United States General Accounting Office 132010

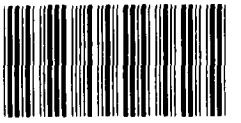
GAO

Briefing Report to the Chairman, Committee on Labor and Human Resources, United States Senate

December 1986

DEPARTMENT OF LABOR

Preventing Conflicts of Interest by Employees Enforcing Labor Union Laws



GAO/HRD-87-40BR

GAO

United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

B-164292

December 29, 1986

The Honorable Orrin G. Hatch
Chairman, Committee on
Labor and Human Resources
United States Senate

Dear Mr. Chairman:

In response to your request and later discussions with your office, we reviewed the Department of Labor's changes in enforcement activities under the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) since our 1978 report. We reported the results of our review to you in September 1985.

We did that review primarily at Labor's national office, three of the Labor-Management Services Administration's (LMSA's) six regional offices, and 6 of its 24 area offices. During that review, we identified (1) apparent and potential conflict-of-interest situations in Labor's enforcement activities under LMRDA and the Civil Service Reform Act (the Reform Act) and (2) problems in Labor's procedures established under Executive Order 11222, issued May 8, 1965, and the Ethics in Government Act of 1978 (the Ethics Act) in helping Labor employees avoid conflict situations when carrying out such federal activities as enforcing LMRDA and title VII of the Reform Act. We agreed to provide a briefing report on the results of our work in the conflict-of-interest area. Those results are summarized below and discussed in detail in this briefing report.

LMRDA is designed to protect the rights of millions of labor union members in the private sector from improper and corrupt practices by their organizations, officers, representatives, and labor relations consultants.

The Reform Act, enacted in 1978, includes standards-of-conduct provisions, patterned after Executive Order 11491--which had granted to federal employee unions bargaining rights in 1970--that govern and regulate the activities of federal employees' unions. Labor administers LMRDA and the standards of conduct for federal unions under the Reform Act.

The Ethics Act requires executive-level officials, such as those at grade 16 and above and members of the Senior Executive Service, to file public financial disclosure reports containing information on financial income, property interests, and outside employment. In our review of LMRDA enforcement activities, we found that Labor had not established specific review criteria, as required by the Ethics Act, for use by officials reviewing financial disclosure reports. Our review of the public reports filed by the 14 executive-level LMSA employees involved in LMRDA enforcement at the time of our audit, primarily in calendar years 1983 and 1984, showed three apparent or potential conflicts that were not adequately addressed by those who reviewed the reports or Labor's review process.

LMSA also did not have adequate case assignment procedures to preclude its field investigators from being assigned to investigate unions or private companies in which they may have had a personal or financial interest. Although we did not identify any conflict situations, LMSA area administrators cited examples of potential conflicts that could be occurring in the absence of procedures for avoiding conflicts in assigning cases.

We also found that LMSA investigated and/or supervised a federal employees' national union's 1981 and 1982 elections and several of its local unions' elections--including the local that represents Labor employees at the Washington headquarters--in apparent violation of the Reform Act. LMSA also supervised the rerunning of an election of an officer of the national union that represents most LMSA field investigators and other Labor field employees. The Office of Labor-Management Standards Enforcement (LMSE) developed special instructions to minimize the possible conflicts, but LMSA officials believed that there was still a potential for conflict in its handling of the elections.

To determine Labor's actions related to possible conflict-of-interest problems, we did subsequent work at the Office of Labor Management Standards (OLMS)--the successor to LMSE--and the Solicitor's Office in the national office. We found that, in calendar years 1985 and 1986, Labor took or planned to take action to establish more specific review criteria for reviewers of public financial disclosure reports to help them resolve possible conflict situations.

For example, OLMS has issued case assignment instructions requiring that when an investigator is assigned a case, the supervisor and investigator should ensure that neither the investigator nor his family members have any present or past relationships with the organization or individuals being investigated that would or could potentially constitute a conflict of interest or an appearance of one.

OLMS has also recognized the apparent conflict-of-interest problem under the Reform Act and has petitioned the Federal Labor Relations Authority to exclude investigators who work on LMRDA and the Reform Act enforcement from the National Union of Compliance Officers--an independent union--bargaining unit. The Authority's regional director in Washington, D.C., agreed with Labor, but the Authority in April 1985 granted a stay of the order. On September 26, 1986, the Authority issued a decision finding that Labor should continue to recognize the National Union of Compliance Officers--an independent union--as the bargaining unit for OLMS employees, pursuant to section 7135(a)(1) of the Reform Act.

OLMS has also prepared proposed legislation to amend the Reform Act and LMRDA to have the Authority handle cases involving federal unions representing Labor employees. Assigning this responsibility to the Authority would not pose a conflict-of-interest situation because its employees belong to an independent union not covered by title VII of the Reform Act and not affiliated with any other national or local federal organization. The proposal still was under review as of December 9, 1986, but according to Labor and Office of Management and Budget officials, Labor hopes to submit it to the first session of the 100th Congress.

We believe that Labor's actions and legislative proposal, if adopted and properly implemented, should resolve the conflict situations facing Labor employees enforcing LMRDA and the Reform Act.

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As requested, we did not obtain official comments from Labor on a draft of this briefing report. However, knowledgeable Labor officials were given an opportunity to review a draft of this report and provide oral comments, which were considered in finalizing the report.

