

Courts Side With Workers on Union Financial Disclosure Unions Seek New Ways to Spend Member Dues

By Jennifer Hickey

Summary: “Accountability” and “change” are the buzz words on the presidential campaign trail. Candidates rage against corporate interests and government abuses and promise to protect the well-being of Americans. But while the candidates dominate the headlines, a federal court ruling in March promises to make a real difference in protecting American workers and safeguarding their money from union corruption.

On March 27, the U.S. District Court for the District of Columbia struck a blow on behalf of both union members and nonunion workers when it ruled in favor of Labor Secretary Elaine Chao in a lawsuit brought by state-level affiliates of the National Education Association (NEA) and the American Federation of Teachers (AFT). The impact of the decision handed down in *Alabama Education Association v. Chao* is far-reaching.



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Teachers union attorneys failed to convince a federal court to hinder the federal government’s efforts at ensuring union accountability.

At the center of the debate is the question of how to interpret the scope and intent of the Labor-Management Reporting and Disclosure Act (LMRDA) of 1959, and how to enforce the law, which was designed to protect the rights of American workers against the misuse and misappropriation of their money by union officials. This particular dispute was over whether or not local and state unions are subject to the financial disclosure requirements of LMRDA.

Teachers Go To Court

In 2002 the Labor Department (DOL) proposed revisions to the forms that labor unions use to file annual financial reports as required by the LMRDA. Under the updated forms, unions would be compelled to itemize all gifts and contributions of \$5,000 or more.

In its Notice of Public Rules Making, the Department modified its interpretation of the LMRDA to include public-sector intermediate bodies of labor organizations whose parent organizations were subject to the law. DOL believed it had the authority to expand the coverage of the LMRDA to state affiliates of national

unions, even if an affiliate’s membership is composed entirely of public-sector employees, as long as the national union is composed partly of private sector employees.

Prior to this policy change, the DOL had interpreted the LMRDA not to include public-sector unions, even affiliates of larger organizations. The new interpretation was part of Labor Secretary Chao’s efforts to update and upgrade the laws governing the American workplace, which more often than not had failed to adapt to the changing dynamics of a 21st century labor force.

When the final rule was published in October 2003, union officials almost immediately characterized the rules as “anti-union” and “anti-worker.” Thirty-nine state level affiliates of the National Education Association and the American Federation of Teachers filed suit challenging the DOL’s new policy in federal court.

The U.S. Court of Appeals for the District of Columbia Circuit reversed a lower court’s ruling and concluded that ambiguity in the LMRDA allows DOL the authority to adopt its new policy. However, the court also determined the Department

May 2008

**Court Sides With Workers on
Union Financial Disclosure**
page 1

**‘Paycheck Protection’ Advances
Through the Courts**
page 5

Labor Notes
page 6

had failed to provide a “reasoned analysis supporting its change of position,” as required by law, so it remanded the rule to the DOL.

The required analysis was issued by the Labor Department on January 26, 2007. Soon thereafter both the Department and the labor unions filed motions for summary judgment in the U.S. District Court for the District of Columbia. On March 27, 2008, the court upheld the Department’s interpretation of LMRDA.

The implications for public-sector workers and members of union affiliates are significant. Prior to the ruling, employees had to rely on generally weak state disclosure laws to monitor public-sector union activity.

According to the DOL’s Bureau of Labor Statistics, in 2007 the density of union members in the public sector was nearly five times that of the private sector. The occupations with the highest rate of union membership were in the fields of education, training and libraries.

The ruling’s impact will be felt most in the State of Alabama, where politics for many years has been dominated by teachers unions. The Alabama ethics commission reported that by 1987, 58 of the 140 members of the state legislature were teachers, former teachers or spouses of teachers. Today the Alabama Education Association (AEA) claims a record-high union membership of almost 103,000 members. This means that one out of every 45 Alabamians and one out of every 25 Alabama voters is an AEA member, forming

one of the most powerful and unified constituencies in the state. The decision in *Alabama Education Association v. Chao* could help break the grip of the AEA and other unions over Alabama’s workers.

Halting Corruption

Prior to 1959, corrupt union officials could easily mask improper activities under vague and broad categories on fed-

The administration of President Bill Clinton did little to enforce the executive order on *Beck* rights, but under the leadership of Secretary Chao in the George W. Bush administration, efforts to implement and update labor laws were rejuvenated. Numerous criminal cases in recent years have helped demonstrate the need to continue the anti-corruption campaign that started with Landrum-Griffin.

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eral financial disclosure forms. The wave of corruption which washed over unions in the 1950s caused public outrage. In 1959 Rep. Phil Landrum (D-Georgia) and Sen. Robert Griffin (R-Michigan) sponsored the Labor-Management Reporting and Disclosure Act to rein in labor unions.

