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LMCC Contributions to Unions

This information was previously provided to Chapters on August 19, 2019

From time to time, contractors, local chapters, and local LMCCs are asked to contribute to certain union sponsored events and initiatives, so the question was asked to legal counsel of whether providing money (or other things like gifts or prizes) to the union for an anniversary celebration, dinner, golf outing or retirement celebration is permissible under the law.

Generally speaking, the answer is no. There could be some exceptions, such as; where money is being raised for a charity and payments are made directly to the charity. When the money is paid directly to the union, it is most likely a violation of the law, even if the union were to forward it on to a charity.

Section 302

Section 302 of the [Labor Management Relations Act](#), also known as the “Taft-Hartley Act,” is a criminal statute that was enacted to address conflicts of interest, bribery, and corruption issues that had polluted labor relations in the 1940s.

The provision makes it a federal crime for any employer or association of employers to:

- 1) *"pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value 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."*

LM-10 Reporting

The LMRA also makes it a crime for a union or labor organization to solicit and/or receive such unauthorized contributions from an employer or employer organization.

Such contributions would trigger [LM-10](#) reporting requirements and would be subject to audit. Depending on the amounts involved in the violation, criminal penalties vary from conviction of a felony or a misdemeanor and result in significant fines.

Anything over \$1,000 exposes all persons involved to a felony conviction of up to five (5) years and a fine of up to \$15,000. Amounts that do not exceed \$1,000 are misdemeanors with up to one (1) year sentence and up to a \$10,000 fine.

Exceptions

There are nine (9) categories of exceptions in Section 302, which permit financial assistance for such things as payments to stewards who also perform work for the employer, settlement of employment disputes and payments to arbitrators, purchases of goods in an arms-length transaction, among others. The [Labor Management Cooperation Act of 1978](#) amended the LMRA to add an exception to the general funding prohibitions that is relevant to this discussion.

Financial assistance by an employer is permitted "(9) with respect to money or 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."

Local Labor Management Cooperation Committees

This Act encourages the formation of labor management cooperation committees (LMCC) for appropriate purposes. These committees are typically separate legal entities that are bargained for in collective bargaining agreements. While a particular legal form is not mandated, best practice would certainly call for separate accounting and audit functions.

The Act identifies seven general areas for which employer financial assistance, which is normally prohibited, is permitted:

- 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 company/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 their employees through Federal assistance in the formation and operation of labor management committees.*

There is no helpful case law on the interplay of the Labor Management Cooperation Act of 1978 and Section 302 of the LMRA. However, it is clear from the statutory language that the funding exception associated with a LMCC must be for a purpose related to the formation of the LMCC.

Contributions to Unions

Counsel was asked if it would be appropriate for a LMCC to provide money or other things of value directly to the union that an employer or chapter would not be allowed to provide, such as union anniversaries, dinners, golf events and retirement functions.

Given the potential criminal exposure faced by chapters and members under Section 302 for improper financial contributions, any such request from the union to the local LMCC must be closely scrutinized to see if any of the nine (9) exceptions allowed in the law.

As noted above, the newest of the nine exceptions is the inclusion of the Labor Management Cooperation Act of 1978 (LMCA). The LMCA contains seven broadly written purposes, but it is not a catch-all category for *any and all* requests to fund an LMCC. Such funding must be for one of the seven (7) enumerated purposes of a properly established LMCC. It is difficult to square a union anniversary celebration, dinner, golf outing, or retirement celebration within the permitted funding exceptions.

A good rule of thumb should be that contractors should not fund an LMCC just so the LMCC can pass funds directly to the union to reimburse costs that the union would otherwise need to absorb to put on social functions.

While one could argue that such events are staged to "improve communications" or "expand and improve working relationships" between workers and managers, such generous interpretations are not prudent in the face of a potential felony conviction for violating federal law. And while many local LMCCs do not have direct employees and therefore are not

themselves employers covered by the Labor-Management Relations Act, the LMCC could be viewed as a mere device to funnel money from the employers to the union to circumvent the law.

While it seems almost silly for the federal government to care whether an employer or group of employers (through a chapter or an LMCC) provides a relatively small amount of money so that the union that represents its employees can have a social event, that is the law.

Contractors, chapters, and even LMCCs should take great care in making such contributions.

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