[COMMITTEE PRINT]

THE FORGOTTEN LAW—DISCLOSURE OF CONSULTANT AND EMPLOYER ACTIVITY UNDER THE LMRDA

REPORT

OF THE

SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS

OF THE

COMMITTEE ON EDUCATION AND LABOR HOUSE OF REPRESENTATIVES

TOGETHER WITH

MINORITY VIEWS

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FOREWORD

The Labor-Management Reporting and Disclosure Act of 1959 [LMRDA], requires disclosure of activities by employers and labor relations consultants who seek to influence the rights of employees to organize and to bargain collectively. The Subcommittee has undertaken an investigation of the Department of Labor's enforcement of these provisions of the law. In preparation for oversight hearings the Subcommittee staff conducted a preliminary examination of the Department's activities in this area. The Subcommittee then conducted two days of oversight hearings on February 7th and February 8th, 1984. This report reflects the conclusions and findings of the Subcommittee's investigation. It was formally adopted by the Subcommittee on June 25, 1984.

The Subcommittee wishes to acknowledge the staff assistance received in the preparation of this report from Fred Feinstein, Lloyd Johnson, Faye Mays, Gail Weiss, Peter Rutledge, Rose Hamlin, and Gail Brown.

Hon. WILLIAM L. (BILL) CLAY,
Chairman.

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Introduction

Title II of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Landrum-Griffin Act) requires that employers and labor relations consultants file reports with the Secretary of Labor if they seek to persuade employees about how to exercise their rights to organize and collectively bargain.[1] Title II also requires extensive reporting by unions and union officers.[2] Through a staff investigation and oversight hearings, the Subcommittee on Labor-Management Relations has closely examined the Department of Labor's (DOL) enforcement of these provisions of the law.

The Subcommittee concludes that, while each year more than 50,000 unions file a detailed account of their activities and finances with the Department of Labor, there is widespread non-compliance by employers and labor relations consultants with the disclosure provisions of Title II. In spite of this lopsided compliance, the Department has systematically dismantled its employer and consultant reporting enforcement program. The Department of Labor is clearly failing to enforce important provisions of the LMRDA.

Nature of Preliminary Investigation

In preparation for the oversight hearings, the Subcommittee staff gathered information on the Department's enforcement of the employer and consultant reporting requirements of the Act. The Subcommittee reviewed the following sources of information: employer and consultant reports filed with the Department of Labor, closed employer and consultant case files covering the period from 1979 to 1983, internal documents and memoranda provided by the Department, the Department's responses to questions posed by the Subcommittee and other background materials. Officials of the Department and others familiar with the enforcement program were also consulted.

Background of the LMRDA

During the late 1950's, the Senate Select Committee on Improper Activities in the Labor-Management Field (the "McClellan Committee") held well-publicized hearings on corrupt and unethical practices by unions, employers and labor relations consultants. One finding of the McClellan Committee was that certain employers hired labor relations consultants to thwart workers from effectively exercising their organizing and bargaining rights under the National Labor Relations Act.[3]

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[1] Sec. 203; 29 United States Code sec. 433.
[2] Secs. 201, 202; 29 United States Code secs. 431, 432.
[3] *Final Report*, Select Committee on Improper Activities in the Labor-Management Field of the U.S. Senate, S. Rep. No. 1139, 86th Cong., 2d Sess., p. 871 (1960).

When Congress enacted the Landrum-Griffin Act in 1959 it made the policy judgment to require disclosure, rather than regulation, of consultant activity. Congress clearly intended that labor-management relations be conducted in full public view. Section 203 of the Act, which details the reporting and disclosure obligations of employers and labor relations consultants, was the "management side" counterpart to the extensive reporting and disclosure obligations imposed on unions and union officials in Sections 201 and 202 of the Act.

The disclosure provisions require that all unfair labor practices be reported. The statute also requires the disclosure of agreements between an employer and a consultant that have an objective of persuading employees about unionization. Thus, the Act also requires disclosure of matters that are neither illegal nor constitute unfair labor practices. They may not even be improper. Congress made the policy judgment that only full disclosure enables the people whose rights are directly affected, the public, and the Government to determine whether the activities are justifiable, ethical and legal.[4]

The Department of Labor has sole authority to enforce the reporting and disclosure requirements of the LMRDA. The Act establishes identical procedures for enforcing the provisions relating to employers, consultants and unions and identical penalties for non-compliance with the Act. Within the Department of Labor, the LMRDA is administered by the Office of Labor-Management Standards Enforcement (LMSE), a sub-division of the Labor Management Services Administration (LMSA).[5]

In the 25 years since the enactment of the LMRDA there has been a dramatic increase in management's use of consultants to counter the unionization efforts of employees or to decertify existing unions. This well-documented increase has been most pronounced in the past 10 years.[6]

During the February, 1984 Subcommittee hearings, Charles McDonald of the AFL–CIO presented research which documented the burgeoning growth of the consultant industry. The study revealed that consultants were the prime architects of anti-union campaigns in 70 percent of the sample surveyed. Further, the incidence of discharge of active unionists in violation of the National Labor Relations Act increased when consultants were involved. The study also concluded that consultants stimulate more aggressive, sophisticated and illegal activities by employers during organizing campaigns. Mr. McDonald pointed out that the failure of the Department to enforce the employer and consultant reporting requirements frequently denies employees significant information required by law about the full extent of their employers' anti-union efforts.

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[4] S. 1555, S. Rep. No. 187, 86th Cong., 1st Sess., p. 5 (1959).

[5] Subsequent to the adoption of this report, the Secretary of Labor in Order No. 3–84, abolished the LMSA and redesignated the LMSE as the Office of Labor-Management Standards (OLMS).

[6] *See, Pressures Hearings, Infra* note 12.

Requirements of the LMRDA

Section 203(a)(4) of the LMRDA requires all employers to report to the Secretary of Labor any agreement with a labor relations consultant "where an object thereof, directly or indirectly, is to persuade employees" in regard to their rights to organize or collectively bargain. Such employers must file a Form LM-10, entitled "Employer Report", with the Department of Labor within 90 days after the end of the fiscal year in which the expenditures were made.[7] Employers are also required to report on this form all expenditures incurred for the purpose of committing unfair labor practices whether or not a consultant was involved. In 1983, 60 such employer reports were filed.[8]

Section 203(b) of the LMRDA requires certain labor relations consultants to file two reports with the Secretary. The first, an "Agreement and Activities Report", Form LM-20, must be filed within 30 days after the consultant enters into an agreement with an employer "where an object thereof, directly or indirectly" is to persuade employees or to gather information.[9] The second, a "Receipts and Disbursements Report", Form LM-21, must be filed annually by consultants required to file Form LM-20.[10] It must list all employers for whom the consultant performed labor relations services and the amounts received from each during the course of the year whether or not those services would otherwise be reportable. During 1983, a total of 138 consultant reports were filed.[11]

In short, the consultant's LM-20 report should be followed by the employer's LM-10 report and later the consultant's LM-21 report. The forms require a description of the agreement between employer and consultant, including the amount of money the employer paid the consultant.

Section 201 of the LMRDA requires every international and local union to file annually with the Department of Labor, a detailed statement of its income and expenses, including salaries paid to all officers and employees of the union. Unions are also required to file reports about the maintenance of trusteeships and certain financial transactions. More than 70,000 union reports are filed every year.

Prior Subcommittee Consideration

In 1979 and 1980 this Subcommittee conducted hearings, *Pressures in Today's Workplace,* which included extensive testimony about the activities of consultants and their increasing impact on labor-management relations.[12] Following eleven days of hearings, the majority members of the Subcommittee issued a report in 1980 that criticized the Department of Labor's failure to correctly inter-

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[7] *See infra,* p. 15.
[8] See, p. 15, below.
[9] *See,* Attachment 2.
[10] *See,* Attachment 3.
[11] *See infra,* p. 15.
[12] *Pressures in Today's Workplace:* Hearings before the Subcommittee on Labor-Management Relations of the Committee of Education and Labor of the U.S. House of Representatives, 96th Cong., 2nd Sess., Vol. IV (1980).

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pret and effectively enforce the employer and consultant reporting requirements of the Act.

The report commended the Department for beginning to recognize the proliferation and transformation of the consultant industry, and for responding with preliminary steps to adjust its enforcement of Section 203. The report concluded that the improvements, while a necessary first step, did not go far enough toward achieving Congress' intent of full disclosure.

During the February, 1984 Subcommittee hearings, however, it became apparent that the Department has not only disregarded the 1980 Subcommittee recommendation which urged more effective enforcement of the employer and consultant reporting requirements of the LMRDA, but has retreated from the preliminary steps which it had inititated to improve its enforcement of these provisions. The Subcommittee concludes that, rather than upgrading or even continuing its prior enforcement program, the current administration has substantially undermined effective implementation of Title II of the LMRDA.

The Erosion of Section 203 Enforcement

The Department of Labor's reduced enforcement of the Act's employer and consultant reporting and disclosure requirements since 1980 is so substantial that it approaches abandonment of its enforcement obligation. There are three principal components to the erosion of this important agency responsibility: resource allocation, case initiation and statutory interpretation.

A. RESOURCE ALLOCATION

Despite increased appropriations for LMSE, since 1980 the Department of Labor has allocated diminishing resources to the enforcement of Section 203. The high point in enforcement was reached during FY 1980, when LMSA advised its field offices that "(t)he investigation of employer or consultant reporting cases will be afforded an equal priority to that presently given the investigation of (union) embezzlement complaints."[13] The terms of that directive expired at the end of FY 1980.

LMSE has enjoyed an overall 20 percent increase in budget in recent years:

Fiscal year:	*Thousands*
1979	$15.0
1980	16.8
1981	17.1
1982	17.0
1983	18.0
1984	22.3
1985 (req.)	22.5

In spite of this increase in resources, since 1980 there has been a precipitous decline in the resources allocated to LMSE enforcement of Section 203. The "LMSE Enforcement Strategy Document", issued to agency field offices for FY 1981, FY 1982 and FY 1983, mandated a sharply reduced commitment to Section 203 enforce-

[13] LMSA Notice No. 69-79 (November 13, 1979) (Attachment 8). *See also*, "LMSE Steps Up Consultant Enforcement," *LMSA Focus*, March-April 1980, p. 1 (Attachment 10).