As arranged with your office, unless its contents are announced earlier, we plan no further distribution of this briefing report for 30 days. At that time, we will send copies to interested parties and make copies available to others on request.

Should you need additional information on the contents of this document, please call me on 275-5451.

Sincerely yours,

Ira Goldstein

for Franklin A. Curtis
Associate Director

Contents

ABBREVIATIONS

AFGE	American Federation of Government Employees
FLRA	Federal Labor Relations Authority
GAO	General Accounting Office
LMRDA	Labor-Management Reporting and Disclosure Act of 1959
LMSA	Labor-Management Services Administration
LMSE	Office of Labor-Management Standards Enforcement
NUCO	National Union of Compliance Officers
OGE	Office of Government Ethics
OLMS	Office of Labor-Management Standards
OMB	Office of Management and Budget

PREVENTING CONFLICTS OF INTEREST BY EMPLOYEES ENFORCING LABOR UNION LAWS

BACKGROUND

The Department of Labor administers or helps administer two laws that directly affect the rights and welfare of millions of union members in the United States. One is the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), which applies to labor unions in the private sector. The second is title VII of the Civil Service Reform Act of 1978 (the Reform Act), which covers unions representing federal employees.

In 1978, we reported[1] the problems and weaknesses in the enforcement program for LMRDA and recommended that Labor make certain improvements in its enforcement activities under LMRDA. In response to a request from the Chairman, Senate Committee on Labor and Human Resources, and later discussions with his office, we reviewed Labor's changes in enforcement activities under LMRDA since our 1978 report and reported the results of our review to the Chairman in September 1985.[2]

During that review, we identified apparent and potential conflict-of-interest situations in Labor's enforcement activities under LMRDA and the Reform Act and problems in Labor's procedures under Executive Order 11222, issued May 8, 1965, and the Ethics in Government Act of 1978 (the Ethics Act), helping federal employees avoid conflict situations when carrying out federal activities, such as enforcing LMRDA and the Reform Act.

This briefing report covers the apparent and potential conflict-of-interest situations we identified in Labor's enforcement of LMRDA and title VII of the Reform Act, and the actions taken and planned by Labor to correct the problems. At the request of the Chairman's office, we did not obtain official agency comments on this briefing report. However, knowledgeable program officials were given an opportunity to review a draft of this report and provide oral comments, which we considered in finalizing the report. Our work was performed in accordance with generally accepted government auditing standards.

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[1]Laws Protecting Union Members and Their Pension and Welfare Benefits Should be Better Enforced (HRD-78-154, Sept. 28, 1978).

[2]The Department of Labor's Enforcement Activities Under the Labor-Management Reporting and Disclosure Act of 1959 (HR2-44FS, Sept. 24, 1985).

Objectives, scope, and methodology

Our LMRDA enforcement review, during which we identified conflict-of-interest problems, was made primarily at the Office of Labor-Management Standards Enforcement (LMSE) national office; three of six Labor-Management Services Administration (LMSA) regional offices (Chicago, Philadelphia, and San Francisco); and 6 of 24 area offices (Chicago, Cleveland, Los Angeles, Philadelphia, San Francisco, and Washington, D.C.).

At each of the LMSA regional and area offices visited, we reviewed the controls and procedures used by the offices and their employees to comply with Labor's, LMSE's, and LMSA's regulations, policies, and standards of ethics and conduct. We also discussed with regional and area administrators what they believe are possible conflict situations their investigative staff should avoid and what actions they take when assigning individuals to union audits and investigations to avoid potential conflict situations.

We also performed work at the Division of Legislation and Legal Counsel in the Office of the Solicitor and the Office of the Assistant Secretary for Administration and Management, both in Washington, D.C.

We reviewed and evaluated pertinent sections of LMRDA, the Reform Act, and Executive Order 11491, particularly those relating to Labor's responsibilities for regulating and investigating federal labor unions--including those to which Labor employees belong. We also reviewed several Labor representative petitions submitted to the Federal Labor Relations Authority (FLRA), and related briefs and FLRA decisions, requesting (1) a clarification of the validity of the National Union of Compliance Officers (NUCO)--an independent union--as the bargaining unit for LMSA compliance officers enforcing LMRDA, and (2) the Office of Pension and Welfare Benefit Programs employees in NUCO be transferred to the American Federation of Government Employees' (AFGE's) Local 12 in Washington, D.C., or its National Council of Field Labor Locals.

We also reviewed Executive Order 11222, the Ethics Act, and the Office of Government Ethics' (OGE's) regulations governing the (1) standards of ethics and conduct for federal employees and (2) disclosure and review of financial interests of employees and maintenance of the public financial disclosure report system.

We also discussed Labor's standards of ethics and conduct and public and financial and employment disclosure systems with Labor and OGE officials and reviewed November 1981 and July 1984 OGE reports covering reviews of Labor's two systems.

LMRDA and the Reform Act

LMRDA was enacted to eliminate and prevent improper practices by labor organizations (unions), employers, labor relations consultants, and their officers and representatives. The act protects various rights of union members, including the right to elect union officers, and it imposes fiduciary responsibilities on labor union officials to safeguard union funds and other assets. It also requires (1) labor organizations to file annual reports with the Secretary of Labor disclosing their financial conditions and operations and (2) officers and employers of labor organizations to file reports with the Secretary disclosing personal financial information.