As it is known today, the Landrum-Griffin Act was the first step toward accounting for union spending. It was not until 1963 that the Labor Department issued the LM-2 form for larger unions and the briefer LM-3 and LM-4 forms for smaller unions. However, the forms proved inadequate to prevent unions from flouting the requirements and keeping union members in the dark about spending.

President George H.W. Bush delighted reformers in April 1992 by issuing Executive Order 12800, requiring all federal contractors to properly and clearly inform employees of the rights granted to them by the 1988 U.S. Supreme Court opinion in *Communications Workers of America v. Beck*. Citing the authority found in National Labor Relations Act (NLRA), the Court’s *Beck* ruling affirmed that workers may withhold the portion of their compulsory union dues that is used for political activities. In order to inform union members how their contributions were used, President Bush proposed minor changes to the federal financial disclosure forms.

For instance, in 2002 Frank Massey, a partner at Thomas Havey, the nation’s largest union accounting firm, pleaded guilty to aiding in a conspiracy to help Ironworkers president Jake West and his associates conceal more than \$1.5 million spent on personal expenditures. Massey exploited the vagueness of the LM-2 forms to classify items, including steak dinners and alcohol, as “Office and Administrative Expenses” or “Education and Publicity” on the federally mandated forms.

One of the more egregious cases of corruption involved the Washington Teachers Union, which represents educators in some of the nation’s worst and most costly schools in Washington, D.C. Gwendolyn Hemphill, who was an aide to the union president, and James Baxter II, formerly the union treasurer, were convicted in U.S. District Court of conspiracy, fraud and embezzling millions of dollars that went to pay for fur coats, elaborate dinners and other personal purchases. In addition, Barbara A. Bullock, the former union president, pleaded guilty in 2003 to embezzling nearly \$5 million by devising shell corporations and issuing duplicate salary checks or fraudulent reimbursement claims.

By publishing financial disclosure forms online, the DOL hopes to both educate union members and dissuade individuals

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from corruption. With the revised forms, expenditures related to lobbying, politics, organizing, litigation and other activities must be filed with enough clarity so that they are meaningful to union members.

Compliance Issues

Since announcing the updated financial disclosure rules, the Labor Department has helped all filers comply with them, most notably by providing online instructions, free software and technical help. PowerPoint presentations and a Frequently Asked Questions (FAQs) section were added to the DOL's website. In addition, as many as 25 national and international unions have been provided informational briefings and a toll-free help desk number. Despite the assistance and outreach, about 35 percent of unions continue to fail to comply with the LMRDA's mandatory filing requirements. Either they file their annual reports late (sometimes several years late), incompletely or not at all.

Unfortunately, the Secretary of Labor and union members have little recourse when unions fail to file the mandatory disclosure forms or file incomplete forms. Resolution can only be pursued through the litigation process, which can be laborious and expensive. To alleviate this situation, several members of Congress have proposed a legislative fix, including granting a federal district court and the Secretary of Labor the authority to impose monetary fines on those who flout the law.

On April 10, legislation intended to promote compliance with the LMRDA was introduced in the House and Senate. By authorizing civil monetary penalties in cases of clear violations or disregard for legal transparency requirements and the rights of union members, companion bills sponsored by Rep. Jeff Sessions (R-Alabama) and Sen. John Cornyn (R-Texas) would add some teeth to the law.

If the law is approved, the Secretary of Labor would be granted the authority to impose civil monetary penalties for late filings in amounts up to \$250 a day, subject to a \$10,000 maximum. This would provide the proper incentives for a union to fully disclose how its member dues are being spent, thus giving union members the ability to make informed decisions at

election time.

Hiding Money

Unfortunately, special interests and unions are developing new and unique ways to shield their finances from public scrutiny. The *National Journal* recently reported that interest groups, including labor unions, are developing new models for organizing that further blur the line between election politics and lobbying. By conducting their lobbying and "legislative" activities year-round, they are able to "engage in a permanent operation that

America, further pushing the boundaries of the legitimate use of union finances.

With so much at stake, it is no surprise that the labor unions are fully engaged in communication and lobbying campaigns aimed at both members of Congress and the public. Consider the new website that aims its sights at Secretary Chao. The site, "Shame on Elaine," expresses its purpose as giving the public "an honest picture of her administration and its egregious policies affecting workers." American Rights at Work, which runs the site, also "promises to continue the campaign to demand

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blends public education, issue advocacy, grassroots lobbying and direct political messages. The typical activist group now runs multiple affiliates under one umbrella, often including a 501(c)(3) charity, a political action committee and a 527, which must steer clear of explicit campaign messages and must disclose its donors to the IRS."

Anna Burger, secretary-treasurer of the Service Employees International Union (SEIU), told the *Journal* that "we see politics as being tied to issues—not political parties, not necessarily political candidates, but issues. We see it as a 12-month process, day in, day out."

