OLMS Interpretative Manual

U.S. Department of Labor - Office of Labor-Management Standards

December 2016 (Revisions made in December 2018 and December 2019)

Introduction

This Manual has been prepared for the use of employees of the Office of Labor-Management Standards (OLMS), whose responsibilities relate to administration of the Labor-Management Reporting and Disclosure Act of 1959. It is also made available to the public via the OLMS website.

Each Manual item is keyed to a specific subject of the law. Appropriate court decisions and other administrative materials which affect or relate to provisions of the Act are also keyed into the codification scheme.

The Manual may be used by authorized office personnel as a basis for dealing with situations similar to those in the entries. Care should be taken, however, in attempting to apply an interpretation to a given fact situation, to assure that the facts justify such application. In answering inquiries, orally or (where authorized) in writing, office personnel should follow the language used in the Manual as closely as possible. Doubtful situations should be referred, through appropriate channels, to the Division of Interpretations and Standards.

Please note that, in the December 2016 updates, OLMS deleted Manual sections 214.940, 241.710, 253.323, 285.201, 515.110, 552.250, 552.300, and 552.400, as obsolete, while it has added sections 030.655, 253.960, and 515.301. Also, OLMS has reissued Manual section 310 entries, and 510.005, which had been removed from prior editions. Additionally, please see the below list of revised Manual sections, including those in section 310 and 510.005.

Technical Revisions: 030.205, 030.230, 030.305, 030.403, 030.410, 030.430, 030.505, 030.605, 030.622, 030.627, 030.650, 030.690, 040.901, 041.301, 041.305, 041.420, 110.600, 120.200, 200.550, 200.650, 204.005, 205.120, 205.201, 205.601, 206.705, 206.802, 208.001, 208.002, 208.100, 211.001, 212.005, 212.200, 213.200, 214.001, 214.102, 214.210, 214.215, 214.310, 214.320, 214.505, 214.520, 214.571-77, 214.580, 214.585, 214.590-93, 214.605, 214.610, 214.705, 214.720, 214.810, 214.816, 214.820, 214.840, 214.850, 214.901, 214.920, 214.930, 215.003, 215.005, 215.400, 215.500, 214.600, 214.700, 219.005, 219.010, 220.001, 240.100, 243.400, 243.511, 246.500, 253.007, 253.061, 253.082, 253.305, 253.320, 253.322, 253.350, 253.360, 253.370, 255.100, 255.110, 255.505, 256.005, 257.005, 257.200, 260.002, 263.005, 264.100, 269.001, 270.003, 270.005, 272.500, 274.005, 274.100, 275.006, 281.002, 282.005, 285.100, 290.001, 290.005, 290.100, 305.200, 306.200, 310.200, 313.007, 314.005, 321.100, 350.006, 352.100, 352.105, 352.200, 470.300, 471.005, 471.100, 471.200, 471.201, 473.102, 473.200, 473.300, 473.310, 474.100, 474.101, 474.102, 474.530, 475.005, 475.007, 475.300, 476.001, 476.110, 476.200, 476.210, 476.400, 477.005, 478.100, 490.005, 490.100, 492.005, 510,002, 512.810, 514.005, 517.005, 518.100, Special Note – Bonding, 531.140, 531.435, 531.505, 531.615, 531.640,

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Other Revisions: 020.005, 030.210, 030.220, 030.652, 041.330, 120.300, 208.005, 210.005, 213.100, 214.115, 214.220, 214.430, 214.560, 214.730, 214.806, 215.200, 241.005, 241.400, 241.700, 244.120, 245.200, 246.700, 248.100, 250.010, 253.020, 253.050, 253.70, 253.71, 253.80, 253.91, 253.710, 255.120, 260.300, 269.510, 272.300, 275.005, 276.005, 280.003, 285.200, 285.400, 305.500, 307.005, 310.005, 310.300, 315.005, 315.100, 354.100, 355.005, 471.210, 472.200, 473.105, 474.202, 474.520, 475.400, 476.005, 476.100, 476.500, 512.800, 515.100, 515.201, 517.100, 517.200, 518.005, 531.405, 531.423, 532.400, 534.002, 536.005, 536.100, 536.300, 537.005, 550.001, 550.005, 550.200, 550.400, 550.700, 552.001, 552.005, 552.205, 552.208, 552.220, 552.500, 552.600, 553.305, 553.400, 580.002, 580.150, 580.200, 580.710, 601.005, 601.100, 605.100, 610.200, 610.305, 610.330, 610.350, 610.365, and 630.002.

These revisions, whether technical or non-technical, do not articulate or establish new policy. Many of the changes are to add and clarify legal citations and to update the manual to be consistent with more recent regulatory and other actions.

Additionally, in December 2018, OLMS deleted Manual Section 493.055.

Finally, in December 2019, OLMS made technical revisions to 517.200, 531.150, 550.001, 552.600, and 675.001, as well as other revisions to 536.100 and 541.100.

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ENFORCEMENT

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USE OF THE MANUAL

To facilitate research, the material in this Manual has been arranged under general subjects, e.g., the 100s related to Members' Rights, the 200s relate to Reporting, the 300s, to Trusteeship, 400s, to Elections, etc.

While the hundreds generally correspond to the contents of the Titles of the Act, the breakdown within the hundreds does not correspond to the section numbering of the Act. (This is because the same subject is often treated under different Titles of the Act. For example, Title II covers reporting, but section 301 covers Trusteeship Reports. In this Manual all information relating to reporting is contained in the 200s Reporting series.)

Within these "hundreds" series (100, 200, 300, etc.) the numbers are broken down to accommodate general topics and further broken down to indicate subtopics.

For example, the 400 series deals with Elections and Removal of Officers.

The general topic of Elections and Removal is broken down as follows:

410 - Organizations to Which Election Provisions Apply

420 - Nominations – In General

430 - Campaigning

440 - The Election Itself – In General

460 - Publications of Results and Preservation of Records

470 - Protesting Elections – In General

490 - Removal of Officers – In General

The particular topic 430 "Campaigning" is subdivided as follows:

431 - Distribution of Campaign Literature

432 - Inspection of Membership Lists

433 - Right to Support Candidate

434 - Unions May Not Support Candidates

435 - Impartial Publication of Election Information

436 -

(Numbers Reserved)

437 -

438 - Employer Promotion of Union Candidacy

Under these subtopics the material is arranged in the following order:

.001 Section or sections of the Act involved

.002 Section or sections of Regulations involved

.005, .007, .009, .011, etc. Explanatory materials.

It will be observed that a decimal numbering system indicates each particular entry in the Manual. Thus, under the subtopic 433, Right to Support Candidate, 433.001 is the pertinent section of the LMRDA (second part of the first sentence of section 401(e)); there is no 433.002 because presently the Regulations contain no statement on this subtopic; and 433.005, 433.090,

433.091 are three entries on this subtopic. You will note that there are gaps in the decimal numbering, e.g., there are presently no entries numbered 433.002, 433.003, 433.004, 433.006, 433.080, 433.100, etc.; this is to facilitate the placement of new entries in this Manual in the future.

A comprehensive topical index is included in the Manual.

PURPOSES OF THE ACT

020.001 LMRDA, SECTION 2

Sec. 2. (a) The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.

(b) 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.

(c) The Congress, therefore, further finds and declares that the enactment of this Act is necessary to eliminate or prevent improper practices on the part of labor organizations, employees, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended, and the Railway Labor Act, as amended, and have the tendency or necessary effect of burdening or obstructing commerce by (1) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (2) occurring in the current of commerce; (3) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods into or from the channels of commerce, or the prices of such materials or goods in commerce; or (4) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing into or from the channels of commerce.

020.005 CONGRESSIONAL INTENT

The purposes of the Act are, among other things, to provide for the reporting and disclosure of certain financial transactions and administrative practices of labor organizations, employers, and labor relations consultants; to prevent abuses in these areas and in the administration of trusteeships by labor organizations; and to provide standards and procedures with respect to the election and removal of officers of labor organizations.

The terms used in the Act are, generally speaking, defined broadly so as to provide the maximum coverage, although unions composed exclusively of public sector employees are not within the scope of the definitions.

> NOTE: Most labor organizations which represent employees of the U.S. Postal Service are covered by the LMRDA pursuant to the Postal Reorganization Act of 1970, at 39 U.S.C. 1209. Most federal sector labor organizations in the executive branch are covered under the similar requirements of the standards of conduct provisions of the Civil Service Reform Act of 1978, 5 U.S.C. 7120(a) - (d), and the Foreign Service Act of 1980, 22 U.S.C. 4117(a) - (d). Labor organizations in the legislative branch that are covered by the Congressional Accountability Act of 1995 are also subject to the standards of conduct requirements. The regulations implementing the standards of conduct are contained in 29 CFR Parts 457 - 459.

(Revised: Dec. 2016)

020.100 EFFECT ON RAILWAY LABOR ACT

Administrative responsibility for enforcement of the Railway Labor Act is not vested in the Department of Labor. Nothing in the Labor-Management Reporting and Disclosure Act has altered the procedures to be followed in processing grievances under the Railway Labor Act. Congress in its declaration of findings, purposes and policy has declared, in section 2(c) of the LMRDA, in favor of a policy of eliminating or preventing improper practices which distort and defeat the policies of certain federal labor laws, including the Railway Labor Act. However, the LMRDA does not affect the bargaining or employment relationships between carriers and employees in the railroad industry. Consequently, the Secretary does not have authority under section 2(c) of the Act to intervene in matters relating to the Railway Labor Act.

DEFINITIONS

DEFINITIONS RELATING TO JURISDICTION:

COMMERCE

030.100 JURISDICTION

Jurisdiction under the Labor-Management Reporting and Disclosure Act of 1959 is established on the basis of the determination that employers and labor organizations are engaged in activities affecting interstate commerce. "Employer" and "labor organization," and other terms related to the employment relationship, as used in the Act, are, generally speaking, defined broadly so as to provide the maximum coverage. To establish the fact of jurisdiction under the Act, it is necessary to determine whether the employer, or labor organization, comes within the definitions of the Act.

030.101 LMRDA, SECTION 3(a)

"COMMERCE" means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

030.102 See 29 CFR 401.1.

DEFINITIONS RELATING TO JURISDICTION: INDUSTRY AFFECTING COMMERCE

030.201 LMRDA, SECTION 3(c)

"INDUSTRY AFFECTING COMMERCE" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

030.202 See 29 CFR 401.3

030.205 COMMERCE OF SMALL VOLUME

Since there is no expression of a Congressional intent to exclude commerce of small volume, it is felt that Congress by the use of the term "affecting commerce" in the Labor-Management Reporting and Disclosure Act has intended to regulate with reference to employers who affect commerce in any degree. National Labor Relations Board v. Fainblatt, 306 U.S. 601 (1939). (See also National Labor Relations Board v. Ozark Dam Constructors, 190 F. 2d 222 (8th Cir. 1951); NLRB v. Tri-State Casualty Insurance Company, 188 F. 2d 50 (10th Cir. 1951); Wickard v. Filburn, 317 U.S. 111 (1942)).

(Technical Revisions: Dec. 2016)

030.210 INSTITUTION OF HIGHER LEARNING

A local composed of custodial workers employed by a nonprofit, educational institution alleges that it is not a labor organization within the meaning of section 3(i) of the LMRDA because it does not bargain with an employer who is engaged in an "industry affecting commerce" as defined in section 3(c). The local bases its position on the fact that the NLRB declined to assert its jurisdiction over such an institution in the case of The Trustees of Columbia University City of New York and Community and Social Agency Employees, Local 1707, 97 NLRB No. 72.

The fact that a particular industry is excluded from coverage because of a statutory exemption or a Board policy under the LMRA does not prevent coverage under the LMRDA. All labor organizations of any type (except state and local central bodies) which bargain with a private sector employer engaged in an industry affecting commerce were intended to be covered by the LMRDA. See Manual Entries 030.605 (Scope of LMRDA Jurisdiction) and 030.606 (Use of LMRA Precedents).

Therefore, a labor organization which negotiates a collective bargaining agreement for its members with an "institution of higher learning" which is not an entity of the Federal Government or any of the State Governments is considered, insofar as the LMRDA is concerned, to be

negotiating with an employer in an "industry affecting commerce." Such an organization comes within the definition of a labor organization in section 3(i) of LMRDA and must file the appropriate reports.

(Revised: Dec. 2016)

030.220 LABOR-MANAGEMENT COMMITTEE

A labor-management committee, which is comprised partially of employers and labor representatives, is an “employer” in an “industry affecting commerce” within the meaning of the Act, at least with respect to its own employees. The fact that it does not produce any goods or put its capital at risk does not preclude its being "engaged in an industry affecting commerce." To meet this definition, it is not necessary that an association be "engaged in commerce," i.e., that it participate in transactions in commerce. It is only necessary that it be engaged in an industry affecting commerce. There is ample precedent for regarding an association of employers as engaged in an industry affecting commerce on the basis that its members are so engaged. Note particularly cases arising under the Labor Management Relations Act: Katz v. National Labor Relations Board, 196 F. 2d 411(9th Cir. 1952); South Texas Chapter, Associated General Contractors, 107 NLRB 965 (1954)1954 WL 12838 (Jan. 28, 1954); and Santa Clara Pharmaceutical Association, 114 NLRB 256, WL 12926 (Oct. 7, 1955).

(Revised: Dec. 2016)

030.230 INTRA-STATE FARMING

A farmer whose produce is shipped to a cannery from which it is exported in interstate commerce may be considered to be engaged in an activity in which a labor dispute would hinder or obstruct commerce. Even if his produce did not cross state lines he could be affecting commerce.

Concerning the scope of a farmer's activities, the Supreme Court has repeatedly held that the term "affecting commerce" extends to the protection of interstate commerce from hindrance or obstruction due to activities which are wholly intra-state or local in character. In the case of National Labor Relations Board v. Fainblatt, 306 U.S. 601 (1939), the Court stated, in pertinent part, the following:

> “It has been settled by the repeated decisions of this court that an employer may be subject to the National Labor Relations Act though not himself engaged in commerce. The end sought in the enactment of the statute was the prevention of the disturbance to interstate commerce consequent upon strikes and labor disputes induced or likely to be induced because of unfair labor practices named in the Act. That these consequences may ensue from strikes of the employees of manufacturers who are not engaged in interstate commerce where the cessation of manufacture necessarily results in the cessation of the movement of the manufactured product in interstate commerce has been repeatedly pointed out by this court.”

(Technical Revisions: Dec. 2016)

030.240 RACE TRACK OPERATIONS

Since the operation of a horse race track involves interstate activities, such as the transportation of horses, personnel, equipment and supplies, the transmission of radio and television broadcasts from the track, the advertising in publications of wide geographical distribution, all of which involve the crossing of State lines, employers who operate race tracks are deemed to be engaged in an "industry affecting commerce" as defined in LMRDA.

Therefore, a labor organization representing employees connected with the operation of horse race tracks would be deemed to be engaged in an "industry affecting commerce." Such an organization comes within the definition of a labor organization in section 3(i) of LMRDA and must file the reports required by section 201 thereof.

DEFINITIONS RELATING TO JURISDICTION:

LABOR ORGANIZATION ENGAGED IN AN INDUSTRY AFFECTING COMMERCE

030.301 LMRDA, SECTION 3(j)

A labor organization shall be deemed to be engaged in an industry affecting commerce if it –-

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.

030.302 See 29 CFR 401.10.

030.305 DEFINITION CREATES REBUTTABLE PRESUMPTION THAT UNION IS ENGAGED IN "INDUSTRY AFFECTING COMMERCE" IN A CRIMINAL PROSECUTION AGAINST A UNION OFFICIAL

Presuming the fact that a labor organization is certified as the bargaining representative for employees in an industry affecting interstate commerce, it shall also be deemed engaged in such industry; however, the LMRDA does not preclude the defendant charged with violation of the Act from showing that the labor organization of which he was an officer was not engaged in an industry affecting interstate commerce.
Lawson v. United States, 300 F. 2d 252 (10th Cir. 1962), 49 LRRM 2557.

(Technical Revisions: Dec. 2016)

030.310 BARBERS' LOCAL

Where a barber's local, although it does not negotiate master craft collective bargaining agreements, negotiates individual agreements with independent operators of barbershops within its jurisdiction and is chartered by the Journeymen Barbers International Union of America, it is deemed engaged in an industry affecting commerce within section 3(j)(4) of the Act and comes within the section 3(i) definition of a labor organization.

DEFINITIONS RELATING TO JURISDICTION:
EMPLOYER

030.401 LMRDA, SECTION 3(e)

"EMPLOYER" means any employer or any group or association of employers engaged in an industry affecting commerce (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

030.402 See 29 CFR 401.5

*030.403 U.S. POSTAL SERVICE

Section 1209 of the Postal Reorganization Act (39 U.S.C. 1209) applies the provisions of the Labor-Management Reporting and Disclosure Act to Postal Service employees' "labor organizations that have or are seeking to attain recognition . . . and to such organizations' officers, agents, shop stewards, other representatives, and members to the extent to which such provisions would be applicable if the Postal Service were an employer" under section 3(e) of the Act.
See 29 CFR 451.3(a)(4).

(Technical Revisions: Dec. 2016)

030.405 COUNTIES AND MUNICIPAL GOVERNMENTS

Section 3(e) of the LMRDA, which defines the meaning of "employer" under the Act, expressly excludes any "political subdivision" of a State. The term “political subdivision” includes, among others, counties and municipal governments, so that such entities are not "employers" under the LMRDA.
See 29 CFR 451.3(a)(4).

030.410 CORPORATE OFFICERS

The definition of the term "employer" in section 3(e) includes "any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee." The clear language of section 3(e) thus includes managers who are responsible for the employer-employee

relationship on behalf of the corporation. See National Labor Relations Board v. New Madrid Manufacturing Co., 215 F. 2d. 908, 34 LRRM 2844 (8th Cir. 1954), which involves similar language under the Labor Management Relations Act.

(Technical Revisions: Dec. 2016)

*030.420 GOVERNMENT-OWNED CORPORATIONS

Section 3(e) of the Act does not specifically exclude from its definition of "employer" a corporation owned by a State or a political subdivision of a State. Excluded from the meaning of "employer" under the Act are the United States, any State, any political subdivision of a State, and any corporation wholly owned by the Government of the United States. Thus, a corporation owned by a State or political subdivision is an "employer" under the Act unless the corporation is itself either a political subdivision of a State or an integral part of the State.

See also 29 CFR 452.12

*030.425 POLITICAL SUBDIVISION

Section 3(e) of the LMRDA specifically excludes from its definition of "employer" any political subdivision of a State. Whether a particular entity is a "political subdivision" of a State depends upon the facts of each case. Included among the factors that may be considered are the following: (1) whether the State or other public authority exercises any regulatory control over the entity; (2) whether the State or other political authority participates in the selection of officers of the entity; (3) whether the operations of the entity are conducted independently; (4) whether the operations are financed by the State or other public authority; (5) whether the entity was created by a legislative act; (6) whether the employees of the entity are civil servants subject to regulation by or wage scales of the State or other public authority; and (7) whether the entity is exempt from Federal taxation.

030.430 HOSPITALS AND CEMETERIES

Hospitals, whether or not owned by religious groups, may be employers within the meaning of the LMRDA. Their status may depend in part on whether they secured medical supplies from outside the State in which they are located and whether some of their patients are residents of other States.

Likewise, depending upon the specific facts involved, a cemetery association may be an employer within the meaning of the Act. See National Labor Relations Board v. Forest Lawn Memorial Park Association, 206 F. 2d 569 (9th Cir. 1953, 32 LRRM 2611 cert. denied, 347 U.S. 915, 33 LRRM 2589 (1954).

(Technical Revisions: Dec. 2016)

030.440 ATTORNEY

An attorney would be an employer under section 3(e) of the LMRDA if in connection with his practice (1) he engages in interstate commerce or renders services to clients engaged in interstate commerce or in industries affecting interstate commerce (e.g., certain labor unions), or if he makes frequent and continued use of the instrumentalities of commerce (e.g., telephone, telegram and mail messages across State lines), and (2) he has any employees for whom he makes withholdings under Internal Revenue laws or contributions under the Federal Insurance

Contributions Act.

030.450 FRANCHISED AGENTS OF AGVA

Agents franchised by the American Guild of Variety Artists (AGVA) who act only as representatives of certain AGVA members in dealing with employers in the entertainment field are not required by section 203 of the LMRDA to report payments made to AGVA for the franchise. This is because a franchised agent, as such, is not an "employer" within the meaning of section 3(e) of the Act. In representing AGVA members, a franchised agent's interest is opposed to that of the employer, since his income is derived from commissions on the earnings of the AGVA members.

However, a franchised agent who acts not only as a representative of AGVA members but also as a producer of package shows, etc. is an "employer" and therefore is required by section 203(a)(1) to report franchise fee payments made to AGVA. Such franchise fees do not appear to come within the exceptions in section 203(a)(1). Although the franchise fees of the franchised agents who also function as producers are reportable, payments by franchised agents as producers into the AGVA welfare trust fund or the AGVA sick and relief fund appear to come within an exception of section 203(a)(1) of the LMRDA. Such payments appear to come within section 302(c)(5) of the Labor Management Relations Act cited by reference as an exception in section 203(a)(1).

In this connection, the question has arisen as to whether a franchised agent is subject to the reporting requirements of section 202 of the LMRDA. Although the franchised agent may be an "agent . . . or other representative" of AGVA within the meaning of section 3(g), section 202 refers only to "officers" and "employees" of labor organizations.

The franchised agent is bound by the terms of the union's standard form contract for the protection and benefit of the union members who are the agent's clients and is an independent contractor rather than an "officer" or "employee" of the union.

DEFINITIONS RELATING TO JURISDICTION:

EMPLOYEE

030.501 LMRDA, SECTION 3(f)

"EMPLOYEE" means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.

030.502 See 29 CFR 401.6.

030.505 PORT PILOTS ASSOCIATION

An association of port pilots, established by the State legislature and chartered by an international labor organization, is not a labor organization for purposes of the LMRDA under the conditions indicated below.

None of the member companies of the steamship association, the putative employer, has any control regarding the selection, remuneration, or supervision of the pilots, or any control whatsoever over the pilots. The duties and responsibilities of the pilots are defined in the State

statute which regulates grievances, labor disputes, wages, rates of pay, hours, and other conditions of employment. Any disciplinary action against the pilots must be taken in accordance with statutory procedure which provides that the ultimate action must be taken by the State Governor. Neither a withholding tax nor social security tax is paid by the steamship association or its member companies on the pilots. The pilots are considered independent businessmen under Internal Revenue laws and pay their own estimated income and self-employment taxes. The statute establishing the pilots' association allows it to make its own membership rules, subject to regulations of the United States Coast Guard, applicable State statutes, and the Board of Port Commissioners. Because of the exclusive right awarded to the pilots by the statute to pilot vessels between two specific points, the U.S. Supreme Court has deemed the pilots "state officers" whose work is controlled by the State.

There is no evidence that the pilots' association exists for the purpose, in whole or in part, "of dealing with employers concerning grievances," etc. Since the statute so thoroughly regulates the duties and responsibilities of the pilots, there is little or no contact between the pilots' association and the shippers, who are under a statutory duty to pay the fees which are established in the statute.

The above conclusion applies so long as the pilots' association does not negotiate agreements with shippers calling for services outside the pilots' statutory duties. If the pilots' association does so negotiate, which is permitted under amendments to the statute, the question of whether the pilots' association is a labor organization, for purposes of the LMRDA, would depend upon whether the pilots could be considered "employees," rather than "independent contractors," when engaged in the performance of special services pursuant to such agreements with shippers. Significant to whether an individual is an independent contractor is the degree of control exercised by the person hiring the contractors, i.e. whether he has the right to control the work while it is in progress as distinguished from determining the end product, whether the contractor furnishes materials or equipment, and whether the contractor performs a specified service for a specified fee.

(Technical Revisions: Dec. 2016)

030.510 RETIREES NOT EMPLOYEES

A local all of whose members are retirees and which continues in existence for the sole purpose of receiving a pension from the union is not a labor organization within the meaning of the Act since these members are not employees within the meaning of section 3(f) and the group does not exist for the purpose, in whole or in part, of dealing with employers.

*030.520 EMPLOYEES WHOM UNION DOES NOT REPRESENT

A union of Federal, State, or municipal employees which is not a labor organization as defined in the Act will not lose its exempt status if its membership includes employees of nonexempt employers, provided that the union does not represent these members in collective bargaining, grievances, etc. For example, if retired members of a government employees' union retain their membership for welfare, pension, and social reasons while taking employment with employers who are not exempt from the Act, the union will not become subject to the Act since it does not represent the retired employees in their new employment relationship.

Similarly, a union of public employees which admits employees of a private, charitable corporation, such as a hospital, for the sole purpose of enabling them to participate in insurance

and other benefit programs, will retain its exempt status because it does not exist for the purpose of dealing with (private) “employers.”

DEFINITIONS RELATING TO JURISDICTION:

LABOR ORGANIZATION

030.601 LMRDA, SECTION 3(i)

"LABOR ORGANIZATION" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

030.602 SEE 29 CFR 401.9

030.6021 PARTICIPATING EMPLOYEES

The "participating employees" referred to in section 3(i) of the Act need not necessarily be the employees of the employer with whom the labor organization deals so long as they fall within the broad definition of "employee" in section 3(f) of the Act.
See 29 CFR 451.3(a)(1).

*030.6022 LABOR ORGANIZATIONS OF POSTAL SERVICE EMPLOYEES

Labor organizations composed of employees of the U.S. Postal Service are generally subject to the LMRDA pursuant to Section 1209 of the Postal Reorganization Act.

*030.603 SEPARATE EXISTENCE

To be considered a labor organization under the Act an entity must be a separate organization having an organic existence or structure of its own, in addition to having the other characteristics of a labor organization set forth in sections 3(i) and (j). It may not be a mere administrative arm or an integral, undifferentiated part of another labor organization. Various factors are considered in determining whether an entity has a separate existence. It is not feasible to prescribe a precise formula. An analysis must be made of all the facts concerning the structure and function of a particular entity and a determination made on the evidence as a whole. Factors to be considered include: whether the existence of the entity is recognized by means of a charter, reference in the parent body's constitution, or some other manner; whether it has its own constitution and bylaws or other governing rules; whether it has a distinct and identifiable membership; whether it may accept or reject application for membership; whether it has its own officers; whether it holds meetings as a unit with some regularity or frequency; whether it has assets of its own; whether it may expend funds allocated to it or raised by it; whether it may assess and collect dues, fees, or assessments; whether it may discipline its members; whether it is represented as a unit at conventions or meetings of a parent or other body; and whether it engages in collective bargaining, grievance handling, or any business arrangements.

030.605 SCOPE OF LMRDA JURISDICTION

An organization that is not a "labor organization" under the Labor Management Relations Act (LMRA) may nonetheless be a "labor organization" under the LMRDA. For example, in Wirtz v. Union Azucarera, 52 LRRM 2213 (D.P.R. 1962), the court did not deny the contention of the union of agricultural workers that it was not a labor organization under the LMRA but held that the union was a labor organization under the LMRDA. The LMRA does not cover organizations of agricultural workers.

(Technical Revisions: Dec. 2016)

030.606 USE OF LMRA PRECEDENTS

Although precedents regarding the definition of a labor organization under the LMRA will be persuasive in interpreting the definition of a labor organization under the LMRDA, they cannot be binding, because (1) terms "employer" and "employee" are more broadly described in LMRDA; (2) LMRDA includes certain intermediate bodies not within NLRA: and (3) the two Acts emphasize different goals.

030.610 ACTUAL DEALING WITH EMPLOYERS NOT ESSENTIAL

The language of section 3(i) makes it clear that an organization in which employees participate need not actually deal with employers; only existence for the purpose, in whole or in part, of dealing with employers concerning any of the subjects referred to in the definition is necessary in order to meet this requirement. Prima facie evidence of such a purpose may be found by reference to the organization's constitution, bylaws, charter or resolutions.

For example, a State Nurses Association states in its bylaws that one of its purposes is "To promote and protect the economic and general welfare of nurses" and has an Economic Security Program authorizing the Association to improve the employment conditions of nurses "by using all appropriate instruments, including collective bargaining. . . ." Such an Association may be said to exist at least in part for the purpose of dealing with employers as a representative of employees regardless of whether or not the Association actually negotiates directly with employers at the present time.

030.611 PURPOSE NEED NOT BE TO DEAL DIRECTLY

The phrase "exists for the purpose . . . of dealing with employers" in section 3(i) does not require that the purpose of the organization be to deal with employers directly. It is sufficient that the organization exists for the purpose of dealing with employers indirectly through the organization's member organizations. Thus, an organization whose function is to coordinate the activities of its member bodies in dealing with employers "exists for the purpose. . . of dealing with employers" within the meaning of section 3(i).

030.612 CONTRACTS WITH EMPLOYERS UNNECESSARY

If a labor organization meets the definition contained in section 3(i) of the Act, existing "for the purpose of" dealing with employers, the fact that it does not now have contracts with any employers does not place it outside the scope of the Act.

030.620 INFORMAL ORGANIZATION

The language of section 3(j) of the Act will be construed broadly to include all labor organizations of any kind other than those clearly shown to be outside the scope of the Act. The language is deemed sufficiently broad to encompass any labor organization irrespective of size or formal attributes. For example, employee committees which regularly meet with management to discuss problems of mutual interest and handle grievances are "labor organizations" even though they have no formal organizational structure.
See 29 CFR 451.2, 451.3

030.622 INFORMAL GROUPS REPRESENTING EMPLOYEES

The courts have held in a number of cases under the Labor Management Relations Act that no formal organization is required for a group to be defined as a "labor organization" under the law, and that loosely formed employee committees, appointed by employers to present grievances to the employers, and neither having bylaws or officers nor collecting dues, are "labor organizations" under the Act (National Labor Relations Board v. Cabot Carbon Co., 360 U.S. 203, 44 LRRM 2204 (1959); Pacemaker Corp. v. National Labor Relations Board, 260 F.2d 880, 43 LRRM 2120 (7th Cir. 1958).

(Technical Revisions: Dec. 2016)

030.623 SELECTION OF INDIVIDUAL TO REPRESENT EMPLOYEES

Selection or designation of an individual as a bargaining representative of employees is evidence that a "labor organization" exists within the meaning of section 3(i) of the LMRDA. The labor organization consists of the representative and the employees who designate him.

030.624 TEMPORARY CONFERENCE BOARD

An essential characteristic of a labor organization is that it is a separate organization rather than merely a department or an instrument of a labor organization. Consequently, where certain conference boards of a national union are not separate organizations but are arms of the national used in its collective bargaining activities, they are not labor organizations for purposes of the Act. Characteristically, such conference boards have no constitutions, no fixed officers, no office or mailing address, no administrative functions, do not sign as parties to contracts, and have no continuity of existence but are formed from time to time as required.

*030.625 JOINT EMPLOYER-UNION COMMITTEE

A grievance committee created by a collective bargaining agreement in which both union and employer representatives participate and which exists solely for the purpose of resolving grievances as set forth in the collective bargaining agreement is not a labor organization within the meaning of the LMRDA.

030.626 ANTI-UNION COMMITTEE

A Committee of Employees established only for the purpose of defeating a union organizing drive, which was not intended to act as a union, which did not bargain with the employer or entertain grievances from members, and which disbanded as soon as the representation election was completed, was not a labor organization within the meaning of the LMRDA.

*030.627 JOINT APPRENTICESHIP COMMITTEE

A joint apprenticeship committee, composed of representatives of the employer and representatives of labor, is not a labor organization within the meaning of the LMRDA. However, it is a "trust in which a labor organization is interested" under the definition in section 3(1) of the Act and therefore required to comply with the bonding provisions of section 502(a) of the Act.

See Manual Entries 041.301 and 531.405 et seq.

(Technical Revisions: Dec. 2016)

030.628 COMMITTEE OF UNIONS DEALING WITH PUBLIC BODIES

An ad hoc committee which is not subordinate to an international, whose membership consists of a group of unions of the building crafts, and which exists solely for the purpose of calling the provisions of a State prevailing wage law (a law providing for the payment of the prevailing wage in the area on all public construction contracts) to the attention of the various public bodies in the State and to bring suit against any public body in violation of that law, is not a labor organization as defined by the LMRDA. However, if the committee also deals with private contractors concerning wages or any other matter specified in section 3(i) of the Act, it is a labor organization within the terms of the LMRDA.

030.629 RAILROAD ADJUSTMENT COMMITTEES

A local committee of adjustment which is limited to a railroad system having but one division (or lodge) is not a labor organization even though it is designated as a "general" committee of adjustment by the international constitution. However, the financial transactions of such a local committee must be incorporated in the reports submitted by the division (or lodge) of which the committee is a part, pursuant to section 201.

On the other hand, a multi-division (or multi-lodge) general committee of adjustment would be an intermediate body which is subject to the reporting and other requirements of the Act.

030.630 FEDERAL CREDIT UNION

A federal credit union is not a labor organization within the meaning of the Act.

030.632 CORPORATION OWNED BY UNIONS

A corporation whose stockholders are labor organizations and members of labor unions but whose sole function is to engage in the rental of office space to labor organizations and other tenants does not, on its face, come within the Act's definition of a labor organization.

030.634 WOMEN'S AUXILIARY

Women's auxiliaries of labor unions are not normally "labor organizations" within the meaning of section 3(i) of the Act, because they do not ordinarily exist "for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment . . . ." They also usually do not fall within any of the

categories described in section 3(j) as being "engaged in an industry affecting commerce."

030.636 UNIONS HAVING BOTH GOVERNMENT AND NONGOVERNMENT LOCALS

A national or international union whose membership consists predominantly of employees of governmental agencies is nevertheless a labor organization within the meaning of the Act if any of its locals represents members who are not employed by State or other governmental instrumentalities. (It is immaterial that the employer with which a particular local bargains is a charitable hospital or a private, non-profit educational institution.)

For example, if a local represents employees of a non-profit public corporation (supported in part by State and/or municipal funds) which has been chartered to run a zoo, the local is a labor organization within the meaning of LMRDA unless the employees involved are considered State or municipal employees under pertinent State law. The national or international is also covered under the Act because one of its locals is not an exempt labor organization. The intermediate body, subordinate to the national or international, with which the local is affiliated is covered for the same reason.

030.640 FEDERATIONS

Federations, such as the American Federation of Labor and Congress of Industrial Organizations, are included as "labor organizations" under section 3(j)(2), although expressly excepted from the election provisions of Title IV of the Act.
See 29 CFR 451.4(c).

030.650 DETERMINING LOCAL OR NATIONAL STATUS

In National Labor Relations Board v. Highland Park Mfg. Co., 341 U.S. 322 (1951), the Supreme Court held that the Congress of Industrial Organizations (CIO), being admittedly a labor union and one of nationwide jurisdiction, operation and influence, was certainly in the ordinarily accepted meaning, a national union, whatever its internal compositions.

In addition to the foregoing, the following should be considered:

1. Internal composition.

2. Relationship of the organization to any superior or subordinate bodies.

3. Status of any superior, subordinate or affiliated bodies or groups.

4. The history and objectives of the labor organization.

5. Constitutional provisions which may or may not limit jurisdiction or membership to the employees of a single local employer.

6. The classification chosen by the labor organization should be given some weight.

(Technical Revisions: Dec. 2016)

030.652 "NATIONAL" CLASSIFIED AS LOCAL

The classification of a union for purposes of the LMRDA depends upon its characteristics rather than its name designation or how it classifies itself. Analysis of the facts with regard to the National Cash Register Employees' Independent Union indicates that it is a local labor organization rather than a national labor organization. This is so because the members of the NCREIU, which has neither subordinate nor superior affiliates, are employed in Ohio and there is no evidence that it represents, or that it is trying to organize or represent employees outside Ohio. It has negotiated only one bargaining agreement with the National Cash Register Company and that concerns only the employees in the Dayton, Ohio, and Washington Court House, Ohio, areas.

The day-to-day operation of the Union indicates that the membership of the NCREIU meets monthly at a single time and place. Special meetings of all the membership may be called by verbal or telephone notice, together with posting of notice for forty-eight hours. Ratification of contract terms with the Company is by the members present at a specially-called meeting of the membership. The NCREIU Executive Committee is composed of the only officers of the NCREIU, including Vice Presidents of Divisions, the latter of which are "plant" rather than geographic segments. Nomination of officers takes place at the regular October general membership meetings. All members have a right to nominate the Election Committee and the candidates for offices. The sole disciplinary power over the members is vested in the National Executive Committee with a right of appeal to the next regular membership meeting. Committees are chosen by the National President with the approval of the National Executive Committee for the purpose of bargaining collectively with the employer and all members are eligible for those committees.

In summary, the entire operation and functions of the Union are carried on by the officers elected and located in the Dayton area, and the constitution and bylaws establish that the Union is intended to function internally in ways similar to locals whose characterization as locals is generally accepted.

Where a labor organization was subordinate to an international union, had no subordinate organizational units, paid a “per capita” tax to the international, negotiated the basic terms of collective bargaining agreements, ensured that the agreements were enforced, handled grievances, collected dues from members, maintained out-of-work lists, and held meetings at which members expressed their views, the DOL determined that the organization was functionally and structurally a local labor organization. See Donovan v. International Brotherhood of Boilermakers, 736 F.2d 618 (10th Cir. 1984), in which the court upheld the DOL’s determination that the entity was local rather than national.

(Revised: Dec. 2016)

030.655 DETERMINING LOCAL OR INTERMEDIATE STATUS

In classifying a union entity as intermediate or local, OLMS will look at the entity’s “functions and purposes” rather than “its formal title or nominal placement within the organization.” The inquiry is “whether the intermediate body has taken on so many of the traditional functions of a local union that it must in actuality itself be considered a local union.” The organization’s placement within the overall structure of a union is also highly relevant. Applying these factors, the New England Regional Council of Carpenters was determined to be an intermediate rather than a local union body and is thus not required by the Act to conduct direct elections.

Harrington, Supplemental Statement of Reasons (January 31, 2003); Harrington v. Chao, 372 F.3d 52 (1st Cir. 2004).

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INTERMEDIATE BODIES

030.660 STEERING COMMITTEE

A "Steering Committee" which is composed of representatives from 6 locals (in the same geographical area) engaged in the same industry is affiliated with a District Council of a particular International. The 6 locals comprising the "Steering Committee" have contracts with the same employer. The District Council also contains numerous other locals in other related industrial activities. Factually, it has been ascertained that the Steering Committee is subordinate to the International Union; is composed of local labor organizations engaged in an industry affecting commerce; is endowed with separate organic identity in that it is a continuing body conducting regular meetings and electing its own officers and having bylaws; exists for the purpose of coordinating its local members' activities, contract proposals, contract negotiations; and has among its officers a Financial Secretary who is required under its bylaws to be bonded (thus indicating the presence or expectation of funds). Consequently, the Steering Committee has been determined to be an intermediate type labor organization within the meaning of the Act even though the Constitution and Bylaws of the District Council make no provision for such a "committee."

030.662 BUILDING AND CONSTRUCTION TRADES COUNCIL

A building and construction trades council, which is chartered by the Building and Construction Trades Department of the AFL-CIO and represents a number of locals in the building and construction industry in a particular area but does not itself engage in collective bargaining, is a labor organization subject to the requirements of the Act.

030.664 MARITIME PORT COUNCILS

The Maritime Port Councils chartered by the Maritime Trades Department, AFL-CIO, are intermediate labor organizations for purposes of the LMRDA of 1959. These Councils are not local central bodies for the reason that their membership is limited to unions whose jurisdiction involves the maritime trades in a particular port area. Furthermore, some of these Councils actually have collective bargaining responsibilities. The fact that some do not have collective bargaining responsibilities does not change the determination that they are labor organizations since intermediate bodies "are covered" irrespective of whether they exist for the purpose of dealing with employers.

030.665 LOCAL FEDERATIONS OF RAILWAY EMPLOYEES' DEPARTMENT OF AFL-CIO

Local Federations of the Railway Employees' Department of the AFL-CIO are intermediate labor organizations within the meaning of the LMRDA. By virtue of their charter from the Railway Employees' Department they accept as members different Craft Unions such as Machinists, Welders, etc., whose employees are employed by the various railroads at a particular location where the railroad has repair and other types of shops. These are not local central bodies

since membership in the Local Federation of the Railway Employees' Department is limited solely to the Craft Unions which bargain with the railroads in the particular locale in which the Local Federation is situated.

030.666 STATE LEGISLATIVE BOARDS OF RAILROAD BROTHERHOODS

State Legislative Boards which are provided for in constitutions of the Railroad Brotherhoods and which function under the jurisdiction of the parent body are subject to the provisions of the Act which are applicable to "intermediate bodies." From the way in which these State Legislative Boards are organized and the position they occupy in the organizational structure of their respective Brotherhoods, it is clear that they are not national, international, or local labor organizations. Their coverage results from the section 3(i) definition of "labor organization" by the inclusion there of labor organizations which are subordinate to national or international labor organizations. Such subordinate organizations are within the Act's definition of "labor organization," irrespective of whether or not they exist for the purpose of dealing with employers.

030.668 STATE OR LOCAL CENTRAL BODY

(a) The definition of "labor organization" in section 3(i) and the examples of labor organizations deemed to be engaged in an industry affecting commerce in section 3(j)(5) both except from the term "labor organization" a "State or local central body." As used in these two sections, the phrase "State or local central body" means an organization that:

(1) Is chartered by a federation of national or international unions, and

(2) Admits to membership local unions and subordinate bodies of national or international unions that are affiliated with the chartering federation within the State or local central body's territory and any local unions or subordinate bodies directly affiliated with the federation in such territory; and

(3) Exists primarily to carry on educational, legislative and coordinating activities.

(b) The term does not include organizations of local unions or subordinate bodies (1) of a single national or international union; or (2) of a particular department of a federation or similar association of national or international unions. 29 CFR 451.5

030.669 STATE ORGANIZATIONS OF INDEPENDENT UNIONS

The exemption from the provisions of LMRDA given to a "State or local central body" is not limited to entities chartered by the AFL-CIO. Entities chartered by any federation of national or international unions are exempt if they meet the criteria set forth in section 451.5 of the Interpretative Bulletin (see Manual Entry 030.668 for text). Under these criteria, a State body chartered by a single national or international union, even if that union is affiliated with a federation of national or international unions, would not come within the terms of the exemption.

030.6691 COMMITTEE OF UNIONS DEALING WITH PUBLIC BODIES

See Manual Entry 030.628.

030.6692 RAILROAD ADJUSTMENT COMMITTEES

See Manual Entry 030.629.

LOCALS

030.670 FOREIGN LOCALS

It is not the purpose of the Act to impose on foreign labor organizations any regulation of the activities they carry on under the laws of the countries in which they are domiciled or have their principal place of business. The applicability of the Act is limited to the activities of persons or organizations within the territorial jurisdiction of the United States. The foregoing would be applicable, for example, to Canadian local affiliated with international labor organizations organized within the United States. Consequently, such foreign locals do not have to submit reports required by section 201 of the Act.

030.672 LOCAL COMPOSED OF RETIREES

See Manual Entry 030.510.

*030.673 RETIRED MEMBERS

See Manual Entry 030.520--Employees Whom Union Does Not Represent.

030.680 SUBUNITS - FACTORS DETERMINING STATUS

A determination of whether a subdivision of a labor organization is, itself, a labor organization must be based on whether the evidence as a whole supports a conclusion that the subdivision manifests sufficient organic existence, purposes, and functions to establish it as a labor organization under the Act.

Factors usually considered in deciding whether a subdivision has separate identity as an organization are the source of authority which created it and what documents acknowledge its existence; by what constitution, bylaws, or other rules or regulations it is governed; how frequently it holds meetings and whether it does so regularly; whether it is represented as a unit at meetings or conventions of superior bodies, including the parent body; whether it can accept or reject membership applications and take disciplinary action against its own members; whether it can establish or change dues, fees, or assessments and has its own funds, treasury, and property.

That a subdivision with separate identity as an organization has the purpose, in whole or in part, of dealing with employers, as described in the Act, is usually indicated by the extent to which it participates in the handling and final settlement of grievances, the presentation of bargaining demands, and the acceptance or ratification of collective bargaining agreements.

See also Manual Entry 030.603.

030.682 SUBUNITS OF A LOCAL

An autonomous unit of an amalgamated local is a labor organization within the meaning of the Act and is required to file reports pursuant to Title II in a situation where the unit in question has its own bylaws, determines the manner of selecting its own officers, and handles grievance matters and to a limited extent undertakes collective bargaining with the employer who employs the members of the unit.

See also Manual Entry 030.603.

030.684 BRANCHES WITHOUT ASSETS

A branch with no charter, money or property is nevertheless a separate labor organization where it has rules of procedure conforming with the parent union's rules and policy and subject to the latter's approval; where these rules set up a governing body; where it has authority to act in matters pertaining to status of its members, subject to appeal to the parent union's board of directors; where it may affiliate with and select delegates to other AFL-CIO organizations in the area; where it negotiates regarding local wages and working conditions subject to consultations with and approval by the parent union's board of directors; and where it appoints committees and officials and adopts rules for conduct of its own affairs.

See also Manual Entry 030.603.

030.686 BRANCHES OF NATIONAL

A branch of a national labor organization is a labor organization within the definition in section 3(i) when the local board of the branch has authority (1) to act in matters pertaining to the status of the branch members, subject to their right of appeal to the national's board of directors; (2) to affiliate with, and select delegates to, other labor organizations in the area; (3) to conduct negotiations on local wages and working conditions in consultation with the national's board of directors, with any agreements made subject to the board's approval; and (4) to adopt rules and regulations for the conduct of its affairs even though the approval of the national board is required for these actions, if the articles of agreement and constitution of the branch and the rules of the national indicate that the branch is sufficiently independent to qualify as a labor organization under section 3(i).

See also Manual Entry 030.603.

030.688 SUBDIVISIONS NOT MEETING ALL CRITERIA

Even though the subdivision of a local lacks some of the characteristics usually indicative of a labor organization, e.g., it is not chartered, does not have its own bylaws, and does not have authority to accept, reject, or discipline members, or to set the amount of dues and fees, it may be a labor organization under the Act. The documents as well as the information as to actual practice indicate that the Honolulu Section of a local, whose addresses is in California, (1) is a recognized organization with continuity of existence; (2) in which employees participate; (3) with the purpose, at least in part, of dealing with employers; and (4) it is engaged in an industry affecting commerce. These characteristics are sufficient to support the conclusion that the Honolulu Section is a labor organization.

030.690 POOL ARRANGEMENTS

A. An international labor organization established a "pool arrangement" composed of local labor organizations of the same union, without charter or elected officers for the purpose of supplying adequate and sufficient union labor to employers on a series of construction projects in the same area, to provide temporary affiliation in one body for members of participating chartered locals, and to avoid disputes among such locals in dealing with employers. The international deals with the "pool arrangement" as a separate labor organization. The "arrangement" is managed by a board consisting of representatives of the participating local labor organizations, which holds regular meetings, and which selects the "pool's" business representatives.

The international did not negotiate the collective bargaining agreements under which the "pool" functions. The "pool" and the area construction trades council were the signatories and parties to the collective bargaining agreements with the employers, and the "pool arrangement" is recognized as the local labor organization representing the employees, who either are members of the "pool" directly or of the participating local labor organizations, in matters concerning grievances, wages, rates of pay, hours of work and other terms and conditions of employment. This "pool" also collects dues and fees, issues membership books, and pays per capita taxes to the international.

It is the Department's position that such a "pool arrangement" is a labor organization within the meaning of section 3(i) of the LMRDA. In reaching its determination the court used language which might be confusing in distinguishing between separate labor organizations and administrative arms, but it is clear that the court held the "pool" to be a separate labor organization. In its resolution of the coverage question, the same court held that section 3(j) also applied in that while the "pool arrangement" was not itself certified as the representative of employees under the National Labor Relations Act, it was a "local labor organization recognized or acting as the representative of employees of an employer engaged in an industry affecting commerce. . . ."

Opinions 5/31/63, 2/24/64, and Memorandum of Opinion, 5/12/64, United States v. Dicus, 229 F.Supp. 282, 56 LRRM 2243 (E.D. Ark. 1964).

B. An international labor organization established a temporary "arrangement" composed of state councils, which is without charter, elected officers, and separate bylaws, for the purpose of handling job referrals and grievances of participating labor organizations under the collective bargaining agreement negotiated by the international union with an employer whose operations cover a group of contiguous states. The "arrangement" is not a party to the contract, holds no regular meetings, has no officers of its own selection, has no members or autonomous powers itself, and remits no per capita taxes to the international nor is any of its income transmitted to the affiliated locals and state councils. The international appoints or hires a person to implement the agreement by performing only such duties as are delegated to him by the international labor organization. Control of the project's funds by officers of the participating state councils stems from their status as representatives of the international. Such an "arrangement" is an administrative arm of the international labor organization rather than a labor organization within the meaning of section 3(i) of the LMRDA, even though the international may consider it to be a local labor organization.

NOTE: Although the two situations set forth above have some similar characteristics, they have the following basic differences:
1. In A the international union did not negotiate the collective bargaining agreement while in B the international negotiated the contract. The "pool arrangement" in A is one of the parties to the contract but the "arrangement" outlined in B is not a party to the agreement.

2. Per capita taxes are paid to the international in A but in B no payments are made to the international.

3. In A some persons hold direct membership in the "pool arrangement" while in B there are no persons holding direct membership in the "arrangement."

4. The directors in A hold regular meetings while in B regular meetings are not held by the

council representatives.

5. In A the business representatives are selected by the "pool's" board members, while in B the international selects the "arrangement's" representative.

(Technical Revisions: Dec. 2016)

030.692 PORT BRANCHES OF NATIONAL MARITIME UNION

Port branches of the National Maritime Union of America, which do not have (1) membership by port affiliation, (2) locally elected officials, nor (3) voting rights limited to members present at any port meeting, are not labor organizations within the meaning of section 3(i) because they lack sufficient separate organic identify and purpose.

030.694 BRANCHES OF AGVA

Branches of the American Guild of Variety Artists, where executive committees are elected by active members registered in the branches, and where bylaws empower such committees to (a) recommend minimum wage scales that do not conflict with National minimums, (b) recommend disciplinary action against members within the jurisdiction of a branch, and where (c) committees may be appointed to conduct hearings on salary and breach of contract claims involving AGVA members and management, are labor organizations.

030.695 RAILROAD ADJUSTMENT COMMITTEES

See Manual Entry 030.629.

STATUTORY DEFINITIONS

040.101 LMRDA, SECTION 3(a)

"COMMERCE" means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof. See 030.100.

040.201 LMRDA, SECTION 3(b)

"STATE" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf-lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343).
040.202 SEE 29 CFR 401.2

040.301 LMRDA, SECTION 3(c)

"INDUSTRY AFFECTING COMMERCE" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended. See Manual Entry 030.200.

040.401 LMRDA, SECTION 3(d)

"PERSON" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 of the United States Code, or receivers.

040.402 SEE 29 CFR 401.4

040.501 LMRDA, SECTION 3(e)

"EMPLOYER" means any employer or any group or association of employers engaged in an industry affecting commerce (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.
See Manual Entry 030.400.

040.601 LMRDA, SECTION 3(f)

"EMPLOYEE" means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.
See Manual Entry 030.500.

040.701 LMRDA, SECTION 3(g)

"LABOR DISPUTE" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

040.702 SEE 29 CFR 401.7

040.801 LMRDA, SECTION 3(h)

"TRUSTEESHIP" means any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.
See Manual Entries 300.001 ff.

040.901 LMRDA, SECTION 3(i)

"LABOR ORGANIZATION" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which

exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.
See Manual Entries 030.601ff.

(Technical Revisions: Dec. 2016)

041.101 LMRDA, SECTION 3(j)

A labor organization shall be deemed to be engaged in an industry affecting commerce if it--
(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended, or;
(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or
(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or
(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or
(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.
See 030.300.

041.201 LMRDA, SECTION 3(k)

"SECRET BALLOT" means the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed.
See 29 CFR 452.97(a).
041.301 LMRDA, SECTION 3(l)

"TRUST IN WHICH A LABOR ORGANIZATION IS INTERESTED" means a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries. (At present, no reporting forms have been prescribed by the Secretary but the existence of the trust must be acknowledged and identified on Form LM-2, Items 10 and 69, and on Form LM-3, Items 11 and 56.) See instructions for Form LM-2 and LM-3 .

(Technical Revisions: Dec. 2016)

041.305 TAXICAB DRIVERS LOAN FUND

A "Taxicab Drivers' Accident Repair Loan Fund--Contingency Fund" of a local labor organization (1) which was created as a part of a collective bargaining agreement between the cab companies and the union, (2) which is financed entirely by contributions from the employer (cab companies), (3) which is administered by trustees, all of whom are selected by the union and are union officers, and (4) the purpose of which is to provide interest-free loans to union members to enable them to repair accident damages to their taxicabs, was found to be a "trust in which a labor organization is interested" within the meaning of the definition in section 3(1) of LMRDA.

The above-mentioned definition includes "a trust or other fund or organization". . ."one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members. . . ." As indicated by the facts above, the "Fund" clearly comes within this definition.

Inasmuch as the "Fund" is financed by contributions from employers, which are considered to have been made to union officers who are the trustees, and since there are no employer trustees of the "Fund," it appears that the payments are in violation of section 302 of the Taft-Hartley Act (assuming the Fund was created subsequent to its passage). The exceptions in section 302(c)(5) and (6) do not apply since the "Fund" is not administered in accordance therewith nor is the "Fund" itself one of the type spelled out in those subsections.

Accordingly, reports from the employers who contributed to the "Fund" are required pursuant to section 203(a)(1) of LMRDA, and reports from union officers who received payments from employers are required pursuant to section 202(a)(1).

The "Fund" in question cannot be regarded as a "subsidiary organization" as that term is defined in the Instructions for the LM-2 because it is not financed by the labor organization. Neither may it be regarded as a Welfare Benefit Plan under the predecessor statute to the Employee Retirement Income Security Act of 1974 (ERISA) since, as a general rule, the making of loans does not constitute providing benefits within the meaning of that law.

(Technical Revisions: Dec. 2016)

041.310 FEDERAL CREDIT UNIONS

Federal credit unions "affiliated" with a labor organization are not trusts in which a labor organization is interested inasmuch as no member of the governing body of the credit union is selected or appointed by the labor organization. Furthermore, a federal credit union is not created or established by a labor organization since, under the Federal Credit Union Law (12 U.S.C. 1771), it must be created by natural persons. Other factors leading to the above conclusion are: (1) Board members of the credit union must be elected by the "membership" of the credit union, (2) Treasurers of federal credit unions must be bonded under the Federal Credit Union Law, and (3) Federal credit unions are audited by an agency of the United States Government.

041.320 PROFIT-SHARING PLAN

An ordinary type of cash profit sharing program in which the money in a trust fund (established and administered solely by the employer in accordance with a collective bargaining agreement) is distributed to employee-union members according to a specified formula every three months, is

not a "trust in which a labor organization is interested." Even though the primary purpose of the trust fund was to provide benefits for the employee-members, it cannot be said that it was established or created by a labor organization unless the labor organization is a party to a specific trust instrument.

Of course, if a profit-sharing program provides benefits at or after retirement, the reporting and bonding provisions of the Employee Retirement Income Security Act may apply.

041.330 TRUST CREATED BY NOW DEFUNCT LABOR ORGANIZATION

The "Trust in which a labor organization is interested" continues, even though the labor organization is no longer in existence, whenever the members of the former labor organization and their beneficiaries or both still could receive benefits from that trust.

(Revised: Dec. 2016)

041.340 "BENEFITS" FOR UNION MEMBERS INCLUDE RECREATIONAL FACILITIES

The term "benefits" as used in the definition of a "trust in which a labor organization is interested" in section 3(1) of the Act is considered broad enough to include organizations like building associations established by a union or unions to provide, among other things, recreational outlets for union members, retirees and others.

041.401 LMRDA, SECTION 3(m)

"LABOR RELATIONS CONSULTANT" means any person who, for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.

041.402 SEE 29 CFR 401.13

041.405 ASSOCIATION AS CONSULTANT

Where an employer association's corporate charter provides, in part, that the corporation shall "represent, aid and advise members in connection with labor problems, with a view to establishing lasting relations between employer and employees or the duly chosen representatives of employees, and the elimination of labor disputes, stoppage of operations and disturbances. . .," and where its bylaws provide that the grievance committee shall "negotiate and arbitrate grievances under agreements with any labor organization," the corporation is a labor relations consultant within the meaning of the Act, assuming there is a membership fee.

041.410 INDUSTRIAL COUNCIL

If an industrial council received dues which entitle members to its services in various arbitration conciliation, negotiation, and personnel matters, providing such services "for compensation" in this way would plainly bring the council within the definition of a "labor relations consultant" in section 3(m) of the Act.

041.420 EXTENT OF LABOR SERVICES IMMATERIAL

An association which has membership fees and which as a membership service, engages in negotiation of labor contracts with Teamster and Carpenter locals and represents members in mediation disputes, although these activities constitute only a small part of the association's total activities, is a "labor relations consultant" within the meaning of section 3(m) of the Act. The precise extent to which such services may be rendered is immaterial as far as the applicability of the definition in section 3(m) is concerned.

(Technical Revisions: Dec. 2016)

041.501 LMRDA, SECTION 3(n)

"OFFICER" means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.
See 29 CFR 452.17 through 452.22.

041.601 LMRDA, SECTION 3(o)

"MEMBER" or "MEMBER IN GOOD STANDING," when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

041.602 SEE 29 CFR 401.15

041.701 LMRDA, SECTION 3(p)

"SECRETARY" means the Secretary of Labor.

041.702 SEE 29 CFR 401.16

041.801 LMRDA, SECTION 3(q)

"OFFICER, AGENT, SHOP STEWARD, OR OTHER REPRESENTATIVE," when used with respect to a labor organization, includes elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority), but does not include salaried nonsupervisory professional staff, stenographic and service personnel.

041.901 LMRDA, SECTION 3(r)

"DISTRICT COURT OF THE UNITED STATES" means a United States district court and a United States court of any place subject to the jurisdiction of the United States.

MEMBERS' RIGHTS

BILL OF RIGHTS OF MEMBERS OF LABOR ORGANIZATIONS

100.001 POLICY STATEMENT

Because the Secretary of Labor does not have authority to enforce Title I of the Act (except the provisions of section 104 concerning the right to copies of collective bargaining agreements), it is the policy of this Office to refrain from giving advisory opinions on questions relating to any provision of Title I except section 104.

RIGHT TO COPY OF COLLECTIVE BARGAINING AGREEMENT

110.001 LMRDA, SECTION 104

It shall be the duty of the secretary or corresponding principal officer of each labor organization, in the case of a local labor organization, to forward a copy of each collective bargaining agreement made by such labor organization with any employer to any employee who requests such a copy and whose rights as such employee are directly affected by such agreement, and in the case of a labor organization other than a local labor organization, to forward a copy of any such agreement to each constituent unit which has members directly affected by such agreement; and such officer shall maintain at the principal office of the labor organization of which he is an officer, copies of any such agreement made or received by such labor organization, which copies shall be available for inspection by any member or by any employee whose rights are affected by such agreement. The provisions of section 210 shall be applicable in the enforcement of this section.

110.005 RIGHT NOT DEPENDENT ON UNION MEMBERSHIP

Every employee (whether or not a union member) is entitled, on request, to have a local union forward to him a copy of each collective bargaining agreement made by the local union which directly affects his rights as an employee.

Whenever a parent labor organization makes a collective bargaining agreement which directly affects the rights of members of an affiliated local union, the parent organization is required to send a copy of the agreement to the local union. The copy is to be kept in the principal office of the local union, and every member or employee whose rights are affected by the agreement is

entitled to examine the copy.

If a member or employee believes that a union has violated its duty to furnish or make available copies of collective bargaining agreements, he may make this known to the Secretary of Labor who is empowered to enforce this provision by bringing suit in a Federal district court.

110.100 OBLIGATION OF LOCAL

The language of section 10 creates the duty of the appropriate official of a local labor organization to forward a copy of any collective bargaining agreement made by it to any employee who requests a copy and whose rights are directly affected by the agreement. It also creates the duty to make the agreement available for inspection by any member of the labor organization or any employee whose rights are directly affected by such agreement.

This means that where a local union has agreements with a number of employers, the local union would be required to furnish a copy of a particular agreement only to those employees and members whose rights as employees are directly affected by such agreement. The local union would also be obligated to show a copy of any agreements it negotiated to any of its members whether or not they are directly affected.

110.120 OBLIGATION OF PARENT ORGANIZATION

If a collective bargaining agreement was made by the national or international organization, the secretary or corresponding officer of such organization is required to forward a copy to the local.

The secretary or corresponding officer of the local is required to keep a copy at the principal office of the local, available for inspection by members and affected employees.

110.130 EMPLOYER'S OBLIGATION

The Act does not compel an employer to supply any copies of the collective bargaining agreement to the union, nor does it compel the union to supply the employer with copies of the collective bargaining agreement. Since the Act places with the labor organization the responsibility of making copies of collective bargaining agreements available to affected employees, the fact that an employer prints copies of the collective bargaining agreement does not remove that responsibility from the secretary or corresponding principal officer of the labor organization.

110.200 FORMER EMPLOYEE

In view of the language of section 104, it is our opinion that a person who is no longer an employee within the meaning of section 3(f) of the Act is not entitled to receive a copy of the collective bargaining agreement. However, he is entitled to inspect the agreement in effect at the time of his dismissal and the current contract at the principal office of his local union, if he is still a member of the union. He would still be considered a member if he has been expelled from the union in a manner inconsistent with section 101(a)(5).

If the individual's work has ceased as a consequence of, or in connection with, any current labor dispute, or because of any unfair labor practice, or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of the LMRDA, he would still be considered an employee and would be entitled to receive a copy of any collective bargaining agreement which affects his rights.

110.300 "AGREEMENT" INCLUDES CHANGES

The question as to what components comprise a collective bargaining agreement depends upon several factors in each individual case. In addition to the basic agreement, any subsequent agreement or amendment, oral or written, which modifies the basic agreement becomes a part of the collective bargaining agreement. Furthermore, all agreements which are incorporated by reference into the basic working agreement become a part of it.

110.305 ORAL AGREEMENTS

Section 104 applies to oral as well as written collective bargaining agreements. If the agreement is negotiated by a local labor organization, a copy of the agreement, including a written statement of all terms arrived at orally, must be furnished to any directly affected employee who requests a copy. It is the duty of the secretary or corresponding principal officer of the organization to furnish a statement setting forth the terms and conditions of the oral agreement.

In the case of a labor organization other than a local, the entire agreement, including a written statement of any oral provisions, must be transmitted to the principal office of the constituent unit for inspection by a union member or directly affected employee who asks to see the agreement

110.320 WORK REFERRAL LIST

All supplements which are incorporated by reference into a collective bargaining agreement become a part of it. Thus, where an agreement makes reference to a work referral system which the union is to administer, and further sets up terms, conditions and classifications of employees which the union is obliged to follow in referring applicants for jobs, the referral list is incorporated by reference into the basic agreement. Therefore, being a part of the basic working agreement, the referral list should be made available pursuant to section 104.