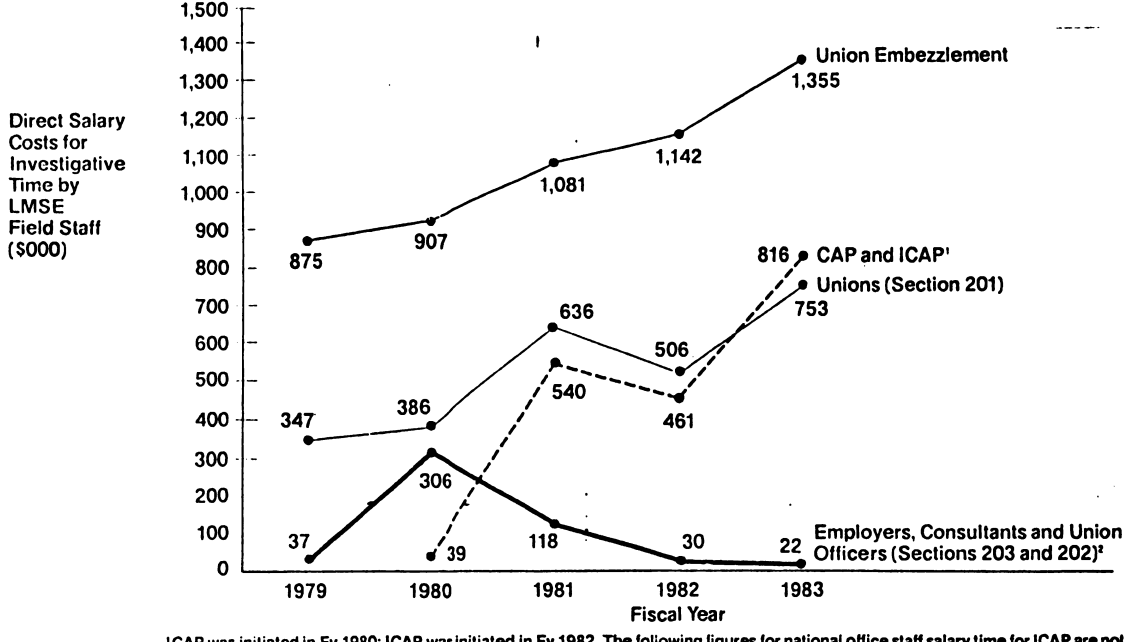
ment. Currently, a maximum of approximately 3 percent of LMSE program time is committed to Section 203 enforcement.

At the same time, LMSE has for the first time "established [union] audits and criminal investigations as the highest priority after the statutorily-mandated election program."[14] Documents indicate that a minimum of 50 percent of LMSE program time is now spent on this new priority. There are projections that this will soon increase to over 70 percent of program time. Virtually all of the rest of LMSE's program time is allocated to statutorily-mandated union election matters.

The divergent LMSE enforcement trends for achieving compliance with the LMRDA is further demonstrated by a comparison of the resources LMSE has committed to each enforcement area. Department of Labor data supplied to the Subcommittee, and reflected in Figure 1, shows substantial increases in expenditures for union-related enforcement, but a 93 percent decline in expenditures for employer and consultant enforcement since FY 1980. The Department's justification for LMSA's FY 1985 budget before both the House and Senate Appropriations Subcommittees reflected no changes in these enforcement policies.

[14] LMSE Enforcement Strategy Document for FY 1983, p. 2. This document apparently remained in force during FY 1984.

Figure 1: A rise in budget authorizations for LMSE in recent years has produced a sharp increase in expenditures for union investigations but a sharp decline in expenditures for employer/consultant investigations.



¹CAP was initiated in Fy 1980; ICAP was initiated in Fy 1982. The following figures for national office staff salary time for ICAP are not included on the graph above: Fy 1982: $108,000; Fy 1983: $129,000.

²LMSE information indicates that nearly all of these figures are attributable to employer and consultant investigations.

Figure 1 also shows the growth in the recently implemented Compliance Audit Program (CAP) and International Compliance Audit Program (I-CAP) which are directed at local and international unions. According to LMSE, CAP "is a hard-hitting audit approach to detect civil and criminal LMRDA violations in a minimum amount of time by using simplified auditing, investigating and reporting techniques."

LMSA justifies its vigorous audit and investigation activities with respect to labor unions on a 1978 study by the General Accounting Office which recommended greater activity in that area and on criticism that year by the Senate Permanent Subcommittee on Investigations. The Subcommittee finds this justification suspect given the fact that the Department has disregarded the 1980 recommendations of this Subcommittee to increase enforcement of the employer and consultant provisions of the LMRDA. The Department's justifications for its reallocation of resources is further undermined by the failure of its new aggressive enforcement program to uncover significant violations of the law.

The Department has repeatedly asserted to Congress that at least 14 percent of CAP audits indicate union embezzlement activity. Yet, information which the Department provided the Subcommittee documented that only one percent of the CAP audits have resulted in criminal indictments. And a March 1984 analysis of LMSA by the Department's Office of Inspector General found even this figure to be "inflated".

During FY 1982 and FY 1983, 661 CAP audits revealed 490 violations, the vast majority of which were of a minor and technical nature. Only 19 possible embezzlement cases were uncovered by LMSE. The 19 I-CAP audits which the Department conducted through FY 1983 resulted in a single criminal indictment of a union bookkeeper. The following chart summarizes the nature and the results of LMSE's CAP program from 1980–1983.

	Audit	Embezzlement investigations		Referred to Department of Justice		Criminal litigation	
		Number	Percent	Number	Percent	Number	Percent
1980	82	14		7		3	
1981	903	93		41		9	
1982	740	68		34		10	
1983	975	137		62		6	
Total	2,700	312	11.6	144	5.3	28	1.0

A recent study of LMSA by the Department's Office of Inspector General (OIG) supports the Subcommittee's view that LMSE's commitment of resources to the CAP program is misguided.[15] The OIG found that LMSE implemented CAP without evaluating the need or the effectiveness of the program. The OIG further determined that CAP is not an effective detection program for union violations. As shown by the table above, CAP has uncovered few

[15] Office of the Inspector General, U.S. Department of Labor, "Recommendations for LMSA Reorganization," (March 22, 1984) (unpublished report).

criminal violations and the OIG finds even the meager 1 percent conviction figure to be overstated.

Moreover, detection of many violations are not attributable to CAP. To the contrary, they resulted from tips or complaints from unions, other union self-disclosure, bonding company reports and information already available to LMSE from other sources. In fact, over half of the successful embezzlement cases the OIG reviewed were opened on the basis of a union tip or complaint; only 8 percent resulted from LMSE action.

Significantly, the OIG report makes no mention of LMSE enforcement of the LMRDA disclosure requirements for employers and labor relations consultants. This is consistent with the Department of Labor's lack of enthusiasm for those provisions of the LMRDA.[16]

Thus, the Department is devoting a significantly increased percentage of its resources to a program that its own Inspector General has labeled as misguided. At the same time it has failed to enforce the disclosure requirements for employers and labor relations consultants inspite of the fact that the evidence indicates signficantly increased violations of these provisions.

B. CASE INITIATION

In enacting the LMRDA, Congress empowered only the Secretary of Labor to enforce Title II's reporting and disclosure requirements. One court has held that private citizens cannot bring suit against consultants and employers to compel disclosure of information.[17] Further, Title II provides an array of enforcement mechanisms for DOL, ranging from broad investigatory and subpoena authority to civil litigation. The Act also provides criminal penalties for false and misleading reports. The Act contains no restrictions on sources of investigative leads or on the reasons DOL may initiate an employer or consultant investigation. Until March, 1982, the LMSE Manual suggested that investigations of employers or consultants for compliance with the Act could be predicated on complaints, NLRB records, news media reports and other sources.

Closing of non-complaint cases.—On March 12, 1982, however, LMSA issued LMSA Notice 13-82 which instructed its field offices that "(c)ases that have been opened on a basis other than complaint should be closed."[18] As a result of this instruction, approximately 100 cases were closed. In many of these cases the Department had already found reportable activity. Thus, not only does LMSE no longer have a program to identify violators of the Act, but it has dismissed cases in which their field investigations had documented violations of the law.

LMSE enforcement is now completely reactive. Even if egregious non-compliance is discovered through means other than a com-

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[16] *See,* "Hearings on Department of Labor Appropriations for Fiscal Year 1985," before the Subcommittee on Department of Labor, Health and Human Services, Education and Related Agencies of the Committee on Appropriations, U.S. House of Representatives, 98th Cong., 2d Sess. (April 6, 1984).

[17] *International Union, United Automobile Workers* v. *National Right to Work Legal Defense and Education Fund,* 590 F.2d 1139 (D.C. Cir. 1978).

[18] *See,* Attachments 14 and 15. *See also,* LMSE Enforcement Strategy Document for FY 1983.

plaint, LMSE's new policy prevents its investigators from proceeding in those cases.

In sharp contrast, virtually all of the other programs administered by LMSE continue to be initiated by "non-complaints." The only exceptions are union election and trusteeship investigations where the statute requires initiation by complaint. The following chart lists the LMSE investigatory programs in which the manner of case initiation is not specifically mandated by statute. The second column lists the subject of the programs and the third column lists the manner in which cases are initiated. The information on this chart was provided by DOL.

Activity	Subject	Case initiation
Financial report audits	Unions	Most noncomplaints.
Union fiduciary audits	Unions	Most noncomplaints.
Compliance audits	Unions	Most noncomplaints.
International compliance audits	Unions	Most noncomplaints.
Employer, consultant, and union officer report investigations	Employers, consultants, and union officers and employees.	Most complaints.[1]
Delinquency report compliance investigations	Unions	All noncomplaints.
Financial report compliance investigations	Unions	All noncomplaints.
Union member complaint investigations	Unions	½ complaint and ½ noncomplaint.
Embezzlement investigations	Union officers and employees	Fewer than ½ complaints.
Delinquency compliance cases	Unions	All noncomplaints.
Deficient financial reports compliance cases	Unions	All noncomplaints.

[1] According to LMSA Notice 13–82, the policy is actually all complaints.

