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# The Michigan Union Accountability Act: A Step Toward Accountability and Democracy in Labor Organizations

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by Robert P. Hunter, J.D., LL. M  
Paul S. Kersey, J.D.  
Shawn P. Miller

**A Proposal to Better Inform Unionized Government  
Employees, Policy Makers, and the Public**

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# The Michigan Union Accountability Act

## A Step Toward Accountability and Democracy in Labor Organizations

### Foreword

by Ken Boehm

Chairman, National Legal and Policy Center

Advocates of American federalism have traditionally viewed the states of the United States as “laboratories of democracy” in which different policy prescriptions can be tried.

The following analysis by Robert P. Hunter, a nationally known labor law expert and director of labor policy at the Mackinac Center for Public Policy, in Midland, Michigan, is a strong contribution to that tradition. Hunter proposes that the state of Michigan adopt a Union Accountability Act, which would protect workers’ rights by bringing financial disclosure and accountability to the relationship between workers and labor unions.

While the policy change Hunter advocates is limited to state and local public-sector unions in Michigan, the model legislation he offers blazes a trail for other states to follow and certainly offers federal reformers a model to work with.

The basic problem Hunter addresses is that unions are not very accountable to those who finance them. It’s ironic that unions, set up to empower workers, provide far less financial information to their members—whose mandatory fees support them—than a publicly held corporation must, by law, provide to its shareholders. This lack of accountability frustrates the ability of workers to protect their right not to have their dues or fees used for matters, such as political causes, with which they may disagree. These constitutional rights were recognized in a series of Supreme Court cases, including the 1986 case, *Chicago Teachers v. Hudson*, in which the Court established procedures to safeguard public school teachers’ right to pay only a limited fee to their union.

It is often stated that Supreme Court decisions are not self-enforcing. The unfortunate fact is that when workers have no practical access to information on how their unions spend their dues money, there is no way they can intelligently exercise their *Hudson* rights under the law. As things currently stand, *Hudson* largely provides American workers a right without a remedy.

The fact that unions do not have to disclose their expenditures in any meaningful way does more than just thwart workers’ rights under *Hudson* and related cases. The secrecy and lack of accountability that cloaks union bookkeeping has made possible what The New York Times recently called “a wave of union corruption.” From rampant embezzlement at the local level to the theft of more than \$800,000 in Teamsters funds to help steal a national

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election, union corruption has reached epidemic proportions. Indeed, my own organization publishes a biweekly web newsletter, *Union Corruption Update*, which never runs short of news of indictments, convictions and investigations having to do with union corruption.

Robert Hunter's analysis of the problem points the way to the only just solution: ensuring that workers have access to accurate information as to how their money is being spent by the union. Invoking the late Supreme Court Justice Brandeis' dictum that "sunlight is the best disinfectant," Hunter's review cogently spells out exactly the type of disclosure needed to truly empower workers.

Thwarting corruption and protecting workers' constitutional rights are worthy goals. Empowering workers so they have the means to find out how their union spends their money is not only an appropriate remedy to a longstanding problem—but also is in keeping with the values of a democratic society. If Michigan were to adopt legislation dispelling the darkness that surrounds union finances, it would light the way for other states and the federal government to follow.

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### Executive Summary

Unions are a big business in Michigan. With public and private sector unions representing over 900,000 Michigan workers, unions in this state alone take in more than \$250 million in membership dues annually.<sup>1</sup>

These dues are extracted through legislative grants of powers and privileges to the union movement that force even unwilling employees to pay money to the union. But in spite of the expansive revenue and legal privileges unions possess, requirements that they disclose their financial dealings are minimal. Financial information in the IRS and Labor Department forms provide little insight into the various functional areas where union money is received and where it is spent, and leave plenty of nooks and crannies for hiding questionable activities.

This lax oversight invites abuses that cheat union members. Waste and corruption plague many union locals, sapping resources from the union movement and leaving workers to foot the bills. In order to create some worker protection, the U.S. Supreme Court has placed limits on the collection and use of fees charged to nonmembers. All workers in a unionized workplace have the right to resign from the union and pay only for negotiation, contract administration, and the handling of grievances. Nonetheless, union officials are determined to deny dissenting workers information and keep these fees as high as possible.

By exploiting loopholes in campaign finance laws, unions are able to pretend they spend relatively little on politics, even while building tremendous political influence. The political stances unions take are contrary to those of many dues-paying workers. Many activities that are political in practical terms aren't necessarily listed as political. Workers who question the union's use of dues commonly encounter stiff resistance from union officials.

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<sup>1</sup> Estimated, see p. 6 of this report.

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*In spite of the expansive revenue and legal privileges unions possess, requirements that they disclose their financial dealings are minimal.*

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***Since the 1930s corporations have been obligated to file detailed reports. The same should be true for labor unions.***

Passage of a Union Accountability Act would go a long way toward solving these problems. Since the 1930s corporations have been obligated to file detailed reports. The same should be true for labor unions.

Reform of the federal reporting system, which governs private-sector unions, is very much needed but unlikely in the current political climate. A better bet is to begin with public labor union affiliates, which, in Michigan, are not required at all to report under any federal or state labor law.

Michigan can correct this problem by amending the Public Employment Relations Act (PERA). PERA should require annual union reporting according to functional spending categories and should furthermore require an annual audit by an independent accounting firm. Violations should result in the loss of mandatory union dues and, in extreme cases, trigger a de-certification election, in which the union could lose representation rights.

Amending PERA to include a strong reporting requirement would give union members a new understanding of how their locals operate; information that would assist them in challenging union officers who are not doing their jobs well. All workers would benefit from an atmosphere of openness and accountability in which misuse of funds is discouraged and union politics is brought out into the open. The result would be stronger unions with a renewed focus on the workplace concerns of members.

By passing a Union Accountability Act, Michigan could take the lead in protecting the interests of all workers, a goal that all union supporters should approve.

## Introduction

Under federal and state law, unions in Michigan have unique prerogatives, such as the authority to represent all workers in a given bargaining unit, and to collect mandatory membership dues. No other private organizations have comparable authority. Public support, legal privileges, and a hefty revenue stream all add up to tremendous economic and political clout.

The fact that unions represent the legitimate interests of workers in the workplace should not blind us to the fact that labor unions, especially in Michigan, are large, prosperous establishments with hundreds of thousands of members paying millions of dollars each year in membership dues.

Yet there is nothing about unions or their leadership that insulates them from the same sorts of misjudgments and ethical lapses that cause us to monitor the financial dealings of business or government. Unions across the country and in Michigan struggle under the burdens of waste and fraud. Workers who look to their unions to stand up for their rights in the workplace are discovering that too often their funds are being used not for representation, but for political campaigns they do not necessarily support.

Workers who find themselves in this situation get little help from current union financial disclosure laws. While corporations are subject to stringent financial reporting requirements, the laws that dictate union disclosure are outdated and provide little of the “sunshine” that experience shows to be the best policy. Workers should not be forced to provide unions with millions of dollars of support based on little more than blind faith that this money will be used to defend their legitimate interests.

Annual accounting for and disclosure of union expenditures is a burden labor organizations should be willing to bear as a legitimate cost of doing business and as a natural consequence of the favorable treatment they receive under existing law. Unions that refuse to provide such disclosure should face stiff penalties, including the loss of membership dues or agency fees. Until unions are required to disclose their financial dealings, employees will be left in the dark about union dues and expenditures, and labor unions will continue to be easy targets for white-collar criminals and political opportunists.

## The Nature and Scope of Union Revenues

Michigan has a long tradition of labor unionism, and union members can look back with pride on their accomplishments. Organized labor dominates the automobile industry, still the state’s largest. The tradition that started with Walter Reuther and Jimmy Hoffa continues to the present day, with Michigan having one of the highest rates of union representation in

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America's workforce; 938,300 workers constituting 20.8 percent of Michigan's workforce are represented by labor unions.<sup>2</sup> This includes 321,500 public sector employees.

How much do these employees pay in dues to their unions, and does it amount to a sum large enough to warrant mandatory financial disclosure?

Unionized employees pay a considerable price for the representation they gain. For example, full-time public school support personnel represented by the Michigan Education Association (MEA) pay annual dues of \$290.20, while teachers themselves pay \$580.40.<sup>3</sup> The MEA took in \$46 million in membership dues in 1999.<sup>4</sup> Full-time Michigan employees represented by Council 25 of the American Federation of State, County, and Municipal Employees (AFSCME) pay \$294.60 annually.<sup>5</sup>

Other unions, such as the United Auto Workers (UAW) and the Teamsters use a sliding scale in which annual dues are set at a percentage (around 1.1 percent) of a worker's base salary.<sup>6</sup> The use of sliding scales and discounts for part-time workers makes it difficult to calculate the average dues paid by union workers. But the results of a recent lawsuit against the California State Employees Association (CSEA) provides a benchmark. Earlier this year the U.S. District Court ruled that the CSEA was obligated to refund 20 percent of fees it had taken from non-members across the state. According to the National Right to Work Legal Defense Foundation, which provided legal assistance to the workers, CSEA had been collecting \$1.1 million monthly from 37,000 state employees in eight statewide bargaining units.<sup>7</sup> This works out to \$13.2 million in annual dues revenue from the affected bargaining units, or \$356 per worker.

