

Is the Sun Setting On Union Accountability?

By Michael Reitz

Summary: Since 2001, U.S. Labor Secretary Elaine Chao has championed union accountability, achieving remarkable gains through the Office of Labor Management Standards. Now union leaders and Democrats in Congress are looking to roll back the changes. Will they succeed?

Steamfitters Local 449 is housed in a square box of a building along State Route 30 just across the river from Pittsburgh. The 1,400-member union's website features a video endorsement by Dan Rooney, owner of the Pittsburgh Steelers, who proudly observes, "The Steamfitters 449 Local were just tremendous. They have a training program that... got the workers [at Heinz Field] well-educated to do the job, and I can't say enough about them."

But Rooney's endorsement doesn't mention that in 2006 Local 449 spent \$17,176 on dinners at the Fran O'Brien Steakhouse. The famous eatery, which closed in 2006, was located a few blocks from the White House in Washington, D.C.

This expenditure and thousands of other instances of questionable union spend-



Labor Secretary Elaine Chao has championed union accountability. But will the gains be reversed?

ing are now coming to light thanks to U.S. Secretary of Labor Elaine Chao. Five years ago, in late February 2003, Chao addressed the AFL-CIO executive council, which was meeting in Hollywood, Florida, and she infuriated AFL-CIO president John Sweeney and other union officials by explaining why the Bush Administration was proposing sweeping changes to union financial disclosure rules. The new reforms require unions to file detailed annual reports itemizing their spending. They give the public more information about how unions manage their members' dues. And they are essential, said Chao, to curb union financial abuses.

Labor officials were livid over the new rules, but because of federal reporting requirements, union members now enjoy unprecedented access to hard data about their unions' financial condition. And in

the process they are discovering that many union officials enjoy lavish lifestyles and wastrel spending habits at their expense.

But the five-year anniversary of the Bush labor reforms is bittersweet for workers. Some state lawmakers are trying to replicate Chao's work and rein in public sector unions that are exempt from Labor Department scrutiny. However, it is unclear whether they will be successful. Meanwhile the Democratic majority in Congress is eager to repay organized labor for helping it make gains in 2006. It seems intent on erasing Chao's legacy and reversing the progress already made.

'U.S. Department of Labor Unions'

The goal of genuine union financial disclosure has been more than 40 years in the making. In 1959, Congress made the first serious effort to confront union corruption and financial mismanagement when it passed the Labor-Management Reporting and Disclosure Act (LMRDA), also known as the Landrum-Griffin Act, to ensure "basic standards of democracy and fiscal responsibility in labor organizations."

LMRDA, passed by a Democratic Congress and championed in the Senate by John F. Kennedy, establishes a "Bill of Rights" for members of labor organizations. It guarantees members the equal right to participate in union business, protects their rights to free speech and assembly, and requires unions to provide members with copies of the collective bargaining agreements union officials reach with an employer.

The law also provides for union finan-

January 2008

**Is the Sun Setting On Union
Accountability?
page 1**

**Labor Notes
page 6**

cial disclosure. LMRDA requires every union to file copies of its constitution and bylaws with the Department, as well as an annual report detailing its assets, liabilities, income, expenditures and the salaries of its officers. The Act also includes, among other provisions, safeguards for conducting fair union elections.

Despite their apparent stringency, the Act's financial disclosure rules were lazily enforced for decades. The government's disclosure forms required minimal information and the completed reports were housed at the Department of Labor, where they were largely inaccessible to union members across the country. Meanwhile union officials enjoyed a cozy relationship with long-serving Labor Department bureaucrats who presided over what one agency official called the "U.S. Department of Labor Unions."

All that changed when Elaine Chao took over as President George W. Bush's Labor Secretary.

The Little Agency That Could

The Department of Labor's Office of Labor-Management Standards (OLMS) was set up to be the agency responsible for enforcing LMRDA. While it plays a vital role in safeguarding union assets, Secretary Chao acknowledged in a July op-ed that, "OLMS was hamstrung from the get-go, saddled with inadequate regulatory power and woefully insufficient manpower." Nevertheless, a reading of entries in the OLMS 2006 Annual Report shows that it has successfully conducted

many investigations that have resulted in criminal convictions of union misdeeds.

