement Statistics – Union Democracy</b>	<b>FY 2005</b>
Election Investigations Conducted	127
Lawsuits Filed	11
Voluntary Compliance Agreements Obtained	19
Supervised Elections	35
Trusteeship Investigations	9

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## **Program Activities**

### **Safeguarding Union Assets**

Union officers have a duty to manage the funds and property of the union solely for the benefit of the union in accordance with its constitution and bylaws. A union officer or employee who embezzles or misappropriates union funds or assets commits a federal crime punishable by a fine and/or imprisonment, and OLMS vigorously pursues investigations of these crimes. Following are some of the most significant cases brought by OLMS during FY 2005.

#### **Investigation of Longshoremen's Local Yields Multiple Indictments**

An investigation of Local 1740 of the International Longshoremen's Association and its Health Benefit Plan in San Juan, Puerto Rico, resulted in the indictment of ten individuals and three corporations on July 19, 2005. Among the officials and members indicted were Local 1740

president Jorge Aponte-Figueroa, two union members, Plan Director Ada Perez-Alfonso, Plan Sub-Director Enrique Sosa, and Plan Finance Supervisor Milagros Pagan. In addition, businessmen Angel Ramallo, Francisco Consuegra, Guillermo Rivera, and Rafael Garcia-Perez were also indicted. All individuals were arrested on July 20, 2005.

## **Safeguarding Union Assets (cont.)**

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The indictment accuses Aponte and Sosa of embezzling more than \$1.95 million from Local 1740 and accuses Aponte of under-reporting nearly \$1.5 million in dues. The indictment also alleges that Aponte, Perez-Alfonso, Pagan, Garcia-Perez, and Ramallo conspired to embezzle health plan funds in excess of \$8 million for their personal use.

### **Long Trial Nets Two More Convictions in Washington Teachers' Union Case**

On August 31, 2005, in the U.S. District Court for the District of Columbia, James Baxter, former treasurer of the Washington Teachers' Union (WTU), and Gwendolyn Hemphill, former Assistant to previously convicted president Barbara Bullock, were found guilty on all counts after a jury trial lasting nearly three months. Baxter and Hemphill were convicted of conspiracy, embezzlement, mail fraud, wire fraud, money laundering, false statements on LM reports, and false union records. They are the last of eight individuals charged and convicted of embezzling approximately \$4.6 million from the WTU. The case was the result of a joint investigation by the OLMS Washington District Office, the FBI, and the U.S. Attorney's Office for the District of Columbia.

### **Union Officer Pleads Guilty to Receiving Kickbacks**

On September 19, 2005, Lenny V. Perez, former president of the National Association of Letter Carriers (NALC), Branch 599 in Tampa, Florida, pled guilty to receiving cash kickbacks of \$384,000 in union funds in return for referring postal employees to certain medical specialists under the Workers' Compensation Program. This offense is punishable by a maximum term of up to five years in prison,

a fine of up to \$250,000, or both; up to three years probation; and a special assessment. The indictment and plea resulted from a joint investigation that involved OLMS, FBI, U. S. Postal Inspection Service, DOL-OIG, Florida Department of Law Enforcement, and the Manatee County Sheriff's Office.

### **Secretary-Treasurer Raids Union Treasury**

Martha Bautista, the former secretary-treasurer of Machinists Lodge 1528 in Modesto, California, pled guilty to embezzling more than \$9,500 in union funds and acknowledged taking more than \$165,000 from the union. Bautista was the only full-time employee of Lodge 1528, which has approximately 1,300 members engaged in the manufacturing of cans, boxes, and plastic containers. Bautista wrote 89 computer-generated checks to herself, made out in her name or to an alias, and altered information on the checks to conceal her embezzlement. In August 2005, Bautista was sentenced to 36 months probation, including 180 days of home detention. She was ordered to make restitution of \$115,259.