Labor unions representing federal employees were not included in the coverage of LMRDA. Executive Order 11491, which became effective for the most part on January 1, 1970, granted federal employee unions bargaining rights and required them to meet standards of conduct patterned after the provisions of LMRDA. The Reform Act, enacted in 1978, superseded section 18 of Executive Order 11491, which established standards of conduct for federal employee unions. Title VII incorporated the standards-of-conduct provisions similar to those in Executive Order 11491.

The Reform Act has two conflict-of-interest provisions pertinent to this report. One, 5 U.S.C. 7112(b)(4), prohibits labor bargaining units (recognized representatives of employees under the Reform Act) from including employees engaged in administering title VII of the Reform Act. The other, 5 U.S.C. 7112(c), prohibits any employee engaged in administering "any provision of law relating to labor-management relations" from being represented by a labor organization that represents other individuals covered by such provision or is directly or indirectly affiliated with an organization representing other individuals covered by such provision.

Enforcement of the acts

Labor has primary responsibility for administering LMRDA and shares responsibility for enforcing the act's criminal provisions with the Department of Justice. Among other things, Labor investigates union elections and, if the act's provisions are violated, can obtain a voluntary or court-ordered rerun of an election and supervise the new election.

In enacting the Reform Act in 1978, the Congress created FLRA as an independent agency and neutral third party, with primary responsibility for administering the federal labor-management relations program and resolving labor-management disputes in the federal government. The act requires Labor to prescribe regulations to carry out the purpose of title VII

standards-of-conduct provisions for labor organizations; the regulations must conform generally to the principles applied to private unions.

Until May 1984 within Labor, LMSA and LMSE were primarily involved in enforcing LMRDA and the Reform Act. In May 1984, the Secretary of Labor issued an order that abolished LMSA's national office--including LMSE--and realigned its components to a newly established Office of Labor-Management Standards (OLMS) and the Office of Labor-Management Relations Services. OLMS assumed responsibility for LMRDA and the Reform Act enforcement.

In addition, Labor realigned LMSA's field offices into separate entities, one for OLMS and one for the Office of Pension and Welfare Benefit Administration.[3] The reorganization of OLMS and realignment took effect in August 1984.

Labor's system for preventing and resolving conflicts of interest

LMSE headquarters and LMSA field staff were governed by standards of conduct in Executive Order 11222, issued on May 8, 1965; Labor's standards of ethics and conduct regulations (29 CFR 0.735), issued in 1968; the Ethics Act, enacted in 1978; and conflict-of-interest statutes.

Executive Order 11222 established standards of conduct for federal employees and required the reporting of financial interests. The order also established standards of conduct and financial disclosure reporting requirements for special government employees.

Pursuant to Labor's regulations in 29 CFR 0.735, in October 1968 LMSA issued Order No. 1-68, "Ethics and Conduct." It supplements the executive order with an annual notice reminding all LMSA employees of ethics and conduct regulations' requirements, including the requirement that each LMSA employee annually review the ethics and conduct standards in Labor's regulations.

The Ethics Act established public financial disclosure report requirements for executive-level officials (such as those in grade 16 and above and members of the Senior Executive Service). The act also established the OGE to provide overall

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[3]This organization administers Labor's responsibilities under the Employee Retirement Income Security Act, which regulates private employee pension and welfare benefit plans. The Pension and Welfare Benefit Programs was designated the Office of Pension and Welfare Benefit Programs from January 16, 1984, to January 20, 1986, at which time it was redesignated the Office of Pension and Welfare Benefit Administration.

direction on policies concerned with preventing conflicts of interest by officers and employees of executive branch agencies. The act's principal objectives were to promote the financial accountability of, and increase public confidence in, government officials.

APPARENT AND POTENTIAL CONFLICT-OF-INTEREST PROBLEMS FOUND DURING LMRDA ENFORCEMENT REVIEW

In our review of LMRDA enforcement activities, we found that Labor had not established specific review criteria for use by Labor officials reviewing public financial disclosure reports of LMSE and LMSA personnel. Our review of the public financial disclosure reports for the 14 executive-level LMSE and LMSA employees involved in LMRDA enforcement at the time of our audit work, primarily in calendar years 1983 and 1984, showed three of these officials had apparent or potential conflicts that were not adequately addressed or identified by Labor's review process or the officials who reviewed the statements.

LMSE and LMSA also did not have adequate case assignment procedures to preclude their field investigators from being assigned to investigate unions or private companies in which they may have a personal or financial interest. Although we did not identify specific instances of conflict situations, LMSA area administrators cited examples of conflicts that could be occurring because of the absence of procedures for avoiding conflicts in assigning cases.

LMSE investigated and/or supervised the AFGE--an affiliate of the American Federation of Labor and Congress of Industrial Organizations--national union's 1981 and 1982 elections and several of its local union elections, including Local 12, which represents Labor employees at Labor's Washington headquarters. LMSA also supervised the rerunning of an election of an officer of NUCO, which represents most LMSA field investigators (OLMS and Pension and Welfare Benefit Programs Office), a potential violation of the Reform Act. LMSE developed special instructions to minimize the possible conflicts, but LMSE believed that there was still a potential for conflict in its handling of the elections.