And it is an expensive process. Last year the SEIU reported that it spent \$380,000 to lobby on behalf of its 1.9 million members, a figure that is minuscule in comparison to the \$17.2 million in PAC receipts reported to the Federal Election Commission. According to the *National Journal*, the SEIU intends to appropriate at least \$70 million toward direct mail, advertising and grassroots lobbying "to help elect a pro-worker president and pro-worker Congress."

The union also runs a 527 that spent \$14 million in 2007, and it has donated \$2.5 million to a start-up 527, the Fund for

accountability from Chao and help raise the standards necessary for the next secretary of labor." Among the group's board of directors are AFL-CIO President John Sweeney and former Rep. David Bonior (D-Michigan), two of the fiercest opponents to the Bush administration's labor reforms.

Opposition also comes on the local and state levels where the grassroots are making advances. According to news reports, the NEA intends to dedicate more than \$5 million to weigh in on more than 40 ballot initiatives in 18 states that will be considered in November.

The NEA is battling the tide of reform through an ongoing project known as Communities for Quality Education. Formed in 2004 under the umbrella title "America Learns," CQE's activities are coordinated by the NEA despite no mention of the union in the group's press statements or on its web site. According to press reports, the NEA intends to dedicate \$600,000 to help CQE lobby the media and reach out to education and political reporters during the 2008 campaign.

DOL Under Assault

Why aren't lawmakers doing more to give the DOL the tools it needs to stay

ahead of union corruption? On Capitol Hill it is the Labor Department's enforcement efforts that are under attack.

Last year congressional Democrats attempted to stymie reforms by cutting appropriations for the DOL's Office of Labor-Management Standards (OLMS), which is the only federal agency charged with protecting the \$22 billion in union assets from corruption. Although OLMS operates on less than one-tenth of 1 percent of the Labor Department's budget, it has proved to be a vital force in exposing corruption and criminal activities. OLMS also investigates civil matters, including union elections.

The agency's criminal enforcement program includes investigations of embezzlement from labor organizations, extortionate picketing, deprivation of union members' rights by force or violence and fraud in union officer elections. The agency's civil program collects and publicly discloses unions' annual financial reports, conducts compliance audits of labor unions and seeks civil remedies for viola-

tions of officer election procedures. In certain cases, OLMS also conducts joint investigations with other Labor Department agencies including the Employee Benefits Security Administration and the Office of Inspector General, as well as law enforcement agencies including the Federal Bureau of Investigation.

These investigations get results. According to an OLMS press release, in February the office obtained eight convictions, 11 indictments and court orders of restitution totaling \$185,318. The office's totals for fiscal year 2008 (which began on Oct. 1, 2007) now stand at 49 convictions, 57 indictments and court-ordered restitution of \$1,251,798. The bulk of the cases involved embezzlement of union funds.

These totals represent increases of 20 percent (41 to 49) in convictions and 39 percent (41 to 57) in indictments over fiscal year 2007. Deputy Assistant Secretary for Labor-Management Standards Don Todd noted in a press release that the office's efforts to protect union members

have resulted in the successful prosecution of almost 850 individuals since 2001. He added, "We also have obtained almost 900 indictments and obtained court orders of restitution for more than \$89.9 million in that time."

State and Local Disclosure

As Congress chips away at OLMS, and the Labor Department does battle with the larger unions, the critical battleground remains on the state and local level. That's why the ruling in Alabama is so important.

The decision in *Alabama Education Association v. Chao* represents a big step forward. However, unions whose membership is entirely in the public sector are still shielded from LMRDA oversight. It is critical that DOL and state agencies be given the resources to ensure union financial transparency in order to protect the fundamental rights of all Americans in the workplace.

Jennifer Hickey is a freelance writer from Washington, D.C.

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'Paycheck Protection' Advances Through the Courts

By Jennifer Hickey

State and federal courts are advancing workers' rights across the nation, most often in the area of "paycheck protection." On March 31, 2008, the U.S. Supreme Court granted certiorari and agreed to review a case involving an Idaho state law that prohibits school districts from deducting monies from employee paychecks to advance political causes. In *Ysursa v. Pocatello Education Association*, Idaho is defending the federal constitutionality of its 2003 Voluntary Contributions Act.