The Subcommittee has documented that even when affected parties complain to the Department, many of those complaints are disregarded. For example, during the hearing Polly Connelly, an organizer for the United Auto Workers in Chicago, described how despite a law-breaking campaign in which the LMSA field office found seven instances of reportable activity by the Kawasaki Motor Company and the consultant/law firm of Tate, Bruckner & Sykes, LMSA took no action.

The UAW's complaints of nondisclosure to the Washington headquarters of LMSA only prompted replies that the violations did not warrant further action. This matter is currently under litigation. Ms. Connelly described her frustration that, while employers and consultants are allowed to ignore the statutory requirement to file reports, they often use reports filed by unions during organizational campaigns.

Melinda J. Branscomb, an attorney representing the Professional Nurses and Hospital Personnel Division of the United Paper Workers International Union, testified about the failure of LMSA's Chicago Regional Office to investigate alleged violations of the LMRDA by the Deaconess Hospital of Evansville, Indiana and its two law firm consultants during a union organizing campaign in 1983. First, the Regional Office ignored three complaint letters. Then, a supervisor at the Regional Office explained that its original failure to investigate the complaints was because the letters had been misplaced. He then said it was unclear whether the Chicago office had jurisdiction over the case since a new office would be opening in Evansville, no complaint had been filed with the

NLRB, and Departmental priorities, staff shortages and its own regulations prevented the Department from vigorously enforcing the requirements of the LMRDA. Ms. Branscomb described LMSA's representative as "defensive, evasive . . . and was willing to come up with any excuse it could think of for not enforcing these laws . . .".[19]

Attorney James I. Singer and Business Manager Robert Miller, representing Local 1 of the International Brotherhood of Electrical Workers, told the Subcommittee how a St. Louis employer had filed an LM-10 report which stated that its labor relations consultant, Imberman & DeForest of Chicago, had performed persuader activity. Imberman & DeForest failed, however, to file either an LM-20 or an LM-21 report with the Department of Labor. After three years and nine union inquiries, there was still no action on this case. Two days before the February Congressional hearings and after notice that this case would be considered at the hearings, Mr. Singer was informed that the Department would institute suit to compel Imberman & DeForest to comply with section 203(b) of the LMRDA.[20]

The Department's exclusive reliance upon complaint based enforcement of the employer and consultant reporting requirements of the LMRDA contrasts with its investigations and audits of labor unions. For union-related enforcement programs, LMSE's enforcement strategy documents instruct staff of LMSA to use field audits, desk audits, referrals from other agencies, news media reports and surety company reports in addition to complaints. The new "complaint only" policy regarding employer and consultant enforcement has occurred simultaneously with the creation and rapid growth of the wholly discretionary and "non-complaint" based CAP and I-CAP programs aimed at unions. It is only for investigations directed at employers and consultants that LMSE investigators are confined to responding to complaints.

Review of NLRB records.—Another related policy change is that LMSE no longer looks at National Labor Relations Board (NLRB) records as a source of reportable activity, despite past agency practice and agency acknowledgment during the 1980 hearings that this was a productive source of information.[21]

A recent study of NLRB cases arising in California established that over a seven-year period less than one percent of the employers and consultants revealed to be engaged in reportable activity actually filed reports with the Department of Labor.[22] John Williams, who coauthored the study and also served as a consultant to the Subcommittee, appeared as a witness at the hearings. Mr. Williams documented the impact of the Department's failure to regularly review NLRB decisions which identify violations of the law. Mr. Williams reported that after reviewing almost 10,000 NLRB cases, nearly all of the employers and labor relations consultants who should have reported pursuant to the LMRDA, failed to do so.

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[19] *See infra*, p. 16.
[20] *See infra*, p. 15-16.
[21] *See, Pressures Hearings, Supra* note 11, at 13.
[22] *See, "Union Busters" and the Law: Consultant and Employer Non-Compliance with Reporting Requirements of the Landrum-Griffin Act in California*, 5 New Labor Review 1 (1983).

Subcommittee witnesses, Branscomb and Connelly, reported conflicting LMSE policies: on the one hand, LMSE has deemed that a necessary precondition for its own initiation of an investigation was a prior NLRB finding of an unfair labor practice. On the other hand, LMSE has also advised that it would not act when the NLRB had already provided relief.

For example, an NLRB administrative law judge found that the Formaloy Corporation of Peoria, Illinois had committed an unfair labor practice. Anxious to obtain a copy of the employer's LMRDA report, a union representative contacted the Department of Labor and was advised that the NLRB action would trigger an LMSE investigation. Later, when the representative requested the report from LMSE, she was told that in order for the Department to initiate an investigation, it would be necessary for her to file a complaint. A complaint was filed, but LMSE has taken no action.

The Department justified its discontinuation of review of NLRB cases on the grounds that it was costly and would absorb resources that would otherwise be utilized to investigate complaint-generated cases. To the contrary, it would appear that the examination of NLRB case files would be an inexpensive and efficient means of assuring compliance with the law.

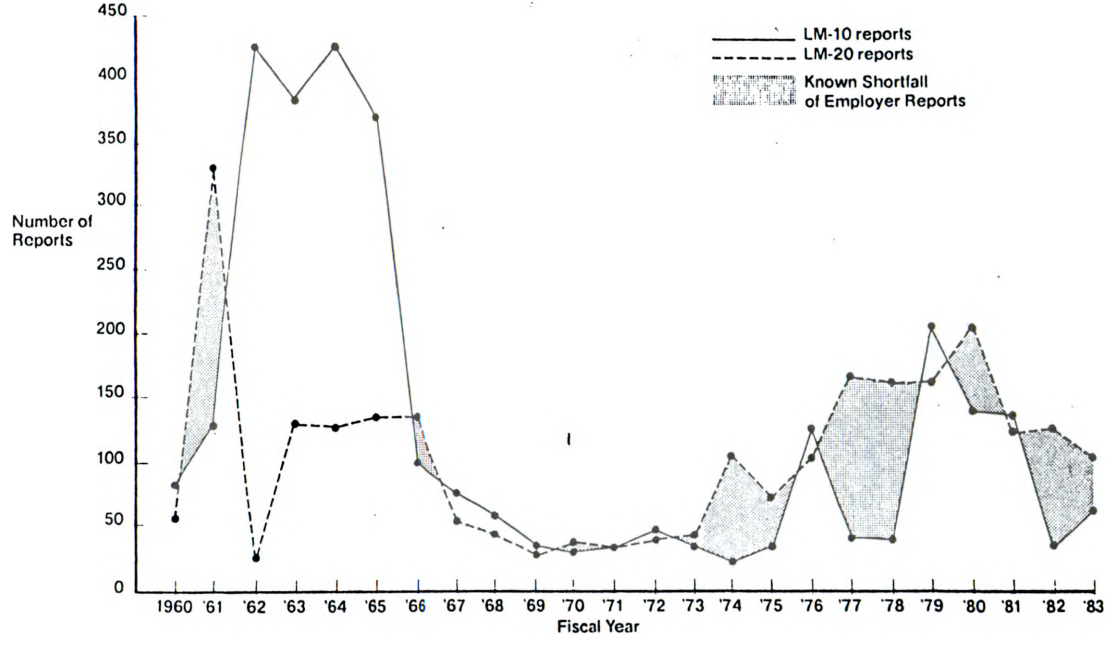
Despite this lack of coordination with the NLRB regarding section 203 enforcement, LMSA and the NLRB recently entered into an agreement under which the NLRB will provide LMSA with data about newly certified unions in order to "enable LMSE to promote and ensure immediate compliance" by unions with the LMRDA reporting requirements.[23]

Accuracy of Reports Received.—The Subcommittee found another serious flaw in LMSE enforcement—its failure to cross-check employer and consultant reports received and its inadequate efforts to require filers to cure serious deficiencies in their reports. The filing of an LM-20 report by a consultant should always result in the filing of a corresponding employer LM-10 report. (The reverse is not always true since an employer could be required to file an LM-10 report in some instances which did not involve consultant activity.)

Figure 2, which compares the number of LM-10 and LM-20 reports received, clearly demonstrates the discrepancies between these numbers. To supplement Figure 2, 84 randomly-selected LM-10's were examined. We found that 31 percent of the consultants identified in the LM-10's failed to file the required LM-20's.

[23] "Reporting Agreement", LMSA Focus, September-October, 1983, p. 8 (Attachment 16).

Figure 2: Even though an LM-20 filing should be a predicate for an LM-10 filing, more LM-20's have been filed than LM-10's in recent years.



It was equally apparent that the Department did not routinely check to ensure that consultants who file LM-20's later file the required LM-21 form. The Subcommittee sample further revealed that only 62 percent of the consultants filing LM-20's bothered to file the required LM-21 form. This non-compliance with the Act was easily discoverable had LMSE simply cross-checked the forms in its possession.

Initially, LMSE admitted in its response to the Subcommittee inquiry that it does not cross-check reports unless the report is received as a result of investigative activity. However, at the Subcommittee hearings, Richard G. Hunsucker, Director of LMSE, announced that LMSE routinely reviews and cross-checks for accuracy reports submitted by employers and consultants whether or not they were obtained after an investigation. In response to a question, Mr. Hunsucker acknowledged that the practice was initiated only two days prior to the hearings.

Further, in our sample we noted that a substantial number of reports LMSE had acknowledged by letter as satisfactory contained significant omissions of required information. These omissions included names, dollars amounts, and legally required signatures of principals. In such instances there was no indication that LMSE had attempted to secure proper data.

Again, LMSE enforcement policy here sharply contrasts with LMSE review of union reports, which are subjected to computerized review, with deficiencies and contradictory entries flagged and assigned for audits and investigations.[24] This unequal enforcement is all the more difficult to justify in light of the fact that union filings vastly out number employer and consultant filings—in FY 1983, for instance, LMSA received over 71,000 union and union officer reports, and just 198 employer and consultant reports.

C. STATUTORY INTERPRETATION

The Subcommittee finds that LMSA has arbitrarily narrowed its interpretation of what employer and consultant activities are reportable under Section 203. In so doing, LMSE has ignored the plain meaning of the statute, and has reversed long-standing agency policy.