### **Bookkeeper Forges Officers' Signatures to Steal Union Money**

Following an OLMS investigation, Amanda Kemmer, former bookkeeper and office secretary of Bricklayers Local 3 in Des Moines, Iowa, was sentenced to 24 months in prison plus three years of supervised release after pleading guilty to embezzling \$209,000 in union funds. Kemmer used her position as the local's bookkeeper to forge officers' names on checks that were payable to herself, gave herself unauthorized salary increases, and took members' dues that she should have deposited in the local's accounts. Kemmer must also make full restitution to the union.

## **Safeguarding Union Assets (cont.)**

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### **Former Treasurer Indicted for Embezzling Union Funds**

On July 28, 2005, Donald Dixon, former treasurer and bookkeeper for Stage and Picture Operators (IATSE) Local 623 in West Palm Beach, Florida, was indicted for embezzling \$106,151 in union funds. As a union officer, Dixon was authorized to pay legitimate and authorized union expenses. Without authorization or other officers' knowledge, however, he also paid his personal expenses that were not related to union business. A plea hearing and sentencing date are pending.

### **Postal Worker Paid Personal Bills with Union Money**

Terry Gloe, former secretary-treasurer of American Postal Workers Union Local 11 in Omaha, Nebraska, was sentenced in July 2005 after pleading guilty to embezzling \$113,377 from the local's treasury. While serving as the secretary-treasurer for the labor organization, Gloe wrote numerous unauthorized checks to himself and his creditors. The court sentenced Gloe to six months in prison and three years of supervised release that includes six months of home confinement. The court also ordered Gloe to make full restitution to the union.

### **Former Liquor and Allied Workers Union Officials Convicted**

An investigation that began with the Liquor and Allied Workers Union Local 3, led to the convictions of former Local 3 vice president James M. Duff and former Local 3 business agent William Stratton. Both Duff and Stratton were employed and associated

with the Duff Family Business Enterprise, which involved five inter-related entities.

The Duff Family Business Enterprise was involved in more than \$100 million in government and private contracts it obtained through sham women- and minority-owned businesses and over \$3 million in unpaid workers' compensation insurance premiums. Duff was sentenced to 118 months in prison and 36 months of supervised release. At sentencing, Duff was ordered to make restitution of \$10,933,016 to the City of Chicago and \$1.09 million to the National Council on Compensation Insurance's Assigned Risk Pool in Illinois.

He was also ordered to forfeit \$10 million and assessed \$58,805.62 in costs. Stratton was sentenced to 70 months in prison and 36 months of supervised release. Stratton was ordered to be jointly and severally liable with Duff for restitution in the amount of \$7,370,739 to the City of Chicago and ordered to forfeit \$525,932 in salary he fraudulently received as the sham minority figurehead in one of the entities owned by the Duff Family Business Enterprise.

This OLMS investigation was conducted jointly with the Chicago offices of the FBI, IRS and DOL-OIG.

## Financial Reporting and Recordkeeping

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### **New Division of International Union Audits Exposes Violations**

The Division of International Union Audits (DIUA) completed its first year as an OLMS organization during FY 2005. The seven audits that the division conducted included three of the largest international unions with no prior LMRDA audit history, and three unions that had not been audited in more than ten years. A summary of audit findings is provided to the unions in closing letters that will be posted on the OLMS Web site. For serious deficiencies and violations that have not been corrected by the union at the time of the exit interview, DIUA conducts a follow-up review.

During the audits and follow-up reviews, DIUA staff identified a total of 92 violations of the LMRDA:

- 44 involved reporting deficiencies.
- 16 concerned inadequate recordkeeping violations.
- 25 related to the lack of internal controls safeguarding financial operations.
- 7 included fiduciary responsibility, bonding, and loans to officers and employees.

In FY 2006, DIUA plans to complete six audits, including one of a large international union with no prior audit history.

