

that they would be unable to allocate precise amounts to contract negotiations and organizing efforts.

By combining these Schedules, the Department believes that an employer would be far less likely to be able to identify itself as an organizing target merely by examining Schedule entries. Unless one or more disbursements to an individual meet the threshold to constitute a "major disbursement," disbursements would be aggregated with other non-major disbursements for contract negotiations and administration and organizing, thus further shielding such data. Further, the confidentiality procedures, explained in Section III(b)(2), allow a labor organization to withhold any information that would disclose the recipient or target of an organizing expense in reporting the disbursement on the Form LM-2.

The Department decided that this approach is preferable to the suggestion by one commenter that unions submit both a redacted and unredacted schedule for organizing expenses and a request that certain expenses be withheld from public disclosure. The statute requires the Secretary to publicly disclose the information it receives. 29 U.S.C. 435. ("The contents of the reports and documents filed with the Secretary \* \* \* shall be public information.") Further, the concerns raised by the comments concerning sensitive information, confidentiality, and the burden involved in distinguishing organizing activities from contract negotiation and administration can be addressed without the need to redact a schedule, and thus more effectively serve the transparency objectives of the statute.

Substantial case law under the NLRA recognizes the employee status of individuals paid by a union to seek employment with an employer in order to assist the union in organizing its workforce and the need to protect them from retaliatory conduct by their employer. *See, e.g., NLRB v. Town & Country Electric, Inc.*, 516 U.S. 85 (1995); *Willmar Electric Service, Inc. v. NLRB*, 968 F.2d 1327 (D.C. Cir. 1992), *cert. denied*, 507 U.S. 909 (1993). At the same time, the individual's status as an employee of the union and the amount of the payments received by him affects the obligation of the union to disclose information that may reveal his identity. On both the existing and the revised LM forms, if a "salt" is paid \$10,000 or more per year as an employee of the union, the union is obliged by statute to list him by name on the Form LM-2 and to report the amount of his compensation. If a labor organization makes payments to an individual for

services as a "salt" in organizing an employer that exceed \$5,000 but not \$10,000, the labor organization may choose to refrain from disclosing specific information regarding such payments on the Form LM-2, but only if it indicates that this reporting procedure has been used and provides the underlying information to any union member who requests it. *See* Section III(b)(2).

The Department disagrees with the view that it has applied the LMRDA more stringently to unions than to employers. Unlike the situation with regard to labor organizations, for over 40 years employers and their consultants have been statutorily required (29 U.S.C. 433(a) and (b)) to include particular "persuader" information in their annual reports, while labor organizations have not. Implementation of this statutory scheme by the Department cannot be considered as evidence of either anti-union or anti-employer bias, and the suggestion of a double standard is unwarranted.

The Department also rejects the comment that strike benefits should be reported in the same category as other representational activities. The AFL-CIO argued that because economic pressure devices, such as strikes, work stoppages and lockouts, are "part and parcel of the system" of collective bargaining, this exclusion is bound to create a seriously distorted presentation of the reporting union's collective bargaining disbursements. This argument is unconvincing. The amount that a labor organization spends on representational activities, including strike benefits, will be readily apparent by adding the total disbursements in both schedules together. On the other hand, only by maintaining a separate line item for Strike Benefits will union members be able to discern the true cost of the use of this economic weapon.

Finally, we disagree with the comment that a union's compelled disclosure of information relating to legal fees associated with an organizing campaign would improperly intrude upon the union's attorney-client privilege. This concern is misplaced, as this privilege does not generally extend to the fact of attorney consultation, retention, or employment, including the payment and amount of fees. *See McCormick on Evidence*, § 90 (5th ed. 1999, updated 2003). Further, while the privilege might protect the identity of a client when sought from an attorney, a client can be required to divulge the name of its attorney, which would be relevant here. *Id.*

4. Schedules 16 (Political Activities) and 17 (Lobbying)

The Department proposed separate Schedules on the Form LM-2 for reporting disbursements for "political activities"—intended to influence the selection, nomination, election, or appointment of anyone to a public office, or a particular outcome in a ballot initiative, or for material assessing a political candidate's views on issues—and for "lobbying"—for the purpose of passing or defeating new legislation, advancing the repeal of existing laws, or the promulgation of rules or regulations (including litigation expenses). The Department received some comments supportive of the proposed category for political activities. Labor organizations did not oppose the Schedules and the AFL-CIO did not challenge (apart from its general opposition to any functional reporting) the Department's premise that such information should be reported. The AFL-CIO, however, contends that the separate "political activities" and "lobbying" Schedules should be combined into a single category. Based on the concerns expressed by comments from labor organizations and others, and for the reasons described below, the Department agrees that the two Schedules should be combined into a single revised Schedule 16, "Political Activities and Lobbying."

One commenter stated its belief that the categories are closely related to each other and that each is likely to draw a relatively insignificant portion of the reporting union's resources. It explained that political activity and lobbying by unions typically involve communications with, and mobilization of, the union's membership concerning issues of interest to the membership. Lobbying, as distinct from membership mobilization, it argued, thus is likely to consume a relatively small amount of union resources. The AFL-CIO added that the Department's proposal to require the separate reporting of "political activity" and "lobbying" is exacerbated by the requirement that time estimates be recorded in 10% increments. It asserted that many unions have programs that are at least as important to their members, and often consume more resources, than either "political activity" or "lobbying." Some labor organizations noted that the Department's current reporting rules do not require that payments by a political action committee be reported if such information already is reported to federal, state, or local government agencies. The proposal, it argued, layers another burden on the local unions,