1. "Indirect" persuader activity

Section 203 of the LMRDA directs employers and consultants to report "any agreement" pursuant to which the consultant "undertakes activities where an object thereof is, directly or indirectly . . . to persuade employees . . . or . . . to supply an employer with information concerning the activities of employees or a labor organization . . ." Until LMSA Notice 13-82 was issued in March 1982, LMSE adhered to the plain meaning of this section. In the words of its Interpretative Manual, the law does "not limit reports to situations where a consultant speaks directly to employees, but report-

[24] LMSE Enforcement Strategy Document for FY 1982, pp. 7-10.

ing depends rather on whether the activity in question has an object to persuade employees . . ." [25]

In two lawsuits, the Department successfully sued to compel consultant reports based on "indirect" persuader activity.[26] The second of these cases, against South Hills Health System, was initiated in 1981. In neither case was there "direct" contact between the consultant and the employees; rather, the consultant directed the employer's anti-union campaign from behind the scenes through supervisors. Each case resulted in the defendant filing the required reports.

Shortly after the successful conclusion of the second of these cases, LMSE abruptly and without public notice decided to close all cases involving " 'indirect' theories concerning consultants (alleged contacts by consultants with employees through supervisors)." [27] All field offices were so instructed in LMSA Notice 13–82.

Notwithstanding the statute's plain words requiring reports for both direct and indirect persuader activities and LMSE's own successful litigation, that directive tersely explained that indirect persuader cases involved "theories that were untested in that they had no legal precedent." In addition to ignoring the above mentioned cases, a shortage of legal precedent can only be attributed to LMSA's failure to prosecute such cases.

As a result of LMSA Notice 13–82, at least 99 cases were closed. LMSE no longer requires reports for activities which the "Pressures" hearings documented as the most prevalent form of modern consultant activity—the coordination of an employer's anti-union campaign through the use of front-line supervisors. The new policy undermines Congress' primary concern—exposing consultant activities which were hidden from employees.

2. "Split-income" theory

Section 203 of the LMRDA also requires employers to report expenditures made with the intention of committing unfair labor practices. It exempts compensation to officers, supervisors and employees for performance of their regular duties from the reporting requirements. Until March 1982, LMSE interpreted the Act to require reports of salary expenditures related to unfair labor practices because activities which violate federal labor law could not be regarded as "regular" services.[28]

Nonetheless, LMSE abruptly abandoned this longstanding interpretation of the Act, again without public notice. A handwritten note, dated September 23, 1981, stated that LMSE Assistant Director for Enforcement, Charles Williamson, "personally doesn't buy (split income.)" [29] The March 1982 directive to field offices (LMSA

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[25] U.S. Department of Labor, Interpretative Manual, sec. 263.200 (Attachment 5). *See also,* memorandum from LMSE Director Rolnick to Assistant Director Murphy (September 20, 1973) (Attachment 7).

[26] *Dunlop* v. *John Sheridan Assoc. Inc.,* No. 75–C–4205 (N.D. Ill. 1976), *Marshall* v. *South Hills Health System,* No. 81–66 (W.D. Pa. 1981).

[27] Memorandum from Charles M. Williamson to Jim Green (January 25, 1982) (Attachment 13).

[28] U.S. Department of Labor, Interpretative Manual, secs. 255.200 and 266.200 (Attachments 4, 11 and 6). *See also,* Attachment 9.

[29] *See,* Attachments 6 and 12.

Notice 13-82) formally implemented the abandonment of split-income cases. As a result, at least 30 cases have been closed.

Additional Consequences of Non-enforcement

As indicated previously, the primary consequence of non-enforcement has been non-compliance with the law. Some additional results of non-enforcement are:

1. Fewer consultant and employer reports are being filed despite evidence of the continuing growth of the consultant industry. Since 1980 there has been an overall decline in the number of LM-10, LM-20 and LM-21 reports filed. The Department has provided the following figures:

	1979	1980	1981	1982	1983
LM-10	204	145	141	55	60
LM-20	159	206	124	125	102
LM-21	35	32	37	21	36
Total	398	383	302	201	198

2. The number of employer and consultant cases opened has also dropped dramatically:

1980	350
1981	90
1982	39
1983	28

3. There has been a sharp decline in the percentage of "meritorious" Section 203 cases; that is, those which offer instances of conduct which the Department considers reportable. According to Department figures, the percentage of "meritorious" cases is as follows:

	Percent
1980	42
1981	40
1982	10
1983	19

The Subcommittee reviewed 448 LMSE case files which were selected randomly from cases closed within the past 5 years. It found that 56 percent of these cases were dismissed on the basis of policy changes implemented by LMSE within the last three years.

February 1984 Subcommittee Hearings

In February 1984, the Subcommittee conducted public hearings on the Department's enforcement of the employer and consultant reporting provisions of the LMRDA and its impact upon working people.[30] Witnesses who appeared before the Subcommittee substantiated the Subcommittee staff findings which were presented at the opening of the hearings.

[30] Oversight Hearings on the Landrum-Griffin Act before the Subcommittee on Labor-Management Relations of the Committee on Education and Labor of the U.S. House of Representatives, 98th Cong., 2d Sess. (1984) (hereinafter cited as *Hearings*).

As stated above IBEW Local 1 witnesses, Singer and Miller, testified that a labor relations consultant firm, Imberman & DeForest of Chicago, was hired to persuade employees to decertify a duly elected collective bargaining representative of a St. Louis employer. Two employees who were directly approached by the consultant provided reports to a Department investigator.

The employer voluntarily submitted its report to the Department and stated that Imberman & DeForest was retained to foster an anti-union environment, to prepare a decertification petition and to advise employees how to file such a petition. Two years passed after the Department had received this evidence and no action was taken by the Department to compel Imberman & DeForest's compliance with the law.

Two days before their scheduled appearance before the Subcommittee, the Department informed Messrs. Singer and Miller that the Department would institute a civil suit to compel Imberman & DeForest to submit the required reports. Mr. Singer has since been informed by the Department that Imberman & DeForest has filed reports for the year at issue. No lawsuit has been filed.

Melinda J. Branscomb, an attorney representing the Professional Nurses and Hospital Personnel Division of the United Paperworkers International Union, testified that the Department gave at least eight different and unsatisfactory excuses for not investigating the complaint of a failure to report to the Department. She stated, "the Department was so totally unresponsive to and evasive to me, it was shocking."

Con O'Shea, Special Representative of the Building and Construction Trades Department, AFL–CIO, accompanied by attorney Terry R. Yellig, testified that in 1979 in Los Angeles, Mike Sullivan and Associates, Inc., a consultant firm often retained by construction firms, actively sought to disrupt picketing activity and cause confusion among workers regarding their rights to organize and to collectively bargain. Mr. O'Shea informed LMSE about the consultant's activities. The Department replied that the activities were not reportable since the employees were not members of a recognized bargaining unit and LMSE had inadequate staff to conduct the investigation.

Four and a half years later, after Sullivan assaulted a union official, the Department filed suit to compel Sullivan and Associates to comply with the requirements of the LMRDA. The Department's suit was dismissed on procedural grounds, then reinstated. The litigation is still underway.

Charles McDonald, of the AFL–CIO, presented research which demonstrated that the consultant "stimulates the employer and its supervisors to more aggressive, sophisticated, and illegal campaign tactics. . . . The employees involved in the organizing drive are entitled to know how much of the company's money is going to pay him [the consultant], how carefully they are being manipulated by an outside force." [31]

John Williams, a writer-researcher from Berkeley, California, summarized his testimony by stating, "I have reviewed over 475

[31] *Hearings, supra* note 30, at 283.

LMSA case files . . . I can tell you that the LMSA's history of non-enforcement is even worse than I believed. . . . I uncovered over 200 cases of direct persuader and information-gathering activity by 177 different consultants. . . . In sum, one college undergraduate identified 57 more consultants in his spare time than all 26 offices of an entire federal agency charged with doing this job." [32]

Richard G. Hunsucker, Director of LMSE, attributed the sharp decline in the number of investigations conducted by the Department to a shifting of priorities and the Department's limited resources. Resources have been no constraint to the substantial upgrading of the Department's enforcement of the LMRDA provisions directed at unions. The 20% overall increase in funding for LMSA has been used to establish far more aggressive enforcement of these programs, while section 203 enforcement has been dismantled.

The priorities have certainly shifted, but what is absent from the Department's testimony is a rationale for the shift in priorities. Mr. Hunsucker acknowledged that anti-union management consultants ". . . from everything I've read . . . would seem to be on the increase".[33]

Yet, he also acknowledged that the Department, despite the abundant evidence of substantial growth, has done nothing to examine this significant change in labor-management relations and its possible implications on section 203 enforcement. Rather, their priority is how to investigate unions even though their own evidence suggests that the Department's stepped up efforts have failed to uncover significant union violations of the law. The Department is shifting its "priorities" away from activities where the evidence suggests that non-compliance with the law is greatest and devoting its admittedly limited resources to programs that the Department's own Inspector General has found are bearing little fruit.

Conclusion

Based on the materials examined and the testimony of witnesses during these hearings, the Subcommittee concludes:

1. The Department of Labor has arbitrarily "re-interpreted" several key substantive provisions of the law without public comment or any apparent substantive consideration. These reinterpretations are contrary to the statute and have substantially undermined the intent of Congress.

2. The Department of Labor is not enforcing even its re-interpreted version of the law. By its own admission, the Department has no employer or consultant enforcement program other than responding to complaints. The percentage of monetary and staff resources devoted to enforcing this provision of the LMRDA has steadily declined. The Department's failure to enforce the law continues in the face of substantial evidence of widespread non-compliance with the Act.

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[32] *Hearings, supra* note 30, at 277.
[33] *Hearings, supra* note 30, at 367.

3. The Department has consciously closed cases where its own investigations revealed violations of the Act without seeking compliance with the law.

4. At the same time the Department has sharply reduced its enforcement of the law pertaining to employers and consultants, it has expanded and intensified enforcement of comparable provisions of the law relating to unions.

In summary, the Department of Labor has abdicated its responsibility to enforce the employer and consultant reporting law. The Department has abandoned an even-handed approach to enforcing the law against unions, employers and labor relations consultants. As a result, non-compliance by employers and consultants is widespread, and the Department has frustrated Congress' intent that labor-management relations be conducted in the open.

It is imperative that Congress continue its active oversight of this program and take steps to provide for a more balanced allocation of the Department's resources to ensure that the Department enforce the reporting requirements of the LMRDA in an even-handed manner.

