

enter into pre-hire collective bargaining agreements with a labor organization whose majority status has not previously been established and which agreement requires membership in the union as a condition of employment. In these "top down" bargaining situations, the BCTD explains, the terms and conditions of employment are negotiated and agreed upon before any employees express support for or actually become members of the union. The BCTD and others expressed the view that it is not possible in these situations to separate disbursements into contract negotiations differentiated from organizing.

Further complicating the situation for building trades unions, these unions assert, is the fact that often these same unions also engage in traditional "bottom up" organizing. For such purposes, these unions would have to separately allocate disbursements for organizing and contract negotiations. Several commenters who supported the proposal to establish the organizing schedule argued that union members needed detailed information on their union's organizing activities to enable them to accurately assess their union's overall success or failure in its organizing efforts. The commenters argued that if, as the Department has concluded, separate allocations cannot be made in the pre-hire situation arising pursuant to section 8(f) of the NLRA, but separate allocations could be made for other traditional organizing efforts by the same union, a member would at best get an incomplete picture and at worst an inaccurate and misleading impression of the union's disbursements and overall effectiveness in organizing.

Labor organizations generally opposed the creation of a separate category for organizing. Comments from officers of labor organizations at both the national/international and local levels expressed strong opposition to the proposal to create a new Form LM-2 schedule on which all major disbursements relating to a union's organizing efforts would be reported and then made publicly available over the DOL website. The common thread to these comments was a significant concern that employers would become privy to sensitive union information not otherwise available, such as organizing strategies or the extent of a union's financial commitment to a given campaign. As one union member who was active in organizing his workplace stated, the new requirements to list major disbursements within eight categories "would do nothing to help union members achieve better representation but would literally put

the union at a disadvantage when organizing or negotiating contracts with companies." These regulations, he argued, "would give the company inside information to whether or not the union would have the ability to sustain a strike or the ability to fight unfair tactics by the company during organizing drives."

Several labor organizations commented that sensitive information of this type has generally not been available to members, except on a showing of just cause. See 29 U.S.C. 431(c). Moreover, they asserted that where just cause has been demonstrated, access to the information is given to union members only, whereas the Department's proposal would provide Internet access to this sensitive information to the world, regardless of the strength of the union's interest in confidentiality or the potential damage that release of this information might cause to the union—and without any showing of "just cause." The AFL-CIO noted that unions would have no opportunity to protect their confidentiality interests by seeking protective orders. It further argued that information that the courts have held is not subject to disclosure, even when the § 201(c) standard of just cause is met, cannot, *a fortiori*, be subject to routine annual disclosure under § 201(b) of the LMRDA.

Numerous labor organizations complained that under the Department's proposal unions would be required to list the names of union "salts," individuals who receive subsidies from a union to assist in its organizational activities while working for an employer that is the subject of the organizing drive. Two specific concerns were raised by the commenters: (1) The listed individuals can be targeted by an employer and subjected to discharge or other retaliatory action; and (2) by identifying these individuals by name on the new schedule, employers would be able to learn of an organizing drive in its early stages and take action to undermine the union's efforts.

In the view of the AFL-CIO, publication of detailed information about what types of investigators and consultants a union is using and for what purposes carried with it the potential to undermine the success of the union organizing efforts. In its view, the Department's concession that unions would not be required to reveal the "name of the employer" or the "specific bargaining unit" that is the subject of organizing activities is insufficient to protect the union's interest in the confidentiality of these campaigns. The AFL-CIO noted that with regard to smaller local unions (or larger unions

attempting to organize a workplace in a new geographic area), employers would be able to easily discern from a labor organization's Form LM-2 what workplaces the union campaign is targeting and what steps the union is taking in pursuit of that campaign.

Several organizations urged the Department to protect from disclosure information that, they asserted, could be used to reveal the target and location of an organizing drive. For example, by requiring that the schedule contain discrete data showing substantial disbursements to a hotel where union organizers are staying (particularly in a small town or remote location, or one with only a single industry or employer) the Department's proposal would enable an employer to learn of the organizing drive and initiate action to undermine the campaign. The unions stated that they attempt to keep such information from an employer whose workforce is being organized. The Steelworkers explained that until they receive a substantial majority of signed authorization cards, they do not disclose to an employer that they have an organizing drive underway.

Another commenter, an employer association, suggested that in lieu of shielding the employer's name or the bargaining unit identity, the reporting unions should be given an opportunity to submit both redacted and unredacted versions of the Schedule and an accompanying "Confidential Treatment Request." Under this procedure, a reporting union could offer grounds to the Department in support of its request for identity exemption, and specify the time period sought for such exemption. The Department would then review the request, and either grant or deny the requested redactions before making the Form LM-2 publicly available.

Based on these comments, the Department has decided to eliminate the separate category for reporting organizing disbursements and to require that disbursements for these activities be reported in combination with Contract Negotiation and Administration disbursements in a single Schedule entitled "Representational Activities." The Department agrees with the comments that organizing strategies deserve some level of protection. In crafting the final rule, the Department has balanced the legitimate need for members to be apprised of how union funds are expended for this important function with the need to minimize the risk of disclosing sensitive information. By combining the categories, the Department also meets the concerns expressed by the building trades unions