110.325 RECORDS OF NEGOTIATIONS

Ordinarily the records of negotiations conducted are not considered part of the collective bargaining agreement. Therefore, copies of such records are not required to be made available under section 104.

110.400 PRINTING AND DISTRIBUTION

Section 104 of the Act places a duty on the secretary or corresponding principal officer of a local labor organization to forward a copy of a collective bargaining agreement to any employee who requests such a copy and whose rights are directly affected by the agreement. The law does not place any responsibility upon an employer who is a party to the contract to make available such copies. The number of copies to be printed, the cost of printing them and the method of distribution are internal union matters or subjects for collective bargaining. After the copies are printed, the responsibility is with the secretary or corresponding principal officer of the labor organization to forward a copy of the agreement to those affected employees who request it, regardless of who printed them.

110.410 FEE FOR COPY

In our opinion, the right to a copy of the contract under section 104 is unqualified and the union may not condition it upon payment of a fee however small.

110.420 DUPLICATE COPIES

The Secretary or corresponding principal officer of a labor organization is under a duty to forward a copy of the collective bargaining agreement to any employee upon request and may not charge for copies, no matter how reasonable a proposed charge may seem. However, he need not furnish duplicate copies of those component parts of a contract which have already been furnished to a requesting employee.

110.510 ENFORCEMENT BY PRIVATE SUIT OR BY SECRETARY

Section 102 in Title I of the Act authorizes "any person" to bring a civil action in a district court of the United States to protect rights secured by "this title." There is no suggestion that this does not include rights secured by section 104 which is, of course, a part of Title I. The fact that the Secretary may also enforce rights secured by section 104 seems in no way inconsistent with this result. In the case of these particular rights, action by the Secretary is simply an additional enforcement method.

110.600 ENFORCEMENT OF AGREEMENT

Section 104 merely gives the union member the right to receive from his union a copy of the collective bargaining agreement, and in no way gives the member a right of action against the union seeking to require that the agreement be carried out.
Allen v. Armored Car Chauffeurs and Guards Local Union No. 820, 185 F.Supp. 492, 45 LRRM 3067 (D.N.J. 1960).

(Technical Revisions: Dec. 2016)

110.610 RATIFICATION OF AGREEMENT

There is nothing in the Act which requires that collective bargaining agreements be submitted to the membership for ratification. Procedures concerning this matter would be controlled by the constitution and bylaws of the union involved.

110.620 REQUEST THROUGH ATTORNEY

It is clear from the language of the Act that an employee who has a right to a copy of a collective bargaining agreement under section 104 must make a specific request for a copy to the labor organization concerned. There is, however, nothing in the Act or its legislative history to indicate that he may not make the request through his attorney. Therefore, where an employee makes such a request through his attorney, and where the conditions of section 104 have been met, the labor organization would have a duty to furnish a copy of the agreement to the attorney, provided it has knowledge that the request was authorized by the employee. A letter from the attorney to the labor organization transmitting a signed request from his client would ordinarily be sufficient.

RIGHT TO BE FREE FROM VIOLENCE AND THREATS

120.001 LMRDA, SECTION 610

It shall be unlawful for any person through the use of force or violence, or threat of the use of force or violence, to restrain, coerce, or intimidate, or attempt to restrain, coerce, or intimidate any member of a labor organization for the purpose of interfering with or preventing the exercise of any right to which he is entitled under the provisions of this Act. Any person who willfully violates this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

120.005 FREEDOM FROM FORCE OR VIOLENCE IN EXERCISING RIGHTS

It is made a criminal offense for any person to use force or violence or threats of force or violence against union members to interfere with them in the exercise of their rights under the Act. Penalties provided are a fine of not more than $1,000 or imprisonment for not more than 1 year, or both.

120.200 SECTION PROHIBITS VIOLENCE BY "ANY PERSON"

Defendants (another member of the local and a member of another local of the same union working under a permit) attacked a local union member on the floor of the union hall during a union meeting when he made a statement challenging the business agent relative to the issuance of work permits to nonmembers.

The court held that the defendants were attempting by the attack to interfere with the member's expression of his views in violation of section 610 of LMRDA which makes it unlawful for "any person" to use force or violence to restrain or intimidate any union member in the exercise of his rights under LMRDA. The court stated that it was the intent of Congress "to preserve for union members the right of free expression secure from interference by force or threat of force from any person, not merely from union agents, or those acting on behalf of, or in concert with them."
United States v. Roganovich, 318 F.2d 167, 170, 53 LRRM 2418 (7th Cir. 1963).

(Technical Revisions: Dec. 2016)

120.300 VIOLENCE AGAINST DISSIDENT MEMBERS

Criminal convictions of two union officers under Section 610 were upheld based on facts that, after dissident members on a worksite circulated a petition calling for election of new union officers, one officer drove with another to that site, followed a truck in which the dissidents were riding, and the passenger officer threw a baseball bat at and fired shots at the truck transporting the dissidents. This demonstrates that the rights guaranteed to the members of a labor organization apply equally to dissident members. See United States v. Kelley, 545 F.2d 619, 94 LRRM 2550, (8th Cir. 1976).

The prohibitions of section 610 apply not only to the relations between a union and its members, but prohibit "any person" from interfering or preventing a union member from exercising a right to which he is entitled under the Act. Tomko v. Hilbert, 288 F.2d 625, 627 (3d

Cir. 1961) and United States v. Roganovich, 318 F.2d 167, 53 LRRM 2418, (7th Cir. 1963). Whether the "person" who is seeking to deny or interfere with a union member's rights under the Act is a member or officer of the same union, an employer, a member of another labor organization, or an outsider would seem to be immaterial under the language of section 610.

(Revised: Dec. 2016)

REPORTING AND DISCLOSURE

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REPORTING AND DISCLOSURE IN GENERAL

200.001 SEE LMRDA, TITLE II AND SECTION 301 OF TITLE III

200.101 REPEAL OF TAFT-HARTLEY REPORTING PROVISIONS

LMRDA, SECTION 201

(d) Subsections (f), (g), and (h) of section 9 of the National Labor Relations Act, as amended, are hereby repealed.

(e) Clause (i) of section 8 (a) (3) of the National Labor Relations Act, as amended, is amended by striking out the following: "and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with section 9 (f), (g), (h)".

200.105 PREVIOUS REQUIREMENTS

Sections 9 (f), (g), and (h) of the National Labor Relations Act, 1947, (Taft-Hartley) provided that any labor organization wishing to use the services of the NLRB file annually certain registration and financial reports, as well as non-Communist affidavits executed by each of its officers. These requirements of the National Labor Relations Act have been repealed by section 201(d) of the Labor-Management Reporting and Disclosure Act.

200.201 REGULATORY AUTHORITY

LMRDA, SECTION 208

The Secretary shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under this title and such other reasonable rules and regulations (including rules prescribing reports concerning trusts in which a labor organization is interested) as he may find necessary to prevent the circumvention or evasion of such reporting requirements. In exercising his power under this section the Secretary shall prescribe by general rule simplified reports for labor organizations or employers for whom he finds that by virtue of their size a detailed report would be unduly burdensome, but the Secretary may revoke such provision for simplified forms of any labor organization or employer if he determines, after such investigation as he deems proper and due notice and opportunity for a hearing, that the purposes of this section would be served thereby.
See specific Regulations published in 29 CFR 402, 403, 404, 405, 406 and 408.

200.400 EFFECTIVE DATE - GENERAL APPLICATION

Sections 201, 202, and 203 became effective immediately upon the date of enactment, September 14, 1959. Section 207, which is titled "Effective Date", merely specifies the period within which reports required under those sections must be filed.

200.450 LATE REPORTING

The mandatory language of section 207 allows no extension of reporting dates. The report should be submitted as completely as possible on or before the reporting date, indicating what information has not been furnished, why it has not been furnished, and when it will be submitted.

This includes situations where constitution or bylaws are in the process of revision.

200.501 CIVIL ENFORCEMENT

LMRDA, SECTION 210

Whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate. Any such action may be brought in the district court of the United States where the violation occurred or, at the option of the parties, in the United States District Court for the District of Columbia.

200.550 CIVIL VENUE

For purposes of venue, failure to file a report is not a violation that "occurs" in the District of Columbia. Section 210 provides that civil actions may be brought in the District Court where the violation occurred, or, at the option of the parties, in the District of Columbia. The Congressional policy that it is fairer to require the Government to bear the cost of litigation in localities throughout the country rather than to force unions and employers, many of them obviously small, to come to the District of Columbia, applies to all types of Title II violations, failure to file, filing misinformation, or the destruction of records.

Wirtz v. Cascade Employer's Association, Inc. of Pacific Northwest, 219 F.Supp. 84, 87 (D.D.C 1963)

(Technical Revisions: Dec. 2016)

200.610 CRIMINAL PROVISIONS

LMRDA, SECTION 209

(a) Any person who willfully violates this title shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(b) Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any document, report, or other information required under the provisions of this title shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(c) Any person who willfully makes a false entry in or willfully conceals, withholds, or destroys any books, records, reports, or statements required to be kept by any provision of this title shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(d) Each individual required to sign reports under sections 201 and 203 shall be personally responsible for the filing of such reports and for any statement contained therein which he knows to be false.

200.650 CONSTITUTIONALITY OF CRIMINAL PROVISIONS

An officer of a local union was convicted in the U. S. District Court of willfully concealing, withholding and destroying certain books and financial records of his union, in violation of section 209 (c) of LMRDA.

On appeal, the convicted officer alleged that the District Court lacked jurisdiction to try him because (1) LMRDA is unconstitutional, and (2) the evidence did not establish that the activities of his union affected commerce within the meaning of LMRDA.

In affirming the conviction the Court of Appeals recognized the constitutional power vested in

Congress to regulate labor management matters affecting commerce in the manner described in section 2(c) of LMRDA, and concluded that the criminal remedies provided in section 209(c) bear a reasonable relation to the nefarious conditions which Congress found to exist and sought to correct.
Lawson v. United States 300 F. 2d 252, 49 LRRM 2557 (10th Cir. 1962).

(Technical Revisions: Dec. 2016)

200.660 FALSE OR INCOMPLETE STATEMENTS

Where the actual practice of a union in disciplining or removing its officers is different from the provision for such discipline or removal in the union's constitution, a report on the LM-1 which does not indicate the difference between the practice and the constitutional requirement is not in compliance with the law.

FALSE ENTRIES

200.670 WHEN VIOLATION OCCURS

A false entry, willfully made, constitutes a violation of section 209(c) of the Act. Consequently, any person who willfully makes a false entry in any of the records "required to be kept by the provisions of this title" is liable within the meaning of the Act, regardless of whether or not said person signs reports. Because a false entry constitutes a violation it is not necessary that such false entry be made with the intent to report to the Department. It follows that the violation occurs at the time of entry, as opposed to the time the report is submitted.

200.680 LEDGER ACCOUNTS

Prior to an election the incumbent president and secretary-treasurer issued quarterly work cards to certain members without charge in order to induce the recipients thereof to vote for them. The individual ledger accounts of those members who received the work cards fraudulently reflected the payment of quarterly dues.
Where the ledger accounts show dues payments by the individual members who received work cards when, in fact, said members made no dues payments and none were made in their behalf, a falsification of records within the purview of section 209(c) has occurred.

LABOR ORGANIZATION INFORMATION REPORT IN GENERAL

201.001 LMRDA, SECTION 201(a)

Every labor organization shall adopt a constitution and bylaws and shall file a copy thereof with the Secretary, together with a report, signed by its president and secretary or corresponding principal officers, containing the following information--
(1) the name of the labor organization, its mailing address, and any other address at which it maintains its principal office or at which it keeps the records referred to in this title;
(2) the name and title of each of its officers;
(3) the initiation fee or fees required from a new or transferred member and fees for work permits required by the reporting labor organization;
(4) the regular dues or fees or other periodic payments required to remain a member of the

reporting labor organization; and

(5) detailed statements, or references to specific provisions of documents filed under this subsection which contain such statements, showing the provision made and procedures followed with respect to each of the following: (A) qualifications for or restrictions on membership, (B) levying of assessments, (C) participation in insurance or other benefit plans, (D) authorization for disbursement of funds of the labor organization, (E) audit of financial transactions of the labor organization, (F) the calling of regular and special meetings, (G) the selection of officers and stewards and of any representatives to other bodies composed of labor organizations' representatives, with a specific statement of the manner in which each officer was elected, appointed, or otherwise selected, (H) discipline or removal of officers or agents for breaches of their trust, (I) imposition of fines, suspensions, and expulsions of members, including the grounds for such action and any provision made for notice, hearing, judgment on the evidence, and appeal procedures, (J) authorization for bargaining demands, (K) ratification of contract terms, (L) authorization for strikes, and (M) issuance of work permits. Any change in the information required by this subsection shall be reported to the Secretary at the time the reporting labor organization files with the Secretary the annual financial report required by subsection (b).

201.002 SEE 29 CFR 402.

201.003 SEE 29 CFR 451.1 to 451.6 for extended discussion of coverage of Labor Organizations.

201.004 SEE Instructions for Form LM-1, Labor Organization Information Report.

WHO MUST FILE

202.001 DEFINITION OF "LABOR ORGANIZATION"

See Manual Entry 030.601 ff for definition of the term "labor organization” in section 3(i) of the Act and for discussion of coverage.

202.005 FOREIGN LOCALS

Foreign locals do not have to submit reports required by section 201 of the Act.

*202.010 CONSOLIDATED LOCAL

Where two local unions consolidate under a new charter but retain the same members and assets as the former separate organizations, the consolidated local is considered a new labor organization which must file the reports required by section 201. The initial information report on Form LM-1 is due within ninety days after the consolidation takes effect, and annual reports must be filed ninety days after the end of the fiscal year of the new organization.

Further, each organization which loses its identity through the consolidation must file a terminal report within thirty days of the effective date of such loss of identity.

See 29 CFR 402.2, 402.5, 403.2 and 403.5, and Manual Entries 203.001 ff and 212.100 ff.

TIME AND PLACE TO FILE INITIAL REPORTS AND TERMINAL INFORMATION REPORTS

INITIAL REPORTS

203.001 LMRDA, SECTION 207(a)

Each labor organization shall file the initial reports required under section 201(a) within ninety days after the date on which it first becomes subject to this Act.

203.002 SEE 29 CFR 402.2, 402.3.

203.005 EFFECTIVE DATE FOR INITIAL REPORT

Section 207(a) of the Act requires a labor organization to file its initial report within 90 days after becoming subject to the Act. Thus, once a group has taken one of the steps subjecting it to the Act (e.g., electing provisional officers) it should adopt a constitution and bylaws as quickly as possible and file it with the Secretary not later than 90 days after taking the action which makes it subject to the Act. Similarly, an LM-1 should be filed with as much information as is possible with a statement attached indicating that the group is newly formed and that therefore some of the questions are not applicable or immediately answerable.

TERMINAL INFORMATION REPORTS

203.102 SEE 29 CFR 402.5

203.105 COMBINED REPORTS

Where locals have gone out of existence the technical requirements of the Act provide for terminal labor organization reports, financial reports (if necessary), and terminal financial reports. If convenient to combine these reports in any way, it is possible to do so, so long as all of the information required in the Regulations is contained in the reports. (The specific requirements for the terminal reports are discussed in section 402.5 and 403.5 of the Regulations.)

REQUIREMENT TO <u>ADOPT</u> A CONSTITUTION AND BYLAWS

204.001 LMRDA, SECTION 201(a)

Every labor organization shall adopt a constitution and bylaws and shall file a copy thereof with the Secretary, together with a report, signed by its president and secretary or corresponding principal officers, containing the following information--. . .

204.002 SEE 29 CFR 402.1, 402.3(b)

204.005 DIFFERENCE BETWEEN CONSTITUTION AND BYLAWS

Section 201 requires the adoption of written documents which contain the substance of what is generally contained in the constitution and bylaws of an organization. Ordinarily the two terms are distinguishable to the extent that the document which sets forth the mode of organization, the fundamental organic law, and the principles governing the body, and which enacts and establishes the organization and fixes the structure and the aggregate of powers of the association is denoted as the constitution. The term "bylaws", on the other hand, is generally used to denote the rules, details and regulations applicable to the internal affairs of the association. According to Webster, bylaws would include such matters as duties of members, fees or dues, authority in case of disputes and the order of business. It is stated in section 402.1 of the Regulations that "as used in this part 'constitution and bylaws' means the basic written rules governing the organization." If the constitution incorporates the substance of what may more often be described as bylaws, and if in fact it includes all of the basic written rules governing the organization, and if other bylaws, as that term is usually understood, either denominated as such or otherwise, actually do not exist, no formal adoption thereof need be made. However, in such case a statement should be included in the LM-1 report to the effect that the constitution embodies all of the basic written rules governing the organization, and that no bylaws as such have been adopted.

See also Manual Entries 204 ff.

(Technical Revisions: Dec. 2016)

204.200 ADOPTION OF INTERNATIONAL CONSTITUTION BY LOCAL

Section 201 of the Act requires a labor organization to adopt a constitution and bylaws and file a copy with the Secretary. This section presumes that the constitution and bylaws adopted will be adequate for the operation of the adopting labor organization and that the provisions will be in accordance with the Act. Where a local union adopts the constitution and bylaws of a parent union, such documents must contain provisions which are applicable to the adopting union. Where the language of an adopted International constitution and bylaws is limited in its application to the conduct of the International's business and no provisions are made for the guidance of the internal operation of subordinate unions, then any subordinate union which adopts such documents as its own without any additions, has not met the requirements of Title II of the Act.

See also Manual Entries 205 ff.

CONTENTS OF LM-1 REPORT: CONSTITUTION AND BYLAWS

205.101 LMRDA, SECTION 201(a)

Every labor organization shall adopt a constitution and bylaws and shall file a copy thereof with the Secretary, together with a report, signed by its president and secretary or corresponding principal officers, containing the following information-- . . .

205.105 INFORMATION NEED NOT BE IN CONSTITUTION OR BYLAWS

Section 201(a) requires that a labor organization file with the Secretary of Labor a copy of its

constitution and bylaws, together with an information report containing ". . . (3) detailed statements or references to specific provisions of documents filed under this subsection, showing the provision made and procedures followed with respect to each of the following: . . . (J) authorization for bargaining demands . . . (K) ratification of contract terms."

It is the position of this Office that the language of the statute does not require that provisions and procedures in question must be contained in the constitution or bylaws, and our interpretation finds support in the option given labor organizations of filing "detailed statements" in lieu of "references to specific provisions of documents." The provisions and procedures may be informal; the statute is only concerned that, in whatever form they exist, they be described in detail on the information report.

205. 110 PARENT CONSTITUTION ADOPTED BY SUBORDINATE

Under section 402.3(b) of the Regulations, a subordinate labor organization may adopt the constitution and bylaws of a national or international union and the subordinate organization will not have to file copies of these documents under the conditions stated in that section of the Regulations.

This exemption from filing copies is limited to the adoption of the constitution and bylaws of a national or international labor organization and therefore if a local union has adopted the constitution and bylaws of a district council, the local must file two copies of the district council's constitution and bylaws with its LM-1.

However, Item 18 on the Form LM-1 must be answered by every labor organization, including those governed by the constitution of an international labor organization, either by a detailed statement or by reference to the constitution filed on behalf of the reporting organization.

205.120 FILING OF CONSTITUTION ON BEHALF Of SUBORDINATES

Section 402.3 of the Regulation on "Labor Organization Information Reports" permits an international labor organization to file copies of its constitution on behalf of its subordinate organizations provided that the subordinate organizations indicate in their filings that they have adopted such international constitution. This section of the Regulation does not, however, relieve the subordinate organizations of the responsibility in regard to reporting the provisions made or procedures followed with respect to the matters asked about in Item 18 of Form LM-1. Such provisions or procedures may be reported by giving citations to a document which contains detailed statements describing the provisions or procedures or by the submission of a detailed statement which describes the provisions or procedures.

See also Instructions on use of LM-1, Preparing This Form.

(Technical Revisions: Dec. 2016)

CONTENTS OF LM-1 REPORT: NAME-ADDRESS-OFFICES OF UNION NAMES-TITLES OF UNION OFFICERS

205.201 LMRDA, SECTION 201(a)

(1) the name of the labor organization, its mailing address, and any other address at which it maintains its principal office or at which it keeps the records referred to in this title;

(2) the name and title of each of its officers;
See 29 CFR 452.17 - 452.21 for definition of "Officer."

NOTE: Items 4, 8, 9, and 15 of Form LM-1 cover section 201(a)(1) and (2).

(Technical Revisions: Dec. 2016)

CONTENTS OF LM-1 REPORT: DUES-FEES-WORK PERMITS-ASSESSMENTS

205.301 LMRDA, SECTION 201(a)

(3) the initiation fee or fees required from a new or transferred member and fees for work permits required by the reporting labor organization;
(4) the regular dues or fees or other periodic payments required to remain a member of the reporting labor organization; and . . .
NOTE: Item 16 of LM-1 covers section 201(a)(3) and (4). Under this item, the basic reporting principle is that dollar and cents figures are required instead of constitutional references.

CONTENTS OF LM-1 REPORT: QUALIFICATIONS AND RESTRICTIONS ON MEMBERSHIP

205.401 LMRDA, SECTI0N 201(a)(5)(A)

. . . qualifications for or restrictions on membership, . . .
NOTE: LM-1, Item 18(A) covers section 201(a)(5)(A)

CONTENTS OF LM-1 REPORT: LEVYING OF ASSESSMENTS

205.501 LMRDA, SECTION 201(a)(5)(B)

. . .levying of assessments,…
NOTE: LM-1, Item 18(B) covers section 201(a)(5)(B)

CONTENTS OF LM-1 REPORT: INSURANCE OR BENEFIT PLANS

205.601 LMRDA, SECTION 201(a)(5)(C)

. . . participation in insurance or other benefit plans, . . .

NOTE: LM-1, Item 18(C) covers section 201(a)(5)(C).
NOTE: Plans referred to here may be reportable under the Employee Retirement Income Security
Act of 1974 which is administered in part by the Employee Benefits Security Administration.

(Technical Revisions: Dec. 2016)

205.605 BENEFIT PLANS

The only benefit plans which must be reported under Item 18(C) on the Form LM-1 are plans which are entirely union operated. No report is required under section 201(a)(5)(C) or Item 18(C) of the LM-1 with respect to plans established by collective bargaining which are operated jointly by employer and employee representatives or by an independent trustee.

205.607 VOLUNTARY RELIEF FUND

A Voluntary Relief Fund is raised by contributions at the time of the death of a member who has voluntarily affiliated himself with the fund and the entire amount thereof is paid to the party or parties designated to receive it. Any expenses incurred in the operation of the fund come from a General Fund and there is no guaranty as to the amount any beneficiary will receive.

This plan would seem to be a type of benefit plan within the meaning of section 201(a)(5)(C) of the Act. It is necessary under section 201(a) of the Act to either submit a detailed statement or copy of a document with references to the specific provisions thereof which contain such a statement, showing the provision made and procedures followed with respect to each such plan. In addition, it would appear to be necessary to report receipts and disbursements of the Association pursuant to the plan in the annual financial report required to be filed under section 201(b) of the Act.

CONTENTS OF LM-1 REPORT: DISBURSEMENT OF FUNDS

205.701 LMRDA, SECTION 201(a)(5)(D)

. . . authorization for disbursement of funds of the labor organization, . .
NOTE: Form LM-1, Item 18(D) covers section 201(a)(5)(D).

205.705 MEANING OF "DISBURSEMENT"

It would not be responsive to answer Item 18(D) of the LM-1 Form by citing a provision of the union's constitution which states, "All checks must be signed by the Treasurer," when the treasurer is not authorized, in point of fact, to sign checks whenever he wishes, but must have permission from some other person or group.

CONTENTS OF LM-1 REPORT: AUDIT OF FINANCES

205.801 LMRDA, Section 201(a)(5)(E)

. . . audit of financial transactions of the Labor organization,…
NOTE: LM-1, Item 18(E) covers section 201(a)(5)(E).

CONTENTS OF LM-1 REPORT: CALLING OF MEETINGS

205.901 LMRDA, SECTION 201(a)(5)(F)

. . . the calling of regular and special meetings, . . .
NOTE: LM-1**,** Item 18(F) covers section 201(a)(5)(F).

CONTENTS OF LM-1 REPORT: SELECTION OF OFFICERS

206.101 LMRDA, SECTION 201(a)(5)(G)

. . . the selection of officers and stewards and of any representatives to other bodies composed of labor organizations' representatives, with a specific statement of the manner in which each officer was elected, appointed, or otherwise selected . . .

NOTE: LM-1, Item 18(G)(1), (2) and (3) covers section 201(a) (5) (G).

CONTENTS OF LM-1 REPORT: REMOVAL OF OFFICERS

206.201 LMRDA, SECTION 201(a)(5)(H)

. . . discipline or removal of officers or agents for breaches of their trust, . . .
NOTE: LM-1, Item 18(H) covers section 201(a) (5) (H).
NOTE: For adequacy of removal procedures see Manual Entry 490 ff., and 29 CFR 417.

CONTENTS OF LM-1 REPORT: FINES AND APPEALS

206.301 LMRDA, SECTION 201(a)(5)(I)

. . . imposition of fines, suspensions, and expulsions of members including the grounds for such action and any provision made for notice, hearing, judgment on the evidence, and appeal procedures, . . .
NOTE: LM-1, Item 18(I) covers section 201(a)(5)(I).

CONTENTS OF LM-1 REPORT: BARGAINING

206.401 LMRDA, SECTION 201(a)(5)(J)

. . . authorization for bargaining demands, . .

NOTE: LM-l Item 18(J) covers section 201(a)(5)(J).

CONTENTS OF LM-1 REPORT: RATIFICATION OF CONTRACT

206.501 LMRDA, SECTION 201(a)(5)(K)

. . . ratification of contract terms , . . .
NOTE: LM-1, Item 18(K) covers section 201(a)(5)(K).

206.505 VOTING UPON COLLECTIVE BARGAINING AGREEMENTS

There is nothing in the Act which regulates the procedures unions must follow in voting upon collective bargaining contracts. However, section 201(a)(5)(J) and (K) does require, as part of the labor organization information report, a detailed statement or references to specific provisions of documents containing detailed statements showing the provisions made and procedures followed with respect to authorization for bargaining demands and ratification of contract terms.

CONTENTS OF LM-1 REPORT: AUTHORIZATION OF STRIKES

206.601 LMRDA, SECTION 201(a)(5)(L)

. . authorization for strikes, . . .
NOTE: LM-1, Item 18 (L) covers section 201 (a)(5)(L).

206.605

There is no specific provision in the Act respecting the manner in which strike votes may be taken. However, section 201(a)(5)(L) does require as part of the report under section 201, a detailed statement or references to specific provisions of documents showing the provisions made and procedure followed with respect to authorization for strikes.

Apart from the requirement in the National Emergencies provisions of the Taft-Hartley Act, which calls for a last-offer secret ballot conducted by the National Labor Relations Board, no Federal legislation is now in effect which imposes a secret strike vote upon unions in this area.

CONTENTS OF LM-1 REPORT: ISSUANCE OF WORK PERMITS

206.701 LMRDA, SECTION 201(a)(5)(M)

... issuance of work permits . . .
NOTE: LM-1, Item 18(M) covers section 201 (a)(5)(M).

206.705 "REFERRAL" OR "HIRING HALL" SYSTEMS UNDER 201(a)(5)(M)

The United States District Court for the Northern District of Alabama has said that referral slips used in a union hiring hall system amount to "work permits" within the meaning of section

201(a)(5)(M) of LMRDA. The Court found that a reference to a provision in a union's constitution which deals with transfers of members from one local union to another and the means by which such transferred members obtain permission to work is not sufficiently responsive to the requirement, under section 201(a)(5)(M), that the union provide "detailed statements" about the "issuance of work permits," when the union also has a "referral" or "hiring hall" system under which the union regularly receives requests from employers to furnish them with employees for the kind of jobs customarily done by members of the union. This latter information must also be included under Item 18(M) of the Form LM-1.
Allen v. Local 92, International Association of Bridge, Structural, and Ornamental Iron Workers, 47 LRRM 2214 (N.D Ala. 1960).

(Technical Revisions: Dec. 2016)

CONTENTS OF LM-1 REPORT: SIGNATURES

206.801 LMRDA, SECTION 201(a)

Every labor organization shall adopt a constitution and bylaws and shall file a copy thereof with the Secretary, together with a report, signed by its president and secretary or corresponding principal officers,…

206.802 PERSONAL RESPONSIBILITY OF SIGNATORIES OF REPORTS

SEE 29 CFR 402.8

(Technical Revisions: Dec. 2016)

206.805 INTERNATIONAL OFFICERS SIGNING FOR LOCALS

Reports under section 201 of the Act must be signed by the persons specified in the section. There is no exception permitting international representatives to sign reports for local unions, although the Act does not preclude them from assisting local officers in the preparation of these reports.

206.810 PROPER SIGNATURES WHEN OFFICERS CHANGE

The question of which officer is the proper one to sign labor organization reports when a labor organization selects new officers, particularly when the new officers take office in the 90 day period following the end of the labor organization's fiscal year, is left to the discretion of the labor organization. In the absence of a union rule or determination specifying which officers are to sign the report, we should proceed on the assumption that the current officers should sign the report.

206.820 PROPER OFFICERS TO SIGN WHERE THE EXECUTIVE BOARD IS THE GOVERNING BODY

See Manual Entry 214.920 and Note following.
See also Instructions for Use of LM-1, "Who Must File."

CHANGES OF INFORMATION ON LM-1 REPORT

208.001 LMRDA, SECTION 201 (a)(5)

Any change in the information required by this subsection shall be reported to the Secretary at the time the reporting labor organization files with the Secretary the annual financial report required by subsection (b).

See Instructions for Item 18 on Form LM-2, Item 21 on Form LM-3, and Item 9 on Form LM-4.

(Technical Revisions: Dec. 2016)

208.002 SUBSEQUENT REPORTS

See 29 CFR 402.4

(Technical Revisions: Dec. 2016)

208.005 CHANGE IN CONSTITUTION OR BYLAWS

Section 201(a)(5) of the Act and section 402.4 of the regulations require that a union which revises the most recent constitution and bylaws it has filed with the Office of Labor-Management Standards must file two dated copies of its revised constitution and bylaws at the time it files its annual financial report. However, a union which has a uniform constitution and bylaws prescribed by its parent national or international union is not required to file a copy of a revised uniform constitution and bylaws if its parent body files copies.

Section 201(a)(5) of the Act and section 402.4 of the regulations require that a union which changes the practices and procedures for which separate statements must be filed on Form LM-1 must file an amended Form LM-1 when it files its annual financial report to update the information submitted on its previous Form LM-1.

When a union is not governed by a uniform constitution and bylaws prescribed by a parent national or international union, but the union is required by that parent union to make changes in its constitution or bylaws, the union must file the newly revised constitution and bylaws with its annual report. See Form LM-2 Instructions, Item 18; Form LM-3 Instructions, Item 21; and Form LM-4 Instructions, Item 9.

(Revised: Dec. 2016)

208.100 CHANGE OF OFFICERS

Information with regard to change of officers is reported in the Labor Organization Annual Report (Form LM-2) in Schedule 11 where all officers of the labor organization during the period covered by the report must be listed, together with a code indicating if they left office during the period, continued in office throughout the period, or newly assumed office during the period.

When a labor organization uses Form LM-3, this information must be supplied in Item 24.

(Technical Revisions: Dec. 2016)

LABOR ORGANIZATION ANNUAL REPORTS
LM-2/LM-3/LM-4 IN GENERAL

210.001 LMRDA, SECTION 201(b)

Every labor organization shall file annually with the Secretary a financial report signed by its president and treasurer or corresponding principal officers containing the following information in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year--

(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.

210.002 SEE 29 CFR 403.2

210.005 REPORTING WHERE DUES PAID DIRECTLY TO PARENT BODY

An employer checks off the dues and initiation fees of a local union’s members and forwards them directly to the parent body. After per capita and other charges are deducted the remainder is sent to the local.

If an intermediate or parent body receives dues checkoff directly from an employer on behalf of the reporting organization, the reporting organization does not report in Item 36 the portion retained by the intermediate or parent body for per capita tax or other purposes, such as a special assessment. Any amounts retained by the intermediate body or parent body other than per capita tax must be explained in Item 69 (Additional Information). For example, if the intermediate body or parent body retained $500 of the reporting organization's dues checkoff as payment for supplies purchased from that body by the reporting organization, this should be explained in Item 69, but the $500 should not be reported as a receipt or disbursement on either organization's Form LM-2. If, however, the intermediate body or parent body disbursed part of the reporting organization's dues checkoff on that organization's behalf, this amount should be included in Item 36 and in the appropriate disbursement item on the reporting organization's Form LM-2. For example, if the intermediate body or parent body disbursed $500 of the reporting organization's dues checkoff to an attorney who had provided lobbying services to the reporting organization, this amount should be reported in Item 36 and as a disbursement in Schedule 16 (Political Activities and Lobbying) of the reporting organization's Form LM-2. See Form LM-2 Instructions, Item 36 (Dues and Agency Fees).

(Revised: Dec. 2016)

WHO MUST FILE

211.001 LMRDA, SECTION 201(b)

Every labor organization shall file annually with the Secretary a financial report . . .
See Instructions for LM-2, Sections II and VII.

(Technical Revisions: Dec. 2016)

211.002 SEE 29 CFR 403.2; 403.3; 403.4; 403.5

211. 100 FOREIGN LOCALS

Foreign locals do not have to submit reports required by section 201 of the Act.

TIME AND PLACE TO FILE INITIAL AND TERMINAL REPORTS

212.001 LMRDA, SECTION 207(b)

Each person required to file a report under section 201(b), 202, 203(a), or the second sentence of 203(b) shall file such report within ninety days after the end of each of its fiscal years; except that where such person is subject to section 201 (b), 202, 203(a), or the second sentence of 203(b), as the case may be, for only a portion of such a fiscal year (because the date of enactment of this Act occurs during such person's fiscal year or such person becomes subject to this Act during its fiscal year) such person may consider that portion as the entire fiscal year in making such report.

212.002 SEE 29 CFR 403.2(a) 403.5

INITIAL REPORTS

212.005 PERIOD COVERED

A union which elected to file a report covering the last six months of its fiscal year for the year in which the Act became effective, when it might have complied with the Act by reporting only the final three and a half months, was properly ordered to produce records to validate its entire report, even though some of the records were related to events occurring prior to the effective date of the Act. The reason for this is that when the union chose to file its report for the six month period, it assumed the burden imposed by the Act of maintaining the necessary records to support the report which it chose to file.
International Brotherhood of Teamsters v. Goldberg, 303 F.2d 402, 407, 49 LRRM 2968 (D.C. Cir. 1962), cert. denied, 370 U.S. 938 (1962).

(Technical Revisions: Dec. 2016)

TERMINAL REPORTS

212.100 CONSOLIDATION WITH OTHER LOCAL

Where locals have gone out of existence due to consolidation with other locals, the technical requirements of the Act provide for terminal labor organization reports, financial (if necessary), and terminal financial reports. If convenient to combine these reports in any way, it is possible to do so, as long as all of the information required in the Regulations is contained in the reports. (The specific requirements for the terminal reports are discussed in sections 402.5 and 403.5 of the Regulations.)

212.200 MOST FREQUENT PROBLEMS

1. Often letters are received giving some terminal information but no financial report.
2. Omissions on terminal reports.
   a. Effective date of termination or loss of reporting identity.
   b. Reason for termination.
   c. Name and mailing address of the labor organization into which terminated organization has been consolidated, merged or otherwise absorbed.
3. Failure to report ultimate disposition of residual assets or plans for disposition.
4. Missing annual reports for fiscal years prior to the terminal report.

See Instructions for LM-2, Parts III, IV, V, and XII; Instructions for LM-3, Parts III, XI, and XII; and Instructions for LM-4, Item 3 (Amended or Terminal Report) and Part X.

(Technical Revisions: Dec. 2016)

212.300 DISSOLVED UNIONS

If the labor organization should lose its identity through merger, consolidation, or otherwise—that is, if the local should cease to exist as a separate local—then it must file a terminal report within 30 days after it ceases to exist.

*212.350 TERMINAL REPORT NEED NOT LIST ASSETS AT ZERO

A labor organization that has gone out of existence need not list its assets at zero on its terminal financial report. The reporting provisions of the Act require only that a labor organization <u>disclose</u> its financial operations. The organization is not required to make any financial transaction, such as a formal transfer of assets, prior to the time it ceases to be a labor organization. Thus, an organization filing a terminal report must show its financial status, including assets, as of the time it ceased to be a labor organization.

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COMBINED OR CONSOLIDATED REPORTING

213.005 GENERALLY NOT ALLOWED

The Act requires that <u>every</u> labor organization covered by its provisions submit an annual financial report which covers its own financial activities and operations. A report submitted for two labor organizations combines and consolidates the financial activities of those labor organizations and therefore is not acceptable. Each local must submit its own report which is

signed by its president and treasurer or corresponding principal officers.

213.007 NOT ALLOWED WHEN LOCAL "HANDLES" FUNDS

Where a local union pays a monthly assessment to a Joint Board which is (1) deposited in a bank account to the credit of the local's Unemployment Relief Fund, (2) set up for the benefit of the members of the local, and (3) disbursed by a committee made up of members of the local, a report of the receipts and disbursements from this fund must be reported separately by the local on its LM-3 and may not be reported in a consolidated financial report by the Joint Board.

One of the conditions for filing consolidated financial reports is that the local unions included in the report "neither receive nor handle any funds." The local in question appears to be "handling" the funds of the Unemployment Relief Fund in that it exercises sole control over the disbursements therefrom through a committee made up of members of the local. The Joint Board's only function in connection with the fund is to do the bookkeeping of the fund transactions.

213.100 WHEN ALLOWED

A consolidated labor organization annual report by an intermediate body such as a joint board or council which includes the financial condition and operations of its constituent locals is acceptable, provided (1) each constituent local union files a separate, individual annual report properly signed, (2) the intermediate body reports the names of officers of the constituent locals to whom any payments have been made together with the purpose and amount of such payments, and (3) each of the locals included in the report neither receives nor handles any funds, nor does it hold title alone to any assets or other property. All relevant questions are to be completed, and the intermediate body with which the local is affiliated indicated on the negative report as well as a showing made that the local has no receipts, no disbursements, no assets, and no liabilities.

Consolidated annual reports by groups of locals each of which has assets or handles funds but whose accounts are handled on a pooled or centralized basis are unacceptable. There is nothing in the LMRDA which prohibits centralized accounting. However, under section 201(b) each labor organization must submit annually a report of its own financial condition and operations showing its assets, liabilities, receipts, and disbursements. Thus, if a number of labor organizations wish to utilize centralized accounting, such accounting must have the capability of producing, and in fact produce, separate and distinct annual reports limited to the financial condition and operations of the individual locals or other bodies being served by the centralized accounting service.

(Revised: Dec. 2016)

*213.200 SIMPLIFIED ANNUAL REPORTS FOR CERTAIN SMALLER LABOR ORGANIZATIONS

Pursuant to 29 CFR 403.4(b) a local labor organization which is not in trusteeship and which has no assets, no liabilities, no receipts, and no disbursements during the period covered by the annual report of the national organization with which it is affiliated need not file an annual financial report if the following conditions are met:

(1) It is governed by a uniform constitution and bylaws filed on its behalf pursuant to §402.3(b)

of this chapter, and does not have governing rules of its own;

(2) Its members are subject to uniform fees and dues applicable to all members of the local labor organizations for which such simplified reports are submitted;

(3) The national organization with which it is affiliated assumes responsibility for the accuracy of, and submits with its annual report, a separate letter-sized sheet for each local labor organization containing the following information with respect to each local organization in the format illustrated below as part of this regulation:

(i) The name and designation number or other identifying information;

(ii) The file number which the Office of Labor-Management Standards has assigned it;

(iii) The mailing address;

(iv) The beginning and ending date of the reporting period which must be the same as that of the report of the national organization;

(v) The names and titles of the president and treasurer or corresponding principal officers as of the end of the reporting period;

(vi) The names and titles of the officers as of the end of the reporting period;

(4) At least thirty days prior to first submitting simplified annual reports, the national organization notifies the Office of Labor-Management Standards, Division of Reports Processing and Disclosure, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210, in writing, of its intent to begin submitting simplified annual reports for affiliated local labor organizations;

(5) The national organization files a terminal report on Form LM-3 clearly labeled on the form as a terminal report, for any local labor organization which has lost its identity through merger, consolidation, or otherwise if the national organization filed a simplified annual report on behalf of the local labor organization for its last reporting period; and

(6) The national organization assumes responsibility for the accuracy of and submits with its annual report and the simplified annual reports for the affiliated local labor organizations, the following certification in duplicate properly completed and signed by the president and treasurer of the parent national organization:

September , 1976 (Technical Revisions: Dec. 2016)

CERTIFICATION

We, the undersigned, duly authorized officers of (name of national organization), hereby certify that the local labor organizations individually listed on the attached documents come within the purview of 29 CFR 403.4(b) for the reporting period from (beginning date of national organization’s fiscal year) through (ending date of national organization’s fiscal year), namely:

(1) they are local labor organizations;

(2) they are not in trusteeship;

(3) they have no assets, liabilities, receipt, or disbursements;

(4) they are governed by a uniform constitution and bylaws, and fifty copies of the most recent uniform constitution and bylaws have been filed with the Office of Labor -Management Standards;

(5) they have no governing rules of their own; and

(6) they are subject to the following uniform schedule of fees and dues: (Specify schedule for dues, initiation fees, fee required from transfer members, and work permit fees, as applicable.)

Each document attached contains the specific information called for in 29 CFR 403.4(b)(3)(i)-(vi), namely: (i) the local labor organization's name and designation number; (ii) the file number assigned the organization by the Office of Labor-Management Standards; (iii) the local labor organization's mailing address; (vi) the beginning and ending date of the reporting period; (v) the city; county and state where the local labor organization is chartered to operate; and (vi) the names and titles of the officers of the local labor organization as of (the ending date of the national organization's fiscal year).

Furthermore, we certify that the terminal reports required by 29 CFR 403.4(b)(5) and 29 CFR 403.5(a) have been filed for any local labor organizations which have lost their identity through merger, consolidation, or otherwise on whose behalf a simplified annual report was filed for the last reporting period.

(FORMAT FOR SIMPLIFIED ANNUAL REPORTING)

SIMPLIFIED ANNUAL REPORT

Affiliation name:

Designation name and number:

Unit name:

Mailing address:

Name of person:

Number and street:

City, State and Zip:

File number:

Period covered:

From Through

Names and Titles of president and treasurer or corresponding principal officers

---

For certification see NHQ file folder file number:

President_____

Where signed_____

Date_____

Treasurer_____

Where signed_____

Date_____

(Technical Revisions: Dec. 2016)

INFORMATION REQUIRED BY LAW

214.001 LMRDA, SECTION 201(b)

. . . the following information in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year--
(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.
See Instructions for Form LM-2, Section XI; LM-3, Section XI; and LM-4, General Instructions, Items 1-24.

(Technical Revisions: Dec. 2016)

214 .002 SEE 29 CFR 403.2(b), 403.3

214.101 to 214.850 deal with the items listed in section 201(b).

CONTENTS OF ANNUAL REPORT: FISCAL YEAR

214.101 LMRDA, SECTION 201(b)

..... its financial condition and operations for its preceding fiscal year---

214.102 FISCAL YEAR FOR REPORTS REQUIRED

SEE 29 CFR 403.1

(Technical Revisions: Dec. 2016)

214.105 NEED TO ADOPT FISCAL YEAR

The law does not call for a specific fiscal year period. It is however, implicit in the phrase that "every labor organization shall file annually" a financial report. Therefore each labor organization should select a convenient fiscal year ending date for reporting purposes.

214.110 CHANGE IN FISCAL YEAR

It is not necessary to obtain the approval of the Secretary of Labor of a proposed change in a labor organization’s fiscal year. However, organizations which file Federal income tax returns must obtain approval of the Internal Revenue Service of any proposed change of fiscal year. Request for that approval is made on Form 1128, obtainable through district offices of the Internal Revenue Service.

214.111

There is nothing in the Labor-Management Reporting and Disclosure Act of 1959 which prevents local unions from changing their fiscal years for the purpose of bringing them into uniformity or for any other reason of administrative or accounting convenience.

214.115 INTERNATIONAL CHANGING LOCAL' S FISCAL YEAR

A clause adopted by an international labor organization making it mandatory for each subordinate local's fiscal year to end on December 31 of each year is proper if appropriate action to comply was taken by the locals. Such action by the locals would have to be in accordance with their own constitution and bylaws, and in conformity with other regulations, such as those of the Internal Revenue Service pertaining to fiscal years. If, therefore, the local's fiscal year in fact ended on December 31, the local would then have until the end of March to comply with section 201(b). However, if such proper action was not taken, and the local's fiscal year in fact ended on some other previously established day, the 90-day period for making the report should be calculated from that date.

(Revised: Dec. 2016)

214.120 EFFECT OF CHANGE

Locals designating a new fiscal year prior to the expiration of a previously established fiscal year period are required, by 29 CFR 403.1, to file a financial report for the resulting period of less than 12 months. Subsequent reports should be filed within 90 days after the close of each new succeeding year.

CONTENTS OF ANNUAL REPORT: ASSETS

214.201 LMRDA, SECTION 201(b)(1)

. . . assets and liabilities at the beginning and end of the fiscal year; . . .

214.205

See Instructions for LM-2, Items 15, 16, 22-29. (For examples of assets).
See Instructions for LM-3, Items 13, 25-31.

214.210 CLAIMS IN LITIGATION

“Grain Warehousemen’s Local No. X,” affiliated with International Union Y, is induced by

International Union Z to disaffiliate from International Union Y and to affiliate with it (Z). One of X's assets was a $6,000 bond on deposit with International Y. Y refuses to turn over the bond and as part of the "affiliation" with Z, International Union Z takes an assignment of X's claim and pays X the full $6,000. It is expected that Z will be able to recover the bond but in any event the officers of Z feel it a worthwhile expenditure for securing a going local, X, and if unsuccessful are prepared to treat the $6,000 as an organizing expense.

The proper reporting by the International of the claim for the bond which they (Z) have taken from Local X is "Other Assets," reportable in Item 28 of the LM-2. The amount of this contingent claim should be set forth in the supporting schedule for "Other Assets" (LM-2, Schedule 7) and full details should be furnished in Item 69 -- Additional Information.

(Technical Revisions: Dec. 2016)

214.215 YEARLY GROWTH IN U.S. TREASURY BONDS

Yearly growth in U.S. Treasury Bonds can be shown on Form LM-2 in either of two ways. If the bond is carried on the books at cost, actual cost is entered in Item 25, Columns A and B. When the bond is converted into cash, total redemption price is entered in Item 43 (and supporting Schedule 3). Alternately, if the bond is carried on the books at current appreciated value, rather than cost, the yearly growth would be shown by entering that increased value at the end of the reporting period in Item 25, Column B, and entering the cost of the bond in Item 69 with a brief explanation of the noncash increase in value.

(Technical Revisions: Dec. 2016)

214.220 DEPRECIATING AND EXPENSING FIXED ASSETS

Land and buildings must be itemized, whereas automobiles and other vehicles, and office furniture and equipment should be aggregated. A labor union is required to record the purchase of fixed assets as assets in its financial records and to charge a portion of the cost of those items in each year in which they have a useful life (i.e., depreciate). To expense a fixed asset is to charge the cost of the asset to current expenses, rather than enter the asset on the books and periodically depreciate it. It is generally not permissible to expense certain fixed assets, such as buildings, office furniture and equipment (e.g., computers, photocopiers), and automobiles. If it is permissible under accounting procedures and tax law to expense a fixed asset, and the union does so in its books, then the union may report the fixed assets in this manner on the Form LM-2. All fixed assets, other than land, must be reported in Form LM-2, Column C with accumulated depreciation or an amount expensed. Fixed assets must be reported even when expensed, fully depreciated, or carried on the books at scrap value or other nominal value.

(Revised: Dec. 2016)

CONTENTS OF ANNUAL REPORT: LIABILITIES

214.301 LMRDA, SECTION 201(b)(1)

. . assets and liabilities at the beginning and end of the fiscal year; . .

See Instructions for LM-2, Items 17, 30-34.
See Instructions for LM-3, Items 32-36.
See Instructions for LM-4 Item 15.

214.310 CONTINGENT LIABILITIES (PENDING DAMAGE SUITS)

The United States District Court for the Northern District of Alabama has held that a union must include in its financial report any contingent liabilities in the form of pending damage suits. The Court said:

> Defendant (union) has filed with the U.S. Secretary of Labor two financial reports under (section 201(b) LMRDA). . . The Court finds there is reasonable cause to believe these reports are inaccurate, incomplete, or inadequate explanations of the financial condition of defendant. Specifically, the Court finds . . . that defendant has contingent liabilities of upwards of a quarter of a million dollars, in the form of certain damage suits pending in Alabama State courts, which were not reported on either financial report filed with the U.S. Secretary of Labor; ...

Allen v. Local 92, International Association of Bridge, Structural, and Ornamental Iron Workers, 47 LRRM 2214 (N.D. Ala. 1960).

(Technical Revisions: Dec. 2016)

214.320 PER CAPITA LIABILITIES

A local union which owes per capita taxes to a superior body at the end of its fiscal year should report such obligations on its annual report as "Other Liabilities," Item 33 on Form LM-2, with detailed information in Schedule 10, or as "Other Liabilities" in Item 35 on Form LM-3.

(Technical Revisions: Dec. 2016)

CONTENTS OF ANNUAL REPORT: RECEIPTS

214.401 LMRDA SECTION 201(b)(2)

. . . receipts of any kind and the sources thereof; . . .

214.405

See Instructions for LM-2, 36-49. See Instructions for LM-3, 38-44.

214.410 STRIKE FUND

The requirements for reporting the receipts and disbursements of a Strike Fund for which the reporting organization has the accountability are the same as for reporting all other receipts and disbursements of the reporting organization. The Instructions for Form LM-2 state, in part, that the Statement of Receipts and Disbursements should include all cash receipts and disbursements of the reporting organization during the reporting period. Receipts must be identified as to kind and source and disbursements must be identified as to purpose.

The financial report should accurately disclose the consolidated financial condition and

operations of the labor organization for the period for which it is filed; and include the general fund, strike fund and any other receipts and/or disbursements for which the labor organization has financial accountability.

214.420 UNION ADVERTISING INCOME

Labor organizations must include in their annual financial reports filed under section 201(b) of the Act, statements concerning income received from the sale of advertising space in their newspaper or journal.

NOTE: If the newspaper or journal is operated as a separate entity, see ruling on Subsidiary Organizations, Manual Entries 215 ff.

*214.430 REPORTING OF SHORT-TERM TRANSFERS OF UNION FUNDS

On May 15, a union used $10,000 from its checking account to acquire a six-month certificate of a savings and loan association. On November 15 of the same year, the certificate of deposit was redeemed and the money returned to the union's checking account. A question was raised as to the proper handling of this type of transaction for purposes of reporting under the LMRDA.

The acquisition and redemption of a certificate of deposit does not constitute the ordinary type of cash flow activity required to be reported as a receipt and disbursement for purposes of reporting under the LMRDA. The transferred funds were already part of the union's "cash" assets. The exchange of funds between cash accounts of the same labor organization, such as to and from savings accounts, subsidiary checking accounts, or credit union accounts, also do not constitute reportable cash flow activities. If the transferred money were reported as part of the union's cash flow activities for the fiscal year, the results would clearly distort the union's financial status by inflating the amount of money reported as taken in and paid out for the fiscal year involved.

The distinction, for reporting purposes, between cash transfers and actual receipts and disbursements is explained in the Instructions for the LM-2 (page 34, column 1) under the heading (Statement B - Receipts and Disbursements). The explanation, which appears in the second paragraph, states that "the purpose of Statement B is to report the flow of cash in and out of the labor organization during the reporting period. Transfers between separate bank accounts or between special funds of the labor organization, such as vacation or strike funds, do not represent the flow of cash in and out of the labor organization. Therefore, these transfers should not be reported as receipts and disbursements of the labor organization."

(Revised: Dec. 2016)

CONTENTS OF ANNUAL REPORT: SALARY AND DISBURSEMENTS TO OFFICERS AND EMPLOYEES

214.501 LMRDA, SECTION 201(b)(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; . . .

214.505

See Instructions for LM-2, Schedules 11 and 12.
See Instructions for LM-3, 24, 45, 46
See Instructions for LM-4, Item 18

(Technical Revisions: Dec. 2016)

214.510 OFFICERS RECEIVING LESS THAN $10,000

The salaries of all officers of labor organizations must be reported, but only the salaries of employees who receive more than $10,000 in the aggregate must be reported. Any other construction of this section would make the words "also to" as used in this section superfluous. If the $10,000 limitation had been intended to apply to both officers and employees, we would expect the section to read, "to each officer and employee who received more than $10,000." But the words "also to" create two separate reporting categories: (1) officers, and (2) employees who receive more than $10,000.

214.520 ALLOWANCES

If "allowance" payments by the union are to a representative who is an officer of the labor organization, they are reportable under (E), Schedule 11, of the LM-2, Labor Organization Annual Report. If "allowance" payments are to a representative who is not an officer of the labor organization but is an employee of the labor organization, they are reportable under (E), Schedule 12 in Columns D-G if his total compensation from all affiliated labor organizations (salary, expenses, and other direct or indirect payments) is more than $10,000, and on the Totals Received By Employees Making Less than $10,000 Line if $10,000 or less.

(Technical Revisions: Dec. 2016)

214.530 BUSINESS REPRESENTATIVES EXPENSES

The law does not limit the amount of expenditures of union funds by business representatives. It leaves the establishment of such a limit to the organization. All such expenditures, however, must be reported in the union's annual financial report. With publicity available on the amount, the membership can act, if they wish, to set limits. Similarly, a union may, if it wishes, and if the constitution and bylaws permit, contract with its business representatives to pay part or all of their personal expenses. Such expenditures must also be reported by the union in its annual financial reports.

214.540 FUNDS FOR DEFENSE OF UNION OFFICER

Where a union makes payments to a law firm for legal fees occasioned by the legal defense of one of its officers, the disbursement of such funds must be shown on the LM-2 as an expense or allowance to the officer and may not be shown as an organizational expense to the union. The union argument that because of persecution of union officials the possibility of a criminal action is an inherent risk of union office and therefore the allocation of funds for the defense of a union officer is in the interest of the union, is not a valid argument.

214.550 POLITICAL CONTRIBUTIONS

If a labor organization makes contributions to the political campaign fund of one of its own or even some other labor organization's officers or employees, it must report them under either sections 201(b)(3) or 201(b)(6) of this law.
NOTE: This opinion does not pass upon the legality of such contributions under any other law.

214.560 DISBURSEMENTS FOR TIME SPENT ON UNION BUSINESS

Under section 201(b)(3) of the Act, the "salary, allowances, and other direct or indirect disbursements . . . to each officer . . . " must be reported. Even though disbursements to officers for "lost time" and "payments to officers for union business" may be repayment for lost income while performing in the role of a shop chairman, they nevertheless are direct disbursements to an officer when the shop chairman is also an officer of the union. Under the circumstances, such payments to shop chairmen who are also officers must be reported. In Form LM-2 reports, such disbursements should be reported in Schedule 11, and should be taken into account in calculating amounts of disbursements reported in Statement B. In Form LM-3 reports, such disbursements should be reported in Item 24 "All Officers and Disbursements to Officers," and identified in Item 45, "To Officers."

"Lost time" disbursements which are made to a shop chairman who is not also an officer should also be reported. In Form LM-2 reports, such disbursements should again be taken into account in reporting amounts in Statement B, and should be reported in Schedule 12 as explained in the instructions for Form LM-2 reports. In Form LM-3 reports, such disbursements must be included in Item 46, "To Employees." Include disbursement to individuals other than officers who receive lost time payments even if your organization does not consider them to be employees or does not make any other direct or indirect disbursements to them.

(Revised: April 2017)

214.570 PERSONAL TRANSPORTATION EXPENSES

An elected union officer whose official duties and responsibilities are principally at the union headquarters in City X maintains his "legal residence" or "home" in City Y, 300 miles away from the union headquarters. Travel each weekend to his home in City Y at union expense by public transportation is not the type of transportation expense covered in Schedule 11 of the Instructions for Labor Organization Annual Report, LM-2, which permits the union to enter in a general category the expenses for the transportation by public carrier of an officer on official business if payment was made to the public carrier or their agents by the reporting organization either directly or through its credit arrangements. For purposes of reporting on Form LM-2, the officer is not considered to be on official business when he travels to his "legal residence" 300 miles away from his principal place of work and abode. Therefore, the union must report the payment for transportation expenses in Schedule 11 (All Officers and Disbursements to Officers) of Form LM-2 in Column G (Other Disbursements) rather than reporting the transportation expenditures in a general category of union expenses.

214.571 DISBURSEMENTS FOR FOOD AND REFRESHMENTS

Disbursements by a union for food and refreshments for the union's officers, employees, and other individuals must be reported on the LM-2 in accordance with the following rules:

1. Direct and indirect disbursements to officers and employees for their food and refreshments when the disbursements are necessary for conducting official union business must be reported in column F of Schedule 11 or 12, as appropriate, of the LM-2.

2. Direct and indirect disbursements to officers and employees for their food and refreshments when the disbursements are not necessary for conducting official union business, but are essentially for the personal benefit of the officers and employees, must be reported in column G of Schedule 11 or 12, as appropriate, of the LM-2.

3. Indirect disbursements for food and refreshments at general membership gatherings should be reported in Schedule 18 and Item 53 of the LM-2.

4. Indirect disbursements for food and refreshments for the entertainment of individuals other than officers and employees on official union business may be reported in Schedule 18 and Item 53 of the LM-2. If the disbursements are made directly to an officer or employee to reimburse him for the expenditure, they must be reported in column F of Schedule 11 or 12, as appropriate, of the LM-2.

Manual entries 214.572 through 214.577 provide specific examples to illustrate these general rules.

See also the Instructions for Schedules 11 and 12 of the LM-2.

(Technical Revisions: Dec. 2016)

214.572 DINNER MEETING OF OFFICERS

The officers of union A meet to dinner in order to discuss business to be conducted at a regular monthly membership meeting or to discuss collective bargaining proposals. The union's disbursements for the meals, whether direct or indirect, must be reported in column F of Schedule 11 on the LM-2, because the general rule that a union should show in column F its expenditures for officers' food and refreshments which are necessary for conducting official union business appears to be applicable to this situation. The union's disbursements may be allocated among the officers.

(Technical Revisions: Dec. 2016)

214.573 FREQUENT LUNCHEONS OF OFFICERS

The officers of union A go out for lunch together several times a week, during which general union matters are usually discussed. The bill is charged to the union's account. The frequency and regularity of the meetings, and the fact that they take place at a time when the officers would otherwise normally be paying for meals themselves, appear to indicate that the meals are more for the personal benefit of the officers rather than necessary for conducting official union business. In this case, therefore, unless it can be shown that the luncheons are actually necessary for conducting official union business, such disbursements of the union must be reported in column G of Schedule 11 of the LM-2 rather than in column F, and may be allocated among the

officers.

(Technical Revisions: Dec. 2016)

214.574 ENTERTAINMENT OF NONUNION INDIVIDUAL

The officers of union A have dinner with a journalist who is doing research for a news article on the union. Such a meeting would ordinarily be considered official union business. Therefore, the union's disbursements for the officers' meals may be reported in column F of Schedule 11 of the LM-2 rather than in column G and may be allocated among the officers. The cost of the journalist's meal may be reported in Item 53 and Schedule 18 if the union's disbursement is indirect; if a direct disbursement is made to an officer to reimburse him for paying for the journalist's meal, it must be reported in column F of Schedule 11. This is an application of the general rules that all direct and indirect disbursements to officers for their meals and entertainment which are necessary for conducting official union business must be reported in column F of Schedule 11, and that only indirect disbursements for the food and entertainment of individuals other than officers on official union business may be reported in the appropriate disbursement schedule (LM-2 Schedules 15-19), and taken into account in the cash disbursements reported in Statement B.

(Technical Revisions: Dec. 2016)

214.575 GENERAL MEMBERSHIP FUNCTIONS

Union A has refreshments at a membership meeting or a Christmas party for its members and staff. The union's indirect disbursements may be reported in Schedule 18 and Item 53 of the LM-2 as provided in Section XI of the instructions for completing column F of Schedule 11.

(Technical Revisions: Dec. 2016)

214.576 FREQUENT DINNER MEETINGS OF OFFICERS OF TWO UNIONS

The officers of union A and union B hold regular weekly dinner meetings in order to discuss general matters of mutual concern. The officers of the two unions alternate in paying for the meals with their union's credit cards. The net effect of this quid pro quo arrangement is that all the officers are getting dinners each week paid by the unions. If each union paid for its officers' meals each week, all disbursements in connection with the dinner meetings would be reported in column F of Schedule 11 (if the meetings are in fact necessary for conducting union business) of the LM-2 of each union. The fact that the officers find it more convenient to alternate in charging the costs to their respective unions does not change the actual nature of the situation. Therefore, each union must report in column F or G of Schedule 11 of its LM-2 all the expenditures for each dinner meeting for which it pays the bill because each union's LM-2 would contain misleading information if any disbursements were reported in Item 53 and Schedule 18. The disbursements may be allocated among the officers.

(Technical Revisions: Dec. 2016)

214.577 INFREQUENT MEETING OF OFFICERS OF TWO UNIONS

The officers of union A and union B hold a meeting to discuss the strategy for a possible strike at a plant which employs members of both unions. Refreshments are ordered and paid through union A's credit card. The costs of the refreshments for union A's officers should be

reported in column F of Schedule 11 because the meeting appears to be necessary for conducting union business and because of the general rule that a union's direct and indirect disbursements for food and refreshments for its officers on official union business must be reported in column F of Schedule 11 of the LM-2; these disbursements may be allocated among the officers. The disbursements for the refreshments for union B's officers, however, may be reported in Item 50 and Schedule 15 because the officers would be considered to be a group other than officers and employees of the reporting union (in accordance with Section (part XI) of the instructions for completing column F of Schedule 11) and because, unlike the frequent quid pro quo meetings in Entry 214.576, allowing these disbursements to be reported in the general categories would not result in misleading information .

(Technical Revisions: Dec. 2016)

214.580 PERSONAL LODGING EXPENSES

Where a union pays the hotel bills of an officer who during his workweek resides at a hotel in the city where the union headquarters is located and which is his principal place of work but who maintain his home and legal residence in another city, such payments must be reported as disbursements to the officer rather than as an office or administrative expense of the union. On Form LM-2 such payments must be reported in Schedule 11 (All Officers and Disbursements to Officers) in column G (Other Disbursements) and not in Item 53 (Office and Administrative Expense). The instructions for Schedule 11 and Item 53 indicate that a union may report in Item 53 the disbursements for a hotel room of an officer on official business if payment was made to the hotel or its agents by the union either directly or through its credit arrangements. The hotel expenses intended to be within Item 53 are those of an officer on official union business away from union headquarters and home; such as attending a convention, conferring with employers, or directing a strike.