- *"Elevator Constructors Case Produces 14 More Convictions."* The multi-year investigation of a no-show jobs scheme in New York involving officials of Elevator Constructors Local 1, Operating Engineers Local 14 and Laborers Local 79, which had already resulted in 35 convictions, approached completion in fiscal 2006 with 14 more convictions. The individuals convicted in FY 2006 were sentenced to make restitution totaling more than \$1.6 million and to forfeit assets totaling more than \$1 million.

- *"Prison Terms Handed Down in the Washington Teachers Union Case."* On May 22, 2006, and June 5, 2006, in the U.S. District Court for the District of Columbia, James Baxter, former treasurer of the Washington Teachers Union (WTU), and Gwedolyn Hemphill, former assistant to previously-convicted president Barbara Bullock, were sentenced following their jury trial conviction for conspiracy, embezzlement, mail fraud, wire fraud, money laundering, false statements on LM reports and falsification of union records. Baxter was sentenced to 10 years in prison and was ordered to pay restitution in the amount of \$4.2 million and perform 900 hours of community service. Hemphill was sentenced to 11 years in prison and ordered to pay \$4.2 million in restitution.

- *"NALC Branch 599 President Sentenced in Kickback Scheme."* On May 19, 2006, Lenny V. Perez, former president of the National Association of Letter Carriers (NALC), Branch 599 in Florida was sentenced to 21 months in prison, 31 months supervised probation and a special assessment. Perez pled guilty on September 19, 2005, to receiving cash kickbacks of \$384,000 in union funds in return for referring postal employees to certain medical specialists under the Workers Compensation Program.

- *"Six Enter Guilty Pleas in Multi-Million Dollar Scheme."* Thirteen indictments have been obtained in the OLMS investi-

gation of International Longshoremen's Association (ILA) Local 1740 and its health benefit plan in Puerto Rico. To date, five individuals and one corporation involved in the \$10 million embezzlement scheme have entered guilty pleas, and a second corporation is expected to enter a guilty plea soon. Six additional individuals and one corporation are expected to go to trial in January 2007.

- *"LA County Federation of Labor Official Convicted of Conspiracy."* On March 28, 2006, Martin Ludlow, former executive secretary-treasurer of the Los Angeles County Federation of Labor and former member of the Los Angeles City Council, pled guilty to conspiracy with embezzlement of union funds as the underlying crime pursuant to a plea agreement covering federal, state and local charges for his role in the use of funds embezzled from Service Employees International Union (SEIU) Local 99 by its former president, Janett Humphries. Ludlow admitted using the embezzled union funds in his 2003 campaign for Los Angeles City Council. Six people were put on the union payroll but actually worked on Ludlow's campaign. Ludlow also used union funds to pay for a cell phone used in his campaign. On June 5, 2006, he was sentenced to 5 years probation, 2,000 hours of community service and was ordered to make restitution of \$36,400 to Local 99.

- *"Local President's Wife Steals from Union."* A joint investigation by OLMS and the DOL-OIG established that Leslie Bell, former bookkeeper for Laborers Local 1184 and ex-wife of its former president, embezzled \$178,452 over a three-year period by stealing members' cash dues and initiation fees and forging union checks to pay personal expenses. After pleading guilty, Bell was sentenced to 18 months of incarceration and 3 years of supervised probation, and was ordered to pay restitution to the union's bonding company.

- *"Guilty Plea in \$100,000 Embezzlement from UFCW Local."* Donald Hutchinson, the former financial-secre-

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tary of United Food and Commercial Workers Local 763-C in Joliet, IL, pled guilty to embezzling more than \$103,000 in union funds after serving 10 years as financial secretary for the local. Hutchinson wrote over 250 unauthorized union checks to himself under the guise of lost time, mileage and hotel expenses. He attempted to conceal his embezzlement by falsifying monthly financial reports and the local's annual financial reports submitted to OLMS.

Sarbanes-Oxley Act for Labor

The changes to the financial disclosure rules that so riled John Sweeney and the other officials who met with Secretary Chao in Florida were first proposed on December 27, 2002. On that day the Department of Labor issued a notice of its plan to update union annual financial reporting forms. After inviting public comments the Department would promulgate its final rule on October 9, 2003.