### **Form LM-30 Grace Period Successful**

The Form LM-30 filing grace period established by OLMS ended on August 15, 2005 and resulted in more than 13,000 reports being filed during FY 2005 compared to 244 reports during the previous 4 years. This temporary policy did not grant amnesty for criminal activity. The reporting requirements are designed to

disclose possible conflicts between personal interests of the official or the official's spouse or minor child and the official's duty to the union and its members.

### **Electronic Form LM-2**

OLMS maintained its program of substantial compliance assistance in training unions on how to use electronic filing software and understand the reporting requirements of the revised electronic Form LM-2. This continuing effort included the creation and updating of informational Web-based tools, the posting of e-tools, and the updating of Web pages related to the revised electronic LM-2.

### **Compliance Assistance**

OLMS continued to provide comprehensive compliance assistance to labor organizations. During FY 2005, OLMS achieved the following goals:

- Created and updated informational Web-based tools regarding E.O. 13201, court actions, compliance assistance events, new regulatory initiatives, and user feedback.
- Launched a new and improved Internet Public Disclosure Room.
- Responded to roughly 150 public e-mails per month.
- Conducted approximately 100 CA workshops and seminars nationwide.
- Posted a new Web page to help small unions comply with the LMRDA.
- Posted e-tools for LM-30 reporting.
- Translated more publications into Spanish.
- Posted Web-based user guides for the fillable pdf versions of the LM-3 and LM-4.

## Union Democracy

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The LMRDA establishes democratic standards for conducting union officer elections, such as the frequency and method of election, the right of members in good standing to be candidates, rights of candidates, and voting rights of members. An investigation will be conducted if OLMS receives a timely filed complaint from a union member alleging that the LMRDA has been violated. If the investigation determines that the election provisions have been violated, OLMS may negotiate a voluntary agreement to have the union rerun the election under OLMS supervision or OLMS may take legal action seeking a new election. Following are highlights of some of the most significant OLMS election cases during FY 2005.

### **Department Sues to Supervise New Election in Chicago Teamsters Local**

An extensive investigation of the December 4, 2004 election of officers in the International Brotherhood of Teamsters Local 743 revealed numerous violations of the LMRDA. The most serious violations occurred when the union denied members in good standing the right to vote by mailing members' ballots to incorrect addresses. These ballots were marked by individuals other than the designated recipients and were subsequently returned and counted in the election tally. The complaint, filed in Federal district court, seeks a court order directing that OLMS supervise a new election to correct these serious violations.

### **OLMS Suit Seeks New Election in Michigan's Largest Local**

OLMS is seeking to void certain results of the September 2004 election of officers of United Food and Commercial Workers Local 951. On September 19, 2005, the U.S. Attorney's Office in Grand Rapids, Michigan, filed suit in Federal district court on behalf of the U.S. Department of Labor seeking a court order directing Local 951 to hold a new election for the offices of president and three regional vice-presidents under the supervision of OLMS. The complaint alleges numerous violations of the LMRDA, including union officials distributing and collecting ballots at

worksites; use of union and employer resources to promote the incumbent slate; members voting in the presence of union officials and other members; and discrimination against certain candidates with respect to the use of a union membership list. In addition, the union failed to provide adequate safeguards for the distribution of replacement ballots, denied eligible members the right to vote, failed to account for all unused ballots, and failed to preserve all election records for the period required by the LMRDA. UFCW Local 951 is the largest local union in Michigan with over 33,000 members.

### **OLMS Supervises Election of International Union**

In September 2005, OLMS completed a supervised election for the Brotherhood of Maintenance of Way Division, International Brotherhood of Teamsters. The Department and the BMWE, which at the time had not yet merged into the Teamsters, reached a settlement agreement on September 1, 2004 to overturn the union's election of president and secretary-treasurer, held in 2002. The supervised election involved the certification of approximately 600 delegates of which nearly 100 were elected under direct OLMS supervision. The 600 delegates voted by mail on behalf of the 30,000 members of the union.

