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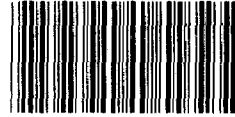
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HUMAN RESOURCES  
DIVISION

September 30, 1981

Mr. Donald L. Dotson  
Assistant Secretary of Labor -  
Management Relations  
Department of Labor



116647

Dear Mr. Dotson:

Subject: Review of Department of Labor's Program  
for Handling Union Election Complaints  
(HRD-81-158)

We have made a review of the Labor-Management Services Administration's (LSMA's) enforcement of the union election provisions in title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA) (29 U.S.C. 401).

Title IV gives union members the right to select their officers and representatives through democratic elections. It establishes terms of office and election procedures unions must follow in electing their officers and requires that elections comply with the unions' constitutions and bylaws. If union members believe their rights to a democratic election have been infringed, they can file a complaint with the union under its constitution and bylaws. However, if the member is not satisfied with the union's response, or has not received a final decision within 3 months, the member can then file a complaint with Labor under title IV.

Our review revealed problems in LMSA's (1) monitoring of members' election complaints resolved by unions, (2) efforts in providing technical assistance to local union officials and members, and (3) program for detecting whether union members convicted of violating criminal law are serving as union officers in violation of LMRDA. We also noted that, because of restrictions on its authority under LMRDA, LMSA (1) does not investigate complaints concerning election of certain union officials, such as shop stewards and committee representatives, and (2) cannot include election violations the complainant was aware of, but did not include in the protest, in requesting court ordered election reruns.

During our review we brought these problems to the attention of LMSA officials.

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## BACKGROUND

The Congress enacted LMRDA to help eliminate or prevent improper and corrupt practices by labor organizations (unions), labor relations consultants, and their officers and representatives. It covers over 53,000 private unions with a membership of about 21 million. The act imposes Federal standards on union activities to, among other things, protect the rights of union members and the election of union officers.

LMSA's Office of Labor-Management Standards Enforcement is responsible for enforcing LMRDA, including title IV. Upon receiving a complaint, LMSA determines whether it is valid--i.e., whether the complainant is a member of a union subject to LMRDA; whether the allegations, if true, constitute violations of title IV; and whether the complainant has invoked or exhausted remedies under the union's constitution and bylaws. After determining the complaint's validity, LMSA has an area office investigate the allegations. Under the act, LMSA must, within 60 calendar days, decide to close the case if no violations of title IV that could have affected the elections outcome, are established, or to seek a rerun of the election for the affected offices or a rerun of the entire election if such violations are established. LMSA tries to obtain a voluntary rerun by the union, but if that fails, it uses Labor's authority under section 402(b) to request a court-ordered rerun.

LMSA started a Compliance Audit Program in fiscal year 1980 as a pilot program to supplement its regular enforcement program of making field audits and investigations at unions. Under the program, LMSA area office investigators perform reviews--in about 5 days--of targeted unions' financial and other selected operations. When potential criminal and civil violations of LMRDA are noted, the investigators refer them to the appropriate LMSA area office, which follows up with a regular field audit or investigation. In fiscal year 1981, LMSA formally implemented the program and scheduled 623 and 536 audits for fiscal years 1981 and 1982, respectively.

## OBJECTIVES, SCOPE AND METHODOLOGY

The principal objectives of our review were to determine whether (1) title IV of LMRDA is protecting and safeguarding union members' election rights and privileges as the Congress intended and (2) LMSA is effectively administering and enforcing title IV. However, our ability to achieve these objectives was limited because LMRDA and our basic legislative and statutory auditing authority restrict our access to labor union records under certain circumstances. Thus, our work was limited to reviewing LMSA's records and activities and the records of two unions that voluntarily agreed to provide us access.

Our work at LMSA was performed principally at LMSA's regional and area offices in Philadelphia and at Labor's headquarters in Washington, D.C. We reviewed (1) pertinent sections of LMRDA's legislative history, (2) LMSA's administrative and enforcement regulations and procedures, and (3) LMSA's coordination with the Department of Justice concerning the handling of civil complaints filed in U.S. district courts requesting reruns of union elections. We also interviewed key LMSA officials involved in administering and enforcing title IV, and officials of Labor's Solicitor's Office who help LMSA enforce title IV.

