

# 2004 Program Highlights



## Office of Labor-Management Standards

Employment Standards Administration  
U.S. Department of Labor  
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March 2005

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### Introduction

Safeguarding union democracy and assuring financial accountability for the millions of Americans who are union members is the mission of the Department of Labor's Office of Labor-Management Standards (OLMS). Congress enacted the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) to insure that these important goals are met.

The LMRDA establishes a bill of rights for union members; reporting requirements for unions, union officers, union employees and others; rules for establishing and maintaining trusteeships; standards for the election of union officers; and safeguards for protecting union funds and assets.

The OLMS mission to advance the goals of union democracy and fiscal responsibility is accomplished through investigations and audits, intensive compliance assistance, and information outreach programs. OLMS also administers Executive Order 13201, the notification of employee rights concerning payment of union dues or fees.

### Safeguarding Union Assets

In addition to conducting compliance assistance sessions on financial reporting and recordkeeping for union members and officials, OLMS conducts investigations into possible embezzlements of union funds to protect and safeguard union funds and assets. During FY 2004, OLMS-initiated investigations led to 111 criminal convictions for crimes such as embezzlement, filing false reports, destroying records, bank fraud, theft, forgery, and federal racketeering.

### Financial Reporting and Recordkeeping

With the first major revision in union financial reporting requirements in over 40 years, OLMS increased the transparency and accountability of labor organizations to their members, the public, and the government. These requirements took effect for fiscal years beginning July 1, 2004 and thereafter following extensive compliance assistance to train unions in the use of the electronic filing software and the requirements of the new forms. In addition to requiring more detailed information from unions, the new regulations require that all unions filing a Form LM-2 must do so electronically.

OLMS has revamped its Web site to focus on all aspects of the new rule, posting copies of the new forms and instructions, and Frequently Asked Questions. An electronic message service was also created to disseminate up-to-date and uniform information about the rule.

### Union Democracy

Investigations of union officer elections may be initiated by OLMS on receipt of a timely filed complaint from a union member protesting the election. The union may rerun the challenged election under OLMS supervision or, if warranted, OLMS may take legal action seeking a new election if a union has been found to have violated the requirements of the LMRDA. During FY 2004, OLMS completed 107 election investigations and supervised 28 union officer elections.

# Safeguarding Union Assets

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Union officers have a duty to manage the funds and property of the union solely for the benefit of the union in accordance with its constitution and by-laws. A union officer or employee who embezzles or misappropriates union funds or assets commits a federal crime punishable by a fine and/or imprisonment. Following are highlights of some of the most significant cases brought by OLMS during 2004.

## **New York City Construction Industry Investigation**

An ongoing investigation of the New York City construction industry has resulted in more than 50 indictments and over 30 convictions of union officers and members of Elevator Constructors Local 1 and other unions and their associates. The investigation uncovered violence and intimidation against union members as well as numerous instances of individuals being paid for work they did not perform at construction sites in New York. This scheme caused construction costs to be significantly inflated.

In a related prosecution, a 43-count indictment was issued involving the Metropolitan Transportation Authority's new headquarters in Manhattan. The ten defendants include the developer, a "soldier" in the Gambino organized crime family, a business agent with Laborers' Local 79, as well as union officers and members. The indictment alleges that organized crime influence over the project led to fraudulent over-billing, extortion, and kickbacks in at least ten contracts. The indictment estimates that the monetary loss to the MTA and the building's owner as a result of this corruption was "substantially in excess of \$10 million."

## **Former City Councilman Admits to Union Embezzlement**

Daniel F. Kearney, a former Long Beach, New York, city councilman, has been sentenced to one year in federal prison after pleading guilty to embezzling nearly \$150,000 from Local 79 of the Laborers Union while he was secretary-treasurer from 2000 to 2002.

Among Kearney's misuse of union funds were unauthorized purchases at Radio City Music Hall, the Mirage Hotel in Las Vegas, a Macy's in Hawaii, and the San Diego Zoo. He also made a political contribution with stolen funds. Kearney was elected to the Long Beach City Council in November 2001, but resigned in June 2003 when questions began to surface about the union's finances.

## **Washington Teachers Union Corruption Exposed**

An investigation of corruption within the Washington Teachers Union (WTU) has resulted in five individuals, including former WTU president Barbara Bullock, pleading guilty to embezzling more than \$4.6 million from the union as well as conspiracy and money laundering. Four additional persons, including the union's former secretary-treasurer, the former executive assistant to the president, and two outside accountants have been indicted and charged with embezzlement, wire fraud, mail fraud, money laundering, and conspiracy and are awaiting trial.