(Technical Revisions: Dec. 2016)

214.585 OTHER PERSONAL EXPENSES

Personal expenses of officers, such as laundry, valet service or meals and beverages, paid by the union must be reported as disbursements to officers (Item 54 - Disbursements to Officers) and may not be reported as an expense of the union (Item 53 - Office and Administrative Expense), even if incurred by an officer engaged in official union business. The instructions for Schedule 19 and Item 53 of LM-2 permitting a union to expense the cost of a hotel room of an officer on official union business under some circumstances specifically refers to "expenses for hotel room" and this is intended to include only hotel rent. On Form LM-2 personal expenses incurred by an officer engaged in official union business are reported in the appropriate cash disbursement item and supporting Schedule 11 (Disbursements to Officers) in column F (Expenses Including Reimbursed Expenses). Personal expenses incurred by an officer not engaged in official union business are reported in the appropriate cash disbursement item and supporting Schedule 11 in column G (Other Disbursements).

(Technical Revisions: Dec. 2016)

214.590 EXPENSES FOR A CHARTERED PLANE

Where a labor organization charters a plane to transport a number of its officers and employees to a special meeting (it having been determined that a chartered flight would cost less than space on a regular flight), the expenses of the charter may be allocated equally among such

officers and employees in Schedules 11 and 12 of Form LM-2, even if the plane is booked by one officer in his name. Because a chartered flight is not transportation by "public carrier," as that term is used in Schedule 11 of the instructions for Form LM-2, the cost of the flight may not be shown as a regular union expense in the other disbursement schedules (Schedules 15-19) whether or not the union paid the airline directly or through its credit arrangements with the airline.

(Technical Revisions: Dec. 2016)

214.591 AUTOMOBILE LEASES FOR PERSONAL USE

The United States Court of Appeals for the Second Circuit upheld the conviction of two union officers for violation of sections 201(b) and 209(b) and (d) of LMRDA for failing to report as "disbursements to officers" payments of union funds for long-term automobile leases for themselves and their friends and for gas and oil expenditures for personal use. The court stated that, "the auto, gas and oil . . . disbursements were squarely in the category of 'disbursements to officers' (a heading in the Local's Annual Reports), to be reported as such rather than reported, as they were, under some other general heading such as "Disbursements --for Other Purposes' or 'Office and Administrative Expense'."

United States v. Ferrara, 451 F.2d 91, 96 (2d Cir. 1971), cert. denied, 405 U.S. 1032 (1972).

(Technical Revisions: Dec. 2016)

214.592 USE OF UNION CAR

If a union officer or employee has the use of an automobile owned or leased by the union, the cost borne by the union to operate the vehicle is considered a disbursement to the officer or employee (Schedule 11 or 12) and may not be reported in the other disbursement schedules (Schedules 15-19). For purposes of Form LM-2 the costs borne by the union to operate the automobile are reported in one of the following ways, as appropriate:

1. If the automobile is used solely for official union business, the entire cost of operating the car is treated as money disbursed indirectly to the officer or employee for the benefit of the organization and should be entered on the appropriate line in Column F ("Expenses Including Reimbursed Expenses") of Schedule 11 ("Disbursements to Officers") or Schedule 12 ("Disbursements to Employees").

2. If the automobile is used for both official and personal business, the entire cost of operating the car is reported in one of the following ways, as appropriate:

    a. The union may break down the total cost of operating the car into the amount incurred for official union business and the amount not incurred for official union business; the amount attributable to union business is reported in Column F and the other amount in Column G of Schedule 11 or Schedule 12.

    b. Alternatively, the union may choose not to divide the total cost of operating the car into the amounts incurred for official union business and for personal matters. In that event, if 50% or more of the use of the car is for official union business, the total cost is entered in Column F with a footnote indicating that the car was also used for personal business. If the official use of the car is less than 50%, the

total cost is entered in Column G with a footnote indicating that the car was also used for official union business.

3. If officers or employees are given the use of automobiles but they must bring the cars daily to union headquarters where they become part of a pool of vehicles available to other officers and employees during the day, it may be difficult to allocate the total cost of operating a car to a particular individual; in that event, the arrangement may be reported by an asterisk after the name of each officer or employee to whom a car was assigned in Schedule 11 or Schedule 12 with a footnote stating: "Use of Car__ see Item 69." In Item 69 the union should indicate: Type of car; the year; the model; initial cost; current market value; and the nature of the arrangement, e.g., that the individual has private use of the car but that it is principally for official union business and others also use it for that purpose.

(Technical Revisions: Dec. 2016)

214.593 USE OF UNION-OWNED HOUSE

If a union provides an officer with the free use of a house, the yearly rental value of the house must be reported as a disbursement to the officer. It may be reported by an asterisk after the name of the officer in Schedule 11 with a footnote stating: "Use of House—see Item .69." In Item 69 the union would indicate that the union furnishes a house for the officer and would set forth the yearly rental value of the house.

(Technical Revisions: Dec. 2016)

214.595 EXPENSE ALLOWANCE NOT ACTUALLY USED FOR EXPENSES

If payments to officers or employees for expense are in excess of the amounts of the actual expenses incurred, the excess must be reported as salary or allowances and not as expenses.

See also Manual Entry 214.605 on advances.

CONTENTS OF ANNUAL REPORT: LOANS TO OFFICERS-MEMBERS-EMPLOYEES

214.601 LMRDA, SECTION 201(b)(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; . . .

214.605 ADVANCES

An advance in salary and business expenses would be considered a loan, payable by services to be rendered. In the case of Grone v. Economic Life Ins. Co., 80 A. 809, 816 (Del. Ch. 1911), the court said “One of the meanings of ‘advance’ is a loan and when used in that sense naturally implies a reimbursement, so as to imply relation of debtor and creditor.” In re Will of Altman, 6 N.Y.S.2d 972, 973-74 (Sur. 1938), the court said “The word ‘advances’, when taken in its strict legal sense, does not mean gift-advancements, and does mean a sort of loan; and taken in its ordinary and usual sense, includes both loans and gifts-loans more readily, perhaps, than gifts.”

Because of the debtor-creditor relationship created by an “advance”, we believe a loan would be constituted.

(Technical Revisions: Dec. 2016)

214.610

See Instructions, Form LM-2, Schedule 2. Form LM-3, Items 18, 56.

(Technical Revisions: Dec. 2016)

CONTENTS OF ANNUAL REPORT: LOANS TO BUSINESS ENTERPRISES

214.701 LMRDA, SECTION 201(b)(5)

. . . direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment; and . . .

214.705

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(Technical Revisions: Dec. 2016)

214.720 REPORTABLE AS “LOANS RECEIVABLE” ON LM-2

All loans made to business organizations by the reporting labor organization, whether secured or unsecured, must be reported as “Loans Receivable” except those of an investment nature, such as an arrangement with a bank or similar institution for the block purchase of mortgages or the bona fide purchase of obligations of a business enterprise on the open market. “Loans Receivable” are reported under Item 24 of the LM-2 and the supporting information required for loans to business organizations must be supplied in Schedule 2 thereof.

(Technical Revisions: Dec. 2016)

214.730 LOANS TO AFFILIATES OR SUBSIDIARIES

Where an international labor organization makes loans to a “subsidiary organization” of a subordinate labor organization, or to the subordinate organization itself, which provide for the payment of interest (at any percent) on the loan, the transaction is basically a loan to the subordinate or its “subsidiary organization” and, consequently, is to be reported as “Loans Receivable” under Item 24 of the Statement of Assets and Liabilities of Form LM-2 of the International. <u>It is not</u> to be reported as any form of investment by the international labor organization, notwithstanding the fact that it may receive a more than adequate return by way of interest for the use of its money by the subordinate. This is true even if the loan is secured by first mortgages on the property (or properties) for which the loan is made.

(Revised: Dec. 2016)

CONTENTS OF ANNUAL REPORT: OTHER DISBURSEMENTS

214.801 LMRDA, SECTION 201(b)(6)

. . . other disbursements made by it including the purposes thereof; . . .
See Manual Entries 512 ff., PROPRIETY OF EXPENDITURES.

214.805 See Instructions for LM-3, Items 45-55. Instructions to LM-2, Items 50-68.

214.806 DISBURSEMENTS FOR OTHER PURPOSES (LM-2, ITEM 53)

There is nothing in the Act which would tend to prevent a labor organization from voting to spend money to arrange or help to arrange a picnic for its members, nor any provision denying to a union the right to divide its treasury or a share thereof among its members. Such expenditures and disbursements would be among the items to be reported by the organization in its annual report. In making disbursements from a union treasury, the Act specified that those should be made in accordance with the constitution and bylaws of the organization and with the applicable resolutions of its governing body, if any.

(Revised: Dec. 2016)

214.810 USE OF UNION AUTOMOBILE

When a union officer is furnished a car by the union which is used partially for his own use, it is necessary that the union report the approximate cash value of the benefit which the officer personally derives from the use of the car, and enter an asterisk with a brief explanation under "Other Disbursements to Officers" in Schedule 11, Column G, of the LM-2.

(Technical Revisions: Dec. 2016)

214.816 LOANS TO OTHER LABOR ORGANIZATIONS

On its annual report a labor organization need not list separately with supporting detail loans made to labor organizations whether or not affiliated with it. Loans made to labor organizations must be reported in Items 24 and 61 of Form LM-2 or Items 26 and 53 of form LM-3 as part of the aggregate of all loans. On Form LM-2 a loan to another labor organization must also be included in the total on the **"**Total of loans not listed above**"** of Schedule 2 as part of the aggregate of loans to entities other than an "officer, employee, member, and business enterprise."

(Technical Revisions: Dec. 2016)

214.820 UNION PURCHASE OF OFFICER'S MORTGAGE

An international bought a block of 20 mortgages for investment purposes from a mortgage lending institution. The face value of the mortgages totaled $250,000. This transaction was reported on the LM-2 at line 26 "Investments," on Statement A -- Assets and Liabilities.

In the course of an audit of the international's records to verify the LM-2 filing, the investigator noted that one of the mortgagors was an employee of the international. In discussing this block mortgage purchase by the international with the financial institution concerned, the investigator ascertained that this mortgage loan was issued to the employee and included in the block at the request of a key official of the international.

In the light of the above, the report of the international is incorrect and the mortgage loan involving the employee (face amount $20,000) should be included under "Loans Receivable," and supported with proper detail in Schedule 2.

Inasmuch as the loan in question was one indirectly made by the international, there appears to be a violation of section 503(a) of the Act. Such matters should be pursued in accordance with existing procedures involving criminal violations under section 503.

(Technical Revisions: Dec. 2016)

214.830 UNION EXPENSES FOR JOINT PICNIC

For many years it had been the custom of Company X to sponsor an annual picnic for its employees. After the Company was organized by Union Y, the union decided that it would co-sponsor the picnic and share the expenses equally with the Company. The cost of the picnic for the 200 employees of the Company was $3,000.

Since section 201 requires a union to report all of its disbursements, Union Y would be required to report the amount of money it donated to help defray the expenses of the picnic in its annual financial report.

214.840 DISBURSEMENT OF ASSETS PRIOR TO MERGER

Local X merged with Local Y. Prior to the merger all of the assets of Local X were transferred to a corporation set up to hold these assets.

In these circumstances, a terminal report is required from Local X in order to apprise members of the union and the public of the independent existence of these assets. The transfer of any cash assets to the corporation should be reported in Item 53 of the LM-2 as "other disbursements," and described sufficiently to identify the purpose. If assets other than cash, such as a building, are transferred, the related transactions should be reported only as "additional information" in Item 69 of Form LM-2 in sufficient detail to describe the action taken.

In the event the union is entitled to use the LM-3 rather than LM-2 for its terminal report, the appropriate item to report the transfer of any cash assets to the corporation would be Item 5, and a detailed description of the purpose of the transfer should be shown in Item 56. If assets other than cash, such as a building, are transferred, the related transactions should be reported only as "additional information" in Item 56, of LM-3 in sufficient detail to describe the action taken.

While no additional information is technically called for by Item 5 of LM-3, section 402.5 of the Regulations (29 CFR 402.5) calls for full details as to the termination of existence of the Labor organization. In any event, the Secretary has the power under section 208 to revoke a union's eligibility to file the LM-3 report if this is necessary to obtain full disclosure.

(Technical Revisions: Dec. 2016)

214.850 PAYMENTS TO TRUST FUND

Payments made by a union to a trust fund established by the union for the benefit of officers must be reported in the annual report of the union on line 5555, "Benefits," supported by information in Schedule 20, on the LM-2, or under Item50 on the LM-3.

In addition, the first year that payments are made, an amended Form LM-1 must be filed with the labor organization's LM-2 or LM-3 since the establishment of the trust is a change in the information reported under Item 18 (c), "Participation in insurance and other benefit plans," of the union's LM-1.

(Technical Revisions: Dec. 2016)

CONTENTS OF ANNUAL REPORT: SIGNATURES-NAMES AND ADDRESSES OF ORGANIZATION

214.901 LMRDA, SECTION 201(b)

Every labor organization shall file annually with the Secretary a financial report signed by its president and treasurer or corresponding principal officers.

See Form LM-3 Items 4-9. Instructions for Form. LM-3, same items.
See Form LM-3, Items 57-58. Instructions for LM-3, these items.

(Technical Revisions: Dec. 2016)

214.902 SEE 29 CFR 403.6

214.905 INTERNATIONAL OFFICERS SIGNING FOR LOCALS

Reports under section 201 of the Act must be signed by the persons specified in the section. There is no exception permitting international representatives to sign reports for local unions, although the Act does not preclude them from assisting local officers in the preparation of these reports.

214.910 PROPER SIGNATURES WHEN OFFICERS CHANGE

The question of which officer is the proper one to sign labor organization reports when a labor organization selects new officers, particularly when the new officers take office in the 90 day period following the end of the labor organization's fiscal year, is left to the discretion of the labor organization. In the absence of a union rule or determination specifying which officers are to sign the report, we should proceed on the assumption that the current officers should sign the report.

214.920 PROPER OFFICERS TO SIGN REPORTS WHERE THE EXECUTIVE BOARD IS THE GOVERNING BODY

Where a local labor organization's constitution and bylaws provide for a nine (9) man executive board which is the governing body of the labor organization, and all its members are elected by secret ballot, the proper officers to sign a Form LM-1 report are the elected officers whose functions most closely approximate those of president and secretary, respectively. Likewise, the Form LM-2 report shall be signed by the elected officials whose functions most closely approximate those of president and treasurer.

NOTE: This entry deals with the question of signing reports when the union has no general officers but is governed by an executive board. It should not be taken to mean that general

officers of a union may be elected by such a board. See 29 CFR 452.26.

(Technical Revisions: Dec. 2016)

214.930 FINANCIAL SECRETARY AS TREASURER

Use of the phrase "or corresponding principal officers" indicates that the reports should be signed by the officers performing the duties normally associated with the officers designated in the statute. Since large numbers of organizations have officers bearing the titles specified in the statute who have little knowledge regarding the matters required to be reported, while other officers with different titles (e.g., financial secretary) do possess such knowledge, such officers are in a much better position to prepare these reports and certify their correctness. This would be the situation, for example, where the treasurer acts merely as the repository for the union's funds while the financial secretary is responsible for the union's financial operations and for maintaining the union's financial soundness.

(Technical Revisions: Dec. 2016)

SUBSIDIARY ORGANIZATION

215.003 DEFINITION

"A subsidiary organization," within the meaning of these instructions, is any separate organization in which the ownership is wholly vested in the labor organization or its officers or its membership, which is governed or controlled by the officer, employee, or members of the labor organization, and which is wholly financed by the labor organization.

See Instructions for Form LM-2, Part X.

(Technical Revisions: Dec. 2016)

215.005

See Instructions for Form LM-2, Part X.

(Technical Revisions: Dec. 2016)

215.100 CREATION BY INTERNATIONAL LOAN

Where an international labor organization, as part of an organizational campaign, causes a nonprofit, nonstock legal entity to be created in order to purchase a meeting hall, such an entity will be considered a "subsidiary" of the international where (1) all the officers of the newly created organization are identical with the officers of the international and (2) the organization is wholly financed by the international's treasury even though the funds expended are reflected as a "loan" to the newly created corporation. The LM-2 for the international should reflect the transactions involving the "subsidiary" organization in accordance with Section X on page 4 of the LM-2 instructions, "Labor Organizations with Subsidiary Organizations" In no case would it be correct to report the financial interest of this entity solely as a "loan."

215.200 HOLDING OF STOCK BY DISTRICT COUNCIL AND MEMBER LOCALS

Where a District Council holds a portion of the equity ownership (i.e., common stock) of a corporation which owns the building which is used to house the District Council, and where the balance of the outstanding common stock is held by local labor organizations which are members

of the Council, the Building Corporation in question comes within the definition of a "subsidiary organization" set forth in Part X of the instructions for the Form LM-2: Provided, That the initial financing came from the Council and/or its members: And provided further, That the corporation is governed or controlled by the Council and/or its members.

NOTE: In a case-involving a "subsidiary organization" which is wholly owned, controlled and financed by an intermediate labor organization, such as a District Council, and its member organizations, (e.g., the stock is held by the intermediate organization and the member locals), the obligation to report the entire net assets, financial condition, and operations of such "subsidiary organization" nonetheless remains with the intermediate labor organization (the District Council).

Assuming that the District Council in the example above elects to report the activities of the subsidiary, the Building Corporation, in a separate report as set forth in Method (2) in of Part X of the instructions for Form LM-2, then in the District Council's own Form LM-2 it should include in "Item 69 -- Additional Information" a descriptive itemization of the composition of the remaining ownership by the various participating locals of that District Council, in order to fulfill the requirements for full disclosure of the subsidiary ownership.

When a "subsidiary organization" is owned, controlled and financed under the above circumstances, reporting required financial information on it by use of Method (1) as set forth in Part X of the instructions for the LM-2 (consolidated method) is not practical due to the distortion of the financial condition and operations of the reporting labor organization (the District Council) that would result. Consequently, use of Method (1) should be discouraged.

(Revised: Dec. 2016)

215.300 HOLDING OF STOCK BY MEMBER LOCALS

A Development Corporation was formed to hold title to a building in which various locals of a Joint Council maintain their offices. All of the stock in the corporation is held by the constituent locals of the Joint Council. The Joint Council controls and finances the corporation.

Under these conditions the Development Corporation may be considered a "subsidiary organization" of the Joint Council. The term "membership" in the subsidiary organization definition (as distinguished from the statutory definition of member in section 3(o) of the Act) is applicable to the participating locals which constitute the membership of the Joint Council. Since all of the stock in the Development Corporation is held by these locals, ownership is thus wholly vested in the membership of the Joint Council.

215.310 HOLDING OF STOCK BY INTERNATIONAL OFFICERS

A labor organization organized a corporation, the stock of which was held in trust by succeeding officers of the International. The funds representing the capital stock of the corporation were applied to the purchase of a vacation resort held in the name of the corporation. The remainder of the purchase price of the resort was provided by mortgage loans made by various affiliates of the International.

The creation of the corporation was wholly financed by the International, and control of the outstanding stock has always been vested in its officers. The equity capital for the purchase of the resort was provided by the labor organization, notwithstanding secured loans held by affiliates against the property amounting to a major portion of the purchase price. For these reasons, the corporation and its property are to be considered as wholly owned, controlled and

financed by the International and should be reported by it as a “subsidiary organization” according to the instructions accompanying the LM-2.

215.400 “HOLDING CORPORATION” OF SUBSIDIARY

When a local labor organization creates two separate corporations, one of which is a holding company for the other which owns the building where the union meets, and where the officers of the local are the officers of both corporations and the ownership of both corporations is vested in membership of the local, the Department will consider both entities “subsidiary organizations” as that term is defined in the Instructions for the LM-2 (Section X) since ownership and control actually reside in the local.

(Technical Revisions: Dec. 2016)

215.500 BUILDING CORPORATION

Where a local union creates a nonprofit building corporation which is financed, under terms permissible under the Employee Retirement Income Security Act (ERISA), by a mortgage loan obtained from a jointly administered Welfare Fund of the local, and that corporation is wholly controlled by the officers of the union and is indirectly owned by the union through possession of 100% of the stock of the corporation, the corporation is a “subsidiary organization” within the meaning of that term as it is defined in Form LM-2 Instructions Part X Organizations X.

Since the corporation is wholly owned and controlled by the local, the presence of a mortgage would not constitute outside financing so as to take the corporation outside of the scope of the definition of a subsidiary organization.

(Technical Revisions: Dec. 2016)

215.600 INTERVENTION OF TRUSTEES

Where a labor organization creates a trust, the trustees of which are representatives of the labor organization and where the purpose of the trust is to hold all the outstanding stock in a building corporation for and on behalf of the Labor organization, and the primary purpose of the corporation is to house the labor organization, the building corporation is a “subsidiary organization” within the meaning of that term as defined in Form LM-2 Instructions Part X.

In short, the intervention of trustees holding the labor organization’s ownership interest in a building corporation does not change the status of the building corporation as a “subsidiary organization” if it otherwise comes within the terms of the definition.

(Technical Revisions: Dec. 2016)

215.700 RECEIPT OF INCOME BY SUBSIDIARY

A separate organization wholly owned by the union, or its officers, or its members, would be considered “wholly financed” by the union despite the receipt of some operating income from rent, sales, etc., if the funds used to establish it as a going concern originally were either union funds or were obtained by the union through credit arrangements with lending institutions. Even if the subsidiary subsequently becomes fully self-supporting through operating revenue, it will nevertheless be considered “wholly financed” by the union if a source of that revenue is capital furnished by the union.

(Revised: Dec. 2016)

METHODS OF ACCOUNTING

216.005 METHODS OF ACCOUNTING CASH VERSUS ACCRUAL

The Department of Labor does not prescribe a particular method of accounting, and it would not be necessary to convert accounting records from an accrual to a cash basis in order to prepare required financial statements, as long as the method used accurately reflects the operations and financial condition of the organization. However, the accounts should be kept in a manner that will permit the preparation of the required reports.

The statement of receipts and disbursements required by sections 201(b)(2) through 201(b)(6), which is provided for in the Department's Forms LM-2 and LM-3, is essentially an accounting of the inflow and outflow of an organization's cash during the fiscal period. Consequently, a profit and loss statement prepared on the accrual basis is not acceptable as compliance with the above-mentioned sections of the Act since this reflects the income and expenses of an organization in the fiscal period and not the disposition of its cash. Preparation of a cash receipts and disbursement statement when the accrual method of accounting is used normally requires only an analysis of the organization's cash receipts and disbursements records in order to properly reclassify its cash transaction, where necessary, to conform to the types of accounting classifications represented by like items on the prescribed forms.

The statement of assets and liabilities required by the statute is essentially an accrual type of statement and provides for reporting all receivables, payables, accruals and deferred items. Consequently, it should not be necessary for an organization which maintains its records on the accrual system of accounting to change its procedures in order to prepare the statement of assets and liabilities.

LABOR ORGANIZATION FINANCIAL REPORT - LM-3

219.001 LMRDA, SECTION 208

In exercising his power under this section the Secretary shall prescribe by general rule simplified reports for labor organizations or employers for whom he finds that by virtue of their size a detailed report would be unduly burdensome but the Secretary may revoke such provision for simplified forms of any labor organization or employer if he determines, after such investigation as he deems proper and due notice and opportunity for a hearing, that the purposes of this section would be served thereby.

219.002 See 29 CFR 403.4

219.005

See instructions for LM-3, I.

(Technical Revisions: Dec. 2016)

219.010 RECEIPTS OF SUBSIDIARY ORGANIZATION INCLUDED IN $250,000

To determine the eligibility of a labor organization to file a Form LM-3, the receipts of a subsidiary organization are considered part of the receipts of the labor organization. Thus, if the receipts of a union and its subsidiary organization total $250,000 or more, the union is ineligible to file a Form LM-3 even though the union's receipts alone would total less than $250,000.

(Technical Revisions: Dec. 2016)

TRUST IN WHICH A LABOR ORGANIZATION IS INTERESTED

220.001 LMRDA, SECTION 208

The Secretary shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under this title and such other reasonable rules and regulations (including rules prescribing reports concerning trusts in which a labor organization is interested) . . .
For definitions and interpretations of "trust in which a labor organization is interested," see Manual Entries 041.301 ff.

(No trust reporting forms are currently extant, but the existence of the trust must be acknowledged on Form LM-2, Items 10 and 69 and on Form LM-3, Items 11 and 56.)

(Technical Revisions: Dec. 2016)

TRUSTEESHIP REPORTS: WHO MUST REPORT

230.001 LMRDA, SECTION 301

(a) Every labor organization which has or assumes trusteeship over any subordinate labor organization shall file with the Secretary within thirty days after the date of the enactment of this Act or the imposition of any such trusteeship, and semi-annually thereafter, a report, signed by its president and treasurer or corresponding principal officers, as well as by the trustees of such subordinate labor organization, containing the following information: (1) the name and address of the subordinate organization; (2) the date of establishing the trusteeship; (3) a detailed statement of the reason or reasons for establishing or continuing the trusteeship; and (4) the nature and extent of participation by the membership of the subordinate organization in the selection of delegates to represent such organization in regular or special conventions or other policy-determining bodies and in the election of officers of the labor organization which has assumed trusteeship over such subordinate organization. The initial report shall also include a full and complete account of the financial condition of such subordinate organization as of the time trusteeship was assumed over it. During the continuance of a trusteeship the labor organization which has assumed trusteeship over a subordinate labor organization shall file on behalf of the subordinate labor organization the annual financial report required by section 201(b) signed by the president and treasurer or corresponding principal officers of the labor organization which has assumed such trusteeship and the trustees of the subordinate labor organization.

(b) The provisions of section 201(c), 205, 206, 208, and 210 shall be applicable to reports filed under this title.

(c) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(d) Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any report required under the provisions of this section or willfully makes any false entry in or willfully withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such report is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(e) Each individual required to sign a report under this section shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

See Manual Entry 300: TRUSTEESHIPS, for definition and discussion of Trusteeships.

230.002 SEE 29 CFR 408

230.005 APPROVAL OF CONTROL BY LOCAL

Where a special representative of the International assumes a degree of supervision over the affairs of a local, a trusteeship report should be filed in accordance with section 301 of the Act.

Whether the supervision or control of the local by the International is undertaken with the local's approval is not material to the reporting requirement.

230.100 SUPERVISORSHIP

Any suspension of autonomy imposed on a subordinate labor organization by a parent body is a trusteeship. A union argument that the suspension is one of "supervisorship" imposed for the benefit of the subordinate organization is not valid and does not affect the reporting requirements of the Act.

230.105 GOVERNMENT EMPLOYEES' LOCAL

An International union which establishes a trusteeship over a subordinate unit comprised solely of government employees is not required to comply with the reporting requirements of section 301 (a) since that section applies only to trusteeship over a subordinate "labor organization." An organization composed of government employees is not a "labor organization" within the meaning of section 3(i) of the Act.

*230.200 FOREIGN LOCAL

An International union which is subject to the Act must report any trusteeship it establishes over a subordinate union which is located outside the territorial jurisdiction of the United States, if the foreign affiliate is a "labor organization" within the meaning of the Act. The International must file the initial, semiannual, and terminal trusteeship reports; it need not file an annual financial report for the subordinate, since section 201(b) does not require a foreign organization to file such reports when it is not under trusteeship.

230.300 SUIT AGAINST OFFICERS OF DISSOLVED LOCAL

If a pending civil suit against the officers of a local which has been dissolved is brought by the International as the legal successor of the dissolved local, then no trusteeship report would be necessary. If, however, the suit is brought by the International in a supervisory capacity on the theory that a trusteeship exists, then a report would be due. In the latter case the claim asserted against the local's officers would be the operation of the local and the local would to that extent be in existence until its dissolution and transfer of its assets to its legal successor.

TRUSTEESHIP REPORTS: WHEN AND WHERE REPORTS MUST BE FILED

231.001 LMRDA, SECTION 301(a)

Every labor organization which has or assumes trusteeship over any subordinate labor organization shall file with the Secretary within thirty days after the date of the enactment of this Act or the imposition of any such trusteeship, and semiannually thereafter, a report . . .

231.002 SEE 29 CFR 408.2

TRUSTEESHIP REPORTS: INITIAL TRUSTEESHIP REPORT - LM-15

232.001 LMRDA, SECTION 301(a)

. . . signed by its president and treasurer or corresponding principal officers, as well as by the trustees of such subordinate labor organization, containing the following information: (1) the name and address of the subordinate organization; (2) the date of establishing the trusteeship; (3) a detailed statement of the reason or reasons for establishing or continuing the trusteeship; and (4) the nature and extent of participation by the membership of the subordinate organization in the selection of delegates to represent such organization in regular or special conventions or other policy-determining bodies and in the election of officers of the labor organization which has assumed trusteeship over such subordinate organization. The initial report shall also include a full and complete account of the financial condition of such subordinate organization as of the time trusteeship was assumed over it.

232.002 SEE 29 CFR 408.3

232.003

For meaning of "corresponding principal officer," see Manual Entry 214.930.

232.005 SEE INSTRUCTIONS FOR LM-15

232.100 TRUSTEESHIPS ESTABLISHED PRIOR TO THE ACT

Section 301(a) of the Act requires that initial reports show the financial conditions of the subordinate labor organization as of the date the trusteeship was established, even if it was established before September 14, 1959, the effective date of the Act.

TRUSTEESHIP REPORTS: SEMIANNUAL TRUSTEESHIP REPORT - LM-15

233.001 LMRDA, SECTION 301(a)

Every labor organization which has or assumes trusteeship over any subordinate labor organization shall file with the Secretary within thirty days after the date of the enactment of this Act or the imposition of any such trusteeship, and semiannually thereafter, a report . . .

233.002 SEE 29 CFR 408.4

233.005 SEE INSTRUCTIONS FOR LM-15A

TRUSTEESHIP REPORTS: INFORMATION AND FINANCIAL REPORTS FOR TRUSTEED UNIONS LM-2 - LM-46

235.001 LMRDA, SECTION 301(a)

During the continuance of a trusteeship the labor organization which has assumed trusteeship over a subordinate labor organization shall file on behalf of the subordinate labor organization the annual financial report required by section 201(b) signed by the president and treasurer or corresponding principal officer of the labor organization which has assumed such trusteeship and the trustees of the subordinate labor organization.
See Instructions for LM-15, "Other Reports Required."

235.002 SEE 29 CFR 403.2(c), 408.5, 408.6.

235.005 PERIOD COVERED

An international labor organization imposed a trusteeship over one of its locals on March 1. The local in question has a fiscal year ending December 31. The international did not take control of the local's finances until June 1. The trusteeship was lifted on September 30 of that same year. The local labor organization officers submitted an LM-2 covering the period January 1 to February 28 although no such partial report was required from the local officers.

Since the trusteeship was imposed on March 1, the international is required to cover in its terminal financial report the finances of the local from the beginning of the local's fiscal year (January 1) to the date of termination of the trusteeship. However, since the local's officers filed a report covering the period January 1 through February 28, the international's terminal financial report may cover the period of March 1 through September 30. The fact that the international did not take control of the local's finances until June 1 is irrelevant as the trusteeship was imposed on March 1.

235.100 RESPONSIBILITY FOR DELINQUENT REPORTS

Section 301(a) of LMRDA requires that during the continuance of a trusteeship the labor organization which has assumed trusteeship over a subordinate labor organization shall file the annual financial report required by section 201(b) of the Act on behalf of the subordinate labor organization.

Where a local fails to file a financial report within 90 days after the end of its reporting year and such local subsequently has a trusteeship imposed over it, the responsibility for filing such

financial report falls upon the international. The application of this requirement is not to be viewed as assigning retroactive responsibility to the international for the local's failure to file. The filing of the annual report is a continuing obligation and since it is unfulfilled, the international has assumed the statutory duty of filing by virtue of imposing the trusteeship.

TRUSTEESHIP REPORTS: TERMINAL TRUSTEESHIP REPORT - LM-16

236.002 SEE 29 CFR 403.5, 408.7, 408.8

See Instructions for LM-15, "Other Reports Required."

236.100 DECERTIFICATION

The decertification of a local union as the bargaining agent with the employer does not constitute any basis for assuming that the trusteeship has been terminated. The trusteeship may be continued until such time as any litigation with regard to the local's treasury is resolved. Of course, the international will be required to submit semiannual reports during the pendency of the trusteeship. Formal dissolution of the union would normally constitute a termination of the trusteeship.

UNION OFFICER AND EMPLOYEE REPORTS IN GENERAL

240.001 LMRDA, SECTION 202

(a) Every officer of a labor organization and every employee of a labor organization (other than an employee performing exclusively clerical or custodial services) shall file with the Secretary a signed report listing and describing for his preceding fiscal year –

(1) any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child derived directly or indirectly from, an employer whose employees such labor organization represents or is actively seeking to represent, except payments and other benefits received as a bona fide employee of such employer;

(2) any transaction in which he or his spouse or minor child engaged, directly or indirectly, involving any stock, bond, security, or loan to or from other legal or equitable interest in the business of an employer whose employees such labor organization represents or is actively seeking to represent;

(3) any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent;

(4) any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, a business any part of which consists of buying from, or selling or leasing directly or indirectly to, or otherwise dealing with such labor organization;

(5) any direct or indirect business transaction or arrangement between him or his spouse or minor child and any employer whose employees his organization represents or is actively seeking to represent, except work performed and payments and benefits received as a bona fide employee of such employer and except purchases and sales of goods or services in the regular course of business at prices generally available to any employee of such employer; and

(6) any payment of money or other thing of value (including reimbursed expenses) which he or his spouse or minor child received directly or indirectly from any employer or any person who acts as a labor relations consultant to an employer, except payments of the kinds referred to in section 302(c) of the Labor Management Relations Act, 1947, as amended.

(b) The provisions of paragraphs (1), (2), (3), (4), and (5) of subsection (a) shall not be construed to require any such officer or employee to report his bona fide investments in securities traded on a securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934, in shares in an investment company registered under the Investment Company Act of 1940, or in securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935, or to report any income derived therefrom.

(c) Nothing contained in this section shall be construed to require any officer or employee of a labor organization to file a report under subsection (a) unless he or his spouse or minor child holds or has held an interest, has received income or any other benefit with monetary value or a loan, or has engaged in a transaction described therein.

240.002 SEE 29 CFR 404

240.100 FORM OF REPORT; SPECIAL REPORTS

See 29 CFR 404.3.

(Technical Revisions: Dec. 2016)

240.200 UNION OFFICERS BASED OUTSIDE THE UNITED STATES

While the Department takes the position that the reporting provisions of the LMRDA are limited to “activities of persons or organizations within the territorial jurisdiction of the United States,” its application in any particular case will depend on whether there is a substantial relationship between the transactions in question and United States property or interests which are the objects of the Act’s protection.

For example, there would ordinarily not be sufficient relationship to require reporting where an officer of a foreign local has a financial interest in a foreign company with which the local deals, although the officer may on occasion perform official union business in the United States

such as attending an international conference or convention. However, a foreign member of an international executive board, who participates in the board's meetings in the United States, may well be required to report otherwise reportable holdings in a United States company with which the international deals, even though his principal office is in a foreign country.

In other words, each case would require evaluation of the substantiality of the official's contacts with the United States and of the impact on United States interests.

WHO MUST FILE

241.002

For definitions of "labor organization officer," "labor organization employee," see 29 CFR 404.1.

ATTORNEY-CLIENT COMMUNICATIONS

Nothing contained in this part shall be construed to require an attorney who is a member in good standing of the bar of any State to include in any report required to be filed pursuant to the provisions of section 202(a) of the Act and of this part any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

29 CFR 404.5

241.005 USE OF FORM LM-30 PRIOR ACTIVITIES

A former union officer who engaged in activities clearly reportable under section 202 prior to the issuance of Form LM-30, and who did not report such activities until after the issuance of that form, is required to report on Form LM-30.

The regulations governing reporting by union officers and employees (29 CFR Part 404) require reports to be made on Form LM-30 which is incorporated by reference into the regulations. Thus, insofar as Form LM-30 requires reporting of matters reportable under LMRDA since its passage, it cannot be said that the form is being given retroactive application. Reports of the activities in question were required to be made at the end of the fiscal year in which such activities were undertaken and only the manner in which they are to be reported has been changed.

(Revised: Dec. 2016)

241.100 INTERNATIONAL OFFICER WITH INCOME FROM BUSINESS DEALING WITH LOCAL UNION

Section 202(a) of the Act requires reports from "every officer of a labor organization" of income derived from "any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent." An international union officer must report his income from such a business even though he is not an officer of the local which represents the employees of the business, and even though his duties as an international officer do not include representation activities.

241.200 TRUSTEES

The trustee appointed by a superior labor organization to administer or supervise a subordinate labor organization which has been placed in trusteeship is subject to the reporting requirements of section 202.

241.300 APPLICATION TO MEMBERS

Reports are required only from those "officers" and "employees" of labor organizations who have engaged in any of the activities specified in section 202(a) of the Act. Activities specified therein need not be reported if undertaken by a member of the labor organization, provided, the member is neither an officer nor an employee of the union.

241.400 SELF-INCRIMINATION

Reports required of union officers or union employees under section 202(a) of LMRDA must be submitted notwithstanding the fact that the information required to be included in the report may disclose a violation of section 302 of the Taft-Hartley Act. Because section 302 contains a criminal provision, it has been argued that the reporting required by LMRDA 202(a) infringes on the constitutional 5th Amendment protection against self-incrimination. However, the only court so far to have ruled on a 5th amendment challenge to Section 202(a) rejected it. See United States v. McCarthy, 422 F.2d 160, 160 (2d Cir. 1970).

(Revised: Dec. 2016)

241.500 FRANCHISED AGENTS

Franchised agents of the American Guild of Variety Artists (AGVA) who act only as representatives of artist and entertainers in dealing with employers in the entertainment field would have no duty to report the payments made to AGVA for the franchise under section 203 of the Act. Franchised agents when acting as such would not be employers within the meaning of section 203 or within the meaning of that definition in the Act. The agent's interest in representing the artist is opposed to that of the employer. The success of the agent depends upon the bargain he can strike on behalf of the artist. His income is derived from commissions on earnings of his clients. Thus, it cannot be fairly concluded that agents, insofar as they are acting in that capacity alone, are employers subject to the reporting requirements of section 203 of the Act.

However, a different conclusion would be warranted in those cases where franchised agents not only act as representatives of artist but also act as producers of package shows, etc. Clearly, when acting as a producer, the agent would be an employer within the meaning of the Act and reports would be required under section 203(a)(1) for the payments made to AGVA in the form of a franchise fee. Such payments do not seem to fall within the exceptions contained in section 203(a)(1). (But payments made by them as producers into the AGVA welfare trust fund or the AGVA sick and relief fund would seem to fall within the exceptions contained in section 302(c)(5) of the LMRA, and consequently would not have to be reported under section 203(a)(1).)

The question may be asked whether a franchised agent may be considered an ". . . agent . . . or other representative" of AGVA within the meaning of section 3(q) and therefore come within the reporting requirements of section 202. It should be pointed out that section 202 of the Act does not employ the terms "agent" or "representative"; it refers to "officers" and "employees" of a labor organization. In our opinion, a person independently engaged in the business of

representing professional entertainers is not an "employee" or "officer" of the union to which the entertainer may belong by reason of his contractual duty to observe the conditions laid down in the union's standard form of contract for the protection and benefit of his clients.

241.600 DEPENDENCE ON EMPLOYER OBLIGATION TO REPORT

The fact that employers are excepted from reporting certain transactions with union officers and employees by virtue of section 203(a) does not in any way affect the obligation of the union officers and employees to report such transactions, where the applicable provision of section 202 does not provide a pertinent exception.

*241.700 "DE MINIMIS"

We should all take cognizance of the "de minimis non curat lex" doctrine. This means that courts will not find persons guilty of acts involving trivial sums of money. The instructions for Form LM-30 provide that:

> **Insubstantial payments and gifts.** You do not have to report any payments or gifts totaling 250 or less from any one source, and payments or gifts valued at $20 or less do not need to be included in determining whether the $250 threshold has been met. For example, if you receive from an employer two gifts worth $20 each and two restaurant meals worth $150 each, you need only keep records of the restaurant meals, and report your receipt of this $300 value. However, you may not use the exception to hide the receipt of a series of payments or gifts purposely set at $20 or less to avoid reaching the $250 reporting threshold. For example, you would have to report your receipt of individual tickets worth $20 or less to all of a professional baseball team's home games even if they are provided before each game rather than given as a complete package at the start of the season.
>
> **Widely-attended gatherings.** You also do not have to report the benefits, such as food and entertainment, that you received while in attendance at one or two widely attended receptions, meetings or gatherings in a single fiscal year for which an employer or business has spent $125 or less per attendee per gathering. You do not have to include the value of those gatherings in determining whether the $250 threshold has been met for the employer or business providing the meeting or gathering. However, if you attend three or more such widely-attended gatherings provided by an employer or business, you must count the value of all such events. A gathering is widely attended if a large number of persons are in attendance and the attendees include union officers and employees and a substantial number of individuals with no relationship to a union or a *trust in which a labor organization is interested.* For a gathering to qualify as widely attended, those individuals with a relationship to a union must be treated the same as others when the employer or business advertises or distributes invitations for the event and must be treated alike at the event.

(Revised: Dec. 2016)

241.750 UNION OFFICERS BASED OUTSIDE THE UNITED STATES

See Manual Entry 240.200.

TIME AND PLACE TO FILE UNION OFFICER AND EMPLOYEE

REPORTS

242.001 LMRDA, SECTION 207(b)

Each person required to file a report under section 201(b), 202, 203(a), or the second sentence of 203(b) shall file such report within ninety days after the end of each of its fiscal years; except that where such person is subject to section 201(b), 202, 203(a), or the second sentence of 203(b) as the case may be, for only a portion of such a fiscal year (because the date of enactment of this Act occurs during such person's fiscal year or such person becomes subject to this Act during its fiscal year) such person may consider that portion as the entire fiscal year in making such report.

242.002 SEE 29 CFR 404.1, 404.2

242.005 FISCAL YEAR

See 29 CFR 404.1 and Manual Entries 214 ff.

BENEFIT FROM EMPLOYER OF UNION MEMBERS

243.001 LMRDA, SECTION 202(a)(1)

. . . any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimburse expenses) which he or his spouse or minor child derived directly or indirectly from, an employer whose employees such labor organization represents or is actively seeking to represent, except payments and other benefits received as a bona fide employee of such employer;…

243.005 PAYMENTS UNDER INCENTIVE PLAN

Payments made under an incentive plan which is contained in the collective bargaining agreement and which contemplates the payment of additional compensation to employees who through additional effort obtain new accounts for the employer would not be reportable by the union officer-employees who received such additional compensation, since such payments are received for work as a bona fide employee of such employer.

243.100 COMPANY PICNIC

For many years it had been the custom of Company X to sponsor an annual picnic for its employees. After the company was organized by Union Y, the union decided that it would co-sponsor the picnic and share the expenses equally with the company. The cost of the picnic for the 200 employees of the company was $3,000.

No report would be required pursuant to section 202 from a union officer who attends this picnic. Even if the union officer was not an employee of the company, the value, such as food, beverage, etc., of what he received there would be insignificant.

It is to be noted, however, that the Secretary of Labor may require special reports in situations of the nature described above if he so desires.

243.200 NEGOTIATING EXPENSES

Company A and Union B are attempting to negotiate production standards related to the operation of new equipment. The company, through its plant officers, invites several union representatives who are employees to visit other plants of the company with a view to observing the new equipment in operation. It was believed that when the union representatives viewed the new equipment in operation they would have a more adequate factual basis for negotiating a production standard with Company A. The company paid the union representatives their regular wages and their actual expenses for travel and hotel accommodations (one night's lodging).

Under these circumstances, no labor officer reports are required from the union representatives because the payment of bona fide expenses by the company in connection with collective bargaining and negotiations are considered to come within the scope of regular wages.

This principle would not apply to a union officer who is not an employee of the employer.

243.300 FREE ACCOMMODATIONS

A union officer who received complimentary hotel accommodations from a hotel which employed members of the union which he represents is deemed to have received a "benefit with monetary value" within the meaning of section 202(a)(1) and is required to report thereon.

243.400 POLITICAL CONTRIBUTIONS

Where an employer contributes to the campaign fund of one of his employees who is running for local public office and that employee is also an officer of the labor organization which represents the employees in collective bargaining with the employer, the employer is required to file a report of the payment pursuant to section 203(a)(1) of the Act. The union officer is also required to report the payment in question by virtue of section 202(a)(1).

The legality of an employer's contributions to the campaign fund of one of the employer's employees who is also a union officer, requires consideration of section 505 of the Act which amends section 302 of the Labor Management Relations Act, for which the Department of Labor is not assigned responsibility.

Contributions by a corporation, or a labor organization to a person campaigning for Federal office are made criminal offenses under 52 U.S.C. 30118 (formerly cited as 2 U.S.C. 441b and 18 U.S.C. 610) and it is also a crime for a candidate for a Federal office to receive such contributions.

(Technical Revisions: Dec. 2016)

243.500 BONA FIDE INVESTMENTS

Bona fide investments in stocks "traded on a securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934" are excluded from the reporting requirements of section 202(a) of the Act by section 202(b). For example, this exclusion does not apply to:

(1) Stocks traded on an unregistered exchange.

(2) Stocks traded only on an organized foreign exchange.

(3) A gift of stock, regardless of where the stock is traded.

(4) Stock held in a private "closed" family corporation.

The exclusion does apply, however, to bona fide investments ("purchases") made by a union

official in the stock of a company whose employees he represents, provided that the stock is traded on a registered exchange such as the New York Stock Exchange. Likewise, the income from such stocks is not required to be reported.

243.510 STOCKS TRADED OVER THE COUNTER

If a union official holds stock in a corporation traded over the counter and his union has a contract with that corporation, he would be required to file a report since the reporting exemption in section 202(b) applied only to securities traded on a securities exchange registered under the Securities Exchange Act of 1934.

243.511

President A of Local 100 is a regular production employee of the B Corporation. The stock of B Corporation is traded over the counter, that is, it is not traded on a regulated exchange. Assume that President A got his stock, now worth $8,000 and which brings him dividend income of $600 a year, through many years of purchases under the B Corporation stock purchase plan available to all employees. Under section 202(a)(1) a report is required from President A. The requirement of a report does not imply that the act or behavior or agreement to be reported is illegal. It means that the Congress decided that the reporting of the interest and public disclosure of the report are desirable in accomplishing the objectives of the LMRDA.

(Technical Revisions: Dec. 2016)

243.520 EMPLOYEE STOCK PURCHASE PLANS

Where an employer whose stock is traded on a national securities exchange has an employee stock purchase plan by which all employees including labor union officials who are employees may purchase the employer's stock at a discount from the market price, no reports are required with regard to these purchases and holding of the employer's stock by labor organization officers for the reason that they come within the exception of section 202(b) of the Act and section 302(c) of the Labor Management Relations Act, 1947, as amended (payments to a union officer "as compensation for, or by reason of, his service as an employee of such employer").

243.522

An officer of a union who participates in an employee stock plan authorizing a regular deduction from his pay check, to be applied to the purchase of government bonds, and under which the employer, whose employees the union represents or is actively seeking to represent, contributes one-fourth as much to buy company stock for the employee must be reported under section 202(a)(1) and (2) of the Act, in the absence of an applicable exemption. Such a report would have to list and describe the officer's holdings of, and transaction in, this stock for the preceding fiscal year, whether acquired under the Plan or not. However, the exemption contained in section 202(b) could apply. That section provides that 202(a)(1) and (2) shall not be construed to require any such officer or employee of a labor organization to report his bona fide investments in securities traded on a securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934.

243.600 FREE USE OF HUNTING LODGE

QUESTION: I am the president and business agent of my local. We have a collective bargaining agreement with the CDE Company. The CDE Company has a private lodge on a lake in the

Adirondack Mountains in New York for the use of its officers. As the families of the Corporation's officers were not using the lodge before July, I was offered the use of the facilities for a 2 week period in late June. Do I have to report under these circumstances?

ANSWER: Yes. This is a gift of more than nominal value and consequently is required to be reported pursuant to section 202(a)(1) of the Act.

TRANSACTION WITH EMPLOYER OF UNION MEMBERS

244.001 LMRDA, SECTION 202(a)(2)

. . . any transaction in which he or his spouse or minor child engaged, directly or indirectly, involving any stock, bond, security, or loan to or form other legal or equitable interest in the business of an employer whose employees such labor organization represents or is actively seeking to represent; . . .

244.100 LOANS

It is clear that loans in excess of a minimal amount must be reported by an officer or employee of a union which represents, or is actively seeking to represent, the employees of the employer who makes the loan. Although subsections (1) and (6) of section 202(a) contain exceptions which might be construed to apply to such loans, subsection (2) of section 202(a) specifically covers such loans and does not contain any exceptions; there appears to be no basis for the exclusion of such loans from the reporting requirements contained in that paragraph.

244.120 "DE MINIMIS" LOANS

Congress intended that union officers report loan arrangements with their employers that pose conflicts of interest - for example, a 40 year, 2 percent loan in the amount of $20,000 so that the officer could buy a home, would pose a reportable conflict.

(Revised: Dec. 2016)

244.150 CASH ADVANCES

A cash advance would not be considered a loan if at the time the advance is made to the employee union officer, he had already rendered services to the employer the value of which exceeded the amount of the cash advance. It would seem that the employee was equitably entitled to the money advanced and consequently had not, in fact, received a loan.

244.170 EMPLOYER AS A GUARANTOR OF LOAN

See Manual Entry 253.041.

BENEFIT FROM BUSINESS WHICH DEALS WITH EMPLOYER OF UNION MEMBERS

245.001 LMRDA, SECTION 202(a)(3)

. . . any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary

value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent . . .

245.005 STOCKHOLDER IN MUSIC PUBLISHING FIRM

When an officer of a musician's union holds stock and is an officer in music publishing firms whose income is derived from record companies which engage in collective bargaining with the musician's union, reports may be required if a substantial part of the business of the music publishing firms consists of dealing with record companies whose employees the union represents or is actively seeking to represent.

245.100 LEASING TRUCKS TO EMPLOYER

Where a collective bargaining agreement between a local of newspaper truck drivers and the employer provides that each member-employee of the union may lease a truck to the employer at X dollars per day of use, and an officer of the union who is a regular driver-employee of the employer leases his truck to the employer, no report under section 202(a)(3) of the Act is required for the reason that the leasing arrangement amounts to an incidental benefit of the employment relationship.

245.200 SUBSTANTIALITY OF DEALING

Union Officers A and B of a local union are co-owners of a building corporation. The corporation, through intermediaries who are regular meat wholesalers, sold meat to employers who bargain with the local union. In 1962, some 80% of the corporation's business of approximately $100,000 was with such employers. Both A and B owe reports for the year 1962 with regard to their interest in and their income from the building corporation pursuant to section 202(a)(3), since both the interest and the income are "derived from, any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent." See Form LM-30 Instructions, Section X, Part B (Items 8-12) Business, Definition of "substantial part."

(Revised: Dec. 2016)

245.300 BUSINESS AGENT - SIDE EMPLOYMENT

If a union business agent were to take a job with an employer (and thereby receive income), and the employer's business consisted in substantial part of buying from, selling to, or otherwise dealing with other employers whose employees the labor organization with which the business agent is affiliated represents or is actively seeking to represent, a report would be required from the business agent. This would be so even though the primary employer does not himself employ anyone who is a member of the labor organization with which the business agent is affiliated and the labor organization does not represent and is not actively seeking to represent employees of the primary employer, and even though the business agent's job with the primary employer would not put him into contact with employees of any of the companies with which the primary employer deals and he will have no responsibility for activities in labor relations matters.

245.400 EQUIPMENT RENTING

If an officer or employee of Union X rents theatrical equipment to groups staging amateur plays, and such groups employ persons represented by Union X, the officer or employee renting the equipment must file a report pursuant to section 202(a)(3). The amateur group is the employer, and the renting of equipment is a business, a substantial part of which is carried on with employers whose employees Union X represents.

Opinion 9/16/60

245.500 REPAIR BUSINESS

Mr. A, Secretary-Treasurer and Business Agent of a union, is also the owner, along with his wife and minor child, of a small corporation whose major business activity is the repair of motion picture projection equipment used in theaters and the sale of new equipment to these same theaters. He is considered one of the most competent repairmen in the area where he resides. Certain members of his union alleged that he had been delinquent in getting wage raises for them for the reason that he was more concerned with having good personal business relations with the theaters with which he would have to bargain to secure wage raises for the members of his union. This union official is required to file a full report of his income from the corporation as well as that of his wife and minor child.

BENEFIT FROM BUSINESS WHICH DEALS WITH UNION

246.001 LMRDA, SECTION 202(a) (4)

. . . any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, a business any part of which consists of buying from, or selling or leasing directly or indirectly to, or otherwise dealing with such labor organization; . . .

246.005 MEMBER OF PARTNERSHIP DEALING WITH UNION

A and B are employees of an international union in a professional capacity and also have interests in a partnership which is under contract to render the same type of professional services to the union. The union has reported the persons concerned as employees who perform services other than those which are exclusively clerical or custodial in nature. If each of the persons referred to is in fact an employee of the labor organization, section 202(a) (4) would be applicable, since by virtue of his connection with a partnership which performs professional services pursuant to a contract with the labor organization, there is an "interest, legal or equitable, which he . . . directly or indirectly held in . . . a business any part of which consists of … dealing with such labor organization." In addition, such persons no doubt also derived income and benefits with monetary value from the partnership which deals with their union employer. In such instance, the employee is required to file a report with the Office.

246.100 DISPENSING MACHINES

Where a business agent for a union makes a deal with the union and employer whereby dispensing machines are installed in the plant and the profits are split among the agent, the union and the employer, the agent is required to report any profits which he derives from the

transaction under section 202(a)(4) and 202(a)(5).

246.200 INTEREST MAY BE AS CREDITOR

Union Officer A of a local union had a one-third ownership interest (worth $8,000) in an insurance agency, a legal entity which is independent of the local and not a "subsidiary organization" thereof. Union Officer B, of the same local, was a creditor of the insurance agency by virtue of a loan of $10,000, secured by a 5% interest bearing note, made to the agency in 1959. During the years 1960 to 1962, while the note was still outstanding and interest payments were received by Officer B in the amount of $500 per annum, the agency "wrote" the automobile insurance policies for the local.

Section 202(a) (4) requires a report from a union officer who has an interest in an entity which does any business with the union of which he is an officer.

Therefore, reports are required from both union officers. The language of section 202(a) (4) is broad enough to render a distinction between a creditor or owner interest "academic."

246.250 INCOME FROM BUSINESS DEALING WITH TRUST

A union officer or employee is required to report income he receives from a business any part of whose buying and selling activities are with a trust in which his labor organization is interested. While this type of situation is not specifically covered in LMRDA, by 29 CFR 404.2, we are requiring union officers and employees to file reports as to their income or interest in a business, any of the activities of which are with the trust in which their labor organization is interested.

246.300 OFFICERS AS WHOLESALER

When a local union establishes a gasoline station for the purpose of providing discounts for its members, and the president of the local union purchases wholesale gasoline with his own money, which he then sells to the union at a profit to himself, he is required under section 202(a) (4) of the LMRDA to file reports on these transactions with the union.

246.400 GRATUITIES FROM HOTEL WHERE CONVENTION HELD

Union officers who receive complimentary hotel rooms and other gratuities of substantial value from the hotel at which the union holds its convention are required to report pursuant to section 202(a)(4).

While the furnishing of complimentary rooms by hotels to officials of organizations which hold conventions at their establishments is a common practice, reports under section 202(a)(4) nevertheless are required from the union officers so that the union members may be aware of substantial gratuities received by their representatives by virtue of their position in the labor organization, and to disclose any possible conflict of interest situation between such officials and the employers which sell to or otherwise deal with the union.

246.500 "SUBSIDIARY ORGANIZATION" AS BUSINESS

Where a labor organization has a "subsidiary organization" as defined in Article X of the Instructions for the Preparation of LM-2, and where the officers of the labor organizations are also officers of the "subsidiary organization," and where, further, there is full and complete disclosure of the activities of the "subsidiary organization" by the labor organization in accordance with the special instructions for subsidiary organizations" in Article X, it will not be necessary for the officers of the labor organization to file union officer reports pursuant to

section 202(a) of the Act for the income, etc., received from the "subsidiary" since examination of the LM-2 filed by the labor organization will disclose to the members and the public the full income, expense, and allowances received by the union officer from the labor organization itself and its "subsidiary organization."

(Technical Revisions: Dec. 2016)

246.600 INCOMES AS EMPLOYEE OF INSURANCE COMPANY

A union officer, who is an employee of an insurance company from which the union welfare fund procures insurance, is required to report that money which he receives as an employee of the insurance company, inasmuch as he derives income from a business which sells to or otherwise deals with a labor organization of which he is an officer.

246.605 EMPLOYEE OF UNION ATTORNEY

A union president who works part-time for the union's attorney, keeping the union's books and filing necessary reports, and who receives half of the attorney's retainer from him as compensation, is required to file a report under section 202(a) (4) since the attorney operates a business (practice of law) which deals with the union and the union president receives income from that business. It is immaterial that motions passed by the executive board of the union and the membership indicate that this arrangement was known.

246.700 "DE MINIMIS" STOCKHOLDING, INTEREST OR INCOME

An employee of a labor organization purchased, in an "Over-the-Counter" transaction in 1963, $400 worth of a common stock of a business which supplies his labor organization with more than one million dollars annually in goods and services. This employee occupies a position which requires him to make policy recommendations to officers of the labor organization regarding the purchase of such goods and services.

No report would ordinarily be required of the union employee under these circumstances (even though Over-the-Counter securities do not come within the exception from union officer and employee reporting in section 202(b)) if (1) his total holdings, including the $400 purchase, had a prevailing market price of $1,000 or less, (2) the holdings were unrelated to the employee's status in the labor organization, and (3) he received income of $100 or less from the stock during 1963. This type of transaction comes within the terms of exclusion in Item (ii) of the Instructions relating to Part A of the LM-30.

(Revised: Dec. 2016)

246.800 EMPLOYEE OF CREDIT UNION

If a credit union grants loans to a labor union, a report would be required from an officer of that labor union who is also an employee of the credit union. However, no report would be required merely because the credit union grants loans to members of the labor union.

There is nothing in the nature of the purposes or policies of a credit union which would appear to be adverse to the interests of a related labor union. However, it is conceivable that because of peculiar circumstances an employee of the credit union might find that his duty to the credit union conflicts with the duty he owes to his labor organization as its elected officer or employee. It might also be possible that a person could abuse his position with the credit union in such a way as to violate his duty of trust in relation to the labor organization.

BUSINESS TRANSACTION WITH EMPLOYER OF UNION MEMBERS

247.001 LMRDA, SECTION 202(a) (5)

. . . any direct or indirect business transaction or arrangement between him or his spouse or minor child and any employer whose employees his organization represents or is actively seeking to represent, except work performed and payments and benefits received as a bona fide employee of such employer and except purchases and sales of goods or services in the regular course of business at prices generally available to any employee of such employer; and . . .

247.005 UNION OFFICERS AS EMPLOYEE OF PENSION FUND

When a union officer is paid by the employer for services rendered in the capacity of a secretary to a pension fund, both the union officer and the employer are required to report the transaction.

247.100 DISPENSING MACHINES

See Manual Entry 246.100.

247.200 OPERATING A SIDE BUSINESS

The business agent of a local union has a side business which consists of repairing motion picture equipment and selling new equipment to the theater operators who are the employers of the members of the union which the business agent represents. The transactions with the employers are a substantial part of the business agent's side business. He is required to file reports of his interest in and the income from that business under section 202(a) (3) of the Act (for which there is no statutory exception). On the other hand, the employers need not report under section 203(a) (1) since their purchases of equipment and their payments to the business agent for repairs are at the prevailing market price in the regular course of business.

247.300 DISCOUNTS AVAILABLE TO ALL EMPLOYEES

Section 202(a) (5) is designed to pick up any direct or indirect business transactions between the union officer for his wife or minor child) and the employer whose employees the union officer's organization represents. Here there are two very important statutory exceptions, namely, payments of bona fide wages to the union officer for regular work performed, and purchases and sales of goods or services in the regular course of business at prices generally available to any employee of the employer.

The second exception to reporting under section 202(a) (5) may be illustrated by this situation. An automobile manufacturer, in order to promote the sale of its cars to its own employees, offers any regular employee a car at a 20% discount. President A of the local that has collective bargaining relations with this automobile manufacturer buys a car at the 20% discount; President A is a regular employee on the assembly line. Since President A is a regular employee, no report of the discount given to him by the employer need to be made since the same discount is available to all employees. On the other hand, if President A were not an employee, a report would be required.

PAYMENT RECEIVED FROM ANY EMPLOYER OR CONSULTANT

248.001 LMRDA, SECTION 202(a) (6)

. . . any payment of money or other thing of value (including reimbursed expenses) which he or his spouse or minor child received directly or indirectly from any employer or any person who acts as a labor relations consultant to an employer, except payments of the kinds referred to in section 302(c) of the Labor Management Relations Act, 1947, as amended.

248.005 SCOPE OF SECTION

Section 202(a) (6) is designed for those situations which pose conflict of interest problems which are not covered in the previous five sections of 202. The Committee Reports supply this example:

> Union Officer C accepts a payment from employer K with the understanding that C's union will not attempt to organize the K firm plant.
>
> Normally it would be expected that C's union would attempt to organize that plant. This transaction, which is reportable under 202(a) (6) of LMRDA by the union officer, (and by the employer under 203(a) (1)), is one that is also indictable under section 302(a) of the Taft-Hartley Act.

A union officer must report under section 202(a) (6), if he receives any payment by way of dividends or otherwise from a firm which is competitive to one which has collective bargaining agreements with his own union.

Conflict of interest reporting under section 202(a) (6) does not require an employer who manufactures sweaters in California to report a wedding gift of $1,000 he has given to his son-in-law who is the Business Agent of a Machinist Union in Pittsburgh for the reason that, in the absence of any other factors, no conflict of interest situation is posed. The key issue of the problem lies in whether the payment (received by the union officer) poses a "conflict of interest" in the responsibilities of the union officer to his members to whom he owes fiduciary responsibilities as a union officer to represent them with undivided loyalty.

A payment by an employer to an ordinary member of the union who is not an officer would not be reportable. Similarly, if the maker of the payment does not meet the definition of employer, no report would be required by the union officer even if the payment he received was clearly one that poses a conflict of interest situation.

Exceptions: In 202(a) (6) of the Act note the reference to section 302(c) of Taft-Hartley. Union officers will be particularly concerned with subsections 1 and 3 thereof. Note that the language of those subsections has been incorporated specifically in several of the first five subsections of 202(a). By far the most important one is the bona fide regular employee exception: Where an employer pays a union officer wages for work performed, no report is required. The difficulties stem from those released or lost time situations. For example, where a union officer is responsible for handling grievances for the union in his plant, the contract between the union and the employer may provide in many instances that this officer shall be excused from his regular work to handle the grievances and shall be paid his regular wages while handling the grievances. Such a situation will not normally require reports from the union officer or the employer on the theory that the employee officer is being paid for work performed of value to the employer who is interested in seeing to it that grievances are immediately adjusted.

