



## The New **MONOPOLY**<sup>®</sup> Union-Related Expenses, Jail, and the Department of Labor

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The board game Monopoly<sup>2</sup> has been played by an estimated 500 million people since the early 1900s.<sup>3</sup> It takes little imagination to understand why Monopoly has enjoyed such popularity. The game – patented by Philadelphia-area native Charles Darrow<sup>4</sup> – involves three things that are well known to most people, especially those in business: money, power and the element of chance. And Monopoly involves two outcomes that everyone wants to avoid: one bad outcome is bankruptcy, the other is jail.

The goal when playing Monopoly is to make as much money as possible, and to drive everyone else into bankruptcy. Given these objectives, it is no surprise that Monopoly even finds psychologists among its fans. As one commentator has written:

The more we became immersed in the world of games, the more we realized that games weren't simply revealing and therapeutic by nature; they were terrific tools for informing people about themselves, for getting them back in touch with the world of pure play and even for civilizing them. The idea was remarkable: 25 bucks and a Monopoly game might tell people as much about their own emotional truths as 25 hours on the couch, or 25 volumes of Shakespeare.

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  - 2 Monopoly is a registered trademark of Hasbro, Inc. and is also protected by numerous copyrights.
  - 3 See Hasbro, Inc., *Monopoly History* (<http://www.hasbro.com/monopoly/pl/page.history/dn/default.cfm>). See also Wikipedia, *Monopoly (game)* ([http://en.wikipedia.org/wiki/Monopoly\\_\(game\)](http://en.wikipedia.org/wiki/Monopoly_(game))).
  - 4 Some readers may complain that Monopoly patent holder Charles Darrow was a native of Germantown, Pennsylvania, rather than Philadelphia. Although this is correct (see *Monopoly History, supra* note 3), Philadelphia played a role in Monopoly's early success. After game publisher Parker Brothers rejected the game (ostensibly citing "52 design errors"), Mr. Darrow reportedly arranged for the private sale of handmade Monopoly games by a Philadelphia department store (*id.*). When the game's popularity outstripped Mr. Darrow's ability to keep up with demand, Parker Brothers was given another chance, and commenced production of Monopoly in 1935 (*id.*). Parker Brothers became part of toy manufacturer Hasbro, Inc. in 1991. See Hasbro, Inc., *Over 110 Years of Fun: The Story of Parker Brothers* ([http://www.hasbro.com/default.cfm?page=ci\\_history\\_pb](http://www.hasbro.com/default.cfm?page=ci_history_pb)).

Imagine you're sitting down to play Monopoly. What you have in front of you is a circumscribed universe, Atlantic City, and a set of rules, simplified real-estate capitalism, that will govern your behavior for the next few hours. You've just rolled a 6 from Community Chest and landed on Boardwalk, which no one owns. Boardwalk costs \$400; you have \$500. You have only two options: to buy or not to buy. Your action will be determined by strategy and personality.<sup>5</sup>

In 1935 – when Monopoly went into commercial production – Congress also adopted the National Labor Relations Act (“NLRA”).<sup>6</sup> The NLRA involves many of the elements that have been responsible for Monopoly’s success.<sup>7</sup>

In fact, even Monopoly’s elixir of money, power and jail has its place in federal labor law.<sup>8</sup> However, these elements were not fully addressed until the 1947 enactment of Section 302 of the Labor Management Relations Act (“LMRA”), 29 U.S.C. §§ 141 *et seq.*, and the 1959 enactment of the Landrum-Griffin Act (“LGA”), also known as the Labor-Management Reporting Disclosure Act (“LMRDA”), 29 U.S.C. §§ 401 *et seq.* Both statutes included important amendments to the NLRA and significant new restrictions and reporting obligations if any “thing of value” is provided by an employer to a union officer, a union employee and/or the union itself.

Beginning in mid-2005, the U.S. Department of Labor (“DOL” or the “Department”) announced a number of highly publicized policy changes suggesting that years of leniency even

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5 Jay Teitel, *Wanna Play – Role of Games*, PSYCHOLOGY TODAY (July-Aug. 1998) ([http://www.findarticles.com/p/articles/mi\\_m1175/is\\_n4\\_v31/ai\\_20845730](http://www.findarticles.com/p/articles/mi_m1175/is_n4_v31/ai_20845730)).

6 29 U.S.C. §§ 151 *et seq.*

7 Research uncovers no instances where the NLRA itself has been reduced to a board game, although National Labor Relations Board (“NLRB” or “Board”) decisions have addressed situations where employees played board games in the workplace. *See, e.g., Gallup, Inc.*, 334 NLRB 366, 368 (2001) (employee “would read, draw, do collages, [and] play board games with his immediate neighbors”); *Nu-Skin International, Inc.*, 320 NLRB 385, 389 (1995) (employees were “sitting around on the job for hours playing various card games and board games”). For its part, the AFL-CIO has created a number of board games bearing anti-corporate titles such as “Take the Money and Run,” “Greed,” “Shatter the Glass Ceiling” and “Find the Health Insurance.” *See AFL-CIO, The Union Shop, Fun and Games* ([www.aflcio.org/unionshop/games](http://www.aflcio.org/unionshop/games); and [www.aflcio.org/corporatewatch/paywatch/games](http://www.aflcio.org/corporatewatch/paywatch/games)).

8 The element of money is central to the NLRA, since the statute’s cornerstone is the protection of employee rights to engage in collective bargaining through representatives of their own choosing, and the right to refrain from such activity, where unions and employers are required to bargain in good faith “with respect to wages, hours, and other terms and conditions of employment . . .” (29 U.S.C. § 158(d); *see also* 29 U.S.C. §§ 158(a)(5), 158(b)(3)). In bargaining under the NLRA, it has long been recognized that each party’s success depends on its relative power, with federal law striking a “balance . . . between the conflicting interests of the union, the employees, the employer and the community.” *Teamsters Local 20 v. Lester Morton Trucking Co.*, 377 U.S. 252, 259 (1964), citing *IEU Local 761 v. NLRB*, 366 U.S. 667, 672 (1961). Although the NLRA does not directly regulate bankruptcy, the rejection of collective bargaining agreements in some circumstances is permitted under the Bankruptcy Code. *See* 11 U.S.C. § 1113; *cf. NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984).

with respect to *de minimis* employer-union payments and expenses may come to an end. These DOL pronouncements have occurred primarily in the context of addressing *union* reporting and disclosure requirements. However, the Department also announced that it will be issuing comparable *employer* guidance. Moreover, because union requirements basically mirror those applicable to employers – at least with respect to payments or any “thing of value” that passes from an employer to union officers or union employees – there appears to be little doubt that the DOL’s renewed enforcement efforts, relative to unions, will have an equally profound impact on employers.

The remainder of this paper discusses the basic federal law requirements applicable to employer payments to union officers and other union-related expenses paid by an employer. These requirements primarily involve (i) LMRA Section 302’s prohibition of most payments and any other “thing of value” that passes from an employer to union officers or employees (subject to specific exceptions set forth in the statute), and (ii) various LGA reporting and disclosure requirements applicable to unions and employers.

The text then turns to the role played by the DOL in the enforcement of LGA reporting and disclosure requirements, basic principles that have already been established in LMRA Section 302 cases, the treatment of no-docking provisions, full-time union officers and collective bargaining expenses, and the DOL’s more aggressive LGA enforcement efforts commencing in mid-2005.

Finally, this paper concludes with a practical assessment of employer compliance issues pending the DOL’s long-awaited guidance to employers that, hopefully, will clarify LGA reporting and disclosure requirements and LMRA Section 302 issues that, at present, pose difficult challenges for employers and unions alike.

### **A. Federal Law and the Prohibition Against Employer-Union Payments**

Section 302(a) of the LMRA, as passed in 1947, included a new prohibition against any employer’s payment or delivery of any “money or other thing of value” to “any representative of any of his employees . . .” (61 Stat. 157, ch. 120, Title III, § 302(a)). At the same time, Section 302(b) imposed a relatively symmetrical prohibition on unions, making it unlawful for “any representative of any employees” to “receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.” *Id.* § 302(b). These general prohibitions were limited only by certain specific explicit exceptions that were enumerated in the statute. *Id.* § 302(c)

Following the LMRA’s enactment, there ensued a period of varied and colorful perceived union abuses, prompting Congress to enact even more onerous legislation which, among other things, strengthened Section 302’s prohibitions, clarified certain Section 302 exceptions, and imposed an array of new reporting and disclosure requirements especially on unions, but with employers also coming within their sweep. This more onerous legislation was the LGA.

The LGA’s passage followed two years of public debate concerning perceived abuses on the part of several prominent labor organizations. This debate arose principally from hearings,

beginning in 1957, sponsored by the Senate's McClellan Committee (more formally known as the Senate Select Committee on Improper Activities in the Labor or Management Field). As described by one source:

The McClellan Committee focused its attention on the improper activities of the Teamsters, the Bakery and Confectionery Workers, the Operating Engineers, the United Textile Workers, and the Allied Industrial Workers. As the hearings progressed, one union emerged to dominate the proceedings – the International Brotherhood of Teamsters. The articulate, colorful, and combative president of the Teamsters, James R. Hoffa, was a frequent witness. Often engaging in sharp encounters with Senator McClellan, Hoffa was the recipient of widespread, highly unfavorable press coverage. Likewise prominently reported in the media were sensational disclosures of union corruption and lack of democratic procedures which were being revealed at the McClellan Committee's hearings.

J. Bellace and A. Berkowitz, THE LANDRUM-GRIFFIN ACT 3 (The Wharton School Industrial Research Unit 1979).

Two overlapping parts of the LMRA and the LGA play a vital role in situations involving payments, transfers or expenses from an employer to union officials and/or union employees. Section 302 of the LMRA imposes broad prohibitions against employers giving “money or any other thing of value” to union representatives. And several LGA provisions impose significant reporting and disclosure obligations on unions and employers relative to such transfers. Each of these legal requirements is discussed, in turn, below.

### **1. LMRA Section 302's Prohibition Against Union-Related Payments**

In its present form, Section 302 of the LMRA – captioned "Restrictions on financial transactions" – states as follows:

(a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, *any money or other thing of value*–

(1) *to any representative of any of his employees* who are employed in an industry affecting commerce; or

(2) *to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce; or*

(3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing; or

(4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization.