If we take the membership figures for Michigan and assume average annual dues of \$300—a conservative estimate—then unions take in \$281.5 million annually from Michigan membership dues alone, with \$96.5 million of that coming from government employees.<sup>8</sup>

Under federal law, once a union wins a certification election and is officially recognized it becomes the representative for all employees in the work unit, including those who opposed unionization. With that privilege also comes the option to bargain for a union security clause, which requires all employees covered by the contract to either join the union or pay what are typically referred to as “fair share fees” or “agency fees.”<sup>9</sup> The State of

<sup>2</sup> *Union Membership and Earnings Data Book*, The Bureau of National Affairs.

<sup>3</sup> *2000-2001 Membership Dues*, Michigan Education Association, <http://www.mea.org>

<sup>4</sup> IRS form 990 submitted by the Michigan Education Association 12/2/00.

<sup>5</sup> Per telephone conversation with an employee of AFSCME DC 25, Sept. 20, 2001. AFSCME dues are lower for part-time workers, but the bottom rate is a still substantial \$18.75 per month.

<sup>6</sup> *In the UAW, Members Set and Control Dues*, United Auto Workers web site, <http://www.uaw.org>; *The Facts About Teamster Dues*, Teamsters web site, <http://www.teamster.org>

<sup>7</sup> *State Employees win \$3 million Judgment Against Powerful California Union*, news release, National Right to Work Legal Defense Foundation, May 8, 2001, <http://nrtw.org>

<sup>8</sup> Mackinac Center researchers also contacted the Michigan Federation of Teachers, the Fraternal Order of Police and the Police Officers Association of Michigan. At the time this was written these organizations had yet to respond to our inquiries.

<sup>9</sup> 29 U.S.C. 157, 158.

**Earlier this year the U.S. District Court ruled that a California public employee union must refund 20 percent of fees it had taken from non-members across the state.**

Michigan has similar provisions, covering state and local government employees.<sup>10</sup> Some states, most recently Oklahoma, have passed “right to work” laws, which bar agency shop clauses so that workers are not required to join a union or pay agency fees in order to work. The fact that Michigan is not a “right to work” state leaves workers in Michigan vulnerable to a wide range of potential abuses.

The idea that workers should pay their “fair share” for union representation assumes that all workers benefit. Whether or not this is actually true depends upon the quality of representation, both in terms of expertise and ethics, and may also be affected by the details of a contract. Union contracts assure uniform treatment of all workers but not all workers have the same priorities, so that even the most diligent of unions may wind up hurting the interests of some employees.<sup>11</sup> Setting aside First Amendment freedom of speech and association objections to the practice of charging agency fees to non-members, the fact remains that workers are in a much better position than lawmakers to decide whether the union is doing its job well enough to deserve their support.

The Supreme Court placed some limits on the collection and use of fees from non-members beginning in 1961 with *Machinists v. Street*.<sup>12</sup> The original *Street* case limited only that portion of non-member fees devoted to political activity by unions representing workers in the railroad and airline industries. But the doctrine was expanded to include public sector workers in *Abood v. Detroit Board of Education*, then refined until the case of *Ellis v. Railway Clerks*, in which the Supreme Court ruled that non-members could be charged only for expenditures “incurred for the purpose of performing the duties of an exclusive bargaining representative.”<sup>13</sup>

The principle that workers should not be charged for non-representational activity made a large leap forward in 1988 with *Communications Workers v. Beck*.<sup>14</sup> The Supreme Court, concluding that the union shop provisions of the Railway Labor Act and the National Labor Relations Act (NLRA) were passed for similar reasons, extended the rules laid out in *Street*, *Abood*, and *Ellis* to workers subject to the NLRA. All workers in a unionized workplace now have the right to resign from the union and pay only for negotiation, contract administration, and the handling of grievances. These generally are referred to as *Beck* rights.

The fact that the U.S. Supreme Court has to intervene to establish American workers’ right not to be a member of an organization should tell us something is wrong. But

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<sup>10</sup> MCLA 423.210(2).

<sup>11</sup> For example, consider a college student working nights at a grocery store, who needs to leave work at a reasonable hour to complete assignments and get some sleep before classes start in the morning. If the contract leaves overtime to management’s discretion, this worker’s studies might suffer. The existence of a written contract expressly giving management the power to assign overtime hampers any arrangement this worker might make that would allow him to leave earlier than his co-workers. Naturally, whether the extra pay is worth the damage to his academic career would depend on how much value he puts on his education.

<sup>12</sup> 367 U.S. 740 (1961).

<sup>13</sup> *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977); *Ellis v. Railway Clerks*, 466 U.S. 435 (1984).

<sup>14</sup> 487 U.S. 735 (1988).

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***Conservatively, unions take in \$281.5 million annually from Michigan membership dues alone, with \$96.5 million of that coming from government employees.***

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***Most union workers have no idea they have the right to question, much less withdraw their consent for their dues being used for other than representational purposes. Union officials would like to keep it that way.***

even with such intervention, under both federal and state law workers at a unionized facility still are required to make some sort of payment, whether they support the union or not. Not surprisingly, union officials are determined to keep “fair share” fees as high as possible. And they strenuously resist attempts to open their records to scrutiny so it can be accurately determined how much the union spends on representing workers and how much it spends on other activities.

Enforcing *Beck* rights, or even letting workers know they exist, has been a slow, difficult process. Most union workers have no idea they have the right to question or even to withdraw consent for their dues being used for other than representational purposes. Union officials would like to keep it that way. The National Labor Relations Board was slow to release rules enforcing *Beck*, waiting seven years, until 1995, before releasing a decision on a *Beck* case. The rules it eventually promulgated were useful but did not go as far as the courts have in similar public-sector cases.<sup>15</sup>

The first Bush administration waited until 1992, four years after *Beck* was decided, before taking action. It issued Executive Order 12800, which required the display of a poster describing *Beck* rights at the worksites of federal contractors. Despite the fact that the order covered only a limited number of worksites, the Clinton administration rescinded it within a month of that president’s inauguration, on the ground that the posters did not inform workers of any of their other rights under the NLRA.<sup>16</sup> George W. Bush reinstated the original *Beck* rights display requirement in February 2001.<sup>17</sup>

*Beck* was a victory for workers, but the fruits of that victory have largely been denied due to political infighting and the refusal of union officials to notify workers of their rights or generally cooperate with those workers who oppose their political agenda.

## **Government Subsidies and Other Sources of Union Support**

Besides membership dues, there are other means by which unions receive large amounts of financial support. For example, unions receive substantial federal funds for education and training. The Capital Research Center has uncovered records showing that the National Council for Senior Citizens, which had served as the AFL-CIO’s lobbying arm on senior issues until it was disbanded at the end of 2000, received \$332 million in federal funds between 1996 and 2000. Much of this money may have been spent on political and lobbying efforts, such as the “Fair Taxes for All Coalition,” which opposed President Bush’s tax cut plan earlier this year.<sup>18</sup>

<sup>15</sup> *California Saw and Knife Works*, 320 NLRB 224 (1995).

<sup>16</sup> Executive Order 12836, 58 Fed Reg. 7045 (1993). It would have been no great difficulty to amend the rule to include any other rights the Clinton administration felt were pertinent.

<sup>17</sup> Executive Order 13201, 66 Fed Reg. 11219 (2001).

<sup>18</sup> *Policy Analysis: More Government for All, How Taxpayers Subsidize Anti-Tax Cut Advocacy*, John Samples and Chris Yablonski, Capital Research Center, (2001).

During the same period, the Capital Research Center was able to document direct federal support totaling \$6.6 million for the AFL-CIO itself, along with \$3.6 million for the NEA, nearly \$1 million to the American Federation of Teachers, and, and \$447,000 that went to AFSCME. These grants were tracked using the Financial Assistance Award Data System (FAADS) operated by the U.S. Census bureau. FAADS data are not complete in many respects, so the figures compiled by the Capital Research Center are not necessarily comprehensive.<sup>19</sup>

Another form of support that clearly translates into greater financial clout for unions is “release time,” which employers grant to union officials to engage in union related activities during working hours, at regular rates of pay. Release time is commonly included in contracts and it is primarily reserved to compensate employees for the time they devote to collective bargaining, contract administration, and grievance handling.

Accountability for the use of the time varies from contract to contract but generally employers do not inquire in detail as to how union representatives are using their allotted union time. The amount of time available to union agents is usually determined by a negotiated formula and capped at an agreed-upon level. If and when the ceiling is reached, unions bear the economic burden of compensating employees for the time they devote to union pursuits.

It is impossible to precisely quantify the economic benefits that flow to unions as a result of release time. But it is important to note that in public sector labor relations the time granted by public employers is paid for by tax revenues.

A case in point is revealed in Table 1 on page 10, which shows the 1999 labor relations “leave banks” (release time) for State of Michigan employees.<sup>20</sup> The information reflects the release time negotiated in collective bargaining agreements covering some 41,162 union-represented state workers in 1999. According to this estimate, over 60,000 hours are available at a taxpayer-subsidized cost exceeding \$1,000,000 (see table, p. 10). These taxpayer funds would otherwise come out of union dues coffers and therefore represent a direct subsidy to union organizations that represent state employees.

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<sup>19</sup> FAADS data do not attempt to account for who controls various organizations. Some grant recipients listed in FAADS may in fact be controlled by other organizations, including unions, and many grants do not have recipients listed. The FAADS database can be accessed at <http://www.census.gov/govs/www/faads.html>.

