

GLOBAL ELECTION SERVICES INC.

LEGAL RESTRICTIONS ON INVOLVEMENT IN UNION ELECTION CAMPAIGNS

BY UNION OFFICERS, LOCAL UNIONS, STAFF AND CANDIDATES

1. **What are the general legal restrictions concerning the use of union and employer funds, equipment and personnel in a union officers election?**

Section 401 (g) of the Labor Management Reporting and Disclosure Act (LMRDA) prohibits the use of *any* union funds or *any* employer funds to promote the candidacy of any candidate for union office. (29 U.S.C. §481(g).) The law prohibits *both* direct contributions *and* indirect financial support by a union or employer to a candidate for union office. [29 C.F.R. §452.73; Donovan v. Local 70 Teamsters. 661 F.2d 1199, 1202 (9th Cir. 1981)].

2. **Does the prohibition against support and assistance from a union or employer apply only to those locals and companies affiliated or connected with the Local?**

No. The LMRDA's prohibition against the use of union and employer funds applies to **all** Unions and **all** employers, including those not affiliated or connected with the Local. In the most recent version of its publication "Conducting Local Union Officer Elections: A Guide for Election Officials" the Department of Labor (DOL) states:

The prohibition against the use of union or employer funds applies to any union and any employer, not just the union conducting the election or the employer of the union's members.

For example, it is improper for a candidate to have literature duplicated free of charge on a copy machine at a small business owned by a relative of the candidate.

(DOL Guide for Election Officials).

3. What if the prohibited assistance is something small and of little real value, like the use of a union or company copier machine to make a couple copies of campaign literature?

It would still violate the law and could be grounds for setting aside the election. The DOL regulations state, “*Any such expenditure regardless of the amount, constitutes a violation of section 401(g).*” (29 C.F.R. §452.75.) The prohibition against any use of union or employer funds and resources in promoting a candidate for union office means that any amount of unlawful assistance, no matter how minimal, could be the basis for the Labor Department overturning the election.

There is no *de minimus* exception to this rule. Union elections have been overturned by the federal courts in cases where the "unlawful" assistance had a monetary value less *than twenty dollars!* See Shultz v. Local Union 6799, United Steelworkers of America, supra. 426 F.2d 969 (9th Cir. 1970) (court ordered re-run of election where goods and services worth \$13.04 used to print campaign leaflets; the fact that the candidate involved reimbursed the International for the expense *after the fact* did not correct the violation).

4. What if the officers of the union, the company or the candidate doesn't know that its equipment, personnel, funds or other property were used in support of a particular candidate?

It would still break the law. The use of Union or employer funds or facilities is a violation of federal law even if union officials or the employer do not know about or approve the use regardless of the *amount* of the expense, or the *motivation* for it. The DOL regulations that implement the LMRDA election provisions are clear on this point: “*any showing of preference by a labor organization or its officers which is advanced through the use of union funds to criticize or praise any candidate....*” constitutes an election violation.

5. What are some examples of prohibited campaign activity involving use of Union or employer funds or property?

The following are examples of campaign activity by union officers, locals and staff that are strictly prohibited by law and by the Local's Election Rules:

campaigning on work-time paid for by the Union or the Employer;

use of union or employer owned or leased equipment, such as vehicles, telephones or cell-phones, fax machines, copy machines, computers, website, or email;

use of union or employer supplies, such as stamps, paper, stationery, and envelopes;

use of Union or employer employees to prepare campaign literature while on paid time;

use of Union or company letter-head;

use of or access to union membership or union and company mailing lists; (except that the LMRDA and the Local's Election Rules permit candidates to inspect, but not copy, the official membership lists at the Local's headquarters;

use of Union or employer property or facilities, such as a Union hall or meeting rooms, for meetings, speeches or other campaign activities *for or against a particular candidate*;

printing articles which support or criticize an individual's candidacy in the Union newspaper, bulletin, newsletter or other publications;

giving free services or special discounts to a candidate, such as printing, photocopying, web-design, etc.

the use of business agent or other union representative privileges to gain access for candidates to employer facilities not accessible to the public.

6. Are there any exceptions to the prohibition against using employer funds, equipment or personnel?

No. Receiving any support or assistance from any employer not only violates the union election laws; it could also constitute a criminal offense. However, allowing candidates access to employer working areas is permissible, provided that access is given to all candidates, without discrimination or favoritism.

7. Are there any exceptions to the prohibition against using Union funds, equipment or personnel?

Yes. There are two limited exceptions to the general rule prohibiting the use of Union funds in a Union election campaign: First, it is permissible for a Union to allow candidates to use their equipment, facilities, or publications for campaign purposes so long as notice is given and equal use is provided to all other candidates, and no preference for one candidate over another is expressed or shown in any way. Second, campaigning by Union officials, which is "incidental to regular union business," does not violate the law.

8. What are some examples of lawful use of a union's property or staff in an internal election?

The Local (and affiliates) may lawfully publish candidates' statements in their newspapers

or bulletins, provided all candidates receive completely equal notice, opportunity and treatment. Similarly, unions may sponsor debates at which all candidates for a particular office are afforded equal notice and opportunity to express their views to the membership. Unions may also pay for "for notices, factual statements of issues not involving the candidates, and other expenses necessary for the holding of the election." (29 C.F.R. §452.73 and §452.74). The key is equal notice, access and opportunity for all candidates.