LMRA Section 302(a), 29 U.S.C. § 186(a) (emphasis added).<sup>9</sup>

LMRA Section 302(c), in its present form, identifies nine specific exceptions where payments or other “things of value” are considered lawful and permissible, even if they pass from an employer to a union official or union employee. The exceptions identified in Section 302(c) are highly technical in many respects and can adequately be evaluated only by reviewing the actual statutory language (see Attachment 1). In general terms, however, Section 302(c) renders lawful the following types of payments or other things of value:

- (1) *Regular Compensation.* Employer payments to its own labor relations or personnel representatives, or “to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer”;
- (2) *Satisfaction of Judgment or Settlement.* Employer payments “in satisfaction of a judgment” or in settlement of “any claim, complaint, grievance, or dispute in the absence of fraud or duress”;
- (3) *Sale/Purchase at Market Price.* Employer payments associated with “the sale or purchase of an article or commodity at the prevailing market price in the regular course of business”;
- (4) *Dues Checkoff with Written Authorization.* Money deducted from the wages of employees in payment of membership dues in a labor organization, provided that the employer has received a valid written dues checkoff authorization form from each employee;
- (5) *Joint Management-Labor Trust Fund.* Payments to a trust fund established for the sole and exclusive benefit of the employer’s employees, and their families and

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<sup>9</sup> LMRA Section 302(b)(1) states: “It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a).” 29 U.S.C. § 186(b)(1).

- dependents, in relation to medical care, pensions, workers compensation, unemployment benefits, life insurance, disability, sickness or accident insurance, subject to a variety of additional requirements;
- (6) *Joint Trust for Vacation/Holiday/Severance Pay, etc.* Payments to a trust fund established for the purpose of “pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs,” subject to certain requirements;
- (7) *Joint Trust for Scholarships, etc.* Payments to a pooled or individual trust fund established for the purpose of scholarships, childcare centers, or housing financial assistance, subject to certain requirements;
- (8) *Joint Trust for Legal Services.* Payments to a trust fund established for the purpose of “defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice,” subject to certain requirements; or
- (9) *Labor Management Cooperative Committees.* Payments to a “plant, area or industrywide labor management committee” established to improve management-labor communication, to study innovative ways to achieve organizational effectiveness, and to assist the employer and employees in solving certain problems of mutual concern, among other things.

See LMRA Section 302(c), 29 U.S.C. § 186(c).

Violations of Section 302 are potentially serious criminal offenses. Under Section 302(d)(2), any person who “willfully” violates the prohibition against employer-union payments “shall, upon conviction thereof, be guilty of a felony and be subject to a fine of not more than \$15,000, or imprisoned for not more than five years, or both” (29 U.S.C. § 186(d)(2)). However, if the value of the payment or thing of value received is \$1,000 or less, the offense is a misdemeanor with a fine of up to \$10,000 and/or imprisonment of up to one year, or both. 29 U.S.C. § 186(d)(2).

## **2. The LGA’s Reporting and Disclosure Obligations**

**Employer Requirements: Form LM-10.** Section 203(a) of the LGA requires an employer to file with the Secretary of Labor a written report – which the Department of Labor (“DOL” or “the Department”) calls “Form LM-10” (see Attachment 2) – for every fiscal year in which the employer made:

- (1) any payment or loan, direct or indirect, of money or other thing of value (including reimbursed expenses), or any promise or agreement therefor, to any labor organization or officer, agent, shop steward, or other representative of a labor organization, or employee of any labor organization, except (A) payments or loans made by any national or State bank, credit union, insurance company, savings and loan association or

other credit institution and (B) payments of the kind referred to in [the LMRA Section 302(c) exceptions] . . . ;

(2) any payment (including reimbursed expenses) to any of his employees, or any group or committee of such employees, for the purpose of causing such employee or group or committee of employees to persuade other employees to exercise or not to exercise, or as the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing unless such payments were contemporaneously or previously disclosed to such other employees;

(3) any expenditure, during the fiscal year, where an object thereof, directly or indirectly, is to interfere with, restrain, or coerce employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing, or is to obtain information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

(4) any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertakes activities where an object thereof, directly or indirectly, is 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, or undertakes to supply such 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; or

(5) any payment (including reimbursed expenses) pursuant to an agreement or arrangement described in subdivision (4)

29 U.S.C. § 433(a) (emphasis added).

Every employer's report must be signed by the “*president and treasurer* or corresponding principal officers” and must “show[] in detail the date and amount of each such payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made” (29 U.S.C. § 433(a) (emphasis added)).

**Union Requirements: Form LM-30 and Other Forms.** The LGA reporting requirements applicable to unions are even broader than the requirements applicable to employers. However, the employer and union reporting obligations are very similar when it

comes to employer payments and other employer-provided “things of value” that are given to officers or employees of unions.

The primary LGA reporting requirements applicable to “officers and employees of labor organizations” are set forth in LGA Section 202. That section requires every union officer and employee (excluding individuals performing “exclusively clerical or custodial services”) to file a report – which the DOL calls “Form LM-30: Labor Organization Officer and Employee Report” (see Attachment 3) – listing or describing the following:

- (1) any stock, bond, security, or other interest . . . which he or his spouse or minor child directly or indirectly held in, *and any income or any other benefit with monetary value . . . from, an employer whose employees such labor organization represents or is actively seeking to represent, except payments and other benefits received as a bona fide employee of such employer;*
- (2) any transaction in which he or his spouse or minor child engaged, directly or indirectly, involving any stock, bond, security, or loan to or from, or other legal or equitable interest in the business of an employer whose employees such labor organization represents or is actively seeking to represent;
- (3) any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value . . . from, any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent;
- (4) any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value . . . from, a business any part of which consists of buying from, or selling or leasing directly or indirectly to, or otherwise dealing with such labor organization;
- (5) any direct or indirect business transaction or arrangement between him or his spouse or minor child and any employer whose employees his organization represents or is actively seeking to represent, except work performed and payments and benefits received as a bona fide employee of such employer and except purchases and sales of goods or services in the regular course of business at prices generally available to any employee of such employer; and
- (6) *any payment of money or other thing of value . . . which he or his spouse or minor child received directly or indirectly from any employer or any person who acts as a labor relations consultant to an employer, except payments of the kinds referred to in [the LMRA section 302(c) exceptions]. . . .*

29 U.S.C. § 432(a) (emphasis added).

Apart from Form LM-30, unions are required to file additional reports under the LGA, including copies of their constitution and bylaws (which the DOL calls its “Form LM-1”) and annual statements of finances and disbursements, among other things (Form LM-2, LM-3 or LM-4). These reports must be signed by every union’s “president and secretary or

corresponding officers” (Form LM-1) or by the “president and treasurer or corresponding principal officers” (Forms LM-2, LM-3 and LM-4).

The penalties for failing to comply with the LGA’s reporting and disclosure requirements are onerous. Willful violations – or a knowing “false statement or representation” or a knowing “fail[ure] to disclose a material fact” – can result in fines of up to \$10,000, imprisonment for up to one year, or both (LGA § 209(a), (b), 29 U.S.C. § 439(a), (b)). A corporation’s president, treasurer or other principal officers, and a labor organization’s president, secretary or other principal officers, are “*personally responsible for the filing of . . . reports and for any statement, . . . which [they] know[] to be false.*” LGA § 209(d), 29 U.S.C. § 439(d) (emphasis added).

### **3. The “Real World” Challenge Associated With Section 302 and LGA Compliance**

Taken in combination, LMRA Section 302’s prohibition against employer-union payments (or the delivery or payment of any other “thing of value” from employers to unions) and the LGA’s reporting requirements create a practical dilemma for employers and unions.

First, the failure to comply with LGA reporting obligations can expose the offending employer to criminal penalties, possibly including imprisonment.

Second, the LGA requires employer reports to be signed personally by the company’s president and treasurer who, therefore, face potential criminal liability for misstatements and/or omissions.

Third, if employer payments to union officers and/or employer-paid union-related expenses attributable to union officials are “reportable” under the LGA, the payments or expenses seemingly violate LMRA Section 302. And Section 302 violations result in their own criminal penalties.

Fourth, as noted above, if an employer is required to report certain union-related expenses under the LGA, the statute imposes an equivalent reporting obligation on the union recipients. Therefore, discrepancies between union and employer reports create the risk of a DOL investigation and potential criminal prosecution.

These four considerations place employers in a “Catch-22” situation. If conduct is reportable under the LGA, the filing of a report (which, among other things, is then publicly available on the Department of Labor’s website) can obviously result in unhelpful admissions, particularly since criminal prosecutions can result from payments described in the report. However, to the extent that reportable events have occurred, the failure to file a report likewise gives rise to potential criminal prosecution.

It provides little comfort to realize that Congress consciously intended that Section 302 and the LGA in combination would produce this potential “one-two punch” with respect to employer-union payments and every other “thing of value” that passes from an employer to

union officials who represent or would “admit to membership” the employer’s employees. Nor is it uncommon in the law for reporting and disclosure violations to be afforded equal (or greater) weight in comparison to underlying criminal activity.<sup>10</sup> Nonetheless, various business practices involving modest union-related expenses, dinners, small gifts and/or other forms of hospitality have become common over time, especially in mature bargaining relationships. Although these business practices raise legal issues under a strict reading of LMRA Section 302 and the LGA, the DOL and federal prosecutors have seemingly turned a blind eye to such practices as a matter of prosecutorial discretion presumably based on a view that, at most, they are *de minimis* offenses.

As noted previously, the Department of Labor’s latest LGA enforcement efforts suggest that any leniency may be ending even in relation to *de minimis* types of employer-union payments and expenses. The paragraphs below describe the DOL’s historical approach to *de minimis* payments and expenses, which contrasts with established principles of LMRA Section 302 case law. The text also addresses questions concerning no-docking provisions, full-time paid union officers and collective bargaining expenses, and the DOL’s more aggressive LGA enforcement initiatives which commenced in mid-2005.

## **B. The Department of Labor’s LGA Enforcement Activity and Section 302’s Treatment of “*De Minimis*” Violations**

### **1. DOL’s Historical Approach**

The LGA and LMRA Section 302 do not specify that employer-union payments or expenses should be afforded leniency or other special treatment if they have a *de minimis* value. Nevertheless, the Department of Labor in the past has articulated principles that reflect a qualified *de minimis* standard when addressing relatively small expenses and acts of hospitality.