## **Union Democracy (cont.)**

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### **Statewide AFSCME Council Election Rerun**

OLMS filed suit against the 12,000 member American Federation of State, County, and Municipal Employees (AFSCME) Council 61 after an investigation of its July 26, 2003 election revealed that many of the Council's 106 locals had failed to provide proper nomination and election notices to members. The suit was settled in November 2004 with the signing of a consent decree, under which the union agreed to OLMS supervision of the Council's next officer election. Between February and July 2005, OLMS investigators supervised the mailing of nomination and election notices and went on site throughout the State of Iowa to supervise the nomination meetings in 112 locals and the election of delegates in 20 AFSCME locals. Finally, OLMS supervised the nomination and election of the Council's 25 officer positions at its July 2005 convention.

### **OLMS Supervises New Election for Nationwide Machinists District Lodge**

A new election for Machinists District Lodge 143, a nationwide union headquartered in St. Paul, Minnesota, was supervised by OLMS after investigation of a complaint found LMRDA violations. The violations included the failure to conduct the election by secret ballot, failure to protect the secrecy of all ballots cast, and the failure to provide proper notice of election. This was the second consecutive

Machinists District Lodge 143 election in which the notice of election was inadequate and in which several constituent local lodges failed to conduct an election. A voluntary settlement between OLMS and the District Lodge provided for OLMS to supervise a new election to correct the violations found. District Lodge 143 has members in more than 50 local lodges throughout the United States.

### **Florida District Council Election Supervised**

The nomination and election of delegates in 81 local union affiliates of AFSCME, Florida Council 79, was supervised by OLMS in February and March 2005. Council 79 represents about 18,000 members throughout the state of Florida. On April 9, 2005, OLMS supervised the nomination and election of the three primary Council officers at its convention in Altamonte Springs, Florida. Eighty delegates representing 55 affiliates cast 15,169 votes in the election. The agreement to have OLMS supervise the nomination and election was reached after an OLMS investigation of AFSCME's October 19, 2004 election determined delegates from a number of affiliates had not been elected by the membership, by secret ballot, or after proper notification of the membership.

## Regulatory Activities

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### **Form LM-30 Notice of Proposed Rulemaking Issued**

On August 29, 2005, OLMS published a Notice of Proposed Rulemaking seeking public comment on its plan to revise the Form LM-30 and its instructions. The broad purpose of Form LM-30 is to disclose possible conflicts between the personal financial interests of a union officer or employee and his or her duty to the union and its members. Form LM-30 has remained essentially unchanged in the more than 40 years since 1963, when the Department of Labor first approved it. Over the past several years, the Department has engaged in a process to improve the administration of the LMRDA, including the design and usefulness of the financial reports required by the Act. In the course of this process, a number of problems were identified with Form LM-30. The proposed rule addresses those problems. Comments must be received on or before January 26, 2006.

### **Fiduciary Request for Information Published**

OLMS also published a Request for Information on August 29, 2005 to assist the Department in determining whether to issue guidelines concerning the fiduciary obligations of union officers, agents, shop stewards and other representatives under section 501(a) of the LMRDA.

The Department also seeks comments on the nature and scope of such fiduciary obligations. Section 501 states in general terms that officers, agents, shop stewards, and other representatives of a labor organization occupy "positions of trust" within their labor organizations and must act in the best interests of their union. Comments must be received on or before January 26, 2006.

### **OLMS Gets Public Input on Union Rights Proposal**

OLMS received 765 comments on its Notice of Proposed Rulemaking seeking public reaction to its plan that would require federal sector unions to inform their members about their democratic rights as union members. The comments are currently being reviewed and a Final Rule prepared.

### **OLMS Reviewing Comments on Categorizing Labor Organizations**

On November 3, 2004, OLMS published a Request for Information to help evaluate the agency's methods for determining when a labor organization constitutes a local, intermediate, or national or international labor organization. Title IV of the LMRDA calls for different election intervals and methods, depending on the type of labor union holding the election. OLMS is currently reviewing the 24 comments received.