248.100 TRANSACTION WITH PRESIDENT OF EMPLOYER ACTING IN INDIVIDUAL CAPACITY

Union Officer A works for a union that represents employees of X Corporation. A sold his stock interest in X Corporation to Y, President of X Corporation. Y purchased the stock in his individual capacity. Y owns 30% of the X Corporation's stock (the 30% includes the stock secured from A). The purchase agreement between A and Y calls for an initial payment on execution of the agreement and the balance payable in five equal annual installments. Under these circumstances both A and Y are required to file reports of this transaction; A under section 202(a) (6), and Y under section 203(a) (1). Notwithstanding the fact that Y purchased stock in his own individual capacity, he is considered an employer under section 3(a) of the Act. See Note 1.

At the same time Mrs. B, wife of Union Officer B (who is also an officer of a union that represents employees of X Corporation), also sold her stock interest in X Corporation to Y in his individual capacity. Payments are on the same terms as the transaction involving A and Y. Under these circumstances, Union Officer B is required to report pursuant to section 202(a) (6) with regard to the payments received by his wife from Y. On the other hand, Y is not required to report under 203(a) (1) the payments made to the wife of Union Officer B. See Note 2.

NOTE 1:

A key official of corporation will be considered to be an employer within the meaning of section 3(e) of the Act if he has the responsibility for any aspect of the employer-employee relationship of the corporate employer, albeit he is dealing in his "individual" capacity with a union officer.

NOTE 2:

Under section 202(a) (6) a union officer must report any payments received by his wife or minor child, whereas, under section 203(a) (1) an employer need report only payments made to a union officer and is not required to report payments to a union officer's wife unless the wife is a mere conduit for the transmission of funds to the union officer.

(Revised: Dec. 2016)

248.200 PAYMENT OF WAGES FOR WORK NOT PERFORMED

Members of a local were paid wages by X Department Store for a project on which they did no work but on which they would have been employed had not the store inadvertently employed a non-union contractor. Payment of the funds was made by the store to the union steward for disbursement to the members of the local.

Section 202(a)(6) requires every "officer" or "employee" of a labor organization to file a report listing any payment of money which he received from any employer except payments of the kind referred to in section 302(c) of LMRA. Therefore, the union steward is required to report the receipt of this payment if he is an "officer" or "employee" of the labor organization within the meaning of those terms as they are defined in sections 3(f) and 3(n) of LMRDA. Further, any officer of the union who received payments from the store through the union steward would be required to file a report.

X Department Store is required to report the payment pursuant to section 203(a) (1). Since the payment in question was a payment of wages for work not performed, it cannot be said to come within the regular wage exception in section 302(c) of LMRA.

248.300 PAYMENTS TO JOINT APPRENTICESHIP COMMITTEE

Payments by employers to a Joint Apprenticeship Training Program, which has been created under the conditions set forth in section 302(c)(6) of the Labor Management Relations Act

(section 505 of LMRDA) are not required to be reported under section 202(a)(6) of LMRDA by a union officer serving as the union representative on such a committee.

See also Manual Entry 253.805.

EMPLOYER REPORTING IN GENERAL

250.001 LMRDA, SECTION 203

(a) Every employer who in any fiscal year made--

(1) any payment or loan, direct or indirect, of money or other thing of value (including reimbursed expenses), or any promise or agreement therefore, to any labor organization or officer, agent, shop steward, or other representative of a labor organization, or employee of any labor organization, except (A) payments or loans made by any national or State bank, credit union, insurance company, savings and loan association or other credit institution and (B) payments of the kind referred to in section 302(c) of the Labor Management Relations Act, 1947, as amended;

(2) any payment (including reimbursed expenses) to any of his employees, or any group or committee of such employees, for the purpose of causing such employee or group or committee of employees to persuade other employees to exercise or not to exercise, or as the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing unless such payments were contemporaneously or previously disclosed to such other employees;

(3) any expenditure, during the fiscal year, where an object thereof, directly or indirectly, is to interfere with, restrain, or coerce employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing, or is to obtain information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

(4) any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertakes activities where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing, or undertakes to supply such employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; or

(5) any payment (including reimbursed expenses) pursuant to an agreement or arrangement described in subdivision (4);

shall file with the Secretary a report, in a form prescribed by him, signed by its president and treasurer or corresponding principal officers showing in detail the date and amount of each such payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made.

* * * * *

(d) Nothing contained in this section shall be construed to require an employer to file a report under subsection (a) unless he has made an expenditure, payment, loan, agreement, or arrangement of the kind described therein. Nothing contained in this section shall be construed to require any other person to file a report under subsection (b) unless he was a party to an agreement or arrangement of the kind described therein.

(e) Nothing contained in this section shall be construed to require any regular officer,

supervisor, or employee of an employer to file a report in connection with services rendered to such employer nor shall any employer be required to file a report covering expenditures made to any regular officer, supervisor, or employee of an employer as compensation for service as a regular officer, supervisor, or employee of such employer.

250.002 REGULATIONS

See 29 CFR Part 405

250.010 EFFECTIVE DATE

Sections 201, 202, and 203 became effective immediately upon the date of enactment, September 14, 1959. Section 207, which is titled "Effective Date," specifies the period within which reports required under those sections must be filed.

(Revised: Dec. 2016)

250.100 ATTORNEY

An attorney who meets the definition of employer (see Manual Entry 030.440) and makes a loan of money to a labor organization would be required to file an employer report under section 203(a) (1).

250.200 CORPORATE OFFICERS

A manager or a president of a corporation may be required to report under section 203 payments to a union officer, even if the payment involves an activity "individual" in nature and not on behalf of the corporate employer, as for example, the sale at half the true and fair market value of his home to a union officer of the union which represents the employees his corporate firm employs.

250.300 FRANCHISED AGENTS OF AGVA

See Manual Entry 030.450.

EMPLOYER REPORTS: WHO MUST REPORT

251.001 LMRDA PROVISIONS

See Manual Entry 250 ff. for statutory provisions; 030.400 for definition of "Employer."

251.002

See 29 CFR 405.1(b), 405.7, 405.8

251.005 NONUNION EMPLOYER

The fact that none of an employer's employees are union members does not except him from the reporting requirements of this section, if otherwise he would be required to report.

251.100 SELF-INCRIMINATION

Reports required of employers under section 203(a) of LMRDA must be submitted notwithstanding the fact that the information required to be included in the report may disclose a violation of section 302 of the Taft-Hartley Act (section 302 contains a criminal provision). It has been argued that the requirement to file such a report infringes on the 5th amendment to the Constitution of the United States.

NOTE:
For a discussion of the constitutionality of the Reporting requirements, see Manual Entry 241.400.

WHEN AND WHERE TO FILE EMPLOYER REPORTS

252.001 LMRDA, SECTION 207(b)

Each person required to file a report under section 201(b), 202, 203(a), or the second sentence of 203(b) shall file such report within ninety days after the end of each of its fiscal years; except that where such person is subject to section 201(b), 202, 203(a), or the second sentence of 203(b), as the case may be, for only a portion of such a fiscal year (because the date of enactment of this Act occurs during such person's fiscal year or such person becomes subject to this Act during its fiscal year) such person may consider that portion as the entire fiscal year in making such report.

252.002

See 29 CFR 405.1, 405.2, 405.3, 405.4, 405.5

252.005 DUE DATE

The Act requires that employer reports be submitted within 90 days after the end of an employer's fiscal year so as to include information on all reportable payments and agreements or arrangements which occurred during the year. If certain arrangements are subject to the reporting requirements, reports should be submitted after the end of every fiscal year in which such an arrangement was made and also after every year in which payments were made pursuant to such an arrangement. At the same time, the employer would report any other payments or agreements or arrangements required by the form.

PAYMENTS TO UNIONS-OFFICERS-ETC.

253.001 LMRDA, SECTION 203(a) (1)

. . . any payment of loan, direct or indirect, or money or other thing of value (including reimbursed expenses), or any promise or agreement therefore, to any labor organization or officer, agent, shop steward, or other representative of a labor organization, or employee of any labor organization, except (A) payments or loans made by any national or State bank, credit union, insurance company, savings and loan association or other credit institution and (B) payments of the kind referred to in section 302(c) of the Labor Management Relations Act, 1947, as amended;

253.005 PAYMENT FOR WORK NOT PERFORMED

See Manual Entry 248.200.

253.007 EMPLOYER-MEMBER PAYING DUES

Although there is no mention in section 302(c) of the LMRA of dues paid to a union by an employer who is a member of the union, such payments need not be reported by the employer under section 203(a)(1) of the LMRDA. It has previously been held that employers may join or retain membership in a union so long as they were not required to do so. Obviously, the right to join includes the obligation to pay dues. Further, while the dues are paid by employers, they are paid by them in the capacity of union members and not in the capacity of employers. However, if the union's constitution establishes higher dues for employers, these dues would have to be reported, since the payments are required from them as employers and not as members.

(Technical Revisions: Dec. 2016)

253.010 REIMBURSEMENT OF EMPLOYEES FOR WORK PERMIT COSTS

An employer imported a number of men from local unions of a national union outside the jurisdiction of the local affiliate of that national to work on a special project within that local's jurisdiction. Under the constitution and bylaws of the national union, such workmen were required to pay a charge for a work permit in the jurisdiction of the local where work was secured. The imported workmen paid the work permit fee to the local and obtained receipts which were subsequently turned over to the employer who reimbursed the men for this expense.

In the absence of evidence showing that such an arrangement was a scheme to achieve an indirect payment by an employer to a union, the reimbursement of the men by the employer of the cost of a work permit is consistent with a legitimate effort by an employer to make it more attractive for specialized employees to work for him away from their own home base.

253.020 PRESIDENT OF EMPLOYER ACTING IN INDIVIDUAL CAPACITY

Union Officer A, whose union represents employees of X Corporation, sold his stock interest in X Corporation to Y, President of X Corporation. Y purchased the stock in his individual capacity. Y owns 30% of the X Corporation's stock (the 30% includes the stock secured from A). The purchase agreement between A and Y calls for an initial payment on execution of the agreement and the balance payable in five equal annual installments. Under these circumstances, both A and Y are required to file reports of this transaction; Y is required to report under section 203(a) (1). Notwithstanding the fact that Y purchased stock in his own individual capacity, he is considered an employer under section 3(e) of the Act. (See Note 1)

At the same time Mrs. B, wife of Union Officer B (who is also an officer of a union that represents employees of X Corporation), also sold her stock interest in X Corporation to Y in his individual capacity. Under these circumstances, Union Officer B is required to report pursuant to section 202(a) (6) with regard to the payments received by his wife from Y. Y is not required to report under 203(a) (1) the payments made to the wife of Union Officer B. (See Note 2)

NOTE 1:

A key official of a corporation will be held to be an employer within the meaning of section 3(e) of the Act if he has the responsibility for any aspect of the employer-employee relationship of the corporate employer, albeit he is dealing in his "individual" capacity with a union officer.

NOTE 2:

Under the specific language of section 203(a)(1) an employer need report only payments made to a union officer and is not required to report payments made to a union officer and is not required to report payments to a union officer's wife unless the wife is a mere conduit for

the transmission of funds to the union officer.

(Revised: Dec. 2016)

253.030 POLITICAL CONTRIBUTIONS

See Manual Entry 243.400.

253.040 LOANS TO EMPLOYEES

Employers are not required to report loans made to employees under circumstances and terms unrelated to the employees' status in a labor organization, unless the Secretary, in particular cases, requires the submission of a special report on such information. Whether a particular loan meets the condition set forth above is, of course, a question of fact to be determined in each case on the basis of the pertinent circumstances. The size and terms of a particular loan, especially in relation to the size and terms of loans actually made to other employees, would be significant circumstances in making this determination.

253.041 EMPLOYERS AS GUARANTOR OF OFFICER LOAN

An employer who guarantees payment of a bank loan made to a labor organization representative is required to report this since it constitutes an "other thing of value" to the recipient within the meaning of section 203(a)(1). It would correspondingly be required to be reported by a recipient labor organization officer or employee under section 202 of the Act.

253.045 ADVANCES

An advance on salary offered to all employees is not reportable by the employer since it may be regarded as a payment of the kind referred to in section 302(c)(1) of the LMRA, 1947, in that it is payable to an officer of a labor organization by reason of his service as an employee of said employer. Further, Instructions to LM-10, Employer Report, Part A, Question 8A, makes the following exception:

> "(b) Loans made to employees under circumstances and terms unrelated to the employees' status in a labor organization."

253.050 UNION MEMBERS WHO CONTRACT WORK

Members of local unions who are classified as contractors are employers in addition to being members. As employers they are required to file reports with the Office regarding payments in excess of regular dues which they make to their local union and that are not among those excluded from the Act under section 302(c).

(Revised: Dec. 2016)

253.060 NEGOTIATING EXPENSES

Company A and Union B are attempting to negotiate production standards related to the operation of new equipment. The company, through its plant officers, invites several union representatives to visit other plants of the company with a view to observing the new equipment in operation. It was believed that when the union representatives viewed the new equipment in operation they would have a more adequate factual basis for negotiating a production standard

with Company A. The company paid the union representatives their regular wages and their actual expenses for travel and hotel accommodations (one night's lodging).

Under these circumstances, no employer report is required from the company and no labor officer reports are required from the union representatives because the payment of bona fide expenses by the company in connection with collective bargaining and negotiations are considered to come within the scope of the regular wage exception referred to in section 302(c) of the LMRA, 1947, as amended.

But see Manual Entry 243.200.

253.061 MEALS FOR BARGAINING COMMITTEE

The practice of any employer, who pays for meals of a five-man bargaining committee of an independent local on the occasion of its meeting several times a year with the employer's management committee to discuss matters under the collective bargaining agreement, is not reportable under section 203(a)(1) of the Act in view of Item (e) of the exclusions listed in the instructions for Question 8A, Part A of Form LM-10 (sporadic or occasional gifts or gratuities) if the practice involves an insubstantial cost per recipient and amounts to occasional acts of hospitality which the employer extends to other groups with which it meets to discuss matters of mutual interest.

(Technical Revisions: Dec. 2016)

253.062 COMPLIMENTARY ROOMS TO UNION OFFICERS

Hotels which furnish complimentary rooms to union officers as such during a convention are required to file reports under section 203(a)(1) notwithstanding the exception in section 302(c)(3) of the Taft-Hartley Act, as amended. While the furnishing of complimentary rooms by hotels to officials of organizations which hold conventions at their establishments is a common practice, where rooms are made available without charge or at a substantial "discount" because the men involved are officers of the union dealing with the hotel, reports are required from both parties.

253.070 ADVERTISING IN UNION LITERATURE

Expenditures for employee advertisements in union souvenir journals paid to a labor organization should be treated as "sporadic and insubstantial." Where such payments are made to a banquet group or committee composed of employees of the employer, such payments need not be reported unless the purpose is to persuade the employees in relation to their collective bargaining rights. See also Form LM-10 FAQ 31(A) (noting that this is not a blanket rule and reporting also depends on the frequency and amount of the expenditures).

An employer pays a labor organization $1,000 for a full-page advertisement in a commemorative booklet that is given to all of the officers of local unions attending a union conference. The same employer also pays $2,000 to conduct marketing activities from a trade booth at the conference. The employer must file a Form LM-10 reporting the $1,000 paid for the advertisement in the commemorative booklet, and the $2,000 for the conference trade booth. Under section 203(a), and subject to multiple exceptions, employers must report payments to labor organizations and their officials. 29 U.S.C. § 433(a)(1). Section 203(a)(1)(B) exempts payments of the kind referred to in section 302(c) of the Labor Management Relations Act (LMRA). 29 U.S.C. § 433(a)(1)(B). Section 302(c) covers payments "with respect to the sale or

purchase of an article or commodity at the prevailing market price in the regular course of business." 29 U.S.C. § 186(c)(3). The purchase of "advertising" in a journal or use of a booth might be considered to be comparable to the purchase of an "article or commodity" within the meaning of the exception set forth in section 302(c)(3) of the LMRA, but the transactions, by all appearances, are not made in the "regular course of business." Unions are not in the business of producing and selling periodicals for advertising revenue or hosting trade shows. Thus, the payment is not in the regular course of business. In addition, the purpose of a commemorative journal is to raise funds for the union, and purchasers of space do so, at least in part, to support the union, and not merely for advertising purposes. Thus, there is no reliable way to assess a "prevailing market price" for journal entries or rental of a booth at a union conference; therefore this exemption is not applicable.

(Revised: Dec. 2016)

253.071

29 CFR 405.5 by reference to Form LM-10 specifically excludes from the reporting requirements certain sporadic or occasional gifts, gratuities or favors of insubstantial value. Advertisement in a testimonial booklet would not need to be reported unless its purpose, directly or indirectly, is to influence employees in relation to their collective bargaining rights. See also Form LM-10 FAQ 31(A).

(Revised: Dec. 2016)

253.072 SOLICITING PAID ADVERTISEMENTS FROM EMPLOYER

There is nothing in the LMRDA (of 1959) which would affect the legality of a union's continuation of its practice of soliciting paid advertisements from employers for insertion in a souvenir journal in connection with its annual dinner.

253.080 CONTRIBUTIONS TO UNION APPRENTICESHIP PROGRAM

The furnishing by an employer of less than $250 worth of steel every three or four years on the request of the union for use in the union's apprenticeship training program can be considered a "sporadic or occasional gift... of insubstantial value" within the meaning of exception (e) of the exclusions listed in the instructions for Question 8A, Part A, of Form LM-10. Therefore, no report of such a gift is required.

(Revised: Dec. 2016)

253.081 TO IMPROVE LABOR-MANAGEMENT RELATIONS

Occasional acts of hospitality which are designed solely to further sound labor-management relations, which involve an insubstantial cost for each person invited, and which the company extends in similar fashion to other groups with which it meets on matters of mutual interest need not be reported.

253.082 EMPLOYEE RECREATION

Employer payments to a fund for the purposes of conducting a bowling league, picnic, clambake or Christmas party is not prohibited under the Act. Neither is a report required from the employer; such payments fall within exception (e) of the exclusions listed in the instructions

for Question 8A, Part A, of Form LM-10 which states that "sporadic or occasional gifts, gratuities, or favors of insubstantial value, given under circumstances and terms unrelated to the recipients' status in a labor organization (e.g., traditional Christmas gifts)," need not be reported.

(Technical Revisions: Dec. 2016)

253.083 EMPLOYEE PICNIC

For many years it had been the custom of Company X to sponsor an annual picnic for its employees. After the company was organized by Union Y, the union decided that it would co-sponsor the picnic and share the expenses equally with the company. The cost of the picnic for the 200 employees of the company was $3,000.

Under these circumstances no report is required from the company pursuant to section 203 of LMRDA under either the past or the present practice because the payment involved (at most $15.00 per employee and his family) is, in effect, a gift or additional wages of insubstantial value given under circumstances unrelated to the recipient's status in a labor organization. This is one of the administrative exceptions to the reporting requirements of LMRDA granted by the Secretary of Labor.

253.090 DIVIDENDS TO LABOR ORGANIZATION

Payments of dividends to labor organizations which are stockholders of the corporation need not be reported, notwithstanding the fact that the corporation is on notice that the dividend payment is to a labor organization.

*253.091 PAYMENTS TO SUBSIDIARY OF A LABOR ORGANIZATION

An employer made a payment to a Building Corporation which was a subsidiary of a local labor organization as reparation for a violation of the collective bargaining agreement. The violation involved the employer's breach of a contract provision prohibiting the use of prefabricated materials. Since the reparation payment made to the subsidiary of the local did not fall within the exceptions set forth in section 302(c), Labor Management Relations Act, 1947, as amended, it is required to be reported by the employer under section 203(a)(1) of the LMRDA.

However, if the payments had been made as the result of a valid settlement, arbitration, or court decision, they might have been allowed by Section 302(c)(2)'s exception for "payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress . . . . ." See Flynn v. Dick Corp., 481 F.3d 824, 181 LRRM 2673 (D.C. Cir. 2007)(order for employer to make payments to union trust funds would not violate §302 because would be made after decision finding breach of "traveling contractor" clause); Toyota Landscaping Co. v. S. Cal. Dist. Council of Laborers, 11 F.3d 114, 119 & n. 4, 144 LRRM 2824, 2828 & n. 4 (9th Cir.1993)(employer payments in settlement of grievance over breach of subcontracting clause). When this exception applies, reporting is not required by employers under LMRDA §203(a)(1). See also Manual Entry 253.401.

(Revised: Dec. 2016)

PAYMENTS EXCEPTED UNDER TAFT-HARTLEY
IN GENERAL

253.101 LMRDA, SECTION 203(a) (1)

. . . and (B) payments of the kind referred to in section 302(c) of the Labor Management Relations Act, 1947, as amended; . . .

253.106

The LMRDA of 1959 does not place with this Department any final authority to construe the provisions of law which are amended by section 505 of the Act. Such authority is left, as before, in the courts having jurisdiction to decide questions arising in the criminal proceedings and civil actions contemplated by subsections (d) and (e) of the LMRA, (1947), as amended. To the extent the provisions of this section as amended by the new law have a bearing on the Department's responsibilities under Title II of the Reporting and Disclosure Act we may, of course, have to reach certain conclusions as to their meaning. Furthermore, the Department of Labor is not in a position to advise as to the view the Department of Justice might take in carrying out that Department's responsibilities for the enforcement of the criminal sanctions provided in section 302(d) of the Taft-Hartley Act.

253.107

Although it will no doubt have occasion to consider the meaning of section 302(c) in determining whether particular transactions are reportable under section 202(a)(6) and 203(a)(1) of the LMRDA, the Department of Labor has no administrative or enforcement responsibilities with respect to the prohibitions contained in section 302 of the Taft-Hartley Act. Violations of that section are subject to injunctive restraint in the Federal district courts upon the petition of any interested party and the Attorney General can institute criminal proceedings for willful violations.

PAYMENTS EXCEPTED UNDER TAFT-HARTLEY: PAYMENTS TO EMPLOYEE-CONSULTANT ACTING OPENLY

253.201 LMRA, SECTION 302(c)

The provisions of this section shall not be applicable (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration. . .

PAYMENTS EXCEPTED UNDER TAFT-HARTLEY: REGULAR WAGE EXCEPTION

253.301 LMRA, SECTION 302(c) (1)

. . . or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; . . .

253.305 EXCEPTION FOR REGULAR PAYMENTS TO EMPLOYEES

The explanation and instructions in the form for the Employer Report set forth that certain

payments are not required to be reported under section 203(a) unless the Secretary, in particular cases, requires the submission of a special report thereon. Among the payments not required to be reported are:

> Payments made to any regular employee as wages or other compensation for service as a regular employee of the employer, or by reason of his service as an employee of such employer, for periods during regular working hours in which such employee engages in activities other than productive work, if the payments for such periods of time are: (1) required by law or a bona fide collective bargaining agreement, or (2) made pursuant to a custom or practice under such a collective agreement, or (3) made pursuant to a policy, custom, or practice with respect to employment in the establishment which the employer has adopted without regard to any holding by such employee of a position with a labor organization.
>
> Part A, Form LM-10

But see Manual Entries 254.100, 255.200 and 266.100.

(Technical Revisions: Dec. 2016)

253.320 CHIEF STEWARD'S PAY

When a chief steward performs no productive work for the company during the regularly scheduled 40 hour work week, and the amount of payment is based upon the job classification held prior to his election as chief steward, and such payments are made pursuant to practices of long standing established in conjunction with collective bargaining agreements, such payments would fall within the exception (c) of the exclusions listed in the instructions for Question 8A, Part A, of Form LM-10, and thus would not need to be reported.

(Technical Revisions: Dec. 2016)

253.321

An employee who is paid at the rate of a forty-hour productive week, but whose entire function is that of a chief steward who hears and investigates grievances, would not need to have payments to him reported under section 203(a) of the Act.

253.322 RELEASED TIME PAYMENTS

Pursuant to a collective bargaining agreement with the employer, wages are to be paid the president of a local labor organization in his capacity as "chief steward." As such, his activities performed on company time consist of the investigation of grievances and their processing. The officer in question does not handle other union business during his period of employment with the employer. Under such circumstances, no report of payments made to the officer is required of the employer on Form LM-10, exception (c) of the exclusions listed in the instructions for Question 8A, Part A and no report need be filed by the union officer pursuant to section 202 of the Act (see section 302(c), LMRA, 1947, as amended).

(Technical Revisions: Dec. 2016)

253.330 PAYMENT FOR DEFERRED VACATION

A bus driver for the X Tramway Corporation was elected to the office of Division President

of one of the divisions of his union. He took a leave of absence from the corporation as of January 1, 1963 to devote full time to his new duties. He now raises a question concerning the report ability of a payment by the corporation to him of $268.00 which he earned in 1962 under a corporation policy which allows employees to draw vacation pay for vacation earned but not taken during the previous year. The money thus accumulated is not paid to the employee until the next calendar year.

Since the payment in question is a payment by an employer to a union officer, it would constitute a violation of section 302(a) of LMRA unless it can be considered to come within one of the exceptions contained in section 302(c) thereof. Section 302(c) states that the provisions of section 302 shall not be applicable to any money payable by an employer to any officer of a labor organization who is also an employee or former employee of such employer "as compensation for, or by reason of his service as an employee of such employer." Since it appears to have been the policy of the employer in this case to allow all employees to take a money payment in lieu of a vacation, the payment to the Division President appears to come within the terms of section 302(c) (1) and is therefore exempted from the reporting requirements of section 202(a) (6) and section 203(a) (1) by the terms of those sections.

253.340 INCENTIVE PLAN PAYMENTS

Payments made under an incentive plan which is contained in the collective bargaining agreement and which contemplates the payment of additional compensation to employees who through additional effort obtain new accounts for the employer come within the purview of section 302(c) (1) of LMRA and would therefore not be reportable by the employer under section 203(a) (1) of LMRDA in the absence of other factors. Similarly, such payments would not be reportable by the union officer-employees who received such additional compensation.

253.350 CHRISTMAS BONUSES

Christmas bonuses which are based on a certain percentage of earnings, and which are payable on a uniform basis to all employees without regard to their relationship to a union or their status therein, fall within exceptions provided in section 203(a)(1)(B) of the LMRDA (section 302(c)(1) of the LMRA).

(Technical Revisions: Dec. 2016)

253.360 GROUP INSURANCE

Under collective bargaining agreements where an employee selected to represent the union is granted leave of absence without pay for this purpose and during this leave the employee's rights are preserved for him, including the provision for group insurance for the employee and his dependents in the same amount and in the same manner as is provided for active employees, no LM-10 report is required with regard to these payments pursuant to section 203(a) of the LMRDA.

(Technical Revisions: Dec. 2016)

PAYMENTS EXCEPTED UNDER TAFT-HARTLEY: PAYMENTS OF DISPUTED CLAIMS

253.401 LMRA, SECTION 302(c) (2)

. . . with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; . . .

PAYMENTS EXCEPTED UNDER TAFT-HARTLEY: SALES AND PURCHASES AT MARKET PRICES

253.501 LMRA, SECTION 302(c) (3)

. . . with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; . . .

253.505 STOCK PURCHASE PLAN

Where an employer has a stock purchase plan under which all employees may purchase stock at a discount, no reports are due from the employer with regard to the benefit given union officers who are regular employees since the "benefit" is deemed to be additional compensation within the meaning of section 302(c)(1) of Taft-Hartley.

PAYMENTS EXCEPTED UNDER TAFT-HARTLEY: DUES DEDUCTED FROM WAGES

253.601 LMRA, SECTION 302(c) (4)

. . . with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; . . .

253.605 CHECKOFF NEGOTIATED BY SUPERIOR BODY

Where a superior labor organization, such as a District Lodge of Machinists, negotiates a collective bargaining agreement with an employer under which there is a bona fide dues check off agreement which on its face meets the terms and conditions of section 302(c)(4) of the LMRA, 1947, as amended, no employer report, pursuant to section 203(a)(1) of the LMRDA, is required where by direction of the District Lodge the dues are sent directly to the local lodge in which the employees of the employer are members, even though the local lodge does not negotiate the agreement.

253.610 REPORTABLE DUES PAYMENTS

If payments of employees' union dues are made by an employer in accordance with section 302(c)(4) of the LMRA, the employer is exempted from the reporting requirements of section 203(a)(1) of the LMRDA with respect to such payments. Otherwise, e.g., if the payments are made from the employer's own funds or if they are made without an assignment meeting the statutory requirements, a report is necessary and should be made in such detail as is prescribed by section 203(a) of the LMRDA.

253.625 “DUES” INCLUDES INITIATION FEES AND ASSESSMENTS

The Department of Justice has taken the position that “initiation fees and assessments, being incidents of membership, should be considered as falling within the classification of membership dues’ as that term is used in section 302(c)(4) of the LMRA. Memorandum of Assistant Attorney General to Assistant Solicitor General, May 13, 1948, 22 LRRM 46.

NOTE:

In view of this opinion, no reports are required under section 203 of LMRDA of the payment of initiation fees or assessments by an employer to a union under a valid check off arrangement in writing providing for the payment of “membership dues.”

253.630 ASSESSMENTS

A check off arrangement for assessments which parallels the requirements for the check off of membership dues would not be considered improper. That is, where “the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner,” a check off of assessments would be proper.

253.640 EMPLOYER DEDUCTION OF SUPERVISOR DUES

An employer is required by section 203(a)(1) of the LMRDA to report union dues deducted for supervisors formerly covered by a collective bargaining agreement and remitted to the union, unless such payment could be regarded as a payment “of the kind referred to in section 302(c) of the LMRA, 1947, as amended.” The only portion of that exemption which would have any applicability in such an instance is section 302(c) (4) exempting “money deducted from the wages of employees in payment of membership dues in a labor organization” subject to a provision that the deduction be authorized by the employee by written assignment.

In making such a determination it would be necessary to consider the broad definition of “employee” in section 3(f) of LMRDA as “any individual employed by an employer,” and the more restricted definition in section 2(3) of the LMRA, which expressly excludes from that category “any individual employed as a supervisor.” When section 302(c) (4) is placed in the setting of the LMRDA, and absent the considerations which motivated Congress to exclude supervisors from the definition of “employee” in drafting the LMRA, our view is that the broader definition of “employee” in section 3(f) of the LMRDA appropriately applies to the 302(c) (4) exemption as it is adopted by the LMRDA. Consequently, reporting would not be required of payments to unions for deductions from supervisors’ wages for membership in the union.

253.641 EMPLOYER-MEMBER PAYING DUES

See Manual Entry 253.007.

253.650 DUES DEDUCTIONS FROM PENSION PAYMENTS

The deduction of union dues from pension payments to retired employees who are union members is not prohibited by section 302(a) of the Labor Management Relations Act and would not have to be reported under section 203 of the LMRDA, if such deductions are made pursuant to a collective bargaining agreement and have been voluntarily authorized in writing.

PAYMENTS EXCEPTED UNDER TAFT-HARTLEY:

PAYMENTS TO WELFARE AND PENSION TRUST

253.701 LMRA, SECTION 302(c) (5)

. . . with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event of the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, am impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principle office of the trust fund and at such other places as may be designated in such written agreement; and (c) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities . . .

253.705 SCOPE OF PROVISION

Section 505 of the LMRDA, 1959, amends section 302(c) of the LMRA, 1947, as amended, to provide in part, the conditions under which contributions by an employer to a union health and welfare fund can be made. Included are requirements that the payments into the fund be held in trust for the benefit of employees and their families; that the detailed basis on which the payments are to be made is specified in a written agreement between the employee representative and the employer; and that employees and employers are equally represented, together with neutral persons selected by them in administration of the fund. The Secretary of Labor does not have the authority to enforce (nor normally to investigate) those sections of the Act which are amendments to the LMRA, 1947, as amended.

253.706 PAYMENTS TO PLANS NOT MEETING STATUTORY CONDITIONS

Where an employer makes payments to a union or jointly administer pension, vacation, or welfare plan created subsequent to the enactment of the Taft-Hartley Act which does not meet the conditions set forth in section 302(c)(5) and (6) of that Act, such payments are considered payments to a “labor organization or officer, agent, shop steward or other representative, or employee of any labor organization” and must be reported on Schedule B of form LM-10, the Employer Reporting Form, pursuant to section 203(a)(1) of the LMRDA.

253.710 TRUSTEES SELECTED BY UNIONS AND EMPLOYER ASSOCIATIONS

In a situation where unions and employer associations, in the building trades industry, establish a trust fund pursuant to a collective bargaining agreement which is administered by trustees selected by the unions and the employer associations in accordance with section 302(c)(5) of LMRA, a question was raised as to the reportability (under section 203 of LMRDA) of payments made to such fund by an independent employer who enters into a similar agreement with the same unions under which his contributions are accepted by the trustees and administered for his employees without such employer having any voice in the selection of the management trustees or control over the trustees' actions.

The point in question was answered in a case brought under the LMRA. In the case of United Marine Div., I. L. A., Local 333, A. F. of L. v. Essex Transp. Co., 216 F.2d. 410, 35 LRRM 2049 (3d Cir. 1954), the U.S. Court of Appeals for the Third Circuit rendered a decision which in substance was as follows:

> Where a welfare fund, established by agreement between a union and an employer's association, is operated by trustees chosen by the contracting parties, a promise, if any, by an employer, who is not a member of the employers' association, to make payments to trustees of the fund is not a promise to make payment to representatives of any of the employer's employees within the meaning of the statute prohibiting employers from making such payments.

Id. at 412-13.

The union brought suit in the District court to compel the Essex Transportation Company to make payments, per oral agreement, to trustees of a welfare fund for employees. The defendant contended that if the agreement was made, it was insufficient to hold them liable for payments because of the provisions of section 302, LMRA. In reversing the District Court's judgment which had been in favor of the defendant, the Court of Appeals said, "The promise alleged was to pay these trustees. These trustees were not, in our judgment, representatives of the employees. They were trustees of a welfare fund." Id. At 412.

In view of the Third Circuit decision, it would appear that no reports are required under section in 203 of the LMRDA where payments have been made to trust funds under similar conditions.

(Revised: Dec. 2016)

253.720 DIRECT PAYMENTS TO UNION

A group of independent retail stores joined together as an informal organization of employers. These employers individually make payments to a local representing their employees for employee health and welfare benefits. Part of this money is used to pay the premium on an insurance policy for employee benefits and the remainder is retained by the local to defray the expense of administering the program.

The payments in question are payment to a labor organization and are therefore within the scope of section 203(a) (1) unless they are the kind referred to in section 302(c) of the LMRA. While it is true that section 302(c) (5) of LMRA exempts money paid to a trust fund established under certain conditions for the purpose of providing employee health and welfare benefits, the payments in question are not being made to a trust fund, but are paid directly to the local which uses part of the money to pay the cost of an insurance policy for employee benefits.

Under such circumstances, each employer making payments to the local must report these payments. The amount to be reported is the entire amount which each employer pays the local and not just the difference which the local uses to defray the cost of administering the program.

253.730 PURPOSE OF EMPLOYER'S PAYMENTS

Section 302(c) (5) and (6) require that the employer's payments must be used exclusively for certain specified purposes. It is not sufficient that the disbursements be, "directly related to the welfare of the union membership"; they must have one of the particular purposes specified in the statute.

253.750 PAYMENT TO UNION OFFICER BY EMPLOYER FOR PENSION FUND

When a union officer is paid by the employer for services rendered in the capacity of a Secretary to a pension fund, both the union officer and the employer are required to report the transaction.

253.760 PAYMENT TO TRUST FOR LOST TIME

Form LM-10 states that payments to a trust fund for periods of "lost time" are not required to be reported if they are either required by law or a bona fide collective bargaining agreement, or made pursuant to a custom or practice under such a collective bargaining agreement.

253.770 USE OF WELFARE FUND MONEY

On appeal by the trustees of a jointly administered trust from an injunction granted by the District Court to the Kroger Company to prevent the trustees from making certain expenditures of fund monies, the Court of Appeals reversed the District Court insofar as the lower court held that coverage under a section 302(c)(5) trust could not be extended to allow retired employees of employers, employees of the trust, and officers and employees of the union to participate as beneficiaries under the trust. The Court held that persons within these categories may participate as beneficiaries under the trust: Provided, That (1) the retired employees were covered by the trust while actively employed; and (2) the union (whose officers and employees may participate only if the union contributes to the fund for them as an employer) may not participate in the selection of employer trustees.

In regard to employees of the trust itself, the Court held that their coverage is not improper even though the expense of their participation is effected by an internal book transfer from surplus since it does not infringe on other contributing employers' contributions "any more than a cash wage and does not make the trust any less a contributor." The Court also excluded the trust from participation in the selection of employer trustees. Blassie v. Kroger Co., 345 F.2d 58, 71, 59 LRRM 2034 (8th Cir. 1965), reversing in part, Kroger v. Blassie, 225 F.Supp. 300, 55 LRRM 2224 (E.D. Mo. 1964).

NOTE:

The Court of Appeals sustained the District Court's holding that (1) the acquisition and development of land to be used primarily for recreation purposes and (2) the operation of a pharmacy where drugs and medicines were available at discount prices to persons not covered under the trust, were not proper purposes on which to expend trust funds.

(Technical Revisions: Dec. 2016)

PAYMENTS EXCEPTED UNDER TAFT-HARTLEY: PAYMENTS TO A FRINGE BENEFIT TRUST

253.801 LMRA, SECTION 302(c) (6)

. . . with respect to money or other thing of value paid by any employer to a trust fund established by such representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds. . .

253.805 PAYMENTS TO JOINT APPRENTICESHIP COMMITTEE

Payments by employers to a Joint Apprenticeship Training Program, which has been created under the conditions set forth in section 302(c)(6) of the Labor Management Relations Act (section 505 of LMRDA), are not required to be reported under section 203(a) (1) of LMRDA. See also Manual Entry 248.300.

PAYMENTS EXCEPTED UNDER TAFT-HARTLEY: SCHOLARSHIP OR CHILD CARE CENTER TRUST

*253.900 LMRA, SECTION 302(c) (7)

. . . with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, or (B) child care centers for preschool and school age dependents of employees: Provided, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: Provided further, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds.

(NOTE: Section 302(c) of the LMRA was amended by Public Law 91-86 on October 14, 1969, to add subsection 7 set forth above in Manual Entry 253.900.)

PAYMENTS EXCEPTED UNDER TAFT-HARTLEY: PAYMENTS TO LEGAL SERVICES TRUST

*253.950 LMRA, SECTION 302(c) (8)

. . . with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: Provided further, That no such legal service shall be furnished: (A) to initiate any proceeding directed (i) against any such employer or its officer or agents except in workman's compensation cases, or (ii) against such labor organization or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under the National Labor Relations Act, as amended, or this Act; and (B) in any proceeding where a labor organization would be prohibited form defraying the costs of legal services by the provisions of the Labor-Management Reporting and Disclosure Act of 1959.

(NOTE: Section 302(c) of the LMRA was amended by Public Law 93-95 on August 15, 1973, to add subsection 8, set forth above in Manual Entry 253.950.)

PAYMENTS EXCEPTED UNDER TAFT-HARTLEY:

PAYMENTS TO LABOR MANAGEMENT COMMITTEE

*253.960 LMRA, SECTION 302(c) (9)

…with respect to money or other things of value paid by an employer to a plant, area or industrywide labor management committee established for one or more of the purposes set forth in section 5(b) of the Labor Management Cooperation Act of 1978.

(NOTE: Subsection (b)(7) of section 302 of the Labor Management Relations Act, 1947 was added by Public Law 91-86, Oct. 14, 1969; subsection (b)(8) by Public Law 93-95, Aug. 15, 1973; and subsection (b)(9) by section 6(d) of Public Law 95-524, Oct. 27, 1978. ADDITIONAL NOTE: Section 5(b) of the Labor Management Cooperation Act of 1978 probably means section 6(b) of Public Law 95-524 (92 Stat. 2020; 29 U.S.C. 175a note).)

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PAYMENTS TO EMPLOYEES

254.001 LMRDA, SECTION 203(a) (2)

...any payment (including reimbursed expenses) to any of his employees, or any group or committee of such employees, for the purpose of causing such employee or group or committee of employees to persuade other employees to exercise or not to exercise, or as the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing unless such payments were contemporaneously or previously disclosed to such other employees;…

LMRDA, SECTION 203(e)

Nothing contained in this section shall be construed to require any regular officer, supervisor, or employee of an employer to file a report in connection with services rendered to such employer nor shall any employer be required to file a report covering expenditures made to any regular officer, supervisor, or employee of an employer as compensation for services as a regular officer, supervisor, or employee of such employer.

See REGULAR WAGE EXCEPTION, Manual Entries 253.300 ff.

254.005 EMPLOYER ASSISTANCE TO “GRIEVANCE COMMITTEE”

Where in connection with an organizational drive run by a national union to organize the employees of a particular employer, there is established a “Grievance Committee” to which the employer furnishes assistance by permitting production workers to cease their normal duties and engage in electioneering during regular working hours in favor of the “Grievance Committee” as against the “outside union,” a report is required of the employer under section 203(a)(2) if the employer does not make a contemporaneous disclosure in some affirmative way that he is allowing the previously mentioned production workers to leave their normal work in order to "electioneer" for the "Grievance Committee."

254.100 NONEXEMPT PAYMENTS

The exemption in section 203(e) applies only to expenditures made for services which are performed by employees in the regular and ordinary course of their employment. Such may be the case, depending on the particular circumstances, for payments falling under section 203(a)

(2). For example, where an employer prepares a message to his employees which attempts to persuade employees as to the manner of exercising their right to organize, and the employer then has the message conveyed to all plant employees through his labor relations director who is a regular staff member, no report would be due under section 203(a) (2) because the director would be performing as a regular employee within the meaning of section 203(e). However, if the employer called in one of his old and trusted employees who was a drill press operator for example, and asked him (without disclosing the assignment to other employees) to persuade his fellow employees as to their right to organize, then a report would be due from the employer under 203(a)(2).

254.200 FURNISHING STRIKEBREAKERS

The mere furnishing of replacements for strikers is not itself sufficient to require reporting. If the object of the replacements is solely to keep the business going, then the arrangement would probably not come within section 203(a)(4) and 203(b), even though the replacements might incidentally have persuasive effect. The duties performed or assigned could be evidentiary. If the duties were limited to those of the persons replaced, that could be an indication of a purpose other than persuasion; but if they in fact included violence, missionary work and the like, this could be an indication that the original arrangement was within the reporting requirement.

However, the employer would have to report under 203(a) (2), regardless of the original "object" of the arrangement for the furnishing of the men, if the men were in fact used to do missionary work or otherwise to persuade the employees to abandon the union or the strike, unless the fact that they were being paid for such duties were contemporaneously disclosed to the employees.

254.300 INDUSTRIAL RELATIONS COUNSELOR

Several parts of the employer report form contain exclusion for payments and expenditures made to a regular officer, supervisor or employer as compensation for service as a regular officer, supervisor or employee. Accordingly, an employer will not be required to report in those parts payments made to an industrial relations counselor in his capacity as full-time director of industrial relations.

EXPENDITURE TO INTERFERE WITH-RESTRAIN OR COERCE EMPLOYEES

255.001 LMRDA, SECTION 203(a) (3)

. . . any expenditure, during the fiscal year, where an object thereof, directly or indirectly, is to interfere with, restrain, or coerce employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing.

LMRDA, SECTION 203(g)

The term “interfere with, restrain, or coerce” as used in this section means interference, restraint, and coercion which, if done with respect to the exercise of rights guaranteed in section 7 of the National Labor Relations Act, as amended, would, under section 8 (a) of such Act, constitute an unfair labor practice.

255.002 See 29 CFR 405.7

255.005 COST OF LETTER CONTAINING THREATS

An employer in the middle of a representation struggle between two unions, attempted to state its position by mailing a letter to its employees. The letter urged employees to get rid of both unions and in effect promised them "a better job and better working conditions."

The NLRB found that in context with the rest of the letter this constituted a promise of a benefit. The Board also found that other parts of the letter "constitute a threat to close up the plant and move to another town where the company could operate without union trouble." The Board found that by mailing this letter to its employees the employer had interfered with, restrained or coerced the employees in the exercise of rights guaranteed in section 7 of the Labor Management Relations Act, 1947, as amended, and had engaged in unfair labor practices within the meaning of section 8(a)(1) of that Act.

Since the object of the letter in question was "to interfere with, restrain, or coerce employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing," and since the cost of preparing and mailing the letter in question was an expenditure to further this objective, a report is required from the employer pursuant to section 203(a) (3) of LMRDA.

255.100 "INTERFERENCE" WITH REPRESENTATION ELECTION NOT NECESSARILY UNFAIR LABOR PRACTICE

An important distinction should be noted insofar as the work "interference" is concerned vis-à-vis the Labor-Management Relations Act, 1947 (Taft-Hartley). There are certain situations where particular statements or activities of an employer in connection with a representation election being held in his plant under the aegis of the NLRB may result in the election being set aside for "interference" or "any conduct which prevents free and untrammeled choice of a bargaining representative" without the activity amounting to an unfair labor practice within the meaning of section 8(a) (1) of the Taft-Hartley Act. That section provides; "It shall be an unfair labor practice for an employer (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7." Note the use of the word "interfere" in the extract of the statute.

In connection with the above, the National Labor Relations Board in the case of *In re* Metropolitan Life Insurance Company, 1950 WL 9327, **4, 90 NLRB 935, 26 LRRM 1294, (Jul. 12, 1950) stated:

> Section 8(c) prevents the Board from treating as evidence of unfair labor practices any expression of views, argument, or opinion which contains no threat of reprisal or force or promise of benefit. Section 8(c) does not, however, prevent the Board from finding in a representation case that an expression of views, whether or not protected by section 8(c), has, in fact, interfered with the employees' freedom of choice in an election, so as to require that such election be set aside.

In short, where the "interference" is related solely to the conduct of the election and does not constitute an "unfair labor practice" under precedents set by the courts or the National Labor Relations Board, or alternatively the Board finds that the activity in question does not constitute an unfair labor practice, the activities or speeches or statements by the employer will be considered to have been made within his "free speech" rights set forth in section 8(c) of the Taft-Hartley Act insofar as section 8(a)(1) of that Act is concerned. Under such circumstances, no report is required under section 203(a)(3) of the LMRDA for expenditures involving that type of "inference" having in mind section 203 (f) and (g) of the LMRDA of 1959.

An example involves the decision of the National Labor Relations Board v. Plochman and Harrison--Cherry Lane Foods, Inc., 1962 WL 16119, 140 NLRB 130, 51 LRRM 1558 (Dec. 13, 1962). The facts were the following:

> The day before a representation election, the employer called together the employees and presented them with a showing of the movie "And Women Must Weep." The union lost the election by a very close margin and filed objections to the results and conduct of the election alleging that the showing of the movie "And Women Must Weep" amounted to misrepresentation and "interference" with the employees' rights to an objective election.

The NLRB overruled its Regional Director and held that the showing of that emotional anti-union movie immediately prior to the date of the election was sufficient "interference" with the objectivity of the election so as to justify the election being set aside and the holding of anew election. The Board made no finding at all that the showing of the movie constituted "interference" of the type referred to in section 8(a)(1) of Taft-Hartley (i.e. unfair labor practice). Consequently, the Department holds that no report is required in this case, as the employer was exercising his "free speech" rights set forth in section 8(c) of the Taft-Hartley Act so far as section 8(a)(1) of that Act is concerned having in mind the language of section 203(f) and (g) of LMRDA.

(Technical Revisions: Dec. 2016)

255.110 ACTIVITIES WHICH "INTERFERE" WITH REPRESENTATION ELECTION MAY ALSO BE UNFAIR LABOR PRACTICES

In the case of the National Labor Relations Board v. Trades Winds Motor Hotel & Restaurant, 1963 WL 16333, 140 NLRB 567, 52 LRRM 1063 (Jan. 9, 1963), the National Labor Relations Board, through its Regional Director found that the employer through its supervisors, (1) interrogated certain employees concerning their union membership and anticipated vote, and (2) threatened certain employees that if the union won the election it would close down its plant. These acts took place in connection with a representation election involving the employees of the Trade Winds Hotel. The NLRB set aside the election and ordered a new one on the basis that the acts in question constituted "improper interference with the election."

Though the union did not charge the employer with an unfair labor practice in this case, the type of conduct which the Board found the employer to be guilty of, has, under prior court rulings and board decisions, been held to be an unfair labor practice. See National Labor Relations Board v. Armstrong Tire and Rubber Co., 228 F.2d 159, 161, 37 LRRM 2244 (5th Cir. 1955); W.W. Chambers Co., Inc., 1959 WL 14834, 125 NLRB 78, 45 LRRM 1176 (Dec. 8, 1959), aff'd per curiam, National Labor Relations Board v. W.W. Chambers Co., Inc., 279 F.2d 817 (D.C. Cir. 1960).

The Department of Labor concluded that reports were required from the employers pursuant to section 203(a)(3) of the LMRDA, since the foregoing acts constituted "interference," "restraint" and "coercion" under section 203(g).

(Technical Revisions: Dec. 2016)

255.120 BOARD'S "JURISDICTIONAL YARDSTICK" NOT GERMANE

Although the National Labor Relations Board could exercise its powers to enforce the LMRA in all cases involving enterprises whose operations affect commerce, the Board, in its discretion, limits the exercise of its powers to cases involving enterprise whose effect on commerce is substantial. The board's requirements for exercising its power or jurisdiction are

called “jurisdictional standards.” These standards are based on the early amount of business done by the enterprise, or on the yearly amount of its sales or of its purchases. They are stated in terms of total dollar volume of business and are different for different kinds of enterprises.

However, insofar as the LMRDA, is concerned, a report may be required pursuant to section 203(a)(3) from an employer who comes within the definition in section 3(e) and who has undertaken activities which amount o unfair labor practices within the meaning of section 8(a)(1) of LMRA, provided there were expenditures in connection therewith, notwithstanding the fact that the Regional Director of a given NLRB region could not entertain a union “charge” of such unfair labor practice activities due to the Board’s “jurisdictional yardstick.”

(Revised: Dec. 2016)

255.300 EMPLOYER ASSISTANCE TO “GRIEVANCE COMMITTEE”

Where in connection with an organizational drive run by a national union to organize the employees of a particular employer, there is established a “Grievance Committee” to which the employer furnishes assistance, financially or otherwise, and with which he undertakes to negotiate, payments in connection with the assistance constitute payments which interfere with employees’ right to organize and bargain collectively through representatives of their own choosing and consequently must be reported by the employer under section 203(a)(3) of the Act.

“FREE SPEECH” RIGHT OF EMPLOYER

255.501 LMRDA, SECTION 203(f)

Nothing contained in this section shall be construed as an amendment to, or modification of the rights protected by, section 8(c) of the National Labor Relations Act, as amended

255.502 See 29 CFR 405.7

255.505 REPORTABILITY OF FREE SPEECH ACTIVITIES

It is stated in Part III of the instructions for the employer Form LM-10 report on page 2 for use in preparing the employer report that, while section 203 of the Act does not amend or modify the rights protected by section 8(c) of the National Labor Relations Act, as amended, the Act contains no provisions exempting the activities protected by that section from the reporting requirements. Accordingly, activities covered by section 203 must be reported since such reports are required by law, regardless of whether they are protected by the free speech provisions. While these instructions pertain exclusively to employer reports, the same principle, so far as the free speech provisions are concerned, is applicable to reports required of consultants.

(Technical Revisions: Dec. 2016)

255.600 NEWSPAPER ADS OF EMPLOYERS’ VIEWS

1. Where an employer, in connection with a labor dispute, places an ad under his own name in a newspaper in which he sets forth his viewpoints on the dispute without threat of reprisal, or force, or promise of benefit, and the ad may objectively and fairly be stated not to constitute any interference with, restraint of or coercion by the employer in connection with the employees’ rights to bargain collectively through representatives of their own choosing, no report under section 203(a) of the Act is required by virtue of section 203(f) inasmuch as the placing of such an ad constitutes the exercise of the employer’s “free speech” rights under section 8(c) of the

National Labor Relations Act of 1947, as amended.

2. On the other hand, where the employer places an ad in a newspaper and the substance of that ad amounts to "interference with, restraint, or coercion" in connection with the employees' rights to bargain collectively through representatives of their own choosing, a report is required under section 203(a) (3) of the Act with regard to the expenditures for the advertisement. The protected "free speech" rights under section 203(f) of the LMRDA (section 8(c) of LMRA) are not applicable in such a situation since threats, etc. cetera, do not constitute "free speech." For example, if the ad contains a statement as direct and blunt as the following, "If the union wins the representation election, you have my solemn promise that I will close this plant and move it to another State"; it would normally be considered a threat.

3. Where a labor relations "consultant" or other person, pursuant to an agreement with the employer prepares the copy for the ad referred to in (1) above, no report is required from the "consultant" under section 203(b) or from the employer since the "consultant" is deemed to be giving "advice" to the employer within the exception set forth in section 203(c) of the LMRDA.

4. Where a "consultant" or other person prepares the same copy, referred to in (1) above for an employer and that ad is place in a newspaper by the "consultant" or other person and does not appear as being the statement of the employer, as for example, the ad appears under the name of a fictitious committee entitled "Citizen Committee for Industrial Peace in our Town," then the ad may be fairly considered to constitute persuasion of the employees of the employer by the consultant (and not merely furnishing of advice to the employer) as to matters involving their rights to bargain collectively through representatives of their own choosing. In that case, reports are required from the "consultant" or other person pursuant to section 203(b)(1) and from the employer with regard to his agreement with the "consultant" or such other person pursuant to section 203(a)(4). If the employer makes any expenditure under the latter agreement, a report is required from his pursuant to section 203(a) (5) of the Act.

5. If the material in the ad referred to in (4) above constitutes "interference with, restraint, or coercion," then the employer is also required to file a report pursuant to section 203(a)(3) with regard to any expenditures he makes in connection with that advertisement.

6. The "consultant" must also file pursuant to section 203(b) (1) in the situation outlined in (5) above since "interference with, restraint, or coercion," amounts to persuasion, albeit illegal.

7. In the absence of special factors the publisher of the newspaper will not normally be required to file a report with regard to his having published any of the ads referred to above.

EXPENDITURES TO OBTAIN INFORMATION

256.001 LMRDA, SECTION 203(a) (3)

. . . or is to obtain information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; . . .

256.005 INFORMATION SOLELY FOR LEGAL PROCEEDINGS

The instructions for Part X, Part A, Item 8 of the Form LM-10, on page 4, contain an exclusion relating to agreements and arrangements to obtain information solely for use in conjunction with administrative, arbitral, or judicial proceedings. Thus, if the information is

obtained and used solely in conjunction with such proceedings (which would include for example, a representation hearing before the National Labor Relations board) it is not required to be reported. If the information is obtained or used also for purposes extraneous to such proceedings, it must be reported.

(Technical Revisions: Dec. 2016)

256.100 LABOR SPYING

Instead of hiring a middleman, some employers pay a bonus to one of their regular officers, supervisors, or employees to spy. Here the "spy" may simply sit outside the place where the union organizers are meeting with other employees of the same business and record the names of the employees who are going in and coming out. He then turns this information over to the employer. This type of activity is also, reportable, unless the information is to be used solely in connection with an administrative, arbitral or judicial proceeding. An example of such a proceeding would be a representation hearing before the NLRB.

AGREEMENT WITH CONSULTANT

257.001 LMRDA, SECTION 203(a) (4)

. . . any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertakes activities where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing, or undertakes to supply such employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; or . . .

257.002 See 29 CFR 405.5

257.005 PERSUASION, EVEN THOUGH LEGAL, MUST BE REPORTED

The purposes which would make an arrangement subject to the reporting requirements of section 203(a) (4) and (b) need not be unfair labor practices otherwise in violation of law. These subsections speak of activities to "persuade" employees in the exercise of their collective bargaining rights, in significant contrast with section 203(a) (3) which requires reporting by employers of expenditures where the object is "to interfere with, restrain, or coerce employees in the exercise of" these rights. The legislative history supports this conclusion. The provision corresponding to section 203(a)(4) in the House Bill as reported (section 203 House Bill as reported (section 203(a)(4) of H. R. 8342) would have required reporting only in the case of an agreement to provide an employer with the services of a person or firm engaged in the business of "interfering with, restrain, or coercing employees in the exercise of rights guaranteed" by the LMRDA, the National Labor Relations Act, or the Railway Labor Act. This provision was replaced by the present section 203(a) (4) with its test of persuasion.

(Technical Revisions: Dec. 2016)

257.010 ADVICE TO EMPLOYER

See Manual Entries 265 ff.

257.100 AGREEMENTS BETWEEN EMPLOYERS AND EMPLOYER COUNCIL

It is not necessary that an agreement or arrangement be formal or in writing in order to be within the scope of section 203(b). There may be no more than an understanding between an employer and an employer council that reportable services will be performed as necessary by the council. For example, both parties may understand perfectly that if an attempt is made to organize the employees of the employer, the council will provide material assistance (beyond the mere giving of advice) in persuading employees as to the manner of exercising their collective bargaining rights. Where such an understanding exists, both parties are required to report the terms of their arrangement or agreement, the employer's report being required by section 203(a)(4) of the Act. If periodic membership dues are paid by the employer to the association, annual reports would be required from each party for as long as the understanding continued to exist.

257.200 LABOR "SPIES"

The furnishing of persons to perform espionage or reporting work in connection with the strike, as part of their duties, would have to be reported under section 203(a)(4) and 203(b)(2) covering undertakings to supply the employer with information about the activities of the employees or the union in a labor dispute.

(Technical Revisions: Dec. 2016)

257.205 EXAMPLE OF CONSULTANT "SPYING"

Example: A union is trying to organize the employees of an employer. The employer hires a "consultant" to find out for him what the union is promising his employees and which of the employees are attending the union meetings. This can be done in many ways. In the McClellan Committee hearings there was testimony showing cases where the consultant had "planted" one of his employees in the union. This man was able to let the employer know exactly what the union was doing and planning as well as its strength and weaknesses. This type of activity on the part of employers and middlemen led to the inclusion of this reporting provision in the Act.

257.210 SURVEILLANCE IN CONNECTION WITH LABOR DISPUTE

In order to be reportable under sections 203(a)(4) and 203(b)(2) of LMRDA, an agreement or arrangement between an employer and an independent contractor for obtaining information must be made "in connection" with an existing labor dispute. Thus, where an employer in the railroad industry (within which a continuing major dispute over work rules and so-called "featherbedding" exists between the companies and the unions) hires a detective agency to obtain information concerning the conduct of his employees and such information is obtained by surveillance, it must be shown that the surveillance is reasonably connected with that dispute before a report is required. A later disagreement between the employer and the union as to whether the evidence developed by the surveillance justified disciplinary action against the particular employees involved is not germane since the dispute was not one existing at the time of the surveillance.

257.220 INFORMATION ON PREVIOUS UNION ACTIVITIES

An employer report on Form LM-10 is required under sections 203(a) (4) and 203(a) (5) whenever an employer enters into an agreement with a labor consultant, or other independent

contractor or organization, to supply him with information about activities of a union or its officers where the union involved is engaged in a current labor dispute with the employer. A report is required even if the information to be supplied concerns activities of the union or its officers during a previous organizing drive or a labor dispute involving a different employer in another location.

257.300 EMPLOYER "AGREEMENTS OR ARRANGEMENTS" WHERE EMPLOYEES ARE NOT "HIS EMPLOYEES"

Some employees of A Plant decided to resist an organizing drive by B union. They engaged C consultant to advise them and help organize anti-union activities. C suggested the organization of an employees' anti-union committee and acted directly to persuade employees against joining the union by making speeches to the employees, preparing and distributing letters to the employees which were signed by members of the employees' committee. The activities of the committee were financed by X, an auto dealer, and Y, a doctor, under the name of "Citizens of Z Town." These men had approached C and offered to pay the costs of the anti-union committee. No evidence was developed to indicate that either had any connection with A Plant or any financial interest in it. They attributed their contributions to a desire to promote the best interests of their town and their names were never revealed publicly. Likewise, no evidence was developed that A Plant was involved with the activities of the anti-union committee in any manner. When the organizing drive was defeated, the committee disbanded.

Section 203(a) (4) of LMRDA requires reports from "every employer" who arranges with a labor relations consultant to persuade "employees" concerning the exercise of their right to organize. By its terms it is not limited to any particular employees, but applies to all. Therefore, it is not material that the employees were employed by A Plant and not by X and Y, since section 203(a) (4) does not limit the reporting obligation to agreements or arrangements of employers whose employees are affected by the agreements or arrangements. Section 203(a) (2), in contrast, does limit reporting to payments made by an employer to "his employees."

Accordingly, if X and Y are employers within the meaning of section 3(e) of the Act, they are required to report the "agreement or arrangement" with C pursuant to section 203(a)(4) and, as a consequence, C would be required to report pursuant to section 203(b)(1).

257.400 CO-EXTENSIVE REPORTING OBLIGATION

The agreements and arrangements covered by section 203(a) (4) and (5) and those covered by section 203(b) are substantially co-extensive. Also the provisions of section 203(c) are applicable in equal fashion under section 203(a) and (b). Thus, to the extent that an employer is under the obligation to file a report under section 203(a) (4) and (5), a labor relations consultant who is a party to those activities would have to file the reports required by section 203(b).

257.500 AGREEMENT WITH ARTIST TO PREPARE ANTI-UNION CARTOONS

X Employer was engaged in labor dispute with Y Union. X commissioned an artist to prepare a series of cartoons which he (X) adopted as his own and used to express his views in connection with the labor dispute. These anti-union cartoons appeared as advertisements under the employer's name in local newspapers during the period of the dispute.

Since the sentiments conveyed by the advertisements are those of the employer, not the artist, no report is required from the employer pursuant to section 203(a) (4) and (5) with respect to the agreement between the employer and the artist.

Similarly, no report is required from the artist pursuant to section 203(b)(1) with respect to

said agreement because his services are ministerial in nature and represent only a technical step in the progress of the employer's message from his own mind to the finished advertisement.

PAYMENT TO CONSULTANT

258.001 LMRDA, SECTION 203(a)(5)

. . . any payment (including reimbursed expenses) pursuant to an agreement or arrangement described in subdivision (4); . . .

258.005 EMPLOYER ASSOCIATIONS

Employers who are members of an employer association must report money paid to such an association only if the association undertakes to perform any of the activities set forth in section 203(a)(4) and (5) of the Act.

An employer association whose purpose is to represent, aid and advise its members in connection with labor problems and to negotiate and arbitrate grievances under agreements with labor organization must file a report if, in carrying out its responsibilities, it undertakes any of the activities set forth in section 203(b) of the Act.

When the association undertakes to assist employers in presenting their point of view to employees in connection with organizational activities by labor organization, and this assistance involves persuading employees to exercise or not exercise, or as to the manner of exercising their rights to organize or bargain collectively, the employer association must file a report.

EMPLOYER REPORT FORM - LM-10

259.001 LMRDA, SECTION 203(a)

. . . shall file with the Secretary a report, in a form prescribed by him, signed by its president and treasurer or corresponding principal officers showing in detail the date and amount of each such payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made.

259.002 See 29 CFR 405.3, 405.4, 405.6, 405.2

259.005 PROPER OFFICIALS REQUIRED TO SIGN EMPLOYER REPORTS

A vice president and assistant treasurer of a plant distant from the main office of a corporation requested that they be permitted to sign employer reports with respect to that plant since they were in a better position to verify the facts contained in the report.