The DOL’s LMRDA Interpretative Manual, for example, states that “anything with a value of \$25 or less will be considered ‘de minimis’ and therefore not reportable if it is given under circumstances unrelated to the recipient’s status in a labor organization.” U.S. Department of Labor, *LMRDA Interpretative Manual*, § 241.700 (emphasis added).

Along similar lines, the LMRDA Interpretative Manual has described the status of employer-paid meals as follows:

The practice of an employer, who pays for meals of a five-man bargaining committee of an independent local on the occasion of its meeting *several times a year* with the

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10 Most well-known, obviously, is the case of Chicago gangster Al Capone, whose longest period of imprisonment – seven years, six months and fifteen days – resulted from a federal conviction for tax evasion (and Prohibition charges), instead of resulting from his more nefarious criminal activities. See Federal Bureau of Investigation, *FBI History – Famous Cases, Alphonse Capone aka Al, Scarface* (<http://www.fbi.gov/libref/historic/famcases/capone/capone.htm>). Contrary to conventional belief, Capone previously served lesser amounts of time for other criminal violations. Here, too, there is a Philadelphia connection – Capone was arrested in Philadelphia on May 17, 1929 for carrying concealed deadly weapons, resulting in a one-year sentence (ultimately reduced to nine months based on “good behavior”). *Id.*

employer's management committee to discuss matters under the collective bargaining agreement, is not reportable . . . if the practice involves an *insubstantial cost per recipient* and amounts to *occasional acts of hospitality* which the employer extends to other groups with which it meets to discuss matters of mutual interest.

U.S. Department of Labor, *LMRDA Interpretative Manual* § 253.061 (emphasis added).

Entertainment of union officers (for example, the attendance of union officials at a company picnic) has likewise been described in similar terms. Here, the LMRDA Interpretative Manual states:

*Occasional acts of hospitality which are designed solely to further sound labor-management relations, which involve an insubstantial cost for each person invited, and which the company extends in similar fashion to other groups with which it meets on matters of mutual interest need not be reported.*

*Id.* § 253.081 (emphasis added).

A DOL guidance document for unions, *Filing Form LM-30: An Overview of Union Officer and Employee Reporting* ("LM-30 Overview"), contains the question, "Must I report gifts or loans of small value?" which is accompanied by the following answer:

*Sporadic or occasional gifts, gratuities, or loans of \$25 or less do not have to be reported if they are given under circumstances unrelated to the recipient's status in a labor organization. For example, if an employer frequently provides a catered lunch during long meetings with various groups, a union officer would not have to report the receipt of such a lunch if it has a value of \$25 or less.*

U.S. Department of Labor, *LM-30 Overview* (emphasis added).

## **2. Section 302 Case Law – No Clear *De Minimis* Standard?**

The federal courts have broadly construed Section 302's blanket prohibition on employer payments to unions and union officers, at least where the union in question represents or would admit to membership the employer's employees. Thus, one court described Section 302(a) as imposing a "bright line test, outlawing any payment, with stated exceptions, regardless of motive or intent." *Int'l Longshoremen's Ass'n v. Waterfront Comm'n of New York Harbor*, 495 F. Supp. 1101, 1118 (S.D.N.Y. 1980). The court expounded that, given the broad language of the statute, Congress must have regarded any payment or loan between management and union members as "potentially corrupting, and so utterly lacking in any legitimate justification that all such transactions should be prohibited." *Id.*

**Motivation Immaterial.** Where a union represents or would admit to membership people who work for a particular employer, numerous cases suggest that the employer cannot

lawfully make payments or transfer things of value to union officers or union employees, regardless of how innocent may be the the employer's motivation.<sup>11</sup>

In *United States v. Ryan*, 350 U.S. 299, 305 (1956), the Supreme Court indicated that Section 302 is "a criminal provision, *malum prohibitum*, which outlaws all payments, with stated exceptions, between employer and representative" of his employees. In concluding that an individual who represented employees both as union president and principal negotiator was a "representative" covered by Section 302, the *Ryan* Court agreed that the representative had violated Section 302 by accepting one \$1,000 payment in 1950 and two payments of \$1,000 and \$500 in 1951.

In *United States v. Ricciardi*, 357 F.2d 91 (2d Cir. 1966), the Second Circuit elaborated on the Supreme Court's position in *Ryan*, finding that any payment violated the statute – except for the narrow statutory exceptions – despite the fact that the defendant may not have realized he was violating the law. The Second Circuit rejected the argument that a payment or loan to the employee representative because of friendship would not fall within the proscription of Section 302 due to a lack of "evil motive." Consequently, under Section 302, the prosecution need not prove an evil intent or corrupt motive to establish a criminal violation, but must only show that the violation of Section 302 was "willful."

Concerning the definition of "willful" in cases involving Section 302 violations, courts have held that the government is not required to show that the defendant actually knew his or her conduct was prohibited by Section 302. Consequently, union officers have been found guilty of willful conduct when they knew (1) that they were receiving or accepting a thing of value and (2) that the person giving them the thing of value was an employer of employees they represented. *United States v. Pecora*, 484 F.2d 1289 (3d Cir. 1973). In *Pecora*, the defendant (Pecora) was a local union business manager who was honored for his involvement in the labor movement by the Thomas Pecora Testimonial Dinner Committee. The Committee sold tickets to the dinner for \$50 per couple and advertisements in a souvenir program for \$300 per page. In total, the Committee sold \$44,400 worth of tickets and advertising. Employers who employed some members of Pecora's union purchased \$25,450 worth of tickets and advertising. Moreover, at the dinner, Pecora was given a new car worth \$5,324.96, a color television set worth \$448.00, a plaque, a citation from the International Union, and a thirty-year pin. After the costs to cover expenses for the dinner were deducted, Pecora was given the balance of the proceeds: \$26,755.32 in cash. The court rejected Pecora's arguments that the payments and gifts fell within one of the exceptions of Section 302. The court reasoned that even assuming the testimonial dinner was a "commodity," and that "it was sold in the 'regular course of business,' it would strain credulity to believed that the market price for an advertisement in the program was \$300 or that the value of the dinner was twenty-five dollars per person." *Id.* at 1294.

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11 As noted above, employer-union payments generally are excused only if they fall within the specific, enumerated exceptions set forth in LMRA Section 302(c), 29 U.S.C. § 160(c). However, in some contexts, Section 302 does take into account the employer's "purpose" or "intent" in the case of payments to company employees (with the "purpose" of causing them to influence others) or payments to union officers or union employees that do *not* represent, and would *not* admit to membership, the company's employees (here, such payments would violate Section 302 only if given "with the intent" of influencing the recipient in relation to his or her role as a union officer or employee). See 29 U.S.C. §§ 186(a)(3), (4).

**Direct Versus Indirect Payments.** Courts have invalidated, under Section 302, numerous employer payments, transfers and assumptions of financial responsibility even where the beneficiaries were not union officers or employees but, rather, third-party agents, intermediaries, or other go-betweens. For example, in *United States v. Lanni*, 466 F.2d 1102 (3d Cir. 1972), the Third Circuit held that Section 302 forbids indirect union official-management bribery, whether it occurs directly or through middlemen. The defendant in the *Lanni* case was Louis Lanni, Secretary-Treasurer of Teamsters' Local No. 830. At a time when Local 830 represented D'Agata Trucking's employees, Lanni's girlfriend, Mary Maiale, received \$16,300 from D'Agata, supposedly for performing bookkeeping functions. In reality, though, Maiale never performed any work, bookkeeping or otherwise, for the trucking company and Lanni, in the meantime, was forcing local businesses to hire D'Agata as repayment for Maiale's salary. In the end, although Lanni did not actually receive the money – i.e., the evidence did not establish that he had the money “in his hands” – the appeals court affirmed Lanni's conviction under Section 302(b) for receiving and accepting \$16,300 from D'Agata.

Numerous other circuits support the *Lanni* court's conclusion that Section 302 encompasses indirect as well as direct payments from an employer to union officers and union employees. For instance, in *Brennan v. United States*, 240 F.2d 253 (8th Cir. 1957), the Eighth Circuit upheld the convictions of three union officials when the employer sent a check in the amount of \$5,000 to the son of one of the officials made out to a nonexistent corporation payee. The son then directly deposited the check to his father and the two other officials, while keeping \$1,100 for himself.

Courts have also found that indirect payments not to third-party individuals, but rather to third-party entities, are covered by Section 302. For example, the Tenth Circuit upheld the conviction of a union official when the employer indirectly paid the official by discharging the official's personal loan of \$2,300 by making bank payments on the official's behalf. *Korholz v. United States*, 269 F.2d 897 (10th Cir. 1960). Similarly in *United States v. McMaster*, 343 F.2d 176 (6th Cir. 1965), the employer made indirect payments valued at \$8,823.48 to a corporation of which the union official was the president and controlling stockholder. The court reasoned that because the official had “substantial access” to the corporate funds, receipt by the corporation violated Section 302.

**No De Minimis Exception?** The courts have *not* recognized or applied any dollar-threshold *de minimis* exception when applying Section 302. Because the statute itself indicates that transfers involving \$1,000 or less are misdemeanors, this reinforces the notion that payments significantly less than \$1,000 are still violations of the statute, and could be the subject of federal prosecution.

This is borne out in numerous instances when courts have recognized a Section 302 violation based on payments that were significantly less than \$1,000. For example, in *United States v. Thompson*, 466 F. Supp. 18 (W.D. Pa. 1977), Thompson, a local union's business manager, was convicted of violating Section 302 for receiving a \$900 unsolicited Christmas gift from an employer, where the union business manager kept \$250 for himself and distributed the

remainder among several other union officers.<sup>12</sup> Another court has suggested that even an “inconsiderable and harmless” act, such as an innocently intended holiday gift, might be covered by Section 302. See *Int’l Longshoremen’s Ass’n*, 495 F. Supp. 1101, 1119 (S.D.N.Y. 1980).

The Second Circuit upheld the conviction of a union business agent under Section 302 when the agent accepted separate payments of \$300 and \$50 from the employer. *United States v. Annunziato*, 293 F.2d 373 (2d Cir. 1961). Similarly, in *United States v. Schwartzbaum*, 527 F.2d 249 (2d Cir. 1976), the court affirmed the district court’s conviction of an employer who made payments totaling \$600 to union officials.