<sup>20</sup>*Labor Relations Leave Bank*, Michigan Department of Civil Service; this chart was prepared by the Department of Civil Service based on an overview of collective bargaining agreements and may not be all inclusive.

**Table 1 - Release Time Used by State of Michigan Employees, Fiscal Year 1999**

Union	Bargaining Unit	Hours	Wages*	Cost to Taxpayers
UAW	Administrative Support	14,647	\$15.40	\$224,563
UAW	Human Services	15,558	\$19.89	\$309,449
Michigan Correctional Organization	Security	12,177	\$17.21	\$209,571
MSEA	Labor and Trades	4,541	\$15.96	\$72,474
AFSCME	Institutional	4,982	\$15.06	\$75,029
MPES	Scientific & Engineering	2,112	\$23.72	\$50,097
POAM	Safety & Regulatory	3,302	\$18.27	\$60,328
UTEA	Technical	2,000	\$16.56	\$33,120
SEIU	Human Services Support	988	\$16.84	\$16,638
<b>TOTAL</b>		<b>60,307</b>	<b>\$17.43</b>	<b>\$1,051,269</b>

\* average hourly wage of employees taking release time

Source: Michigan Department of Civil Service

***Waste and corruption continue to plague many union locals, sapping resources from the union movement and leaving workers to pay the price.***

## Corruption and Collaboration

Waste and corruption continue to plague many union locals, sapping resources from the union movement and leaving workers to pay the price. Inadequate union disclosure laws help create the atmosphere in which these abuses thrive.

In 1999, workers at AFSCME District Council 37 in New York learned that over the preceding four years their union had been shortchanged by its leadership to the tune of \$4.6 million. The workers of DC 37, who earn average annual salaries of around \$27,500, paid for such items as a \$345,000 catering bill for an event in Chicago, \$135,000 for a car leased by the president of a union local, and \$141,000 for travel, food, and drinks when DC 37 President Stanley Hill attended AFSCME's Aloha Conference in Hawaii.<sup>21</sup> (A \$1,081-per-night hotel room in Hawaii, where Hill and his wife stayed for eight nights, was complimentary.) While this was going on, DC 37's funds dropped from \$20 million to \$3.5 million. Adding insult to injury, investigators learned that DC 37 officials had rigged the vote on a contract with the City of New York.<sup>22</sup>

While this level of abuse has not been uncovered in Michigan's public-sector unions, the same combination of mandatory dues and minimal oversight that contributed to

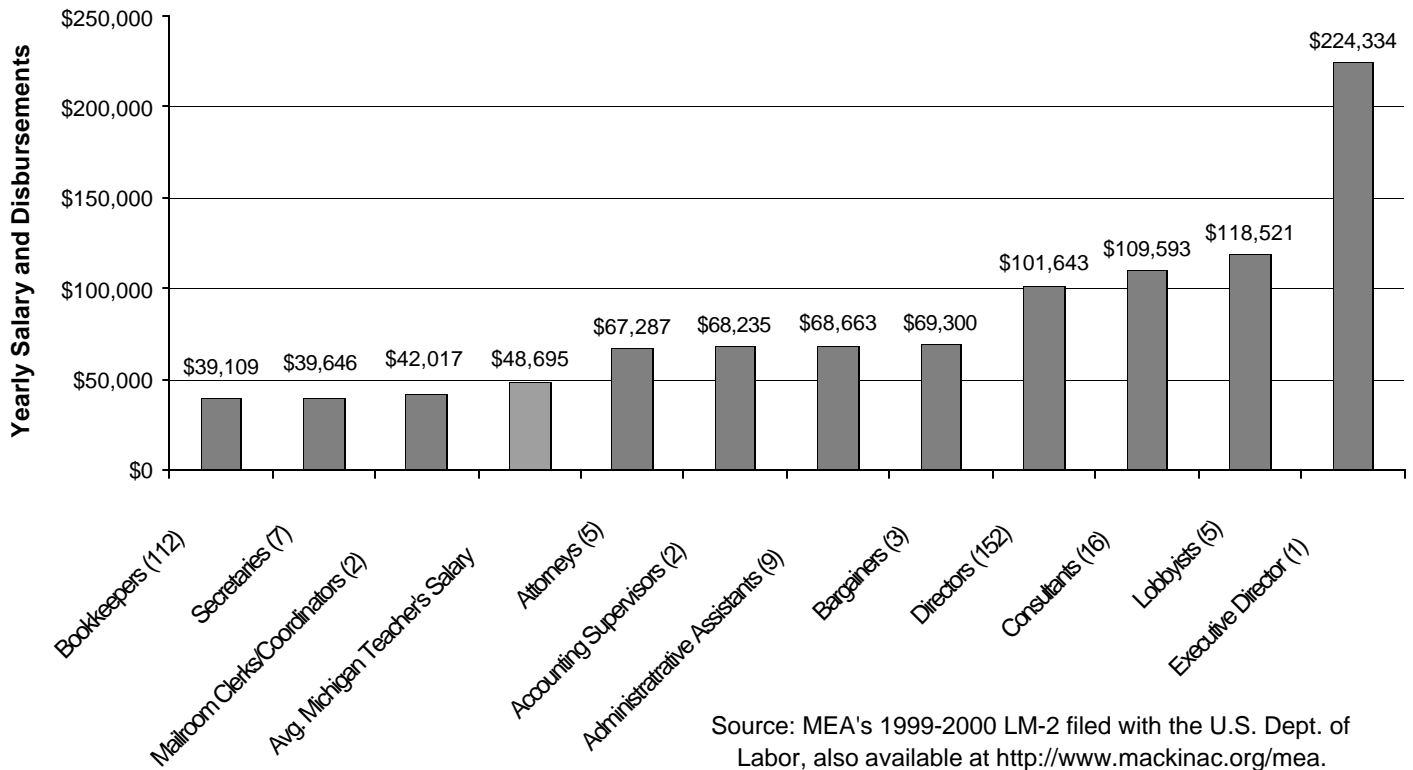
<sup>21</sup> *Let's Fix the Law on Public Sector Union Corruption*, Ken Boehm, Capital Research Center, <http://www.capitalresearch.org>; *Union Corruption Update*, May 21, 2001, <http://www.nlpc.org>.

<sup>22</sup> *Ex-Officials of City Union Convicted of Rigging Vote*, Steven Greenhouse, The New York Times, July 26, 2000.



the DC 37 debacle in New York exists here, and offers the same temptations and opportunity. Certainly Michigan union officials are well compensated. The MEA, for instance, has 125 officers and staff who receive over \$90,000 per year in salary and disbursements, compared with an annual average teacher salary of \$48,695.<sup>23</sup> Chart 1 below compares average salaries and disbursements for MEA staff to the average Michigan teacher salary.

**Chart 1 - Average Salaries and Disbursements to MEA Staff Members**



Michigan unions still contend with their own corruption problems. Recently the International Brotherhood of Teamsters was forced to remove Michael Bane, the President of Local 614 in Pontiac for giving misleading testimony about his involvement with three suspected mob figures. Teamsters President James Hoffa is a member of Local 614 and a close associate of Bane.<sup>24</sup> The Bane incident suggests that the Teamster's continue to

<sup>23</sup> Michigan Education Association IRS form 990 filed for 1999.

<sup>24</sup> Top officer removed from Teamsters Local, Detroit News, July 20, 2001

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***“The UAW has become a company union.... They don’t represent the members. The Big Three have bought off the union, paying representatives 70 hours a week to ignore their members.”***

struggle with organized crime, even as they argue for the termination of a federal review board charged with investigating and cutting mob ties.

Even more disturbing are reports that some local officials of the UAW are allegedly beginning to collaborate with the automobile manufacturers, lining their own pockets in the process. A Detroit Free Press series in May of this year described rank-and-file worker suspicion that union officers had been paid off by General Motors and Daimler/Chrysler. Workers claim that the automakers had paid UAW leaders for hours they did not work, or hired relatives and friends of UAW officers. In exchange, it is alleged, the UAW agreed that it would not follow up on worker grievances. At one point, UAW members allege, officers of Local 594 in Pontiac extended a strike in order to secure GM jobs for their relatives.<sup>25</sup> A spokesman for GM declined to comment on the allegations for purposes of this Mackinac Center for Public Policy report.

The UAW also operates joint funds with each of the Big Three automakers for the retraining of laid-off workers. The funds were set up in the early 1980s, when recession and foreign competition led to large-scale layoffs, then expanded tremendously when the automakers recovered and prospered.