MINORITY VIEWS ON LMRDA ENFORCEMENT

We disagree with the focus, the analysis and the conclusions of this report.

While there may indeed be shortcomings in the enforcement of Sec. 203 of the Landrum-Griffin Act, we believe that these are primarily a result of resource limitations and the need for establishing priorities. Therefore, we believe that this report overstates its case and we cannot endorse it.

A casual reader of this report, with little knowledge of the Landrum-Griffin Act or its legislative history, would surely believe that the employer/consultant reporting provisions in Section 203 must be the centerpiece of the Act, given the report's implicit insistence that it be given equal priority to the union reporting requirements.

However, as the Subcommittee well knows, the impetus behind the Landrum-Griffin Act was the disclosures of corruption within organized labor, frequently aided and abetted by management. While devoting nearly all of its investigative energies to this area, the McClellan Committee also learned of reprehensible uses of consultants by employers battling organization campaigns. Yet, since the authors of Landrum-Griffin were apparently incapable of defining precisely what was wrong with the use of consultants other than their frequent engagement in "unfair labor practices" (which was already prohibited under the National Labor Relations Act), it was decided that they could at least be somewhat neutralized through reporting requirements.

The primary purpose for Section 203, was best stated in the Senate Labor and Public Welfare Committee Report on S. 1555 (S. Rept. No. 187):

> The committee believes that employers should be required to report their arrangements with these union-busting middlemen . . . These expenditures may or may not be technically permissible under the National Labor Relations or Railway Labor Acts, or they may fall in a gray area. In any event, where they are engaged in they should be exposed to public view, for if the public has an interest in preserving the rights of employees then it has a concomitant obligation to insure the free exercise of them.

The public policy behind the union reporting requirements, on the other hand, is the need for protection against improper and ineffective use of that portion of an employee's hard-earned wages or salary that is set aside for union dues.

The relative weight of these policies, the clarity of their goals, and the respective ability of the Federal government to effectively further them, constitutes the principal basis for our belief that this

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report attaches too much importance to relatively minor deficiencies.

Given this viewpoint, let us examine the various charges that have been levied against the Department of Labor in this report.

A. RESOURCE ALLOCATION

The report attempts to demonstrate through the persuasive power of numerical data that Section 203 enforcement has been suddenly drained of all effectiveness through a decrease in commitment of dollars and time.

Had the statute been enacted in 1978, the report would make a convincing case, because virtually every statistic used is from FY 1979 or later, which indeed shows a decline in caseload and resources since 1980. As it turns out, the statute was enacted in 1959 and, by every account (including this Subcommittee's 1981 staff report entitled "Pressures in Today's Workplace"), had been largely ignored for 20 years.

The crucial factor in 1979 and 1980 was a substantial increase in the number of complaints filed regarding violations of Section 203. The decrease in resources committed to Section 203 has, in turn, coincided with a decrease in the number of complaints filed. [The Department does not keep data on the number of complaints received but, according to its testimony, in most instances where a complaint is received, a case is opened. The number of case openings based upon complaints from 1977 to 1983 are as follows: 1977—14; 1978—19; 1979—57; 1980—424; 1981—103; 1982—55; 1983—30.]

The report does note that, at least in FY 1980, the investigation of Sec. 203 violations was given "equal priority" with union embezzlements. However, this policy was abandoned by the previous administration when it expired on September 30, 1980, apparently in order to return the enforcement of Section 203 to a priority level that reflected its standing within the statutory scheme.

It is only logical that Section 203 would receive a small share of the resources committed to Landrum-Griffin Act enforcement—Section 203 is only a very small part of the statute. The main thrust—the dominant subject of the McClellan Committee hearings—is aimed at corruption within organized labor where the victims were those whose hard-earned union dues were being misspent and ineffectively used.

The failure of previous Departments of Labor to address this important concern was underscored in a 1978 GAO Report, which criticized the Department for inadequate investigation and auditing of labor organizations and pension plans. The budgetary increases that have occurred for Landrum-Griffin enforcement over the past six years have resulted from the need to address this inadequacy. We note that our Subcommittee, which holds jurisdiction over all aspects of the Landrum-Griffin Act, has (other than a 1976 hearing on weighted voting) virtually ignored these aspects of the Act, though they form its central core.

B. CASE INITIATION

The report criticizes the Department of Labor for a 1982 policy change that closed all Section 203 cases that had not originated with a complaint and restricted future enforcement actions to complaint-based cases, in contrast with the other provisions of Landrum-Griffin, none of which relies solely upon complaints.

While there may be some room for criticism of the Department in this regard (as well as its recently-remedied failure to cross-check employer and consultant forms), we cannot agree with the report's strong conclusions in this area because the report fails to answer a crucial question: Prior to 1982, what proportion of Section 203 cases did not originate with complaints and what was their success ratio compared to complaint-based cases?

The crux of this question is whether, given the limited resources available for enforcement of Section 203, the Department is genuinely focusing its efforts in the most productive areas. There is positive evidence to support the Department's strategy, in light of the fact that 12 civil cases have been filed since 1980, compared to only 4 in the previous ten years.

In critiquing the Department's resource allocation decisions, it is important to realize that, as with most laws, Landrum-Griffin relies upon the deterrent effect of its ability to track down its violators. That being the case, the more successful enforcement actions taken, the stronger the likelihood of voluntary compliance. Reliance upon complaints may very well enhance that success ratio within limited resources.

The report also criticizes the lack of an effective inter-agency agreement between the Department and the National Labor Relations Board (NLRB) in enforcing Section 203. As Mr. Hunsucker explained to the Subcommittee, previous efforts to achieve effective cooperation have failed because of the different focus of each agency. The report fails to mention that the inter-agency agreement between DOL and the NLRB on Section 203 enforcement was discontinued by the previous administration. Moreover, several Federal court decisions have undercut any hopes of effectiveness by holding, for example, that an NLRB finding of fact is not conclusive in a Section 203 enforcement action.

The report attempts to demonstrate an anti-union bias by referring to the recent inter-agency agreement whereby the NLRB provides DOL with data regarding newly-certified unions. In the first place, this is only appropriate since the NLRB is the agency responsible for certifying those unions. Moreover, the contours of that kind of information are precise and easily obtainable, which is certainly not the case with the information needed to enforce Section 203.

C. STATUTORY INTERPRETATION

The report claims that the LMSA has "arbitrarily narrowed" the range of reportable activities under Section 203. The report then discusses two theories: "indirect persuader activity" and "split income".

Despite the report's claim that these theories are within the "plain meaning" of the Act and were previously included under

"long-standing agency policy", the fact remains that, in the 25 years since enactment of the Act, no court decision has ever interpreted Section 203 to include these theories. The report asserts that the Department has twice successfully sued to compel reports based upon "indirect activity", but fails to mention that, in both instances, a settlement was reached and the consultants agreed to report without any final court decision being issued.

With respect to the "indirect persuader activity theory" (which holds that reporting is required where the consultant has indirect contact with employees through their supervisors), the report states that, the policy of not applying the theory "undermines Congress' primary concern: exposing consultant activities which were hidden from employees."

Without expressing an opinion as to the validity or desirability of the "indirect persuader activity" theory, we simply note that it is clear that Congress did not intend to expose all "hidden" consultant activity, as is evident by the exception stated in Sec. 203(c): "Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give *advice* to such employer . . ." (emphasis supplied) The "advice" exemption clearly does not apply when there is direct contact by the consultant with employees. Therefore, the exception can only refer to contacts with those other than the employees, which could arguably include supervisors. We do not necessarily believe that the exception is so broad, but we do note that, despite its pronunciations regarding the "plain meaning" of the statute, the "advice" exemption is mentioned nowhere in the Subcommittee report.

Similar concerns apply with the "split income" theory, which requires disclosure of salary expenditures related to unfair labor practices on the theory that activities violating the Federal labor laws cannot be regarded as "regular" services (and thereby excepted under Sec. 203(e))."

As with the previous theory, there is also a lack of legal precedent in the courts for this theory, which does not necessarily refute it. Nevertheless, we underscore the fact that the theory can only be applied where an unfair labor practice has occurred, which per se requires a determination by the NLRB. Once the NLRB has made such a determination, we question the value of a Section 203 report since the matter has already been openly displayed. The requirement for a report may very well be consistent with Section 203, but, with limited resources, should it be a priority?

Conclusion

The Landrum-Griffin Act is a lengthy, multi-faceted statute, which the Labor-Management Standards Administration is charged with enforcing. Section 203 is only one small portion of the statute and thereby deserves a relative portion of the enforcement effort. No one can reasonably argue that Section 203 embodied the principal purpose for Landrum-Griffin. It is even open to question whether it would have been enacted on its own.

Meanwhile, we applaud the Department in its efforts to intensify enforcement of the auditing and anti-embezzlement provisions of

the Landrum-Griffin Act, which has resulted in over $\$1/2$ million being recovered. We underscore that the interests being protected through such actions are those of the employees who rely upon honest and effective representation by those to whom they contribute a share of their wages. We assume that the Department will take heed of the criticisms offered by the Inspector General report mentioned in this report. We emphasize that the Inspector General's report criticizes the Department's strategy for enforcement of the Act's requirements imposed upon unions, but neither questions nor criticizes the Department's emphasis upon those portions of the Act. Nowhere does the Inspector General mention the enforcement of Section 203.

Section 203 is not a provision that lends itself to easy enforcement decisions. Its purpose—to keep workers informed of the "hidden" persuader activities of their employer and his consultants—is somewhat vague. As a result, the law does not leave clear guidelines to the administrator who must enforce it. Consequently, priorities must be set based upon the administrator's understanding of where the law clearly applies. It appears to us that this is precisely what the Department is doing and, for this reason, we cannot join in this hyperbolic report.

MARGE ROUKEMA.
JOHN N. ERLENBORN.
STEVE BARTLETT.
ROD CHANDLER.
TOM TAUKE.

ATTACHMENTS

ATTACHMENT 1

EMPLOYER REPORT FORMS

Employer Report—Part A
The Labor-Management Reporting and Disclosure Act of 1959

U.S. Department of Labor

Office of Labor-Management Standards Enforcement
Washington, D.C. 20216
(Rev. 1977)

Form approved.—OMB No. 44R-1137.1.