**“Thing of Value” Broadly Defined.** In addition to cash payments, Section 302 prohibits providing “any other thing of value.” The phrase “thing of value” has been broadly interpreted to include “any material thing with a monetary value.” *United States v. Scotto*, 641 F.2d 47, 57 (2d Cir. 1980).

Courts have found numerous types of noncash payments to constitute “a thing of value.” For example, the First Circuit affirmed the conviction of a union official for accepting carpentry work performed at his home. *United States v. Walsh*, 928 F.2d 7 (1st Cir. 1991). In *United States v. Ferrara*, 458 F.2d 868 (2d Cir. 1972), the Second Circuit held that an employer’s agreement with the union to switch coffee suppliers was a thing of value because the union collected a commission. The union representatives in *Ferrara* created an elaborate scheme with a coffee supply company in exchange for cash payments. The coffee supplier, who employed individuals represented by the union, agreed to pay commission to the union representatives if they could convince another one of their employers to switch coffee suppliers. The union representatives then went to the employer and agreed to promote the modification of the food benefit provision in the collective bargaining agreement to their employees in exchange for the employer’s commitment to change coffee suppliers. Once an agreement was reached, the coffee supplier made annual payments to the union representatives of four cents a pound on all sales of coffee to the employer. Similarly, in *Volmer Distributors, Inc. v. New York Post Co.*, 825 F. Supp. 1153 (S.D.N.Y. 1993), the court held that an alleged agreement to exchange distribution rights for labor concessions violated Section 302.

The provision of *travel accommodations* in the form of free airfare and automobiles or hotel expenses appears to be prohibited under Section 302. In *United States v. Sink*, 355 F. Supp. 1067 (E.D. Pa. 1973), the court affirmed the jury’s conviction of a local union’s president under Section 302 for accepting an employer’s payment of his airfare and hotel bills. Specifically, the president of a union representing Philadelphia janitorial workers accepted vacation trips from MacClean Service Company, a New York-based corporation that actively sought expansion of its cleaning service into the Philadelphia area. In total, the president received payments of hotel bills in Miami, Florida and the Bahamas, in addition to airfare to the Bahamas.

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<sup>12</sup> In dicta, the court in *Thompson* distinguished the \$900 Christmas gift from “a trifling or innocuous Christmas gift such as a Christmas card or a box of candy,” arguably suggesting the possibility of a *de minimis* standard. *Thompson*, 466 F. Supp. at 20 n.1.

In *Butchers' Union, Local No. 498, United Food & Commercial Workers v. SDC Investment, Inc.*, 631 F. Supp. 1001 (E.D. Cal. 1986), the court denied defendants' motion to dismiss, concluding that plaintiffs had properly pled a Racketeer Influenced and Corrupt Organization Act claim by relying on Section 302 of the LMRA. In this case, on the same day that SDC Investment, Inc. (SDC) opened its slaughterhouse in Dixon, California, it recognized the National Maritime Union (NMU) as the bargaining representative of its employees. Plaintiffs alleged that SDC's recognition of NMU was done to prevent plaintiff from organizing SDC's employees and to maximize profit for SDC and enrich NMU and the law firm defendants. The court found that in order to accomplish these purposes, defendants hired and paid defendant organizers of NMU, providing them with travel expenses, reimbursements for hotel, meals and automobile expenses, and direct payment of wages. The court determined that such reimbursements violated Section 302.

Not only reimbursement, but also the free use of an automobile has been found to constitute a violation of Section 302. For example, the Third Circuit found that Eugene Boffa, Sr. and Louis Kalmar, Sr., co-owners of UCI, violated Section 302 when they caused UCI to "deliver the free use for a month . . . of a 1975 Lincoln Continental . . . to Francis Sheeran . . . with intent to influence (Sheeran) in respect to his actions and duties as president of (Teamsters) Local 326." *United States v. Boffa*, 688 F.2d 919, 924 (3d Cir. 1982). The co-owners further violated the statute by agreeing to sell Sheeran the car at a below-market price.

Finally, although the court in *United States v. Schiffman*, 552 F.2d 1125 (5th Cir. 1977), ultimately upheld the conviction of an international union officer whose local affiliate represented a hotel's employees for accepting a room from the hotel at a discounted rate well below the hotel's actual cost, the court suggested, without specifically addressing one of the exceptions under Section 302, that the purchase of an article or commodity at an established discount rate – a rate that covers the actual costs – does not violate Section 302. In affirming the conviction, the Fifth Circuit implicitly ruled that the \$1,278 difference between the hotel's regular corporate rate and the discount rate that the union officer demanded and received was a "thing of value" within the meaning of Section 302. However, the court raised the possibility that the employer could lawfully sell travel arrangements at a generally available and established discount rate. Specifically, *Schiffman* suggests that buying a hotel room at an established discount rate that covers actual costs would be "at the prevailing market price in the regular course of business," and thus would fall within the exception in Section 302(c)(3).

### **3. No-Docking Provisions, Full-Time Paid Union Officers and Collective Bargaining Expenses**

In *Caterpillar, Inc. v. International Union, United Automobile, Aerospace & Agricultural Implement Workers of America*, 909 F. Supp. 254 (M.D. Pa. 1995), *reversed*, 107 F.3d 1052 (3d Cir. 1997), *cert. granted*, 521 U.S. 1152 (1997), *cert. dismissed*, 523 U.S. 1015 (1998),<sup>13</sup> the

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<sup>13</sup> The Supreme Court in *Caterpillar* initially granted certiorari in the case, but later dismissed the case based on Supreme Court Rule 46.1 (providing for dismissal of any action where all parties agree to the dismissal, with arrangements for addressing relevant costs and fees). See *Caterpillar, Inc. v. Int'l Union, UAW*, 523 U.S. 1015 (1998).

employer (Caterpillar) was party to a series of collective bargaining agreements that, for many years, permitted various union representatives to leave their regular jobs for periods of time, without any loss of pay or benefits, while they handled grievance-related matters (909 F. Supp. at 255). In 1973, these “no-docking” arrangements were expanded in relation to union committeemen and grievance chairmen, who were then allowed “to work full-time in their union capacities while still receiving wages and benefits from the company” *Id.* After Caterpillar’s labor contract with the UAW expired, the Company informed the union that the full-time grievance chairmen would no longer receive wages (or group insurance coverage), and the Company questioned the Section 302 legality of such an arrangement. *Id.*

Ultimately, *Caterpillar* filed a declaratory judgment action seeking a ruling that the payment of wages to full-time grievance chairman violated Section 302. In response, the UAW argued (among other things) that the wage payments to full-time grievance chairmen came within a specific exception described in Section 302(c)(1), which renders lawful employer payments “to any officer or employee of a labor organization, who is also an employee *or former employee* of such employer, as *compensation for, or by reason of, his service as an employee of such employer*” (29 U.S.C. § 186(c)(1) (emphasis added)). The district court ruled that the payment of wages to full-time union representatives violated Section 302, even though the representatives were “former” Caterpillar employees. The district court reasoned that the grievance chairmen were not current “employees” of Caterpillar, and the continuation of wages was not compensation “for” or “by reason of” their former Caterpillar employment. The district court thus concluded:

We hold, as a matter of law, that the [Grievance] Chairman is *not a current employee of Caterpillar because Caterpillar does not exercise sufficient control over his duties and does not significantly benefit from the performance of those duties.* Further, the payments to the Chairman are *not for services rendered while he was an employee of Caterpillar.* Accordingly, the exemption of section 302(c)(1) is inapplicable, and any payments made by Caterpillar to the Chairman are unlawful under section 302(a) of the LMRA.

909 F. Supp. at 260 (emphasis added).

On appeal, the Court of Appeals for the Third Circuit, sitting *en banc*, reversed the district court decision, with three judges dissenting (107 F.3d 1052, 1059, 1066). The court majority noted that conventional “no-docking” arrangements (permitting union stewards and other union representatives to leave their regular jobs for part of the day to handle union business) had consistently been declared lawful for purposes of Section 302. *See* 107 F.3d at 1056, citing *NLRB v. BASF Wyandotte Corp.*, 798 F.2d 849, 854-56 (5th Cir. 1986); *BASF Wyandotte Corp. v. Local 227*, 791 F.2d 1046 (2d Cir. 1986); *Herrera v. International Union, UAW*, 73 F.3d 1056 (10th Cir. 1996), *affirming* 858 F. Supp. 1529, 1546 (D. Kan. 1994); *Communications Workers v. Bell Atlantic Network Servs., Inc.*, 670 F. Supp. 416, 423-24 (D.D.C. 1987); *Employees' Independent Union v. Wyman Gordon Co.*, 314 F. Supp. 458, 461 (N.D. Ill. 1970). The court majority agreed that the grievance chairmen were not current “employees” of Caterpillar, but held that the continuation of wages – during the period that the grievance chairmen worked full-time as union representatives – nonetheless came within the Section 302(c)(1) exception that permitted payments to union representatives as compensation

“by reason of” their prior “service as an employee of [the] employer” (107 F.3d at 1056). The court majority concluded:

*[T]he payments at issue here, while they were not compensation for hours worked in the past, certainly were “by reason of” that service. We reach this conclusion because the payments arose, not out of some “back-door deal” with the union, but out of the collective bargaining agreement itself. Caterpillar was willing to put that costly benefit on the table, which strongly implies that the employees had to give up something in the bargaining process that they otherwise could have received. Thus, every employee implicitly gave up a small amount in current wages and benefits in exchange for a promise that, if he or she should someday be elected grievance chairperson, Caterpillar would continue to pay his or her salary.*

*Id.* (emphasis added).