Section 203(a) of LMRDA specifically requires the president and treasurer or corresponding principal officers of the reporting organization to sign employer reports.

In view of the specific requirement of the Act, it is our position that reports required by section 203(a) must be signed by the officer named in the Act or by that principal officer who

most nearly corresponds to the named officer without regard to titles.

Accordingly, a report signed by the vice president and assistant treasurer would not be properly executed.

259.100 CERTIFICATION REQUIRED IN INDIVIDUAL PROPRIETORSHIP

Reports submitted by individual proprietors pursuant to section 203 may be signed by such individual proprietor, since he corresponds to the president and treasurer of the organization or by the person or persons who actually perform the duties of president and treasurer or are authorized to do so.

If the Form LM-10 is signed by someone other than the actual owner, the following certification will be required:

"I_____perform the principal executive functions corresponding to those of the president and treasurer, or I am authorized to perform such functions. I am aware of the section 209(d) provision of the Labor-Management Reporting and Disclosure Act of 1959 regarding false reporting."

CONSULTANT REPORTS IN GENERAL

260.001 LMRDA, SECTION 203

(b) Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly--

(1) to persuade employees to exercise or not to exercise or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement.

Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe.

260.002 REGULATIONS

As provided in 29 CFR 406.1(c),

> "Undertake" means not only the performing of activities, but also the agreeing to perform them or to have them performed.

As provided in 29 CFR 406.1(d),

> "A direct or indirect party to an agreement or arrangement" includes persons who have secured the services of another or of others in connection with an agreement or arrangement of the type referred to in 406.2, as well as, persons who have undertaken activities at the behest of another or of others with knowledge or reason to believe that they are undertaken as a result of an agreement or arrangement between an employer and any other person, except bona fide regular officers, supervisors or employees of their employer to the extent to which they undertook to perform services as such bona fide regular officers, supervisors or employees of their employer.
>
> (Technical Revisions: Dec. 2016)

260.005 CONSULTANT FOR LABOR ORGANIZATION

Activities of an attorney on behalf of a labor organization (and not for an employer) would not be required to be reported, even though the attorney meets the definition of "labor relations consultant" under section 3(m), because the only section of the Act which requires reports from labor relations consultants is section 203(b), which provides for reports from every person who has an agreement with an employer for certain purposes.

260.100 ACTIVITIES TO IMPROVE EMPLOYER-EMPLOYEE RELATIONS

The development or performance of certain services intended to improve employee-employer relations may not, alone and in itself, bring those services under the reporting requirements of section 203; however, if the purpose of the services was in fact--directly or indirectly--to persuade employees in relation to collective bargaining, then they would fall within the reporting requirements of this section.

260.200 AGREEMENTS PRIOR TO THE ACT

When a person (a labor consultant, attorney, etc.) entered into a contract to undertake activities specified in section 203(b) of the Act prior to the effective date thereof, no 30-day report is required from that person. On the other hand if, subsequent to the effective date of the Act, that same person receives or makes any payments pursuant to the agreement, he is required to file the annual report called for in the second sentence of section 203(b) notwithstanding the fact that an initial report of the agreement was not required.

260.300 SCOPE OF ANNUAL REPORT

Where a person "undertakes activities" of the type referred to in section 203(b) of the Act and Part 406 of the Regulations and as a result thereof is required to file the LM-20 report (Agreement and Activities Report), he is also required to file the LM-21 report (Receipts and Disbursements Report) within 90 days after the end of his fiscal year provided any receipt or disbursement was made pursuant to the agreement reported in the LM-20 report. There must be

included in the Receipts and Disbursements Report all receipts and disbursements from any employers for whom "labor relations advice and services" have been rendered including payments received for such services and advice which would not in and of themselves have required the LM-20 report in the first instance. (29 CFR 406.3)

For example, Consultant A, an attorney whose practice is limited to "labor law," has 20 clients (including B) on retainer. He renders labor relations advice and services (i.e., representation, bargaining, etc.) to all of them. During the course of his year's practice, A undertakes to deliver a persuasive speech for one of his clients, B, in connection with a union organization drive in B's plant.

As a result of this activity, A is required to report:

(1) The persuasion activity he undertook for B (on Form LM-20);

(2) Receipts and disbursements from all 20 of his clients to whom he has rendered labor relations advice and services during his fiscal year (on Form LM-21).

It should be noted that if A had not delivered the "persuasive" speech, no reports would have been required of him.

However, since April 2016, OLMS has applied a Special Enforcement Policy to consultants' annual Receipts and Disbursements Report, Parts B and C, which provides that filers need not report any receipts for "labor relations advice and services" and also need not report disbursements for such services except where the object of the disbursement is one or both of those described in LMRDA §203(b)(1) and (2).
See www.dol.gov/olms/regs/compliance/ecr/lm21_specialenforce.htm and Manual Entry §260.001.

Douglas v. Wirtz, 353 F.2d 30, 32, 60 LRRM 2264 (4th Cir. 1965), cert. denied, 383 U.S. 909 (1966).

(Revised: Dec. 2016)

260.400 TRAINING OR SURVEYS

A person would not be required to file reports as a labor relations consultant on the basis of either the supervisory training or the employee-attitude surveys he conducts, unless any of these activities has, directly or indirectly, an objective described in section 203(b)(1) and (2) of the Act.

260.500 WRITTEN AGREEMENT NOT NECESSARY

It is not necessary that an agreement or arrangement be formal or in writing in order to be within the scope of section 203(b). There may be no more than an understanding between an employer and an employer council that reportable services will be performed as necessary by the council. For example, both parties may understand perfectly that if an attempt is made to organize the employees of the employer, the council will provide material assistance (beyond the mere giving of advice) in persuading employees as to the manner of exercising their collective bargaining rights. Where such an understanding exists, both parties are required to report the

terms of their arrangement or agreement, the employer's report being required by section 203(a)(4) of the Act. If periodic membership dues are paid by the employer to the association, annual reports would be required from each party for as long as the understanding continued to exist.

260.600 ASSOCIATIONS AS CONSULTANTS

Reports must be filed by an employers council which provides, as a regular service to its members, discussion meetings with the employees of the member employers which are intended to persuade such employees in the exercise of their bargaining rights. A report must be submitted by the council within 30 days after each employer entered into membership with the council, since the discussion meeting service is part of the membership agreements of the council. In addition the council would have to file an annual financial report within 90 days after the end of the council's fiscal year. The employers who are members of the council would also be required to report the arrangement under section 203(a)(4).

WHO MUST REPORT

261.003 SEE INSTRUCTIONS, FORMS LM-20, LM-21

261.005 EXISTENCE OF A LABOR DISPUTE

For definition of Labor Dispute, see Manual Entry 040.701.

Any agreement or arrangement a labor relations consultant has with an employer in which he agrees to undertake activities with either of the objectives described in sections 203(b)(1) or (2) of the Act, should be reported. The existence of a labor dispute is pertinent only to section 203(b)(2). In the context of that section, however, the labor dispute need not necessarily be in progress at the time a consultant supplies an employer with information concerning the activities of his employees or a labor organization in connection with such dispute. Agreements with an employer to persuade his employees as to their rights to bargain collectively should be reported irrespective of whether there is a labor dispute.

261.010 COEXTENSIVENESS OF REPORTING OBLIGATION

The agreements and arrangements covered by section 203(a)(4) and (5) and those covered by section 203(b) are substantially coextensive. Also, the provisions of section 203(c) are applicable in equal faction under section 203(a) and (b). Thus, to the extent that an employer is under the obligation to file a report under section 203(a)(4) and (5), a labor relations consultant who is a party to those activities would have to file the reports required by section 203(b).

261.120 MANAGEMENT CONSULTING SERVICE

While the fact that a management consulting service is engaged in the development of "Company Policy Manuals" and "Job Evaluation and Classification" and "Wage Administration Plans" intended to improve employee-employer relations does not, alone and in itself, bring that service within the reporting requirements of section 203(b), if the purpose of the service were in fact, directly or indirectly, to persuade employees in relation to collective bargaining, then it would fall within the reporting requirements of section 203(b) of the Act.

261.200 ARBITRATING, BARGAINING, AND ADVISING ACTIVITIES

Under ordinary circumstance, acting as an arbitrator would not result in any reportable activity. Neither would engagement in collective bargaining on behalf of an employer, nor the giving of advice to industrial management regarding job evaluation, wage and salary administration, personnel administrator or similar fields ordinarily require a report. The law specifically requires reports from persons including labor consultants, only when the activities they undertake have as an object thereof, either directly or indirectly, "to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding."

261.300 ORAL OR SUPPLEMENTARY AGREEMENT OR ARRANGEMENT

Any decision or mutual accord between a firm and its attorney that the attorney was to render services which are described by section 203(b) of the Act would be reportable. Such an arrangement may be oral and may supplement a previous arrangement establishing the attorney's relationship with his client.

WHEN AND WHERE TO FILE CONSULTANT REPORTS

262.001 LMRDA, SECTION 207(b)

Each person required to file a report under section 201(b), 202, 203(a), or the second sentence of 203(b) shall file such report within ninety days after the end of each of its fiscal years; except that where such person is subject to section 201(b), 202, 203(a), or the second sentence of 203(b) as the case may be, for only a portion of such fiscal year (because the date of enactment of this Act occurs during such person's fiscal year or such person becomes subject to this Act during its fiscal year) such person may consider that portion as the entire fiscal year in making such report.

262.002 See 29 CFR 406.1(b), 406.4, 406.7, 402.2, 406.3, 406.1(a).

See also Instructions for LM-20, LM-21.

262.005 TIME FOR FILING REPORTS

Labor relations consultants, and other persons, who enter into an agreement or arrangement of the kind described by section 406.2 of the Regulations must file a report within 30 days after making such agreement or arrangement. Thus, the date of submission of the report is determined by the date of the agreement or the arrangement, rather than the date on which certain activities were performed.

PERSUASION BY CONSULTANT

263.001 LMRDA, SECTION 203(b)(1)

. . . to persuade employees to exercise or not to exercise or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or . . .

263.005 PURPOSES OF ARRANGEMENT

The purposes which would make an arrangement subject to the reporting requirements of section 203(a)(4) and 203(b)(1) need not be unfair labor practices or otherwise in violation of law. These suggestions speak of activities to "persuade" employees in the exercise of their collective bargaining rights, in significant contrast with section 203(a)(3) which requires reporting by employers of expenditures where the object is "to interfere with, restrain, or coerce employees" in the exercise of these rights. The legislative history supports this conclusion. The provision corresponding to section 203(a)(4) in the House Bill as reported (section 203(a)(4) of H.R. 6342) would have required reporting only in the case of an agreement to provide an employer with the services of a person or firm engaged in the business of "interfering with, restraining, or coercing employees in the exercise of rights guaranteed by the LMRDA, the National Labor Relations Act, or the Railway Labor Act. This provision was replaced by the present section 203(a)(4) with its test of persuasion.

(Technical Revisions: Dec. 2016)

263.100 SPEECH BY CONSULTANT

When a labor relations consultant addresses the employees of an employer and expresses to the employees the employer's views, argument, or opinion under the free speech provision (section 8(c) of the NLRA, as amended), such an activity constitutes persuasion within the meaning of the Act.

Accordingly, the labor relations consultant should file a report in accordance with the requirements of section 203(b) of the Act. As indicated in section 406.2 of the Regulation on labor relations consultants reports, the report must be filed within 30 days after the agreement or arrangement is made.

263.102 SPEECH IN SPANISH

A consultant prepared a speech to be given by an employer in connection with a union organization drive in the employer's plant. Since most of the employees to whom the speech was to be delivered did not understand English well, the consultant translated the speech into Spanish and delivered it himself. The object of the speech was to persuade the employees concerning their organizing and bargaining rights.

The delivery by a consultant of a speech in Spanish is no different than the delivery of such a speech in English (which has been held to be outside of the section 203(c) "advice" exemption) and therefore constitutes a reportable activity by the consultant under section 203(b).

However, a truly "neutral" translation into Spanish of a "persuasive" speech delivered by the employer in English is not a reportable activity. In this connection, alleged translation might be reportable where there is substantial evidence that the translation was not "neutral," e.g., where the translator significantly added to the persuasive impact of the employer's speech.

263.200 JOB APPLICANTS CONSIDERED "EMPLOYEES"

Attorney X was employed by Employer Y to inform prospective employees being given pre-employment interviews of the employer's policy of maintaining an open shop. Attorney X's talk to these job applicants tended to persuade them concerning the manner of exercising their collective bargaining rights.

It is the Department's view that when prospective employees or job applicants are exposed to this type of persuasion, a report is required from the employer pursuant to section 203(a)(4) and from the attorney pursuant to section 203(b)(1), even though the section 3(f) definition of "employees" does not specifically include applicants as employees, for the following reasons:

(1) The court decisions under the LMRA have held that job applicants are "employees" under certain provisions of that Act, holding this conclusion to be necessary to carry out the policy of that Act. Similarly, the policy of the LMRDA requires such a conclusion in relation to the reporting requirements of section 203(a)(4) and 203(b)(1). A restrictive reading of section 3(f) that eliminated reporting of this type of activity would frustrate the policy of the Act and might give the employer an unwarranted advantage if the persuasive activities of the consultant were not identified as employer-inspired. The legislative history of the LMRDA also supports this view.

(2) Since the Act does not limit reports to situations where a consultant speaks directly to employees, but reporting depends rather on whether the activity in question has as an object to persuade employees, it can be said that the consultant's persuasive activities directed at potential employees had as its object the persuasion of an (subsequently hired) employee.

SUPPLYING OF INFORMATION BY CONSULTANT

264.001 LMRDA, SECTION 203(b)(2)

. . . to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

264.005 KNOWLEDGE OF PURPOSE FOR INFORMATION IS IRRELEVANT

An organization which supplies information to an employer in connection with a labor dispute is required to file a report even when it has no knowledge of the purpose for which the information is wanted.

Any doubt as to the purpose should be resolved by reporting. Even if a judicial proceeding were pending, a report would be needed if the employer had a dual purpose.

264.006 EMPLOYEE SURVEY

During an effort by a union to organize his employees, an employer hired an "Employee

Opinion Survey" firm to take a survey of his employees. Each employee was asked one question: "Do you feel a union here would help or harm you?" "Why?" Employees did not put their names on the forms. After the forms where returned, the survey firm tabulated the results. After tabulation, the forms were destroyed by one of the employees of the survey firm. The results were then turned over to management.

Since these activities were designed to gather information and to supply it to the employer for use in connection with a labor dispute, the survey organization must file reports under the provisions of section 203(b)(2).

See Manual Entry 257.400 concerning the requirement for the employer to report.

264.100 LABOR "SPIES"

The furnishing of persons to perform espionage or reporting work in connection with a strike, as part of their duties, would have to be reported under sections 203(a)(4) and 203(b)(2) covering undertakings to supply the employer with information about the activities of the employees or the union in a labor dispute involving the employer.

(Technical Revisions: Dec. 2016)

264.200 SURVEILLANCE "IN CONNECTION" WITH LABOR DISPUTE

In order to be reportable under sections 203(a)(4) and 203(b)(2) of LMRDA, an agreement or arrangement between an employer and an independent contractor for obtaining information must be made "in connection" with an existing labor dispute. Thus, where an employer in the railroad industry (within which a major dispute over work rules and so-called "featherbedding" exists between the companies and the unions) hires a detective agency to obtain information concerning the conduct of his employees and such information is obtained by surveillance, it must be shown that the surveillance is reasonably connected with that dispute before a report is required. A later disagreement between the employer and the union as to whether the evidence developed by the surveillance justified disciplinary action against the particular employees involved is not germane since the dispute was not one existing at the time of the surveillance.

“ADVICE” EXEMPTION

265.001 LMRDA, SECTION 203(c)

Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such employer before any court, administrative agency, or tribunal of arbitration or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder.

265.002 SEE 29 CFR 406.5

265.005 SCOPE OF THE “ADVICE” EXEMPTION

Section 203(b) provides for reports from every person who pursuant to an agreement or arrangement with an employer undertakes the type of activities described therein. Section 203(c) provides that nothing in section 203 shall be construed to require any person to file a report ". . . by reason of his giving or agreeing to give advice to such employer. . ."

The question of application of the "advice" exemption requires an examination of the intrinsic nature and purpose of the arrangement to ascertain whether it essentially calls exclusively for advice or for other services in whole or in part. Such a test cannot be mechanically or perfunctorily applied. It involves a careful scrutiny of the basic fundamental characteristics of any arrangement to determine whether giving advice or furnishing some other services is the real underlying motivation for it.

As to specific kinds of activity, it is plain that the preparation of written material by a lawyer, consultant, or other independent contractor which he directly delivers or disseminates to employees for the purpose of persuading them with respect to their organizational or bargaining rights is reportable. Moreover, the fact that such material may be delivered or disseminated through an agent would not alter the result. Such undertakings obviously do not call for the giving of advice to an employer.

However, it is equally plain that where an employer drafts a speech, letter or document which he intends to deliver or disseminate to his employees for the purpose of persuading them in the exercise of their rights, and asks a lawyer or other person for advice concerning its legality, the giving of such advice, whether in written or oral form, is not in itself sufficient to require a report. Furthermore, we are now of the opinion that the revision of the material by the lawyer or other person is a form of written advice given the employer which would not necessitate a report.

A more difficult problem is presented where the lawyer or middleman prepares an entire speech or document for the employer. We have concluded that such an activity can reasonably be regarded as a form of written advice where it is carried out as part of a bona fide undertaking which contemplates the furnishing of advice to an employer. Consequently, such activity in itself will not ordinarily require reporting unless there is some indication that the underlying motive is not to advise the employer. In a situation where the employer is free to accept or reject the written material prepared for him and there is no indication that the middleman is operating under a deceptive arrangement with the employer, the fact that the middleman drafts the material in its entirety will not in itself generally be sufficient to require a report.

265.100 RECOMMENDATIONS ON HIRING

Activities such as recommending the names of manufacturers' agents and salaried personnel would not normally need to be reported under the provisions of the Act. However, if, in recommending an individual to a client for approval, the intention of a labor consultant is to provide the employer with an employee who will perform any of the activities set forth in section 203(b), such an activity must be reported.

265.200 ADVICE ON APPLICABILITY OF LMRA

A situation in which an attorney gives advice with respect to the provisions of the LMRA of 1947 to an employer involved in an organizational drive need not be reported, since such a case would be encompassed by the exemption for advice contained in section 203(c).

265.300 REVEALING SUBSTANCE OF ADVICE

There is no requirement that an attorney shall disclose in his report the advice he gave to an employer though he is called upon to report, in his LM-21 report, the sums of money he was paid for labor relations advice and services.

265.400 APPLICABILITY OF THE EXCLUSION TO ADDITIONAL ACTIVITIES

Section 203(c) of the Act does not require the filing of reports when an attorney is solely advising a client and representing him in judicial, administrative or arbitral proceedings or in collective bargaining. However, if any agreement or arrangement with an employer covers, besides these services, other activities which are covered by the reporting requirements of section 203, the exclusion of section 203(c) does not apply, and the information for the entire agreement or arrangement must be reported.

ATTORNEY-CLIENT EXEMPTION

265.501 LMRDA, SECTION 204

Nothing contained in this Act shall be construed to require an attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of this Act any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

265.502 See 29 CFR 406.5

265.505 ADVICE BY ATTORNEY

If an attorney's services are limited to advising the employer or to representing him before any court, administrative agency or tribunal of arbitration, such as the National Labor Relations Board, no report would be required by the Act. These activities are excluded from the reporting requirements by section 203(c) which also exempts reports of a consultant's services by reason of his "engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder."

265.510 ATTORNEY SPEECHES TO EMPLOYEES

Where an attorney is specifically hired to address employees and persuade them as to the manner of exercising their vote in a representation election, the agreement seems plainly to go beyond the giving of advice to an employer. The free speech provisions of the Taft-Hartley Act are not impaired by the LMRDA; however, a report of such arrangements, notwithstanding their legality, would be required from the employer under section 203(a)(4) of the Act for employers, and under section 203(b)(1) of the Act for the attorney.

265.520 ATTORNEY ENGAGING IN 203(b) ACTIVITIES

Section 204 of the Act exempts any attorney from including in any report required to be filed pursuant to the terms of the Act, information which was lawfully communicated to him by

any of his clients in the course of a legitimate attorney-client relationship. This does not, however, exempt any attorney from filing a report pursuant to section 203(b) of the Act if he undertakes any of the activities referred to therein.

SUPERVISORS AND EMPLOYEES

266.001 LMRDA, SECTION 203(e)

Nothing contained in this section shall be construed to require any regular officer, supervisor, or employee of an employer to file a report in connection with services rendered to such employer, nor shall any employer be required to file a report covering expenditures made to any regular officer, supervisor, or employee of an employer as compensation for service as a regular officer, supervisor, or employee of such employer.

266.002 See 29 CFR 406.5

266.005 INDEPENDENT CONTRACTORS

Under section 203(e), a regular officer of an employer and the employer are exempted from filing a report on services rendered by the officer and payments made to the officer and in the regular course of business. The exemption does not apply to independent contractors. Whether or not a person is acting as an officer in the regular course of business or an independent contractor is a question of fact and the title assigned to the person performing duties on behalf of an employer is not controlling. Additional pay for the duties would be strong evidence that such activities are not part of the regular duties of the officer, but it would not necessarily be conclusive.

266.010 ATTORNEY AS INDEPENDENT CONTRACTOR

Whether or not an attorney who is engaged in activities which would require him to report under section 203(b) is exempt from these requirements under section 203(e), by virtue of being a regular employee, would depend on the facts of the relationship in each case. Normally, however, an attorney, who is not employed on a full-time basis by the employer, would be considered to be an “independent contractor” rather than “employee.”

266.100 NONEXEMPT PAYMENTS

The exemption in section 203(e) applies only to expenditures made for services which are performed by employees in the regular and ordinary course of their employment. Such may be the case, depending on the particular circumstances, for payments falling under section 203(a)(2). For example, where an employer prepares a message to his employees which attempts to persuade employees as to the manner of exercising their right to organize, and the employer then has the message conveyed to all plant employees individually through his labor relations director who is a regular staff member, no report would be due under section 203(a)(2) because the director would be performing as a regular employee within the meaning of section 203(e). However, if the employer called in one of his old and trusted employees who was a drill press operator, for example, and asked him (without disclosing the assignment to other employees) to persuade his fellow employees as to their right to organize, then a report would be due from the employer under 203(a)(2).

CONSULTANT:
AGREEMENT AND ACTIVITIES REPORT - LM-20

269.001 LMRDA, SECTION 203(b)

Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly--

(1) to persuade employees to exercise or not to exercise or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a Labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement.

269.002 See 29 CFR 406.2, 406.4

See Instructions for LM-20.

(Technical Revisions: Dec. 2016)

CONSULTANT:
RECEIPTS AND DISBURSEMENTS REPORT - LM-21

269.501 LMRDA, SECTION 203(b)

Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangements, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a Statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe.

269.502 SEE CFR 406.3, 406.4

269.510 SEE INSTRUCTIONS for Form LM-21, B, C, D. See also Manual Entry §260.300 (regarding Special Enforcement Policy for Section B and C of Form LM-21).

(Revised: Dec. 2016)

*269.520 LABOR RELATIONS ADVICE

"Labor relations advice or services" as that term is used in section 203(b) of the Act, would include all advice and services on matters having a bearing on the relations between an employer and his employees, including advice which is informally given as part of a service where a retainer fee is paid. Advice on contract negotiations, employee training programs, development of vacation, overtime, and job evaluation policies, and employee education programs, for example, would fall within this definition as would advice on the various Federal and state laws bearing on the employer-employee relationship. It is not necessary that a union organization drive be in process or that there be a dispute in order for "labor relations advice and services" to be rendered.

PRIVATE DISCLOSURE: UNIONS TO MEMBERS

270.001 LMRDA, SECTION 201(c)

Every labor organization required to submit a report under this title shall make available the information required to be contained in such report to all of its members, and every such labor organization and its officers shall be under a duty enforceable at the suit of any member of such organization in any State court of competent jurisdiction or in the district court of the United States for the district in which such labor organization maintains its principal office, to permit such member for just cause to examine any books, records, and accounts necessary to verify such report. . .

270.002 See 29 CFR 402.10, 403.8, 408.11

*270.003 RIGHTS ONLY FOR MEMBERS

The rights under section 201(c) are granted only to members of the labor organization, not to employers or others who are not members.

(Technical Revisions: Dec. 2016)

270.005 DEFINITION OF "VERIFY"

As used in section 201(c), "verify" means to check generally on the accuracy or completeness of a statement or statements.

Rekant v. Rabinowitz, 194 F.Supp. 194, 195 (E.D. Pa. 1961), 48 LRRM 2157.

(Technical Revisions: Dec. 2016)

WHAT UNION MUST MAKE AVAILABLE TO MEMBERS

*272.005 INSPECTION OF CONSTITUTION AND BYLAWS

Section 201(a) of the LMRDA requires every labor organization covered by the Act to adopt a constitution and bylaws and to file a copy thereof with the Secretary of Labor together with a report containing specified information. Section 402.2 of the regulations (29 CFR 402.2) requires that this information be submitted on Form LM-1, Labor Organization Information

Report, and makes the constitution and bylaws a part of this report.

The information contained in this report is required to be made available to all members of the labor organization pursuant to section 201(c) of the LMRDA. Since the constitution and bylaws of a labor organization are a part of that report, they must be made available to all of the labor organization's members. (See 29 CFR 402.10).

The LMRDA does not, however, require a union to furnish a copy of its constitution and bylaws to each member. The law requires only that the union permit each member an opportunity to examine such documents at a reasonable time and place.

272.100 COPIES OF REPORTS

Labor organizations are not required to supply copies of their reports to their members; it is sufficient for the unions to maintain copies of such reports at their principal office and to allow their members an equal opportunity to inspect and examine them.

272.200 METHODS OF DISSEMINATION

The requirements of section 201(c) could be satisfied by various alternative methods including, among others, the mailing of copies of their reports to all members, publication of the report in the union paper, or (in the case of local unions) the posting of a copy in a conspicuous place at the union headquarters and meeting hall, and announcing at a regular meeting that copies are ready for distribution to all members. It would appear, however, that a union that does not mail the information to all its members is required, at least, to make the information available at a reasonable time and place and to notify the membership that the information is available.

272.300 DISCIPLINED MEMBERS

Since section 201(c) requires labor organizations to make certain information available to "all of its members," a union may not deny requests by disciplined members to inspect these records or reports.

(Revised: Dec. 2016)

272.400 MINUTES OF MEETINGS

Section 201(c) requires that, "for just cause," labor organizations must permit any member to examine any books, records and accounts necessary to verify the reports required by section 201. Consequently, the minutes of any meetings which contain statements bearing on the information contained in these reports must be available for inspection.

272.500 USE OF AUDITOR TO INSPECT BOOKS

The United States Court of Appeals for the Fifth Circuit, in answering the union argument that the right of inspection of the books and records of the union is personal only to the members and that they may not be assisted by an auditor, states in pertinent part:

> "The Act is silent on this question but the general law on the subject as it applies to the inspection of corporate books by a stockholder is both analogous and clear. In Finance Co.

of America at Baltimore v. Brock, 80 F. 2d 713 (5th Cir. 1936), this court pointed out:

> . . . 'It is well settled in Louisiana that stockholders have the right at reasonable times and places and for proper purposes to examine the books and papers of the corporation and to have the assistance of accountants in so doing. . . This is the law generally . . . . .'
>
> 80 F.2d at 714.

"This accords with the general rule set out in 13 Am. Jur. Corporations § 438:

> 'While the right to inspect the books of a corporation is, in a sense, personal to the stockholder, it is very generally held to include the right to have the assistance of a skilled agent, such as an attorney, accountant, or stenographer, if the stockholder desires such assistance. The possession of the right would be futile if the possessor through lack of knowledge necessary to its exercise were debarred of the privilege to procure in his behalf the services of one competent to exercise it.'

"Here those seeking the right of inspection are longshoremen, unversed in financial records and accounting methods. The right to inspect would be utterly meaningless if it runs only to them. This is remedial legislation and our view is that Congress intended to create both a right and a remedy, with the remedy to be fashioned by the courts, where as here controversy obtains, with the end in view of giving force and meaning to the right when, and only when, good cause is shown."

Local No. 1419, ILA, General Longshore Workers Union v. Smith, 301 F.2d 791, 796 (5th Cir. 1962), 49 LRRM 3108. See also Campbell v. Transport Workers Union of America, 1996 WL 131096. 151 LRRM 2837 (E.D.Pa.1996) (unpublished decision in which judge ordered local union and its officers to permit union member and his accountant to review the union's financial records). For updated citation, see 18A Am. Jur. 2d Corporations § 331 ("While the right to inspect the books of a corporation is, in a sense, personal to the stockholder, it is very generally held to include the right to have the assistance of a skilled agent, such as an attorney, accountant, or stenographer, if the stockholder desires such assistance. The corporation cannot dictate to the stockholder whom he or she will employ to assist him or her in inspecting the books; nor can it refuse to submit its books for inspection on the ground that the attorney employed to aid the stockholder is inimical to it. The right of the average stockholder to use an expert is undeniable because most stockholders are incapable of understanding the books and records of an extensive business without taking an unreasonable time to study them. However, if a stockholder understands the books and records that he or she seeks to inspect, then there is no need for expert assistance, and the burden is on the stockholder to show the necessity for such expert assistance.").

August, 1968 (Technical Revisions: Dec. 2016)

MEMBER MUST MAKE DEMAND

274.005 DEMAND REQUIRED

The duty imposed upon a union and its officers under section 201(c) to permit examination by a member, for just cause, of the supporting records necessary to verify a report required to be submitted pursuant to sections 201(a) or (b) does not arise until there has been a

demand setting forth just cause for the examination and relating the books, records and account to a specific report. In the instant case, where such a demand was made by a union member and thirty days elapsed without a reply form the union, it was deemed sufficient to show a refusal of the demand by the union.

Further, where union members seek to enforce their rights to inspect union books and records under section 201(c) in a State court, matters of pleading and procedure are determined by State law, though the right to be enforced is governed substantively by Federal law.

Henderson v. Sarle, 197 N.Y.S.2d 920, 922-23 (Sup. Ct. N.Y. 1960), 45 LRRM 3037.

___(Technical Revisions: Dec. 2016)

274.100 SPECIFICITY AS TO RECORDS

An action by a union member for access to union records under section 201(c), LMRDA, must fail where the request was in general terms for records extending over a period of time and insufficient for the court to identify the records sought to determine whether they have been denied or are the kind required to be disclosed under section 201(c), or whether the member has shown just cause for having them produced.

McCraw v. United Association of Journeymen and Apprentices of Plumbing and Pipe Fitting Industry, 216 F.Supp. 655, 661 (E.D. Tenn. 1963), aff'd, 341 F.2d 705 (6th Cir. 1965), 52 LRRM 2516.

(Technical Revisions: Dec. 2016)

REQUIREMENT OF "JUST CAUSE" TO EXAMINE UNION BOOKS

275.005 JUST CAUSE

The United States District Court for the Northern District of Alabama set the following standards for determining the existence of "just cause" for the examination of records required to be kept under Title II of the LMRDA:

> In order to establish just cause to examine any books, records and accounts necessary to verify any report of a labor organization submitted pursuant to 29 U.S.C.A. 431 (section 201 LMRDA), it is sufficient that a member of that organization show that there is reasonable ground to believe that such report is incomplete or inexact, or that it inadequately explains the information required to be submitted. It is not necessary that it be shown, or that the Court make any findings and conclusions, that the labor organization or any of its officers has in fact violated any law or any provision of its Constitution or Bylaws.

Allen v. Local 92, International Association of Bridge, Structural, and Ornamental Iron Workers, 47 LRRM 2214 (N.D. Ala. 1960).

Relying on Allen and other precedents, the D.C. Circuit held that just cause does not require a union member to "show outright error or grossly suspicious items" on a union's financial report, and is met "when a union member demonstrates a sudden, apparently significant, and unexplained change in a [financial report] item. See Mallick v. Intern.

Brotherhood of Elec. Workers, 749 F.2d 771,782-84, 117 LRRM 3081,3085-90 (D.C.Cir.1984).

Other federal appellate courts have been more general in describing the just cause standard. See, e.g., Fruit and Vegetable Packers and Warehousemen Local 760 v. Morley, 378 F.2d 738, 744, 65 LRRM 2424, 2427 (9th Cir.1967)(just cause standard is met "if a reasonable union member would be put to further inquiry . . . Irrespective of the nature of the asserted cause, the test must be whether reason would require substantiation."); Gabauer v. Woodcock, 594 F.2d 662, 100 LRRM 2808, 2811 (8th Cir. 1979)(relying on Allen and Morley in finding just cause satisfied "if a reasonable union member would be put to further inquiry"). See also Kinslow v. American Postal Workers Union, Chicago, 222 F.3d 269, 274 & n. 2, 164 LRRM 3025, 3028 & n. 2 (7th Cir.2000) (holding that "'just cause' encompasses more than just a desire to confirm the information " on the union's annual report).

(Revised: Dec. 2016)

275.006

In order to show good cause under section 201(c), the union member need only show that the size and nature of certain expenditures were such that a reasonably prudent member having an interest in proper financial management of the union would naturally be put upon inquiry and, in the course of his inquiry, has been denied access to his union's records.
Coratella v. Roberto, 56 LRRM 2668 (D. Conn. 1964).

Note: This decision was rendered on a motion for summary judgment which was later set aside on the basis that such a motion cannot be granted where there is a factual question, i.e., a question as to "good cause."
56 LRRM 2668.

(Technical Revisions: Dec. 2016)

WHEN MEMBER CAN SUE TO ENFORCE RIGHT

276.005 EXHAUSTION OF REMEDIES

The right to sue for inspection of union books and records under section 201(c) is not subject to the limitation of prior exhaustion of internal union remedies contained in section 101(a)(4) of the Act. To hold otherwise would defeat the purposes of section 201(c). It should also be noted that the rights and remedies of section 201(c) and 101(a)(4) are of a fundamentally different nature.
Coratella v. Roberto, 56 LRRM 2668 (D. Conn. 1964). But see Pierce v. Bahr, 1996 WL 33675196, at *3 (D.D.C. May 9, 1996) (holding that under section 101(a)(4) of the LMRDA, a union member seeking to examine union financial books and records, under section 201(c), has an obligation to exhaust reasonable union hearing procedures before seeking relief from the court),

(Revised: Dec. 2016)

PUBLIC DISCLOSURE IN GENERAL

280.001 LMRDA, SECTION 205

(a) The contents of the reports and documents filed with the Secretary pursuant to section 201, 202, and 203 shall be public information, and the Secretary may publish any information and data which he obtains pursuant to the provisions of this title. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

(b) The Secretary shall by regulation make reasonable provision for the inspection and examination, on the request of any person, of the information and data contained in any report or other document filed with him pursuant to sections 201, 202, or 203.

(c) The Secretary shall by regulation provide for the furnishing by the Department of Labor of copies of reports or other documents filed with the Secretary pursuant to this title, upon payment of a charge based upon the cost of the service. The secretary shall make available without payment of a charge, or require any person to furnish, to such State agency as it designated by law or by the Governor of the State in which such person has his principal place of business or headquarters, upon request of the Governor of such State, copies of any reports and documents filed by such person with the Secretary pursuant to sections 201, 202, or 203, or of information and data contained therein. No person shall be required by reason of any law of any State to furnish to any officer or agency of such State any information included in a report filed by such person with the Secretary pursuant to the provisions of this title, if a copy of such report, or of the portion thereof containing such information, is furnished to such officer or agency. All moneys received in a payment of such charges fixed by the Secretary pursuant to this subsection shall be deposited in the general fund of the Treasury.

280.002 See 29 CFR 402.12, 403.10, 404.8, 405.10. 406.9, 408.12

280.003 REPORTS AVAILABLE FROM OLMS

The reports filed pursuant to the LMRDA are public information and are available from the Office of Labor-Management Standards. Pursuant to 29 C.F.R. §70.53, these reports are public records and, as such, individuals can exercise the right to examine any such reports at, and/or purchase copies from, the OLMS through its Internet Public Disclosure Room at www.unionreports.gov and its Public Disclosure room at: U.S. Department of Labor, Office of Labor-Management Standards, 200 Constitution Avenue, NW, Room N-1519, Washington, DC 20210. The telephone number is (202) 693-0125, and the fax number is (202) 693-1344. Any person may inspect these reports or may purchase copies for 15 cents per page; requests for 30 or fewer pages are provided free of charge.

Freedom of Information Act (FOIA) requests for public records that are available pursuant to 29 C.F.R. §70.53 are considered improper requests. The Public Disclosure room will provide the documents to requestors, if they exist, if the requestor is unable to locate them on the website.

(Revised: Dec. 2016)

280.004 PUBLIC USE OF MATERIAL IN REPORTS

Section 205 of the Act makes reports and documents filed with the Secretary of Labor pursuant to Title II public information. Any person has the right to obtain copies of such reports

upon payment of the prescribed fees. The Department of Labor has no authority over the subsequent use of any such reports and documents.

EFFECT OF ACKNOWLEDGMENT AND FILING OF REPORTS BY OLMS

281.002 See 29 CFR 402.7

(Technical Revisions: Dec. 2016)

CANCELLATION AND REMOVAL OF REPORTS FROM OLMS FILES

282.005 IMPROPERLY FILED REPORTS

When an organization or individual upon demand and/or under protest files a report pursuant to Title II, or when such report is voluntarily submitted, although it is questionable that it is required, if it is thereafter definitely determined that the report is not called for by the Act, the report shall be canceled and removed from the disclosure file. Upon request, OLMS will return the original report to the person who submitted it.

(Technical Revisions: Dec. 2016)

RETENTION OF REPORTING RECORDS

285.001 LMRDA, SECTION 206

Every person required to file any report under this title shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

285.002 See 29 CFR 402.9, 403.7, 404.7, 405.9, 406.8, 408.10

285.100 RECORD KEEPING AND SELF-INCRIMINATION

An individual member of a company or organization cannot make a valid claim of privilege under the 5th amendment with respect to the records of an organization, even though the records might tend to incriminate him, because the records are the property of the organization (Wilson v. United States, 221 U.S. 361, 384-85(1911); United States v. White, 322 U.S. 694, 698-99 (1944)). The privilege which exists as to private papers cannot be maintained in relation to records required by law to be kept (Shapiro v. United States, 335 U.S. 1, 17 (1948)), even though the intention of the law is to make the records available for enforcement purposes (United States v. Darby, 312 U.S. 100, 125 (1941)). The doctrine extends to reports which are required by law (Pulford v. United States, 155 F.2d 944, 947 (6th Cir. 1946); Communist Party of United States v. Subversive Activities Control Board, 367 U.S. 1, 115 (1961)).

(Technical Revisions: Dec. 2016)

285.200 ELECTRONIC RECORDS

There is nothing either in the Act or the Regulation regarding the required reports which prohibits the use of electronic records as a means of maintaining files of the information required by section 206. See the OLMS Compliance Tip on Electronic Recordkeeping for further information.

(Revised: Dec. 2016)

285.300 LOSS OR DESTRUCTION OF RECORDS

The Act does not require that the loss or destruction of a labor organization's records be reported. However, in view of the explicit language of the Act with respect to the retention of records, it is suggested that such loss or destruction be promptly reported.

*285.400 DOCUMENTS NECESSARY TO SUPPORT EXPENDITURES

Section 206 of the Act specifies that every person who is required to file a report pursuant to Title II shall maintain records providing in sufficient detail the necessary basic information from which the reports filed may be verified, explained or clarified and checked for accuracy and completeness. In the case of disbursements required to be reported in the aggregate, sufficient detail would include identification of persons to whom payments are made and a description or explanation of the items or services received for the payments. Such records, normally in the form of signed receipts, invoices, vouchers or canceled checks, must be retained by the union and kept available for examination for a period of five years.

The LM-2 form contains supporting schedules in which certain aggregate disbursements must be particularized (see Schedules 15 through 20). However, the records referred to above must be kept for all disbursements required to be reported in the aggregate, whether or not particularization is called for in a supporting schedule. For example, adequate records, including vouchers, invoices, receipts from payees, or canceled checks, indicating the items covered and to whom payment was made, must be maintained to verify or explain any non-itemized disbursements, as well as for disbursements required to be itemized. Thus, for non-itemized disbursements, when a union officer has authority to expend union funds, documents must be retained by that officer and turned over to the union, identifying the recipient and reflecting the service or goods received for each separate expenditure.

(Revised: Dec. 2016)

SURETY COMPANY REPORTING

290.001 LMRDA, SECTION 211

Each surety company which issues any bond required by this Act or ERISA shall file annually with the Secretary, with respect to each fiscal year during which any such bond was in force, a report, in such form and detail as he may prescribe by regulation, filed by the president and treasurer or corresponding principal officers of the surety company, describing its bond experience under each such Act, including information as to the premiums received, total claims

paid, amounts recovered by way of subrogation, administrative and legal expenses and such related data and information as the Secretary shall determine to be necessary in the public interest and to carry out the policy of the Act.

Notwithstanding the foregoing, if the Secretary finds that any such specific information cannot be practicably ascertained or would be uninformative, the Secretary may modify or waive the requirements for such information.

(Technical Revisions: Dec. 2016)

290.002 SEE 29 CFR 409

290.005 SECRETARY MAY NOT WAIVE ENTIRE REPORT

Section 211 of the LMRDA requires an annual report from each surety company which issues any bond under the LMRDA or ERISA. While the Secretary is empowered to modify or waive the requirement for any specific information, this authority is not construed to be applicable to the waiving of the report as a whole.

(Technical Revisions: Dec. 2016)

290.100 ALL LOSS EXPERIENCE MUST BE REPORTED

Instructions for completing and filing Form S-1 indicate that, in Parts II and III, the information is to be reported on the basis of the five listed code classifications. However, with respect to part IV, all losses involving a welfare or pension plan covered by ERISA or involving any labor organization or trust in which a labor organization is interested which is covered by the LMRDA are to be reported regardless of whether or not such plan, labor organization or trust is insured under a contract reported in Parts II and III.

(Technical Revisions: Dec. 2016)

TRUSTEESHIP

TRUSTEESHIP IN GENERAL

300.001 LMRDA, SECTION 3(h)

"TRUSTEESHIP" means any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.
See 29 CFR 400.1(b).

300.003 HISTORICAL NOTE

The practice of imposing trusteeships by unions dates back to the 19th century, but was

extremely rare until the development of strong national unions.

During hearings of the McClellan Committee it was disclosed that the power to impose trusteeship was used sometimes for the purpose of "milking" local treasuries or undemocratically controlling votes to perpetuate power. In the second and third years of the McClellan Committee hearings, legislation was proposed containing provisions to correct abuses through enforcement measures.

Provisions covering trusteeships were enacted as Title III of the Labor-Management Reporting and Disclosure Act of 1959 (Public Law 86-257) on September 14, 1959. This title prescribes conditions under which trusteeships may be established and continued. It requires reporting and public disclosure of their stewardship by any labor organization, makes it a crime either to count the votes of delegates of the trusteed union unless democratically elected, or to transfer funds to the supervisory body, and provides redress for the union member or subordinate body either directly in court or through the Secretary of Labor.

The discussions and committee deliberations in Congress recognized that union trusteeships, although sometimes used to control subordinated organizations illegally, most often are used to provide assistance to subordinates in difficulties, to assist in maintenance and stability, and to promote rather than stifle union democracy.

The Department's administration of Title III has been guided by an awareness of these Congressionally noted facts. Therefore, the Department emphasizes voluntary compliance and provides technical assistance to unions in their efforts to comply with the law. However, trusteeship violations have been investigated thoroughly to insure that the law is being complied with.

Union Trusteeships: a Report to Congress, page 5.

See also Union Trusteeships: A Report to Congress, published by the Department of Labor, pursuant to LMRDA, Section 305.

(The Secretary shall submit to Congress at the expiration of three years from the date of enactment of this Act a report upon the operation of this title.)

DETERMING EXISTENCE OF TRUSTEESHIP

305.005 SUSPENSION OF CHARTER

Where the charter of a local labor organization is suspended by the parent organization according to the constitution of the parent organization and where the funds, records, and other property of the local are impounded by a court as a result of a dispute between the parent and the local over the suspension, those facts are sufficient to constitute a trusteeship so as to require a trusteeship report by the parent organization.

305.100 SUSPENSION OF AUTONOMY MAY BE COMPLETE OR PARTIAL

A suspension of autonomy imposed on a subordinate labor organization by a superior organization is a trusteeship. The suspension of autonomy may be either complete or partial. Thus, a local is under trusteeship if one of its functions (e.g., control of financial affairs) is suspended, notwithstanding its retention of autonomy in other functions.

See also Manual Entry 235.005.

305.105 SUPERVISION OF LOCAL

Four members of a local union filed a complaint with the Secretary of Labor under the provisions of Title IV of LMRDA charging that an officer of the international union refused to permit them to be seated as officers of their local after they had been duly elected because they would not sign a pledge of loyalty to the union. On investigation it was found that the international president had placed this local under his "direction, control and supervision" because of a movement within the ranks of the local to secede from the parent international and form an independent union. This condition was in effect at the time of the election and the refusal to seat.

Such supervision and control, including the international officer's demand that the complainants sign a loyalty pledge and his refusal to seat them when they would not, was determined by the Department to have constituted a suspension of the autonomy otherwise available to this local under its constitution and bylaws.

This suspension of autonomy was found to have constituted a trusteeship within the meaning of Title III of LMRDA.

305.200 RECEIVERSHIP NOT TRUSTEESHIP

The appointment of a receiver by a State Court is not a "trusteeship" within the meaning of LMRDA because the local's autonomy is suspended by operation of State law and not by a labor organization.

Mills v. Collier, 56 LRRM 2894 (S.D. Ind. 1964).

(Technical Revisions: Dec. 2016)

305.300 MINORITY FACTION

The trusteeship provisions of the Act relate only to assumption of control by one labor organization over its separately organized subordinate labor organizations. In the absence of intervention by a superior labor organization, Title III does not affect in any way the principle of majority rule within a subordinate local union and therefore a minority faction within a single labor organization could not be considered as being under trusteeship because of domination and control exercised by the majority.

305.400 FOREIGN LOCALS

The provisions of the Act with respect to imposition of trusteeships are applicable to United State national or international labor organizations subject to this Act even though the action of the United States organization is taken with respect to a foreign local.

29 CFR 451.6(c).

*305.500 "SUBORDINATE BODY" MEANS SUBORDINATE LABOR ORGANIZATION

While the definition of a trusteeship in section 3(h) of the LMRDA refers to a labor organization's suspension of the autonomy otherwise available to a "subordinate body" under its

constitution and bylaws, multiple courts of appeal have interpreted "subordinate body" to be synonymous with "subordinate labor organization" in this instance. Therefore, a trusteeship is not covered by the Act unless it is imposed over a body that meets the definition of a labor organization in section 3(i) of the Act.

See, e.g., New Jersey County and Municipal Council No. 61 v. American Federation of State, County & Municipal Employees, 478 F.2d 1156, 1160 (3d Cir. 1973); Colorado Labor Council v. American Federation of Labor & Congress of Industrial Organizations, 481 F.2d 396, 399 (10th Cir. 1973).

_____(Revised: Dec. 2016)

MERGER AS TRUSTEESHIP

306.005 IN GENERAL

A merger of two locals to form a new local or the consolidation of one local into another local, when properly conducted, does not in and of itself create a trusteeship.

306.100 ELIMINATION OF OFFICERS

A merger in which the officers' positions ceased to exist would not necessarily amount to a trusteeship, although a parent organization cannot arbitrarily replace the officers of a subordinate union without creating a trusteeship.

306.200 COURT'S JURISDICTION IN MERGER

A United States District Court in New York held that it could not take jurisdiction over a case in which a local union sought to enjoin its international from forcing a merger on it in order to derive the local of its autonomy. The local argued that, in effect, this action constituted the imposition of a trusteeship for a purpose not allowable under section 302. The court rejected this argument, and concluded that nothing in the legislative history of LMRDA indicates an intent to affect mergers.

Brewery Bottlers and Drivers Union Local 1345, Brooklyn, New York, of International Brotherhood of Teamsters v. International Brotherhood of Teamsters, 202 F.Supp. 464, 468, 49 LRRM 2712 (E.D.N.Y. 1962).
See also Local No. 48 v. United Broth. of Carpenters and Joiners, 920 F.2d 1047, 1056-57, 136 LRRM 2001, 2008-09 (1st Cir.1990); Massey v. Curry, 46 LRRM 2140 (Sup. Ct. Ga. 1960).

(Technical Revisions: Dec. 2016)

REVOCATION AND REISSUANCE OF CHARTER AS TRUSTEESHIP

307.005 REVOCATION OF CHARTER

The revocation of a local's charter terminates its affiliation with the international, and it can no longer be regarded as a "subordinate body" of the international thereafter for trusteeship purposes. Nothing in the Act prevents the creation of a new local even though it may be composed primarily of the same individuals formerly belonging to the local which has had its charter revoked.

Local Union No. 14 of United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industry v. United Association of Journeymen and Apprentices of Plumbing and Pipefitting Industry, 160 A.2d 664, 671-72 (1960); page 130 of the Secretary of Labor, Union Trusteeships: Report to the Congress (1962); and Parks v. International Brotherhood of Electrical Workers, 314 F.2d 886, 923-24 (1963 4th Cir.), cert. denied, 372 U.S. 976 (1963).

However, courts have also held that provisions of a parent union's Constitution giving its President the authority to suspend or revoke a local's charter and "create a provisional government" for that local also serve as implied authority for the parent union to impose trusteeships. See, e.g., McVicker v. International Union of District 50, 327 F.Supp. 296 (N.D. Ohio 1971); Local No. 2, International Brotherhood of Telephone Workers v. International Brotherhood of Telephone Workers, 261 F.Supp. 433 (D. Mass.1966).

(Revised: Dec. 2016)

RESTRAINT ON DISAFFILIATION AS TRUSTEESHIP

308.005 VALID DISAFFILIATION

See Manual Entry 315.100.

ABSENCE OF AUTONOMY OTHERWISE AVAILABLE

309.005 SENIORITY DISPUTES

There is no suspension of "autonomy otherwise available" when a president of a union acts under a resolution of the union's convention empowering him to act in a seniority dispute between two merged locals if the resolution permanently removes the autonomy of all locals to decide seniority disputes. Therefore, there is no trusteeship.

PURPOSES OF TRUSTEESHIP IN GENERAL

310.001 LMRDA, SECTION 302

Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization.

310.005 PURPOSES STATED IN TRUSTEESHIP REPORTS

The LMRDA states four allowable purposes for establishing trusteeships:

1. "Correcting corruption or financial malpractice." This reason has been used by parent unions to justify correction of situations ranging from minor speculations to gross mishandling of funds constituting violations of the LMRDA.

2. "Assuring the performance of collective - bargaining agreements or other duties of a

bargaining representative." This was a frequently used and obviously important reason for establishing trusteeships.

3. "Restoring democratic procedures." This reason has frequently been used for trusteeships established to correct violations of the Act.

4. "Otherwise carrying out the legitimate objects of such labor organization." Included under this purpose are: caretaker trusteeships (accounting for about one-third of union trusteeships), which were used when a subordinate union was relatively inactive because of the closing of a plant, a small or itinerant membership, sudden loss of leadership (e.g., by death or illness), or because it was a new local not yet able to stand on its own feet; mismanagement, which embraces other than financial malpractice; enforcing a subordinate's lawful obligations to the parent when a subordinate is improperly refusing to fulfill those obligations; and disaffiliation, a self-explanatory reason for establishing trusteeships. Whether the asserted "purposes" for establishing a trusteeship are valid is resolved on a case-by-case basis, depending on the particular facts.

(Revised: Dec. 2016)

*310.007 ONE STATUTORY PURPOSE MAY ESTABLISH VALIDITY

If in fact a trusteeship is established and administered for at least one of the purposes enumerated in section 302 of the Act, the validity of the trusteeship will not be affected merely because it may have been designed to accomplish other purposes not specified in the statute. These other purposes, however, must not include any of the prohibited activities specified in section 303.

310.100 TRUSTEESHIP TO FRUSTRATE INVESTIGATION

How the imposition of a trusteeship is to be viewed depends upon the purpose sought to be served in its creation. The Department will not allow the imposition of a trusteeship to frustrate its investigation of an election in a trusteed labor organization. It is recognized that use of such control by a parent organization as a device for correcting election abuses may well prove a valuable tool in aid of a policy of voluntary compliance. In either event the Department is not precluded from proceeding with investigation of a timely received election violation complaint.

310.200 ESTABLISHMENT OR ADMINISTRATION

The Department's position, as expressed in the Secretary of Labor, Union Trusteeships: Report to the Congress (1962), has been that the procedure to be followed in the establishment or administration of a trusteeship does not have to be set forth in the parent labor organization's constitution and bylaws as a prerequisite for a valid trusteeship.

However, some U.S. Circuit Courts have ruled to the contrary. See International Brotherhood of Teamsters v. Local Union Number 810, 19 F.3d 786, 790 (2d Cir.1994); United Brotherhood of Carpenters and Joiners v. Brown, 343 F.2d 872, 881, 59 LRRM 2141 (10th Cir. 1965); Flight Engineers' International Association, CAL. Chapter v. Continental Air Lines, Inc., 297 F.2d 397, 49 LRRM 2951 (9th Cir. 1961), cert. denied, 369 U.S. 871 (1962).

(Technical Revisions: Dec. 2016)

310.300 FAILURE TO HOLD A HEARING

Section 302 provides two conditions for the establishment of a valid trusteeship: (1) The trusteeship must be established and administered in accordance with the constitution and bylaws of the labor organization which is imposing the trusteeship; and (2) the trusteeship must be established for one of the purposes stated in section 302.

On its face, section 302 does not make a "fair hearing" mandatory to establish a valid trusteeship. However, if the constitution and bylaws of the labor organization imposing the trusteeship provide for a hearing, then the trusteeship would not be a valid one unless a hearing is held because the trusteeship would not have been established in accordance with the parent labor organization's constitution and bylaws.

On the other hand, where the constitution and bylaws of the labor organization do not provide for a hearing, the effect of the failure of the labor organization imposing the trusteeship to hold a hearing does not affect the validity of the trusteeship, but it deprives the labor organization of the 18-month presumption of validity otherwise available under section 304(c).

But see Becker v. Industrial Union of Marine & Shipbuilding Workers, 900 F.2d 761, 768 (4th Cir. 1990); Jolly v. Gorman, 428 F.2d 960, 966 (5th Cir. 1970), cert. denied, 400 U.S. 1023 (1971); Tam v. Rutledge, 475 F. Supp. 559, 562 n.4 (D. Haw. 1979); Luggage Workers Local 167 v. International Leather Goods Workers Union, 316 F. Supp. 500, 505 (D. Del. 1970) (the contention "that a fair hearing is required to establish a valid trusteeship, does not appear more readily from the Act…. The weight of judicial authority favors the requirement, however, and finds it implied from the legislative history and purpose."); Plentty v. Laborers, 302 F. Supp. 332, 338, 72 LRRM 2305 (E.D. Pa. 1969) (Congress recognized and wished to preserve the common law rule requiring a "fair hearing").

(Revised: Dec. 2016)

310.305 TIME OF HEARING

When a hearing is held in connection with the imposition of a trusteeship or in order to establish a presumption of its validity, such a hearing may be held before the imposition of the trusteeship or within a reasonable time thereafter. This conclusion is based on the language of section 304(c) that "a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing. . . "

311 - - CORRECTING CORRUPTION

312 - - FINANCIAL MALPRACTICE

*312.005 ENDANGERING FISCAL INTEGRITY

The kind of financial malpractice which may justify imposition of a trusteeship is not specifically defined in the Act. The conduct which might lead to supervision by a parent body could be as serious as embezzlement of funds by local officers. However, it would not appear to be improper for a labor organization to impose a trusteeship when action which is not necessarily criminal, like irresponsible leadership, jeopardizes the fiscal integrity of the organization.

313 -- ASSURING PERFORMANCE OF COLLECTIVE BARGAINING AGREEMENT

313.005 WILDCAT STRIKES

A trusteeship imposed on a local union by an international union where the members of the local engaged in a number of wildcat strikes and the officers of the local were irresponsible and incapable of controlling the members was held to be a valid trusteeship within the meaning of section 302.

*313.007 FAILURE TO ENFORCE AGREEMENT

An International union imposed a trusteeship over a local union when its investigation revealed that the local could not police its collective bargaining agreements, offer adequate membership representation in the field, nor properly administer its dispatch procedure.

In a private suit under section 304 challenging the validity of the trusteeship, a Federal District Court found that under the above circumstances the International president was justified in imposing a trusteeship to assure the performance of the union's collective bargaining agreements. Foose v. Hoffa, 63 LRRM 2436 (C.D. Cal. 1966).

(Technical Revisions: Dec. 2016)

RESTORING DEMOCRATIC PROCEDURES

*314.005 INABILITY TO CONDUCT ORDERLY MEETINGS

An international imposed a trusteeship over one of its locals because the local was "in turmoil," and local offices were unable to conduct orderly meetings. In upholding the validity of this trusteeship in a proceeding brought under section 304, a Federal District Court said:

> "Certainly, there was sufficient justification for imposing a Trusteeship for the purpose of restoring democratic procedures…there was no doubt but what the local officers,…were not able to conduct proper parliamentary meetings."

Foose v. Hoffa, 63 LRRM 2436 (C.D. Cal. 1966).

(Technical Revisions: Dec. 2016)

OTHER LEGITIMATE OBJECTS

315.005 PREVENTING IMPROPER BYLAWS CHANGES

Where the international president, acting within the authority granted to him in the international constitution, interprets the actions of a local union as being in conflict with the international constitution, he may validly impose a trusteeship over the local if empowered by the international constitution to do so for that purpose.

Consequently, if a local union were to adopt new bylaws that the international president interpreted as being contrary to the provisions of the international constitution, it would seem

that he may validly impose a trusteeship over the local union.

(Revised: Dec. 2016)

315.007 ENFORCEMENT OF CONSTITUTION AND BYLAWS

In appropriate circumstances, the Department may consider the uniform enforcement of lawful provisions of a subordinate labor organization's constitution and bylaws a legitimate object of a parent labor organization and, if so, will not challenge a trusteeship established for this purpose, provided that the trusteeship was imposed in accordance with the constitution and bylaws of the organizations involved.

315.100 PREVENTING SECESSION OF AFFILIATE

If preventing an affiliated subordinate labor organization is a purpose of a parent labor organization in imposing the trusteeship, that does not necessarily mean the trusteeship is unlawful. One condition that must be met for a parent union to lawfully impose a trusteeship to prevent disaffiliation is that disaffiliation must be prohibited by the parent union's governing document(s) and its prevention authorized by such document(s) as a basis for a trusteeship. See, e.g., Boilermakers v. Local Lodge 714, 845 F.2d 687, 691, 128 LRRM 2259, 2260 (7th Cir. 1988); Local 450 v. International Union of Elec., Elec., Salaried Mach. & Furniture Workers, 30 F. Supp. 2d 574, 578, 579–80, 159 LRRM 2989, 2994 and 2996 (E.D.N.Y. 1998). In addition, preventing disaffiliation is not permissible as a sole purpose for a trusteeship, and must be combined with at least one other valid purpose for the trusteeship to be lawful. See, e.g., International Brotherhood of Boilermakers v. Local Lodge D474, 673 F.Supp. 199, 203-04, 129 LRRM 2309, 2313 (W.D.Tex.1987); C.A.P.E. Local Union 1983 v. International Brotherhood of Painters & Allied Trades, 598 F. Supp. 1056, 1069-70 (D.N.J.1984).

(Revised: Dec. 2016)

315.200 RACIAL DISCRIMINATION

A trusteeship imposed by an international union on a local union because the local union was continuing a course of discriminatory and unequal treatment of members on the grounds of race was established for the purpose of "carrying out the legitimate objects of such organization: within the meaning of section 302 of the Act.

IMPROPER OBJECTS

315.500 INDEBTEDNESS TO INTERNATIONAL

A local union's indebtedness to an international union may be a valid reason for the international to impose and continue a trusteeship over the local within the meaning of section 302 of LMRDA. However, when the international deliberately increases the debt of the local rather than taking steps to decrease it, the continuance of the trusteeship would not be considered to be for a proper purpose.

ACTIVITIES OF A TRUSTEED UNION

320.001 UNLAWFUL ACTS RELATING TO LABOR ORGANIZATION UNDER TRUSTEESHIP

(a) During any period when a subordinate body of a labor organization is in trusteeship, it shall be unlawful (1) to count the vote of delegates from such body in any convention or election of officers of the labor organization unless the delegates have been chosen by secret ballot in an election in which all the members in good standing of such subordinate body were eligible to participate, or (2) to transfer to such organization any current receipts or other funds of the subordinate body except the normal per capita tax and assessments payable by subordinate bodies not in trusteeship: Provided, That nothing herein contained shall prevent the distribution of the assets of a labor organization in accordance with its constitution and bylaws upon the bona fide dissolution thereof.
(b) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

320.005 PURPOSES OF SECTION

Section 303 of the Act appears to have been designed to prevent two of the most flagrant types of abuses that the McClellan Committee found arising out of trusteeships. These were the concentration of power in individuals or groups through the manipulation of delegates from unions under trusteeship and the "milking" of the treasuries of these unions.

320.200 RATIFICATION OF CONTRACT

Members of a local in trusteeship were held to have no standing under LMRDA to challenge the administrator for not allowing them the right, granted under their local constitution, to vote on the ratification of a contract negotiated by the trustee since the trusteeship suspended the autonomy of a local union.

THE TRUSTEE

321.005 APPOINTING ASSISTANTS

If a trusteeship has been established and is being administered in conformity with the requirements of Title III and with the constitution of the labor organization which has assumed trusteeship, nothing in Title IV would prevent the trustee from appointing individuals to assist him in carrying out the purpose for which the trusteeship was established.

*321.100 AUTHORITY IN GENERAL

With the exception of the activities specifically prohibited in section 303, the Act does not define in detail the degree or type of control that may be employed by a parent labor organization administering a trusteeship. If the governing rules of the international union permit, the International through its trustee, may suspend the constitution and bylaws of the local, appoint officers, a business agent or the trustees of a joint trust fund. The trustee may also vacate offices where circumstances warrant, appoint the chairman of meetings, or postpone or suspend regular membership meetings if such action would further the legitimate purposes for which the trusteeship was imposed.

See, e.g., Blassie v. Poole, 58 LRRM 2359 (E.D. Mo. 1965).

(Technical Revisions: Dec. 2016)

PARTICIPATING IN ELECTIONS OF SUPERIOR BODIES

322.001 LMRDA, SECTION 303(a)

During any period when a subordinate body of a labor organization is in trusteeship, it shall be unlawful (1) to count the vote of delegates from such body in any convention or election of officers of the labor organization unless the delegates have been chosen by secret ballot in an election in which all the members in good standing of such subordinate body were eligible to participate.

*322.005 MEANING OF "ANY CONVENTION"

Section 303(a)(1) covers any regular or special convention of a national or international labor organization or intermediate body such as a joint council or conference. The word "convention" is considered to apply to any organized assembly of delegates from constituent organizational units which meets to act upon basic union policy and in which the delegates represent the interests of the members of their respective units.