The new reporting requirements required unions with \$250,000 or more in receipts to file Form LM-2. The form required union officers and employees to provide an accounting of income, benefits and expenses, with an estimated percentage of work time spent in various work categories (representational activities, political and lobbying activities, general overhead, administration, etc.). The final rule amended the LM-2 to require unions to itemize individual receipts and expenditures over \$5,000, with the name, address, purpose, date and amount identified.

The Department required unions filing a LM-2 report to also file a separate report on significant trusts in which the labor organization had an interest. [For more on the importance of trust reporting see *Labor Watch* (December, 2007) on "VEBAs: A Union Slush Fund for the 21st Century."]

"Too many workers are being hurt by the wrongdoing of a few," said Secretary Chao at the time. "In this era of accountability and transparency, updating the financial reporting requirements will empower and protect workers who trust their unions to represent their interests."

As might be expected, the proposed rulemaking touched off a firestorm of union

opposition. The Department received more than 35,000 written comments. However, most of them were copies of about 110 boilerplate opposition letters drafted by unions and pro-union interest groups.

Those opposing the reforms typically said the proposed rule was "political pay-back" to punish organized labor or that it was meant to weaken the union movement. They claimed it would stop unions from serving their members and strain union budgets, or that it was a way to implement the U.S. Supreme Court's *Beck* decision denying unions the right to use member dues for political purposes without their consent (*Communication Workers of America v. Beck*, 487 U.S. 735, 1988). Many letters said financial disclosure was a trick by employers and anti-union groups to get more information about unions. Some simply criticized the Bush Administration as if nothing more needed to be said.

The AFL-CIO famously predicted that complying with the rules would cost more than "\$1 billion," with its own costs at well over "\$1 million." Secretary Chao would later point out that the actual first year cost of AFL-CIO compliance was \$54,150.

Some comments did support the Department's initiative, as the agency pointed out in the *Federal Register* when it was promulgating the final rule.

One union member asked, "Government is accountable to taxpayers, and corporations are accountable to shareholders, shouldn't unions be accountable to dues-paying members?" A former vice president of a local union expressed "full support of the proposed anti-corruption initiative" and wrote, "We should all know how the money is being spent at every level."

Many union members supported overall reforms. One said, "We need protection from our supposed labor leaders." Another commented, "Just please be sure the unions cannot get around these [proposed] requirements through creative accounting tricks." A commenter who described himself as having been a union member for 33 years, wrote, "I do not believe that these new regulations go far enough to hold unions more accountable."

A number of union members noted how hard it is to get unions to give out information. One shop steward said his requests had "gone unanswered" and he felt "it is time that unions be required to account for every penny of the dues they collect." Another union member wrote, "You shouldn't have to beg or plead with your Business Manager/Agent to see financial reports for an organization you finance."

As soon as the Labor Department issued its final rule, organized labor immediately filed a lawsuit. In *AFL-CIO vs. Chao* the union federation argued that the Secretary lacked the authority to promulgate such rules, particularly the requirement that expenditures be itemized and the interest in trusts reported. The unions also protested the effective date of the final rule.

A federal district court denied the union complaint, and it merely delayed the implementation of the final rule until July 1, 2004, or 90 days after electronic reporting software was made available for transmitting union information to OLMS. The AFL-CIO then appealed its loss to a three-judge panel of the U.S. Court of Appeals for the District of Columbia—which included future Supreme Court Chief Justice John G. Roberts, Jr. The appeals court held that the Secretary's revised Form LM-2 was a reasonable application of her authority. However, it threw out the trust reporting regulations, saying they exceeded Chao's authority.

Foul Things Disclosure Brings

Since the final disclosure rule went into effect in 2005, union members, policy experts and journalists have enjoyed easy access to extensive union financial data, which OLMS has made available on the internet. Anyone can go to the OLMS website at www.union-reports.dol.gov and click on "Annual Financial Disclosure Reports."

Anyone who takes the trouble to explore union financial disclosure forms is sure to be in for a surprise. Here are some of the outrageous union expenses you can discover.