The court majority’s attachment of significance to the lack of a “back-door deal” with the union was criticized by the dissenting judges in *Caterpillar* as an improper reading of Section 302 and its legislative history. In this regard, dissenting Judge Mansmann stated:

*Congress [in passing Section 302] was not merely concerned about secret, back-room deals. Congress was concerned about any form of payment that could upset the balance between labor and management. The payments at issue in this case do exactly that. They create a conflict of interest for union negotiators who may agree to reduced benefits for the employees in exchange for financial support for the union.*

*Id.* at 1060 (Mansmann, J., dissenting, joined by Greenberg, J.) (emphasis added).<sup>14</sup>

The Supreme Court in *Caterpillar* granted *certiorari* and appeared poised to address whether payments to full-time union officers violated Section 302 (consistent with the district court *Caterpillar* decision and the opinions of the three dissenting judges on appeal) or whether such payments were rendered lawful by Section 302(c)(1) (consistent with the Third Circuit majority). *See* 521 U.S. 1152 (1997). Before the Supreme Court decided the case, however, the parties reached an agreement and mutually sought dismissal of the Supreme Court appeal, which the Supreme Court granted.<sup>15</sup>

Historically, the DOL has not required union officers or employers to report employer payments received by union officers, formerly working as employees, who are now paid while working full-time on union business. Although Part A of the union LM-30 form requires union

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14 Dissenting Judge Alito in *Caterpillar* likewise stated in part: “[I]t seems clear to me that the payments at issue in this case are made ‘by reason of’ the chairmen’s grievance work and not ‘by reason of’ their prior service as regular employees. Consequently, these payments cannot be squeezed into the ‘by reason of’ exception in Section 302(c)(1) . . . and I am therefore constrained to conclude that these payments are prohibited by the plain language of Section 302.” 107 F.3d at 1072 (Alito, J., dissenting).

15 As noted previously, the Supreme Court’s dismissal was based on Supreme Court Rule 46.1, providing for dismissal of any action where all parties agree to the dismissal, with arrangements for addressing relevant costs and fees. *See Caterpillar*, 523 U.S. 1015 (1998).

officers or employees to state whether they “derived income or other economic benefit of monetary value from an employer whose employees your organization represents” (U.S. Department of Labor, Form LM-30 (2003), Part A, p. 1), the written LM-30 instructions state that “Part A excludes, and you are not required to answer [questions], with respect to . . . [p]ayments and benefits received as a bona fide employee of the employer for past or present services, including . . . payments for periods in which such employee engaged in activities other than productive work, if the payments for such period of time are: (a) required by law or a bona fide collective bargaining agreement, or (b) made pursuant to a custom or practice under such a collective bargaining agreement . . .” (*id.*, Instructions For Form LM-30, Part A (Items 6 and 7)).<sup>16</sup>

The DOL has proposed changes to the union LM-30 form (see part 4 below) that, among other things, would require reporting not only relative to payments made to full-time union officers but also to other union representatives who, pursuant to a conventional “no docking” arrangement, work part-time on union business without the loss of pay.<sup>17</sup>

The Department of Labor has indicated that an employer can lawfully pay collective bargaining expenses for company employees, while refraining from paying similar expenses for non-employee union representatives. *See* LMRDA Interpretative Manual, §§ 243.200, 253.060.

#### **4. The DOL’s Most Recent Enforcement Initiatives**

Earlier this year, the DOL announced a more aggressive campaign to enforce reporting and disclosure requirements imposed under the LGA.

**Union Form LM-30.** The DOL first focused on union reports concerning things of value received from employers which, under the LGA, must be the subject of annual Forms LM-30 filed by union officers or union employees in the event of reportable activities. This was reflected in the DOL’s announcement in April 2005 of a “grace period” permitting 2004 Forms LM-30 to be filed by July 15, 2005, which was subsequently extended to August 15, 2005.

Although a number of factors contributed to the Department’s renewed interest in LGA enforcement, the DOL used a variety of techniques to determine that an extraordinarily low

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16 Along similar lines, the employer LM-10 report asks employers: “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?*” (U.S. Department of Labor, Form LM-10 (2003), Part A, question 8.a, p. 2 (emphasis added). However, the written Form LM-10 instructions contain language, identical to the union LM-30 instructions (quoted above in the text), stating that a “yes” answer is not required relative to payments “for past or present services, including . . . payments for periods in which such employee engaged in activities other than productive work, if the payments . . . are . . . required by . . . a bona fide collective bargaining agreement” (*id.*, Instructions For Form LM-10, Part A, question 8.a., p. 3).

17 *See* 70 Fed. Reg. 51,166, 51,174-75 (Aug. 29, 2005): “in defining ‘bona fide employee,’ the revised Form LM-30 would require the reporting of payments received by union officers from an employer for work performed for the union. A typical example involves a ‘no docking’ arrangement where an employer allows a union steward or union officer to resolve grievances, often on an ‘as-needed’ basis, without a loss of pay. In other instances, a union official is paid by an employer while working full time on union business.”

percentage of required Forms LM-30 were filed by union officers and union employees, and further investigation by the DOL revealed numerous instances where different union officers and union employees engaged in reportable conduct, and none of the officers or employees filed Forms LM-30 until the Department of Labor contacted them. *See* 70 Fed. Reg. 51,166, 51,171-74 (Aug. 29, 2005) (indicating that only .03 percent of all union officers and union employees – i.e., three one-hundredths of one percent – filed Forms LM-30 during 2002; of 438 union-employed lawyers and legal professionals, 1.37 percent engaged in reportable activity but nobody within this group filed Forms LM-30 until contacted by the DOL; and numerous other cases exist where DOL investigations revealed reportable activity by union officers or union employees but no filing of Forms LM-30).

The DOL’s guidance to unions concerning the filing of Forms LM-30 clearly established that the Department intended to apply and enforce the LGA reporting and disclosure requirements with renewed vigor.

**DOL’s New “Proposed Rule” Concerning Union LM-30 Reports.** On August 29, 2005 – just 14 days after the August 15, 2005 “grace period” ending date applicable to union Forms LM-30 for the year 2004 – the DOL issued a new Proposed Rule suggesting major changes in Form LM-30 and its accompanying instructions. The Department also solicited comments concerning the Proposed Rule, which must be submitted by October 28, 2005. *See* 70 Fed. Reg. 51,166 (Aug. 29, 2005).

Examples set forth in the Proposed Rule concerning union officer/employee reportable conduct – based on money or things of value received from an employer whose employees the union represents or would admit to membership – include the following:

You are a union officer and truck driver who is *paid for five days of work by the employer, even though you only drive a truck one day a week* and spend the rest of the week *handling union member grievances or other union-related work*. You must report the pay and benefits received from the employer for the time spent performing union work under this subsection.

\* \* \*

You are an officer of a union that represents Widget Company employees. *Your wife owns 5,000 shares of Widget Company stock that Widget’s CEO gave her on Mother’s Day two years ago*. This stock is traded on the New York Stock Exchange or another registered stock exchange. You must report the shares under this subsection because the holding of this interest is reportable regardless of when it was obtained and, as a gift, the exclusion for bona fide investments in publicly traded securities does not apply.

\* \* \*

You are a full-time officer of a union that represents employees of several different employers. *One of the employers pays your expenses on a trip with management officials to a plant in another part of the country to view some new equipment that the employer is considering purchasing*. You must report the travel expenses under this subsection.

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*You are an employee of a union that represents actors. You own a production company whose employees are represented by your union. You must report your interests in the production company under this subsection.*

*Id.* at 51,187-88 (emphasis added).

Two aspects of the Department's Proposed Rule (among other things) are especially significant.

One substantial change, as evidenced in the first example quoted above, is the proposed obligation to report "no docking" pay – *i.e.*, pay received during paid periods in which union officers work on union business, rather than performing work for the employer. Here, the DOL's proposed new LM-30 form would *only* exempt payments and benefits received by a "bona fide employee,"<sup>18</sup> defined as "an individual who performs work for, and subject to the control of, the employer."<sup>19</sup> The DOL's explanation concerning this proposed change leaves no doubt about the intentional nature of this change:

*This definition will, thus, require reporting of at least two types of compensation that are currently excluded from reporting. . . . These compensation types are "union leave" and "no docking" payments. Under a union leave policy, the employer continues the pay and benefits of an individual who works full time for a union. Under a no docking policy, the employer permits individuals to devote portions of their day or workweek to union business, such as processing grievances, with no loss of pay. Continuation of pay in this context is not "payments or other benefits received as a bona fide employee" because the payments are not attributable to work performed for, and subject to the control of, the employer. Rather, the pay is for services performed for, and subject to the control of, the union. The payments are, therefore, reportable. See 29 U.S.C. 432(a)(1), (a)(5).*

70 Fed. Reg. at 51,181 (emphasis added). The DOL's explanation includes a quotation from Judge Mansmann's dissenting opinion in *Caterpillar* (also quoted above), and concludes:

*By exempting these payments from reporting [in the past], the Department has deprived union members of information they may need to make an informed judgment on whether their union officers and employees are subject to financial incentives that could hinder them in fulfilling the trust that has been placed in them. The Department acknowledges that this proposal is a departure from the Department's past practice and invites comment about the problems (or their absence) that have arisen by allowing such payments to go unreported. The Department also seeks comment about whether disclosure is always appropriate for "no docking" situations and, if not, suggestions as to whether quantitative (such as number of hours) or qualitative (such as discussing a grievance with a supervisor or management official) distinctions should affect the disclosure obligation.*

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<sup>18</sup> See 70 Fed. Reg. at 51,187.

<sup>19</sup> 70 Fed. Reg. at 51,180.

*Id.* (emphasis added).

Another substantial change involves the possible *elimination* of the DOL’s \$25 *de minimis* exception.<sup>20</sup> The Department’s Proposed Rule for union LM-30 forms acknowledges that “*exceptions based on insubstantiality* are commonly read into statutes that do not expressly contain them” and “*other reporting and disclosure systems do not require reports of small value items.*” 70 Fed. Reg. at 51,175 (emphasis added), citing *Wisconsin Department of Revenue v. William Wrigley, Jr., Co.*, 505 U.S. 214, 231 (1992), where the Supreme Court noted “the venerable maxim *de minimis non curat lex* (‘the law cares not for trifles’) is part of the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept.”

Nevertheless, the Proposed Rule solicited comments – relative to the \$25 *de minimis* exception (including its various qualifiers and requirements) – “on whether this exemption should be retained or removed” *Id.* In relation to the \$25 *de minimis* exception as set forth in the LMRDA Interpretative Manual, the Proposed Rule likewise stated:

The Department seeks comment on whether the \$25 threshold set out in the LMRDA Interpretative Manual is an appropriate one, whether the burden to report small interests and transactions is reasonable, and *whether it would be preferable to require reporting of all transactions and allow union members to assess whether a particular holding or transaction is substantial enough to possibly present a conflict between private interest and union responsibilities.*

*Id.* (emphasis added).