The joint funds have made questionable expenditures, such as sponsoring NASCAR racers Bill Elliott and Casey Atwood (sponsorship of a NASCAR racer costs between \$8 million and \$16 million annually) and two NASCAR races, the UAW-GM Quality 500 and the UAW Daimler/Chrysler 400. The autoworkers’ union also teamed up with Daimler/Chrysler to put on a “Hollywood Showcase” at the 2000 Democratic National Convention. A UAW-Ford conference in Las Vegas reportedly drew 3,000 delegates and guests.<sup>26</sup>

Meanwhile, press reports indicate that workers who raise questions about relationships between UAW officers and the auto companies have received threats and been ostracized by coworkers.<sup>27</sup> The UAW once had a reputation for policing itself reasonably well: “Those gripes stayed in the family and the offenders got slapped hard by the international,” according to Bob King, a former UAW official. But an apathetic response to the latest round of accusations has forced workers to take their suspicions to federal investigators. Billy Robinson, president of Local 2036 in Henderson Kentucky, was harsh in his assessment of where the union is going: “The UAW has become a company union. . . . They don’t represent the members. The Big Three have bought off the union, paying representatives 70 hours a week to ignore their members.”<sup>28</sup>

If Robinson’s fears prove to be true, the return of the “company union” could be a disaster for workers, and represent a tremendous failure for modern labor law. The entire scheme of state and federal labor policy—of exclusive representation and agency fees—is designed to foster powerful unions with the resources to deal with the management of large corporations from a position of strength. The national law contemplates independent labor

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<sup>25</sup> *UAW Dissidents Challenge Bosses*, Jeffrey McCracken, Detroit Free Press, May 17, 2001

<sup>26</sup> *A Shroud of Secrecy Surrounds Joint Funds*, Jennifer Dixon, Detroit Free Press, May 18, 2001

<sup>27</sup> *Speaking Out - At a Cost*, Jeffrey McCracken, Detroit Free Press, May 17, 2001

<sup>28</sup> Op. cit., *UAW Dissidents Challenge Bosses*

organizations whose sole focus is the improvement of workers' wages and conditions of employment.

The abuses outlined above are a small sample. The National Legal Policy Center runs a bi-weekly summary of union corruption stories on its web site at [www.nlpc.org](http://www.nlpc.org). The number of articles is staggering, and Michigan, sadly, is well represented.

## Union Political Involvement

Perhaps the worst kept secret in both Washington and Lansing is the extent to which unions are active in political campaigns. By using clever labels such as "issue advocacy," "voter education," "organizational partnerships with political parties" and "public relations," to describe activities that in ordinary parlance would clearly be considered partisan, and by making relatively few outright contributions to campaigns, unions are able to pretend they spend less on politics than they actually do, even while building tremendous political influence, especially within the Democratic Party.

For example, since the mid-nineties, the MEA's parent union, the National Education Association, has claimed on its federal tax forms that it hasn't spent a single dollar on politics, even while it participated in Democratic Party steering committees, campaigns, and get-out-the-vote drives.<sup>29</sup> Political action committee (PAC) contributions are a small part of the union political effort, but even in that one area unions have a huge impact, with six of the top 12 PACs nationwide being run by various labor unions.<sup>30</sup> (See Chart 2 on the following page.)

Rutgers University economist Leo Troy estimated in 1996 that for every dollar of publicly acknowledged PAC contributions, unions spend 3 to 5 dollars in soft-money and in-kind political contributions, which are much more difficult to track.<sup>31</sup>

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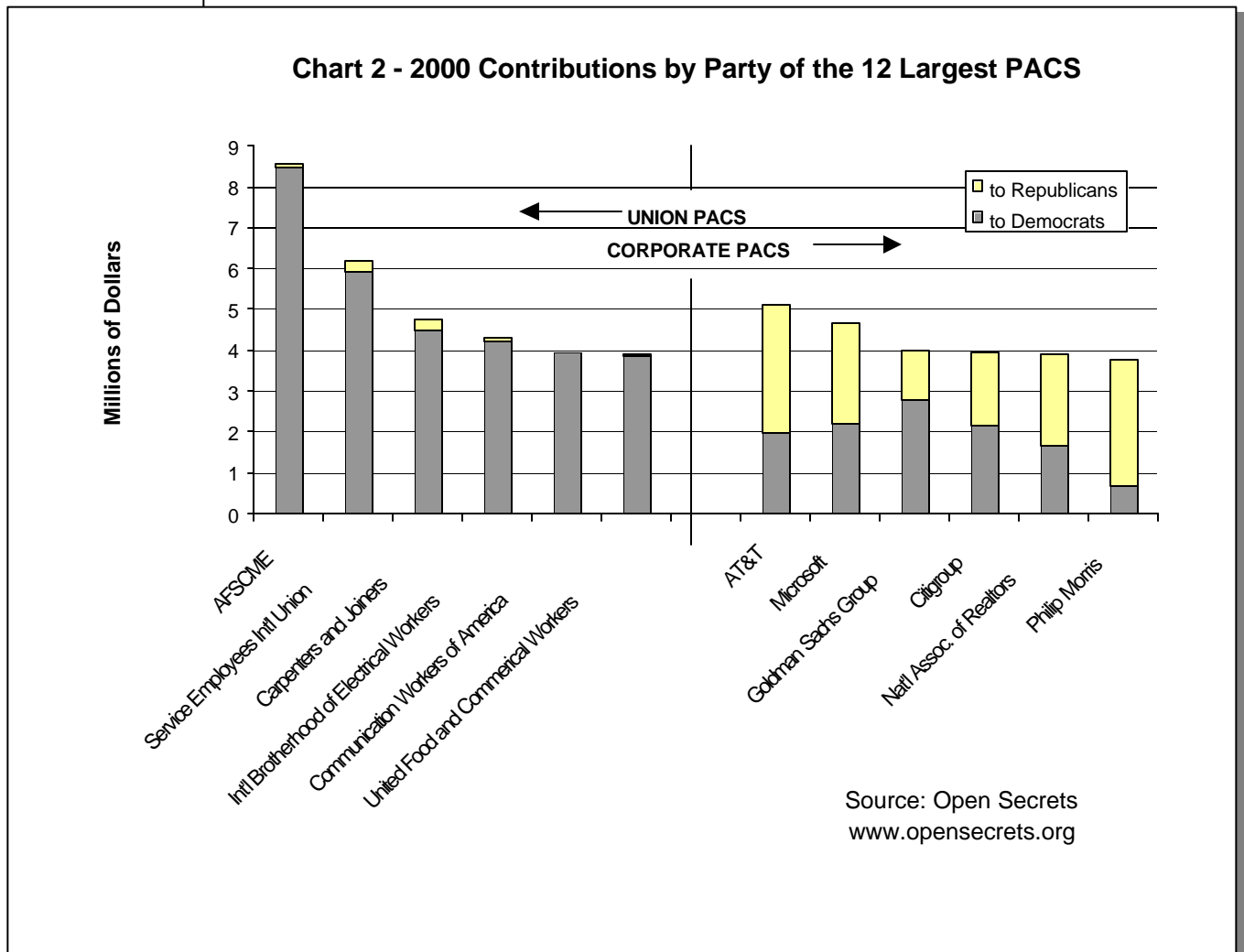
***Since the mid-nineties, the MEA's parent union, the National Education Association, has claimed on its federal tax forms that it hasn't spent a single dollar on politics, even while it participated in Democratic Party steering committees, campaigns, and get-out-the-vote drives.***

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<sup>29</sup> *Teachers Pets*, William McGurn, The Wall Street Journal, August 2, 2001; *Complaint before the Internal Revenue Service, Re: National Education Association, FEIN 53-0115260* Landmark Legal Foundation, available at <http://www.landmarklegal.org>

<sup>30</sup> Information compiled by [opensecrets.org](http://opensecrets.org), available at <http://opensecrets.org/2000elect/storysofar/topcontribs.asp>

<sup>31</sup> *Exposing the Forced-Dues Base of Big Labor's Political Machine* National Institute for Labor Relations Research, (2000) p. 3, <http://www.nilrr.org>



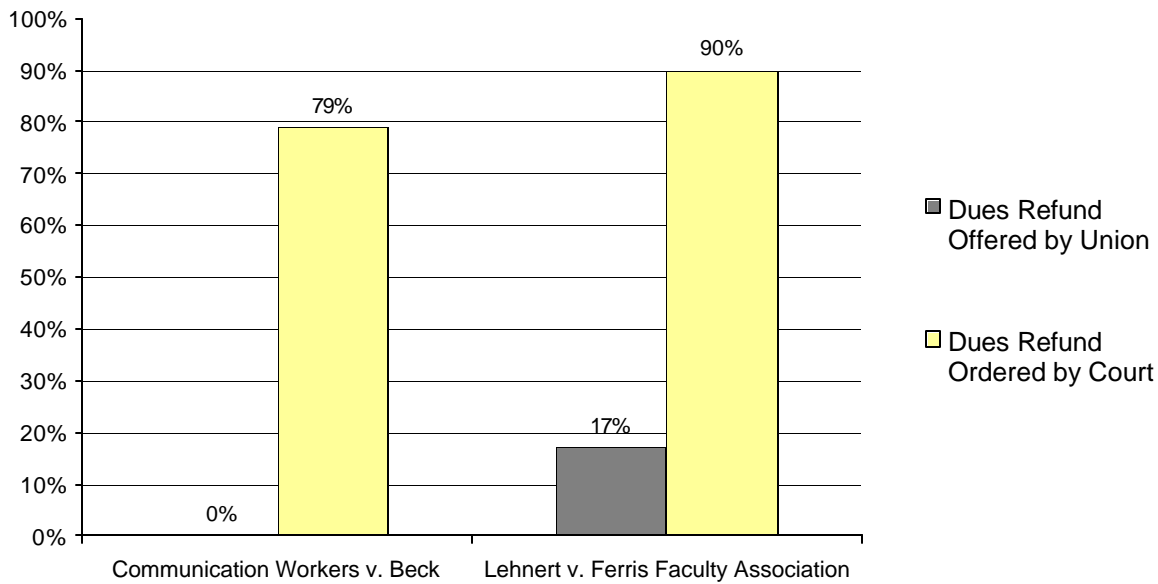
By law, workers are entitled to a refund of their share of political expenditures if they wish it, thanks to the *Beck* case described earlier. In practice, however, the unions' ability to disguise political spending means that getting a full refund requires a herculean effort few workers are willing to endure. Typically, those workers who successfully pursue a refund will receive about 20 percent of his or her dues. Sometimes even that requires litigation.<sup>32</sup>

If what union officials claim is true, 80 percent of union revenue is spent on representation of the interests of workers. Yet, on the rare occasion when workers have the persistence and good fortune to get a look at the union books, an entirely different picture of union spending and priorities emerges.