A single union in Los Angeles has spent literally hundreds of thousands of dollars

on thrill rides and amusement parks. SEIU Local 660 has 39,000 members, and it spent a very busy 2006 paying for tickets and outings to Disneyland (\$321,787), movie and theater tickets (\$141,887), Legoland (\$43,209), Knott's Berry Farm (\$80,273), Sea World (\$67,296), Six Flags Magic Mountain (\$51,901) and Universal Studios (\$115,245). It also charged to the union's account a \$27,142 dinner outing to Medieval Times, a sort of equestrian dinner theater that features "snowy Andalusians and medieval pageantry, coupled with a sumptuous feast." While many of the events were intended to entertain SEIU members, one wonders how they serve the collective bargaining mission of SEIU 660.

You might say union officials spend money like drunken sailors—and you would be right. The disclosure reports indicate that Plumbers Local 669 in Columbia, Maryland, spent \$6,519 on liquor, as did Teamsters Local 812 in Scarsdale New York, which spent \$5,209. AFSCME District Council 37 in New York City spent \$5,774 for booze (oddly categorized as "political activities") and so did Plumbers Local 597 in Chicago, spending \$5,626 (categorized as "general overhead")

In Hillsborough, New Jersey, IBEW Local 164 (which represents 3,200 members) spent \$44,715 for a golf outing to the Royce Brook Country Club.

The Machinists national headquarters in Upper Marlboro, Maryland, spent \$362,954 to insure, maintain and fuel a Learjet.

According to its LM-2 report, the National Education Association spent \$50.4 million on "representation activities," and \$26.9 million on political activities and lobbying. The NEA form notes that it has 38 employees whose time is wholly devoted to politics and lobbying. NEA grant recipients read like a Who's Who list of liberal causes:

- AIDS Responsibility Project (\$5,000)
- Amnesty International (\$5,000)
- Economic Policy Institute, a union-financed think tank (\$150,000)
- People for the American Way (\$10,000)
- Human Rights Campaign (\$30,000)
- Gay & Lesbian Alliance (\$5,000)

- Gay, Lesbian & Straight Education Network (\$5,000)
- Rainbow Push Coalition (\$5,000)
- Center for Innovative Policy (\$125,000)
- U.S. Hispanic Leadership Institute (\$10,000 for voter registration)
- Committee for Fair Elections Florida (\$100,000 for redistricting)
- 100% For Great Public Schools (\$110,000)
- Ohioans for a Fair Minimum Wage (\$30,000)

In 2006, AFL-CIO national headquarters spent \$29.7 million on representation activities and \$41.6 million on politics and lobbying. The federation spent hundreds of thousands of dollars to send officials to conferences in Japan, Vienna, Bangkok, Moscow, Geneva, Paris, London and Sao Paulo, Brazil. But the AFL-CIO doesn't limit itself to international plane travel; the federation also has a chauffeur earning \$69,000.

The OLMS has tried to enforce the filing of Form LM-10, which requires employers to report if they engage in financial transactions with labor organizations or labor officers, employees or consultants. In June 2005 OLMS announced that it would demand compliance but would help employers understand when they are obligated to file. This produced a 1,200 percent increase in the number of LM-10 forms filed in 2005.

In April 2007, at a House Labor, HHS, and Education Appropriations Subcommittee hearing, Secretary Chao highlighted examples of payments and expenses Form LM-10 has exposed to public scrutiny:

- a union-owned bank gave a union president \$76,779 in services and director's fees in one year, which included \$47,058 for a car service.
- an insurance and annuity company paid more than \$400,000 to a union that agreed to endorse the company's product and permit the company to market to the union's members.
- a security company paid more than \$10,000 to various unions that entered into agreements to endorse a retiree health re-

imbursement program marketed by the company.

- a law firm gave two union officers a hunting trip and a gift of personal property worth more than \$3,200 for each officer.

Even though unions still complain about their compliance costs, the Labor Department is trying to reduce the burdens of accountability. Don't want to fill out stacks of paperwork? You can file the LM-2 online. Don't know how to account for spending? The Department has developed financial reporting software and provides it free of charge. Don't understand the new requirements? The agency has extensive compliance training.

Congress Muzzles the Watchdog

How long will the sun of financial disclosure shine? Already there are moves afoot in Congress to prevent enforcement of the new requirements. Giddy from their 2006 election sweep, Democrats have targeted the Office of Labor-Management Standards for a thrashing. In July, the House cut the agency's funding by \$2 million to \$45 million, \$11 million less than President George W. Bush's FY 2008 budget request. Representative John Kline (R-Minn.) offered an amendment to restore the budget to its previous 2007 level of \$47.7 million, but his measure was defeated 186-237, with eight Democrats breaking rank.