Although this Proposed Rule, relating to the \$25 *de minimis* exception, applies specifically to union Forms LM-30, the Department’s approach in this area presents three formidable challenges for employers.

First, as noted previously, the employer’s LM-10 reporting and disclosure requirements – with respect to payments or “things of value” transmitted to union officers or employees – are basically the same as the union’s LM-30 reporting and disclosure obligations. Therefore, if the \$25 *de minimis* exception is eliminated, narrowed or otherwise modified for unions, this would almost certainly have an equally direct impact on employers.

Second, even if the current \$25 *de minimis* exception remains intact, several real world problems make it difficult to rely on this exception in practice:

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<sup>20</sup> As noted previously, the DOL’s *LMRDA Interpretative Manual* states that anything valued at \$25 or less can be considered *de minimis* and non-reportable “if it is given under circumstances unrelated to the recipient’s status in a labor organization.” U.S. Department of Labor, *LMRDA Interpretative Manual*, § 241.700. However, in other situations, the DOL has imposed additional requirements and qualifiers, indicating that such *de minimis* payments are nonreportable *only* if (i) they are “[s]poradic” and/or “occasional,” and (ii) the same practice (in the case of employer-paid meals, for example) is followed relative to “various groups” and/or “other groups.” See *LM-30 Overview*, and *LMRDA Interpretative Manual* §§ 241.700, 253.061, 253.081.

- As noted above, every DOL reference to a possible \$25 threshold includes an array of qualifiers. Putting aside questions of valuation (i.e., whether particular expenses or items are above or below the \$25 threshold), it would be difficult for even the most well-intentioned employer or union officers or employees to determine whether particular practices are “[s]poradic” and/or “occasional,” whether the same practice is followed relative to “various groups” and/or “other groups,” and whether particular expenses or payments are paid “under circumstances unrelated to the recipient’s status in a labor organization” (*LM-30 Overview*, and *LMRDA Interpretative Manual* §§ 241.700, 253.061, 253.081).<sup>21</sup>
- Although not specifically addressed by the DOL, it appears that individual expenses or payments – each under \$25 in value – may nonetheless be reportable (and potentially would violate Section 302) if they occur too often – which means they would not be “[s]poradic” or “occasional” – and possibly if too many union officials benefit or attend a particular company-sponsored event. Stated differently, it would be difficult to formulate or administer a coherent company policy that permits certain \$25 union-related expenses while, at the same time, it prohibits such expenses if they occurred too frequently or were enjoyed by too many union officers or union employees.
- As noted above, the DOL’s \$25 *de minimis* exception has no explicit support in the LGA, nor does it necessarily have *any* impact on what is prosecutable under Section 302. Common sense might suggest that the Justice Department is unlikely to initiate Section 302 prosecutions based on modest expenditures of \$25 or less. On the other hand, all criminal prosecutions generally result from a multiplicity of factors. So there may be circumstances in a particular case which could result in Section 302 prosecution, however improbable, over seemingly innocuous conduct. This risk is all the more real based on the substantial case law – described above – establishing that Section 302 violations are not excused by innocent motives or the relatively small dollar value of particular expenditures.
- The question of valuation – whether particular items are over or under the \$25 threshold – cannot be taken for granted. The practical administration of a \$25 per head minimum, when discussing company-sponsored events, meals and so on, could be complex and confusing, and could produce unexpected results. For example, a smaller-than-anticipated turnout at a particular event might cause the per head expense figure to increase above \$25. Conversely, it is obviously not unusual for total costs associated with a particular event to increase above original estimates, which likewise might cause per head expense figures to increase above \$25. It takes little imagination to come up with scenarios where circumstances might disrupt or destroy even the most well-intentioned plans to keep the Company’s payment of union-related expenses below the \$25 figure.

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21 There have been some indications that the DOL may regard “sporadic” or “occasional” as meaning up to four or five times per year.

Third, the Department's Proposed Rule – consistent with all of the DOL's more vigorous enforcement information that has emerged since early 2005 – appears to focus exclusively on the LGA "reporting and disclosure" requirements, without addressing the more fundamental question that most employers are asking (along with their union officer and union employee counterparts). That question, unsurprisingly, is "*will we go to jail or be subject to criminal prosecution under LMRA Section 302 if we do the right thing by erring on the side of reporting all colorable payments, benefits or other 'things of value' that pass from an employer to its union officers or union employees?*"

If the answer – relative to employer-union payments, expenses and other things of value – is that everything reportable should be regarded as prosecutable, then it would almost certainly be preferable for the DOL, perhaps in conjunction with the Justice Department, to more directly stress the obligation of employers, unions, and their officers and employees to *refrain* from these activities.

**Employer LM-10 Guidance – To Be Announced.** After the DOL announced its intention to more rigorously enforce union LM-30 reporting and disclosure requirements, many employers and others in the management community understandably raised questions concerning whether and how *employer* LM-10 obligations would be affected by the DOL's new stance towards LM-30 reporting. Employers likewise were interested in whether they would have an LM-10 "grace period" – similar to what the DOL had previously afforded to unions – permitting the late filing of reports reflecting 2004 activities. Unions also queried whether employers would equally bear the new burdens being thrust upon organized labor representatives, since employers and unions in many respects were bound by similar or identical LGA and LMRA requirements.

On July 15, 2005, the Department of Labor issued a "Form LM-10 (Employer Reports) Advisory" that stated in part:

In the course of providing compliance assistance to union officers and employees on the Form LM-30 requirements, OLMS<sup>22</sup> has received numerous questions regarding Form LM-10 (Employer Reports). In particular, some have inquired whether the Department intends to provide a similar "grace period" for employers who have a legal obligation to file the Form LM-10, which is used to disclose certain payments to unions and union officers, employees, and representatives.

Because of the current demands on OLMS resources in providing compliance assistance and guidance to LM-30 filers, as well as processing new filers' forms, *OLMS has not yet issued guidance on LM-10 reporting requirements, but expects to do so soon in the near future.* This guidance will assist affected employers in fully understanding the Form LM-10's recordkeeping and reporting requirements *and will include a grace period analogous to the LM-30 policy for the purpose of encouraging voluntary compliance.* Also

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22 OLMS refers to the "Office of Labor-Management Standards," which is part of the DOL's Employment Standards Administration ("ESA"), the agency responsible for administering the LGA's reporting and disclosure requirements.

consistent with OLMS's approach on Form LM-30, absent extraordinary circumstances, *until such guidance is issued and the full grace period has expired, as an exercise of enforcement discretion, the Department will not take action to enforce the Form LM-10 reporting requirements, unless there is already a pending investigation.*

In the interim, the Department encourages employers to seek compliance assistance, advise OLMS of any potential compliance difficulties, and propose methods for increasing compliance with Form LM-10's requirements, as set forth in the Labor-Management Reporting and Disclosure Act, without imposing undue hardships on affected employers.

U.S. Department of Labor, *Form LM-10 (Employer Reports) Advisory* (emphasis added).

### **C. Concluding Remarks**

Distinctions required in many areas of law are not as clear as one would like. As the Supreme Court itself acknowledged in one case (involving secondary boycott issues arising under the NLRA): “However difficult the drawing of lines more nice than obvious, the statute compels the task.”<sup>23</sup>

In fairness to the DOL, the LGA squarely imposes on the Department the burden of administering the the statute’s reporting and disclosure obligations. And given the LGA’s broad sweep – which mirrors LMRA Section 302 – the Department of Labor cannot be faulted for attempting to formulate practical guidelines while erring on the side of disclosure. On the one hand, common sense suggests that the LGA and LMRA Section 302 were not intended to cover common courtesies between companies and unions or reasonable business practices that no one would mistake for an effort to exert undue influence on unions, their officers and/or their employees. On the other hand, the LGA’s legislative history leaves an impression that Congress gave up trying to distinguish between “reasonable” and “unreasonable” employer-to-union things of value, in favor of an approach that prohibited and required reporting concerning all such matters, subject only to limited exceptions written into the LMRA and LGA themselves.

One should not discount the DOL’s obligation to faithfully discharge its duty to enforce the LGA’s reporting and disclosure requirements. But it disserves the interests of employers, unions, and the public at large for the DOL to focus solely on what is *reportable* under the LGA, without also providing concrete guidance concerning what is *prosecutable* under LMRA Section 302. Since questions in this area involve criminal liability, the dividing lines should be meaningful and clear. And although the LGA does not directly vest Section 302 enforcement responsibility in the DOL, the statute authorizes cooperation and coordination between the DOL, the Justice Department and other agencies. *See* 29 U.S.C. § 527; *see also* LMRDA Interpretative Manual §§ 630.001 *et seq.* No statutory objective is furthered by failing to disclose the dual standards controlling what is reportable *and* prosecutable under the LGA and LMRA, respectively.

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<sup>23</sup> *Local 761, Int'l Union of Electrical, Radio & Machine Workers v. NLRB*, 366 U.S. 667, 674 (1961).

Even the world of Monopoly has involved litigation, with outcomes that have not been entirely predictable. More than 40 years after Charles Darrow received his patent for Monopoly, the federal courts were forced to revisit the circumstances surrounding Monopoly's creation.<sup>24</sup> As it turned out, Charles Darrow did *not* invent Monopoly. To the contrary, as described by the Court of Appeals for the Ninth Circuit:

*At some time between 1904 and 1934, the game of Monopoly developed. Early equipment was handmade and copied from earlier handmade equipment. . . . The game was taught to [Charles] Darrow. He sold it to Parker Brothers in 1935, claiming that it was his own invention. . . .*

*It is true that Darrow, in his correspondence with Parker Brothers, claimed to have invented the game and offered to sign an affidavit stating his story. However, Robert B. M. Barton, the former President of Parker Brothers, who negotiated with Darrow in 1935, testified that he did not believe Darrow's claim. A precursor of monopoly, the Landlord's Game, was patented by Mrs. Maggie Elizabeth Phillips of Washington, D.C. in 1904 and again in 1924. Parker Brothers purchased this game from her in 1934 or thereabouts.*

*Anti-Monopoly, Inc.*, 684 F.2d at 1320 (emphasis added).