<sup>32</sup> This was the percentage awarded in the suit against the California State Employees Association. *State Employees win \$3 million Judgment Against Powerful California Union*, news release, May 8, 2001, <http://nrtw.org>

The Supreme Court has examined union financial records in two cases. In the original *Beck* case, the Court found, 12 years after Beck filed his original suit, that 79 percent of his dues were *not* chargeable, nearly the reverse of what unions typically claim.<sup>33</sup> In a follow-up case, *Lehnert v. Ferris Faculty Association*, the Supreme Court found that the defendant union, an affiliate of the MEA, spent only 10 percent of its dues revenue on employee representation.<sup>34</sup> (See Chart 3 below.)

**Chart 3 - Refund Offered by Union vs. Refund Ordered by Court**



Source: *Compulsory Union Dues in Michigan* (Mackinac Center for Public Policy, 1997)

Estimates of union political spending in the 2000 campaign went as high as \$900 million nationwide.<sup>35</sup> Although roughly a third of union members voted for Bush in 2000, nearly all of the union effort was calculated to help Democrats.<sup>36</sup> This stands in stark contrast to most other large contributors, who tended to split contributions more evenly.<sup>37</sup> (See Chart 2 on page 14.)

<sup>33</sup> *Compulsory Union Dues in Michigan*, Robert Hunter, The Mackinac Center for Public Policy, 1997, p. 16

<sup>34</sup> 500 U.S. 507 (1991)

<sup>35</sup> Op. cit., *Exposing the Forced Dues Base of Big Labor's Political Machine*, p. 2

<sup>36</sup> According to a poll taken by the Gallup Organization, completed November 5, 2000. Results are available at <http://www.gallup.com>

<sup>37</sup> Op. cit., [Opensecrets.org](http://Opensecrets.org)

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***Although roughly a third of union members voted for Bush in 2000, nearly all of the union effort was calculated to help Democrats. This stands in stark contrast to most other large contributors, who tended to split contributions more evenly.***

In addition to contributing to PACs, union staffers worked full-time for political campaigns, in some instances taking paid leave to do so. Shop stewards held “worksites blitzes” in which they cajoled workers to vote for candidates favored by union officials. Unions distributed voter guides that favored Democrats without giving formal endorsements, and provided election day rides to the polls for people likely to vote for Democrats.<sup>38</sup> Other than PAC contributions, none of these activities is subject to disclosure either for tax or campaign reporting purposes. Except for those workers who actively supported the Democratic ticket and volunteered their time, most union members were only vaguely aware of the lengths to which their unions went to back the Democratic ticket. And union officials carried out their activities in ways that kept members in the dark.

Mandatory agency fees leave union officials almost completely unaccountable to the workers they are charged to represent. Many union officials roam where they will at workers’ expense. Some, such as the officials of District Council 37 in New York, choose the lap of luxury. Others, as may be happening with greater frequency in the UAW, are trying out life on the management side of the fence. Many pursue political influence.

## **Current Disclosure Rules**

Private-sector unions are required to file reports annually with the U.S. Department of Labor and the Internal Revenue Service. The Labor Department form is mandated by the Landrum-Griffin Act, and is referred to as the LM-2. The IRS filing is on Form 990, required from all non-profit organizations.

LM-2 forms require complete information concerning assets and liabilities at the beginning and end of the fiscal year; all receipts and the sources of all receipts; compensation of all union officer and employees who received more than \$10,000; loans made to officers, employees, or members, of more than \$250; loans to any business enterprise; and other disbursements made by the organization.<sup>39</sup>

Section (c) of the LM-2 requires that this information be made available to all of the labor organization’s members and permits all members to examine any books, records, and accounts necessary to verify the information found in the annual report. The course of legal action available to members who are denied this information is also laid out in this section. Union members may sue in state or federal court to force their union to turn over “any books, records, and accounts necessary to verify” the report if there is just cause to believe the report is inaccurate. But given the financial burden of a lawsuit and the ill will generated by suing the union, this course of action is impractical for rank-and-file union members.

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<sup>38</sup> Op. cit., *Exposing the Forced-Dues Base of Big Labor’s Political Machine*, p. 4, 5. It should be noted that get-out-the-vote efforts, such as providing rides to the polls, may appear non-partisan but they are easily targeted geographically to maximize turnout for one party or another.

<sup>39</sup> 29 U.S.C. 431(b)

Finally, the Act states that this information will be provided in “such categories as the Secretary [of Labor] may prescribe.”<sup>40</sup> This is the crucial point in the effort to create more meaningful labor organization financial disclosure, considering that the value of the information on these forms, for union members and union oversight groups, largely depends on these “categories.” Financial information required of unions provides little insight into the various functional areas where union money is spent, such as collective bargaining, politics, lobbying, or grievances.

Reading the LM-2 or Form 990 of the typical labor union can be exasperating; the disclosure laws leave plenty of nooks and crannies for hiding questionable activities. For example, the MEA’s 1999 LM-2 gives the names and salaries of hundreds of employees. Among them are approximately 100 individuals who appear to have used “release time” to work on union business. Yet, there is no indication of what these persons worked on; it is entirely possible that these individuals did political work on union time. There is an entry for political expenditures in the amount of \$36,550, but no indication of what these expenditures were for, or which candidates received them. Likewise with an entry in the amount of \$321,246 of “legislative and political” spending.

Adding to the confusion is the lack of a consistent standard for reporting. LM-2 forms do not follow generally accepted accounting principles and need not be audited by a third party before submission to the Labor Department. Consequently, similar expenditures can be treated very differently by different unions.<sup>41</sup>

Unions consciously take advantage of this confusion. One NEA publication entitled “How To Set Up and Operate a Local Association Political Action Program” advises local union officials to “combine PAC fundraising and the Association’s membership drive—so you avoid separate drives by asking people to join the Association and give to the PAC at the same time. . . . At the bargaining table, fight for the payroll deduction system of making PAC contributions and for the designation of Election Day as a paid holiday. Show members how human and civil rights programs and laws were accomplished through effective political campaigning and lobbying. Include political action program articles in Association publications. . . . Include a political education line item in the local Association’s budget so that dues monies are available for conducting political activities with members and their families.”<sup>42</sup>

Consequently, many activities that are political aren’t listed as such. Passing out fliers advocating a particular position on an issue without mentioning a specific bill up for a vote could legally be categorized as an “education” expense, for example. “Leadership Development,” upon which the MEA spent \$284,645 in 1999, could easily include political training and “Committees and Task Forces” (\$548,219) may or may not include groups

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<sup>40</sup> 29 U.S.C. 431 (c)

<sup>41</sup> *Testimony of David Fortney before the Senate Committee on Rules Administration*, S Hrg 106-522, appendix 33, p. 595

<sup>42</sup> *Complaint before the Internal Revenue Service, Re: National Education Association, FEIN 53-0115260*, Landmark Legal Foundation, <http://www.landmarklegal.org>

**Activities that are political aren't listed as such. A flyer criticizing school vouchers but not mentioning the specific voucher bill up for a vote could legally be categorized as an "education" expense, for example.**

working on party politics. As the laws covering union disclosure stand, it's impossible to know what the numbers include, especially when it comes to politics.

However inadequate the information obtainable through LM-2 forms may be, it also is extremely difficult for an outsider to obtain.

The Labor Management Reporting and Disclosure Act (LMRDA) was passed in 1958 when the computer age was in its infancy. To this day, files are still only available in hard copy; there has been no upgrade to computer files.

As former U.S. Department of Labor Solicitor Marshall J. Breger told the U.S. House Committee on Education and the Workforce on July 9, 1997:

... LM-2 forms are filed with the Department of Labor's Office of Labor Management Standards (OLMS). OLMS keeps some 34,000 such disclosure statements on file here in Washington. They are not retrievable by computer and are available only on the OLMS's receipt of a five-digit file number corresponding to the file. The public may find such file numbers in a reference book, last published in 1990. Many of the file numbers are not updated, which makes finding some files practically impossible. In addition, their [sic] are significant restrictions on the number of files that can be examined or photocopied per day.<sup>43</sup>

IRS Form 990s share the same flaws. For example, the MEA's 1999 filing states that the union spent no money whatsoever on political activity that year. Yet the MEA's own attachments list \$42,070 for "legislative activities" and \$11,778 for the "Third World political forum." This is not necessarily a violation of tax law: The IRS is looking for specific types of taxable political expenditures.<sup>44</sup> But it is likely to be confusing for laymen. On Form 990s, as on the LM-2, many political expenditures can be mixed in with or concealed by non-political categories. Any union member attempting to learn the extent and thrust of union politics, whether as part of a *Beck* suit or simply to satisfy ordinary curiosity will find little useful information in either filing.