Potential conflict situations not identified during Labor's review of disclosure reports

The Ethics Act required LMSA and LMSE executive-level officials, such as those at grade 16 and above and members of the Senior Executive Service, to file financial disclosure reports annually by May 15 containing such information as income, property interests, and outside employment for the

preceding year. At the time of our LMRDA enforcement audit work, there were 14 executive-level officials involved in LMRDA enforcement. In reviewing the financial disclosure reports for the 14 officials, we noted that 3 officials had apparent or potential conflicts that were not adequately addressed or identified by Labor's review process or reviewing officials.

The first case involved one LMSA official who had considerable influence over the investigation of unions for violations of LMRDA. He had the authority to direct investigative work to specific unions and advise on referral of cases to the Department of Justice for possible civil and/or criminal prosecution. The official was appointed in November 1981, and on his financial disclosure report, filed in May 1982, he reported his involvement as an unpaid counsel representing the plaintiffs in a private suit against a union. In his position, he could have directed an investigation against the union involved in the suit. Labor review officials allowed the person to continue in this capacity despite the potential conflict with his LMSA duties.

Officials in Labor's Solicitor's Office later reviewed the matter and determined that his capacity as unpaid counsel did not pose any legal problem. Also, he was the attorney most knowledgeable about the case, and it would have taken another attorney some time to become acquainted with the case. However, Labor's Solicitor's Office suggested to the person that he consider removing himself from the case when it became appropriate to do so. But he did not terminate his position as counsel until he left LMSA for employment with another federal agency. In June 1983 joint oversight hearings on his new agency,[4] members of two subcommittees expressed concern that the official's outside interest as a counsel was a potential conflict of interest with his duties while at LMSA.

In the second case, the review process was not adequate to identify the appearance of a conflict of interest involving the former head of LMSA, who had terminated employment as counsel for a steel company. He was appointed in April 1981, and in his financial disclosure report submitted in May 1982, he reported that he was employed as counsel for a steel company from August 1975 to April 1982. (This position was actually terminated in April 1981.) As the chief enforcement official over union activities, including directing investigations under LMRDA, the

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[4]"Oversight on the National Labor Relations Board," Joint Hearings before the Subcommittee on Labor-Management Relations, House Committee on Education and Labor, and the Subcommittee on Manpower and Housing, House Committee on Government Operations, 98th Cong., 1st. sess. (June 15 and 29, 1983).

official would have power to investigate unions representing employees of his employer.

In a June 25, 1981, letter to the Chairman of the Senate Committee on Labor and Human Resources in connection with his then pending nomination as head of LMSA, the official stated his intention to recuse himself from participation in any matter that would have a direct and predictable impact on the steel company's interests.

The official's position was not questioned by a counsel in the Solicitor's office who reviewed the report.

On reviewing the 1982 report, the counsel told us he knew of the official's commitment to sever his employment with the company and was aware, in any event, of the official's recusal. The counsel, however, failed to take note of the erroneous 1982 date that the official had indicated on the form. The counsel said he should have questioned the matter, but he overlooked it.

The official was nominated for employment with another agency, and we noted that he continued to list his position as chief labor counsel for the steel company on the financial disclosure report submitted in October 1982. However, he had corrected the report to show that his tenure as chief counsel for the steel company ended in April 1981, the date of his appointment in LMSA, rather than April 1982. Also, his new agency's designated agency ethics official, in his letter to OGE certifying the disclosure report, stated that the official agreed to remove himself from any proceeding that came before the agency involving any firm for which he had provided legal services.

In the third case, the review process did not identify an LMSA regional administrator's spouse's financial interest in a pension plan. The administrator oversaw LMRDA as well as the Employee Retirement Income Security Act, and was a key figure in deciding which pension plans to investigate. He listed on his 1982 financial disclosure report that his spouse had a financial interest in a pension fund. The pension fund was required to, and did, file reports with LMSA on pension activities. This financial interest was not questioned by the LMSA reviewing official, who said he never thought to compare the pension and the incumbent's enforcement duties. He also stated he should have questioned the financial interest for a potential conflict of interest.

Labor had not developed specific review criteria

The Ethics Act and implementing regulations require that each Secretary and designated agency official (the Solicitor of Labor) maintain a list of those circumstances or situations that

have resulted or may result in employees' noncompliance with conflict-of-interest laws and regulations. The act states that the agencies shall periodically publish such lists and furnish them to agency employees who are required to file disclosure reports. We found that the list required by the Ethics Act and OGE's regulations for use by reviewing officials had not been issued by Labor.

The lack of review criteria and list of those circumstances that have resulted or may result in noncompliance with applicable laws and regulations was called to Labor's attention in a November 1981 OGE report. The report also stated that one agency official, who was reviewing the agencies' public disclosure reports, did nct use reference materials, such as Moody's or Standard and Poor's reports. Rather, he relied upon his personal experience and knowledge of his agency's managerial practices as a guidepost in deciding whether the disclosed material posed conflict-of-interest problems, either apparent or actual. The report recommended that Labor and its components publish lists of potential conflict-of-interest circumstances.