Bullock and her Executive Assistant Gwendolyn Hemphill caused Hemphill's son-in-law and a friend to establish a company called Expressions Unlimited. The union then wrote checks to Expressions Unlimited totaling more than \$480,000. Some of this money was given to Hemphill or deposited directly into Bullock's personal bank account in the form of kickbacks. Bullock and Hemphill should have filed Form LM-30, Labor Organization Officer and Employee Reports, disclosing these payments.

# Safeguarding Union Assets

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## **Accountants Sentenced in Iron Workers Union Embezzlement Case**

Francis J. Massey and Alfred S. Garappolo, both former CPAs and partners with the Thomas Havey Company accounting firm, were sentenced in the U.S. District Court for the District of Columbia for their role in concealing the true amount of money that the union disbursed for Iron Worker's officers' meal and entertainment expenses. Their sentences were reduced due to the assistance they provided to the federal government in the larger federal probe of corruption within the Iron Workers Union that resulted in seven union officials and an insurance executive pleading guilty to various fraud charges.

## **UTU Officials Plead Guilty to RICO Conspiracy**

An investigation of corruption in the United Transportation Union (UTU) resulted in the conviction of four union officials who pled guilty to conspiring with others to violate federal mail and wire fraud statutes and interstate transportation in aid of racketeering through commercial state bribery by using their positions of authority to solicit and collect cash payments and other things of value from attorneys doing business or seeking to do business as Designated Legal Counsels of the UTU.

Former International Presidents Byron A. Boyd and Charles L. Little, as well as two other union officials, pled guilty to one count of RICO conspiracy. Boyd, Little, and one of the union officials admitted to embezzlement from a labor organization in their pleas. On July 9, 2004, Boyd and Little were each sentenced to 2 years in prison, followed by 3 years of supervised probation. The two men were also ordered to forfeit \$100,000 each in racketeering proceeds and were fined \$10,000.

## **Union Official Pleads Guilty to Embezzlement and Making False Entries**

Angelous "Smokey" Lineback, former international representative with the Retail, Wholesale District Council of the United Food and Commercial Workers International Union, was charged and subsequently pled guilty to embezzlement and making false entries in required union records for two of the North Carolina locals he was servicing. On May 3, 2004, Lineback pled guilty to embezzling \$182,443 and \$13,685 from Local 1050 and Local 1052, respectively. Lineback forged the signatures of the required signatories for each local and falsified numerous other union records to facilitate and conceal the embezzlement from each local. Lineback will be sentenced in March 2005.

## **Union Official Convicted of Receiving Cash Kickbacks**

Darvin Collins, the former business manager for International Brotherhood of Electrical Workers Local 16 in Evansville, Indiana, was convicted of receiving cash kickbacks of \$25,370 from Gerteisen Electric, a company that employs members of Local 16. Gerteisen Electric received money from a union fund used to help union contractors be more competitive when bidding on construction projects that would employ Local 16 members. Collins was also convicted of receiving a shakedown payment of \$1,434 from Diversified Power Group, a non-union company performing construction work on a riverboat in Mt. Vernon, Indiana. Collins was sentenced to 10 months imprisonment and 2 years supervised release. Collins should have reported payments from both companies on Form LM-30, Labor Organization Officer and Employee Report.

# Financial Reporting and Recordkeeping

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Union members are entitled to transparency and accountability regarding the finances of their unions. Under the LMRDA unions are required to file annual financial reports with OLMS. The reports and documents filed with OLMS are public information and any person may examine them or obtain copies.

**The current Form LM-2, used to disclose a union's financial information to its members, has been revised for the first time in over 40 years.**

## **Revised Form LM-2 and New Form T-1**

The requirement for unions with \$250,000 in annual receipts to file electronically the revised Form LM-2; and the Form T-1, for trusts in which the union has an interest, became effective July 1, 2004. The new requirements will apply only to annual financial reports filed by unions for fiscal years beginning on or after the effective date.