Oddly enough, while dues-paying union members are left to puzzle over IRS forms and LM-2 filings, non-members can receive an accounting for union spending (although unions make it as difficult as possible). In the public sector these disclosures are referred to as *Hudson* notices after *Chicago Teachers Union v. Hudson*, in which the U.S. Supreme Court laid down the ground rules for public sector workers who object to union political activity.<sup>45</sup> Private sector workers who quit the union and object to union spending are legally entitled to receive a similar accounting, referred to as a *Beck* notice (although, again, with great difficulty). Both *Hudson* and *Beck* notices are supposed to break union spending down between costs of representation on the one hand and spending peripheral to worker representation on the other.

<sup>43</sup> At the time this report was written file numbers had been updated, but LM-2 reports could not be viewed online, and a system for ordering LM-2 reports over the Internet was inoperative.

<sup>44</sup> The Landmark Legal Foundation's suit against the NEA raises precisely this question.

<sup>45</sup> 475 U.S. 292 (1986)



The process is unwieldy; resigning from the union and objecting to the agency fee are technically two different things. A worker who resigns from a union is typically charged an agency fee equal to the dues paid by full members of the union. In order to fully exercise *Beck* rights the worker must also “object” to the agency fee. This entitles the worker to receive an accounting of union expenditures and have the agency fee reduced. It is possible to do both simultaneously, but the distinction does create confusion and frustration for workers.

Workers who object to the agency fee amount find that unions will resist efforts to obtain a refund. Since the decision in *Machinists v. Street*, which recognized workers’ right to withhold support for union politics, unions have attempted to limit the period of time during the year during which workers could resign.<sup>46</sup> They have also denied non-members any right to an account of how their fees are being spent,<sup>47</sup> required nonmembers to file objections to dues every year,<sup>48</sup> and forced nonmembers to go through arbitration before taking the matter to court.<sup>49</sup> All of these ploys have been rejected by the federal courts, but workers were forced to go all the way to the Supreme Court in many of these cases before the matters were settled.

Perhaps the nadir of union stonewalling came in the case of *Bromley v. Michigan Education Association - NEA*.<sup>50</sup> In *Bromley*, a group of college and public school employees represented by the MEA objected to the amount the union calculated for their agency fee and went through an arbitration procedure. The arbitrator did not look at the MEA’s records directly, but affirmed the union’s calculations, basing his decision on financial summaries provided by the union. The workers went to federal court and requested further documentation of the fee amount, but the district court denied the request, then allowed the union to go ahead with a motion for summary judgment, concluding that plaintiffs had “everything they need to enable them to respond to the defendant’s motion for summary judgment.” The court went on to grant the union’s motion, dismissing the case.

On appeal, the federal Circuit Court reversed emphatically: “Given the importance of the constitutional interests at stake in the case at bar, the district court should not have decided the summary judgment motion without allowing meaningful discovery first. In declining to allow any discovery beyond the arbitration record . . . the district court clearly abused its discretion.” The case was sent back for trial, with plaintiffs gaining access to the union’s financial records. Eventually the matter was settled, with the union refunding \$150,000 and changing its procedures for tracking staff time.<sup>51</sup>

<sup>46</sup> Unions have attempted to prohibit resignations prior to a strike, *Pattern Makers v. NLRB*, 473 U.S. 95 (1985); and have also attempted to impose a brief annual “window” in which dues protests must be filed *Machinists v. NLRB and Strang*, 133 F.3rd 1012 (7th Cir 1998)

<sup>47</sup> *Teachers v. Hudson*, 475 U.S. 292 (1986)

<sup>48</sup> *Shea v. Machinists*, 154 F.3d 508 (5th Cir. 1998)

<sup>49</sup> *Air Line Pilots v. Miller*, U.S. Supreme Court 97-428 (1998)

<sup>50</sup> 82 F3d. 686 (6th Cir. 1996)

<sup>51</sup> *Mammoth Michigan Union Forced to Return \$150,000 Dollars in Union Dues to 450 Teachers*, National Right to Work Legal Defense Fund, news release, May 15, 2000, <http://www.nrtw.org>

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***Workers who object to the agency fee amount find that unions will resist efforts to obtain a refund.***

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***The record from courts across the country shows that union officers have little regard for the First Amendment rights of workers, and will use any gambit to deny or delay a full reckoning of the money they owe under the rules laid down by Beck.***

The record from courts across the country shows that union officers have little regard for the First Amendment rights of workers, and will use any gambit to deny or delay a full reckoning of the money they owe under the rules laid down by *Beck*. Sometimes the courts themselves are confused by union claims that accounting for their own spending presents a heavy burden.

Nonetheless, the *Hudson* and *Beck* notices available to objecting workers are the only documents in which union officials are made to go on record and state how much money unions actually need to represent workers. The unfortunate fact of the matter is that getting a full record of union spending often involves a lengthy court battle, the supreme irony of which is that even under the *Beck* decision, union members must resign before they can even begin the process.

## Disclosure Laws for Businesses

By contrast, since the 1930s corporations have been obligated to file detailed reports with the U.S. Securities and Exchange Commission (SEC), using generally accepted accounting procedures, with the specific purpose of helping investors assess the health of publicly traded companies.

The SEC requires annual and quarterly disclosure of public companies' financial dealings. This disclosure is made through detailed reports prepared by independent third-party auditors, using generally accepted auditing standards, and generally accepted accounting principles.

The same should be true for labor unions. Union members provide billions of dollars in dues to their unions each year. These 'investors' certainly have a right to a detailed and meaningful annual disclosure of the manner in which their union is spending their dues to represent them. Just as stockholders and not management are the owners of a public company, dues paying members and not union officials are the 'owners' of the union.

Efforts have been made by Congress and the Department of Labor to correct the deficiencies in federal reporting requirements for unions. Numerous bills have been introduced since 1994 to amend the Landrum-Griffin Act, all of which have been either killed in Congress or vetoed by former President Clinton. One of the most comprehensive attempts to amend Landrum-Griffin was HR 928, the Union Members Right to Know Act of 1997, introduced during the 105<sup>th</sup> Congress. This bill would have added the following information to the LM-2:

?? an itemization of the total amount spent by the labor organization, broken down into categories relevant to *Beck* rights, such as contract negotiation and administration, organizing activities, strike activities, lobbying, political activities such as get-out-the-vote drives or issue advocacy, and PAC contributions. This information would be presented in both the aggregate and as a percentage of total spending by the union;

- ?? the names and activities of any union lobbyists;
- ?? a list of political candidates and organizations, charities, and community groups receiving union contributions or other assistance, along with dollar values of that assistance.<sup>52</sup>

Had it been passed, HR 928 would have required the meaningful union disclosure necessary for workers and government to oversee the manner in which unions spend their members' money. Given the partisan balance of power in the U.S. Senate, passage of this or any similar legislation is unlikely for the foreseeable future.

Over the past 10 years, the Department of Labor has also made on-again-off-again efforts to improve the form of financial disclosure mandated by Landrum-Griffin. President George H. W. Bush initiated a Department of Labor rule-making project that would have required labor organizations to report financial information on a much more useful basis.<sup>53</sup> President Clinton's Secretary of Labor, Robert Reich, killed this project in 1993, but it has been revived in 2001 with the election of George W. Bush. Future rule-making in this area remains difficult to predict.

At the state level, Michigan possesses no significant requirements for labor union financial disclosure. Thus, local public labor union affiliates are not required to report under the authority of Landrum-Griffin or any state law.

## **A Legislative Solution: Amend Michigan's Public Employment Relations Act**

Ideally, unions would recognize their moral and ethical responsibility to routinely inform their dues paying financiers of their financial dealings. But whether out of self-interest or suspicion, union officials in Michigan and elsewhere typically resist disclosing financial information and can seldom be relied upon to provide anything but sketchy data voluntarily.

Unfortunately, a full remedy to the problems outlined above—a remedy that would affect all 938,300 unionized workers in Michigan—is not available without changes in the federal National Labor Relations Act (NLRA). This would require federal action, which is not likely to occur. Any effort by a state governor or legislature to improve union financial disclosure at the vast majority of private firms would almost certainly be struck down on the ground that state action has been precluded by federal law.<sup>54</sup>

On the other hand, the NLRA does not apply to state or political subdivision employees. Public sector unions representing state and local government employees are

<sup>52</sup> HR 928 105<sup>th</sup> Congress, Union Members Right to Know Act of 1997.

<sup>53</sup> *Testimony of Marshall Breger before the House Committee on Education and the Workforce*, July 7, 1997, available from Federal Documents Clearing House

<sup>54</sup> The NLRA also exempts managers, independent contractors, agricultural workers and domestic servants. 29 U.S.C. 152

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***Michigan possesses no significant requirements for labor union financial disclosure.***

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***Public sector unions representing state and local government employees are created and regulated under state law, so Michigan has a free hand to deal with the union financial disclosure problem with regard to roughly one-third of Michigan's unionized employees.***

created and regulated under state law, so Michigan has a free hand to deal with the union financial disclosure problem with regard to roughly one-third of Michigan's unionized employees.