In February 1985, OGE issued another report on Labor's ethics program and again recommended that the Department issue a list of conflict situations, as required by the regulations and Ethics Act. The report also noted that Labor's standard-of-conduct regulations had not been revised to include the act's requirements for executive-level officials, such as those at Grade 16 and above and members of the Senior Executive Service, to file annual public financial disclosure reports. The report recommended that Labor revise its regulations to reflect the act's requirements.

Guidelines to prevent conflict in field investigators' assignments

Neither LMSE's enforcement strategy document nor its compliance manual contained case assignment procedures to help preclude its field or national office investigators from being assigned to investigate unions or private companies, such as labor relations consultants, in which they have personal or financial interests. We discussed these matters with the former director of LMSE and the former assistant administrator for field operations, who agreed that LMSE lacked criteria or guidelines for assigning employees to LMRDA cases to avoid possible conflicts of interest.

We also asked the field officials at the three LMSA regional and six area offices visited to describe how they avoided conflicts of interest in assigning investigators cases under LMRDA. The officials included the then regional and assistant regional administrators, the area and deputy area administrators, and supervisory investigators.

Several of these officials said they had no specific procedures to avoid conflicts in assigning cases and did not screen investigators for possible conflicts before each assignment. Generally, they said that conflicts are avoided primarily through self-policing by the investigators, who are required by regulation to notify their supervisors of outside employment under certain conditions.

Area administrators, however, cited examples of conflicts that could occur because of the absence of procedures for avoiding conflicts in assigning cases. Some stated, for example, that investigators could be assigned to investigate (1) an employer consultant reporting violations at a company in which the investigators hold stock or other financial interests, (2) a union that employs or represents the investigator's spouse or other relative, (3) unions for which the investigators provide accounting or consulting services, and (4) attorneys providing legal services to the same unions they investigate. The area administrators stated they had not experienced such conflicts, but the potential exists.

Potential violations of the Reform Act

The Reform Act has two pertinent conflict-of-interest provisions regarding investigation of federal employee unions--5 U.S.C. 7112(b)(4) and 5 U.S.C. 7112(c). Section 7112(b)(4) prohibits employee bargaining units having recognition under title VII of the Reform Act, which is the labor-management statute governing the federal sector, from including employees engaged in administering title VII. This would prohibit, for example, an employee belonging to NUCO from investigating election complaints against that organization or another federal employee bargaining unit.

Section 7112(c) prohibits any employee engaged in administering any provision of law relating to labor-management relations from being represented by a labor organization that represents or is directly or indirectly affiliated with a labor organization, which represents other individuals covered by such provision. This would, for example, prohibit an employee belonging to AFGE from investigating complaints under LMRDA against any American Federation of Labor and Congress of Industrial Organizations bargaining units.

We found that between January 1979--when the Reform Act became effective--and January 13, 1986, LMSE or OLMS had investigated 16 cases involving election complaints or supervised election reruns of federal unions in which Labor employees were members. Two cases involved the AFGE national union, 13 involved AFGE local unions, and 1 involved NUCO. We reviewed 11 of the cases--1 involving AFGE's national union; 9 involving 4 of its local unions; and 1 involving NUCO, which represents LMSA field staff.

Labor's regulations provide that if the federal union members believe their rights to a fair and democratic election have been infringed, they can file a complaint with the union under its constitution and bylaws. But, if the member is not satisfied with the union's response or has not received a final decision within 3 months, he or she can file a complaint with LMSE.

If LMSE's investigation discloses no violations of Labor regulations that could have affected the election's outcome, LMSE will dismiss the complaint. But if the violations could have affected the election's outcome, LMSE notifies the complainant and labor union, either of which may request a conference with LMSE--within 15 days--to discuss and reach an agreement on the allegations. If neither party requests a conference or if no agreement is reached at the conference, LMSE is directed to institute enforcement proceedings by filing a complaint with Labor's chief administrative law judge.

After hearing the complaint, the administrative law judge refers the case and his decision to the Assistant Secretary of Labor-Management Relations, who issues a decision affirming or revising the judge's decision. If remedial action is ordered but not taken, the Assistant Secretary is required to refer the matter to FLRA for appropriate action.

The first case LMSE investigated under the Reform Act involving Labor employees was the complaint regarding improper conduct during the November 1979 election of AFGE Local 12's officers. Local 12 is the exclusive representative of professional and nonprofessional employees at Labor's national office, except for LMSA investigators. The former director of LMSE disqualified himself and assigned the case to the LMSA regional administrator for the New York region. The administrator had the LMSA East Orange, New Jersey, Area Office perform the investigation, which disclosed several violations, such as unreasonable meeting attendance requirements that disqualified 98 percent of the membership, that affected the outcome of the election. The East Orange Office also supervised Local 12's new election of its officials in April 1982.

The East Orange Area Office also investigated two election complaints in June 1982, involving improper procedures and conduct by officials of AFGE Local 2513, which represents about 420 Labor employees in New York and New Jersey. The area office's investigation resulted in the election being overturned, and the area office supervised a rerun of the election in March 1983 resulting from the investigation.

Two other situations involved investigations by the (1) Miami Area Office in May 1983 of a complaint of an improper eligibility ruling of a candidate involving an election of officers of AFGE Local 2139, which represents Labor employees in the

Dallas Region, and (2) San Francisco Area Office in May 1980 of complaints alleging improper dues and selection of delegates to the AFGE national convention by Local 2391, which represents Labor employees in LMSA's San Francisco Region. The Dallas investigation resulted in a rerun of the Miami office election, supervised by Dallas, while the San Francisco investigation determined that both the dues increase and the delegates' selection were proper.