File No. E-
(To be assigned by U.S. Dept. of Labor)

File two copies. Refer to instructions on Page 3

1. Full Name of Reporting Employer (including trade name, if any) and mailing address (Street Number, City, State, ZIP Code).

4. Report relating to fiscal period:
Beginning ..... Mo. Day Yr. and
Ending ..... Mo. Day Yr.

2. Address of Principal Office, if different from address in Item 1.

5. Indicate by checking appropriate box where records necessary to verify this report will be available for examination.
☐ Address in Item 1
☐ Address in Item 2
☐ Address in Item 3

3. Any other address or addresses at which records necessary to verify this report will be available for examination.

6. Type of organization.
☐ Corporation ☐ Partnership ☐ Individual ☐ Other ..... (Specify)

7. Industrial Classification (Check appropriate box(es)):

Manufacturing	Mining	Construction	Transportation	Communication and Utilities	Wholesale and Retail Trade	Finance, Insurance and Real Estate	Services	Other (Specify)
A ☐	B ☐	C ☐	D ☐	E ☐	F ☐	G ☐	H ☐	I ☐

8. READ CAREFULLY THE FOLLOWING QUESTIONS, TAKING INTO CONSIDERATION THE EXCLUSIONS LISTED FOR ITEMS 8A THROUGH 8F OF THE INSTRUCTIONS (SEE PAGE 3). IF YOUR ANSWER TO ANY OF THE QUESTIONS IS "YES," CHECK THE BOX IMMEDIATELY FOLLOWING THE QUESTION AND COMPLETE PART B, A COPY OF WHICH APPEARS ON THE REVERSE SIDE. COMPLETE A SEPARATE PART B FOR EACH "YES" ANSWER TO ANY OF THE QUESTIONS NUMBERED 8A THROUGH 8F. IF THE ANSWER IS "YES" TO MORE THAN ONE PART OF THE SINGLE QUESTION OR FOR MORE THAN ONE PERSON OR ORGANIZATION, COMPLETE A SEPARATE PART B FOR EACH "YES" ANSWER TO THAT QUESTION.

A. *QUESTION.*—During the past fiscal year did you make or promise or agree to make, directly or indirectly, any payment or loan of money or other thing of value (including reimbursed expenses) to any labor organization or to any officer, agent, shop steward, or other representative or employee of any labor organization?
☐ No ☐ Yes. If "Yes," enter the number of Part B's required for this question .....

B. *QUESTION.*—During the past fiscal year did you make, directly or indirectly, any payment (including reimbursed expenses) to any of your employees, or to any group or committee of your employees, for the purpose of causing them to persuade other employees to exercise or not to exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing without previously or at the same time disclosing such payment to all such other employees?
☐ No ☐ Yes. If "Yes," enter the number of Part B's required for this question .....

C. *QUESTION.*—During the past fiscal year did you make any expenditures where an object thereof, directly or indirectly, was to interfere with, restrain, or coerce employees in the right to organize and bargain collectively through representatives of their own choosing?
☐ No ☐ Yes. If "Yes," enter the number of Part B's required for this question .....

D. *QUESTION.*—During the past fiscal year did you make any expenditure where an object thereof, directly or indirectly, was to obtain information concerning the activities of employees or of a labor organization in connection with a labor dispute in which you were involved?
☐ No ☐ Yes. If "Yes," enter the number of Part B's required for this question .....

E. *QUESTION.*—During the past fiscal year did you make any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertook activities where an object thereof, directly or indirectly, was to persuade employees to exercise or not to exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or did you make any payment (including reimbursed expenses) pursuant to such an agreement or arrangement?
☐ No ☐ Yes. If "Yes," enter the number of Part B's required for this question .....

F. *QUESTION.*—During the past fiscal year did you make any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertook activities where an object thereof, directly or indirectly, was to furnish you with information concerning activities of employees or of a labor organization in connection with a labor dispute in which you were involved; or did you make any payment pursuant to such agreement or arrangement?
☐ No ☐ Yes. If "Yes," enter the number of Part B's required for this question .....

TOTAL NUMBER OF PART B'S REQUIRED FOR THIS REPORT IS .....

[Actual size is 8½" × 11"]

Employer Report—Part B

U.S. Department of Labor

Name and Address of Reporting Employer

File No. | E–

(To be assigned by U.S. Dept. of Labor)

Refer to Instructions on Page 3

☐☐ Indicate in blocks at left, question number to which this Part B relates and the consecutive number of this Part B with respect to that question. (See example on page 2, 3d paragraph under "What Must Be Filed.")

9. PROVIDE THE FOLLOWING INFORMATION: ☐ Agreement ☐ Payment ☐ Both.

a. Name and address of person, committee, group or organization with whom or through whom a separate agreement was made or to whom payments or expenditures were made.	b. Position in labor organization or with employer (if an independent labor consultant, so state).	c. Name and address of firm or labor organization with whom employed or affiliated.

10. Date of the promise, agreement or arrangement pursuant to which payments or expenditures were agreed to or made.

..... (Mo. Day Yr.) ☐ Oral ☐ Written

11. a. Date of each payment or expenditure	b. Amount of each payment or expenditure	c. Kind of each payment or expenditure (Specify whether payment or loan, and whether in cash or property)
(1)	(1)	(1)
(2)	(2)	(2)
(3)	(3)	(3)

12. Explain fully the circumstances of all payments, including the terms of any oral agreement or understanding pursuant to which they were made. Attach any additional narrative sheets that are necessary to fully explain the required information.

SIGNATURE AND VERIFICATION

The above employer and each of his undersigned duly authorized officers, declares, under the applicable penalties of law, that all of the information in this report, including all documents referred to therein and attached hereto, has been examined by him and is, to the best of his knowledge and belief, true, correct, and complete

SIGNED ..... PRESIDENT SIGNED ..... TREASURER

At ..... (City State) On ..... (Date) (If other title, cross out and write in correct title above.) At ..... (City State) On ..... (Date) (If other title, cross out and write in correct title above.)

NOTE.—Only one Part B of an LM–10 report need be signed and verified since the Part B so executed will be deemed to cover and include all Part B's filed with the report.

[Actual size is 8½" × 11"]

ATTACHMENT 2

CONSULTANT'S REPORT FORMS

Agreement and Activities Report — U.S. Department of Labor

Office of Labor-Management Standards Enforcement
Washington, D.C. 20216
(July 1977)

Required of Persons, Including Labor Relations Consultants and Other Individuals and Organizations, Under Section 203(b) of the Labor-Management Reporting and Disclosure Act of 1959

Form Approved – OMB No. 44-R1170

File No. C.

A.—PERSON FILING

1. Name and mailing address (Include ZIP code):

2. Any other address where records necessary to verify this report are kept:

3. Date fiscal year ends:

4. Type of person:
a. ☐ INDIVIDUAL b. ☐ PARTNERSHIP c. ☐ CORPORATION d. ☐ OTHER (*Specify*):

B.—NATURE OF AGREEMENT OR ARRANGEMENT

5. Full name and address of employer with whom made (Include ZIP code):

6. Date entered into:

7. Names of persons through whom made:

8. Check the appropriate box to indicate whether an object of the activities undertaken, is directly or indirectly:
a. ☐ To persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing.
b. ☐ To supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding.

9. Terms and conditions (*Explain in detail; see Part B–9 of instructions.*):

C.—SPECIFIC ACTIVITIES TO BE PERFORMED

10. For each activity, separately list in detail the information required (*See Part C–10 of instructions.*):
a. Nature of activity:

b. Period during which performed:

c. Extent performed:

d. Names and addresses of persons through whom performed:

11. Identify (a) Subject employees, groups of employees, and (b) labor organizations.

D.—VERIFICATION AND SIGNATURE. The person in Item 1 above and each of his undersigned authorized officers declares, under penalty of law, that all information in this report, including all attachments incorporated therein or referred to in this report, has been examined by him and is, to the best of his knowledge and belief, true, correct, and complete.

SIGNED: ..... PRESIDENT (If other title, cross out and write in correct title above.)
at: ..... City ..... State ..... on: ..... Date

SIGNED: ..... TREASURER (If other title, cross out and write in correct title above.)
at: ..... City ..... State ..... on: ..... Date

Form LM-20

[Actual size is 8½" × 11"]

ATTACHMENT 3

CONSULTANT'S REPORT FORMS

Receipts and Disbursements Report — U.S. Department of Labor — S-568

Office of Labor-Management Standards Enforcement
Washington, D.C. 20216
(July 1977)

Required of Persons, Including Labor Relations Consultants and Other Individuals and Organizations, Under Section 203(b) of the Labor-Management Reporting and Disclosure Act of 1959

Form Approved—OMB No. 44-R1137

A.—PERSON FILING

1. NAME AND ADDRESS (Include ZIP code)

2. ANY OTHER ADDRESS WHERE RECORDS NECESSARY TO VERIFY THIS REPORT ARE KEPT:

3. FILE NO. C-

4. PERIOD COVERED BY THIS REPORT From: To:

Month	Day	Year

B.—STATEMENT OF RECEIPTS. Report all receipts from employers in connection with labor relations advice or services regardless of the purposes of the advice or services.

5. NAME AND ADDRESS OF EMPLOYER (Include ZIP code)	6. TERMINATION DATE	7. AMOUNT
		$
	TOTAL	$

C.—STATEMENT OF DISBURSEMENTS. Report all disbursements made by the reporting organization in connection with labor relations advice or services rendered to the employers listed in Part B.

8. DISBURSEMENTS TO OFFICERS AND EMPLOYEES:

(a) Name	(b) Salary	(c) Expenses	(d) Totals
	$	$	$
Total Disbursements to officers and employees:			$

9. Office and Administrative Expenses	$
10. Publicity	
11. Fees for Professional Services	
12. Loans Made	
13. Other Disbursements	
14. Total Disbursements (Sum of Items 8–13)	$

D.—SCHEDULE FOR STATEMENT OF DISBURSEMENTS. Use this Schedule to report only disbursements made for the purposes described in Part D of the instructions.