The best course of action, short of barring agency fees outright, is to amend Michigan's Public Employment Relations Act (PERA) to require public-sector unions to report their financial transactions annually. Public-sector unions could be required to detail their spending according to functional spending categories, such as contract negotiation, grievance processing, campaign contributions, public relations, and organization expenses. Reports could be audited by an independent accounting organization to assure accuracy and consistency. Such an amendment could make it an unfair labor practice for a union to fail or refuse to prepare a report. The effectiveness of such a reform of union disclosure laws would be enhanced by computerization and posting on the Michigan Department of Consumer and Industry Services web site. The text of such a proposed amendment can be found in the Appendix to this report.

PERA already regulates the conduct of both employers and unions with respect to their dealings with employees. In PERA's language, it is "unlawful for a public employer or an officer or agent of a public employer" to "interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by PERA."<sup>55</sup>

Similarly, PERA provides that it is an unfair labor practice for a union or its agents to restrain or coerce public employees in the exercise of their rights guaranteed in the statute.<sup>56</sup> The failure of unions to report and accurately account for their income and expenses to their members should be viewed as a restraint on employee rights to self-organization, democratic union governance, and the pursuit of mutual aid and protection which the law should recognize and protect.

Amending PERA to require unions to disclose their finances also makes sense because the law already provides an efficient method for employees to act when a union fails to comply with the statute. Individuals can, without charge, file a complaint with the Michigan Employment Relations Commission (MERC), the state administrative agency charged with enforcing the law. If a trial is ordered, it is relatively simple for employees to represent themselves and prove the complaint by testifying that they did not receive the documents requested according to the law. If financial disclosure were combined with this remedy, the burden would be on the union to demonstrate that it accurately prepared the financial documents and disclosed its financial condition and operations to complaining union dues-payers. MERC would make the ultimate decision who was in the right, and, assuming the statute had been violated, would order the union to comply with the statute.

PERA's process is relatively inexpensive and fairly expeditious. As Chart 4 on the next page illustrates, more than one-third of the complaints filed under PERA during a recent period were filed by individual employees.<sup>57</sup> An individual need not hire a lawyer and there

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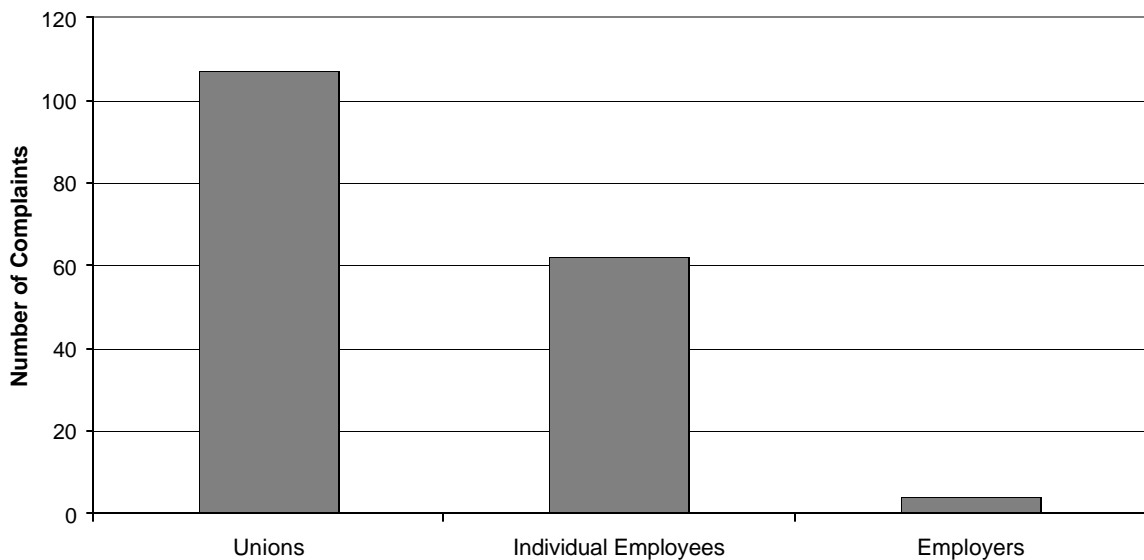
<sup>55</sup> MCL 423.210(1)(a)

<sup>56</sup> MCL 423.210(3)(a)

<sup>57</sup> Compiled from case descriptions on MERC website, covering period from Aug. 1998 to Mar. 2001.

are no filing fees for originating a complaint. There are some secondary costs such as taking time away from an employee's job to prosecute the case and paying for transcript costs. But these expenses are relatively modest compared with court costs and expenses resulting from a traditional litigation. In this type of case, where the facts and law would be fairly straightforward, MERC can make a rapid decision.

**Chart 4 - Initiators of MERC Complaints - August 1998 to March 2001**



Source: Michigan Employment Relations Commission

Remedies for refusal to provide financial information could be designed to provide the right incentives to encourage unions to be accountable for their members' good faith. For a first violation, the union could be required to return all agency fees collected during the period when disclosure should have occurred. If the union cannot account adequately to employees how their dues have been spent then the refund of worker money is an appropriate remedy.

An intentional refusal to provide the information or a second failure to report to employees could result in an employee election—in addition to the refund—at the conclusion of the existing collective contract, by a government-sponsored secret ballot. The workers could vote on whether the union should be removed or replaced. At that point the union would have breached its trust with employees, just as a business would if it refused to disclose its financial information. A referendum on the union's continuing authority to represent them would best be best placed in employee hands.

***accurately prepared the financial documents and disclosed its financial condition and operations to the complaining union dues-payers.***

***A worker cannot exercise an informed right to withhold dues unless there is a clear understanding of union spending.***

The remedial approach taken by the model law strikes a proper balance between securing the unions' compliance with the law and reimbursing employees when the union fails. Ultimately, the cases before MERC would become rare indeed because unions would quickly develop the necessary accounting and reporting procedures needed to routinely inform their members as to sources of income and the nature of expenditures in their behalf.

## **Constitutional and Statutory Authority for a Union Accountability Act**

Union reporting and disclosure requirements clearly aimed at public employees appear to be the least vulnerable to Constitutional and Federal preemption challenges. Congress specifically exempted government workers from the NLRA's jurisdiction, leaving the states largely free to regulate their public sector labor relations.

Consequently, U.S. Supreme Court decisions such as *Abood*, *Hudson*, and *Lehnert*, clearly articulate public employee workplace rights that are rooted in the U.S. Constitution, specifically the First Amendment.

The recommended legislative proposal contained herein is a logical extension and fulfillment of the right of union workers to pay for only union spending that relates to collective bargaining. An integral part of an employee's decision to object to unrelated collective bargaining expenses is the need for audited financial information about how the amount of union agency fees is calculated. A worker cannot exercise an informed right to withhold dues unless there is a clear understanding of union spending as it relates to what is properly chargeable to the individual for direct workplace services.

Because the United States Supreme Court in the *Hudson* case has established this employee safeguard, the state legislature is within its constitutional authority to carry out the Court's directions and extend the protection to all dues payers as a matter of a properly balanced labor policy. The legislature would be declaring as principle that regular, annually audited union financial statements distributed to all dues payers is a *quid pro quo* for the union's right to compel all workers to pay dues.

It is anticipated that the union movement will likely challenge the constitutionality of the disclosure law. Fortunately the courts have provided recent guidance in examining other Michigan statutes that have limited a union's prerogatives in the workplace. The cases offer valuable insight into how union financial disclosure legislation for public-sector workers—that can withstand judicial scrutiny—ought to be framed.

In *Michigan State AFL-CIO v. Miller*, the United States Court of Appeals for the Sixth Circuit examined the constitutionality of Michigan's paycheck protection law, which requires Michigan unions to secure written authorization from dues payers prior to taking automatic payroll deductions for political action fund contributions.<sup>58</sup> In *Miller*, the AFL-CIO

<sup>58</sup> *Michigan State AFL-CIO v. Miller*, 103F3d 1240 (CA6, 1997); Public Act 117, MCLA § 169.255, et

argued that the law violated its free speech rights. The court rejected this argument, recognizing that the state of Michigan has an important or substantial, if not compelling, interest in protecting workers' First Amendment right not to contribute to political causes they do not favor.<sup>59</sup> After determining that the paycheck protection law was a content-neutral regulation (as would be true with union disclosure requirements), the court applied a three-part test of constitutionality that Michigan legislators may rely upon in adopting the recommended statutory change:

**Does the statute further “an important or substantial governmental interest?”** In *Miller*, the state's interest in protecting individual workers' First Amendment right to refrain from making campaign contributions satisfied this requirement. Improving union disclosure laws would protect the free speech rights of workers, as well as discourage union corruption and mismanagement.

**Is the governmental interest “unrelated to the suppression of free speech?”** In other words, does the law have a legitimate purpose other than suppressing the union's free speech? The *Miller* court found that legislation striking a balance between the union's right to solicit political contributions and the individual's right not to contribute is “wholly unrelated to the suppression of free speech.” The amendment to PERA will also help to resolve that same conflict.

**Does the law “burden substantially more speech than is necessary?”** The *Miller* court determined that an “annual mailing to a union's contributing members, asking them to check a box and to return the notice to the union,” would be a burden “insufficient to rise to the level of a constitutional violation.” To the extent that union financial reporting would be a “burden,” it is needed to ensure that unions are accountable to their members, and to expedite the resolution of *Beck* rights cases.

All three of the court's criteria are satisfied by the recommended proposal.