LMSE also investigated a complaint regarding the election of national officers of the AFGE national union by constituent locals' delegates at a convention on August 25-29, 1980. LMSE's investigation disclosed that there was probable cause to believe that in the elections of delegates to the national convention, over 100 local elections were not conducted in accordance with the Reform Act, the standards-of-conduct regulations, and the applicable sections of LMRDA. As a result of negotiations between AFGE and LMSE, the union agreed to conduct its next regularly scheduled election of national officers at its August 1982 convention. AFGE also agreed to have LMSE supervise the nominations and election of regular and proxy delegates by the local unions and councils.

To help supervise the local elections, Labor detailed about 75 employees from other departmental organizations for 6 months. LMSE issued special instructions to regional administrators on handling detailed personnel for the elections and minimizing the potential for conflicts of interest. For example, a nonsupervisory person who was a member of an AFGE local under LMSE supervision was not to be assigned to supervise the local's election. Likewise, the supervisor of employees who belonged to an AFGE local being supervised was not to be assigned to work there.

Despite the safeguards to minimize the potential for conflict, the former director of LMSE told us he was uncomfortable with his office's work on the AFGE election. He said that to avoid conflicts arising under the Reform Act, Labor tried to assign cases involving Labor or LMSE employees to employees in regions outside of the local unions' jurisdiction.

He stated, however, that the potential for conflict was more pronounced in the case involving the rerun of the AFGE election, since it involved reviewing the election of 2,000 to 3,000 delegates in over 100 local unions. He said that because the delegates involved were from all over the country, it was not possible to have a Labor region investigate without delegates from that region being potentially affected by the investigation results.

The former director stated that some of the Labor personnel detailed to the AFGE investigations could have been members of

various local unions subject to supervised elections of delegates. Despite the special instructions developed for the elections, the former director believed that there was still a potential for conflict, or at least the perception to the public that LMSE was not fully independent in its handling of the AFGE elections.

In regard to NUCO, in October 1982, LMSE received a complaint from a NUCO steward in the Kansas City Area Office protesting the election of a NUCO vice president in the Kansas City region in early 1982. On November 10, 1982, the former director of LMSE wrote to the NUCO steward, stating that LMSE was considering an appropriate method for the investigating the complaint. However, the complaint and proposed investigation presented a difficult issue for LMSE. The chief of LMSE's Branch of Elections and Trusteeship (now the Division of Elections and Trusteeships) told us that if LMSE had its investigators in Kansas City perform the investigation, they would be investigating the NUCO local union to which they belonged--in our opinion a violation of title VII of the Reform Act, specifically 5 U.S.C. 7112(b)(4).

He also said assigning the case to another group from either the national office or another area office would have resulted in an appearance of a conflict of interest because if assigned to (1) the Branch of Elections and Trusteeship, its staff would be viewed as "management" in this situation instead of a neutral party or (2) another area office, since all investigators belong to NUCO, the investigators may be viewed as partial to members of the same national organization (i.e., NUCO), and we note that this would also be a violation of 5 U.S.C. 7112(b)(4).

The Chief of the Branch of the Elections and Trusteeships said that he resolved the case by negotiating with the NUCO president and persuading him to take certain remedial actions with respect to the challenged election. Specifically, pursuant to a decision of its executive board, NUCO on April 11, 1983, held a remedial election for the vice president in the Kansas City Region under the supervision of the LMSA Cleveland Area Office administrator and other staff members, and LMSE closed the case.

LABOR'S ACTIONS TO HELP PREVENT POSSIBLE CONFLICT-OF-INTEREST PROBLEMS

Subsequent work we did at OLMS and the Solicitor's Office in the national office indicates that Labor officials have acted to help prevent conflict situations from arising under LMRDA and the Reform Act enforcement activities. In calendar years 1985 and 1986, Labor took action to establish specific review criteria for reviewers of public disclosure reports. It has also

issued case assignment instructions requiring that when an investigator is assigned a case, the supervisor and investigator should ensure that neither the investigator nor his family members have any present or past relationships with the organization or individuals being investigated that would or could potentially constitute a conflict of interest or an appearance of one.

LMSE and OLMS have also recognized Labor's apparent conflict-of-interest problem under the Reform Act and have petitioned FLRA to exclude LMSE investigators who work on LMRDA and the Reform Act from the NUCO bargaining unit. FLRA's regional director granted Labor's request, but in April 1985, FLRA issued a stay of the order. On September 26, 1986, FLRA issued a decision finding that Labor should continue to recognize NUCO as the bargaining unit for OLMS employees, pursuant to section 7135(a)(1) of the Reform Act.

LMSE and OLMS have also prepared proposed legislation for amending the Reform Act and LMRDA to have FLRA handle cases involving federal unions representing Labor employees. Assigning this responsibility to FLRA would not pose a conflict-of-interest situation because FLRA employees belong to an independent union not covered by title VII of the Reform Act and not affiliated with any other national or local federal organization. The proposal was still under review as of December 9, 1986, but Labor hopes to submit it to the first session of the 100th Congress.