Secretary Chao harshly criticized the move. "Last night's House action cutting the budget of the Office of Labor-Management Standards will impede effective enforcement of the law that protects union democracy and financial integrity for rank and file members," she said.

Chao has pointed out that OLMS accounts for less than *one-tenth of one percent* of the Department of Labor's budget. Every other DOL enforcement agency received budget increases.

In October the Senate approved an OLMS budget similar to the House version. Senator Jeff Sessions (R-AL) attempted to restore OLMS funding to its FY 2007 level and add \$3 million more. His amendment failed 47-46. No Democrats

voted in favor of it and two Republicans voted against the funding increase—Sen. Arlen Specter (R-Pa) and Sen. Ted Stevens (R-Alaska).

Brian Johnson, director of the Americans for Tax Reform's Alliance for Worker Freedom, blasted Congress for its action. "This is a sad example of how the Democrat-led Senate is afraid to stand up to corrupt union bosses," he said. "It seems that one too many U.S. Senators count on the deep pockets of Big Labor when the only agency responsible for union financial oversight is stripped of the resources to do its job."

Public Sector Transparency

A major gap in LMRDA is its failure to regulate public-sector employee unions. The Act specifically excludes states and their political subdivisions from the definition of "employer," and government labor relations at the state and local levels are regulated by state statute. For this reason state affiliates of the National Education Association, AFSCME and other unions representing state, county or local government employees are often completely exempt from OLMS reporting requirements.

Only 13 states mandate any financial disclosure for public sector unions, and most of these fall far short in providing real transparency for union members. As a result, billions of dollars in expenditures are quietly concealed within public-sector union budgets.

When the Department of Labor updated Form LM-2 in 2003, it made a policy change and imposed LMRDA reporting requirements on certain intermediate-level unions representing public employees if they were subordinate to a national labor organization that included other labor organizations covered by LMRDA. The Department previously had held that an intermediate labor union of public employees would be covered by LMRDA only if at least one of its local unions was covered by LMRDA.

The new interpretation was challenged in federal court by 32 state affiliates of the National Education Association. NEA President Reg Weaver insisted the regulation was unnecessary: "NEA and its af-

filiates are among the most open and democratically run organizations in the country. We keep our members fully informed about our programs, budgets and policies."

The NEA appeared to have won its case when a federal district court granted summary judgment in its favor in *Alabama Education Association v. Chao* (March 31, 2005). But on appeal, the U.S. Court of Appeals for the District of Columbia Circuit reversed the lower court. It ruled that the Secretary of Labor had not exceeded her authority to promulgate such a rule. However, the judge held that the justifications for the challenged rule were inadequate, and remanded the rule to the Department to provide a "reasoned analysis" in support of its policy change. The Department published this policy statement in January 2007. The issue, however, is still caught in litigation and implementation of the rule will be delayed for several months.

State legislators who want to help state and local public employees demand accountability from their unions have other ways to achieve their goal. For instance, they can adopt a model bill framed by the American Legislative Exchange Council (ALEC), a group representing conservative and free market-oriented state legislators. The ALEC bill is patterned after federal financial disclosure regulations.

"ALEC believes it is of the utmost importance for union members to know how their dues are spent," says Michael Hough, ALEC's Commerce Insurance & Economic Development task force director. "Transparency allows union members to protect their dues from being misappropriated or simply stolen as has unfortunately happened so many times. In order to protect workers, State governments need to adopt laws like ALEC's Union Financial Responsibility Act, which requires a complete public financial disclosure of union finances."

What's To Be Done?

What have union financial disclosure rules actually accomplished?

Rank-and-file union members can now research their union's spending habits and hold officials to higher levels of account-

ability. Union financial reports and many collective bargaining agreements are now posted to the OLMS website (www.union-reports.dol.gov), which recorded nearly 768,000 hits from May 2006 to May 2007—an average of 2,100 a day. Dozens of newspaper stories have been written about these disclosures and they too have increased awareness of the information's availability.