322.100 DELEGATES FROM TRUSTEED LOCALS

Section 303(a)(1) of the Act prohibits counting the votes of delegates or representatives to conventions of a national or international labor organization or intermediate body, appointed by a trustee from an organization under trusteeship, but this does not prevent such delegates or representatives from attending these conventions. If the organization imposing the trusteeship has not suspended the trusteed organization's right to elect delegates or representative to conventions, the organization may elect delegates that have full voting powers to any such convention.

322.105 DELEGATES APPOINTED FROM ELECTED GROUP

Local X elected six delegates to the International Convention. Subsequently a valid trusteeship was imposed over Local X by the International and a trustee was appointed. The trustee selected three of the six delegates to attend the convention. Two of these three delegates would not have been elected if the membership had voted for only three delegates.

This Office took the position that appointment from a group that has been elected by secret ballot is not the same as election by secret ballot and that if the votes of such delegates were counted at the convention, such counting would be a violation of section 303 of the Act.

322.110 REPRESENTATION AT CONVENTION

Where a trusteeship is imposed in accordance with the provisions of Title III of LMRDA and results in complete suspension of the autonomy otherwise available to the trusteed local, the Department's position is that the Act does not require that the trusteed local be represented by delegates at the international convention.

322.200 VOTING ON ISSUES

The prohibition in section 303(a) against counting the votes of delegates or representatives from a trusteed labor organization who have not been chosen by secret ballot at any convention or election of officers includes a meeting, conference, convention, or other

assemblage of a national or international labor organization, or intermediate body, and is applicable to voting on issues as well as voting for officers.

ELECTIONS WITHIN THE TRUSTEED LOCAL

323.005 APPOINTMENT OF OFFICERS

If the autonomy of a local union is suspended in accordance with Title III and the constitution and bylaws of the parent organization, it would not be a violation of the Act for the trustee to appoint the officers of the local to serve while the local is under trusteeship. However, an election of delegates by secret ballot of the local's members in good standing is required by section 303, if the delegates' votes are to be counted in a convention or election of officers.

323.200 APPLICABILITY OF OTHER TITLES

Where a trusteeship is validly imposed for one of the statutory purposes, such as the correction of corruption or financial malpractice on the part of certain officers of a subordinate, compliance with the purposes of section 302 may best be secured by removing the officers in question and temporarily appointing others, despite the provisions of Title IV.

The Department has taken the general position that a validly imposed trusteeship that results in a complete suspension of autonomy would necessarily cut off the requirements of Title IV of the Act, and make Titles II and V largely inapplicable to the members of the trusteed local. But a valid trusteeship runs a broad gamut from complete suspension to only limited suspension of certain aspects of a local's affairs. In those cases where the parent does not completely suspend autonomy, even though it has the power to do so, the other provisions of the Act would apply to the extent that autonomy is, in fact, retained. To the extent that the officers retain some of their powers, Title V may apply. When an election of officers of the subordinate is, in fact, held during the trusteeship, Title IV would apply.

Union Trusteeships: A Report to Congress, page 39.

See also Manual Entry 472.300

MANAGEMENT OF FUNDS

324.001 LMRDA. SECTION 303(a)(2)

. . .to transfer to such organization any current receipts or other funds of the subordinate body except the normal per capita tax and assessments payable by subordinate bodies not in trusteeship...

324.005 TRANSFER TO "HIGHER BODY"

The phrase "such organization" as used in 303(a)(2) obviously refers to "labor organization" in the first line of section 303. Under section 3(i), "labor organization" includes joint councils and conferences, among others, which exist for certain purposes and are subordinate to a national or international labor organization. Reading the statute in this light, it would appear that a transfer of funds from a trusteed subordinate labor organization to any higher body would be barred, including a transfer of the funds of a trusteed intermediate body to a higher intermediate body.

*324.007 EFFECT OF INVALID TRUSTEESHIP

If a trusteeship is determined to be invalid, any payment by a trusteed local whose purpose or effect is to maintain the trustee or the trusteeship may well be an illegal transfer of funds.

324.100 LEGAL FEES

When a court has taken action and has failed to find that a trusteeship was invalid, the payment of legal fees for the defense of the case is a legitimate expense of the local organization and is not a transfer of funds to the international prohibited by section 303(a)(2).

*324.200 EXPENDITURES BY TRUSTEED LOCAL

Under a valid trusteeship the international may require the local to meet reasonable expenses incurred for the benefit of the trusteeship. For example, the local may be required to pay the salary and expenses of a trustee, provided that the payment is comparable to that incurred by local officers in conducting the business of the local.

Criteria for determining the reasonableness of expenditures may be found in the constitution and bylaws of the trusteed organization, and in its past practice when it was not under trusteeship.

324.300 RETURN OF TRANSFERRED MONEY

The transfer of the funds of a trusteed local to a separate account under the name of the international was held not to be an invalid transfer of funds within the meaning of the Act when substantially greater funds were later retransferred to the local on the grounds that there was no evidence of intent by the international to deprive the local of its funds.

324.400 REPAYMENT OF LOAN

The deduction of $1,000 per month by the international from a trusteed local's share of its checkoff dues is not an invalid transfer of funds since the international had loaned the local $10,000 prior to the imposition of the trusteeship and used this method to get repayment.

324.410 LOAN TO INTERNATIONAL

A loan of $2,500 by a trusteed local to the international and the donation of $100 a week to part of the international's strike fund were held not to be an invalid transfer of the funds of the trusteed local where both the loan and the donation were noted and approved by the membership at a regular meeting and where other locals, not in trusteeship, made similar loans and donations.

325 - -

DISTRIBUTION OF ASSETS

325.001 LMRDA, SECTION 303(a)(2)

. . . Provided, That nothing herein contained shall prevent the distribution of the assets of a labor organization in accordance with its constitution and bylaws upon the bona fide dissolution

thereof.

326 - - REPORTING OBLIGATION

See Manual Entries on Trusteeship Reports: 230 ff.

REMEDY OF ABUSES DURING TRUSTEESHIP

See Manual Entry 323.200.

TERMINATION OF TRUSTEESHIP IN GENERAL

350.001 LMRDA, SECTION 304

(a) Upon the written complaint of any member or subordinate body of a labor organization alleging that such organization has violated the provisions of this title (except section 301) the Secretary shall investigate the complaint and if the Secretary finds probable cause to believe that such violation has occurred and has not been remedied he shall, without disclosing the identity of the complainant, bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate. Any member or subordinate body of a labor organization affected by any violation of this title (except 301) may bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate.

(b) For the purpose of actions under this section, district courts of the United States shall be deemed to have jurisdiction of a labor organization (1) in the district in which the principal office of such labor organization is located, or (2) in any district in which its duly authorized officers or agents are engaged in conducting the affairs of the trusteeship.

350.005 ALTERNATIVE REMEDIES

Section 304(a) of the Act provides a dual method of enforcement. A member or subordinate body of a union may either institute a civil action in a district court of the United States or lodge a complaint with the Secretary of Labor. The enforcement of Title III through a complaint to the Secretary of Labor can be initiated only by a written complaint alleging violations of any provisions of Title III except the reporting requirements in section 301.

The Secretary is directed to investigate any such complaint. If he finds probable cause to believe that a violation has occurred and has not been remedied, he may bring civil action for appropriate relief, including injunctions, in any district court of the United States having jurisdiction over the labor organization.

350.006

Action was brought by members of the suspended executive board of a local under sections 302, 303, and 501 of the LMRDA to terminate trusteeship and for an accounting. Defendant union moved to dismiss on the ground that the Secretary has exclusive jurisdiction in bringing suit to remove a trusteeship improperly imposed. Flaherty v. McDonald, 178 F.Supp. 544 (S.D. Cal. 1959), reh'g, 183 F. Supp. 300 (S.D. Cal. 1960); Rizzo v. Ammond, 182 F.Supp. 456, 472 (D.N.J. 1960). Held: motion to dismiss denied.

The court rejected the holding in the Flaherty and Rizzo cases and held that the two remedies set out by section 304(a) were truly alternative remedies, and the filing of a complaint with the Secretary was not a prerequisite to individual suit. Executive Board, Local Union No. 28, I.B.E.W. v. International Brotherhood of Electrical Workers, 184 F.Supp. 649, 655-56 (D. Md. 1960)

(Technical Revisions: Dec. 2016)

VOLUNTARY TERMINATION

See Manual Entry 357.005.

SUIT BY MEMBER TO TERMINATE TRUSTEESHIP

352.001 LMRDA, SECTION 304(a)

Any member or subordinate body of a labor organization affected by any violation of this title (except section 301) may bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate.

352.005 WHEN MEMBER MAY BRING SUIT

Unless and until the Secretary of Labor brings suit, "any member .... affected by any violation of this title (except section 301) may bring a civil action in any district court of the United States having jurisdiction of the labor organization..."

352.100 COURT DECISIONS ON MEMBER'S RIGHT TO SUE

In Blue v. United Brotherhood of Carpenters and Joiners, 47 LRRM 2590 (D. Minn. 1964), members of a union sued to set aside trusteeship of Local 7 which they alleged was imposed in violation of Title III. Union sought dismissal on ground court lacked jurisdiction because Title III requires complainant to proceed through the Secretary of Labor and not go directly into court.

Court noted split in decisions:

Must sue via Sec'y

Cox v. Hutcheson, 204 F. Supp. 442, 450-51, 49 LRRM 2990 (S.D. Ind. 1962).

Rizzo v. Ammond, 182 F. Supp. 456, 471-72, 45 LRRM 3159 (D.N.J. 1960).

Flaherty v. McDonald, 183 F. Supp. 300, 306, 45 LRRM 2456 (S.D. Cal. 1960).

Can sue directly

Parks v. International Brotherhood of Electrical Workers, 314 F.2d 886, 923, 52 LRRM 2281 (4th Cir. 1963), cert. denied 372 U.S. 976, 52 LRRM 2943 (1963).

Air Line Stewards and Stewardesses Association v. Transport Workers Union, 55 LRRM 2711 (N.D. Ill. 1963).

Forline v. Helpers Local No. 42, 211 F. Supp. 315, 319, 51 LRRM 2639 (E.D. Pa. 1962).

Dole v. Local 427, International Union of Electrical, Radio and Machine Workers, 894 F.2d 607, 609, 133 LRRM 2362 (3d Cir. 1990).

Vars v. International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, 204 F. 245, 248, 50 LRRM 2851 (D. Conn. 1962).

Executive Board, Local Union No. 28, I.B.E.W. v. International Brotherhood of Electrical Workers, 184 F. Supp. 649, 655-56, 46 LRRM 2159 (D. Md. 1960).

Hotel and Restaurant Employees and Bartenders International Union v. Del Valle, 328 F.2d 885, 886, 55 LRRM 2595 (1st Cir. 1964).

Court held weight of authority indicates exhaustion of remedy via Secretary is not prerequisite to suit and denied the union's motion to dismiss. Blue v. United Brotherhood of Carpenters and Joiners, 47 LRRM 2590 (D. Minn. 1964).

(Technical Revisions: Dec. 2016)

352.105 EXPELLED MEMBER MAY CHALLENGE TRUSTEESHIP

A union member who has been expelled from membership after the imposition of a trusteeship has standing to bring an action based on the alleged improper imposition of the trusteeship where in the same suit he seeks to be reinstated to membership.

See Vars v. International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, 204 F. Supp. 245, 248, 50 LRRM 2851 (D. Conn. 1962).

(Technical Revisions: Dec. 2016)

*352.200 PARTIES TO SUIT AGAINST TRUSTEESHIP

A union member bringing action against a trusteeship should probably sue the superior body imposing the trusteeship, the trustee and the president of the superior body. The labor organization is, of course, the major party defendant. See Cox v. Hutcheson, 204 F. Supp. 442, 450-51 (S.D. Ind. 1962). But where the international president has power to continue the trusteeship, he, like the trustee of the local, is an indispensable party to the relief sought by the local members. Both officers should be joined as defendants in any such action.

Rizzo v. Ammond, 182 F. Supp. 456, 473, 45 LRRM 3159 (D.N.J. 1960).

(Technical Revisions: Dec. 2016)

COMPLAINT BY MEMBER TO SECRETARY

353.001 LMRDA, SECTION 304(a)

Upon the written complaint of any member or subordinate body of a labor organization alleging that such organization has violated the provisions of this title (except section 301) the Secretary shall investigate the complaint and if the Secretary finds probable cause to believe that

such violation has occurred and has not been remedied he shall, without disclosing the identity of the complainant, bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate.

353.005 WRITTEN COMPLAINT

Investigations under section 302 need not be predicated upon a written complaint, inasmuch as the broad investigative powers granted the Secretary under section 601 authorize an investigation whenever the Secretary believes such is necessary "in order to determine whether any person has violated, any provision of this Act."

Insofar as the enforcement power of the Secretary is concerned, investigations of section 302 which are predicated on the authority of section 601 cannot result in formal enforcement action in the absence of a written complaint. However, the Secretary has the power, under such circumstances, to "report to interested persons or officials concerning the facts required to be shown in any report required by this title."

*353.100 RENEWAL OF COMPLAINT

If the Secretary has received a complaint alleging violation of Title III before the end of the 18 month period of presumptive validity, he may take enforcement action after the expiration of the 18 month period without a new complaint.

ACTION BY THE SECRETARY OF LABOR

354.001 LMRDA, SECTION 306

The rights and remedies provided by this title shall be in addition to any and all other rights and remedies at law or in equity: Provided, That upon the filing of a complaint by the Secretary the jurisdiction of the district court over such trusteeship shall be exclusive and the final judgment shall be res judicata.

354.005 WHERE VIOLATION REMEDIED

The language of section 304(a) does not require the Secretary to bring civil action where the matters complained of have been remedied.

354.100 PROCESSING OF COMPLAINTS

After receipt of a valid complaint under section 304(a) of the Act, OLMS conducts an investigation that includes the development of all facts available to ascertain: (1) whether a trusteeship has in fact been imposed; (2) whether it has been imposed in accordance with the organization's constitution and bylaws; and (3) whether it has been imposed for a purpose allowable under the Act. The report of the investigative findings is then reviewed for a determination of the OLMS issues. OLMS then notifies the parties concerned of its findings. (It is important to note that OLMS is required not to disclose the identity of the complainant.) If OLMS finds cause to believe that a violation has occurred, it will take such steps as are necessary under section 304(a).

On the question of whether an aggrieved individual may file a private suit, the Department of Labor has taken the position that the statutory language permits a member to maintain such a suit under section 304(a) as a supplemental and accessory method of securing

complete relief where appropriate jurisdictional grounds exist for direct action by the member against the labor organization.

(Revised: Dec. 2016)

PRESUMPTION OF VALIDITY

355.001 LMRDA, SECTION 304(c)

In any proceeding pursuant to this section a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution or bylaws shall be presumed valid for a period of eighteen months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 302.

355.005 RETROACTIVITY

The eighteen-month period is to be measured from the date of establishment of the trusteeship, even if establishment occurred before the effective date of the Act, or before labor union coverage under the Act.

(Revised: Dec. 2016)

355.100 EIGHTEEN-MONTH PERIOD

Enforcement of the provisions of Title III in proceedings under section 304 may be had at any time after enactment. The eighteen-month period is not a condition of enforcement, but relates only to the proof required in a court proceeding, whenever brought. In such proceeding, a trusteeship that meets stated conditions is “presumed” valid for a period of eighteen months from establishment. This is not a conclusive presumption; it may be rebutted by clear and convincing proof to the contrary. After the expiration of the eighteen-month period the presumption is to the contrary; i.e., the trusteeship is presumed invalid. But here again the presumption is rebuttable and may be overcome by clear and convincing proof that continuation of the trusteeship is necessary for a purpose allowable by section 302.

PRESUMPTION OF INVALIDITY

356.001 LMRDA, SECTION 304(c)

After the expiration of eighteen months the trusteeship shall be presumed invalid in any such proceeding and its discontinuance shall be decreed unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under section 302. In the latter event the court may dismiss the complaint or retain jurisdiction of the cause on such conditions and for such period as it deems appropriate.

SUIT TO CORRECT ABUSES DURING TRUSTEESHIP NOW TERMINATED

357.005 ILLEGAL TRUSTEESHIP

Termination of a trusteeship should preclude action by the Secretary only where restoration of autonomy can be considered a remedy appropriate to the violation that has occurred. Where the violation is imposition of a trusteeship for an unauthorized purpose, restoration of autonomy after the organization has achieved its unlawful purpose certainly could not be considered a sufficient remedy. Action by the Secretary despite termination of the trusteeship may be warranted in order to deprive the international of the fruits of its illegal act.

ELECTIONS and REMOVAL

(Pre-1974 entries numbered 400-469 were withdrawn; contents incorporated in 29 CFR 452.)

PROTESTING ELECTIONS IN GENERAL: REMEDIES AVAILABLE

470.300 SECRETARY CAN SECURE INJUNCTION TO PROTECT COMPLAINANT

Action brought by Secretary of Labor under section 402(b) of LMRDA to set aside an election held by defendant union. Defendant union took disciplinary steps against complainant and the Secretary moved for a preliminary injunction to enjoin defendant union from such conduct. Issue was whether, pending a decision on the merits, defendant union should be allowed to follow a course of conduct towards complainant which is incompatible with the rights, responsibilities and benefits normally enjoyed as a result of union membership.

The union contends that section 402 of LMRDA spells out in detail the procedures required in connection with setting aside an election of union officers, and stresses that there is no express grant of authority therein to give the relief now sought by the Secretary, neither does the court have jurisdiction to grant such relief. This omission, it is contended, demonstrates that Congress intended that redress must be sought by private action brought under Title 1 of the Act.

The fact that LMRDA contains no express or implied authority to grant a preliminary injunction is not decisive. The court is satisfied that it has the authority to grant the relief sought in the exercise of its equitable jurisdiction independent of statutory enactment.

The court stated:

> "The public interest is involved as well as private rights. As a condition precedent to the bringing of an action by the Secretary of Labor to set aside an election of union officers a member must submit a complaint. If by doing so he will be left unprotected while the issue raised by his complaint and the ensuing litigation await final determination, it is entirely probable that potential complainant will consider quiet

acceptance of the situation the better part of wisdom rather than hazard a possible loss of employment opportunities, discipline or other forms of discrimination. If this should occur, the Secretary of Labor's enforcement responsibilities would be thwarted and the public interest harmed. Use of the injunctive process is warranted to protect the general welfare."

The Secretary's application for a preliminary injunction was granted.

Wirtz v. Local 1752, International Longshoremen's Association, 56 LRRM 2303 (D. Miss. 1963).

(Technical Revisions: Dec. 2016)

WHO MAY SUE - WHEN SUIT MAY BE BROUGHT

471.002 PRE-ELECTION SUITS

The remedy provided in the Act for challenging an election already conducted is exclusive. However, existing rights and remedies to enforce the constitution and bylaws of labor organizations before an election has been held are unaffected by the election provisions. Section 603 of the Act states that except where explicitly provided to the contrary, nothing in the Act shall take away any right or bar any remedy of any union member under other Federal law or law of any State.

29 CFR 452.138(b)

471.005 OTHER REMEDIES AVAILABLE BEFORE ELECTION

An election, once it has been held can be challenged only through the methods provided in section 402 of the Act. However, any existing methods of enforcing the constitution and bylaws of a labor organization can be applied before an election is held. This includes any right or remedy available to the union member under any Federal law or law of any State.

(Technical Revisions: Dec. 2016)

471.006 INTERVENTION BY UNION MEMBERS IN SECRETARY'S SUIT

See Manual Entry 476.500.

471.100 STATE COURT'S JURISDICTION

At the suit of candidates who were not allowed to have their names on the local union's ballot, the court granted an injunction restraining the holding of the election. The court said that it had jurisdiction of the case because the suit was brought on the basis of the constitutions of the international and the local. The LMRDA was held not to have preempted the field because existing rights and remedies are preserved by the Act. Because of the need for speed the relief was granted despite the fact that the plaintiffs had not exhausted their internal remedies.

The court rejected the argument that the injunction should not issue because the plaintiffs

had the alternative of complaining to the Secretary of Labor after the election. The court said that the right to run for office was a valuable right that should be protected by the court.

Beiso v. Robilotta, N.Y.S.2d 504, 506-07, 47 LRRM 2590 (Sup. Ct. N.Y. 1960).

(Technical Revisions: Dec. 2016)

471.200 NO PRE-ELECTION SUIT UNDER TITLE IV

A candidate for union office whose name is not on the ballot, allegedly in violation of the Act, is not entitled to a restraining order enjoining a union from conducting the election. No irreparable harm would be suffered by the candidate because an improperly run election can be set aside by suit of the Secretary of Labor after the election is held.

Rarick v. United Steelworkers, 190 F. Supp. 158, 159, 46 LRRM 2101 (W.D. Pa. 1960). See also Meyer v. Bottone, 328 A.2d 166, 87 LRRM 3228 (Sup. Ct. Pa. 1974).

(Technical Revisions: Dec. 2016)

471.201 DELEGATE ELECTION

A union member brought a suit alleging in part that the General President had appointed delegates whom Title IV of the Act requires be elected. The court declined to take jurisdiction of the case saying that this is a violation that can be the grounds for suit only by the Secretary of Labor.

Penuelas v. Moreno, 198 F. Supp. 441, 449, 48 LRRM 300543 (S.D. Cal. 1961).

(Technical Revisions: Dec. 2016)

471.210 PROTECTION OF RIGHT TO VOTE IN TITLE I DOES NOT AUTHORIZE FEDERAL COURTS TO DISREGARD LIMITATIONS IMPOSED BY TITLE IV

In Calhoon v. Harvey, 379 U.S. 134, 57 LRRM 2561 (1964), the U.S. Supreme Court held that union members could not bring claims regarding eligibility for union office under LMRDA Sections 101(a)(1) (which guarantees equal voting rights to union members) and 102 (which authorizes federal courts to enforce rights guaranteed by section 101). The Court held that members must pursue such claims exclusively through the processes provided for in LMRDA Title IV, meaning a complaint with the Secretary of Labor after exhausting any available internal union remedies.

In 1984 the U.S. Supreme Court decided in Local 82, Furniture & Piano Moving v. Crowley, 467 U.S. 526, 116 LRRM 2633 (1984), that courts could not themselves supervise a union officer election based on claims of Title I violations, nor provide any remedies that would result in "substantially delaying or invalidating an ongoing election." The Court in Crowley found that Congress clearly intended the Secretary of Labor, not the courts, to supervise elections. However, the Court added in Crowley that when LMRDA Title I violations could be "easily" remedied without delaying or invalidating the election, a court could order such a

remedy. The example given by the Supreme Court was a court order, during an ongoing election, for a union to provide ballots to union members from whom the union had discriminatorily denied ballots.

The general standards followed by most courts applying Calhoon and Crowley when dealing with claims of Title I violations involving elections is that when the claim involves an aspect of the election that is specifically prescribed by Title IV (e.g. rules of eligibility for office, distribution of campaign literature) or seeks a remedy that would delay or affect the validity of an election, the court will require the claimant to use the processes of Title IV. The most common type of LMRDA Title I claims, involving elections, in which courts will actually grant the claimant a remedy are claims that the union discriminatorily denied the claimant a Title I right like the right to vote or right to nominate a candidate, and the union can extend that right to the claimant without delaying the election.

(Revised: Dec. 2016)

INITIATING AVAILABLE UNION REMEDIES

472.100 REASONABLE TIME

Section 402(a) does not specify any time limitation within which a union member must initiate his internal union remedies. However, in view of the Congressional intent that election protests be expeditiously resolved, a union member should initiate available internal union remedies within a reasonable time (1) after the election has been held or (2) after he could reasonably become aware of some violation in the conduct of the election. What a reasonable time would be in a particular case would depend upon the facts in that case.

472.105 DELAY IN FILING PROTEST

Where a local union member waited more than a year after the election before initiating his internal union remedies to protest the election in a union where the constitution and bylaws required such remedies to be initiated within 30 days; and where his delay was not caused by fraud or misrepresentation on the part of the union or any of its officers, it is the Department's position that his internal protest was not timely filed within the meaning of section 402(a).

472.200 CONFLICT IN UNION PROCEDURES

Where the International Constitution requires election complaints to be initiated within 48 hours of election and addressed to the local union, and the local bylaws require an election complaint to be made, not to the local but to the International President, within 48 hours of the election, and a complainant following the procedure of the local bylaws, complained to the International President within the allotted time (a copy of which complaint was received by the local 5 days after the election), the local union cannot claim that the complainant has not timely invoked the appeals procedure because a union may not hide behind confusion which it had created itself. Even when a union is not the cause of confusion, courts have often excused member protests that miss deadlines or otherwise fail to fully comply with the union's constitution or bylaws. See, e.g., Donovan v. CSEA Local Union 1000 AFSCME, 761 F.2d 870, 119 LRRM 2249 (2d Cir. 1985); Donovan v. CWA Local 3122, 740 F.2d 860, 117 LRRM 2153

(11th Cir. 1984); Reich v. UBCJA, Civ. A. No. 92–2134 (JHG), 1993 WL 441967, 144 LRRM 2370 (D.D.C. 1993).

(Revised: Dec. 2016)

Complainant attempted to follow the local union appeals procedure. He was misled by the fact that his local bylaws were in conflict with the International Constitution. Even though the International Constitution would ordinarily by controlling, we would consider his action to have properly invoked his internal remedies and he is not barred from filing an actionable complaint.

472.300 PROCEDURE WHERE UNION IN TRUSTEESHIP

Where a local was under trusteeship at the time an election was challenged, it was proper for a member to make his initial protest of the election to the trustee rather than in the manner prescribed by the local bylaws since, at that time, the trustee was solely responsible for all activities of the local, including the conduct of the election.

See Manual Entry 323.200.

UNION REMEDIES MUST BE INVOKED

473.001 LMRDA, SECTION 402(a)

A member of a labor organization
(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or
(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,...

473.005 EFFECT OF INVOKING REMEDIES

It would appear that the Congressional intent of section 402 is to give the labor organization itself the initial opportunity to decide whether an election has been properly conducted under the constitution and bylaws of the labor organization and the Act prior to conferring jurisdiction of the Secretary of Labor. However, if the labor organization has not made a final determination of the complaint filed with it within three calendar months after the internal remedies have been invoked by a member, the complainant may file a complaint with the Secretary of Labor as provided by section 402(a)(2). It thus appears that the provisions of section 402(a)(1) and (2) are conditions precedent to the remaining portions of section 402, which become applicable only after a formal complaint has been filed with the Secretary.

473.007 FAILURE TO HOLD ELECTIONS

Where a union has not held an election of officers within the statutory maximum period, a union member must still exhaust his internal remedies as provided in section 402 of the Act, or have invoked such internal remedies without having obtained a final decision within three calendar months after such invocation, before filing a complaint with the Secretary.

If the union's ordinary election appeals procedures are inappropriate in this type of situation, the member's internal appeal may take the form of a request to the officer or governing body of the union which has power to order an election or other appropriate remedial action.

473.100 NO SPECIFIC ELECTION APPEALS PROCEDURES

In the absence of specific election appeals procedures, section 402 of the Act requires the invocation of whatever trial and appeal procedure is available under the governing constitution and bylaws.

473.102 REVIEW BY PARENT BODY

Section 402 of the Act requires as a condition of filing a complaint concerning an election already held that the complainant shall have taken steps to secure an administrative review from the parent body, if such a review is available under the constitution and bylaws of the union.

(Technical Revisions: Dec. 2016)

473.105 WAIVER BY PARENT BODY

Where the International Executive Board of a labor organization accepts an election complaint from a union member who has not followed the proper procedure for exhausting his internal union remedies and rejects such complaint on its merits, the International Executive Board waives any right to complain about that member's failure to follow the procedure.

(Revised: Dec. 2016)

473.200 APPARENT FUTILITY

That an appeal to the District Council of a union would be futile for the reason that traditionally it takes months and even years to get a further hearing and decision of the District Council would not allow the Department of Labor to entertain an immediate complaint. The complainant must still exhaust his internal union remedies, or invoke the available remedies for three months without obtaining a final decision. See Chao v. Local 2568, American Federation of State County and Municipal Employees, No. 06-15769, 2007 WL 1686519, 182 LRRM 3149 (E.D. Mich. 2007).

(Technical Revisions: Dec. 2016)

473.300 SUBSTANTIAL COMPLIANCE WITH APPEALS PROCEDURE

Where the constitution of an international union provides that an election complaint must first be filed with a local's Secretary-Treasurer, then appealed to the Joint Council of the local, and finally to the international, a complaint made to the Joint Council, with a copy to the Secretary-Treasurer and to the international, properly invoked the internal remedies available, and a timely complaint to the Secretary made after no answer had been received from the union

within three months would be entertained.

See Shultz v. Local 1291, International Longshoremen's Association, 429 F.2d 592, 598, 74 LRRM 2726 (3d Cir. 1970).

(Technical Revisions: Dec. 2016)

*473.310 APPEAL TO AN EXECUTIVE BOARD

Where the union constitution required that appeals be made to the district executive board, an appeal which was sent to some of the individual members of the board, including the international president, the international executive board member of the district, the board's secretary-treasurer, and the board member who represented the complaining member's division, was deemed to be equivalent to an appeal to the board as an entity. The United States Court of Appeals for the Sixth Circuit stated that "To hold otherwise would be to impose a technical burden which would trap practically every union member." The court also noted that the complaining member had explicitly requested in his letter of appeal that the union officials see that the protest was processed through the proper channels, and that their failure to follow instructions would not be used to frustrate the complaining member's candidacy.

Hodgson v. District 6, United Mine Workers, 474 F.2d 940, 945, 72 LRRM 2766 (6th Cir. 1973).

(Technical Revisions: Dec. 2016)

473.400 WHEN THREE MONTH PERIOD BEGINS

The three month period during which a complainant must wait for an answer after he has invoked his internal union remedies and before he may file a valid complaint with the Secretary (unless he receives a final decision) runs from the date the complainant begins to invoke his internal remedies (i.e., by lodging proper complaint with proper party in accordance with the union's constitution and bylaws).

473.500 RESPONSE TO COMPLAINANT

A complainant who has filed a protest with the International President with regard to his name not being placed on the election ballot has not received a final decision with respect to such protest by the mere fact that a letter to the local from the International President concerning such protest is read at a regular meeting of the local at which said complainant was present. Such a letter does not constitute a reply to the complainant for purposes of carrying out his internal union appellate procedure.

473.510 UNION ENTITLED TO 3 MONTHS

The fact that more than 14 days have elapsed without any relief having been granted does not exhaust the remedies available, if the constitution and bylaws set forth a minimum waiting period of at least 14 days, and no maximum. It would appear that the board of directors of the union must be permitted the minimum statutory time within which to resolve the issue internally, unless it renders a final decision in a shorter time. The complainant must follow through on the

exhaustion of his remedies within the union for three calendar months after he initially invoked them (unless a final decision is reached in a shorter time) before he may properly file a complaint with the Secretary.

473.600 TIMELINESS OF COMPLAINT

Because certain members of a local union were declared ineligible for union office, the incumbent officers were unopposed, the executive board of the local then passed a resolution in advance of the election date declaring that an election was unnecessary and that the incumbents were elected. Neither the membership nor the disqualified candidates were advised of this resolution until the previously established election date. The disqualified candidates immediately invoked their post-election internal remedies by a complaint to the local union treasurer, who refused to refer it to the executive board on the ground that it was not filed within the specified period after the "election" (i.e., the date of the resolution declaring the incumbents elected), as is required by the union's constitution and bylaws. Appeal was taken to a higher body in the union, but when no decision was received within three calendar months, the disqualified candidates filed a complaint with the Secretary within one calendar month thereafter.

It is the opinion of this Office that, since complainants were not advised of the so-called "election" (i.e., resolution), they had a right to wait until after the original election date before invoking their internal remedies. Their complaint to the Secretary was timely.

473.650 RIGHT TO PROTEST NOT LIMITED

A clause in the bylaws of a local union provides that any voting member has the right to challenge the validity of an election. If this provision is intended to prohibit any other member from filing an internal protest regarding an election, it would violate section 402(a) of the LMRDA which guarantees every member in good standing, whether he participates in the election or not, the right to protest his union's election of officers.

COMPLAINT TO SECRETARY

474.001 LMRDA, SECTION 402(a)

A member . . . may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election). . .

474.002 TIME FOR FILING COMPLAINT

If the member obtains an unfavorable final decision within three calendar months after invoking his available remedies, he must file his complaint within one calendar month after obtaining the decision. If he has not obtained a final decision within three calendar months, he has the option of filing his complaint or of waiting until he has exhausted the available remedies within the organization. In the latter case, if the final decision is ultimately unfavorable, he will have one month thereafter in which to file his complaint.

29 CFR 452.135(b)

474.005 ENFORCEMENT PREREQUISITES—COMPLAINT CHARGING VIOLATION OF PROVISIONS OF SECTION 401

Violation of any of the provisions of section 401 may serve as ground for a complaint filed by a member with the Secretary under section 402, as a prerequisite for suit by him to set aside the election.

474.100 POST-ELECTION COMPLAINT MUST GO THROUGH SECRETARY

Where a union member is seeking a post-election remedy for an alleged improper election, a court has no jurisdiction to try the case where the complaining member has not exhausted his union remedies or made application for relief with the Secretary of Labor. See Local No. 82, Furniture & Piano Moving, Furniture Store Drivers, Helpers, Warehousemen & Packers v. Crowley, 467 U.S. 526, 544-45, 116 LRRM 2633 (1984); see also Porch-Clark v. Engelhart, 930 F. Supp. 2d 928, 195 LRRM 2301 (N.D. Ill. 2013) (state law claims challenging union election are preempted by Title IV of the LMRDA).

(Technical Revisions: Dec. 2016)

474.101

A union member brought an action because he was denied the right to be a candidate for office, allegedly in violation of the LMRDA. Because of his failure to provide bond, the court refused to issue a temporary restraining order to prevent the holding of the election. After the holding of the election the court dismissed the case saying that after an election has been held the Secretary of Labor has exclusive jurisdiction. For the union member to get relief he must make a complaint to the Secretary of Labor, who, in turn, must decide whether or not to institute a cause of action against the union.
Gammon v. International Association of Machinists, 199 F. Supp. 433, 437, 49 LRRM 2282 (N.D. Ga. 1961).

(Technical Revisions: Dec. 2016)

474.102

Once an election has been held, union members who were denied the right to vote in violation of the Act can obtain relief only through proper application to the Secretary of Labor. A Federal Court has no jurisdiction to grant post-election relief except at the suit of the Secretary of Labor.

Acevedo v. Bookbinders and Machine Operators Local No. 25 Edition Bookbinders of N.Y. Inc., 196 F. Supp. 308, 314, 48 LRRM 3005 (S.D.N.Y. 1961).

(Technical Revisions: Dec. 2016)

*474.200 COMPLAINT BY SUSPENDED OR EXPELLED MEMBER

A person who has been suspended or expelled from membership is not necessarily barred from filing a complaint under section 402. The Secretary has the authority to examine the circumstances of the suspension or expulsion. If it is evident that the member was suspended or expelled in violation of section 101(a)(5), or for exercising or attempting to exercise rights guaranteed by the Act, the Secretary may treat the individual as a member in good standing for the purpose of receiving the complaint.

474.202 ANY MEMBER MAY FILE COMPLAINT

Defendant union in a suit brought by the Secretary of Labor to set aside an election sought dismissal of the action on the grounds that the complaint failed to allege that the complainant was either a candidate for office or a person deprived of his rights under section 401(e). The court, after specifically finding that the complainant was a member in good standing of the defendant local and that he had been improperly suspended and denied his membership rights at the time of the contested election, rejected the defendant's motion stating:

> "... the defendant asks this court to limit the class of complainants in suits of this sort not only to members, as the statute requires but to the actual members affected by the alleged wrongful conduct. If Congress had wished the class of complainants to be so limited, it might have easily so stated. Instead the statute is framed so as to allow any member of the union involved to commence proceedings with the Secretary of Labor.
> "A statutory construction which invites the filing of complaints by all members of the union involved comports with the broad purpose of Title IV of the Labor-Management Reporting and Disclosure Act, which is to safeguard and improve union electoral processes."

Wirtz v. Local Union No. 57, 57-A, 57-B, & 57-C, International Union of Operating Engineers, AFL-CIO, 293 F. Supp. 89, 91 (D.R.I. 1968); see also Donovan v. Air Transport, Dist. Lodge No. 146, 754 F.2d 621, 118 LRRM 2969 (5th Cir. 1985) (listing, and agreeing with, decisions "permit[ting] members who were not affected by a violation of section 401 to raise and challenge those violations in order to effect Congress's desire to safeguard and improve the union electorial process").

(Revised: Dec. 2016)

474.205 EFFECT OF SUSPENSION OF ELECTION RIGHTS ON OTHER MEMBERSHIP RIGHTS

The action of a union in disciplining several members by suspension of their election rights for two years, while specifically continuing their "good standing" in the union, does not operate as a bar to the acceptance of an election complaint from such members by the Secretary. Since the members in question have not had their good standing suspended by the union, they are considered to be members for purposes of filing a complaint.

474.305 REMEDIES MUST BE INVOKED AFTER ELECTION

There is nothing in Title IV of the Act that requires a union member to wait until an election has been held before invoking internal remedies. However, once the election is completed the member must again invoke his internal remedies. Then, if he has either exhausted his internal appeal procedures or has not received a final decision within three months after initiating his post-election complaint, and the member wishes to file a complaint with the Secretary, he must do so within one calendar month. Failure to file within one calendar month renders a complaint untimely.

474.400 COMPLAINT BY AN ATTORNEY

Once a member of a labor organization has fulfilled the conditions outlined in sections 402(a)(1) and (2) of the Act, an unqualified right to file a complaint with the Secretary accrues to him. The terms of the Act do not appear to prohibit a member from employing an attorney as his agent to file a written complaint on his behalf after the right to file such complaint has definitely accrued to the member by reason of his having satisfied the prerequisites of the aforementioned section.

474.500 COMPLAINT AFTER FOUR MONTHS

In the absence of a final decision by the union, a complainant's formal complaint to the Secretary of Labor was received six months after his initial protest to the local (or two months after the four month appeal period provided under section 402(a)(2) of the Act). It was concluded that, since the complainant had not complied with section 402(a)(2) of the Act, the Department has no enforcement jurisdiction over the matter.

474.510 COMPLAINT MUST BE RECEIVED WITHIN ONE CALENDAR MONTH

The date of receipt of a formal complaint to the Secretary is controlling in deciding whether or not the complaint has been timely filed. Thus where a complainant invoked his internal union remedies on September 26, 1962 and, not having obtained a final decision within three calendar months thereafter, mailed a formal letter of complaint to the Secretary on January 25, 1963 which was received on January 28, 1963, it was concluded that the complaint was untimely filed.

474.520 COMPUTING CALENDAR MONTH

For purposes of filing an election complaint with the Secretary of Labor under section 402(a) a calendar month has been held to mean "the time from any day of any of the months...to the corresponding day (if any; if not to the last day) of the next month." See Odom v. Odom, 272 Ala. 164, 165 (Ala. 1961). Further, it has been held that where the last day for the filing of a petition falls on a Sunday or a legal holiday, filing on the next day which is neither a Sunday or a legal holiday, is timely. See Union Nat. Bank of Wichita, Kansas v. Lamb, 337 U.S. 38, 40 (1949).

In one instance the Department accepted a complaint and filed a case on November 27,

1963. In this case a union member how received a final decision from his union denying his election protest on August 29, 1963, mailed his complaint pursuant to section 402(a) to the Secretary by regular mail on the evening of September 26, 1963, from Sparks, Nevada. The letter was received by the Department by, at least, Monday, September 30, 1963, 31 days after the complainant had received his union's final decision. It is possible that the letter was received in the Department on Sunday, September 29, 1963 since mail was delivered on that day but was not processed, i.e., dated, and there is presently no way to identify a particular piece of mail with respect to whether it was received on Sunday or Monday.

However, in view of the rule of law stated above, it is irrelevant in this case whether the letter was received on September 29, 1963, which was a Sunday, or September 30, 1963, since, in accordance with the Lamb rule, the time for filing in this case ends on Monday, by which day the complaint was definitely received. Therefore, the complaint was held to be timely because receipt on Monday would come within the calendar month.
See Wirtz v. Local Union 169, International Hod Carriers', Building and Common Laborers' Union, 246 F. Supp. 741, 750-51, 60 LRRM 2540 (D. Nev. 1965).

(Revised: Dec. 2016)

474.530 COMPLAINT AFTER RECEIPT OF FINAL UNION RULING

At a nominating convention prior to an election, a union member protested a constitutional provision making payment of quarterly dues in advance for one year a condition of eligibility for office. The union rejected the protest. The member then brought a private suit, under Title I, to enjoin the holding of the election. The District Court rejected the member's request for an injunction and ruled adversely on the merit of his contention. (The Court of Appeals later dismissed the pre-election complaint for want of jurisdiction.)

After the election, the member again invoked his internal remedies to protest the constitutional provision. After he received a final answer rejecting his post-election protest, he filed a complaint with the Secretary. The Secretary sued to set aside the election. Defendant union moved to dismiss on the grounds that the complaint was not filed within one calendar month of the denial of the pre-election protest by the union and/or the decision of the District Court. It argued that one or the other of those actions was a final disposition of the matter and further complaint to the union after the election was unnecessary.

The court held that a member must pursue every opportunity to allow the union to settle a grievance internally before coming to the Secretary and that he may not be penalized for so doing. Since the complaint was filed with the Secretary within one calendar month after complainant received a final answer rejecting his post-election protest, the court held that it was timely filed.

Wirtz v. Great Lakes District No 47, International Organization of Masters, Mates and Pilots, 240 F.Supp. 859, 59 LRRM 2085 (N.D. Ohio 1965).

(Technical Revisions: Dec. 2016)

INVESTIGATION BY SECRETARY

475.001 LMRDA, SECTION 402(b)

The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied. . .

475.005 SECRETARY MAY INVESTIGATE WITHOUT COMPLAINT

Section 402(b) provides that the Secretary shall investigate any timely complaint filed with him. This mandatory duty to investigate complaints in no way affects the Secretary's discretionary power to investigate, at any time, under section 601(a).

But see the regulations at 29 CFR 452.4.

(Technical Revisions: Dec. 2016)

475.007

The power of the Secretary of Labor under section 601 of LMRDA to conduct an investigation of an election of union officers and to issue a subpoena duces tecum in connection with such investigation is not limited to those violations complained of by an individual union member under section 402.

Section 402 provides for the Secretary's instituting an action in the courts in behalf of an individual who has complained of a violation of Title IV. It may be that some or all of the limitations of section 402, such as the exhaustion of internal remedies are relevant to the suit which that section authorizes, and presumably the Secretary can bring an action only when a complaint has been filed by an individual member.

Section 601 provides that the Secretary shall "determine the facts relative" to a violation or threatened violation and that he may report the results of his investigation "to interested persons or officials." There is no limitation on the Secretary's power to investigate and report and it need not be predicated on a complaint.

Wirtz v. Local 191, International Brotherhood of Teamsters, 218 F. Supp. 885, 887, 53 LRRM 2783 (D. Conn.), aff'd, 321 F.2d 445, 53 LRRM 2864 (2d. Cir. 1963).

(Technical Revisions: Dec. 2016)

475.200 IMPOSITION OF TRUSTEESHIP DOES NOT PRECLUDE INVESTIGATION

The Office is not precluded from proceeding with investigation of a timely received election violation complaint in a situation where the International has imposed a trusteeship as a consequence of the questioned election. A trusteeship imposed for the purpose of frustrating investigation or prosecution of election violations will not be condoned. On the other hand, it is recognized that use of such control by a parent organization as a device for correcting election

abuses may well prove a valuable tool in aid of a policy of voluntary compliance.

475.300 EXAMINING SEALED BALLOTS

A substantial number of mail ballots received by a union in a mail ballot election were not counted because, according to the union, they were not received until after the election deadline. Investigation revealed that the ballots had been received by the post office before the deadline, but they had not been picked up by the union. Since the ballots had been cast by persons who were eligible to vote, and therefore should have been counted, and because the number involved could have affected the outcome of the election, the Department opened the sealed ballots.

Ballots, whether sealed or unsealed, are part of the election records required to be maintained under section 401(e). Since the Secretary has authority under section 601 to examine these records, compliance officers would be authorized to open such ballots. As a matter of policy, this authority will normally be exercised only if the ballots in question were timely cast by eligible voters, if the secrecy of the ballots can be preserved and if the number of votes involved could have affected the outcome of the election.

(Technical Revisions: Dec. 2016)

REMEDIAL ACTION

475.400 COMPLIANCE AFTER COMPLAINT FILED WITH SECRETARY

The United States District Court for the Eastern District of New York ruled on February 26, 1962, that, in an action brought by the Secretary of Labor under section 402(b) of the LMRDA charging that a Local Union did not hold an election within the period of time required by its constitution, it is not a sufficient affirmative defense that the Union has since held an election, if the election was held after a complaint was filed with the Secretary.

The court says:

> "It would be an answer to the complaint that an election had in fact been held within the three-year period provided by Sec. 401(b) of the LMRDA; or such lesser period of time as provided by the constitution and by-laws of the defendant local labor organization ... Is it an answer to such a charge that the violation was cured before the action was instituted though held after the three-year period (or lesser period provided by its constitution and by-laws)? I think not.
>
> ***
>
> "The filing of the complaint (with the Secretary) under the procedure outlined by Congress sets in operation the governmental machinery. To that point the LMRDA gives the labor organization the opportunity to correct and remedy the violations. Beyond that point, the right of the government to investigate the breakdown of the democratic processes is clear. It is not within the power of the labor union to deprive the government of its right by compliance."

Goldberg v. Amalgamated Local Union No. 355, 202 F.Supp. 844, 846, 49 LRRM 2715

(E.D.N.Y. 1962); see also Hodgson v. Bakery & Confectionery Workers Local 400, 491 F.2d 1348, 1353, 85 LRRM 226773 (9th Cir. 1974) ("The Secretary's right to the statutory remedy of a supervised election cannot be defeated by any subsequent independent action of the union"). Cf. McLaughlin v. Lodge 647, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths Forgers & Helpers, 876 F.2d 648, 131 LRRM 2529 (8th Cir.1989) (holding that district court had authority to refuse to order a supervised election because of an "intervening, untainted election" conducted by the union).

(Revised: Dec. 2016)

475.420 INTERNATIONAL'S RIGHT TO VOID ELECTION

While a court must find that a violation of section 401 may have affected the outcome of an election in litigation brought by the Secretary before the election can be set aside, an international union is not subject to such a restriction, but has the right to set aside elections without reference to the effect of a violation on the outcome, provided, that this is in accord with its constitution and bylaws and that the same practice is followed in all similar election appeals.

SUIT BY SECRETARY

476.001 LMRDA, SECTION 402(b) FILING SUIT

The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(Technical Revisions: Dec. 2016)

476.002 VIOLATION "MAY HAVE AFFECTED THE OUTCOME"

The Secretary will not institute court proceedings upon the basis of a complaint alleging violations unless he finds probable cause to believe that the violation "may have affected the outcome of an election."

29 CFR 452.136(b)

*476.005 SCOPE OF SECRETARY'S COMPLAINT

Based on a ruling by the U.S. Supreme Court, OLMS's election regulations state that in an enforcement action in court, the Secretary's complaint "may not include . . . a violation which was known to the protesting member but was not raised in the member's protest to the union." The regulations further provide that "[c]omplaints filed by the Department of Labor will accordingly be limited . . . to the matters which may fairly be deemed to be within the scope of

the member's internal protest and those which investigation discloses [member] could not have been aware of." 29 CFR §452.136(b-1) (relying on Hodgson v. Local Union 6799, USW, 403 U.S. 333, 77 LRRM 2497 (1971).

With regard to the part of this standard referring to violations known to the protesting member but not raised to the union, the violation(s) in the Secretary's complaint do not have to be the same as the focus of the member's internal protest to the union. As long as the member's protest should have made it discernible to the union that one or more possible violations were at issue, those violations can be included in the Secretary's complaint. See Local Union 6799, USW, 403 U.S. at 341 ("courts should impose a heavy burden on the union to show that it could not in any way discern that a member was complaining of the violation in question")

Turning to the part of the standard applying to any violation(s) that "investigation discloses member could not have been aware of," OLMS's most recent LMRDA Election Issue Guide, because of the Sixth Circuit Court of Appeals's decision in Brock v. Operating Eng'rs Local 369, 790 F.2d 508, 22 LRRM 2518 (6th Cir. 1986), provides further details for that test. The Guide states that "any violation which was not protested to the union" cannot be included in the Secretary's complaint "if: 1) the facts of the violation were generally known; and 2) any reasonable investigation by the complainant could have revealed the violation."

(Revised: Dec. 2016)

476.100 DISCRETION TO FILE SUIT

The U.S. Supreme Court held in Dunlop v. Bachowski, 421 U.S. 560, 89 LRRM 2435 (1975), that a decision by the Secretary not to file suit in a Title IV case is subject to review under the Administrative Procedure Act. However, the Court established a special standard for review of such decisions. First, the Court held that the Secretary must provide to the complaining union member and to the court copies of a "statement of reasons" for deciding against bringing a lawsuit. Second, the Court ruled, the reviewing Court should review only that statement of reasons to determine whether the Secretary's was "so irrational" that it was "arbitrary and capricious." Only if that standard is met should the court order the Secretary to bring a court action to seek a supervised election. See Bachowski, 421 U.S. at 571-73.

(Revised: Dec. 2016)

476.110 DELEGATE ELECTION

In an election where delegates are the only ones who can make nominations, a civil suit may be instituted by the Department if there is evidence that properly elected delegates who were not seated would have placed one or more additional names in nomination. It is not necessary to show that the election outcome was actually affected before the Department may take legal action. See Chao v. Amalgamated Transit Union, AFL-CIO, 141 F.Supp.2d 13, 24, 67 LRRM 2516 (D.D.C. 2001).

(Technical Revisions: Dec. 2016)

476.200 CASE FILED SIXTY-TWO DAYS AFTER COMPLAINT

The Secretary of Labor brought an action against defendant union, Local 611, Hod Carriers, under section 402(b) sixty-two days after the filing of the complaint. Defendant moved for a summary judgment based on the claim that the time to bring an action under section 402(b) (i.e., 60 days after the filing of the complaint) operates as a statute of limitations upon the Secretary.

In denying the defendant's motion for summary judgment, the Court held that although the Secretary of Labor filed his complaint in court on the 62nd day, it was a timely complaint because the 60th day fell on a Sunday and the 61st day was a legal holiday when the courts were closed.

Rule 6 of the Federal Rules of Civil Procedure provides that under such circumstances "the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday." The Court stated that section 402(b) was passed after the adoption of Rule 6 and contains no special language to take it out of the operation of that rule, and that courts generally apply Rule 6 liberally.

The Court further held that the language of section 402(b) is not the usual language of a statute of limitations but is rather directory to the Secretary of Labor which, under certain circumstances, he is required to follow.

Wirtz v. Local 611, International Hod Carriers', Building and Common Laborers' Union, 229 F. Supp. 230, 56 LRRM 22388 (D. Conn. 1964).

(Technical Revisions: Dec. 2016)

476.210 DELAY IN FILING SUIT CAUSED BY UNION

In an action brought by the Secretary of Labor to set aside an election, defendant union moved for dismissal on the ground that the suit filed by the Secretary was untimely since it had not been filed within sixty days after the complaint was received as provided in section 402(b) of the Act. The complaint was received on August 12, 1964, and suit filed on November 9, 1964, or 28 days later than the sixty days provided by section 402(b).

During investigation of the complaint, the Secretary had requested certain information and records from the union. When the union refused to comply with the request, the Secretary issued a subpoena duces tecum. The union did not comply with the subpoena until the Secretary started an enforcement action.

The court held that the time lost as a result of the union's delay in making the information requested by the Secretary available would not be counted as part of the sixty days; therefore the suit was timely filed.

Wirtz v. Great Lakes Dist. Local No. 47, International Organization of Masters, Mates and Pilots, 240 F. Supp. 859, 862, 59 LRRM 2085 (N.D. Ohio 1965).

(Technical Revisions: Dec. 2016)

476.400 JURY TRIAL UNDER SECTION 402

Action brought by Secretary of Labor under 402(b) of the LMRDA to set aside an election held by defendant union. Defendant demanded jury trial and plaintiff moved to strike this demand. Issue was whether in judicial proceedings brought under 402(b) and (c), the parties are entitled to a jury trial. Answer depends upon whether the parties have a constitutional right under the Seventh Amendment and Rule 38 to a jury trial, or whether the right has been given to them by a federal statute.

The conventional test for determining whether a party has a constitutional right to trial by jury is whether he was entitled to have the issue tried by a jury at common law. In the instant case, the basic relief sought by the plaintiff is an injunction, and as such, the matter is equitable and there is no right to a jury trial. A court may not, in a case where both legal and equitable issues are involved, dispose of the equitable issues in such a manner as to deprive the parties of their right to a trial by jury on the legal issues. In the instant case, the relief sought is purely equitable and involves no legal issues and no claim for money damages.

Since defendant union is not entitled to trial by jury under the Seventh Amendment, the question remains whether Congress, by statute, has granted that right to the defendant. Section 402 contains no express reference to trial by jury. Where Congress has intended trial by jury under circumstances where the right was not constitutionally guaranteed, it has expressly so provided. Since Congress referred to "the Court" in section 402(b) and (c) several times, but did not refer to a "jury," Congress did not intend to grant the right to trial by jury as demanded by defendant union.

Wirtz v. District Council No. 21, Brotherhood of Painters, Decorators, and Paperhangers, 211 F. Supp. 253, 255, 51 LRRM 2591 (E.D. Pa. 1962); see also Wirtz v. National Maritime Union of America, 399 F.2d 544, 8 LRRM 3017 (2d Cir 1968).

(Technical Revisions: Dec. 2016)

476.500 INTERVENTION BY UNION MEMBERS

A union member who submitted an election complaint to the Secretary may also intervene in the Secretary's court action against the union under Title IV, but only to present evidence and argument in support of the Secretary's complaint and/or to assist the court in shaping a remedial order. See Trbovich v. United Mine Workers, 404 U.S. 528, 79 LRRM 2193 (1972). Further, when a court finds that the intervention provided substantial benefit to the union's membership, the court may award the intervenor attorneys' fees. See, e.g. Donovan v. Teamsters Local 70, 661 F.2d 1199, 108 LRRM 3133 (9th Cir. 1981); Brennan v. United Steelworkers, 554 F.2d 586, 95 LRRM 2178 (3rd Cir. 1977), cert. denied 435 U.S. 977, 97 LRRM 3238 (1978); Usery v. Teamsters Local 639, 543 F.2d 369, 93 LRRM 2113 (D.C. Cir. 1976), cert. denied 429 U.S. 1123, 94 LRRM 2643 (1977).

Federal courts of appeal have divided over whether, in an action by the Secretary for a court to certify the results of a supervised election, an unsuccessful candidate may

intervene. Compare Donovan v. Westside Local 174, United Auto. Workers, 783 F.2d 616, 121 LRRM 2881 (6th Cir.1986); Usery v. Teamsters Local 639, 543 F.2d 369, 377, 93 LRRM 2113 (D.C.Cir.1976), cert. denied, 429 U.S. 1123, 94 LRRM 2643 (1977); Hodgson v. Carpenters Resilient Flooring Local Union No. 2212, 457 F.2d 1364, 1370, 79 LRRM 3046 (3rd Cir.1972) (permitting such intervention) with Usery v. District No. 22, United Mine Workers of America, 567 F.2d 972, 97 LRRM 2357 (10th Cir.1978) and Brennan v. Silvergate District Lodge No. 50, Int'l Ass'n of Machinists, 503 F.2d 800, 87 LRRM 2935 (9th Cir.1974) (denying such intervention).

(Revised: Dec. 2016)

OUTCOME MAY HAVE BEEN AFFECTED

477.001 LMRDA, SECTION 402(c)

> If, upon a preponderance of the evidence after a trial upon the merits, the court finds. . . (2) that the violation of section 401 may have affected the outcome of an election,. . .

477.005 "POSSIBLE" EFFECT ON OUTCOME SUFFICIENT

An investigation of a complaint concerning a runoff election (held as a result of a tie in the regular election) for the office of business representative of a local union revealed that 58 ineligible members were allowed to vote. The 58 voters involved either (1) had not paid their dues or (2) had not paid or completed payment of mandatory readmission fees. The election was decided by 19 votes.

On suit of the Secretary to set aside the runoff election the court held "that if the number of ineligible votes cast is sufficient to make it mathematically possible that the outcome of the election was affected, this fact alone conclusively establishes the Act's requirement that the conduct complained of may have affected the outcome of the election." The election was set aside.

Wirtz v. Local Union No. 125, International Hod Carriers' Building and Common Laborers' Union, 270 F. Supp. 12, 20, 62 LRRM 2141 (N.D. Oh. 1966).

(Technical Revisions: Dec. 2016)

RERUN ELECTIONS

478.005 SUPERVISED ELECTIONS - TERM OF OFFICE

Elections conducted under the enforcement provisions of section 402 of the LMRDA are for the unexpired term of the contested election. Support for this position is found in section 403 of the LMRDA which provides in pertinent part that no labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by Title IV; and in section 402 which provides that in the interim between challenge and voiding, the challenged election shall be presumed valid and the affairs of the union shall be conducted by the elected

officers or in such other manner as the union constitution and bylaws may provide.

478.100 INTERFERING WITH SUPERVISION

In an action of first instance, the United State District Court, Eastern District of New York, granted a permanent injunction restraining the officers, agents, employees and representatives of a local union from interfering with or obstructing the supervision of the Secretary of Labor in the conduct of an election of union officers by said union.

The original action had been instituted by the Secretary of Labor under section 402(b) of LMRDA, praying for an order of the Court directing the conduct of an election by the union under the supervision of the Secretary. The basis of the complaint was that the union had failed to elect its officers within the past three years by secret ballot among the members in good standing, as required by section 401(b) of LMRDA.

Although the union admitted the violation by stipulation and consented to a judgment allowing an election of officers to be conducted under the supervision of the Secretary, the union subsequently refused to allow the complainant in this case, who had been determined by the Secretary to be a member in good standing and eligible for union office, to be nominated for union office. The union also sent out notice of nominations and elections without the approval of the Secretary.

As a result of these actions on the part of the union, the Secretary applied for and obtained a temporary order restraining the union, through its officers, agents, etc., from violating the stipulation and consent judgment and from interfering with the supervision of the Secretary in the conduct of the election in question. The order was later made permanent.

Wirtz v. Teamsters Warehousemen, Helpers and Production Workers Independent Local 424, No. 63-C-819 (E.D.N.Y. Dec. 11, 1963) (unreported).

NOTE:

It should be noted that the Court did not question the Secretary's authority to determine which of the union members were eligible to vote and eligible to be nominated as an officer.

(Technical Revisions: Dec. 2016)

478.200 CHALLENGE OF COURT-CERTIFIED ELECTION

If the court has appointed someone to supervise the election and has accepted the certification of the election by this party, the court has already determined, in effect, that an election over which it had jurisdiction has been properly conducted. Therefore, it would not be appropriate to challenge the propriety of the election or the court's decision through the Title IV.

REMOVAL OF OFFICERS - IN GENERAL

490.001 LMRDA, SECTION 401

(h) If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this title.

(i) The Secretary shall promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures to which reference is made in subsection (h).
See 29 CFR 417

490.005 REMOVAL PROCEDURES APPLY ONLY TO LOCAL OFFICERS

Removal provisions in section 401(h) refer specifically to officers of local labor organizations and do not include officers of intermediate or international bodies. See, e.g. Vitrano v. Marshall, 504 F.Supp. 1381, 107 LRRM 2935 (D.D.C. 1981).

(Technical Revisions: Dec. 2016)

490.100 401(h) and (i) apply only before officer has been removed

Sections 401(h) and (ii) of the LMRDA are addressed to procedures for removing officers before removal has become an accomplished fact.

This would apply whether or not the officer had been removed in accordance with the constitution and bylaws of the labor organization. The legislative history of sections 401(h) and (ii) clearly supports this conclusion. See, e.g. Small v. Department of Labor, 796 F.Supp. 1089, 142 LRRM 2755 (S.D. Oh. 1992), aff'd 986 F.2d 1422, 142 LRRM 2936 (6th Cir. 1993).

(Technical Revisions: Dec. 2016)

ADEQUACY OF REMOVAL PROCEDURE

492.001 LMRDA, SECTION 401(h)

If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct.

492.002 See 29 CFR 417.2(e) for standards of adequate removal procedure

492.005 ACTUAL OPERATION OF PROCEDURES DETERMINES ADEQUACY

It is the union's responsibility to provide an adequate procedure which meets the standards of section 417.2(e) of the Regulations. The adequacy of a union's procedure in the final analysis is determined by whether in actual operation it meets these standards. Even if the

language describing the union's procedures appears to meet the standards, the procedures would not be considered "adequate" if in fact they are interpreted or applied in a manner which results in a failure to achieve the objectives in that section of the Regulations.

The following examples illustrate how this principle may be applied:

1. A local union constitution provides for trial of an accused officer by a trial committee of seven elected from the membership at the next regular meeting following the filing of charges. Charges were filed against an officer of Local X. At the next regular meeting an attempt was made to elect a trial committee, but the Chairman in accordance with the union's constitution, adjourned the meeting because of the absence of a quorum. The union took the position that since there was no quorum it was not necessary for it to take any further action on the charges unless the accusing member filed his charges again.

   If a quorum is required to take action under the union's procedures for the removal of an officer, it is the union's responsibility, and not that of the member, to assure the presence of a quorum if their procedures are to be considered adequate. Further, failure of a quorum cannot have the effect of shifting the burden back to the member to repeat the filing of his charges until a quorum is obtained since, under section 417.2(e)(6), the member is entitled to final disposition of the charges pursuant to the procedures within a reasonable time after filing them.

2. A local union constitution provides that charges against officers must be in writing, served upon the accused and filed with the Secretary of the union. Charges were made against an officer of that local while he was out of town on union business. A copy was mailed to him and copies were served upon the Secretary of the local. The officer alleged that he never received the charges.

   Section 417.2(e)(2) of the Regulations states that one element of an adequate procedure is that the charges must be communicated to the accused officer and that reasonable notice must be given to the members of the organization reasonably in advance of the time for hearing. Responsibility for communication of the charges rests upon the union as part of its duty to provide an adequate procedure and cannot be shifted to the accusing member if the effect would be a failure of such communication.

3. A union's constitution does not specifically provide for a secret ballot for removal of officers but in practice a secret ballot is provided.

   Failure of the written procedures of the union to make provision for a secret ballot vote on removal of an officer found guilty of serious misconduct does not mean that the removal procedures of the union are inadequate per se, since a secret ballot vote of the members is actually provided.

   (Technical Revisions: Dec. 2016)

492.010 APPELLATE REVIEW AS PART OF REMOVAL PROCEDURES

The Secretary is authorized to act only if he finds that the constitution and bylaws of the

union do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct. Appellate review would be an appropriate part of an adequate removal procedure. Therefore, in the absence of any evidence that the appellate body was motivated by prejudice or bias in hearing the appeal, the removal procedure would not be inadequate under section 401(h) of the Labor-Management Reporting and Disclosure Act of 1959.

