What Happened to Union Transparency?

By Diana Furchtgott-Roth

Financial transparency has assumed a prominent role in most sectors of the economy. Corporations are required by Sarbanes-Oxley to provide extensive disclosure of their financial activities. Candidates for political office have to adhere to Federal Election Commission regulations. The Internal Revenue Service collects taxes from citizens and ensures compliance through audits.

The union sector, however, with assets of over $10 billion, was, until 2005, mostly exempt from any regulation that required detailed financial disclosure.

HIDING CORRUPTION

The first major piece of legislation designed to compel union financial disclosure was the Labor Management Reporting and Disclosure Act, better known as the Landrum-Griffin Act. The law was passed in 1959 and followed more than two years of Senate investigations into widespread corruption in the organized labor movement, particularly in major unions such as the International Brotherhood of Teamsters, United Mine Workers, and International Longshoremen Workers Union. Organized labor's behavior at the time was so egregious that the bill gained overwhelming bipartisan support, passing the Senate by a vote of 95-2 and the House of Representatives by a 352-52 margin. Few pieces of labor law reform since Landrum-Griffin have received this level of approval.

The Landrum-Griffin Act was written with the intention of requiring greater union transparency. While labor unions were compelled to file financial reports before the Act's passage, these reports were not made public and were of virtually no help in holding unions accountable to their members. Even Robert Kennedy, who was involved in the Senate investigations of organized labor, acknowledged that the union financial forms then in place were ineffective.

The first substantive regulations on union financial reporting requirements were issued by Secretary of Labor James Mitchell in 1960. These required unions with $20,000 or more in total annual receipts to submit to the Department of Labor their financial information on a

"Form LM-2." The filing threshold was gradually raised until it reached $200,000 in 1994.

The great hope at the time of passage of the Landrum-Griffin Act was that the new financial disclosures would empower rank-and-file union members and ensure that unions were more accountable to their membership, and, as a result, less corrupt overall.

Unfortunately, the type of reforms the law envisioned never fully materialized. There were several reasons for this failure.

First, some unions attempted to make sure that the financial information contained in the forms was never disclosed to the rank and file, much less widely disseminated to members. Some even took steps to ensure that their dues-paying members did not have proper notification about the existence of the LM-2 data. For example, the International Association of Machinists was involved in litigation for years over this issue. The union claimed that a one-time notification issued in 1959 was sufficient to comply with the Landrum-Griffin Act's notification requirements. The U.S. Court of Appeals for the Fourth Circuit eventually disagreed with this reasoning, but these types of roadblocks were commonplace in the years after the law's passage.

Furthermore, the old regulations and LM-2 forms did not require detailed information that properly reflected the complex financial world of today's labor unions. Large amounts of funds—in the millions of dollars—were reported by unions on the forms as "other," "expenses," or "miscellaneous." Information was deliberately vague and could be grouped into broad categories, allowing labor unions to escape the type of scrutiny faced by corporate and other non-profit entities.

NEW RULES

In 2003, Secretary of Labor Elaine Chao promulgated new rules requiring more detailed LM-2 forms, saying:

> The forms no longer serve their underlying purpose because they fail to provide union members with sufficient information to reasonably *disclose to them the financial condition and operation[s]* of labor organizations … . [I]t is impossible for union members to evaluate in any meaningful way the operations or management of their unions when the financial disclosure reports filed … simply report large expenditures for broad, general categories. The large dollar amount and vague description of such entries make it essentially impossible for anyone to determine with any degree of specificity what union operations their dues are spent on, without which the purposes of the [Landrum-Griffin Act] are not met.

In order to solve this problem, the Department of Labor proposed new rules to update the Form LM-2, including a requirement that all unions with receipts in excess of $200,000 file their disclosure forms electronically.

Additionally, the new rules required eligible unions to disclose detailed membership status information on the form's Schedule 13. Historically, unions would report inconsistent numbers for their membership totals and not differentiate between the many different classes of union members such as active, associate, retired, agency-fee payers, etc. The new class system mandated by Schedule 13 allowed the rank and file to discern the exact composition of their union.

Arguably the most important addition to the new LM-2 forms was the requirement that unions detail specific expenditures in more narrow categories than before on Schedules 14-19 of the LM-2 forms. Schedules 14-19 demand itemized expenses for all expenditures over $5,000 in these schedules and categories. Specifically, other receipts were detailed in Schedule 14, representational activities in Schedule

15, political activities and lobbying in Schedule 16, contributions, gifts, and grants in Schedule 17, general overhead in Schedule 18, and union administration in Schedule 19. These new forms were displayed on the Department of Labor Web site, thus allowing any rank and file union member instant access to the data in the new forms and compelling union leaders to list both their salaries and the percentage of time spent on various union-related activities.