Union assets are safeguarded like never before. Investigations by the Office of Labor-Management Standards are resulting in an average of *ten convictions a month* of union officers and employees who have committed fraud or embezzlement, according to Secretary Chao. Since 2001, indictments from OLMS investigations have increased by 20 percent and convictions have increased by 26 percent. Since 2001 OLMS corruption investigations have led to more than 775 convictions. More than \$70 million in embezzled dues have been returned to union members.

It's no surprise that union members strongly support transparency. A 2007 survey of unionized teachers commissioned by the Evergreen Freedom Foundation found that 95 percent of teachers support extending LMRDA reporting requirements to public-sector unions. A 2004 Zogby survey conducted for the Public Service Research Foundation found that 71 percent of union members believe unions should be required to give an accounting of their finances to deter corruption. If union financial accountability is to be preserved, it is vital that policymakers and labor reformers work to extend fiscal transparency requirements to the state and local levels.

It is regrettable that Democrats in Congress are trying to hamstring Secretary Chao's union accountability initiatives. So far no presidential candidate has pledged to repeal her reforms. But it is easy to imagine that the AFL-CIO will have a little list of policy recommendations for the Democratic nominee—and its version of financial disclosure "reform" will be on it.

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Labor Notes

Democrats Seek Additional Restrictions on OLMS

As this issue of *Labor Watch* went to press, Americans for Tax Reform was fighting riders to an Omnibus spending bill in Congress that would prevent the Labor Department's embattled Office of Labor Management Standards (OLMS) from implementing the LM-30 federal disclosure form. The LM-30 is intended to stop illegal union conflicts of interest. ATR President Grover Norquist complained that despite pledges from Democrats to ensure a "clean" bill, "this Omnibus will be clouded with measures that prevent fiscal transparency and accountability of labor unions." Even while it frustrates OLMS union oversight, the AFL-CIO opposes a Securities and Exchange Commission plan to give small businesses a one-year reprieve from the most costly auditing requirement of the Sarbanes-Oxley corporate accountability law.

AFL-CIO Turns to International Support

Last month the AFL-CIO hosted a Washington, D.C., conference of the Council of Global Unions, which includes union representatives from 153 countries. "What we have now is a very clear recognition that we cannot, as an international labor movement, respond to international phenomena and international operations of capital with purely national responses," said Guy Ryder, general secretary of the International Trade Union Confederation. The AFL-CIO persuaded the foreign union leaders to lobby Congress to support the Employee Free Choice Act, which expands card check procedures to establish unions. American unions need international support: while only 12 percent of U.S. workers are unionized, unions represent 32 percent of workers in Canada, 35 percent in Great Britain and 50 percent in Australia.

Democrats Eye NLRB Vacancies

The National Labor Relations Board (NLRB) could have as many as three vacancies going into 2008, and union-friendly Democrats want NLRB members who support union priorities. At a congressional hearing last month, NLRB Chairman Robert Battista, a Republican appointee, was forced to defend the board's rulings from attacks by fellow board member Wilma Liebman and Sen. Ted Kennedy. "Our critics prognostications that the NLRB system is broken and has become a tool of corporate interest are simply false," Battista said. "Unions are winning a majority of representation elections." Battista argued that the NLRB should focus on the needs of all employees, not union demands.

Unions Try to Influence Iowa Caucuses

Prior to the Iowa presidential caucuses on January 3, the AFL-CIO and the AFSCME ran television advertisements supporting Sen. Hillary Clinton against Sen. Barack Obama. According to *The Washington Post*, the AFSCME planned to spend more than \$1 million for Clinton. She also enjoyed get-out-the-vote support from EMILY's List, the pro-choice feminist organization.

D.C. Union, Residency Quotas Strike Out

What happens when union leaders agree to quota hiring of local residents and union members for public works projects—but there aren't enough skilled residents to fill the jobs? That's the dilemma facing Washington, D.C., local AFL-CIO president Joslyn Williams, who is under fire from District residents because resident journeyman and apprentice workers at the site of the new Washington Nationals ballpark fall far short of the 50 percent mandate. Meanwhile, nonunion firms are furious about being shut out of the project and are lobbying the city government through the District Economic Empowerment Coalition to ban any future agreements requiring union labor for construction projects.