The Michigan Supreme court has also approved of substantial public school related bargaining reforms in *Michigan State AFL-CIO v. Employment Relations Commission*.<sup>60</sup> This case was litigated by the unions after the Michigan Legislature passed Public Act 112 in 1994.<sup>61</sup> The act effected a number of changes in public school collective bargaining, removing several subjects from mandatory bargaining and imposing penalties on teachers who engaged in unlawful strike activities.

At issue in *Michigan State AFL-CIO v. Employment Relations Commission* was Section 17, which stipulated that contracts were to be submitted to employees in the bargaining unit for ratification.<sup>62</sup> This ratification power was left solely to employees and

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***To the extent that union financial reporting would be a “burden,” it is needed to ensure that unions are accountable to their members, and to expedite the resolution of Beck rights cases.***

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seq. Paycheck protection currently applies only to PAC contributions. Other union political activity, such as get-out-the-vote or issue advocacy are not regulated by it.

<sup>59</sup> 103F3d 1240 (CA6, 1997)

<sup>60</sup> *Michigan State AFL-CIO v. Employment Relations Commission*, 453 Mich 362 (1996)

<sup>61</sup> MCL Sec. 423.201 et seq.

<sup>62</sup> MCL Sec. 423.217

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***Labor unions have been given unique powers in both state and federal law, including a steady, guaranteed revenue source from union dues and mandatory agency fees.***

***All workers would benefit from an atmosphere of openness and accountability that discourages misuse of funds and brings union politics into the open.***

could not be delegated. Section 17 prevented state labor organizations from vetoing contracts agreed to by local union officials and approved by workers.

In challenging the statutory provision, the unions asserted that the employee veto power restriction in Sec. 17 violated their right to freedom of association because the power to veto a local unit's ratification of a collective bargaining agreement, among other things, allows local contracts to diverge from the standards established by the union. Sec. 17 thus limits the union's power by removing its ability to compel local bargaining unit conformity.

In upholding the constitutionality of Sec. 17 the State Supreme Court held that, although a union's power to compel conformity among individual groups and, thereby, for a cohesive larger group, is limited by Sec. 17, the power to compel conformity is not guaranteed to it by the First Amendment. The Court went on to say that the "essential right protected under the freedom of association doctrine is the right to join together in a group of like-minded individuals and exercise free speech rights. Therefore, where a statute regulates the internal affairs of an organization, it violates the members' freedom of association if the compelled change in the internal affairs of the organization in turn affects the ability of the organization's members to come together and exercise free speech."

There is nothing in the legislative remedy suggested in this paper that adversely affects the ability of the union's members to come together and exercise free speech. In fact, financial disclosure is the opposite: it promotes democratic governance and the exercise of free speech.

Heeding these considerations should place a state in the best possible position to defend against attacks on the constitutional validity of financial disclosure legislation. The analysis above also will enable legislators to make a forceful argument that such a statute is essential to ensure that workers' rights are secure – a traditional state function that can be exercised without impermissibly infringing upon the collective bargaining system.

## **Conclusion**

Labor unions have been given unique powers in both state and federal law, including a steady, guaranteed revenue source from union dues and mandatory agency fees. But even as they are able to compel financial support, they have little accountability to either society at large or their own members. It should come as no surprise then that labor unions have become easy marks for embezzlers, and have become involved in political causes often at odds with the common interests of workers. The amendment to PERA proposed here addresses this problem by subjecting union finances to public scrutiny.

The Union Accountability Act is not a panacea. Federal law prevents the state of Michigan from acting to protect the interests of two-thirds of its unionized workers, who are employed in the private sector. Government employees who would be covered by the amendment would still be obligated to work under contracts negotiated by unions they may not have supported. Enforcement of *Beck* rights would improve, but workers will still be obligated to pay agency fees.



The new reporting requirements would allow workers to assess the financial health and effectiveness of their unions, and be a more effective tool in their hands which balances the unions statutory right to compel them to make dues payments.

Amending the PERA to include a strong reporting requirement would give union members a new understanding of how their locals operate; information that would assist them in challenging union officers who are not doing their jobs well. All workers would benefit from an atmosphere of openness and accountability that discourages misuse of funds and brings union politics into the open. The result would be stronger unions with less waste and a renewed focus on the workplace concerns of union members. By passing a Union Accountability Act, Michigan would take the lead in protecting the interests of all workers, a goal that all true union supporters should approve.

## Appendix

### **Amending PERA: A Union Accountability Act for Michigan**

**Boldfaced text** represents new text added by the amendment.

Michigan Statutes Annotated, Sec. 17.455(10) is amended by adding subsections (2)(a) and (2)(b):

PUBLIC EMPLOYMENT RELATIONS (EXCERPT)  
Act 336 of 1947

423.210 Prohibited conduct; service fee. [M.S.A. 17.455(10) ]

Sec. 10. (1) It shall be unlawful for a public employer or an officer or agent of a public employer (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section 9; (b) to initiate, create, dominate, contribute to, or interfere with the formation or administration of any labor organization: Provided, That a public employer shall not be prohibited from permitting employees to confer with it during working hours without loss of time or pay; (c) to discriminate in regard to hire, terms or other conditions of employment in order to encourage or discourage membership in a labor organization: Provided further, That nothing in this act or in any law of this state shall preclude a public employer from making an agreement with an exclusive bargaining representative as defined in section 11 to require as a condition of employment that all employees in the bargaining unit pay to the exclusive bargaining representative a service fee equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative; (d) to discriminate against a public employee because he has given testimony or instituted proceedings under this act; or (e) to refuse to bargain collectively with the representatives of its public employees, subject to the provisions of section 11.

(2) It is the purpose of this amendatory act to reaffirm the continuing public policy of this state that the stability and effectiveness of labor relations in the public sector require, if such requirement is negotiated with the public employer, that all employees in the bargaining unit shall share fairly in the financial support of their exclusive bargaining representative by paying to the exclusive bargaining representative a service fee which may be equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative.

- (a) **Where a mandatory service fee is agreed upon, the exclusive bargaining representative must, on a yearly basis, not more than 90 days after the end of its fiscal year, provide financial disclosure information to all employees of the bargaining unit and to the general public by filing with the Commission a report containing the following information, detailed by functional spending categories, which accurately discloses its financial condition and operations for the preceding fiscal year:**
- (i) **assets and liabilities at the beginning and end of the fiscal year;**
  - (ii) **salary, the cost of fringe benefits, allowances and other direct or indirect disbursements to each officer of the local, bargaining representative, and support staff, as well as all contributions to state or national affiliates and any official or employee thereof;**
  - (iii) **all income received or the value of services furnished to an exclusive representative by either a parent affiliated labor organization or by any other labor organization on behalf of the exclusive representative;**
  - (iv) **an itemization of the total amount spent by the exclusive bargaining representative for:**
    - (A) **contract negotiation and administration;**
    - (B) **organizing activities;**
    - (C) **strike activities;**
    - (D) **litigation, specifying the matters and cases involved;**
    - (E) **public relations activities;**
    - (F) **political activities;**
    - (G) **activities attempting to influence the passage or defeat of federal, state or local legislation or the content or enforcement of federal, state or local regulations or policies;**
    - (H) **voter education and issue advocacy activities,**
    - (I) **training activities for each officer of the local bargaining representative or union support staff,**
    - (J) **conference, convention, and travel activities engaged in by exclusive bargaining representatives;**
  - (v) **the percentage of the labor organization's total expenditures that were spent for each of the activities described in subparagraphs (A) through (J) of paragraph (iv);**
  - (vi) **the names, addresses and activities of any of the law firms, public relations firms or lobbyists whose services are used by the labor organization for any activity described in subparagraphs (D) through (J) of paragraph (iv);**
  - (vii) **a list of political candidates, political organizations, charitable organizations, non-profit organizations and community organizations to**

which the labor organization contributed financial or in-kind assistance and the dollar amount of such assistance;

(viii) the name and address of any political action committees with which the labor organization is affiliated or to whom it provides contributions, the total amount of contributions to such committees, the candidates or causes to which such committees provided any financial assistance, and the amount provided to each such candidate or cause.

(b) The report required in subsection (a) shall be prepared by an auditing organization, independent of the exclusive bargaining representative, using generally accepted auditing standards, and generally accepted accounting principles, which shall ensure the accuracy and veracity of the information provided by the labor organization. All union expenditures shall be reported as either germane to collective bargaining, contract administration, or grievance processing, or not so related.

(3) It shall be unlawful for a labor organization or its agents (a) to restrain or coerce: (i) public employees in the exercise of the rights guaranteed in section 9: Provided, That this subdivision shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (ii) a public employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances; (b) to cause or attempt to cause a public employer to discriminate against a public employee in violation of subdivision (c) of subsection (1); or (c) to refuse to bargain collectively with a public employer, provided it is the representative of the public employer's employees subject to section 11.

Michigan Statutes Annotated, Sec. 17.455(10) is amended by adding the following language to subparagraph (3) at the end thereof:

**“(d) to fail or refuse to prepare the report required, in violation of subsections (2)(a) and (2)(b). A failure or refusal to provide the report required herein shall result in the refund of all membership dues or agency fees to employees of the bargaining unit for the period covered by the report. A second failure or intentional refusal to report shall result in an employee election in the bargaining unit affected, pursuant to the provisions of Sec. 12, as to whether the labor organization will continue to be the exclusive agent, as authorized in Sec. 11. The election shall be conducted upon the expiration of any existing collective bargaining agreement”.**

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