There is no uncertainty concerning the origins of LMRA Section 302 or the LGA. It is the meaning and scope of these statutes that currently challenges employers and unions alike. It is also clear that employers and unions – and their officers and employees – need concrete direction concerning what they can and cannot do, both as a matter of what is reportable (under the LGA) *and* what may land them in jail (under LMRA Section 302).

Monopoly players have one advantage over people trying to cope with the real world. There are official Monopoly rules, which make it clear how to play the game. They are even available on the Internet.<sup>25</sup> For the time being, employers and others must hope the DOL will soon issue meaningful LM-10 guidance, so criminal liability will not be so heavily dependent on a roll of the dice.

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24 The dispute arose as a patent infringement dispute directed against a different game, called “Anti-Monopoly.” The Court of Appeals for the Ninth Circuit ultimately ruled that, as applied to a board game, the word “Monopoly” had become “generic,” and the registration of it as a trademark was deemed “no longer valid.” See *Anti-Monopoly, Inc. v. General Mills Fun Group*, 611 F.2d 296 (9th Cir. 1979), *on remand*, 515 F. Supp. 448 (N.D. Cal. 1981), *reversed and remanded*, 684 F.2d 1316, 1326 (9th Cir. 1982), *cert. denied sub nom. CPG Prods. Corp. v. Anti-Monopoly, Inc.*, 459 U.S. 1227 (1983).

25 Hasbro, Inc., *Monopoly Instructions* ([www.hasbro.com/common/instruct/monins.pdf](http://www.hasbro.com/common/instruct/monins.pdf)).

**Attachment 1**

*LMRA Section 302(c) – Full Text*  
*(lawful exceptions to Section 302's prohibition against various employer-union payments)*

**LMRA Section 302(c) – Full Text**

*(lawful exceptions to Section 302's prohibition against various employer-union payments)*

The provisions of this section [Section 302] shall not be applicable . . .

- (1) [*Regular Compensation*] in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer;
- (2) [*Satisfaction of Judgment*] with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress;
- (3) [*Sale/Purchase at Market Price*] with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business;
- (4) [*Dues Checkoff with Written Authorization*] with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner;
- (5) [*Joint Management-Labor Trust Fund*] with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities;
- (6) [*Joint Trust for Vacation/Holiday/Severance Pay, etc.*] with respect to money or other thing of value paid by any employer to a trust fund established by such representative for the purpose of pooled

vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds;

- (7) [*Joint Trust for Scholarships, etc.*] with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, (B) child care centers for preschool and school age dependents of employees, or (C) financial assistance for employee housing: Provided, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: Provided further, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds;
- (8) [*Joint Trust for Legal Services*] with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: Provided further, That no such legal services shall be furnished: (A) to initiate any proceedings directed (i) against any such employer or its officers or agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under the National Labor Relations Act, as amended [29 U.S.C. §§ 151 158, 159 169], or this Act; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor Management Reporting and Disclosure Act of 1959; or
- (9) [*Labor Management Cooperative Committees*] with respect to money or other things of value paid by an employer to a plant, area or industrywide labor management committee established for one or more of the purposes set forth in section 5(b) of the Labor Management Cooperation Act of 1978.<sup>26</sup>

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26 The Labor Management Cooperation Act of 1978 articulates the following purposes, which are codified in section 6(b) of Pub. Law No. 95-524 (the Section 302(c) reference to “section 5(b)” is generally regarded as an inadvertent error): “(1) to improve communication between representatives of labor and management; (2) to provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness; (3) to assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process; (4) to study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area or industry; (5) to enhance the involvement of workers in making decisions that affect their working lives; (6) to expand and improve working relationships between workers and managers; and (7) to encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance to the formation and operation of labor management committees.” See 29 U.S.C. § 175a note.

**Attachment 2**

*Form LM-10 (Employer Report)*

U.S. Department of Labor  
 Office of Labor-Management  
 Standards  
 Washington, DC 20210

## FORM LM-10 EMPLOYER REPORT

Form approved  
 Office of Management  
 and Budget  
 No. 1215-0188  
 Expires 11-30-2008

For Official Use Only

This report is mandatory under P.L. 86-211, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 218 or 402.

**READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT**

Part A

<p>1. File Number E- <input style="width: 50px;" type="text"/></p>	<p>2. Fiscal Year Covered</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="border: none;">From:</td> <td style="border: none; text-align: center;"> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; text-align: center;">Month</td> <td style="width: 20%; text-align: center;">Day</td> <td style="width: 20%; text-align: center;">Year</td> </tr> <tr> <td style="text-align: center;">/</td> <td style="text-align: center;">/</td> <td style="text-align: center;">/</td> </tr> </table> </td> <td style="border: none;">Through:</td> <td style="border: none; text-align: center;"> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; text-align: center;">Month</td> <td style="width: 20%; text-align: center;">Day</td> <td style="width: 20%; text-align: center;">Year</td> </tr> <tr> <td style="text-align: center;">/</td> <td style="text-align: center;">/</td> <td style="text-align: center;">/</td> </tr> </table> </td> </tr> </table>	From:	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; text-align: center;">Month</td> <td style="width: 20%; text-align: center;">Day</td> <td style="width: 20%; text-align: center;">Year</td> </tr> <tr> <td style="text-align: center;">/</td> <td style="text-align: center;">/</td> <td style="text-align: center;">/</td> </tr> </table>	Month	Day	Year	/	/	/	Through:	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; text-align: center;">Month</td> <td style="width: 20%; text-align: center;">Day</td> <td style="width: 20%; text-align: center;">Year</td> </tr> <tr> <td style="text-align: center;">/</td> <td style="text-align: center;">/</td> <td style="text-align: center;">/</td> </tr> </table>	Month	Day	Year	/	/	/
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Month	Day	Year															
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Month	Day	Year															
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<p>3. Name and address of Reporting Employer (inc. trade name, if any).</p> <p>Employer: <input style="width: 90%;" type="text"/></p> <p>Trade Name: <input style="width: 80%;" type="text"/></p> <p>Attention To: <input style="width: 60%;" type="text"/> <input style="width: 20%;" type="text"/></p> <p>Title: <input style="width: 80%;" type="text"/></p> <p>Mailing Address</p> <p>P.O. Box, Bldg., Room No., if any: <input style="width: 80%;" type="text"/></p> <p>Street: <input style="width: 80%;" type="text"/></p> <p>City: <input style="width: 60%;" type="text"/></p> <p>State: <input style="width: 20%;" type="text"/> ZIP Code + 4: <input style="width: 40%;" type="text"/></p>	<p>4. Name and address of President or corresponding principal officer, if different from address in item 3.</p> <p>Name: <input style="width: 60%;" type="text"/> <input style="width: 20%;" type="text"/></p> <p>P.O. Box, Building and Room Number, if any: <input style="width: 80%;" type="text"/></p> <p>Street: <input style="width: 80%;" type="text"/></p> <p>City: <input style="width: 60%;" type="text"/></p> <p>State: <input style="width: 20%;" type="text"/> ZIP Code + 4: <input style="width: 40%;" type="text"/></p>																
<p>5. Any other address where records necessary to verify this report will be available for examination.</p> <p>Name: <input style="width: 60%;" type="text"/> <input style="width: 20%;" type="text"/></p> <p>Title: <input style="width: 80%;" type="text"/></p> <p>Organization: <input style="width: 80%;" type="text"/></p> <p>P.O. Box, Building and Room Number, if any: <input style="width: 80%;" type="text"/></p> <p>Street: <input style="width: 80%;" type="text"/></p> <p>City: <input style="width: 60%;" type="text"/></p> <p>State: <input style="width: 20%;" type="text"/> ZIP Code + 4: <input style="width: 40%;" type="text"/></p>	<p>6. Indicate by checking the appropriate box or boxes where records necessary to verify this report will be available for examination.</p> <p><input type="checkbox"/> Address in item 3</p> <p><input type="checkbox"/> Address in item 4</p> <p><input type="checkbox"/> Address in item 5</p>																
<p>7. Type of organization.</p> <p> <input type="checkbox"/> Corporation                    <input type="checkbox"/> Partnership                    <input type="checkbox"/> Individual                    <input type="checkbox"/> Other (specify) <input style="width: 150px;" type="text"/> </p>																	

**Signatures**

Each of the undersigned, duly authorized officers of the above employer declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. (See Section IV on penalties in the instructions.)

<p>13. Signed _____ President (if other title, see instructions)</p> <p>Title: <input style="width: 100%;" type="text"/></p> <p>On: <input style="width: 20%;" type="text"/> / <input style="width: 20%;" type="text"/> / <input style="width: 20%;" type="text"/></p> <p style="text-align: center;">Date</p> <p>Telephone Number: <input style="width: 150px;" type="text"/></p>	<p>14. Signed _____ Treasurer (if other title, see instructions)</p> <p>Title: <input style="width: 100%;" type="text"/></p> <p>On: <input style="width: 20%;" type="text"/> / <input style="width: 20%;" type="text"/> / <input style="width: 20%;" type="text"/></p> <p style="text-align: center;">Date</p> <p>Telephone Number: <input style="width: 150px;" type="text"/></p>
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Part A, Continued

Name of Reporting Employer:	File Number E-
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**8. Type of Reportable Activity Engaged In By Employer**

Read the following questions and the accompanying instructions carefully, taking into consideration the exclusions listed in the instructions for these items, and check either "Yes" or "No" for each item. For each item that is answered "Yes", you must attach a Part B which appears on Page 3. Complete a separate Part B for each "Yes" answer to any of items 8.a. through 8.f. Also, if the answer is "Yes" for more than one person or organization, complete a separate Part B for each person or organization. If your answer "Yes", enter the number of Part Bs that are submitted for that item in the line indicated.