Labor in process of establishing criteria for reviewers of disclosure statements

We noted that Labor's Office of the Solicitor, in connection with the filing of confidential and disclosure statements for fiscal year 1983, gave agencies specific information and criteria for use in reviewing the statements and resolving potential conflicts. The deputy solicitor's September 1983 memorandum to the deputy assistant for labor-management relations regarding LMSA employees' confidential statements for fiscal year 1983 stated:

> "The statement must be reviewed for the resolution of any real or potential conflicts of interest. The reviewing official should be reminded that if the employee has job assignments in which it might be desirable for a more thorough review of the financial interest statements for potential conflict, that stock guides such as Standard and Poor's may be used to trace the ownership of a corporation to a parent corporation.

"In the event a real or potential conflict of interest cannot be resolved, the employee's statement of employment and financial interests and other pertinent information must be forwarded to the Solicitor's Office as provided in section 0.735-21 of the Departmental regulations."

In addition, the counsel for Special Legal Services in the Solicitor's Division of Legislation and Legal Counsel told us that in the summer of 1985 he held a training session for headquarters officials on completing the public disclosure reports (SF 278). According to the counsel, the officials included those from personnel who monitor the issuance and receipt of the forms and are responsible for reviewing them before forwarding them for signature usually by the head of an agency, such as the Assistant or Deputy Assistant Secretary for LMSA. He provided information and answers to participants' questions, he said, by providing examples of what constituted conflicts of interest and what to look for in complying with the regulations involving the forms.

The counsel also told us that he was revising Labor's regulations on ethics and conduct to provide guidelines for filers and reviewers of disclosure statements to follow. The revised regulations will include specific examples of conflict or potential conflict situations, he added. As of December 4, 1986, the counsel was still working on the revisions.

Labor implements case assignment procedures as part of OLMS reorganization

In a reorganization begun in January 1984, Labor abolished LMSA and established OLMS--with a new national and field organization to enforce LMRDA. In May 1984, OLMS was given responsibility for LMRDA and the Reform Act enforcement under an Assistant Secretary for Labor-Management Standards, who reports directly to the Secretary of Labor.

LMSA/LMSE functions were also reorganized. One important change was the establishment of an Office of Enforcement and Field Operations, under a deputy assistant secretary, which gave line management direction and review over the OLMS program components and activities in the national office and the activities in the field offices. In addition, Labor realigned LMSA's field offices into separate entities, one for OLMS and one for the Office of Pension and Welfare Benefit Programs. The reorganization and realignment took effect in August 1984.

Also, during calendar years 1985 and 1986, OLMS issued enforcement strategy documents and compliance manuals and emphasized the need for national and area office officials to avoid

potential conflict-of-interest situations in assigning investigators under LMRDA. In a February 3, 1986, memorandum, the Acting Deputy Assistant Secretary for Labor-Management Standards urged that employees keep in mind at all times the regulations governing ethics and conduct and stressed the importance of avoiding conflicts and appearances of conflicts in all operations. The memorandum also stated:

> "OLMS personnel must be perceived as fair, impartial, and unbiased in the handling of all cases and other program activities. Whenever an Investigator is assigned to a case, both the Supervisor and the Investigator should ensure that neither the Investigator nor members of his family have any present or past relationships with the organizations or individuals involved in the case that would, or could potentially constitute a conflict of interest or an appearance of a conflict of interest. Employment and social relationships are among those which should be considered."

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We believe OLMS's revised case assignment instructions for avoiding potential conflicts, if properly implemented, should more adequately preclude its employees enforcing LMRDA from participating in investigations of organizations--union or employer--in which they may have a personal or financial interest. We also believe the more detailed review criteria provided and specific examples of conflicts to be provided by the Solicitor's Office, if sufficiently detailed, should help OLMS officials responsible for reviewing public disclosure statements be alert to and resolve potential conflict-of-interest situations.

Labor files representative petitions with FLRA to have NUCO decertified

On April 16, 1984, Labor filed petitions with FLRA to clarify the status of NUCO as an appropriate bargaining unit for LMSA employees. The NUCO unit, as defined in the collective bargaining agreement between NUCO and LMSA, consists of

> "all permanent full and part-time employees, including persons occupying upward mobility positions of the Labor-Management Services Administration, U.S. Department of Labor, excluding management officials, supervisors and confidential employees as defined in Chapter 71 of 5 U.S.C.; employees engaged in Federal personnel work; clerical employees; and student assistants."

Briefs filed by Labor to support the petitions state that in 1984, Labor reorganized LMSA into two separate offices, one to do LMRDA work and the other to do Employee Retirement Income Security Act work. Based on the reorganization, Labor's petitions request that the Pension and Welfare Benefit Administration investigators, who are currently represented by NUCO, be included by accretion into AFGE's Local 12 unit in the Washington, D.C., area and into the National Council of Field Labor Locals in Labor's field offices. Accretion is a concept in labor law that permits a specific group of employees to be included in an already existing bargaining unit without giving the affected employees the right to vote in an election.

Labor also asked that all field LMSE investigators be removed from NUCO's bargaining unit because they administer provisions of title VII of the Reform Act. Thus, if both of Labor's requests were granted, NUCO would in effect would be decertified as a bargaining unit.

