

TEACHER UNION AFFILIATES SUBJECT TO LMRDA, FEDERAL COURT RULES

State-level affiliates of the National Education Association (NEA) and the American Federation of Teachers (AFT) are covered by the Labor-Management Reporting and Disclosure Act (LMRDA) because their parent organizations are, and therefore they must comply with financial reporting regulations even though their members are public sector employees.

Granting summary judgment to the Department of Labor (DOL), the District Court for the District of Columbia notes that the DOL secretary had argued that she was “furthering the congressional goal of financial visibility and allowing a private sector dues-paying employee to trace her dues up to the NEA or AFT and then to an intermediate public sector organization and, with new reporting, to whatever expenditures the intermediate organization makes.”

Citing “the deference that is due,” Judge Rosemary M. Collyer writes that “this Court cannot say that the Secretary has failed to provide a reasoned explanation for her change of statutory interpretation.” The LMRDA requires labor unions to file extensive financial reports annually with the DOL. The statute, however, excludes a “labor organization composed entirely of employees of the governmental entities.” Consequently, public sector unions at all levels have been free of LMRDA obligations since the statute’s adoption.

This case began in 2003 when the DOL published a final rule revising Form LM-2, requiring for the first time the filing of financial disclosure forms by public-sector intermediate bodies of labor organizations whose parent organizations are covered by the LMRDA, even if the intermediate bodies themselves do not have any members who are private sector employees.

Thirty-nine state-level affiliates of the NEA and the AFT challenged the agency’s new interpretation of the LMRDA, and the District Court for the District of Columbia granted them summary judgment. On appeal, the District of Columbia appeals court says that the teachers’ associations “well may have the better reading of the statute” but are “obliged to accept the agency’s construction of the statute, even if the agency’s reading differs from what the court believes is the best statutory interpretation,” if the agency could show that a “reasoned analysis” supported its interpretation. The appeals court reverses, ruling that the DOL’s new interpretation of the LMRDA was not unreasonable, but remands the case so the DOL could provide a reasoned analysis to support it.

The department issued its analysis in the form of a policy statement in the January 26, 2007, *Federal Register*. The DOL says it “selected a policy alternative that is consistent with the terms of the statute and promotes Congress’s purposes in enacting the LMRDA.” Section 3(i) of the statute defines a labor organization to include “any conference, general committee, joint or system board, or joint counsel...which is subordinate to a national or international labor organization other than a State or local central body.” According to the DOL, the new interpretation “advances the twin Congressional goals that labor organizations’ financial conditions and operations should be subject to public disclosure to benefit employees that participate in those organizations, and that the definition of ‘labor organizations’ covered by the LMRDA should be interpreted broadly to advance union democracy, financial transparency, and integrity.” The policy statement also says expanding the statute’s reach “promotes disclosure of financial disbursements and receipts to and from structurally related labor organizations, thus enhancing employees’ ability to understand the overall operation of labor organizations in general, as well as identify any potential financial irregularities in particular.”

The court notes that it must “defer to the agency’s position, so long as it is reasonable.” Pointing out that the appeals court “agreed with the DOL that there are two permissible interpretations of the law,” Collyer explains that “[o]nce there is more than a single interpretation that is permissible, the Secretary may select between or among them as long as she provides a ‘reasoned explanation’ for her choice. She does not need to demonstrate that her prior interpretation was ‘wrong’ or deficient in some way; she only needs to give a sensible reason for the change in interpretation.”

The court was skeptical of the agency’s contention that the complexity and bureaucracy of modern unions, as compared to the smaller unions of the past, necessitated more financial reporting, observing that the “asserted complexity of union structures that might confuse an individual private sector employee is not likely to be made less opaque by additional dense filings with DOL.” Nevertheless, the court concludes, “[w]hether the Secretary is hitting a gnat with a hammer is not for this Court to say. The policy choice is hers to make.”

The text of the opinion is available at <http://op.bna.com/dlrcases.nsf/r?Open=gcii-7ddsck>.

Text of DOL’s January 26, 2007, policy statement in the *Federal Register* regarding the form LM-2 is available at <http://op.bna.com/dlrcases.nsf/r?Open=gcii-7dgs8w>.

(Source: *Alabama Educ. Assn. v. Chao*, D.D.C., No. 03-253, March 27, 2008 as reported in BNA, *Government Employee Relations Report*, Vol. 46, No. 2252, April 22, 2008, pp. 473-474.)