## **Compliance Assistance**

OLMS provided comprehensive compliance assistance to unions following the publication of the Final Rule implementing these changes. During FY 2004 OLMS conducted 237 formal group compliance assistance sessions, and a special training session for 130 CPAs and union accountants. OLMS also offered approximately 60 national unions the opportunity to request a special briefing on the forms, which 24 unions accepted. Ongoing efforts by the OLMS district offices continue to provide assistance as unions develop familiarity with the new filing requirements. OLMS has also revamped and updated its Web site, [www.olms.dol.gov](http://www.olms.dol.gov), which presents a wealth of information about the new rule with quick links to tools that will help with compliance. An e-mail message list was created that allows OLMS to disseminate information about the rule widely and quickly. Currently, there are nearly one thousand organizations and individuals receiving these electronic updates. Unions are also able to access information about the new rule through the Department's Help Desk at 1-866-4-USA-DOL. In calendar year 2004, the Department responded to more than 2336 inquiries through this telephone number. Questions that the Help Desk is not able to answer are forwarded to OLMS where they are handled by technical experts. OLMS continues to expand its outreach efforts, recently posting a new Web page to help officers and members of small unions understand and comply with the requirements of the LMRDA, and will be offering, in early 2005, Spanish translations of its more popular resources.

# Financial Reporting and Recordkeeping

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## Information Technology to Support the Revised Financial Reports

To facilitate the electronic filing of the revised Form LM-2 and new Form T-1, OLMS developed electronic forms software, supporting information technology infrastructure, and a new Public Disclosure Web site. In addition, SRA International, an information technology consulting firm, was selected as the contractor to develop the business rules, requirements documents and user guides for the project. In April 2004 OLMS made the Revised Form LM-2 and the new Form T-1 software available to the public for download through the OLMS Web site. The software is in an Adobe Acrobat PDF form. To assure the security of these electronic forms, they must be digitally signed by the appropriate union officers. Digital Certificates can be purchased through one of the certified ACES certificate providers.

## Electronic Report Auditing Program

In 2003, OLMS implemented an electronic report auditing program (e.REAP). This program electronically audits every labor organization annual financial report to ensure that certain minimum reporting standards are met. When deficiencies are identified, OLMS investigators can take a variety of actions such as providing the filing union with an advisory letter based on the electronic audit results, or conducting a more detailed audit of the report and seeking an amended report. The e.REAP program has helped OLMS meet its performance goal to increase the percentage of union annual reports meeting the minimum reporting standards. In 2004, 94% of all reports met acceptability standards.

## Delinquent Reports Program

To further efforts to improve timely filing, OLMS sends certified letters to chronically delinquent Form LM-2 filers reminding them of the annual financial reporting requirement and advising them of possible legal action. When reports are not received by the specified date, the delinquent case is referred to the Office of the Solicitor of Labor for legal action.

## In-Depth Desk Audits

In a new initiative to strengthen its compliance audit program, OLMS performed several in-depth desk audits of financial reports filed by International Unions. The reports were analyzed and compared with information obtained from various databases. Additional information, explanations of transactions and amended reports were requested as a result of these audits.

**Failure to file reports and irregularities in unions' reports can result in direct financial harm to union members.**

# Union Democracy

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The LMRDA establishes democratic standards for conducting union officer elections, such as the frequency and method of elections, the right of members in good standing to be candidates, rights of candidates, and voting rights of members. Based on a timely filed complaint from a union member, OLMS may take legal action seeking a new election if the LMRDA elections provisions have been violated. The LMRDA also prescribes different intervals and methods for the officer elections required for each type of labor organization. On November 3, 2004, OLMS published a notice requesting information from the public to assist in evaluating its methods for determining when a labor organization constitutes a local, intermediate, or national or international labor organization. Twenty-four public comments were received by the January 3, 2005 deadline. Following are highlights of some of the most significant OLMS election cases during 2004.

## **OLMS Investigation Prompts 25,000 Member Flight Attendant Union to Install Properly Elected President**

The Association of Professional Flight Attendants (APFA) represents approximately 25,000 flight attendants nationwide who are employed by American Airlines. An OLMS investigation of the March 2004 runoff election between two candidates for APFA president revealed that 16 eligible members were denied the right to vote when the union failed to count their ballots even though the 16 members satisfied the union's voter eligibility requirements. The union's board of directors voluntarily recognized the results of the OLMS tabulation of these 16 ballots and installed the candidate that OLMS determined received a majority of the valid votes cast. Since the Title IV violation that occurred when the union failed to count these ballots was remedied by tabulating the ballots and installing the winning candidate, the Department and the union averted protracted and costly litigation.

## **Department Settles Suit Seeking New Election in Brotherhood of Maintenance of Way Employees**

An OLMS investigation of the election of Grand Lodge officers of the Brotherhood of Maintenance of Way Employees revealed that certain candidates used union funds,

equipment, and staff to prepare campaign literature and that employer funds were used to pay the expenses of a candidate's campaign consultant. Suit was filed on July 7, 2003 against the 45,000 member union. However, a settlement agreement was signed on September 1, 2004 that voided the disputed election and provided for new nominations and elections for certain positions to be conducted under the supervision of OLMS.