492.011

Where a local officer was removed from office by action of the local operating under the union's constitution and bylaws, but was reinstated by the executive board of the International Union after appealing to that body in accordance with constitutional procedure, the adequacy of the removal procedure in such a situation should not be questioned unless it can be shown that the appellate body that heard the appeal was prejudiced. Appellate review of decisions rendered by a tribunal of first resort is an inherent part of due process.

Therefore, in cases such as this, once it has been established that the appellate body has acted without prejudice, reversal on appeal does not come within the purview of section 401(h) of the Act.

FILING OF APPLICATION BY MEMBER

492.051 SEE 29 CFR 417.3

COMPLAINT—WHERE REMOVAL PROCEDURE ADEQUATE BUT VIOLATED

493.055 – Deleted (December 2018)

UNION SAFEGUARDS

500-509	(Numbers Reserved)
510	Fiduciary Responsibility of Officers and Others
511	(Number Reserved)
512	Propriety of Expenditure
513	(Number Reserved)
514	Exculpatory Provisions
515	Suit for Accounting or Relief
516	(Number Reserved)
517	Court Must Grant Leave to Sue
518	Counsel Fees and Expenses
519-525	(Numbers Reserved)
530	Bonding In General
531	Who Must Be Bonded In General
531.100	Who Must Be Bonded: “Person”
531.200	Who Must Be Bonded: “Duties”
531.300	Who Must Be Bonded: “Labor Organization”
531.400	Who Must Be Bonded: “Trust in Which a Labor Organization is Interested”
531.500	Who Must Be Bonded: “Funds”
531.600	Who Must Be Bonded: “Handled”
531.700	Who Must Be Bonded: “Exclusions”
532	Amount of Bond—Term of Bond
533	Type of Bond: Honesty
534	Form of Bond: Individual or Schedule Designation of Insured
535	Approved Surety
536	Conflict of Interest—Bonding
537	Payment of Premium
538-539	(Numbers Reserved)
540	Prohibitions Against Certain Financial Aid to Officers
541	Union Loans, Direct or Indirect
542-549	(Numbers Reserved)
550	Prohibition Against Holding Office or Employment
551	Prohibition Against Communists
552	Prohibition Against Convicts
553	Crimes Covered by Section 504
554-579	(Numbers Reserved)
580	Embezzlement and Other Criminal Conversions
581-599	(Numbers Reserved)

FIDUCIARY RESPONSIBILITY OF OFFICERS AND OTHERS

510.001 LMRDA, SECTION 501(a)

The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group.

510.002 LMRDA SECTION 501(a) INVESTIGATIVE POLICY STATEMENT

The Secretary of Labor has the authority under section 601(a) of the LMRDA to investigate "when [s]he believes it necessary in order to determine whether any person has violated or is about to violate any provisions of this Act (except title I or amendments made by this Act to other statutes). . . ." Section 601(a) also provides that "The Secretary may report to interested persons or officials concerning . . . any matter which [s]he deems to be appropriate as a result of such an investigation."

Therefore, it is the policy of the Office of Labor-Management Standards (OLMS) to investigate, at its discretion, allegations of violations by union officers and other representatives of their fiduciary responsibilities under section 501(a) of the LMRDA. The results of such investigations will be made known to interested persons as appropriate.

(Technical Revisions: Dec. 2016)

510.005 Policy Statement

Because the Secretary of Labor does not have authority to enforce section 501(a) of LMRDA, it is the policy of this Office to refrain from giving advisory opinions on the scope of the fiduciary obligations set forth in section 501(a) and the procedure for enforcement set forth in section 501(b).

In appropriate instances the cases set forth below may be referred to, without comment, to call attention to the conflicting court decisions on the scope of the fiduciary responsibilities of union officers.

The U.S. Circuit Court of Appeals, Second Circuit, in the cases of Guarnaccia v. Kenin, 234 F.Supp. 429, 57 LRRM 2310 (S.D.N.Y.), aff'd sub nom.; Gurton v. Arons, 339 F.2d 371, 58 LRRM 2080 (2d Cir. 1964); and Coleman v. Brotherhood of Railway and Steamship Clerks, 228 F.Supp. 276, 55 LRRM 3002 (S.D.N.Y. 1964), aff'd, 340 F.2d 206, 58 LRRM 2220 (2d Cir. 1965), held that section 501(a) applied to fiduciary responsibility with respect to money and property of a union and did not give the courts broad power to interfere with the internal affairs of unions. See also Trustees of Operative Plasterers' and Cement Masons' Local Union Officers and Employees Pension Fund v. Journeymen Plasterers' Protective & Benevolent Society, Local Union No. 5, 794 F.2d 1217, 123 LRRM 2796 (7th Cir. 1986).

The U.S. Circuit Court of Appeals, Eighth Circuit, on the other hand, in affirming the lower court decision requiring union officers to pay legal fees incurred by certain union members in maintaining a law suit which had been authorized by a vote of the membership, took the contrary view. See Nelson v. Johnson, 212 F.Supp. 233 (D. Minn. 1963), aff'd sub nom., Johnson v. Nelson, 325 F.2d 646, 55 LRRM 2060 (8th Cir. 1963). The Eighth Circuit Court of Appeals held that section 501 imposes fiduciary responsibility in its broadest application and is not confined in its scope to union officials only in their handling of money and property affairs of the labor organization. Nelson, 325 F.2d. at 651. See also Air Line Pilots Association International v. Trans States Airlines, 638 F.3d 572 (8th Cir. 2011); Stelling v. IBEW International Brotherhood of Electrical Workers Local Union No.1547, 587 F.2d 1379 (9th Cir. 1978), cert. denied sub nom., Darby v. International Brotherhood of Electrical Workers, Local Union No.1547, 442 US 944 (1979), reh'g denied, 444 US 889 (1979); Sabolsky v. Budzanoski, 457 F.2d 1245 79 LRRM 2993 (3d Cir. 1972).

(Technical Revisions: Dec. 2016)

PROPRIETY OF EXPENDITURES

512.800 DEFENSE OF ACCUSED OFFICER

A stated purpose of the Act is "to eliminate… improper practices on the part of labor organizations … and their officers." (Emphasis added.) To allow a union officer to use the power and wealth of the very union which he is accused of pilfering, to defend himself against such charges, can be inconsistent with Congress' effort to eliminate the undesirable element which has been uncovered in the labor-management field.

Based on this principle, a union cannot provide an attorney for an officer or pay for an officer's legal expenses during litigation if the union and officer might have conflicting interests in the outcome of the case. That will usually be true in cases involving a claim of breach of fiduciary duty by an officer. See Urichuck v. Clark, 689 F.2d 40, 111 LRRM 2323 (3d Cir. 1982); McNamara v. Johnston, 522 F.2d 1157, 1167 (7th Cir.1975), cert. denied, 425 U.S. 911 (1976); Highway Truck Drivers and Helpers Local 107, International Brotherhood of Teamsters v. Cohen, 182 F.Supp. 608, 45 LRRM 3050 (E.D. Pa. 1960), aff'd, 284 F.2d 162 (3d Cir.1960), cert. denied, 365 U.S. 833 (1961). Federal courts will grant injunctions to prevent union officers from expending union funds to pay for officer expenses in defending against lawsuits brought under Section 501 of the LMRDA. See Kerr v. Shanks, 466 F.2d 1271, 81 LRRM 2366 (9th Cir. 1972); Holdeman v. Sheldon, 204 F.Supp 890, 51 LRRM 2758 (S.D.N.Y. 1962), aff'd, 311 F.2d 2 (2d Cir. 1962).

If in the litigation it is found that the union officer did not breach the LMRDA, the officer can seek reimbursement from the union for attorneys' fees and litigation expenses, and the union can provide such reimbursement. If the authorization to pay legal fees for defending its officers was beyond the powers of a union as derived from its

constitution, a mere majority vote at a regular union meeting cannot authorize such expenditures. See Morrissey v. Curran, 650 F.2d 1267, 107 LRRM 2233 (2d Cir. 1981); McNamara v. Johnston, 522 F.2d 1157, 1167 (7th Cir. 1975), cert. denied, 425 U.S. 911 (1976). Nothing in the LMRDA requires a union to reimburse an officer for attorneys fees and litigation expenses, even if the officer prevails on all LMRDA claims. See Doyle v. Kamenkowitz, 114 F.3d 371, 377-78, 155 LRRM 2435 (2d Cir. 1997). However, because of LMRDA's "retention of rights under state laws" provision, §603(a), state law claims on issues not governed by federal law can be brought by union officers to seek reimbursement of legal fees and expenses. See Schepis v. Local Union No. 17, United Brotherhood of Carpenters and Joiners, 989 F.Supp. 511 (S.D.N.Y.1998) (opinion by then federal district judge, now U.S. Supreme Court Justice Sonia Sotomayor).

(Revised: Dec. 2016)

512.810 DUAL LEGAL REPRESENTATION

The United States Court of Appeals for District of Columbia in commenting on the use of union funds and counsel in the defense of union officers charged with wrongdoing against the union stated:

> "As a general proposition we think funds of a union are not available to defend officers charged with wrongdoing which, if the charges were true, would be seriously detrimental to the union and its membership. See, e.g., Highway Truck Drivers and Helpers Local 107, International Brotherhood of Teamsters v. Cohen, 182 F.Supp. 608, 619-22 (E.D. Pa. 1960), aff'd, 284 F.2d 162 (3d Cir. 1960), cert. denied, 365 U.S. 833 (1961). Cf. Witherspoon v. Hornbein, 70 Colo. 1 (Sup. Colo. 1921), involving officers of a corporation. The treasury of a union is not at the disposal of its officers to bear the cost of their defense against charges of fraudulently depriving the members of their rights as members. It is clear the complaint in this case charged individual officer defendants with conduct which was seriously detrimental to the interests of the International and to the rights of its members. And in deciding whether or not union funds may be used to defend such a suit the final outcome of the charges is not determinative; for if the charges have substance a sound resolution may be prevented by the very fact of dual representation during the process leading to a decision with respect to the charges. Different counsel would be required in this process. In other words, counsel who are chosen by and represent officers charged with the misconduct, and who also represent the union, are not able to guide the litigation in the best interest of the union because of the conflict in counsel's loyalties. In such a situation it would be incumbent upon counsel not to represent both the union and the officers."

Milone v. English, 306 F.2d 814, 50 LRRM 2773 (D.C. Cir. 1962).

(Technical Revisions: Dec. 2016)

EXCULPATORY PROVISIONS

514.001 LMRDA, SECTION 501(a)

A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

514.005 GENERAL EXCULPATORY RESOLUTION

Where a majority of members present at a meeting of the local adopted a resolution authorizing the union to bear legal costs of defending the local's officers in certain criminal and civil suits the U.S. District Court for the Eastern District of Pennsylvania found that such an authorization fell within the proscriptions of section 501, but it did not constitute a "general exculpatory resolution" as that phrase is used in the last sentence of section 501(a). The court said:

> Unfortunately the Act does not define the phrase "general exculpatory resolution…" We must distinguish between a resolution which purports to authorize action which is beyond the power of the union to do and for that reason in violation of section 501(a) when done by an officer…and a resolution which purports to relieve an officer of liability for breach of the duties declared in section 501(a). At times this distinction may be a fine one. Very often the result will be the same. Nevertheless we feel that such a distinction should be made here unless the "exculpatory" provision is to be read as a mere "catchall" phrase.
>
> There is a distinction between the merit of a resolution and its legality. The latter question is peculiarly within the competence of a court to pass upon and can not be abandoned finally to the organization. Maloney v. United Mine Workers, infra; Gordon v. Tomei, 144 Pa. Super. 449 (Super. Pa. 1941). When a serious question arises as to whether a particular act is within the legitimate aims and purposes of a labor union as expressed by its constitution and bylaws, the Court must ultimately resolve the matter so as to preserve on the one hand the rights of the union and on the other hand those of the individual members of that union. Maloney v. United Mine Workers, 308 Pa. 251 (Sup. Pa. 1932).
>
> It is true that from the general objectives and purposes of a particular trade union, certain ancillary powers reasonably necessary for their attainment may be implied. In determining whether a particular act falls within this admittedly broad latitude of action, the Court must take into consideration all of the factors surrounding it, i.e., the stated purpose of the action, its immediate effect, its possible future benefit to the union, etc. This is necessary in order to determine whether the union in light of the authority derived from its constitution has a sufficient interest in the action to empower it to so act. If it has, a court of law

will not interfere regardless of the wisdom or propriety of the act. If it has not, a court of law must intervene at the behest of a single union member.

Highway Truck Drivers and Helpers Local 107, International Brotherhood of Teamsters v. Cohen, 182 F.Supp. 608, 45 LRRM 3050 (E.D. Pa. 1960), aff'd, 284 F.2d 162 (3d Cir.1960), cert. denied, 365 U.S. 833 (1961).

(Technical Revisions: Dec. 2016)

SUIT FOR ACCOUNTING OR RELIEF

515.001 LMRDA, SECTION 501 (b)

When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization.

515.100 REQUEST TO UNION MUST BE MADE

Section 501(b) requires a member of a labor organization to request the labor organization "to sue or recover damages or secure an accounting or other appropriate relief" before such member may sue "any officer, agent, shop steward, or representative of any labor organization" who is alleged to have violated his fiduciary responsibilities as described in section 501(a).

Pursuant to this provision, as a precondition to a union member or members bringing a lawsuit for breach of fiduciary duty, the member(s) must make a request to the union or its officers to address the alleged breach, and the request must either be refused or not acted upon within a reasonable time. Courts have differed over what action must be requested.

Some courts have held that a union member must first request that the union or its officers bring legal proceedings to obtain for the union one or more of the following: damages, an accounting, or other appropriate relief. See, e.g., Adams-Lundy v. Association of Professional Flight Attendants, 844 F.2d 245, 248-50 (5th Cir.1988); Erkins v. Bryan, 494 F.Supp. 732 (M.D. Ala. 1980), rev'd, 663 F.2d 1048, 1052 (11th Cir. 1981), cert. denied, 459 U.S. 989 (1982). Other courts have held that the request need not be to pursue legal proceedings, and that a request for payment of damages or other appropriate relief for the union, or for an accounting, will suffice. Compare Saunders v. Hankerson, 312 F.Supp.2d 46, 61-63, 174 LRRM 2824 (D.D.C. 2004) (court found that request retirement satisfied by language of a press

release that accompanied a protest against a union organized by plaintiff union member, as the release said that union "must respond to entire membership" about "alleged improprieties"); Morrissey v. Cocker, 55 LRRM 2532 (Sup. N.Y. 1964) (state trial court held that a written demand allegedly submitted to the union that certain records be turned over did not satisfy the required request for an accounting).

However, even most of the courts that require that the request be to bring legal proceedings do not require that legal action be specifically mentioned in the request, and have required only that the request provide some notice to the union that legal action might be appropriate. See, e.g. Association of Professional Flight Attendants, 844 F.2d at 249-50; Dinko v. Wall, 531 F.2d 68, 72-73 (2d Cir. 1976); Antal v. Budzanoski, 320 F.Supp. 161 (W.D. Pa. 1970), rev'd in part, Sabolsky v. Budzanoski, 457 F.2d 1245, 1252-53 (3d Cir. 1972), cert. denied, 409 U.S. 853 (1972).

(Revised: Dec. 2016)

515.201 EXHAUSTION OF REMEDIES

Most courts have held that union members need not exhaust any available internal union remedies as a precondition to bringing suit for breach of fiduciary duty under Section 501(b). See, e.g., Cowger v. Rohrbach, 868 F.2d 1064, 1066-67 (9th Cir.1989); Erkins v. Bryan, 494 F.Supp. 732 (M.D. Ala. 1980), rev'd, 663 F.2d 1048, 1052-53 (11th Cir. 1981), cert. denied, 459 U.S. 989 (1982). See also International Longshoremen's Association v. Virginia International Terminals, Inc., 932 F.Supp. 761, 763 (E.D.Va.1996) (whether to require exhaustion of internal remedies is within discretion of trial court).

(Revised: Dec. 2016)

515.301 UNION AS PARTY TO SUIT

Courts are divided over whether a union, as an entity, can sue its officers for breach of fiduciary duty under Section 501. Compare International Union of Operating Engineers, Local 150 v. Ward, 563 F.3d 276, 282-89, 186 LRRM 2368 (7th Cir. 2009) (unions have an implied cause of action under Section 501(a) to sue its officers in federal court for violation of the fiduciary duties imposed by the statute) and International Union of Elec., Electronic, Electrical, Salaried, Machine and Furniture Workers v. Statham, 97 F.3d 1416, 1418-21, 153 LRRM 2663 (11th Cir.1996) (Section 501(a) was intended to create a federal cause of action that can be asserted by the union on its own behalf), with Building Material &and Dump Truck Drivers, Local 420 v. Traweek, 867 F.2d 500, 506-07, 130 LRRM 2441 (9th Cir.1989) (court, focusing exclusively on Section 501(b), declined to recognize an implied federal cause of action for suits by labor unions and found that a union cannot sue under Section 501). However, some courts have held that unions should be joined, or should conduct themselves, as party plaintiffs when the Section 501 claim, if successful, would accrue to the union's benefit. See, e.g., Brink v. DaLesio, 453 F.Supp. 272, 98 LRRM 2333 (D. Md.1978); Purcell v. Keane, 277

F.Supp. 252, 67 LRRM 2216 (E.D. Pa. 1967), aff'd, 406 F.2d 1195, 70 LRRM 3167 (3d Cir. 1969).

A union is not an indispensable party defendant to a Section 501 claim brought by members, and whether a union can even intervene in a Section 501 case depends on what interests the union seeks to advance and on the circumstances of the case. See, e.g., Purcell v. Keane, 277 F.Supp. 252, 257-58 (E.D. Pa. 1967), aff'd, 406 F.2d 1195, 70 LRRM 3167 (3d Cir. 1969) (union and union's president not indispensable party defendants in Section 501 suit); International Brotherhood of Teamsters v. Hoffa, 242 F.Supp. 246, 254-55, 59 LRRM 2460 (D.D.C.1965) (union could intervene to defend the validity of a constitutional amendment, but not to defend individual defendants charged with breaching fiduciary duties); Holdeman v. Sheldon, 204 F.Supp. 890, 51 LRRM 2758 (S.D.N.Y. 1962), aff'd, 311 F. 2d 2, 51 LRRM 2764 (2d Cir. 1962) (union may not intervene and file a common answer in action under section 501(b) against union officers for their alleged unlawful issuance of checks, where it appears that there is a serious question of conflict inherent in the conduct of the union officers and the interests of the union).

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COURT MUST GRANT LEAVE TO SUE

517.001 LMRDA, SECTION 501(b)

No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown which application may be made ex parte.

517.005 LEAVE TO SUE

A union member's action charging violations of fiduciary duties by officers under section 501, LMRDA, is not maintainable if the member has not first obtained leave of court upon verified application and good cause shown as required by section 501(b).

Addison v. Grand Lodge of the International Association of Machinists, 318 F. 2d 504 (9th Cir. 1963).

(Technical Revisions: Dec. 2016)

517.100 GOOD CAUSE

Federal courts of appeal have differed over how to define "good cause" for purposes of granting union members leave to bring an action under §501(b). The Second Circuit demands the most of would-be plaintiffs, requiring that plaintiffs show a "reasonable likelihood of success on the merits." The D.C., 3d, 9th and 11th Circuits require less of plaintiffs, holding that if the complaint's allegations support a "good cause" for the suit, that is sufficient. These circuits also decree that a defendant can challenge "good cause" based only on issues such as plaintiff failing to follow the

LMRDA's procedures (discussed above) or estoppel, and not based on disputing the complaint's allegations. The Fifth Circuit's test for "good cause" is that the plaintiff must show that the union's refusal to act in response to the plaintiff's request was "objectively unreasonable, assessed from the point of view of the membership as a whole." See Hoffman v. Kramer, 362 F.3d 308, 315-318, 174 LRRM 2489 (5th Cir. 2004) (discussing each of these definitions of "good cause"). See also Executive Board Local 28, IBEW v. International Brotherhood of Electrical Workers, 184 F.Supp. 649, 653-55 (D. Md. 1960) (in a private action by members comprising the local's executive board to terminate the trusteeship imposed on the local by the International, and for an accounting of the local's funds, a verified complaint, which alleged acts that would be at least a misuse of union funds, constituted "good cause" within section 501 of the LMRDA).

(Revised: Dec. 2016)

517.200 STATE JURISDICTION

Section 501(b) itself provides that union members can bring claims for breach of fiduciary responsibility in federal district court or "in any State court of competent jurisdiction." However, a defendant to such a claim may remove the case to federal court. See Clinton v. Hueston, 308 F.2d 908, 51 LRRM 2273 (5th Cir. 1962).

As the following case demonstrates, union officers, employees and other representatives can also be sued for state law claims in state court: Gilbert and others sued in Oregon State court alleging union officers' disregard of union procedures in the conduct of elections and misuse of union funds. The union defended that Gilbert and the others had not secured the permission of the court to bring suit as required under section 501(b). The Oregon Supreme Court, in affirming the judgment of the lower court, ruled that section 501(b) is not an exclusive remedy; existing remedies are preserved by section 604 and that the Oregon State courts would have always entertained suits of this type, without the need for granting the permission referred to in the LMRDA. The lower court had appointed a CPA firm to report on union finances quarterly for period of one year and to supervise the impending election and report the results to the court.

Gilbert v. Hoisting and Portable Engineers, Local Union No. 701, 237 Or. 130, 54 LRRM 2048 (Sup. Or. 1963).

(Revised: Dec. 2016 and Technical Revisions: Dec. 2019)

COUNSEL FEES AND EXPENSES

518.001 LMRDA, SECTION 501(b)

The trial judge may allot a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit at the instance of the member of

the labor organization and to compensate such member for any expenses necessarily paid or incurred by him in connection with the litigation.

518.005 DEFINITION OF "RECOVERY"

In this case plaintiffs filed a motion for counsel fees and expenses pursuant to section 501(b) of the LMRDA. In construing the language authorizing the payment of counsel fees, e.g., "The trial judge may allot a reasonable part of the recovery…," Judge Body held that "recovery" was not intended to be limited to actual money recovery effectuated, but must include the total benefit conferred upon the union through the efforts of counsel. Therefore, the court determined that a reasonable counsel fee was $38,000 in that the union had benefited because (1) the plaintiffs had obtained an injunction against the use of union funds to defend certain officers against charges and (2) plaintiffs had obtained a verdict against these officers for the $24,921.41 already expended in their defense. See Highway Truck Drivers & Helpers Local 107, International Brotherhood of Teamsters v. Cohen, 220 F.Supp. 735 (E.D. Pa. 1963), aff'd, 334 F.2d 378 (3d Cir. 1964), cert. denied, 379 U.S. 921 (1964). See also Kerr v. Shanks, 466 F.2d 1271 (9th Cir. 1972) (monetary recovery not necessary for trial judge, in "exercise of sound discretion" and when suit benefited the union, to award counsel fees and other litigation expenses to the plaintiff).

However, those courts that allow unions themselves to bring §501 claims (see §515.301, above) do not allow unions to recover counsel fees. See, e.g., Local 815, International Longshoreman's Association, v. Brazil, 12 F.Supp. 2d 918 (E.D. Wis. 1998).

(Revised: Dec. 2016)

518.100 COMPUTING COUNSEL FEE

Ratner, retained as counsel to a dissident faction of union members—the Local Union Reunification Committee (LURC)—successfully pursued several court actions on their behalf. These actions ultimately led to a court-ordered convention, reorganization of the union, ouster of top International officers (the president, the secretary, and three vice presidents–all of whom were later convicted and sentenced on embezzlement and/or conspiracy charges), and the subsequent election of LURC backers to top offices in the union. At that convention it was decided that the LURC should be dissolved, that the International should become plaintiff in what had been a class action, and that Ratner be retained as counsel. However, the union declared that it would not accept the responsibility for LURC counsel fees "unless and until ordered by a court to do so."

Ratner and his associates, who received no payments for their services from April 1961 through January 1962, brought suit to obtain these fees and related expenses. The district court awarded them $54,834.91 from the contracting parities who entered into the fee agreement, the class represented by the parties, i.e., LURC backers, and the funds of the union, because the action was initiated, undertaken, and prosecuted "…in the interest

of the Union membership as a whole…such fruits as flowed from the lengthy proceedings flowed to the benefit of the Union and for the benefit of all its members." The award against the International was limited to the terms of the retainer between Ratner and the LURC.

On appeal, the Circuit Court reversed and remanded, holding that the value of Ratner's legal services, when computed on the basis of benefit to the union, may even exceed the computations based upon the scale provided for in the retainer agreement, and accordingly ruled that the court could not base its award upon the contract between Ratner and the LURC. It ruled that section 501(b) did not limit the court to the amount of "recovery" effected against the ousted union officials, but directed the court to hold the International union liable for reasonable fees, properly earned, based upon the "benefit" which inured to the International.

Bakery and Confectionery Workers International Union v. Ratner, 335 F.2d 691, 56 LRRM 2432 (D.C. Cir. 1964).

(Technical Revisions: Dec. 2016)

BONDING

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SPECIAL NOTE

TEMPORARY PAGE - BONDING
October 1965

Experience gained during the years since the effective date of section 502(a) in September 1959 has suggested the deletion of a number of references to older rulings in this revised section of the Manual. The deleted rulings reflect areas that are either impractical, vague, or the subject of current study, such as the concept of "composite person." In addition, certain clauses that are incorporated in Labor Organization bonds in current use have created technical problems and are receiving our attention. We hope to be able to resolve these problems with a minimum of disruption to current bonding practices, but in view of the ***** and diverse interests involved, the solution will present some delicate and time-consuming negotiations.

After these Manual pages were referred to the printer, Congress enacted certain amendments to the LMRDA. The amended law, among other things, substitutes an "honesty bond" for the "faithful discharge of duty bond" formerly required. It is felt that the amendments do not materially affect the interpretations contained in this section except that, of course, where reference is made to a "faithful discharge bond," this will now be construed to refer to a bond providing protection against loss by reason of acts of fraud or dishonesty.

Please refer any questions not covered in the following rulings to the Division of Interpretation and Standards in the National Office.

(Technical Revisions: Dec. 2016)

BONDING IN GENERAL

530.001 LMRDA, SECTION 502

(a) Every officer, agent, shop steward, or other representative or employee of any labor organization (other than a labor organization whose property and annual financial receipts do not exceed $5,000 in value), or of a trust in which a labor organization is interested, who handles funds or other property thereof shall be bonded to provide protection against loss by reason of acts of fraud or dishonesty on his part directly or through connivance with others. The bond of each such person shall be fixed at the beginning of the organization's fiscal year and shall be in an amount not less than 10 per centum of the funds handled by him and his predecessor or predecessors, if any, during

the preceding fiscal year, but in no case more than $500,000. If the Labor organization or the trust in which a labor organization is interested does not have a preceding fiscal year, this amount of the bond shall be, in the case of a local labor organization, not less than $1,000, and in the case of any other labor organization or of a trust in which a labor organization is interested, not less than $10,000. Such bonds shall be individual or schedule in form, and shall have a corporate surety company as surety thereon. Any person who is not covered by such bonds shall not be permitted to receive, handle, disburse, or otherwise exercise custody or control of the funds or other property of a labor organization or of a trust in which a labor organization is interested. No such bond shall be placed through an agent or broker or with a surety company in which any labor organization or any officer, agent, shop steward or other representative of a labor organization has any direct or indirect interest. Such surety company shall be a corporate surety which holds a grant of authority from the Secretary of the Treasury under the Act of July 30, 1947 (6 U.S.C. 6-13), as an acceptable surety on Federal bonds: Provided, that when the opinion of the Secretary a labor organization has made other bonding arrangements which would provide the protection required by this section at comparable cost or less, he may exempt such labor organization from placing a bond through a surety company holding such grant of authority.

(b) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

530.002 SEE 29 CFR 453

530.005 RELATIONSHIP OF ERISA BONDING REQUIREMENTS TO LMRDA

Section 412 of the ERISA provides that persons bonded under that Act shall not be subject to the bonding requirements of any other law with respect to the same funds. Among plans which are subject to the ERISA are certain “trusts in which a labor organization is interested” (as defined in section 3(I) of LMRDA). Consequently, persons handling funds of such “trusts” who are required to be bonded under section 412 of the ERISA are relieved of the requirement of being bonded under LMRDA with respect to such handling.

530.100 TERM OF BOND

See 29 CFR 453.17. See also Manual Entries 532 ff.

WHO MUST BE BONDED IN GENERAL

531.001 LMRDA, SECTION 502(a)

Every officer, agent, shop steward, or other representative or employee of any labor organization (other than a labor organization whose property and annual financial receipts do not exceed $5,000 in value), or of a trust in which a labor organization is interested, who handles funds or other property thereof hall be bonded... Any person who

is not covered by such bonds shall not be permitted to receive, handle, disburse, or otherwise exercise custody or control of the funds or other property of a labor organization or of a trust in which a labor organization is interested ...

531.002 SEE 29 CFR 453.2 to 453.11, 453.25

WHO MUST BE BONDED: "PERSON"

531.102 SEE 29 CFR 453.22, 453.23

531. 105 OFFICERS AND EMPLOYEES OF UNION

See 29 CFR 453.5

531.130 CHECK SIGNERS AND ALTERNATES

A chairman of a board of trustees and a secretary-treasurer must be bonded under the Act when they have the authority to countersign checks, vouchers, or drafts on the funds of the labor organization. (See 29 CFR 453.8(e).) It would also be necessary to bond any alternates to these two officials if the alternates perform the same functions in the absence of the chairman or the secretary-treasurer.

531.140 $5,000 EXEMPTION

29 CFR Section 453.8(a) points out that the Act does not provide an exemption based upon the amount of fund or other property handled by particular personnel. The statutory $5,000 exemption applies only to the case of unions whose property and annual financial receipts do not exceed this amount. Therefore, if the provisions of section 502(a) of the Act are otherwise applicable to a particular person, the amount of funds handled by him will not affect this applicability.

(Technical Revisions: Dec. 2016)

531.150 "HANDLING" COLLECTION OF DUES BY SHOP STEWARDS AND BUSINESS REPRESENTATIVES

In accordance with the principles set forth in 29 CFR 453.8(c), shop stewards and business representatives who personally collect dues from members are normally required to be bonded under the Act.

(Technical Revisions: Dec. 2019)

531.152 COLLECTION OF WORKING ASSESSMENT BY ONE NOT BONDED

It would not be improper under the Act for a union member who is not bonded to bring another member's working assessments to the financial secretary as a personal

favor, as long as it is not a formal collection but simply a friendly gesture on the part of a co-worker.

531.160 PRIVATE COLLECTION AGENCY

A store owner, who acts as agent for a labor organization in the collection of dues, must be bonded for the monies so collected. Likewise, employees of the store owner who engage in the physical collection of such dues would also have to be bonded based on the amount collected by them.

531.170 EMPLOYER WHO CHECKS OFF DUES

An employer who checks off union dues is not required to be bonded by section 502. Section 502 applies only to an "officer, agent, shop steward or other representative" or to an "employee" of a labor organization or of a trust in which a labor organization is interested. The term "officer, agent, shop steward or other representative" when used with respect to labor organizations is defined by section 3(q) as including "elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers . . .)." Even if the sums withheld by checkoff were deemed to be funds of the union, the employer would not be within the scope of this definition. The funds withheld are not funds of a trust in which a labor organization is interested within the definition of that term in section 3(1). Even if they were, the employer would not be an "officer, agent, shop steward or other representative or employee" of such trust.

531.172 BONDING OF EMPLOYERS—REQUIREMENT IN COLLECTIVE BARGAINING AGREEMENT

While the Act includes a section which requires the bonding of certain union officers and employees and officers and employees of trusts in which a labor organization has an interest, the Act does not require an employer to be bonded in order to guarantee the collection of dues under a collective bargaining agreement provision.

WHO MUST BE BONDED: "DUTIES"

531.202 SEE 29 CFR 453.10, 453.11

WHO MUST BE BONDED: "LABOR ORGANIZATION"

531.302 SEE 29 CFR 453.3, 453.5

531.305 $5,000 EXEMPTION - DETERMINATION OF AMOUNT

See 29 CFR 453.3.

WHO MUST BE BONDED:
"TRUST IN WHICH A LABOR ORGANIZATION IS INTERESTED"

531.402 SEE 29 CFR 453.4, 453.6

531.403 ERISA BONDING EXEMPTION

SPECIAL NOTE: Trusts bonded under ERISA need not be bonded under the LMRDA. See Manual Entry 530.005.

531.405 TYPES OF TRUSTS COVERED

The definition in section 3(1) of the Act of "trust in which a labor organization is interested" covers pension funds, health and welfare funds, profit sharing funds, vacation funds, apprenticeship and training funds, and funds or trusts of a similar nature which exist for the purpose of, or have as a primary purpose, the providing of benefits specified in the definition. This is so regardless of whether they are administered solely by labor organizations or jointly by labor organizations and employers, or by a corporate trustee, unless they were neither created nor established by a labor organization and also do not have any trustee or member of the governing body who was selected or appointed by a labor organization.

29 CFR 453.4

See Manual Entry 530.005.

(Revised: Dec. 2016)

531.406 APPLICATION TO TRUSTS

The exemption from the bonding requirements for labor organizations whose property and annual financial receipts do not exceed $5,000 in value, does not apply to trusts in which a labor organization is interested.

See Manual Entry 530.005.

531.410 EMPLOYEES OF TRUST

All individuals employed by a trust in which a labor organization is interested are "employees" regardless of whether, technically, they are employed by the trust, by the trustee, by the trust administrator, or by trust officials in similar positions.
29 CFR 453.6 (c).

531.412 OFFICERS AND EMPLOYEES OF TRUST

See 29 CFR 453.6.

531.415 PERSONNEL OF EMPLOYERS WHO MUST BE BONDED

Personnel, including trustees, regardless of whether they are representatives of or selected by labor organizations, or representatives of or selected by employers, must be bonded if they handle funds or other property of the trust within the meaning of section 502(a).

See Manual Entry 530.005.

531.417 CONTROL BY CORPORATE CO-TRUSTEE

Where the individual trustees of a trust in which a labor organization is interested have the power to direct the corporate co-trustee to liquidate securities on deposit with it at any time and pay over the proceeds thereof to the individual trustees, the individual trustees must be bonded pursuant to section 502 notwithstanding custody of the securities is retained throughout the year by the corporate co-trustee.

See Manual Entry 530.005.

531.420 JOINTLY ADMINISTERED FUND

If some members of a board of trustees are appointed by the union, the fund will be a "trust in which a union is interested," and the trustees and key administrative personnel must be bonded if they handle funds or other property of the trust within the meaning of section 502(a), regardless of whether they are representatives of or selected by employers. However, banks and other qualified financial institutions in which trust funds are deposited are not subject to the bonding requirements, even though they may also have administrative or management responsibilities with regard to such trusts.

See Manual Entry 530.005.

531.423 JOINT APPRENTICESHIP FUND

When a joint apprenticeship committee has one or more members of the governing body appointed by a labor organization and a primary purpose of any trust or funds overseen by that committee is to provide benefits to the members of the labor organization, or their beneficiaries, it falls within the definition of a "trust in which a labor organization is interested" as defined in section 3(1) of the LMRDA.

See Manual Entry 530.005.

(Revised: Dec. 2016)

531.425 JOINT LABOR-MANAGEMENT ARBITRATION COMMITTEE

A neutral joint labor-management committee established and administered solely for the purpose of serving both labor and management as an administrator or arbitrator under the provisions of a collective bargaining agreement which it interprets at the request of either is not a trust in which a labor organization is interested.

531.430 EMPLOYER PLAN

If a plan is created, established and administered solely by the employer and if its governing body contains no member selected or appointed by a labor organization it would not be a "trust in which a labor organization is interested" within the purview of section 502(a).

531.435 EMPLOYER PENSION OR PROFIT-SHARING PLAN

A pension or profit-sharing plan which is established solely by an employer and administered solely by him and his representatives does not meet the definitional requirements of a "trust in which a labor organization is interested," set forth in section 3(1) of the Act; and even though the primary purpose requirement under (2) of section 3(1) is satisfied, the bonding provisions of the Act do not apply. This is so, notwithstanding the fact that the trust was created as a consequence of a collective bargaining agreement.

(Technical Revisions: Dec. 2016)

531.460 STRIKE FUND

A strike fund maintained by a group of unions as separate fund, and administered by representatives of the several unions, will ordinarily constitute a "trust in which a labor organization is interested" and thus the bonding requirement of the Act will apply in those cases.

See Manual Entry 530.005.

531.461

When a strike fund has been set up by several local labor organizations and the sole purpose of the fund is to solicit and receive money from labor organizations, the general public, and any other possible source, and expend it for the benefit of striking employees, such a fund is a "trust in which a labor organization is interested" and, consequently, the bonding provisions of the Act apply.

WHO MUST BE BONDED: "FUNDS"

531.502 SEE 29 CFR 453.7, 453.14

531.505 MORTGAGE NOTE

As 29 CFR Section 453.14 points out, the term "funds" is not confined to cash but includes as well notes, marketable securities and other items of a similar nature. If a deed of trust is security for an indebtedness evidenced by a note which possesses some measure of negotiability, such a note would be regarded as "funds or other property" for bonding purposes.

(Technical Revisions: Dec. 2016)

531.510 FUNDS COLLECTED FOR CHARITY

Individuals who are asked to make charitable collections for organizations such as the United Givers Fund, Red Cross, etc., are agents of these charities even though they also may have positions in the union, such as steward, etc. Consequently, those persons who undertake such collections need not be bonded with regard to the funds collected on behalf of the charities. On the other hand, if the amounts collected for the charities are for convenience first deposited into the union's account and then later remitted to the charities, in computing the amount of his bond required by section 502 of the Act, the treasurer of the labor organization would have to treat these funds as being "handled" within the meaning of the Act.

WHO MUST BE BONDED: "HANDLED"

531.602 SEE 29 CFR 453.8, 453.9.

531.605 FACTORS TO CONSIDER

Various factors must be considered in determining what constitutes "handling of funds or other property." These include such matters as custody, access, actual authority, powers, responsibilities, supervision, fiscal controls, and the nature of the funds or other property.

531.610 PERSON HANDLING SMALL AMOUNTS

SEE 29 CFR 453.8(a).

* 531.615 PHYSICAL CONTACT WITH UNION DUES

Clerical employees of a union whose duties include the receiving, recording and sorting of union dues payments and who are closely supervised by the Secretary-Treasurer of the union are only required to be bonded with respect to that portion of the dues that are paid in cash.

Under section 453.8(c) of the bonding interpretative bulletin, clerical employees who have only physical contact with checks, securities or funds or perform only ministerial functions under close supervision are not required to be bonded. On the other hand, there is a significant risk of loss involved in the processing of the cash receipts, and bonding is required.

(Technical Revisions: Dec. 2016)

531.620 OPPORTUNITY TO DEFALCATE

The purpose of the bonding provision is to protect the funds of the union against a significant risk of loss. Thus, it is not the physical handling of funds which is controlling nor even the authority to handle funds, but rather the opportunity to defalcate. If a particular person has actual access to, or the opportunity to abscond with union funds, he must be bonded even though his action would not be authorized by the union.

531.623 ABSENCE OF PHYSICAL CONTROL

Even though persons do not handle funds or property physically, they nevertheless "handle" within the meaning of section 502(a) of the Act where they perform significant duties with respect to the funds or property so as to give them access, control or custody over the funds or property.

29 CFR 453.8(d)

531.630 POWER OF TRUSTEES

When the Board of Trustees is the entity possessed of the ultimate power and charged with the major responsibility of determining whether the bulk of the transactions and disbursements are bona fide, regular, and in accordance with the trust instrument, it must be considered to handle funds and property and must be bonded accordingly.

531.640 DISBURSEMENT AUTHORITY

Officers and trustees authorized to sign checks or make cash disbursements clearly fall within the definition. Whether others who may influence, authorize or affect disbursements also do depends on their specific duties and responsibilities.

(Technical Revisions: Dec. 2016)

29 CFR 453.8 (e)

531.650 PERSONS WHO SIGN CHECKS

Personnel who do not handle cash but are only authorized to sign checks are required to be bonded. This would be true regardless of whether such personnel are the sole signers or co-signers of the checks.

531.651 PERSONS WHO HAVE ACCESS TO SIGNATURE DEVICE

Personnel who have access to a check signature device must be considered as "handling funds or other property" within the meaning of the Act and must therefore be bonded in addition to those whose signatures are affixed to the checks.

WHO MUST BE BONDED: "EXCLUSIONS"

531.705 BONDING PROVISIONS NOT APPLICABLE TO FINANCIAL INSTITUTIONS

The bonding requirements of the Act were not intended to be, and are not, applicable to banks or other qualified financial institutions which serve as a depository for trust funds and perform administrative or management responsibilities with respect to trusts, or to other independent contractors who have contracted with trusts for the performance of functions which are normally not carried out by officials or employees of such trusts. Likewise, the bonding requirements are not applicable to the employees of such banks, such other qualified financial institutions, or such independent contractors.

See also 29 CFR 453.22(b).

331.710 EXCEPTION FOR INDEPENDENT CONTRACTORS

See 29 CFR 453.6(b).

531.720 ERISA BONDING EXEMPTION

SPECIAL NOTE:

Trusts bonded under ERISA need not be bonded under the LMRDA. See Manual Entry 530.005.

AMOUNT OF BOND - TERM OF BOND

532.001 LMRDA, SECTION 502(a)

The bond of each such person shall be fixed at the beginning of the organization's fiscal year and shall be in an amount not less than 10 per centum of the funds handled by him and his predecessor or predecessors, if any, during the preceding fiscal year, but in no case more than $500,000. If the labor organization or the trust in which a labor organization is interested does not have a preceding fiscal year, the amount of the bond

shall be, in the case of a local labor organization, not less than $1,000, and in the case of any other labor organization or of a trust in which a labor organization is interested, not less than $10,000. . . .

532.002 SEE 29 CFR 453.13, 453.15, 453.16, 453.17

532.005 SCOPE

29 CFR Sections 453.13 through 453.17 discuss the requisite amount of the bonds which the statute declares shall be fixed "at the beginning of the organization's fiscal year . . . in an amount not less than 10 per centum of the funds handled by him and his predecessor or predecessors, if any, during the preceding fiscal year but in no case more than $500,000." Section 453.15 discusses specifically the meaning of funds handled "during the preceding fiscal year" which is the basis from which the amount of the bond is derived. Such a sum would ordinarily include the total of whatever funds were on hand at the beginning of the fiscal year plus any items received or added in the form of funds during the year. Thus, the amount handled at any one time is not a relevant consideration in determining the amount of the bond.

(Technical Revisions: Dec. 2016)

532.100 DUAL CAPACITY OF UNION OFFICER AND BULDING MANAGER

According to section 453.7 and 453.8, a person is required to be bonded only for the funds he handles. This would include both monies handled in a capacity of manager of-- a union's building (rent collections in addition to any other monies he may handle in this capacity), and monies which he may handle, for example, as financial secretary of his local union. It would not include the value of the building, but would include the value of securities and bank accounts.

(Technical Revisions: Dec. 2016)

532.200 FUNDS HANDLED TWICE BY SAME PERSONS

Once an item properly within the category of "funds" had been counted as handled by personnel during a year, there would be no need to count it again should it subsequently be handled by the same personnel during the same year in some other connection.

532.300 $500,000 LIMITATION APPLIES TO AMOUNT OF BOND ITSELF

The language of the law and the legislative history thereof leave no doubt that the $500,000 limitation applies to the amount of the bond itself, and not to the amount of funds handled, from which the amount of the bond is derived.

532.305 EXCESS COVERAGE

There is no prohibition against additional or excess coverage. The additional bond may be in any amount and form otherwise lawful and acceptable to the parties to each bond.

29 CFR 453.2(b)

532.310 COLLECTION FEE-BONDING CLAIMS

Where an international collects a bonding claim from a surety on behalf of a local and deducts a 20% "collection fee", it was held that such fee does not result in a deficiency in the bonding coverage required under section 502 of the LMRDA.

Under section 502, the sole measure of the adequacy of the amount of bond is the amount of funds handled by the insured during the preceding fiscal year. After a bond at least equal to 10% of the funds handled by the insured has been obtained, the Department could not assert that the bond is inadequate in amount simply because a subsequently recovered claim is partially depleted by payments or deductions for expenses of collection by the insured or his privy.

532.400 SAFEKEEPING AGREEMENT WITH A BANK

Funds covered by a safekeeping agreement with a bank are nevertheless to be considered in determining the amount of the bond required. The fact that a savings account is established in the name of a bank or the bank's nominee does not constitute such a restriction on access, withdrawal or control of the funds by the depositors, as would make bonding unnecessary.

(Revised: Dec. 2016)

532.500 FUNDS IN SAVINGS ACCOUNT

All officers individually or severally authorized to make withdrawals from a union's savings account are required to be bonded. If this is the only function performed by an officer which involves the handling of funds or other property of the union, the amount of his bond may be computed solely on the basis of the funds in the savings account, under application of the principles set forth in 29 CFR 453.15.

532. 600 FUNDS HANDLED DURING THE PRECEDING FISCAL YEAR

Funds handled "during the preceding fiscal year" include funds on hand at the beginning of the year plus funds received or added during the year for any reason. An item does not have to be counted twice should it be handled by the same person during the year in some other connection.

29 CFR 453.15

532.605 PRIOR FUND AS BASE

Where the present strike fund is the same trust as a prior strike fund, even though it is administered by a different organization, it is proper to base the bond for members of the administering committee on the amount of the funds handled by them or their predecessors in the prior fund in the preceding fiscal year.

(Technical Revisions: Dec. 2016)

TYPE OF BOND: HONESTY

533.01 LMRDA, SECTION 502(a)

. . . to provide protection against loss by reason of acts of fraud or dishonesty on his part directly or through connivance with others. . .

533.002 SEE 29 CFR 453.10 AND 453.12

FORM OF BOND: INDIVIDUAL OR SCHEDULE DESIGNATION OF INSURED

534.001 LMRDA, SECTION 502(a)

. . . Such bonds shall be individual or schedule in form, and shall have a corporate surety company as surety thereon . . .

534.002 SEE 29 CFR 453.18, 453.19.

The statute does not require individual bonds, although such bonds are, of course, permissible under its provisions. The statute also permits position schedule bonds. This latter type of bond normally does not raise problems concerning the coverage of successors to bonded personnel.

(Revised: Dec. 2016)

534.005 IN GENERAL

The statute does not require individual bonds, although such bonds are, of course, permissible under its provisions. The statute also permits position schedule bonds. This latter type of bond normally does not raise problems concerning the coverage of successors to bonded personnel.

534.010 CONGRESSIONAL INTENT

The statute requires that the bonds be “individual or schedule in form.” Leading representatives of the bonding industry informed the Department that there are two kinds

of bonds in current usage which are "schedule in form" – name schedule bonds and position schedule bonds. Congress probably knew this before it agreed on language for the provision and it did not qualify or restrict the word "schedule" in any way. It seems reasonable and proper that any schedule bond which meets the currently accepted usage of this term should be acceptable. Consequently, an individual bond, a position schedule bond, or a name schedule bond would meet the statutory requirement, "individual or schedule in form."

* 534.020 AGGREGATE OR MULTIPLE PENALTY BLANKET BONDS ARE PERMISSIBLE

The bonding provisions (section 502) of the LMRDA were amended in certain respects in 1965. The legislative record made in amending the provisions to authorize honesty bonds for labor organizations indicates that Congress was concerned not only with the additional costs for union bonds associated with "faithful discharge of duty" coverage, but also with the higher premiums on multiple penalty as opposed to aggregate penalty bonds. The House Report on the bill to amend section 502 (H.R. Rep. No. 182, 89th Cong. 1st Sess. 3) reflects Congress' desire to remove any distinction between bonding required by the LMRDA and by the WPPDA (Welfare & Pension Plans Disclosure Act, repealed in 1974 when ERISA enacted) with regard to these cost factors. In the light of this expression of Congressional intent, it is the opinion of the Solicitor of Labor that section 502 should no longer be interpreted as requiring multiple penalty bonds.

Accordingly, a bond written to cover all persons required by the LMRDA to be bonded is acceptable if it operates on either an aggregate or multiple penalty basis.

(Technical Revisions: Dec. 2016)

APPROVED SURETY

535.001 LMRDA, SECTION 502(a)

…Such surety company shall be a corporate surety which holds a grant of authority from the Secretary of the Treasury under the Act of July 30, 1947 (6 U.S.C. 6-13), as an acceptable surety on Federal bonds: Provided, That when in the opinion of the Secretary a labor organization has made other bonding arrangements which would provide the protection required by this section at comparable cost or less, he may exempt such labor organization from placing a bond through a surety company holding such grant of authority.

535.002 SEE 29 CFR 453.20 AND 453.26.

535.004

Criteria for exemption have not yet been promulgated. All inquiries relating to exemptions should be forwarded to the National Office.

535.005 SURETIES—AUTHORIZED BY TREASURY DEPARTMENT

See Treasury Department Circular 570 for list of corporate sureties holding grants of authority from the Secretary of the Treasury.

NOTE:

A copy of Treasury Department Circular 570, containing a list of companies holding certificates of authority as acceptable sureties on Federal bonds is included in the "Regulations" section at the end of this Manual.

See Manual Entry 290.001 ff
Re: Surety Company Reporting.

*535.010 SELF-INSURANCE PROHIBITED

A union is precluded from either depositing its own funds with a surety to pay 1osses or indemnifying a surety for losses sustained under a bond. Irrespective of the method used, self-insurance of union funds, either in whole or in part, fails to comply with the requirements of section 502 of the LMRDA.

Section 502(a) requires that every officer, agent, shop steward, etc., of any labor organization "who handles funds or other property thereof shall be bonded ..." (Emphasis supplied). Both this language and its legislative background make it clear that self-insurance arrangements are precluded, in whole or in part. This construction is directly supported by the statement of the House Labor Committee with respect to the exemption authority contained in the 1965 amendments to the LMRDA wherein it was stated that it was not the intention of the Committee, in giving discretionary authority to the Secretary, to sanction self-insurance on the part of labor organizations. If the exemption authority does not extend to self-insurance, then a fortiori these arrangements are not available to unions under section 502.

CONFLICT OF INTEREST–BONDING

536.001 LMRDA, SECTION 502(a)

...No such bond shall be placed through an agent or broker or with a surety company in which any labor organization or any officer, agent, shop steward, or other representative of a labor organization has any interest or indirect interest...

536.002 SEE 29 CFR 453.21

536.005 SURETY, AGENT OR BROKER–INTEREST IN

The section is designed to prevent placing of bonds through agents or brokers, and with surety companies, in which any labor organization or any officer, agent, shop steward, or other representative of a labor organization holds more than a nominal interest. This could include situations in which any of the above persons are in a position to influence or control the activities or operations of such brokers, agents, or surety companies, by virtue of interests held either directly or indirectly by them, or by relatives or third parties which they own or control.

29 CFR 453.21

(Revised: Dec. 2016)

536.010 SALARIED EMPLOYEE OF UNION AS AGENT

A salaried employee of a local union is precluded from acting as agent or broker on any LMRDA bond required by the union or any trust in which the union is interested when his duties are to oversee the union's various insurance needs, collect delinquent health and welfare premiums, process life insurance for the members' programs, process annual diagnostic examinations for the members and research any new business the union might require.

From the description of his duties it appears that he falls within the scope of the definition contained in section 3(q) of the LMRDA with respect to officer, agent, shop steward or other representative of a labor organization and thus, he is barred under section 502(a) from acting as agent or broker on any bond required under the LMRDA for any labor organization or any trust in which any labor organization is interested.

536.100 WHERE INSURANCE AGENT AND UNION PRESIDENT ARE RELATED

The fact that an insurance agent and union president are brothers would not be sufficient in and of itself to make the prohibition against direct or indirect interest contained in section 502 applicable. While not controlling, the presence of the relationship would, however, appear to be a circumstance entitled to some weight, along with other circumstances, in determining whether a direct or indirect interest exists in any given case. If, for example, in addition to the family relationship, any business relationship exists between the president and his brother, including a loan of any sort which would give rise to a legal interest or if they are engaged in any joint venture, trust relationship, etc., it would seem that the brother would be disqualified from acting as agent. Similarly, if the brother's wife or minor child has any business relationship with the union president, the brother would be disqualified from acting as agent by virtue of his legal interest in the estate of the wife or child.

From a practical standpoint, a strong case for disqualification may exist where a close relative holds a controlling interest in or serves as exclusive agent for a bonding company. However, in a case where the relative is one of thousands of agents who receive commissions from large companies, and where the agent does not have the power

to vary the terms of the bond or to conduct or to determine whether an investigation should be conducted, then disqualification would not appear to be warranted.

29 CFR 453.21 states that the disqualification, "would be effective if a labor organization or any of the specified persons are in a position to influence or control the activities…by virtue of interests held either directly by them or by relatives or third parties which they own or control." This statement should be interpreted to mean that the disqualification is effective if the persons specified can influence activities by virtue of interests owned or controlled by such persons or labor organization, irrespective of the degree of relationship or affinity and without regard to where legal title or ownership may happen to be vested.

(Revised: Dec. 2016 and Revised: Dec. 2019)

536.200 UNION'S OWN BONDING FUND

Sections 453.20 and 453.21 contain a discussion of the surety companies with which bonds required by the Act must be placed, and the agents through which this may be done. While it is evident that the disqualification of a union's own Fidelity Department under the principles set forth in section 453.21 will make it necessary for such union to modify its past practice of obtaining bonds through its Fidelity Department to carry out the Act's minimum requirements, there is nothing in the Act which will prevent the uses of the Fidelity Department to provide additional protection beyond the requirements of the Act.

536.300 ANOTHER UNION AS SURETY FOR BOND

As the statutory disqualification provisions regarding agents, brokers, and surety companies are based on the holding of any direct or indirect interest by "any" labor organization or "any" officer, agent, shop steward, or other representative of a labor organization, it appears that the disqualification applies even if such interest is held by a labor organization other than the one for which the bond is to be secured or by any personnel in any such labor organization.

See 29 CFR 453.21.

(Revised: Dec. 2016)

PAYMENT OF PREMIUM

537.002 SEE 29 CFR 453.24

537.005 COST OF BONDING

Since the Act does not prohibit the payment of the cost of the bonds by a trust fund of labor organizations, the decision as to who is to bear this cost is, as noted in 29

CFR Section 453.24, left to the discretion and agreement of the parties concerned in each case, subject to any limitations imposed by law or by their organic instruments. But see Manual Entry 531.403 (regarding bonding for ERISA-covered trusts).

(Revised: Dec. 2016)

537.100 BONDS SECURED BY NATIONAL OR INTERNATIONAL FOR SUBORDINATE BODIES

Section 502(a) does not prohibit an international organization from paying the premium for the required bonds of its affiliated units.

PROHIBITIONS AGAINST CERTAIN FINANCIAL AID TO OFFICERS

540.001 LMRDA, SECTION 503

(a) No labor organization shall make directly or indirectly any loan or loans to any officer or employee of such organization which results in a total indebtedness on the part of such officer or employee to the labor organization in excess of $2,000.

(b) No labor organization or employer shall directly or indirectly pay the fine of any officer or employee convicted of any willful violation of this Act
.

(c) Any person who willfully violates this section shall be fined not more than $5,000 or imprisoned for not more than one year, or both. See pamphlet, “Union Safeguards,” page 3.

540.005 LIMIT ON LOANS APPLIES TO SINGLE UNION

X, the President of a national organization of unions, obtained loans in various amounts, no one of which exceeded $2,000, from each of four locals affiliated with the national organization. X held office in each of these locals. The combined total of these loans was in excess of $2,000.

The language of section 503(a) does not appear to prohibit loans obtained by an officer from more than one labor organization in amounts of $2,000 or less.

UNION LOANS—DIRECT OR INDIRECT

541.005 SPECIAL TRUST FUNDS

Where an employer makes a contribution to a special fund to be used to insure against future uncertainty and risk to which an employee is subject, he is at the time of

the contribution, making a payment on behalf of the employee. This is so even though the employee himself may never receive any of the benefits contemplated by the plan, since the payment made on his behalf accords him the same protection in the form of potential benefits as the employee who actually receives benefits. It would thus follow that loans subsequently made from such vested payments in accordance with the plan should not be considered as direct or indirect loans made by a labor organization within the meaning of the prohibition contained in section 503(a) of the Act. See also Manual Entry 541.100, immediately below.

(Technical Revisions: Dec. 2016)

541.100 LOAN TO DISCHARGED MEMBER

Mr. X, a union member, was discharged from his job. He filed a grievance and while it was being adjudicated, the membership of the union voted to pay him his weekly salary of $125.00 for the period from his discharge until his grievance is finally settled. Mr. X signed an agreement to the effect that if he succeeds in obtaining a back-wage settlement on final adjudication, the amount advanced by the union will be considered a loan to be repaid. Nothing in the constitution or bylaws of the local or international prohibit such a transaction.

Even if the amount paid to Mr. X under this arrangement ultimately aggregates to more than $2,000, the limitation of section 503(a) of LMRDA does not apply as long as Mr. X is neither an "officer," as that term is defined in section 3(n) of the Act, nor an employee of the labor organization.

The act prohibited by section 502(a) is the making of loans in excess of $2,000 by labor organizations "to any officer or employee of such organization." The language of the sections clearly does not apply to all "employees" as defined in section 3(f).

(Technical Revisions: Dec. 2016 and Revised: Dec. 2019)

541.200 LOANS FOR BENEFIT OF THE UNION

Section 503(a) of the Act does not contain any exception for secured loans or for loans which are of benefit to the union. Therefore, a loan to a union employee to assist him in purchasing an automobile used for union business would in our opinion be a violation of section 503(a) if the advance resulted in a total indebtedness on the part of the employee to the union of more than $2,000.

541.300 PRE-LMRDA DEBTS

A reasonable construction of section 503 would be that it cannot render an indebtedness illegal which exceeded $2,000 prior to the effective date of the Act (September 14, 1959). However, if the total indebtedness was $2,000 or more on the effective date of the Act, section 503(a) would make illegal any loans after that date

which would increase the total indebtedness by any amount. Further loans would be prohibited until the total indebtedness had been reduced to the point where an additional loan would result in a total debt to the union of $2,000 or less.

541.400 BLOCK MORTGAGE LOAN

An international bought a block of 20 mortgages for investment purposes from a mortgage-lending institution. One of the mortgages was for a loan of $20,000.00 extended to an employee of the international by the institution at the request of a key official of the international, who also requested that this mortgage be included in the block.

Inasmuch as the loan in question was one made indirectly by the international, there appears to be a violation of sections 503(a) of the Act.

See also Manual Entry 214.720.

PROHIBITION AGAINST HOLDING OFFICE OR EMPLOYMENT

550.001 LMRDA, SECTION 504.

(a) No person who is or has been a member of the Communist Party or who has been convicted of, or served any part of a prison term resulting from his conviction of robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape assault with intent to kill, assault which inflicts grievous bodily injury, or a violation of title II or III of this Act, any felony involving abuse or misuse of such person's position or employment in a labor organization or employee benefit plan to seek or obtain an illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan, or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—

(1) as a consultant or adviser to any labor organization,
(2) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, employee, or representative in any capacity of any labor organization,
(3) as a labor relations consultant or adviser to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent, or employee of any group or association of employers dealing with any labor organization, or in a position having specific collective bargaining authority or direct responsibility in the area of labor-management relations in any corporation or association engaged in an industry or activity affecting commerce, or
(4) in a position which entitles its occupant to a share of the proceeds of, or as an officer or executive or administrative employee of, any entity whose activities are in whole or substantial part devoted to providing goods or services to any labor organization, or

(5) in any capacity, other than in his capacity as a member of such labor organization, that involves decision-making authority concerning, or decision-making authority over, or custody of, or control of the moneys, funds, assets, or property of any labor organization,

during or for the period of thirteen years after such conviction or after the end of such imprisonment, whichever is later, unless the sentencing court on the motion of the person convicted sets a lesser period of at least three years after such conviction or after the end of such imprisonment, whichever is later, or unless prior to the end of such period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) if the offense is a Federal offense, the sentencing judge or, if the offense is a State or local offense, the United States district court for the district in which the offense was committed, pursuant to sentencing guidelines and policy statements under section 994(a) of Title 28, determines that such person's service is any capacity referred to in clause (1) through (5) would not be contrary to the purposes of this Act. Prior to making any such determination the court shall hold a hearing and shall give notice of such proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The court's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this subsection.

(b) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(c) Definitions

For the purpose of this section—

(1) A person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

(2) A period of parole shall not be considered as part of a period of imprisonment.

(d) Salary of person barred from labor organization office during appeal of conviction

Whenever any person—

(1) by operation of this section, has been barred from office or other position in a labor organization as a result of a conviction, and

(2) has filed an appeal of that conviction,

any salary which would be otherwise due such person by virtue of such office or position, shall be placed in escrow by the individual employer or organization responsible for payment of such salary. Payment of such salary into escrow shall continue for the duration of the appeal or for the period of time during which such salary would be otherwise due, whichever period is shorter. Upon the final reversal of such person's conviction on appeal, the amounts in escrow shall be paid to such person. Upon the final sustaining of such person's conviction on appeal, the amounts in escrow shall be returned to the individual employer or organization responsible for payments of those amounts. Upon final reversal of such person's conviction, such person shall no longer be barred by this statute from assuming any position from which such person was previously barred.

NOTE:

The provision in this section relating to membership in the Communist Party has been held unconstitutional.
See Manual Entry 551.005.

(Revised: Dec. 2016 and Technical Revisions: Dec. 2019)

550.005 GUIDELINES TO SECRETARY'S CONSTRUCTION OF SECTION 504

See memorandum of understanding between Departments of Labor and Justice concerning investigation and prosecution of crimes and civil enforcement actions: www.dol.gov/olms/regs/compliance/Enforcement_Coord.htm.

(Revised: Dec. 2016)

550.100 UNION'S RIGHT TO IMPOSE MORE STRINGENT PROHIBITIONS

A, a member in good standing in Local X, was denied opportunity to be a candidate for the office of business manager of his local in a recent election under a provision of the local's bylaws which state, in pertinent part, that "No member shall be eligible for election, be elected, or hold office or position, and no person shall be employed who has been convicted of any crime involving moral turpitude offensive to trade union morality" (Emphasis added). A was convicted of forgery and received a suspended four-year sentence in 1953.

A filed a letter of complaint with the Secretary of Labor contending, among other things, that the subject provision of the local's bylaws imposes an unreasonable qualification on candidacy for union office. In support of this contention A suggests that section 504 of the Act establishes the qualifications for union candidacy in the area of criminal convictions, and since A would not be prevented from seeking office by section 504, the subject provisions is unreasonable.