A clarification of unit hearing was held before an FLRA hearing officer in Washington, D.C., and on November 30, 1984, the FLRA Regional Director issued a decision finding that LMSE investigators who work on LMRDA should be removed from NUCO's bargaining unit because they administer title VII. The regional director found that the saving provision of the Reform Act, section 7135--which preserves recognitions granted before the enactment of the act--did not act to preserve recognitions that are otherwise inappropriate under title VII. Concerning the Office of Pension and Welfare Benefit Programs investigators, the regional director found that they should not be accreted into the bargaining units represented by Local 12 and the National Council of Field Labor Locals.

Both NUCO and Labor appealed the regional director's decision to FLRA. NUCO also requested a stay of the decision. On April 1, 1985, FLRA issued an order granting a stay of the regional director's decision and agreed to hear the appeals.

On September 26, 1986, FLRA issued a decision partially disagreeing and partially agreeing with the regional director's findings. First, FLRA's decision stated that OLMS, with minor changes in the field structure, continues to function as LMSE did before the reorganization of LMSA and, pursuant to section 7135(a)(1) of the Reform Act, NUCO continues to represent a viable unit of former LMSA employees certified in 1972, which currently includes only OLMS employees. Accordingly, FLRA found that Labor must continue to recognize and bargain with NUCO as the exclusive representative of the remaining unit, now entitled OLMS.

In regard to Pension and Welfare Benefit Administration investigators, FLRA agreed with the regional director that they

not be accreted into bargaining units represented by Local 12 and the National Council of Field Labor Locals. FLRA concluded that Pension and Welfare Benefit Administration investigators administer statutes relating to labor-management relations within the meaning of section 7112(c) of the Reform Act. Therefore, FLRA found that the investigators cannot be included in units represented by Local 12 of AFGE or the National Council of Field Labor Locals.

Labor's legislative proposal to have another agency review federal unions

Each calendar year, Labor's agencies prepare legislative program proposals as part of the Department's annual proposed legislative program submitted to OMB pursuant to Circular A-19, Legislative Coordination and Clearance. Our review of Labor's LMRDA legislative programs for calendar years 1981-85 showed that each year LMSE or OLMS has proposed that the standards-of-conduct provisions in the Reform Act be amended to make federal employee unions subject to all LMRDA provisions and to provide for an independent agency, such as FLRA, to be responsible for enforcing matters affecting Labor employees.

In a January 11, 1984, memorandum to the Associate Solicitor, Division of Legislation and Legal Counsel--which is responsible for Labor's legislative program proposals--OMB stated it would consider Labor's proposed amendment to the Reform Act if the draft legislation was submitted for clearance.

On June 25, 1985, the Secretary of Labor submitted to OMB draft legislation that would (1) amend the Reform Act and the Foreign Service Act of 1980 so that LMRDA would apply to federal sector unions and (2) provide the Secretary's office with discretionary authority to refer specific cases to FLRA for enforcement. The second amendment, according to the Secretary, would enable Labor to avoid possible concerns over its objectivity in handling cases involving unions that represent or seek to represent its own employees.

In February 1986, the Labor attorney in the Solicitor's Office monitoring the proposal's progress told us that in July 1985 OMB sent the proposal to 20 departments and agencies, including FLRA, for review and comment. The Labor attorney said OMB had only received comments, which were informal, from one department, Justice.

On August 6, 1986, the Justice Department submitted to OMB its formal comments, in which it recommended that the proposed legislation not be submitted to the Congress.

Justice stated that unlike the Reform Act, which has a short section covering the subject of labor-management relations

that is precisely drafted for the federal sector, LMRDA is a lengthy statute designed to address the problems of corruption in the private sector. Further, LMRDA places equal restraints, including reporting, on unions and employers and provides both criminal and civil penalties for failure to comply. Not only would such penalties appear inappropriate against the federal government, Justice stated, but applying those LMRDA provisions to the federal government would result in the likelihood of one executive branch department suing another to enforce compliance with the bill. Imposing additional reporting provisions would also appear unnecessary, according to Justice, since the federal government already extensively reports on its activities to the Congress, and the Freedom of Information Act provides exhaustive access to government records.

Justice did agree with Labor's reason for advancing the proposed legislation--allowing Labor to refer cases involving unions representing or seeking to represent Labor employees to FLRA--and thus removing any potential conflict of interest. Justice stated that, although it defers to Labor on the desirability of this authority, it does not appear necessary to apply LMRDA to federal employee unions in order to achieve this goal.

The Labor attorney monitoring the proposal's progress said that as of December 9, 1986, Labor was working on a letter that responds to the Department of Justice's policy concerns and constructive objections. The attorney said the letter should be sent to Justice by early December. According to the attorney and an OLMS official, Labor hopes to submit its proposed legislation in the first session of the 100th Congress. The OLMS official stated that even if FLRA had upheld the regional director's decision concerning NUCO, Labor still planned to submit the proposed legislation to clear up the appearance of a conflict of interest of having Labor employees investigate AFGE's Local 12 and its National Council of Field Labor Locals.

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We believe Labor's legislative proposal to have FLRA handle cases involving federal unions representing Labor employees, if properly implemented, should resolve the conflict situations facing Labor employees under the Reform Act and LMRDA.

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