To evaluate LMSA's handling of union member complaints, we reviewed 43 closed investigative cases for the period October 1, 1977, through March 31, 1980. These 43 cases were investigated by LMSA's Philadelphia, Chicago, Los Angeles, and San Francisco area offices and reviewed by the headquarters office. As part of our review of the 43 cases we contacted six complainants--all in the Philadelphia area--to obtain their views on LMSA's handling of their complaints.

We observed LMSA's supervision of a rerun of the election of officers for District 8 in Baltimore of the United Steelworkers of America union. We also interviewed officials of the National Labor Relations Board to determine how they conduct elections in which employees seek to obtain union representation.

As indicated above, we initially planned to determine whether title IV of LMRDA is adequately protecting unions and union members and how effective LMSA is administering and enforcing the law. However, in evaluating Labor's procedures and investigations, we contacted union members in the Philadelphia area to obtain their views on LMSA's investigation and found that many election complaints never reached LMSA. We then altered our approach and attempted to obtain data from unions, on a voluntary basis, on how often election complaints are made within unions and how the unions resolve them. We contacted various national/international unions requesting these data and permission to review the election complaints case files for those the unions resolved.

However, only two unions agreed to cooperate. Thus, our review of how unions handled their members' complaints was confined to reviews at the headquarters of the United Automobile, Aerospace, and Agricultural Implement Workers of America Union at Detroit and the United Mine Workers of America union at Washington, D.C. In addition, we contacted officials at 38 other international, national, and local unions--by visits or telephone calls--to obtain

data on the frequency of union member election complaints filed and resolved by these unions. We were not able to verify the data.

Because of the restrictions on the scope of our work, we are not able to draw overall conclusions on how adequately LMRDA and its enforcement by the Department of Labor is protecting union members' election rights and privileges. However, our review did reveal problems in LMSA's enforcement of LMRDA and restrictions on its authority which were discussed with LMSA officials. A brief discussion of the problems, our observations, and LMSA officials' comments follow.

#### LMSA'S MONITORING OF ELECTION COMPLAINTS HANDLED BY UNIONS

LMSA is not aware of many union members' election complaints because it acts only when a member files a complaint with it and it does not have a program to monitor election complaints that are filed with, and resolved by, unions. Without such a program, LMSA does not know how many complaints are filed within the unions, how the complaints are resolved, or whether they are resolved to the complainants' satisfaction and in accordance with LMRDA.

LMSA's policy is to investigate complaints only after the election is completed and the complainants have exhausted the remedies available through their unions. LMSA believes this policy complies with the intent of the law--that is, to minimize Federal Government interference in internal union affairs. However, LMSA's policy allows many election complaints filed with and resolved by unions to go undetected.

Since 1959--when LMRDA was enacted--to January 1, 1980, unions have held about 400,000 elections. During the same period, LMSA handled an estimated 3,300 election complaint cases. Thus, less than 1 percent of the elections were protested. It appears from these statistics that union election complaints are not a serious problem. However, our limited review of national unions showed that the volume of complaints filed with LMSA represents only a small fraction of the complaints members file with their unions.

For example, during the period October 1, 1977, through March 31, 1980, LMSA received 553 election complaints from union members belonging to about 100 national or international unions. We contacted the headquarters of 9 of these unions and found that, although their members had filed only 55 complaints with LMSA, the unions had handled 326 complaints.

To illustrate, members of the United Automobile, Aerospace, and Agricultural Implement Workers of America filed 16 complaints with LMSA, but the union handled 159 complaints. At the United Brotherhood of Carpenters and Joiners of America, members filed 27 complaints with LMSA, but the union handled 120 complaints in the same period. A list showing the complaints filed with LMSA and those handled by the nine selected unions is in the enclosure.

### Observations

In our opinion, for LMSA to adequately carry out its enforcement responsibilities under LMRDA, it needs to establish a program to monitor how effectively unions are handling their members' complaints. We believe that LMSA can establish such a monitoring program as part of its Compliance Audit Program of making audits at selected targeted unions.

However, our examination of the audit program and questionnaire used in the program showed that LMSA does not specifically require the investigators to examine the targeted unions' procedures in their constitutions and bylaws for handling members' election complaints. It appears to us that LMSA can easily expand the audit program to require investigators to review the union's election procedures, and how well they are working and to gather data on the number of complaints handled by the union. Should the audit identify problems in the complaint procedures, LMSA could, at that time or later during the regular field audit or investigation, provide technical assistance to the local union officers to correct the problems and deficiencies.