15. EMPLOYER	16. TO WHOM PAID	17. AMOUNT	18. PURPOSE
		$	
	TOTAL	$	

IF MORE SPACE IS NEEDED ATTACH ADDITIONAL SHEETS

E.—VERIFICATION AND SIGNATURE. The person in Item 1 above and each of his undersigned authorized officers declares, under penalty of law, that all information in this report, including all attachments incorporated therein or referred to in this report, has been examined by him and is, to the best of his knowledge and belief, true, correct, and complete.

SIGNED: . . . . . PRESIDENT (If other title, cross out and write in correct title above.)
at: City State and Date

SIGNED: . . . . . TREASURER (If other title, cross out and write in correct title above.)
at: City State and Date

[Actual size is 8½" × 11"]

ATTACHMENT 4

EXPENDITURE TO INTERFERE WITH, RESTRAIN OR COERCE EMPLOYEES, contd.

255.200 "UNFAIR LABOR PRACTICES" AS REGULAR WORK

Section 203(e) of LMRDA specifically exempts an employer from filing a report under section 203(a)(3) of that Act covering expenditures made to any regular officer, supervisor or employee of such an employer as compensation for "service as a regular officer, supervisor or employee."

However, it is the Department's position that the commission of an "unfair labor practice" (as that term is defined in section 8(a)(1) of the Labor Management Relations Act, 1947, as amended) would not ordinarily be regarded as "service as a regular officer, supervisor, or employee." The exemption in section 203(e) applies only to expenditures made for services performed by employees in the regular and ordinary course of their employment.

For example, many persons who work as regular officers, supervisors or employees of an employer subject to LMRDA are paid a regular salary for a fixed work week. Where such a person undertakes activities on behalf of the employer during off-duty hours for extra compensation or compensatory time off and these activities constitute "unfair labor practices," the employer would be required to file a report of this expenditure under section 203(a)(3).

255.300 EMPLOYER ASSISTANCE TO "GRIEVANCE COMMITTEE"

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

ATTACHMENT 5

consultant were not identified as employer-inspired. The legislative history of the LMRDA also supports this view.

(2) Since the Act does not limit reports to situations where a consultant speaks directly to employees, but reporting depends rather on whether the activity in question has as an object to persuade employees, it can be said that the consultant's persuasive activities directed at potential employees had as its object the persuasion of an (subsequently hired) employee.

263.200 JOB APPLICANTS CONSIDERED "EMPLOYEES"

Attorney X was employed by Employer Y to inform prospective employees being given pre-employment interviews of the employer's policy of maintaining an open shop. Attorney X's talk to these job applicants tended to persuade them concerning the manner of exercising their collective bargaining rights.

It is the Department's view that when prospective employees or job applicants are exposed to this type of persuasion, a report is required from the employer pursuant to section 203(a)(4) and from the attorney pursuant to section 203(b)(1), even though the section 3(f) definition of "employees" does not specifically include applicants as employees, for the following reasons:

(1) The court decisions under the LMRA have held that job applicants are "employees" under certain provisions of that Act, holding this conclusion to be necessary to carry out the policy of that Act. Similarly, the policy of the LMRDA requires such a conclusion in relation to the reporting requirements of section 203(a)(4) and 203(b)(1). A restrictive reading of section 3(f) that eliminated reporting of this type of activity would frustrate the policy of the Act and might give the employer an unwarranted advantage if the persuasive activities of the

ATTACHMENT 6

266.200 "UNFAIR LABOR PRACTICE" AS REGULAR SERVICE

Supervisors, employees or regular officers of an employer who undertake "unfair labor practice" activities (as defined in section 8 (a)(1) of the Labor Management Relations Act) during off-duty hours may be required to report pursuant to section 203(a)(3) under certain conditions.
See Manual Entry 255.200.

ATTACHMENT 7

SEP 20 1979

John J. Murphy
Assistant Director

Employer-Consultant Reporting

Mr. Carl Kolnick
Director, LMSE

We have received a number of documents from the AFL-CIO concerning the activities of several consultants and employers. Although the alleged activities and agreements may be reportable, we would need additional information in order to determine whether reports are required. I understand that the Division of Enforcement is preparing memoranda for the field to open cases for each potential employer-consultant agreement. However, there is sufficient similarity in all the cases brought to our attention by the AFL-CIO to warrant an overall summary and analysis.

For each of eight different consultants and law firms, the AFL-CIO has submitted allegations of reportable activities for one or more employers. The evidence submitted by the AFL-CIO consists primarily of letters and other documents mailed or otherwise made available by employers to their employees during a union organizing drive. The anti-union themes contained in these documents include statements that the union may call strikes which will cost the employee's money and perhaps their jobs, only the employer can give benefits to the employees while the union can only make promises, organizers are outsiders and employees should trust their colleagues in management and work together with them, the union only wants the employees' dues and may subject them to discipline and fines. The anti-union drives generally involved the distribution of many such documents and letters over a period of several months.

The AFL-CIO supplied the names of an individual to contact for further information for each employer-consultant case. We should obtain information from these individuals on the matters discussed below. In addition, since many of the possible reportable activities may constitute or relate to unfair labor practices, information should be obtained concerning any complaints filed with the NLRB from the contact person or, if necessary, by checking the records and discussing the matter with the Board's Regional Offices.

The leads supplied by the AFL-CIO indicate four different grounds upon which employer and consultant reports may be required. First, there are allegations in some of the cases that the consultant had direct contact with employees in order to persuade them. The direct contact may have been

cc: LMS,Chron; RF-65109
Mr. Murphy; Mr. Vaughn;
Mr. Gousen; Ms. Keith

LMSE:EIS:SGOUSEN:gw 9/19/79

Pat Gousen
9/19/79

either personal or by letter or poster in the name of the consultant. This activity is clearly reportable 1/ and information should be obtained to verify any direct persuader contacts with employees.

Second, some of the literature distributed to employees contains information about activities of the union in connection with labor disputes with other employers. Under LMSA Interpretative Manual entry 257.220, the supplying of such information by a consultant to an employer may be reportable. 2/ Page 12 of the enclosed copy of technical assistance aid number 6, "Employer and Consultant Reporting," states that supplying information is reportable only if the information is not from a public document (such as newspaper articles, NLRB reports, court records, etc.). We should therefore obtain from the AFL-CIO contact person copies of all material distributed to the employees and ascertain whether any of the information about the union or its officers is not from a public document.

The third possible ground upon which reports may be required is the obtaining of the union sentiments of employees. 3/ The strongest case for requiring reports could be made if the consultants themselves obtained the information from employees. However, several years ago we made the determination that reports were required from a consultant who did not have direct contact with employees. In that case the consultant organized, directed and coordinated procedures for obtaining information on the union sentiments of employees; the supervisors of the employer made direct contact with the employees and reported back to the consultant's agents. We concluded that the involvement of the consultant was sufficiently great to come within the scope of section 203(b)(2). 4/ The Solicitor concurred with our determination and, after litigation was instituted, the consultant filed the required reports.

Therefore, we should determine from the AFL-CIO contact person whether the employer or his agents (supervisors, etc.) obtained information concerning the union sentiments of the employees and, if so, the nature and extent of any involvement by the consultant. In addition, since any such activity may constitute an unfair labor practice and/or interference with a representation election, we should obtain information

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1/ The first provision of Section 203(a)(4) and Sections 203(a)(5) and 203(b)(1).

2/ The second provision of Section 203(a)(4) and Sections 203(a)(5) and 203(b)(2).

3/ Ibid.

4/ With regard to the employer, the applicable provisions were Sections 203(a)(4) and 203(a)(5).

concerning any complaints filed with the NLRB.

Finally, although the distribution of anti-union literature to employees is clearly a persuasive activity by the employer, there are two problems in determining whether it is reportable under sections 203(a)(4), (5) and 203(b). First, we have no indication that the material was prepared by the consultants. They are generally signed by employer representatives and/or are on employer stationery. There is also generally no other indication in the material supplied to us that a consultant was involved in any way. We would therefore have to determine whether the consultant prepared the material.

The second problem is that, even if we can show that the consultant prepared the literature pursuant to an agreement, this activity may fall under the advice exemption of Section 203(c) (see also entry 205.005 of the Interpretative Manual). If the consultant only "advised" the employer by preparing literature they felt was legal and effective, rather than sending the literature or making contact with employees themselves, the activity may not be reportable. However, it is also possible that the advice exemption may and should be construed more narrowly so that section 203(c) would make reportable any agreement whereby a consultant organizes and conducts a campaign to persuade employees (and the employer's role is merely that of a "go-between").

We should therefore obtain information concerning the agreement or contract between the employer and the consultant and ascertain whether the material was prepared by the consultant.

Attachment

ATTACHMENT 8

November 13, 1979

LABOR-MANAGEMENT SERVICES ADMINISTRATION NOTICE NO. 69-79

SUBJECT: Employer and Consultant Reports Program

1. Purpose. To insure effective and timely processing of all actionable employer or consultant report complaints.

2. Background. At the request of the Department, emphasis during FY 1980 must be placed upon the enforcement of the reporting provisions in Section 203 of the LMRDA. As a result, LMSE has made this activity a High Priority Management Objective for the fiscal year to coordinate the program nationally.

3. Action.

(a) James Vaughn, Branch of Special Investigations, has been designated National Office Coordinator for Investigations.

(b) Herbert Raskin, Chief, Branch of Interpretations and Standards, has been designated National Office Coordinator for Interpretations and Analysis.

Both Messrs. Vaughn and Raskin will be available to provide assistance or advice to field offices regarding problems which may arise in the employer and consultant reports program and should be notified by primary field offices regarding any unusual difficulties which may be encountered.

(c) Any complaint received in the field regarding employer or consultant reports which is deemed not suitable for investigation by the primary office will be referred for final review to the Office of the Director, LMSE, along with all related material, within four working days after the decision not to investigate is reached.

(d) Upon completion of investigations arising from complaints, the primary area office will forward the completed investigation and its recommendation via the appropriate Region to the National Office for review and final determination.

(e) The investigation of employer or consultant reporting cases will be afforded an equal priority to that presently given the investigation of embezzlement complaints. In deciding the order in which employer or consultant complaints should be investigated, primary consideration should be given complaints involving either multi-unit or national consultant organizations, as well as those involving large or national employers.

4. Effective Date. The foregoing procedures are effective immediately and will remain in effect until September 30, 1980.