There are other recent court decisions that should give hope to state and local union members:

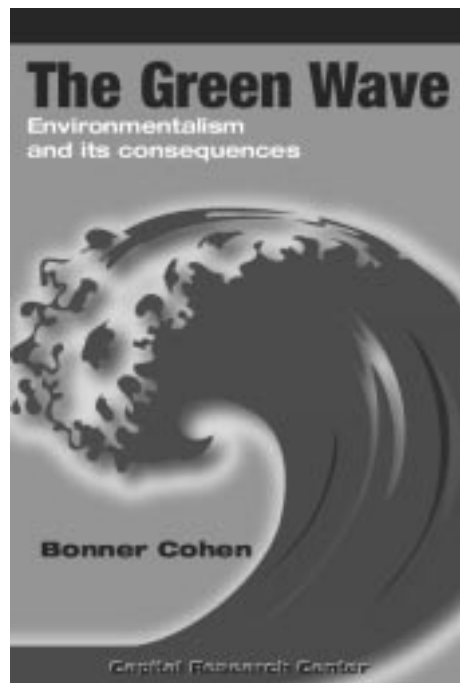
- In February 2008, the U.S. Supreme Court granted a petition for a writ of

certiorari in *Daniel Locke et al. v. Edward Karass et al.* The case involves Maine public employees who object to the use of union dues for litigation unrelated to collective bargaining.

- On March 28, 2008 U.S. District Court Judge Morrison C. England Jr., ruled that union officials of the California State Employees Association (CSEA) failed to properly provide as many as 28,000 non-union state employees union a clear opportunity to opt out of paying for the union's political efforts to lobby against certain reform measures on the 2005 ballot. The union was ordered to give those individuals 45 days to object to the 25 percent fee hike and reimburse eligible employees for the improper 2005 dues hike. CSEA

union officials had imposed a so-called "special assessment" on government employees for the election-related activities. The Court found the CSEA violated the law by raising more than \$12 million—with \$3 million coming from non-union workers—without providing non-union workers the right to object.

- In *Ysursa v. Pocatello Education Association* the U.S. Supreme Court will review a Ninth Circuit Court of Appeals decision that limited the applicability of an Idaho state law banning payroll deductions for union political action committees. The lower court ruled that local government bodies are independent entities not covered by the state law.



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Labor Notes

California Court Orders Restraining Order Against SEIU

The Service Employees International Union (SEIU) and the California Nurses Association (CNA) have long competed to organize healthcare workers. Now the California Superior Court has issued a temporary restraining order against SEIU that prohibits SEIU members from “stalking, threatening, or following CNA/NNOC leaders and staff at work, in hospitals, clinics and offices, at their homes.” CNA alleges that SEIU—in addition to harassing CNA members—sent more than 800 SEIU members to raid a union conference in Dearborn, Michigan, when CNA executive director Rose Ann DeMoro was scheduled to speak. CNA claims that several people were injured, but SEIU says it was conference participants who were violent toward SEIU protesters. In March, SEIU accused CNA organizers of aggressive tactics in Ohio that successfully derailed a SEIU election to represent workers at nine Catholic hospitals.

Flight Attendants Organize to Influence Delta-Northwest Merger

Just days after Delta Air Lines announced plans to merge with Northwest Airlines, creating the world’s largest airline, Delta flight attendants last month began an election for representation by the Association of Flight Attendants (AFA), an affiliate of the Communications Workers of America. Voting will end on May 28. “Now more than ever, Delta flight attendants need a strong voice in order to best defend their profession against the uncertainty that this merger may bring,” said AFA-CWA president Patricia Friend. “Since the election will be completed long before the merger is consummated, Delta flight attendants will have the legal right to negotiate their pay and work rules as part of creating the world’s largest airline.”

Democrats, Unions Stall Colombian Trade Agreement

Until Americans “can exercise core worker rights without fear of intimidation, threat or murder, we cannot seriously consider passing a trade agreement with Colombia,” AFL-CIO president John Sweeney told *Congressional Quarterly* last month. The rival Change to Win coalition has taken a similar position. Accordingly, Colombian officials say they have received no assurances from House Speaker Nancy Pelosi that Democrats will allow a vote on the agreement this year. In April, House Democrats voted to suspend action on the agreement, and union leaders are urging Pelosi not to make any exchange with the White House that might allow a vote in exchange for other Democrat priorities.

Former AFL-CIO Operative Attacks McCain for Old Age

Much attention has been paid to remarks about presidential candidate John McCain’s age by Rep. John Murtha, but he’s not the only one prepared to take negative campaigning to new lows. A key labor operative has created the blog www.youngerthanmccain.com and is urging attacks on the Senator for his age. “John McCain comes from another time, an old war-horse stuck in the past with an old-world view of things,” writes Steve Rosenthal, a former political director for the AFL-CIO who was also executive director of the union and Soros-funded 527 group America Coming Together, on the website. He claims the site is “just for fun.”

AFL-CIO Takes Advantage of Mortgage Crisis

Never one to lose an opportunity, the AFL-CIO is jumping into the debate over the mortgage crisis and whether large fees and bonuses to mortgage brokers caused the increase in subprime lending. The labor federation is publicizing payments to top executives throughout the financial industry at www.paywatch.org.