### LMSA officials' comments

After our review, we discussed the problems we noted with the Director of LMSA's Office of Labor-Management Standards Enforcement and other LMSA officials. The LMSA officials generally agreed on the need for LMSA to increase the effectiveness of its enforcement of the election provisions of title IV of LMRDA.

Regarding the need for monitoring union complaint handling procedures, they agreed to consider revising the Compliance Audit Program to include a review of the targeted unions' election complaint procedures and how well the unions are handling complaints.

LMSA'S TECHNICAL ASSISTANCE  
TO LOCAL UNIONS

LMSA does not have a formal program to provide technical assistance to local union officials or their members. As a result, many union members are not aware of LMRDA or their rights under the act.

LMRDA states every union shall inform their members of the rights and benefits under the act. Also, since 1959, LMSA has had several programs to educate rank and file union members about the law but they have been discontinued because of the uncertainty of their success. Area officials explained to us that they had no way of knowing if the members benefited from the programs.

LMSA headquarters officials also explained that budget limitations resulted in the cutback of some technical assistance programs. This reduction has occurred at a time when LMSA officials estimate that 70 percent of the rank and file members--the act covers about 21 million members--are not familiar with the act and their rights and benefits under it.

Our limited review indicated that LMSA needs to increase its technical assistance program at the local union level. For example, we interviewed several union members whose complaints were denied by the union and by LMSA. All members said they lacked adequate knowledge about the act and may not have adequately explained the violations they observed or included all the violations observed in their protest letters.

Our analysis of complaints filed with LMSA showed that a small number of national unions account for a large percentage of complaints. For example, complaints filed by members of 12 international and national unions accounted for 50 percent of the 553 election complaints LMSA received from October 1, 1977 to March 31, 1980. Also, in December 1980, LMSA published the "Union Officer Elections and Trusteeships Case Digest," which contained more than 1,400 cases involving violations of title IV and other LMRDA provisions from 1959 through 1978. It also included cases from 1979 and 1980. Our analysis showed that eight of the unions appearing most frequently in the digest also had members filing election complaints most frequently during the period covered by our review.

The above data indicate to us that LMSA has information available to identify the unions that have the most problems and the greatest need for technical assistance to improve their election process.

LMSA does have a Election Advisory Unit, which reviews unions' constitutions and bylaws before the unions' regular elections, to identify problems in the election process. The unit, however, advises and assists officials only at the national and international levels.

Also, LMSA's Compliance Audit Program has as one of its objectives to provide effective grassroots technical assistance directly to union officials. However, our analysis of the audit program showed that the investigators are to provide the technical assistance at the exit interview and apparently only to union officers present at the interview. The program does not require the investigators to give rank and file members similar assistance. Moreover, with the short time frame for the audit--5 days--investigators are unlikely to have much contact with the rank and file.

LMSA should also provide technical assistance for both new and current union members. LMSA can identify new union members from mailing lists that the National Labor Relations Board obtains from the employers of groups seeking representation by new or existing unions. The Board prepares a voter eligibility list for use at the representation election. LMSA could coordinate with the Board to obtain the names of all members in organizations holding successful representation elections. LMSA could use these lists to inform new members of their legal rights, privileges, and remedies under LMRDA.

#### Observations

LMSA's technical assistance has been primarily at the international and national levels. We believe that LMSA needs to increase technical assistance to local union officers and members on a continuous basis. Most of the election complaints originate at the local level. Therefore, awareness of the law at this level may help reduce the number of election violations and help educate the members in preparing better complaint letters. Also, the technical assistance program should cover current and new union members.

#### LMSA officials' comments

LMSA officials also agreed on the need for more technical assistance. In fact, they said LMSA had recently formed the Division of Technical Assistance and Technical Disclosure to help improve technical assistance under LMRDA.

LMSA'S PROGRAM TO SCREEN ELECTED  
OFFICERS FOR CRIMINAL CONVICTIONS

Section 504 of LMRDA states that no person who has been convicted of, or served any part of a prison term resulting from their conviction for, among other things, robbery, bribery, extortion, embezzlement, or violation of the reporting requirements of the act, or the conspiracy to commit such crimes, shall serve as an officer, director, trustee, or member of any executive board of a union. The prohibition is to last for 5 years after the conviction, or after the end of the prison term if it exceeds 5 years.