**DURING THE FISCAL YEAR COVERED BY THIS REPORT:**

	YES	NO	If "Yes", number of Part Bs attached
8.a. 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?	<input type="checkbox"/>	<input type="checkbox"/>	<input style="width: 20px; height: 20px;" type="text"/>
8.b. 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?	<input type="checkbox"/>	<input type="checkbox"/>	<input style="width: 20px; height: 20px;" type="text"/>
8.c. Did you make any expenditure 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?	<input type="checkbox"/>	<input type="checkbox"/>	<input style="width: 20px; height: 20px;" type="text"/>
8.d. 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?	<input type="checkbox"/>	<input type="checkbox"/>	<input style="width: 20px; height: 20px;" type="text"/>
8.e. 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?	<input type="checkbox"/>	<input type="checkbox"/>	<input style="width: 20px; height: 20px;" type="text"/>
8.f. 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?	<input type="checkbox"/>	<input type="checkbox"/>	<input style="width: 20px; height: 20px;" type="text"/>

TOTAL NUMBER OF PART Bs FOR THIS REPORT IS

Part B

Name of Reporting Employer:	File Number E-
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Check Item Number (from Page 2) to which this Part B applies	ITEM 8.a <input type="checkbox"/>	ITEM 8.b <input type="checkbox"/>	ITEM 8.c <input type="checkbox"/>	ITEM 8.d <input type="checkbox"/>	ITEM 8.e <input type="checkbox"/>	ITEM 8.f <input type="checkbox"/>
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8.a. <input type="checkbox"/> Agreement <input type="checkbox"/> Payment <input type="checkbox"/> Both	8.c. Position in labor organization or with employer (if an independent labor consultant, so state). <div style="border: 1px solid black; height: 15px; width: 100%; background-color: #ffff00;"></div>
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8.b. Name and address of person with whom or through whom a separate agreement was made or to whom payments were made.  Name: <div style="border: 1px solid black; display: inline-block; width: 100px; height: 15px;"></div> <div style="border: 1px solid black; display: inline-block; width: 100px; height: 15px;"></div>  P.O. Box, Building and Room Number, if any: <div style="border: 1px solid black; display: inline-block; width: 100%; height: 15px;"></div> Street: <div style="border: 1px solid black; display: inline-block; width: 100%; height: 15px;"></div> City: <div style="border: 1px solid black; display: inline-block; width: 100%; height: 15px;"></div> State: <div style="border: 1px solid black; display: inline-block; width: 100px; height: 15px;"></div> ZIP Code + 4: <div style="border: 1px solid black; display: inline-block; width: 100px; height: 15px;"></div>	8.d. Name and address of firm or labor organization with whom employed or affiliated.  Organization: <div style="border: 1px solid black; display: inline-block; width: 100%; height: 15px;"></div>  P.O. Box, Building and Room Number, if any: <div style="border: 1px solid black; display: inline-block; width: 100%; height: 15px;"></div> Street: <div style="border: 1px solid black; display: inline-block; width: 100%; height: 15px;"></div> City: <div style="border: 1px solid black; display: inline-block; width: 100%; height: 15px;"></div> State: <div style="border: 1px solid black; display: inline-block; width: 100px; height: 15px;"></div> ZIP Code + 4: <div style="border: 1px solid black; display: inline-block; width: 100px; height: 15px;"></div>
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10.a. Date of the promise, agreement, or arrangement pursuant to which payments or expenditures were agreed to or made. <div style="border: 1px solid black; display: inline-block; width: 100%; height: 15px;"></div>	10.b. The promise, agreement, or arrangement was: <input type="checkbox"/> Oral <input type="checkbox"/> Written <input type="checkbox"/> Both <small>(Written agreements entered into during the fiscal year must be attached.)</small>
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11.a. Date of each payment or expenditure (mm/dd/yyyy).	11.b. Amount of each payment or expenditure	11.c. Kind of each payment or expenditure (Specify whether payment or loan, and whether in cash or property)
<div style="border: 1px solid black; width: 100%; height: 100%; background-color: #ffff00;"></div>	<div style="border: 1px solid black; width: 100%; height: 100%; background-color: #ffff00;"></div>	<div style="border: 1px solid black; width: 100%; height: 100%; background-color: #ffff00;"></div>
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<div style="border: 1px solid black; width: 100%; height: 100%; background-color: #ffff00;"></div>	<div style="border: 1px solid black; width: 100%; height: 100%; background-color: #ffff00;"></div>	<div style="border: 1px solid black; width: 100%; height: 100%; background-color: #ffff00;"></div>
<div style="border: 1px solid black; width: 100%; height: 100%; background-color: #ffff00;"></div>	<div style="border: 1px solid black; width: 100%; height: 100%; background-color: #ffff00;"></div>	<div style="border: 1px solid black; width: 100%; height: 100%; background-color: #ffff00;"></div>
<div style="border: 1px solid black; width: 100%; height: 100%; background-color: #ffff00;"></div>	<div style="border: 1px solid black; width: 100%; height: 100%; background-color: #ffff00;"></div>	<div style="border: 1px solid black; width: 100%; height: 100%; background-color: #ffff00;"></div>
<a href="#">Continuation page for Item 11</a>		

12. Explain fully the circumstances of all payments, including the terms of any oral agreement or understanding pursuant to which they were made.

**Attachment 3**

*Form LM-30 (Union Officer/Employee Report)*

U.S. Department of Labor  
 Office of Labor-Management  
 Standards  
 Washington, DC 20210

## FORM LM-30

# LABOR ORGANIZATION OFFICER AND EMPLOYEE REPORT

Form approved  
 Office of Management  
 and Budget  
 No. 1215-0188  
 Expires 11-30-2008

This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 438 or 440.

For Official Use Only

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READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT.

1. File Number U - <input style="width: 50px;" type="text"/>	2. Fiscal Year Covered From: <input style="width: 20px;" type="text"/> / <input style="width: 20px;" type="text"/> / <input style="width: 20px;" type="text"/> Through: <input style="width: 20px;" type="text"/> / <input style="width: 20px;" type="text"/> / <input style="width: 20px;" type="text"/>
3. Name and address of person filing. Name <input style="width: 150px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 150px;" type="text"/> P.O. Box, Bldg., Room No., if any <input style="width: 150px;" type="text"/> Street <input style="width: 150px;" type="text"/> City <input style="width: 150px;" type="text"/> State <input style="width: 50px;" type="text"/> <input style="width: 20px;" type="text"/> ZIP Code + 4 <input style="width: 50px;" type="text"/>	4. Name, file number, and address of labor organization. Name <input style="width: 150px;" type="text"/> Labor Organization File Number <input style="width: 50px;" type="text"/> P.O. Box, Building and Room Number, if any <input style="width: 150px;" type="text"/> Street <input style="width: 150px;" type="text"/> City <input style="width: 150px;" type="text"/> State <input style="width: 50px;" type="text"/> <input style="width: 20px;" type="text"/> ZIP Code + 4 <input style="width: 50px;" type="text"/>
5. Position in labor organization. <input style="width: 90%; height: 20px;" type="text"/>	

Enter appropriate data below if, during the past fiscal year, you or your spouse or minor child directly or indirectly had any of the following interests (except as specified in the exclusions set forth in the instructions):

A. Held an interest in, engaged in transactions (including loans) with, or derived income or other economic benefit of monetary value from an employer whose employees your organization represents or is actively seeking to represent. <span style="float: right; border: 1px solid gray; padding: 2px;">Add New Part A</span>	
6. Name and address of Employer (including trade name, if any). Name <input style="width: 150px;" type="text"/> Trade Name, if any: <input style="width: 150px;" type="text"/> P.O. Box, Bldg., Room No., if any <input style="width: 150px;" type="text"/> Street <input style="width: 150px;" type="text"/> City <input style="width: 150px;" type="text"/> State <input style="width: 50px;" type="text"/> <input style="width: 20px;" type="text"/> ZIP Code + 4 <input style="width: 50px;" type="text"/>	7.a. Nature of Interest, Transaction, or Income. <input style="width: 100%; height: 50px;" type="text"/>
7.b. Amount. <input style="width: 150px; margin-left: 400px;" type="text"/>	

Signature

15. Signature and verification. The undersigned declares, under penalty of Perjury and other applicable penalties of the law, that all of the information submitted in this report (including the information contained in any accompanying documents), has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. (See the section on penalties in the instructions.)		
Signed _____	On <input style="width: 50px;" type="text"/>	<input style="width: 100px;" type="text"/>
	Date	Telephone Number

Name of Person Filing _____	File Number U- _____
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**B. Hold an interest in or derived income or economic benefit with monetary value from a business (1) a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with the business of an employer whose employees your labor organization represents or is actively seeking to represent, or (2) any part of which consists of buying from or selling or leasing directly or indirectly to, or otherwise dealing with your labor organization or with a trust in which your labor organization is interested.**

<p><b>8. Name and address of Business (including trade name, if any).</b></p> <p>Name _____</p> <p>Trade Name, if any: _____</p> <p>P.O. Box, Bldg., Room No., if any _____</p> <p>Street _____</p> <p>City _____</p> <p>State _____ ZIP Code + 4 _____</p>	<p><b>9. Business deals with:</b></p> <p><input type="checkbox"/> a. Labor Organization</p> <p><input type="checkbox"/> b. Trust</p> <p><input type="checkbox"/> c. Employer</p>
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<p><b>10. If 9.b. or 9.c. is checked give trust or employer's name.</b></p> <p>Name _____</p> <p>Trade Name, if any: _____</p> <p>P.O. Box, Bldg., Room No., if any _____</p> <p>Street _____</p> <p>City _____</p> <p>State _____ ZIP Code + 4 _____</p>	<p><b>11.a. Nature of such dealing.</b></p> <div style="border: 1px solid black; height: 80px; background-color: #ffff00;"></div> <p><b>11.b. Approximate dollar value of such dealing.</b> _____</p> <p><b>12.a. Nature of interest held or income received.</b></p> <div style="border: 1px solid black; height: 80px; background-color: #ffff00;"></div> <p><b>12.b. Amount.</b> _____</p>
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**C. Received from any employer (other than an employer covered under parts A and B above) or from any labor relations consultant to an employer any payment of money or other thing of value.**

<p><b>13.a. Name and address of Employer or Labor Relations Consultant (including trade name, if any).</b></p> <p>Name _____</p> <p>Trade Name, if any: _____</p> <p>P.O. Box, Bldg., Room No., if any _____</p> <p>Street _____</p> <p>City _____</p> <p>State _____ ZIP Code + 4 _____</p>	<p><b>14.a. Nature of payment.</b></p> <div style="border: 1px solid black; height: 150px; background-color: #ffff00;"></div> <p><b>14.b. Amount of payment.</b> _____</p>
<p><b>13.b. Is the Business an Employer</b> <input type="checkbox"/> <b>or Consultant</b> <input type="checkbox"/> ?</p>	