Union officers are required to complete the LM-30 form, which requires union officials to disclose conflicts of interest. If officials received things of value for any reason other than performing their regular duties, then they would likely need to disclose the transaction and its reason.

Under the 2007 reform of the Form LM-30, stewards receiving leave from an employer to work on union matters—known as "union leave" or "no docking" policy—was reportable if it exceeded 250 hours a year.

The AFL-CIO protested every change, publicly claiming that the LM-2 reforms would impose an impossible burden on the unions. Amongst these burdens, the AFL-CIO cited the supposedly high cost of accounting that would be associated with tracking expenditures as well as an inability to comply with the Department's requested time frame for the new forms. In their legal pleadings against the new rules, the federation also disputed Secretary Chao's authority to issue the broad new regulations that she proposed.

The labor federation won a minor court battle in January 2004 when U.S. District Court Judge Gladys Kessler ruled that the Department of Labor had to give unions more time to comply with the new rules. But Judge Kessler, a Clinton appointee to the bench, eventually said that the new rules themselves were appropriate and legal. The AFL-CIO was still not satisfied and appealed Judge Kessler's decision. In May 2005, the U.S. District Court for the District of Columbia upheld the new rules in a 2-1 decision.

After three years of data collection with the new LM-2 forms, the Labor Department decided to expand the form to make it easier for union members to identify corrupt behavior.

In January 2009, the Labor Department issued revised and expanded LM-2 forms. These new forms required additional information such as verification that sales and purchases of assets were performed without conflicts of interest; the value of benefits and travel reimbursements paid to union officers and employees; and additional details on funds received.

These expenses are listed on Internal Revenue Service tax forms, but not on financial disclosure forms filed with the Labor Department. IRS documents are laborious to find, whereas Labor Department disclosure forms are available electronically.

In addition to the LM-2 form, unions were required for the first time to file a disclosure form, known as T-1, about the finances of union-managed trusts, such as credit unions, strike funds, pension and welfare plans, and building funds. The reason for these requirements was that many unions had created networks of trusts that allowed them to shield massive financial transactions from their members, analogous to the recent abuses involving "off the books" accounting by some corporations.

All these regulations were of great value to union members. Just as shareholders can see how corporations spend their money, so union members could see how their union dues were being spent.

BACKSLIDING ON TRANSPARENCY

But now the Obama Labor Department is rolling back the financial disclosure rules. It does not want unions to file the enhanced LM-2 forms, the new LM-30 forms, and the T-1 form. In the Federal Register of October

13, 2009, the Department states that "comments received indicate that the Department may have underestimated the increased burden that the rule would place on reporting organizations."

It also cited an unnamed union: "The union also asserted that detailed reporting requirements are unnecessary because union members are sophisticated enough to seek information about union financial matters from their unions, as well as seek publicly available information, such as that provided by the IRS."

Just as Sarbanes-Oxley sets standards for corporate disclosure so that shareholders have full information, the same protection should be extended to union assets and activity so that union members know that their contributions are being used wisely.

But the whole point of the disclosure requirements is that if unions are misusing workers' dues, then the union is going to hide it from rank-and-file members. Furthermore, the IRS data to which the union refers, the Form 990s, come out with a two-year delay, are not readily accessible, and disclose payroll and benefits information for only a very limited number of union officials.

The Labor Department provided unions with free software and free training to complete the forms, as well as compliance assistance. In addition, the forms were structured to interface easily with major accounting software. The LM-30 was filed in hard copy, so no new software was needed.

The only reason that completing the forms would be too burdensome is that the organizations do not want to keep track of the expenses. But it is their duty to tell union members where their hard-earned dues are going.

For comparison's sake, it is worth highlighting the costs for corporations to comply with one section of the Sarbanes-Oxley Act of 2002. Section 404 of the act requires public companies to issue a management report on the effectiveness of companies' internal controls, and an independent audit report. In 2005, Charles Rivers Associates, an economic consulting firm, estimated that compliance costs averaged $7.8 million in 2004 for the Fortune 1000 companies. Smaller companies had to spend hundreds of thousands of dollars.

If these companies had complained that the compliance costs were too high and that the SEC should rescind the rules, they would have been mocked in the media and the public eye. Yet unions, who were offered free help and software to fill out the forms, receive a sympathetic hearing.

The criticism of the enhanced LM-2, T-1, and LM-30 forms suggests that union financial activity is now an open book. But this is not so. Political activity is not always disclosed. Payments to third parties, often put down as charitable contributions, are in turn used for political activity. Some of this can be observed from the forms, but other activity is still hidden. Some payments are directed to third parties who have conflicts of interest with union officials.

Just as Sarbanes-Oxley sets standards for corporate disclosure so that shareholders have full information, the same protection should be extended to union assets and activity so that union members know that their contributions are being used wisely.

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