Carl Rolnick
Director, Office of Labor-Management
Standards Enforcement

ATTACHMENT 9

[illegible]
Acting Director, LMSE

Reportable Activities under Section 203(a)(3) of the LMRDA

Assistant Regional Administrators, LMSE

This Office is in the process of reviewing NLRB cases, in which unfair labor practices have been committed by employers, for possible reportable activities under Section 203(a)(3) of the LMRDA. Selected cases in which an employer has failed to file an LM-10 will be sent to the appropriate Area Office and this Office will request that a Program 8 case be opened and an investigation conducted.

Certain questions may arise regarding what moneys or expenditures are to be reported and where the investigator is to "look" for such payments by employers. Such questions may be more forthcoming when the investigation does not uncover a direct payment to an individual who was involved in the commission of an unfair labor practice. In these instances, the investigator must consider the possibility of indirect payments. For example, where supervisors on company time attempted to interfere with and prevent employees from joining a labor union, that portion of the supervisors' salaries which can be ascribed to the commission of unfair labor practices are considered expenditures for which an employer must report.

In connection with this subject, I am attaching copies of three rulings from the Solicitor of Labor to assist your investigators and which can be used as guidelines in investigating possible 203(a)(3) violations. Although these rulings date from the 1960s, they still continue to be in force since there has been no change in philosophy by the Department with regard to this concept of "split income." Review of that portion of the LMRDA Interpretative Manual pertaining to employer reports is suggested by all LMSA investigators. Particular attention should be directed to Sections 254.100, 255.200, and 266.200.

Attachments

cc: P. Elias
T. Gilmartin
J. Jackson
Wm. McGladigan
T. Sheehan
B. R. Withers

LMSE:BIS:JSANTELLI
[illegible]:bdl 1/23/80

cc: BIS; Chron
RF-W5109; Mr. Santelli

LMSE:BIS:JSantelli:bdl 1/23/80

ATTACHMENT 10

LMSA Focus

U.S. Department of Labor
Labor-Management Services Administration

March-April 1980
Vol. 3, No. 2

LMSE Steps Up Consultant Enforcement

The Office of Labor-Management Standards Enforcement (LMSE) has sharply stepped up its enforcement of Labor-Management Reporting and Disclosure Act (LMRDA) provisions requiring employers and labor relations consultants to report activities that are aimed at influencing how workers exercise their collective bargaining rights.

Assistant Secretary William P. Hobgood said that since October 1, 1979, LMSE has opened about 175 cases involving employers and consultants to determine if they have engaged in activities that should be reported to the Labor Department. This is in contrast to 33 such cases opened in all of fiscal year 1979.

Richard Hunsucker, acting LMSE director, said that most of the activity has been in the South, but all regions of the country are involved.

Under the LMRDA, also known as the Landrum-Griffin Act, employers must file reports if they hire a labor relations consultant to *persuade* employees about exercising their collective bargaining rights or to obtain information about union activities. The consultant must also file reports on these activities. Employers generally must also file reports if they spend money to *interfere* with, restrain or coerce employees in their rights to organize and bargain collectively without involving consultants.

Many of these activities are prohibited by the Labor-Management Relations Act (also known as the Taft-Hartley Act), which is administered by the National Labor Relations Board (NLRB). They are classified as unfair labor practices, and the NLRB can move to have them stopped.

When employers or consultants fail to file required reports on their activities, LMSE issues demand letters asking for compliance with the law. Failure to respond to the demand letters by filing the reports can result in the employer or consultant being taken to court. If, after a court order, reports are still not filed, contempt citations can be issued. Criminal penalties are available for willful failure to file reports or knowingly filing an inaccurate report.

Assistant Secretary Hobgood said the increased activity in LMRDA employer and consultant reporting is due largely to the growing number of complaints and specific allegations with supporting documentation being lodged with LMSE by unions, which have become increasingly sensitive to what they consider improper anti-union activities on the part of employers and consultants.

A policy change has also made enforcement of this aspect of the law a high priority management objective—a priority equal to the investigation of union embezzlement complaints, Hobgood said. The only higher priority in LMRDA enforcement is given to complaints of union election violations, which under the law must be given first attention.

The increased case activity is continuing. Additional cases are being sent to LMSA field offices for investigation as they arise. At the same time, LMSE is reviewing NLRB cases because of the overlap between the LMRDA and the Labor-Management Relations Act under NLRB jurisdiction. When such cases appear to involve activities that would require reports to be filed under LMRDA, they are sent to LMSA field offices for investigation.

ATTACHMENT 11

(Handwritten Note in the Files of Jacques Syl Knitwear, Inc. - Case No. 32-6170)

9/22/81

JCT:

Dave H. suggested I discuss this
case with Charles Williamson re
the engineer reporting the ULPs.

He did not recommend the 203(a)(3)
strike, i.e., threats, intimidation, etc
since he doesn't buy the
split-income theory.

(37)

ATTACHMENT 12

(Handwritten Note in the Files of Jacques Syl Knitwear, Inc - Case No. 32-6170)

9/23/81

re: Split-income Charles Williamson — He doesn't personally buy it: Employees know what side supervisors are on.

Suggests we all meet Kitch-Hunsucker Coordinators - ask for something in writing from Doctor —

4-1-83

Jim -

The letters prepared for the employer and for Godfrey Schmidt were never mailed.

ATTACHMENT 13

Reply to the Attention of

January 25, 1982

MEMORANDUM FOR: Jim Greene
Acting Chief, BCI

FROM: Charles M. Williamson CMW

SUBJECT: Cases Nos. 60-6501(Kawasaki Motors);
64-4754(House, Holmes & Jewell);
31-12898(Northwest Medical Center);
62-6689(Marathon Electric);
51-5062 (Kelvinator)

I have reviewed the files in the above captioned cases. The SOL recommended closure of Marathon Electric and Kelvinator some time ago because of the trivial nature of the incidents disclosed by the respective investigations. I agree. Kawasaki Motors and Northwest Medical Center involve only the so-called "split income" theory (Employer must report pro rata share of supervisor's income when he engages in persuader activities). House Holmes and Jewell involves alleged reportable activity under Section 203(b)(1) of the LMRDA. There was alleged direct contact between an attorney acting on behalf of the employer, Wycot Corporation of Hot Springs, Arkansas and the employees of the employer. The evidence in the file concerning these contacts essentially consists of the vague, contradictory and uncorroborated opinions and suppositions of a group of employees. This evidence, which goes to the persuader nature of the attorney's activities, is inadequate. While we have previously sent a demand letter (dated January 7, 1981), I do not believe we could sustain even the lightest burden of proof (preponderance of the evidence) on the persuader nature of activity. Accordingly, we should close the case.

If the remainder of these cases (and I understand we have a large number) resemble these, we should move to close them. I do not believe I need to review each file. Cases of a doubtful nature should be handled in conference. Cases and/or allegations involving "split income" theories and so-called "indirect contact" theories concerning consultants (alleged contacts by consultants with employees through supervisors) should be closed. The SOL is presently engaged in going over their 60-odd Reporting and Disclosure cases to weed out those involving such contentions. Those which they recommend closing will be returned to this Office for appropriate action.

ATTACHMENT 14

Date: MAR 5 1982

MEMORANDUM FOR RICHARD C. HUNSUCKER, DIRECTOR, LMSR

SUBJECT: Policy Guidance in Title II Employer-Consultant Reporting Cases

This memorandum is written in order to clarify issues that have been encountered with respect to the employer/consultant reporting cases.

Henceforth, the following policy should be followed in processing these cases. Cases and/or allegations involving "split income" theories and so-called "indirect contact" theories concerning consultants (alleged contracts by consultants with employees through supervisors) should be closed. These are untested theories in that they have no legal precedent. With our limited resources and the large number of open employer/consultant cases on hand, we must give priority to those cases and/or allegations involving issues with legal precedent. Examples would include direct contact involving persuader activities or information gathering or coercion by consultants.

Cases that have been opened on a basis other than a complaint should also be closed. We have to give priority to complaint cases.

In the near future we may want to reconsider our policy if the NLRB has already resolved the issue and ruled on it. At this point we have established no cut-off date (from the date of the activity which precipitated the reporting requirement) for requesting reports.

signed

Ronald J. St. Cyr
Deputy Assistant Secretary

ATTACHMENT 15

U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
WASHINGTON

JUN 27 1983

March 12, 1982

LABOR-MANAGEMENT SERVICES ADMINISTRATION NOTICE NO. 13-82

SUBJECT: Policy Guidance in Title II Employer-Consultant Reporting Cases

1. Purpose. To ensure effective control and timely processing of substantive complaints in employer/consultant reporting cases.

2. Background. In response to increased interest during the last two years in the disclosure of Consultant and Employer Reports over 400 employer/consultant cases were opened, a number on a non-complaint basis.

During this period numerous problems and issues were encountered with respect to the employer/consultant reporting cases. Many of these issues involved theories that were untested in that they had no legal precedent.

With our limited resources and the large number of open employer/consultant cases on hand we must give priority to those cases and/or allegations involving issues with legal precedent. Examples would include direct contact involving persuader activities or information gathering or coercion by consultants.

3. Directives Affected. This Notice augments Chapters 28 and 29 of the LMSE Manual.

4. Action Required

A. Cases and/or allegations involving "split income" theories and so-called "indirect contact" theories concerning consultants (alleged contacts by consultants with employees through supervisors) should be closed.

B. Cases that have been opened on a basis other than a complaint should be closed.

5. Effective Date and Cancellation. This Notice is effective immediately and is cancelled upon its incorporation in Chapters 28 and 29 of the LMSE Manual.

Richard G. Hunsucker
Director, Office of Labor-Management
Standards Enforcement

Distr.: N-1
F-2

ATTACHMENT 16

Reporting Agreement

An agreement between LMSA and the National Labor Relations Board will make it easier for the Office of Labor-Management Standards Enforcement's Branch of Technical Assistance and Disclosure to obtain the name and address of all newly formed labor organizations.

The Board will supply the name and address of all new labor organizations to LMSE when they are certified as bargaining agents.

Early identification of new labor unions will enable LMSE to promote and ensure immediate compliance by newly certified unions with the reporting requirements of the Labor-Management Reporting and Disclosure Act.

Before the agreement with the NLRB was worked out, LMSE had to rely exclusively on new unions to report voluntarily their existence to the agency.

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