LMSA does not have a program to screen newly elected union officers to determine whether they are serving in violation of section 504. To illustrate, LMSA's procedures and guidelines for investigations of election complaints do not require the investigators to screen the union officers' backgrounds or to make checks with Federal, State, and local enforcement agencies to determine compliance with section 504. As a result, when we examined the 43 closed election cases during our limited review, we found no evidence in any of the cases that the investigators had screened the elected officers' backgrounds to determine whether they violated the section 504 requirement. LMSA officials told us that elected officers' backgrounds are not screened unless the alleged violation is included in the member's complaint.

It appears that LMSA relies on the unions to elect individuals who are not corrupt. However, some unions have not succeeded. For example, widespread union corruption and labor racketeering were disclosed at the Senate Permanent Subcommittee on Investigations' hearings in February 1981 on the influence and control by organized crime over the shipping industry in east and gulf coast ports. <sup>1/</sup> According to the Subcommittee's Ranking Minority Member, a Department of Justice 1975 nationwide investigation of the International Longshoremen's Association union resulted in criminal convictions of more than 100 high-level union officials and shipping company executives. Despite these convictions, the Ranking Minority Member stated reports reaching the Subcommittee indicated that corrupt union officials still control certain locals and exert tremendous influence over the union's international structure.

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<sup>1/</sup>Hearings on Waterfront Corruption, U.S. Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, 97th Cong., 1st Sess. (Feb. 17, 1981).



The Permanent Subcommittee May and July 1981 reports discussed similar allegations of corruption and the influence-- or actual control--of organized crime over the International Brotherhood of Teamsters', Central States, Southeast and Southwest Areas Pension Fund 1/ and the union.

### Observations

We believe LMSA needs to do more to detect and remove union officers serving in violation of section 504 of LMRDA.

When LMSA implemented its Compliance Audit Program in fiscal year 1981, it included an audit step to have the investigators determine whether any union officers or employees had been convicted of any crimes noted in section 504. The audit program also provides that such violations, if detected, be referred for investigation or other disposition. We believe that this procedure is a step in the right direction. However, LMSA should, when reviewing the Compliance Audit Program, determine whether this procedure is adequate to assure effective enforcement of section 504.

### RESTRICTIONS ON LMSA'S ENFORCEMENT POWERS

Because of restrictions under LMRDA, LMSA (1) does not investigate complaints concerning election of union officials such as shop stewards and committee representatives, and (2) cannot include election violations the complainant was aware of, but did not include in the protest, in requesting court ordered election reruns.

### Complaints on election of shop stewards and committee representatives

Under title IV of LMRDA a union officer is defined as any constitutional officer or person authorized to perform the functions of a president, vice president, secretary, or treasurer or other executive functions of the union, and any member of its executive board or similar governing body. The act also allows each union to define its constitutional officers. Thus, if the union's definition does not include

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1/See interim and final reports of the Permanent Subcommittee on Investigations regarding its "Oversight Inquiry of the Department of Labor's Investigation of the Teamsters Central States Pension Fund" Senate Report 97-122, 97th Cong., 1st Sess., May 1981, and Senate 97-177, 97th Cong. 1st Sess., July 1981.

shop stewards and committee representatives, these officials are not subject to the law or LMSA's jurisdiction.

We noted that many union members' complaints involve elections of shop stewards and committee representatives. For example, during our visit to the headquarters of the the United Automobile, Aerospace, and Agricultural Implement Workers of America, we found that 90 out of 159 complaints made by its members, between January 1, 1978, and October 14, 1980, dealt with the election of such officials. Since the union's constitution does not define these officials as constitutional officers election, complaints concerning these officials would not be subject to LMRDA and LMSA's investigation. We also noted that the union handled the cases involving shop stewards and committee representatives in the same manner it handles the complaints concerning constitutional officers subject to LMRDA.

LMSA cannot use violations  
of LMRDA not included in  
the complainant's letter

As indicated previously, when LMSA determines that a complainant's allegations concerning a union election are valid, its area offices investigate the alleged violations. If LMSA's investigation determines that the allegations involve violations of title IV that could have affected the election's outcome, LMSA first tries to obtain the union's voluntary cooperation to rerun the election. Should the union refuse, LMSA uses Labor's authority under section 402(b) to bring suit in a civil court requesting a court ordered rerun.