The language of section 401(e) is designed to prevent a union from denying a member in good standing the right to seek and hold union office. At the same time the union is permitted to uniformly impose reasonable qualifications for office. While a

member's eligibility for candidacy is subject to the prohibitions of section 504, such eligibility is also subject to reasonable qualifications uniformly imposed by the union, and section 504 was not intended to, and does not, preempt the union's right to uniformly impose more stringent prohibitions against ex-convicts seeking office than that imposed by section 504. The subject provision would not appear to constitute an unreasonable qualification. See 29 CFR 52.34

NOTE:

Prior to filing a complaint with the Secretary A sought a preliminary injunction to restrain the union from holding a scheduled election until the question of his eligibility was settled. On the issue of the validity of the union bylaw, the court stated that section 401(e) contemplated that a union may impose greater restrictions concerning the eligibility of its members to hold office than that imposed by section 504 provided only that such restrictions are reasonable and are uniformly imposed.

Coburn v. Operating Engineers Local Union No. 3, 54 LRRM 2229 (N.D. Cal. 1963).

(Technical Revisions: Dec. 2016)

550.200 NONSALARIED PERSONNEL

The section 504(a) prohibition applies to any person who serves as an "officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, employee, or representative in any capacity of any labor organization," whether or not he serves in a paid position. See LMRDA Section 504(a)(2), 29 U.S.C. § 504(a)(2).

(Revised: Dec. 2016)

550.300 AFFIDAVITS

The Act contains no requirements for filing affidavits regarding the absence of Communist affiliations.

Section 201 of the Act repealed sections 9 (f), (g), and (h) of the LMRA (Taft-Hartley). Section 9(h) of the LMRA had provided that in order for a labor organization to use the facilities of the NLRB each officer of the labor organization and the officers of the national or international of which it was an affiliate or constituent unit had to file with the NLRB an affidavit stating that he was not a member of or affiliated with the Communist Party.

Note:

The provision in section 504 of the LMRDA relating to membership in the Communist party has been held unconstitutional. See Manual Entry 551.005.

*550.400 PERSON INELIGIBLE TO SERVE MAY NOT BE A CANDIDATE

A person who will be barred from serving in union office by section 504 is not eligible to be a candidate for such office. However, a person who will be eligible to serve on the date of the installation of officers may be a candidate, even though at the time of his nomination and election he is still within the period set forth in section 504. See 29 CFR 452.34.

(Revised: Dec. 2016)

550.500 WOMEN'S AUXILIARY

It is a conceivable that a body organized as a women's auxiliary could be so integrated with a union and charged with such responsibilities that one of its officers, etc., might be "an officer, organizer, or other employee…" of the union, so as to bring her within the scope of section 504.

550.600 PREEMPTION OF STATE CRIMINAL LAWS

In reference to the Labor-Management Reporting and Disclosure Act, the Supreme Court said in De Veau v. Braisted, 363 U.S. 144, 46 LRRM 2304 (1960): "The federal law expressly provides that none of its provisions are to be construed to impair the authority of states to enact and enforce general criminal laws with respect to the same group of serious felonies and disclaims pre-emption of state laws regulating the responsibilities of union officials excepting where such preemption is specifically provided."

The Court also stated that section 504 of LMRDA makes it clear "that section 504(a) was not to restrict state criminal law enforcement regarding the felonies there enumerated as federal bars to union office…." Braisted, 363 U.S. at 157. See also Bell v. Waterfront Commission, 279 F. 2d 854, 46 LRRM 2448 (2d Cir. 1960); Applegate v. Waterfront Commission, 184 F.Supp. 33, 46 LRRM 2983 (S.D.N.Y. 1960).

(Technical Revisions: Dec. 2016)

550.700 JURISDICTION OF FEDERAL COURTS OVER OFFICER'S SUIT

A U.S. District Court has jurisdiction to decide a suit brought by an elected union officer against his union for injunctive relief and a declaratory judgment interpreting section 504 as applied by his union in removing him from office. See Serio v. Liss, 300 F. 2d 386, 49 LRRM 2111 (3d Cir. 1961). See also Illario v. Frawley, 426 F.Supp. 1132, 1135, 94 LRRM 2834 (D.N.J. 1977) (applying Serio). U.S. District courts also have jurisdiction over suspended officer's claims against the U.S. Department of Labor for declaratory judgment that the officer was not "convicted" for purposes of section 504. See Harmon v. Teamsters Local Union 371, 832 F.2d 976, 977-78, 126 LRRM 2697 (7th Cir. 1987).

NOTE: Persons considered ineligible under §504(a) can petition judges to reduce the period of their ineligibility. See, e.g., United States v. Peters, 938 F.Supp.2d 296 (N.D.N.Y. 2013).

(Revised: Dec. 2016)

*550.710 INJUNCTIVE RELIEF

The U.S. Court of Appeals for the Seventh Circuit has held that the United States may not seek to enjoin a person who is ineligible to serve in union office by reason of section 504 from running for that office. Even though the person by taking office would subject himself and the union to the criminal penalties, section 504 provides no injunctive remedy against the individual or the union. United States v. Jalas, 409 F.2d 358, 70 LRRM 3265 (7th Cir. 1969), aff'gg 67 LRRM 2762 (N.D. Ill. 1968).

However, the election in which the person who is ineligible to serve is a candidate may be subject to challenge under section 402.

See also Manual Entry 550.400 and 29 CFR 452.34.

(Technical Revisions: Dec. 2016)

550.800 RESPONSIBILITY FOR REMOVAL OF CONVICTED OFFICER

Section 504(a) prohibits a "person" who has been convicted of one of the crimes enumerated therein from holding office in accordance with the terms of that subsection. If the "person" is a union officer at the time of his conviction, he must be removed from office by the other officers of the union. Failure of the union's officers to take steps to have the convicted officer removed from office is a violation of the last sentence of section 504(a) which states, in pertinent part: "No labor organization or officer thereof shall knowingly permit any person to assume or hold any office…in violation of this subsection." See, e.g., Herman v. American Postal Workers Union, 995 F.Supp. 1, 2, 157 LRRM 2623 (D.D.C.1997).

(Technical Revisions: Dec. 2016)

PROHIBITON AGAINST COMMUNISTS

551.005

In the case of United States v. Brown, 381 U.S. 437 (1965), the U.S. Supreme Court declared that the portion of section 504 (Prohibition Against Certain Person Holding Office) relating to membership in the Communist Party, was unconstitutional on the grounds that the language of the statute amounted to a bill of attainder within the meaning of Article 1, section 9, of the Constitution. 381 U.S. at 441-51.

In view of the separability clause in section 611 of the LMRDA, section 504 continues to be in full force and effect with regard to the convict provisions thereof.

United States v. Brown, 381 U.S. 437, 59 LRRM 2353 (1965).

(Technical Revisions: Dec. 2016)

PROHIBITION AGAINST CONVICTS

552.001 LMRDA, SECTION 504

See Manual Entry 550.001

(Revised: Dec. 2016)

552.005 LAW OF JURISDICTION DETERMINES OFFENSE

The law of the jurisdiction under which the conviction occurs determines whether the offense is one of the crimes specified. For convictions for crimes under state law, courts will determine, drawing guidance from that state's law, whether the crime is equivalent to one of those identified in Section 504(a). See, e.g., Herman v. American Postal Workers Union, 995 F.Supp. 1,2, 157 LRRM 2623 (D.D.C.1997); Berman v. Local 107, 237 F.Supp. 767, 770-772, 58 LRRM 2009 (E.D. Pa.1964). The prohibition applies even if the person convicted has not lost his citizenship rights as a result of the conviction.

(Revised: Dec. 2016)

552.010 FOREIGN CONVICTION

The prohibition in section 504 on the holding of union office by a person convicted of any of the crimes enumerated therein is applicable to foreign convictions as well as domestic convictions under certain circumstances.

Assuming that he was accorded due process of law, an officer of an International union, subject to the jurisdiction of the United States and whose membership consists predominantly of residents of the United States, who is convicted under Canadian law of a crime which corresponds substantially with one of the crimes listed in section 504, is barred from holding international office.

552.100 CLASSIFICATION AS MISDEMEANOR OR FELONY

The defendant was convicted of a violation of section 504(a) of LMRDA in that he served as an organizer for a local union within five years after "conviction for conspiracy to commit extortion." At the same trial, the president of the local union was convicted of violation of section 504(a) for knowingly permitting the defendant to assume and hold a paid position as an organizer of the local.

The defendant moved for a new trial contending (1) that his conviction of conspiracy to commit extortion under section 580 of the Penal Laws of the State of New York is a misdemeanor and that section 504 only disqualifies persons convicted of felonies from holding office.

In denying the defendant's motion for a new trial, the court stated:

> "The restrictive interpretation urged by defendants would attenuate the corrective action declared in section 504. The section speaks of disqualification of persons convicted of misdemeanors, in proscribing employment by a labor organization of persons convicted of a 'violation of Title II or III of this Act.' The Court concludes that persons convicted of any of the crimes stated in section 504(a) are ineligible, whether such crimes be classified as a misdemeanor or felony."

United States v. Priore, 236 F.Supp. 542, 56 LRRM 2580 (E.D.N.Y. 1964).

(Technical Revisions: Dec. 2016)

552.150 WHERE ELEMENTS OF CRIME INCLUDE CRIME LISTED IN SECTION 504

A labor organization officer convicted of a crime under a Federal or State statute, and actually incarcerated as a result thereof, is subject to the ban on holding union office if the crime of which he is convicted requires as an essential element thereof any of the crimes enumerated in section 504(a).
See language of Section (504(a); see also United States v. Priore, 236 F.Supp. 542, 56 LRRM 2580 (E.D.N.Y. 1964).

(Technical Revisions: Dec. 2016)

552.200 CONVICTION, NOT INDICTMENT, GOVERNS

Where a man is charged with conspiracy to bribe, but is indicted and convicted for conspiracy to defraud the United States, he is not convicted of any of the offenses enumerated in 504(a), nor of a conspiracy to commit any such crimes, and therefore is not precluded from serving as a union officer.

552.205 CONVICTION BASED ON CONFESSION

Section 504(a) of the LMRDA prohibits a person who has been convicted of extortion from holding office in a union for thirteen years after the date of conviction. A conviction based on a confession is nonetheless a conviction.

(Revised: Dec. 2016)

552.208 WHEN PROHIBITION BEGINS

The prohibitions of Section 504(a) begin upon the person's conviction or the end of the person's imprisonment, whichever is later. See Manual Entry 550.001 (language of Section 504(a)). For purposes of determining whether a person's "conviction" has occurred, courts consider state law, but also consider whether the purposes of Section 504 would be served by postponing the start of the period of prohibition. See Harmon v. Teamsters Local Union 371, 832 F.2d 976, 978-80 (7th Cir.1987).

552.210 APPEAL OF CONVICTION

See Manual Entry 550.001 (language of Section 504(a)(d) that explains how convicted person's salary will be paid into escrow while any appeal is pending). See also McMahan v. International Association of Bridge, Structural and Ornamental Iron Workers, 800 F.Supp. 1337 (D.S.C. 1991), aff'd in part, 964 F.2d 1462 (4th Cir. 1992), remand, 858 F.Supp. 529 , 146 LRRM 3113 (D.S.C.1994) (on remand from the Fourth Circuit, trial court upheld escrow provisions of Section 504(d) and granted officer's summary judgment against the local union, after the Fourth Circuit held that a former union officer whose conviction was reversed could bring claim against union under Section 504(d) for funds it was required to hold in escrow during appeal).

(Revised: Dec. 2016)

*552.220 DENIAL OF CERTIORARI

As set forth in Manual Entry 550.001, §504(d) provides that a convicted person's salary will be paid into escrow "for the duration of the appeal" and that "[u]pon the final reversal of such person's conviction" the amounts in escrow would be paid to that person. The references to "duration of appeal" and "final reversal" in this provision indicate that not until the U.S. Supreme Court has denied certiorari or the time has expired for seeking certiorari should the amounts in escrow be paid to whomever is entitled to them under §504(d).

(Revised: Dec. 2016)

552.500 NATURALIZATION OF CONVICT

X, an alien residing in the United States, is convicted in a State court of one of the crimes enumerated in section 504(a) and sentenced to a term in prison. After serving part of his sentence, X is paroled. While in a parole status he becomes a citizen of the United States. Subsequently he is released from parole. X immediately seeks to run for office in a labor organization.

QUESTION:

Is X required to wait thirteen years after the time he was released from parole (i.e., the end of his sentence) before he is eligible to be an officer of a labor

organization, or is the fact that X obtained citizenship subsequent to the commission of the crime equivalent, for the purpose of LMRDA, to the restoration of citizenship rights set forth in section 504(a) thereby making him immediately eligible?

HELD:

Naturalization as a United States citizen cannot be equated with the restoration of citizenship rights set forth in section 504(a). Section 504 is directed to the withdrawal of certain rights incident to citizenship such as the right to vote, the right to hold certain offices, etc. These rights are commonly denied an individual convicted of a felony and incarcerated in a penitentiary. His status as a citizen of the United States is not withdrawn, he is merely placed under a impediment by a state. While an individual is serving under such an impediment he is ineligible to serve as a union officer. His eligibility would be restored only when all of the rights which are denied him as a result of a conviction have been restored. In short, securing of U.S. citizenship through naturalization is not the equivalent of being fully pardoned (and thereby having one's citizenship rights fully restored) for purposes of section 504.

(Revised: Dec. 2016)

552.600 RESTORATION OF CITIZENSHIP RIGHTS

A union member convicted of one of the crimes enumerated in section 504 and incarcerated in the penitentiary as a result of such conviction is prohibited from holding union office only for the period following the termination of his imprisonment, even though his citizenship rights have not been restored.

(Revised: Dec. 2016 and Technical Revisions: Dec. 2019)

CRIMES COVERED BY SECTION 504

553.001 LMRDA, SECTION 504(a)

…robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation or narcotic laws, murder, rape, assault with intent to kill,, assault which inflicts grievous bodily injury, or a violation of title II or III of this Act, or conspiracy to commit any such crimes,…

553.305 HOBBS ACT—EXTORTION

A union officer was found guilty of conspiracy to obstruct interstate commerce by extortion under the Hobbs Act in 1956. He was sentenced to be confined for four years. After his release but prior to the end of the ban on holding union office imposed by section 504, the former office made application for a Certificate of Exemption to the U.S. Board of Parole. After the application was denied, he attempted to run for local union

office and was barred from so doing by the union, which relied upon an opinion of the Attorney General that he was barred from holding office by section 504 of LMRDA until January 10, 1966.

The former officer then brought this action against the union seeking a declaratory judgment that he is not subject to the sanctions imposed by section 504 since he was not convicted of one of the crimes enumerated therein. Upon application, the Attorney General was allowed to intervene as a defendant. The Attorney General contended that the crime of which the former office was convicted necessarily embraced extortion and is therefore included in the list of crimes enumerated in section 504 and moved for a summary judgment to dismiss the complaint.

In granting the defendant's motion for summary judgment, the court construed section 504 "as embracing any of the enumerated crimes, the commission of which is a necessary predicate for the guilty verdict" (i.e., violation of the Hobbs Act). In finding the former officer guilty of the Hobbs Act violation, the court stated, "it is inescapable that the jury…must have found that he was guilty of extortion because it was an essential element of the crime and there was no other means or method by which the conspiracy was established."

Postma v. International Brotherhood of Teamsters, Local 294, 337 F.2d 609, 57 LRRM 2298 (2d Cir. 1964).

(Revised: Dec. 2016)

553.310 CONSPIRACY TO EXTORT

A former convict served as an organizer for a local union. He was charged with violating section 504 and in defense contended that he was convicted of the crime of conspiracy (which is not listed as a crime under section 504) and not conspiracy to extort.

In overruling his contention, the court stated that reference to the indictment "makes it abundantly clear that defendant…was convicted of conspiracy to commit the crime of extortion." The court went on to say:

> "…The interpretation that will result in a rational scheme and give dimension to the purging action of section 504, is one which includes convictions obtained under the conspiracy statues of the several states, upon proof the conspiracy was entered into to commit the crime of extortion or any of the other crimes referred to."

United States v. Priore, 236 F.Supp. 542, 56 LRRM 2580 (E.D.N.Y. 1964).

(Technical Revisions: Dec. 2016)

553.400 FALSE ENTRIES IN CREDIT UNION RECORDS

Section 504(a) makes it a crime for a person who has been convicted of certain offenses enumerated in the section to hold office in a labor union. One of the prior convictions set forth is embezzlement.

X, a union officer, entered a plea of guilty to a violation of section 1006 of Title 18 of the United States Code. He received a suspended sentence of two years, was fined $300 and placed on probation for two years.

Section 1006 proscribes the making of false entries, statements, etc., in records of credit unions (methods used to cover up embezzlement) and while the offense is much like embezzlement, it appears from legislative history of the section that Congress did not intend to cover the offense in 18 U.S.C. 1006.

Therefore, since X was not convicted of embezzlement or any of the other crimes specifically enumerated in section 504(a), he is not proscribed from holding office by virtue of his having been convicted under 18 U.S.C. 1006.

(Revised: Dec. 2016)

553.505 CONSPIRACY TO CHEAT AND DEFRAUD

The plaintiff, a union member, brought an action for a declaratory judgment and sought an injunction which would order the defendant, a local union, to place his name on the ballot as a candidate for the office of business agent in the forthcoming election. Defendant had declared the plaintiff ineligible to be a candidate by reason of his conviction in 1963, under Pennsylvania law, for conspiracy to cheat and defraud the local. The plaintiff, at the time of this action, was in prison in Pennsylvania but had a petition before the court alleging that his conviction under State law was in violation of certain Federal constitutional rights.

Plaintiff's principal contention in this action was that since LMRDA does not specify "a conspiracy to cheat and defraud," his conviction was not covered by any of the specific terms of section 504. He further argued that section 504 of LMRDA "must be regarded as so penal in nature" that the doctrine of strict construction of penal statutes must be applied in this civil injunctive case.

Citing Serio v. Liss, Postma v. International Brotherhood of Teamsters, Local 294, and United States v. Priore (see Manual Entries 550.700, 552.100, 553.305, 553.310) the court rejects the argument that section 504 must be strictly construed in civil cases, holding that it should be interpreted liberally as a remedial statute.

The issue thus was whether the Pennsylvania crime of conspiracy to cheat and defraud is within one of the prohibitions of either embezzlement or grand larceny in section 504.

After lengthy analysis of Pennsylvania and Federal law the court concludes: "While aware of the technical differences under Pennsylvania law as to Larceny and a Conspiracy to Cheat and Defraud, I conclude that for the purposes of the Labor-Management Reporting Act, section 504, the state crime of conspiracy to cheat and defraud is the equivalent of grand larceny as used in section 504. Such a construction seems particularly consistent with the Congressional intent where the cheating and defrauding which resulted in the illegal dissipation of union funds were among the acts which Congress intended to eliminate by the enactment of the Labor-Management Reporting Act of 1959."

The court denied the request for an injunction and held that the plaintiff was not entitled to a declaratory judgment which would sanction placing his name on the ballot in the forthcoming election.
Berman v. Local 107, International Brotherhood of Teamsters, 237 F.Supp. 767, 58 LRRM 2009, (E.D. Pa. 1964).

(Technical Revisions: Dec. 2016)

EMBEZZLEMENT AND OTHER CRIMINAL CONVERSIONS

580.001 LMRDA, SECTION 501(c)

Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

*580.002 STATUTE OF LIMITATIONS FOR EMBEZZLEMENT CASES

Pursuant to 18 USC 3282, the statute of limitations for embezzlement cases under section 501(c) of the LMRDA is five years.

(Revised: Dec. 2016)

580.100 UNAUTHORIZED USE OF FUNDS

Defendant filed motion for judgment of acquittal after jury had returned verdict of guilty on embezzlement charge brought under section 501(c) of LMRDA.

In denying defendant's motion the court ruled that the phrase in section 501(c) "to his own use" does not require the Government to show that the appropriation of union funds was for the personal advantage of the defendant, but means simply "not to the use of the entruster."

The court further ruled that the conversion consisted of the use of union funds for political purposes with knowledge that such use was unauthorized and with the intent to deprive the union of its use of the funds. The fact that this was accomplished in an indirect manner does not militate against the crime because it was the intent of Congress to hold officers of labor organizations strictly to their responsibilities as fiduciaries of the funds entrusted to them.
United States v. Harrelson, 223 F.Supp. 869, 54 LRRM 2456 (E.D. Mich. 1963). See also United States v. Santiago, 528 F.2d 1130, 1135 (2d Cir. 1976).

(Technical Revisions: Dec. 2016)

580.150 UNLAWFUL CONVERSION OF UNION PROPERTY

The United States Court of Appeals for the Second Circuit upheld the conviction of three union officials for violation of section 501(c) of the LMRDA through the unlawful conversion of union property when for a fee they falsified information on union application forms to obtain high priority job classifications for unqualified members. United States v. Robinson, 512 F.2d 491, 88 LRRM 3433 (2d Cir. 1975), cert. denied sub nom., Villegas v. United States, 423 U.S. 853 (1975). The court held that the argument that there was no violation of section 501(c) because the forms had no intrinsic value was not persuasive. The court found that the statute does not require that the converted property be of any particular value, and in fact when the forms were filled in with false information their value to members who were not qualified for the higher job classification was great enough for them to pay $500 to $850 for them. The fact that no union funds were depleted did not remove the action of the officials from the reach of the statute because one of the aims of section 501(c) was to preclude the unjust enrichment of union officials which occurred in this instance. The court also found that the allocation of jobs by priority is a principal benefit of union membership and to the extent that this process was thwarted by the action of the officials in obtaining high priority job classifications for unqualified members, the union and its bona fide members suffered a loss. The court quoted with approval a definition of the unlawful and willful conversion of union property from United States v. Silverman, 430 F.2d 106, 127 (2d Cir. 1970), cert. denied, 402 U.S. 953 (1971) —"It is easy to understand how a union employee does this when he 'unlawfully and willfully' uses union fund in a manner that works to the personal benefit of himself or the payee and does not benefit the union whether or not the union went through the form of authorization; the 'union' presumably would have objected if it had been able to speak freely." Robinson, 512 F.2d at 495, quoting, Silverman, 430 F.2d at 127.

(Revised: Dec. 2016)

580.200 USE OF UNION CREDIT CARD FOR PERSONAL PURCHASES

The defendant, the secretary-treasurer of a local union, was found guilty by a jury in the U.S. District Court on an indictment charging him with embezzlement and

conversion of union money and of making false entries on the union's books in respect thereto in violation of sections 501 and 209 of LMRDA.

Evidence was presented in the District Court that the defendant used credit cards issued to the union by major oil companies for the purchase of gasoline, supplies and equipment for his boat. These purchases, which amounted to about two thousand dollars, were billed to the union and paid by union checks drawn on its bank account. These checks were signed by the defendant who approved the payment of all union bills and signed the checks.

On appeal, the defendant raised the question of whether his use of union funds constituted embezzlement or conversion. He contended that although the words in the statute, "embezzles…or converts to his own use," are in the disjunctive, they are synonymous; that the union's checking account was intangible property not capable of embezzlement or conversion.

In affirming the decision of the District Court, the Court of Appeals answers the defendant's contention as follows:

> "We are unable to follow this reasoning. We think the crime of conversion has even wider application than embezzlement. Congress recognized that there was a difference between embezzlement and conversion by including both in the statute. The union's bank account would certainly come within scope of the broad language of the statute, 'moneys, funds, securities, property, or other assets of a labor organization."
>
> "The language in the statute, 'embezzles, steals, or unlawfully and willfully abstracts or converts to his own use,' would seem to cover almost every kind of a taking, whether by larceny, theft, embezzlement or conversion."
>
> "In 501(a) of the Act Congress indicated rather clearly its policy with respect to the fiduciary responsibility of officers, agents and representatives of labor organizations, and it would appear that technical common law distinctions of various types of crimes were not intended to be rigidly applied."

United States v. Harmon, 339 F.2d 354, 58 LRRM 2033 (6th Cir. 1964), cert. denied, 380 U.S. 944, 58 LRRM 2591 (1965).

(Revised: Dec. 2016)

580.250 UNAUTHORIZED AUTOMOBILE LEASES FOR PERSONAL USE

The United States Court of Appeals for the Second Circuit upheld the convictions of two union officers for violating section 501(c) of the LMRDA when the officers, without authorization from the union and for personal reasons, used union funds to pay for long-term automobile leases for themselves and their friends and for gas and oil

expenditures. United States v. Ferrara, 451 F.2d 91 (2d Cir. 1971), cert. denied, 405 U.S. 1032 (1972).

(Technical Revisions: Dec. 2016)

580.300 TRUST FUNDS

It is the opinion of the Department of Justice that funds of a trust, established in accordance with section 302(c)(5) of the Taft-Hartley Act, are not funds or property of a labor organization, and the embezzlement or conversion of trust funds, therefore, does not constitute a violation of section 501 of the Reporting and Disclosure Act.

580.400 PUBLIC ACCOUNTANT

A public accountant who worked at a local union office one day a month, who performed the usual duties of an outside auditor (such as checking the receipt books to verify proper entry in the day book of all money received, verifying that checks issued were recorded in the cash disbursements journal, reconciling bank statements, etc.) and who in addition prepared checks, Social Security Reports, Form W-2's, Forms LM-1 and LM-2 and assisted in the election of the local's officers, was employed by the local within the meaning of section 501(c).

Persons employed by a labor organization, within the meaning of section 501(c) of the Act, include not only salaried employees but any person whose services are engaged or hired as an independent contractor to perform a particular job or contract for that labor organization. In view of the duties performed by the public accountant in question, he is deemed to be employed by the local during the entire period he performed these duties and is therefore subject to the provisions of section 501(c).

*580.405 ATTORNEY

An attorney who was retained as counsel for a labor organization was found guilty of violating section 501(c) of the LMRDA by charging and receiving payments for services which he had not rendered. On appeal he argued that (1) section 501(c) is applicable only to officers and employees of a union and not to "independent contractors" such as an attorney on retainer, and (2) section 501(c) is limited to embezzlement by "insiders" with inherent access to union funds.

The Court of Appeals held that the attorney was employed by the union within the meaning of section 501(c) of the LMRDA. That section specifically provides for the criminal liability of "any person" who is employed by a union. Its scope is not confined to the common-law sense of "employee" as a servant or a salaried person working under direct supervision.

The Court also ruled that section 501(c) is not limited to the common-law crime of embezzlement, which involves a misappropriation by one entrusted with funds, but

includes other forms of theft, stealing and converting. Its reach is therefore not limited to insiders such as officers and employees. Consequently, the fact that the attorney did not have direct access to union funds but had to have his bills approved by the union was irrelevant. United States v. Capanegro, 576 F.2d 973, 99 LRRM 2232 (2d Cir. 1978), cert. denied, 439 U.S. 928, 99 LRRM 2955 (1978).

(Technical Revisions: Dec. 2016)

580.500 IMPROPER PERSONAL EXPENSES: UNRELATED TO UNION BUSINESS

A union officer was convicted of embezzling and abstracting union money in violation of section 501(c) the LMRDA. The officer had submitted vouchers and had been paid by the union for personal expenses unrelated to union business. The personal expenses unrelated to union business included living expenses during certain winter months in Miami Beach, telephone bills for personal calls, and personal expenses charged on a credit card.

On appeal the court rejected the defendant's assertion that the evidence did not show willful intent. The court stated that: "Direct proof that acts are done unlawfully and willfully is not always necessary for such may often be inferred from the very fact that the acts constituting the crime have been committed." In this case there was "enough evidence from which the jury could have found beyond a reasonable doubt that the items were personal non-business expenses and in no way incurred in furtherance of the union's business. Therefore, the jury could reasonably have inferred, in turn, that appellant intended to receive and knew he was receiving union funds for purely personal expenses."

The court also held that the defendant was not absolved from guilt by the mere fact that subsequently "his expenses were...authorized and adopted by the union" after he had submitted the vouchers and been paid. The court said: "When one sends the union a voucher known to be an improper one, and then receives payment of the voucher, the crime is completed."

United States v. Dibrizzi, 393 F.2d 642, 68 LRRM 2377 (2d Cir. 1968).

(Technical Revisions: Dec. 2016)

580.600 CONSPIRACY TO EMBEZZLE–PERSONS NOT OFFICERS OR EMPLOYEES

Although only a person who is a union officer or is employed, directly or indirectly, by the union can violate section 501(c), a person who is neither a union officer nor employed by the union but who engages in a conspiracy to violate section 501(c) with at least one other person who is a union officer or employed by the union can be charged with conspiracy under 18 U.S.C. 371, which states in part:

> "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both."

It has been established that the phrase "any offense against the United States" in 18 U.S.C. 371 means a violation of any Federal statute, including a violation of section 501(c) of the LMRDA. See United States v. Smith, 200 F.Supp. 227 (D. Tenn. 1961), United States v. Hipsch, 34 F.Supp. 270 (D. Mo. 1950); United States v. Hiroku Komai, 286 F. 450 (S.D. Cal. 1923). It has also been established in numerous cases that as long as one participant in a conspiracy has the capacity to commit an offense, any other participants may be prosecuted for the conspiracy. Brown v. United States, 204 F. 2d 247 (6th Cir. 1953); Curtis v. United States, 67 F. 2d 943 (10th Cir. 1933); United States v. Lester, 363 F.2d 68 (6th Cir. 1966).

(Technical Revisions: Dec. 2016)

*580.710 INTENT ELEMENT

The federal courts of appeals have divided over the definition of [t]he essential elements of a section 501(c) crime. The position of the D.C., First, Second, Fourth and Fifth Circuits is that the prosecution must prove that the use or expenditure of money or property by the defendant(s) was "unauthorized" by the union. See United States v. DeFries, 129 F.3d 1293, 156 LRRM 2999 (D.C. Cir.1997); United States v. Walsh, 928 F.2d 7, 12, 136 LRRM 2913 (1st Cir. 1991); United States v. Hamilton, 2001 WL 51035, at *1-2 (2d Cir. Jan. 2, 2001); United States v. Stockton, 788 F.2d 210, 216-18, 122 LRRM 2408 (4th Cir.), cert. denied, 479 U.S. 840 (1986); United States v. Hammond, 201 F.3d 346, 349, 163 LRRM 2349 (5th Cir. 1999). The Second Circuit further requires that the prosecution prove that the defendant(s), acting with the intent to deprive the union of its property, lacked a good faith belief that the use of money or property was for the benefit of the union. See United States v. Butler, 954 F.2d 114, 118-19 (2d Cir. 1992). By contrast, the Third, Seventh, Eighth and Ninth Circuits apply a "totality of the circumstances" standard, in which whether the union authorized the defendant(s) use of money or property, and whether defendant(s) had a good faith belief that their action benefited the union, are only factors to be considered in determining whether the defendant(s) had the "fraudulent intent" required to prove a Section 501(c) crime. See, e.g., United States v. Oliva, 46 F.3d 320, 148 LRRM 2388 (3d Cir. 1995); United States v. Floyd, 882 F.2d 235, 239-41, 132 LRRM 2175 (7th Cir.1989); United States v. Welch, 728 F.2d 1113, 1119-20, 115 LRRM 3127 (8th Cir.1984); United States v. Thordarson, 646 F.2d 1323, 1334, 107 LRRM 2505 (9th Cir. 1981), cert. denied, 454 U.S. 1055 (1981).

(Revised: Dec. 2016)

ENFORCEMENT

ENFORCEMENT IN GENERAL

601.001 LMRDA, SECTION 601(a)

The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act (except title I or amendments made by this Act to other statutes) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this Act and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

601.005 SECRETARY MAY DELEGATE POWERS

Section 601 and Section 607 give the Secretary of Labor authority to delegate (1) his investigatory and subpoena powers to subordinate officers of his department and (2) his investigatory powers to other departmental agencies, including the Department of Justice.

Goldberg v. Battles, 196 F.Supp. 749 (E.D. Pa. 1961), aff'd, 299 F.2d 937 (3d Cir.) 48 LRRM 2820, cert. denied, 371 U.S. 817, 51 LRRM 2222 (1962). See also Memorandum of Understanding Between the Departments of Justice and Labor Relating to the Investigation and Prosecution of Crimes and Civil Enforcement Actions Under the Labor-Management Reporting and Disclosure Act of 1959 (Pub. L. 86–257), 75 FR 20602 (April 20, 2005); Secretary's Order 03-2012, 77 FR 69376 (Nov. 16, 2012); 78 FR 8024 (Feb. 5, 2013).

(Revised: Dec. 2016)

601.100 SUBPOENA OF DEPARTMENT'S RECORDS

In an action brought by the Secretary of Labor under section 402, defendant union obtained a subpoena duces tecum calling for wholesale disclosure of memoranda, reports and statements in possession of LMWP. The union sought this material in support of its defenses that the complaint filed under section 402(a) by a union member was not timely filed and was unlawfully solicited by the Secretary.

On a motion to quash the subpoena, the Government contended that the subpoena sought documents and information calling for disclosure of informant's communications and information as to the internal operations of the Department and that he has made no showing of good cause as required by the rules of procedure.

The court stated that the subpoena, by its terms sought disclosure of a variety of material whose relevance to any issue in the case was not apparent. Without deciding the force of the Government's arguments with respect to inspection of any particular document, the court held that federal discovery processes are not intended to require such wholesale disclosure as is contemplated by the subpoena in this case. The motion to quash was granted.

Wirtz v. Local Union 169, International Brotherhood of Hod Carriers, 58 LRRM 2364 (D. Nev.1965). See also Dole v. Local 1942, International Brotherhood of Electrical Workers, 870 F.2d 368 ,130 LRRM 2850 (7th Cir. 1989)(appeals court reversed district court decision ordering Labor Department to release the names of persons who made witness statements to OLMS investigators).

(Revised: Dec. 2016)

INVESTIGATIONS

605.005 "REASONABLE BASIS" NOT REQUIRED

Section 601 does not require that the Secretary first establish a "reasonable basis" for investigation, as this would in effect require a showing of "probable cause," which requirement Congress clearly rejected.
Goldberg v. Truck Drivers Local Union No. 299, International Brotherhood of Teamsters, 293 F. 2d 807 (6th Cir.), cert. denied, 368 U.S. 938 (1961). Accord International Brotherhood of Teamsters v. Goldberg, 303 F. 2d 402 (D.C. Cir.), cert. denied, 370 U.S. 938 (1962).

(Technical Revisions: Dec. 2016)

605.100 ELECTION INVESTIGATION

The power of the Secretary of Labor under section 601 of LMRDA to conduct an investigation of an election of union officers and to issue a subpoena duces tecum in

connection with such investigation is not limited to those violations complained of by an individual union member under section 402.

Section 402 provides for the Secretary's instituting an action in the courts in behalf of an individual who was complained of a violation of Title IV. It may be that some or all of the limitations of section 402, such as the exhaustion of internal remedies, are relevant to the suit which that section authorizes, and presumably the Secretary can bring an action only when a complaint has been filed by an individual member.

Section 601 provides that the Secretary shall "determine the facts relative" to a violation or threatened violation and that he may report the results of his investigation "to interested persons or officials." There is no limitation on the Secretary's power to investigate and report and it need not be predicated on a complaint. Wirtz v. Local 191, International Brotherhood of Teamsters, 218 F.Supp. 885, 53 LRRM 2783 (D. Conn), aff'd, 321 F.2d 445, 53 LRRM 2864 (2d Cir. 1963). See also Wirtz v. Local 57, International Union of Operating Engineers, 235 F.Supp. 701, 58 LRRM 2329 (D.R.I. 1964), aff'd, 346 F.2d 552, 59 LRRM 2310 (1st Cir. 1965); Wirtz v. Ross K. Edmonds and Cowdy Printcraft Press, Inc. 58 LRRM 2695 (D. Col. 1965). See also *Chao v. Local 743, International Brotherhood of Teamsters, AFL-CIO*, 467 F.3d 1014, 1020-1022 , 180 LRRM 2961 (7th Cir. 2006) (affirming district court's enforcement of Secretary of Labor's subpoena duces tecum for an election investigation).

(Revised: Dec. 2016)

SUBPOENA POWERS

610.001 LMRDA, SECTION 601(b)

For the purpose of any investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50).1/ are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him. (Underlining supplied.)

1/ FEDERAL TRADE COMMISSION ACT
(Sections 9 and 10)

Section 9: That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as contempt thereof.

Upon the application of the Attorney General of the United States at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States and witnesses whose depositions are taken, and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Section 10: Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make or cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall

willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corruption in his possession or within his control, shall be deemed guilty of any offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000 or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

(Technical Revisions: Dec. 2016)

610.005 NOT RESTRICTED TO ADMINISTRATIVE SUBPOENAS

A union refused to comply with a subpoena issued by the Secretary calling for the production of certain records on the grounds that the provisions of the Federal Trade Commission Act, which are incorporated by reference in LMRDA and are the source of the Secretary's subpoena power, permit only administrative subpoenas directed to a corporation being investigated or proceeded against.

In an action to enforce the subpoena the court rejected this contention on the basis that it is an incorrect interpretation of the FTC Act. While the power of success and copying regarding a corporate defendant in an FTC proceeding is limited as the union contends, the subpoena power is not so restricted.

Local 57, International Union of Operating Engineers v. Wirtz, 326 F.2d 467, 55 LRRM 2105 (1st Cir.1964).

(Technical Revisions: Dec. 2016),

610.015 SCOPE

In a summary proceeding the Federal Trade Commission applied to the U.S. District Court for an order to compel five corporate entities and their duly authorized representatives to appear, testify and produce documentary evidence in an exsparte investigation being conducted by the Commission. The court held that under authority of section 9 of the Federal Trade Commission Act, the Commission is empowered to remove subpoenaed books and records from Philadelphia, Pa., to Washington, D.C., and may retain them for a period of thirty days for the purpose of reproduction, if such removal and retention will not hinder the corporations' daily business operations.

Federal Trade Commission v. Standard American, Inc., 195 F.Supp. 801 (E.D. Pa. 1961), aff'd, 306 F. 2d 231 (3d Cir. 1962).

NOTE:

> In view of the fact that section 9 of the Federal Trade Commission Act is incorporated by reference in section 601(b) of the LMRDA, the effect of this decision is that the same authority is applicable to the Secretary of Labor. Therefore, the Department under its subpoena power may take into its complete custody books and records produced in response to a subpoena duces tecum and may remove them from their place of production and retain them for a reasonable period of time for the purpose of reproduction, provided such retention and removal will not interrupt the organization's daily business operations.
>
> (Technical Revisions: Dec. 2016)

610.100 ANY "PERSON"

Section 601(a) empowers the Secretary of Labor to subpoena any person he deems necessary to determine whether a violation of LMRDA has occurred, thereby granting the Secretary authority to question persons other than those directly charged with duties and responsibilities under the Act.

Goldberg v. Battles, 196 F.Supp. 749, 48 LRRM 2820 (E.D. Pa. 1961), aff'd, 299 F.2d 937, 49 LRRM 2834 (3d Cir. 1962), cert. denied, 71 U.S. 817, 51 LRRM 2222 (1962).

(Technical Revisions: Dec. 2016)

610.105 UNION AS "PERSON"

A local union refused to comply with a subpoena issued by the Secretary of Labor in furtherance of an investigation under section 601 of LMRDA to produce certain records. The district court granted an order enforcing the subpoena and requiring the union to produce the records. The union appealed to this court.

The principal union contentions on appeal were:

> The subpoena was "misdirected" because it was addressed to an unincorporated voluntary association and this case is unique because a statutory immunity provision is involved and unless the subpoena is directed to a natural person the intended immunity will not be achieved.

The court rejected this contention stating:

> It is well settled that an unincorporated labor union has no constitutional privilege against self-incrimination, and equally well settled that an officer of such an association is not entitled to invoke a personal privilege in the mere production of its records in a representative capacity…. We find no indication that Congress intended to grant an immunity more extensive than that required to obtain testimony or other evidence over a claim of the constitutional privilege.

Local 57, International Union of Operating Engineers v. Wirtz, 326 F.2d 467, 469, 55

LRRM 2105 (1st Cir. 1964).

(Technical Revisions: Dec. 2016)

610.110 USE—COVERAGE CASE

Electricians & Associates, Inc. refused to obey a subpoena issued by the Secretary in initiating an investigation as to its status under the Act, contending that the Secretary had to show the organization being investigated is subject to the Act before he could investigate and issue subpoenas. The court rejected this argument and ordered the corporation to obey the subpoena. In reaching this conclusion, the court held that the Secretary was authorized by Congress to determine the question of coverage during his preliminary investigation of possible violations of the LMRDA and could exercise his subpoena power to secure evidence to resolve the questions of coverage.

Wirtz v. Electricians & Associates, Inc., 51 LRRM 2675 (D. Minn. 1962).

NOTE:

The defendant in the above cited case was a "subsidiary organization" of a labor organization.

(Technical Revisions: Dec. 2016)

610.200 APPLICABILITY TO EMPLOYER

The case was brought by the Secretary of Labor to compel certain officers and managing officials of a company meeting the employer definition in section 3(e) of LMRDA to testify in response to a subpoena at a hearing conducted in connection with an investigation under section 601(a) of LMRDA concerning a possible violation of section 203 of the Act.

Defendants had refused to answer certain questions asked of them at the hearing on the grounds: (1) The privilege against self-incrimination in the Fifth Amendment to the Constitution does not permit the Government to compel them to testify on matters which might tend to incriminate them; (2) they had already testified to the grand jury concerning this matter; (3) the presence at the hearing of the Department of Justice attorney who conducted the grand jury proceedings; and (4) they were not informed of the factual foundation of the investigation.

The Court of Appeals agreed with the district court judge that the Fifth Amendment privilege was not available to defendants because the subpoenas, as supported by the district court's order to testify, made them immune from prosecution, and where immunity is granted the privilege ceases to exist The appeals court further held that the grant of immunity, as implemented by the district court's order, was coextensive with the constitutional privilege of defendants not to incriminate themselves,

and under then-recently new U.S. Supreme Court precedent protected them against prosecution under both federal and state law. Accordingly, the appeals court affirmed the district court's judgment, and therefore that court's order to the defendants to testify before the Secretary of Labor's representative pursuant to the subpoenas ad testificandum served upon them.

Wirtz v. Robb, 235 F.Supp. 913, 58 LRRM 2324, (E.D. Mich. 1964), aff'd, 346 F.2d 192, 59 LRRM 2481 (6th Cir. 1965).

(Revised: Dec. 2016)

610.305 EXTENT OF IMMUNITY

Any grants of immunity to defendants or witnesses would now be done only in close coordination with the U.S. Attorney's office of the U.S. Department of Justice.

(Revised: Dec. 2016)

610.330 FEDERAL AND STATE IMMUNITY

Two officials of a company meeting the employer definition in section 3(e) of the LMRDA appealed from an order of the U.S. District Court holding them guilty of contempt for refusing to obey that court's order to answer questions asked them by a representative of the Secretary of Labor. They were served subpoenas ad testificandum during an investigation by the Secretary under section 601 of LMRDA.

The two officials refused to answer the questions on the ground that their answers might incriminate them and that the district court erred in holding that they had been granted immunity from both Federal and State prosecution.

In affirming the judgment of the district court, the U.S. Court of Appeals for the Sixth Circuit stated that the grant of immunity implemented by an order of the district court it protects appellants from both Federal and State prosecution with respect to matters concerning which they have been ordered to testify.

Wirtz v. Robb, 235 F.Supp. 913, 58 LRRM 2324 (E.D. Mich. 1964), aff'd, 346 F.2d 192, 59 LRRM 2481 (6th Cir. 1965) (relying on U.S. Supreme Court decisions in Malloy v. Hogan, 378 U.S. 1 (1964) and Murphy v. Waterfront Commission of New York Harbor, 378 U.S. 52 (1964)).

(Revised: Dec. 2016)

610.350 ALLEGEDABSENCE OF IMMUNITY

A party is not entitled to refuse to comply with a subpoena on the grounds that:

(1) He would be subject to State prosecution; or

(2) A subsequent finding that the subpoena was a nullity would remove immunity from prosecution.

Goldberg v. Battles, 196 F.Supp. 749, 48 LRRM 2820 (E.D. Pa. 1961), aff'd, 299 F.2d 937, 49 LRRM 2834 (3d Cir. 1962), cert. denied, 71 U.S. 817, 51 LRRM 2222 (1962). See also Wirtz v. Robb, 235 F.Supp. 913, 58 LRRM 2324 (E.D. Mich. 1964), aff'd, 346 F.2d 192, 59 LRRM 2481 (6th Cir. 1965) (grant of immunity from federal prosecution would also immunize from state prosecution).

(Revised: Dec. 2016)

610.360 LMRDA IMMUNITY GRANTED BY UNITED STATES ATTORNEY' S SUBPOENA

The Supreme Court recently affirmed a decision of a United States district court dismissing an indictment of an employer for making unlawful payments to a union representative in violation of section 302 of the Taft-Hartley Act. The indictment was dismissed on the ground that it was based on the employer's testimony before a grand jury after he was subpoenaed by a United States Attorney in accordance with the Memorandum of Understanding between the Departments of Justice and Labor.

The court held that the employer was immune because the matters under investigation at the time he was subpoenaed and his oral testimony before the Grand Jury pertained to violations of LMRDA.

United States v. Weber, 255 F.Supp. 40 (D.N.J. 1965), aff'd sub nom., United States v. Fisher, 384 U.S. 212 (1966).

(Technical Revisions: Dec. 2016)

*610.365 IMMUNITY APPLIES ONLY IN "LABOR INVESTIGATION"

In United States v. Norton, 277 F.Supp. 1002 (D.N.J. 1967), union officials who had been indicted for violation of section 501(c) of the LMRDA and other offenses had been subpoenaed by the United States Attorney and had testified before the grand jury as to matters which were directly related to the charges in the indictment. They moved for dismissal of the indictment, arguing that the Department of Justice in its investigation was acting as agent for the Secretary of Labor pursuant to the 1960 Memorandum of Understanding between the two Departments and that, therefore, they were entitled to immunity under section 601(b) of the LMRDA and 15 U.S.C. 49.

The court dismissed the motion, holding that the immunity provisions relating to the proceedings before the Secretary of Labor were inapplicable since the investigation which led to the defendants' testimony before the grand jury was entirely under the

direction of the Justice Department. The court stated that the investigation was not a "labor investigation" since it involved "a number of diverse Federal violations, including extortion, embezzlement, perjury and obstruction of justice."

The court distinguished the Norton case from United States v. Weber, 255 F.Supp. 40 (D.N.J. 1965), aff'd sub nom., United States v. Fisher, 384 U.S. 212 (1966) (Manual Entry 610.360), on the ground that the earlier case involved a "labor investigation" by both BLMR (now OLMS) investigators and the Select Committee on Improper Activities in the Labor-Management Field, 85th Congress.

See also United States v. Zirpolo, 288 F.Supp. 993 (D. N.J. 1968), rev'd on other grounds, 450 F.2d 424 (3d Cir. 1970), in which an investigation by LMWP (now OLMS) of possible embezzlement of union funds was transferred to the Justice Department after possible Hobbs Act violations were discovered. Labor Department compliance officers had interviewed two potential defendants before the case was turned over to the Department of Justice and before a grand jury was impanelled.

The grand jury indictment alleged violation of the Taft-Hartley and Hobbs Acts. The court ruled that since no LMRDA offenses under the jurisdiction of the Secretary of Labor were charged, and since no defendant had testified or produced evidence in response to a subpoena issued by or on behalf of the Secretary of Labor, the immunity provided by section 601(b) of the Act did not apply.

(Revised: Dec. 2016)

610.400 EXISTENCE OF RECORDS

A subpoena duces tecum directing a corporation to appear before an Area Director of BLMR (now OLMS) with certain records of the corporation was upheld by the District Court in Georgia over the objection of the corporation that the records in question did not in fact exist.

The court held that the question of the existence of the subpoenaed records was one to be determined by the Area Director before whom the corporation officers were directed to appear by the subpoena and was, therefore, not properly before the court. Goldberg v. Sewell Manufacturing Co., 210 F.Supp. 293, 51 LRRM 2224 (N.D. Ga. 1962).

(Technical Revisions: Dec. 2016)

610.405 REPORTING RECORDS

A subpoena duces tecum, issued by the Secretary of Labor under section 601, was held not to be too broad where a union was required to produce records used in making reports filed under LMRDA. It was held not to be unreasonable to compel production of the records which the Act requires the union to keep for five years for the purpose of

verification of reports submitted under the Act. Goldberg v. Truck Drivers Local Union No. 299, International Brotherhood of Teamsters, 293 F. 2d 807, 48 LRRM 2868 (6th Cir.), cert. denied, 368 U.S. 938 (1961). Accord International Brotherhood of Teamsters v. Goldberg 303 F. 2d 402 (D.C. Cir.), cert. denied, 370 U.S. 938 (1962).

(Technical Revisions: Dec. 2016)

COOPERATION WITH OTHER AGENCIES AND DEPARTMENTS

630.001 LMRDA, Section 607

In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this Act and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this Act. The Attorney General or his representative shall receive from the Secretary for appropriate action such evidence developed in the performance of his functions under this Act as may be found to warrant consideration for criminal prosecution under the provisions of this Act or other Federal law.

630.002 NOTICE OF MEMORANDUM OF UNDERSTANDING BETWEEN DEPARTMENTS OF JUSTICE AND LABOR RELATING TO THE INVESTIGATION AND PROSECUTION OF CRIMES AND CIVIL ENFORCEMENT ACTIONS UNDER THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959 (P.L. 86-257)

Whereas, the Labor-Management Reporting and Disclosure Act of 1959 (Public Law 86-257; 73 Stat. 519) imposes certain duties and responsibilities upon the Attorney General and Secretary of Labor with regard to prosecution of crimes arising under the Act and civil enforcement actions under the Act; and

Whereas, that Act, in section 601, imposes upon the Secretary of Labor the responsibility for conducting investigations of persons who have violated, or are about to violate, any provision of the Act (except Title I, or amendments made by this Act to other statutes); and

Whereas, that Act, in section 607, provides that the Secretary of Labor may make interagency agreements to avoid unnecessary expense and duplication of functions

among Government agencies and ensure cooperation and mutual assistance in the performance of functions under the Act; and

Whereas, it is desirable and essential that areas of responsibility and procedures in connection with any investigations, prosecutions of offenses and civil enforcement actions arising under the Act should be the subject of formal agreement between the Departments;

It is hereby agreed and understood between the Department of Justice and the Department of Labor as follows:

1. *Criminal Prosecutions.* All cases involving violation of the criminal provisions of the Act will be prosecuted by the Department of Justice. Those cases investigated by the Department of Labor, hereinafter detailed, will be referred to the appropriate United States Attorney's office(s) where the criminal violation(s) occurred or to the Criminal Division, Department of Justice, as provided in section 607.

2. *Investigations of Matters Made Criminal by the Act.* Subject to specific arrangements agreed upon by the Department of Justice and the Department of Labor on a case by case basis, investigations under the Act will be conducted as follows:

(a) The Department of Labor will through its own staff investigate those criminal matters arising under:

1. Title II (Reporting by labor organizations, officers and employees of labor organizations and employers).

2. Title III (Trusteeship).

3. Section 501(c) (Embezzlement of union funds) of Title V.

4. Section 502 (Bonding) of Title V.

5. Section 503 (Making of loans and payment of fines) of Title V.

6. Section 504 (Prohibition against certain persons holding office) of Title V.

7. Section 602 (Extortionate picketing) of Title VI.

8. Section 610 (Deprivation of rights by force and violence) of Title VI.

(b) The Department of Justice will investigate those criminal matters arising under section 505 (Containing an amendment to section 302, Labor Management Relations Act, 1947, as amended) of Title V, and under delegation from the Secretary of Labor, section 501(c) (Embezzlement of union funds) of Title V, section 504 (Prohibition

against certain person holding office) of Title V, and section 610 (Deprivation of rights by force and violence) of Title VI.

3. *Notification*. Whenever either Department learns or is informed of any matter coming within the investigative jurisdiction of the other Department, as set forth above, it will notify such other Department in writing and furnish all information in its possession regarding the matter.

4. *Exercise of other functions*. Exercise of delegated investigative authority by the Department of Justice pursuant to this agreement shall not preclude the Department of Labor from making inquiries for the purpose of administrative action related to the crime being investigated. Nothing in this Memorandum of Understanding shall be construed to affect the investigative jurisdiction of the Department of Justice under other statutes.

5. *Prosecution of Civil Enforcement Actions*. Any violations of the Act, which form the basis for civil enforcement actions, will be investigated by the Department of Labor. Whenever the Department of Labor concludes that a civil enforcement action should be instituted, it will refer the case to the Department of Justice, with the request that suit be instituted on behalf of the Secretary of Labor, and will furnish the Department of Justice with all pertinent information in the possession of the Department of Labor. Upon receipt of such request, the Department of Justice will institute and will conduct the civil enforcement action on behalf of the Secretary of Labor. The Department of Justice will not institute any civil enforcement action under the Act except upon the request of the Department of Labor, nor will the Department of Justice voluntarily dismiss any action so instituted except with the concurrence of the Department of Labor. The Department of Justice will dismiss any action so instituted upon the request of the Department of Labor. Department of Justice attorneys will collaborate with the attorneys of the Office of the Solicitor of Labor in the preparation and, to the extent feasible, in the presentation of such actions in court.

6. *Section 504(a) Proceedings*. Subject to specific arrangements agreed upon by the Department of Justice and the Department of Labor on a case by case basis, the Department of Labor through its own staff will investigate matters arising under section 504(a) (B) of Title V, as amended, (judicial determination that a disqualified person's service in any prohibited capacity would not be contrary to the purposes of the LMRDA). Following the investigation, the Department of Labor will issue its views on the appropriateness of such a judicial determination under section 504(a) (B). The Department of Justice will present the Secretary of Labor's views before a federal sentencing judge or United States district court, by making all necessary appearances and filings. Department of Justice attorneys will collaborate with the attorneys of the Office of the Solicitor of Labor in the preparation and, to the extent feasible, in the presentation of the Secretary's views in court. With respect to relief under section 504(a) by judicial reduction of the period of disability, the Department of Justice will seek the views of the Department of Labor prior to opposing or agreeing to a request for such relief by a criminal defendant or disqualified person.

7. *Instructions*. So that the terms of understanding will be effectively performed, both Departments will issue instructions for the guidance of its officers, such instructions to be submitted for comment to the other Department prior to their issuance.

8. Periodic reviews of this agreement will be made to determine any adjustments which seem necessary based on experience under this Act.

Signed at Washington, D.C., this 18th day of January 2005.

/signed/ /signed/

John Ashcroft, Attorney General Elaine L. Chao, Secretary of Labor

(Revised: Dec. 2016)

630.005 INVESTIGATION BY ATTORNEY GENERAL

The Attorney General is authorized under section 601 to investigate, in behalf of the Secretary of Labor, the incumbency of a business agent previously convicted of atrocious assault and battery, and to express his belief that the business agent is illegally occupying his position where it had not been 5 years since he had been relieved from conditions of parole.
Serio v. Liss, 189 F.Supp. 358, 364, 47 LRRM 2225 (D.N.J. 1960), aff'd, 300 F.2d 386, 40 LRRM 2111 (3d Cir. 1961).

(Technical Revisions: Dec. 2016)

SERVICE OF PROCESS

640.001 LMRDA, SECTION 605

For the purposes of this Act, service of summons, subpoena, or other legal process of a court of the United States upon an officer or agent of a labor organization in his capacity as such shall constitute service upon the labor organization.

640.005 SERVICE UPON TRUSTEE

In an action by the members of a local to terminate the local's trusteeship and for an accounting of the local's funds, there was sufficient service where the marshal served a 1ocal union officer individually and as representative of the international because under section 605 of LMRDA service "upon an officer or agent of a labor organization in his capacity as such shall constitute service upon the labor organization." Executive Board, Local Union No. 28, I. B. E. W. v. International Brotherhood of Electrical Workers, 184 F.Supp. 649, 653, 46 LRRM 2159 (D. Md. 1960).

(Technical Revisions: Dec. 2016)

640.100 SERVICE ON "SHOP STEWARD"

Action against union was dismissed because process was served on the union's grievance man, or shop steward, and since he was not an officer or agent of the union within the meaning of section 605, service of such process was held not to constitute valid service upon the labor organization.
Jackson v. Local 2497, United Steelworkers, 56 LRRM 2903 (W.D.N.Y. 1964).

(Technical Revisions: Dec. 2016)

MISCELLANEOUS PROVISIONS

651-659 (Numbers Reserved)

660 Effect of LMRDA on State and Other Federal Laws

661-669 (Numbers Reserved)

670 Extortionate Picketing

671-674 (Numbers Reserved)

675 Crimina1 Contempt Limitation

676-679 (Numbers Reserved)

680 Applicability of Administrative Procedure Act

681-684 (Numbers Reserved)

685 Separability Provisions

686-699 (Numbers Reserved)

EFFECT OF LMRDA ON STATE AND OTHER FEDERAL LAWS

660.001 LMRDA, SECTION 603

(a) Except as explicitly provided to the contrary, nothing in this Act shall reduce or limit the responsibilities of any labor organization or any officer, agent, shop steward, or other representative of a labor organization, or of any trust in which a labor organization is interested, under any other Federal law or under the laws of any State, and, except as explicitly provided to the contrary, nothing in this Act shall take away any right or bar any remedy to which members of a labor organization are entitled under such other Federal law or law of any State.

(b) Nothing contained in titles I, II, III, IV, V, or VI of this Act shall be construed to supersede or impair or otherwise affect the provisions of the Railway Labor Act, as amended, or any of the obligations, rights, benefits, privileges, or immunities of any carrier, employee, organization, representative, or person subject thereto; nor shall anything contained in said titles (except section 505) of this Act be construed to confer any rights, privileges, immunities, or defenses upon employers or to impair or otherwise affect the rights of any person under the National Labor Relations Act, as amended.

SECTION 604

Nothing in this Act shall be construed to impair or diminish the authority of any State to enact and enforce general criminal laws with respect to robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, or assault which inflicts grievous bodily injury, or conspiracy to commit any of such crimes.

660.005 STATE LAWS NOT PREEMPTED

When Congress meant preemption to flow from the Act, it expressly so provided. Sections 205(c) and 403 are express provisions excluding the operation of state law, supplementing provisions for new federal legislation. In addition, two sections of the Act affirmatively preserve the operation of state laws. That section 504(a) was not to restrict state criminal law enforcement regarding the crimes enumerated as federal bars to union office is provided by section 604. To make the matter conclusive, section 603(a) is an express disclaimer of preemption of state laws regulating the responsibilities of union officials except where such preemption is expressly provided in the Act. De Veau v. Braisted, 363 U.S. 144, 156-57, 46 LRRM 2304 (1960).

NOTE:

Subsequent cases taking the view that the LMRDA does not diminish the States' authority to enforce their own laws include:

Fitzgerald v. Catherwood, 388 F.2d 400, 403-06, 67 LRRM 2232 (2d Cir. 1968), cert. denied, 391 U.S. 934 (1968).

Applegate v. Waterfront Commission of New York Harbor, 184 F.Supp. 33, 35, 46 LRRM 2983 (S.D.N.Y. 1960).

Bell v. Waterfront Commission of New York Harbor, 279 F.2d 853, 856, 46 L.R.R.M. (BNA) 2448 (2d Cir. 1960).

United States v. Haverlick, 195 F.Supp. 331, 332, 49 LRRM 2006 (N.D.N.Y. 1961), aff'd, 311 F.2d 229, 52 LRRM 2193 (2d Cir. 1963).

(Technical Revisions: Dec. 2016)

660.100 RAILWAY LABOR ACT

The Labor-Management Reporting and Disclosure Act of 1959 in no way changes the Railway Labor Act. However, Titles I - VI of LMRDA include within the scope of their

coverage labor organizations (including officers thereof) subject to the Railway Labor Act.

EXTORTIONATE PICKETING

670.001 LMRDA, SECTION 602

(a) It shall be unlawful to carry on picketing on or about the premises of any employer for the purpose of, or as part of any conspiracy or in furtherance of any plan or purpose for, the personal profit or enrichment of any individual (except a bona fide increase in wages or other employee benefits) by taking or obtaining any money or other thing of value from such employer against his will or with his consent.

(b) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

670.005 PERSONAL PROFIT

The section 602(a) prohibition of extortionate picketing is enforced by criminal proceedings upon prosecution by the Department of Justice, and what constitutes "for the personal profit of any individual" as that phrase is used in the section is a matter for determination by the Department of Justice.

CRIMINAL CONTEMPT LIMITATION

675.001 LMRDA, SECTION 608

No person shall be punished for any criminal contempt allegedly committed outside the immediate presence of the court in connection with any civil action prosecuted by the Secretary or any other person in any court of the United States under the provisions of this Act unless the facts constituting such criminal contempt are established by the verdict of the jury in a proceeding in the district court of the United States, which jury shall be chosen and empaneled in the manner prescribed by the law governing trial juries in criminal prosecutions in the district courts of the United States.

(Technical Revisions: Dec. 2019)

APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT

680.001 LMRDA, SECTION 606

The provisions of the Administrative Procedure Act shall be applicable to the issuance, amendment, or rescission of any rules or regulations, or any adjudication, authorized or required pursuant to the provisions of this Act.

SEPARABILITY PROVISIONS

685.001 LMRDA, SECTION 611

If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.
See Manual Entry 551.005.

(Technical Revisions: Dec. 2016)

TOPICAL INDEX

ARRANGEMENT AND ABBREVIATIONS USED

In General:

This is a topical index of the interpretative material in the Manual. Reference is made from each word indexed to the number assigned to the Manual entry in which the particular subject is discussed, for example, ABSENTEE BALLOT – 442.500. In certain instances the index will refer the reader to the particular section of the Regulations in which the topic is discussed, for example, SPECIAL REPORTS, O. & E. Rep. – 29 CFR 404.4.

Abbreviations:

Certain abbreviations have been used in the interest of brevity. The letters "ff" after an entry number mean "following." In instances where this abbreviation is used, the entries following the one referred to should be examined since they include material relating to the subject involved.

Other abbreviations are:

O. & E. Rep.	-	Officer and Employee Report
Cons. Rep.	-	Consultant Report
Emp. Rep.	-	Employer Report
Tr. Rep.	-	Trusteeship Report
Qual. of Nom.	-	Qualifications of Nominee
Nom.	-	Nominee
Coll. Barg. Agm't.	-	Collective Bargaining Agreement
S. or Sec.	-	Section

Format:

Under major capitalized subjects certain topics are indented indicating references to entries under the same general subject. For example:

ENTRY	EXPLANATION
DUES,	
Advance Payment in Checkoff, Voting	443.425 – Subtopic under "DUES"
Checkoff,	442.171 – Subtopic under "DUES"
Bonding	531.170 – Subtopic further divided under "Checkoff"
During Work Absence, Nominee	422.175 – Subtopic further divided under "Checkoff"
Employer Error, Nominee	422.180 – Subtopic further divided under "Checkoff"
Emp. Rep.	253.600 ff – Subtopic further divided under "Checkoff"

SUPPLEMENT TO TOPICAL INDEX

		531.415
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	Excess Coverage	532.305
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	Form of Bond	534 ff
	Fund, Union's Own	536.200
	"Funds"	531.500 ff
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	Honesty Bond	530 Special
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	Mortgage Note	531.505
	Officers & Employees	531.105
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	Opportunity to Defalcate	531.620
	Payment of Premium	537 ff
	Pension or Profit-Sharing Plan	531.435
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