## **Court Affirms Secretary's Regulation on Election Notice and Orders Supervised Election**

The court agreed with the Department that United Food and Commercial Workers Local 538 in Madison, Wisconsin, provided inadequate notices of election in a union federation newspaper because the notices did not appear conspicuously on the front page of the newspaper and the newspaper's front page did not conspicuously reference the inside page where the notice appeared. These requirements for notices of a labor union officer election are set forth in the Secretary's regulations that interpret Title IV of the LMRDA. Pursuant to an order of the court, OLMS supervised a new election that was completed on May 7, 2004. The complainant was elected president.

# Union Democracy

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## **Writers Guild Agrees to New Election for President**

The Writers Guild of America, west, which represents all writers for motion picture studios, network and cable television west of the Mississippi River, agreed to voluntarily rerun the election for the office of president. OLMS conducted an investigation of its September 2003 election of officers and found that the union failed to properly qualify candidates for president allowing one nominee to run and take office who did not meet the union's eligibility requirements. OLMS supervised a new election on September 21, 2004. After investigating complaints arising from this rerun, the Department certified the results of the election on November 5, 2004.

## **Postal Mail Handlers Local 307 Agrees to New Election**

In this mail ballot election of a statewide local with 1,532 members, the OLMS investigation established numerous violations, including up to 44 ballots being cast by persons other than the members to whom the ballots were issued. Other violations included denial of the right to have an observer, denial of the right to vote to an unspecified number of members, improper use of union funds in connection with campaign literature, and the improper disqualification of two candidates for office. When confronted with the investigative findings, Postal Mail Handlers Local 307 in Detroit agreed to invalidate the election and conduct a new election for the offices of president, vice president, recording secretary, treasurer, state executive board, and eight branch presidents under OLMS supervision.

## **AFSCME Florida District Council Agrees to Supervised Election**

On November 22, 2004 AFSCME Florida Council 79, an intermediate body comprised of approximately 90 local unions representing roughly 18,000 members, entered into an agreement with the Secretary of Labor to conduct new nominations and a new election for the offices of trustees, conference board vice president for colleges & universities, Region 5 executive board, and all Council 79 convention delegates under OLMS supervision. The agreement resulted from an investigation by OLMS into the Council's October 19, 2002 election. Investigation established that delegates from 21 local unions were improperly selected when they were not elected by the membership, not elected by secret ballot, or not elected after proper notice was given to members.

## **AFSCME Council 61 Agrees to Supervised Election**

A suit filed by the Department was settled by consent decree after OLMS investigated complaints arising from the AFSCME Iowa Council 61 election held on July 26, 2003. Investigation into the nomination and election of delegates in the 106 locals comprising the council revealed that local members were denied the right to vote when they were not mailed an election notice in violation of the LMRDA and were not provided nomination and election notices as required under the International's constitution. The union agreed to OLMS supervision of new nominations and elections for delegates and all 25 council officer positions.

## **Executive Order 13201**

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Non-exempt government contractors and subcontractors are now required to inform their employees that they have certain rights related to union membership and use of union dues and fees. Under Executive Order 13201, government contracts and sub-contracts must include an employee notice clause that requires such non-exempt Federal contractors and subcontractors to post notices informing their employees of these rights.

On September 30, 2003, the United States Court of Appeals for the District of Columbia Circuit issued its mandate in UAW-Labor Employment & Training Corporation v. Chao. The court's April 22, 2003 decision in this case upheld Executive Order 13201 and reversed the January 2, 2002 district court decision which had permanently enjoined the Department of Labor from enforcing the Executive Order. The Department issued a Final Rule implementing E.O. 13201 on March 29, 2004. The Final Rule is jointly administered by OLMS and the Office of Federal Contract Compliance Programs. OLMS created a Web page about E.O.13201 that includes Frequently Asked Questions, the downloadable poster, a fact sheet, and other guidance.

## **Rights of Federal Union Members**

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A regulation that would require federal unions to periodically inform their members of their democratic rights was proposed by OLMS on November 3, 2004. These rights are set forth in the standards of conduct provisions of the Civil Service Reform Act (CSRA) and the standards of conduct regulations. Among other things, they include the right to participate in union affairs, freedom of speech and assembly, and the right to nominate candidates for office and run for office. The requirements of the standards of conduct regulations are based on requirements of the LMRDA and incorporate pertinent court decisions. A total of 765 public comments on the Notice of Proposed Rulemaking were received by the January 3, 2005 deadline.