LMSA, however, in bringing its suit, can only include alleged violations included in the complainant's letter, although its investigation may have disclosed other violations--so-called "out-of-scope violations" which the complainant should or may have known. This policy is based on a Supreme Court decision in Hodgson v. Local Union 6799, Steelworkers Union of America (403 U.S. 333) (1971). In this case, the Court ruled that Labor may not include in its civil complaint filed in the court any violation which was known to the complainant but was not raised by him or included in the protest to the union. Therefore, any violation LMSA detects during its investigation, which the complainant should or may have known but was not included in the protest cannot be used by LMSA even though the violation could have affected the election's outcome. However, LMSA may include in its civil complaint out-of-scope violations its investigation discloses if the violations were not known to the complainant.

During our examination we noted many examples of out-of-scope violations detected by LMSA investigations. For example, in 10 of the 43 cases investigated by LMSA between October 1, 1977 and March 31, 1980, LMSA found out-of-scope violations. In 3 of the 10 cases, the out-of-scope violations, if proven true, could have affected the elections' outcome.

In one case, for example, LMSA's investigation revealed that the union violated section 401(e) of LMRDA by failing to (1) conduct the election by secret ballot, (2) mail the election notices at least 15 days prior to the election, and (3) preserve election records for 1 year. The investigation, however, only substantiated one of the two other alleged violations of section 401(e) included in the complainant's letter. As a result, since the violation did not affect the election's outcome, LMSA closed the case without any action. Had LMSA been able to consider the out-of-scope violations, the violations may have subjected the election to challenge and thus a possible rerun.

#### Observations

Although they are not executive-type officers, shop stewards and committee representatives represent the rank and file in day-to-day dealings with employers and have a great deal of influence in the members' treatment and working conditions. Because our access to union records was restricted, we were unable to determine the total complaints that involve such officials. We believe, however, that LMSA, as part of its enforcement of LMRDA, should determine and document the frequency of such complaints, their impact on rank and file members' activities, and whether changes are needed in LMRDA to have these officials' elections covered.

We believe LMSA should also develop a data base for determining whether Labor should seek the authority to prosecute all out-of-scope violations when they affect an election's outcome.

#### LMSA officials' comments

LMSA officials said that LMSA may want to reassess the area of shop stewards' and committee representatives' elections. They stated that the union officials are intermediaries between members and employers and that their duties, sometimes make their positions critical, especially from the standpoint of keeping organized crime from assuming control or influence over the unions' day-to-day activities.

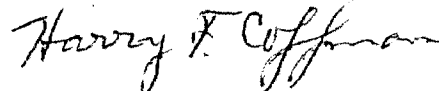
Regarding out-of-scope violations detected by LMSA investigators, the officials acknowledged that Labor is limited by the Supreme Court's decision. However, the

officials believe that Labor, should challenge this issue again.

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We appreciate the courtesy and cooperation of your staff during our review. We would like to be informed of any action you take or contemplate on these matters.

Sincerely yours,



Harry F. Coffman  
Group Director

Enclosure

SCHEDULE SHOWING COMPLAINTS FILED WITH LMSA  
AND COMPLAINTS HANDLED BY 9 SELECTED UNIONS  
DURING PERIOD OCTOBER 1, 1977 TO MARCH 31, 1980

<u>Union</u>	<u>Complaints filed with Labor 1/</u>	<u>Complaints filed with union 2/</u>
Atlantic Independent Union <u>3/</u>	0	1
United Automobile, Aerospace and Agricultural Implement Workers of America <u>3/</u>	16	159
United Brotherhood of Carpenters and Joiners of America <u>4/</u>	27	120
National Education Association <u>3/</u>	2	2
Glass Bottle Blowers Association of the United States and Canada <u>4/</u>	2	2
Amalgamated Lace Operatives of America <u>3/</u>	0	0
United Mine Workers of America <u>3/</u>	3	15
National Treasury Employees Union <u>3/</u>	3	25
Upholsters' International Union of North America <u>4</u>	<u>2</u>	<u>2</u>
Totals	55 ==	326 ===

1/SOURCE: LMSA

2/SOURCE: Officials of nine unions

3/Independent union

4/Affiliated with the American Federation of Labor  
and Congress of Industrial Organizations