9. Is it generally unlawful for paid union officers to campaign during work for the Union?

Yes. The law considers the paid time of union officers and staff to be assets of the union. So under the law, campaigning while on paid union time is no different than a candidate receiving money or "wages" from the union to do electioneering.

10. Is there a clear legal line between conducting official business and electioneering?

Unfortunately, no. Some courts have found unlawful electioneering on paid union time or while acting in an official capacity for the union by simply praising or criticizing a candidate's record while giving a report to the membership regarding union affairs. For example, in Brennan v. Sindicato Empleados, 370 F.Supp, 872, 85 LRRM 2551, 2553 (D.C. Puerto Rico, 1974), the court found an LMRDA violation where a union president gave a speech at a union nominating meeting, where he "praised the accomplishments of the union under his long leadership [and] attacked the policies and personalities of [his] opponents." The court held that "the use of the Union's hall by [the] incumbent" for a speech "without an equivalent offer to other candidates to use such facilities constituted the use of union facilities for personal campaign purposes" (Id. at 2555).

11. Must salaried officers running for re-election go on paid vacation or take unpaid leave in order to do any campaign activities during a regular work day?

Technically, no; but they run a serious risk of being found guilty of improper electioneering on paid union time. The DOL regulations allow for salaried officers to do a small amount of campaigning during their workday, provided it is "incidental to regular union business." The problem here is that there is very little case law that defines what is "incidental to regular union business." Significantly, in its Election Guide for Union Officers, the only example of permissible "incidental" campaigning offered by the DOL is "shaking hands with members while visiting work sites on official business." However, incumbent officers are not advised to rely on this exception because the Local's Election Monitor, the National or International and the DOL may have different views than they do about what activities go beyond

“incidental to regular union business.”

12. May union officers, staff and candidates lawfully do campaign activities during non-paid, non-work times, like evenings and weekends, when not on vacation or paid leave?

Yes. Union officers, candidates and staff are free to engage in campaign activities on their own personal time, the same as any other union member. This includes days and hours during the work-week that are clearly not work time.

13. May union officers and staff lawfully do campaign activities during work breaks and meal periods?

Yes. Union officers and staff can remain on the Union payroll during the election period, and may campaign during portions of the work-week so *long as the campaign activities take place outside of their normal working hours*. This can include meal-hours, or breaks in the day between Union business. As a practical matter, however, it is often very difficult to distinguish between "on the clock" and "off the clock" hours of salaried Union officials or staff who typically work long hours at irregular times, and who routinely work nights and weekends. At least one court has held that campaigning by union officials during regular working hours did not violate the LMRDA where the evidence showed that they (1) did not work regular hours and typically worked more than 40 hours a week, (2) the Union had an informal policy allowing them to take time off during regular business hours to attend to personal business, and (3) *the hours they worked outside of regular business hours substantially exceeded the time they spent campaigning*. Dole v. Machinists Local Lodge 751-A. 132 LRRM 2498, 2501-02. However, there is no guarantee that the Local's Election Monitor, Election, the National or International Union or the DOL will apply this ruling in any particular election challenge here.

To avoid claims, it is recommended that officers and staff who do campaign activities during work breaks and meal periods keep detailed written logs documenting their daily work and campaign activities. The purpose of the log is to show that officers or staff members performed their usual, paid work tasks during their usual work hours, and that the time spent campaigning occurred outside of, or in addition to, their usual work hours. Although not required, this kind of record-keeping can be essential to defend against a post-election charge that officers or staff were campaigning on paid time.

14. What is the safest way for paid officers to engage in election activities for themselves or for other candidates?

The safest approach is for union officers to limit their election activities to particular days when they are either: a) not on paid union time for the entire day; or, b) on paid vacation for that entire day *and* the union payroll records show use of accrued vacation time.

Arrangements to take accrued, paid vacation time and unpaid leaves of absence should be made according to the Union's established policies, practices and procedures for taking time off.

15. May a union officer or staff person do campaign activities while traveling on union business that is paid for by the Union?

Yes, in limited circumstances. Campaigning while an officer or staff member is traveling on union business, or conducting work outside the union offices does not violate the LMRDA, if it can be shown:

(1) That the trip or work outside the Union office was necessary to the conduct of union business and would have been taken *regardless of the election*; and

(2) That any campaign activities connected with the trip took place outside of working hours, before or after the official union business has been performed.

This, too, may be a *very hard line to draw* in some circumstances. We, therefore, recommend that the candidates exercise extreme caution in this area to avoid possibly tainting an otherwise valid election result. Business trips paid for with Union funds to locations a union officer/candidate does not ordinarily have reason to visit, or visits to work-sites not typically serviced by an officer in performing his or her usual job duties during the election period could be difficult to defend against a post-election challenge and are not recommended.

16. May a union officer publicly endorse a candidate by, for example, signing a letter of support or being named as a supporter in campaign material?

Yes and no. (Yes, it is a typical lawyer's answer and no, I can't help it. Here's why.) It is unlawful for a union officer to use his/her union office or the union letterhead and office supplies to support any candidate. However, because union officers also have the same rights as individual members, they may lawfully use their name to publicly support or endorse a candidate provided they are identified as a union member but not as an officer. For example, an open endorsement by "Thom Yorke, Local 1 member" is lawful; but it would be unlawful if the endorsement were by "Thom Yorke, Local 1 President."

17. What are the consequences of engaging in prohibited campaign activities?

Prohibited campaign or election activities can result in the overturn of election results and the re-running of offices whose outcomes are shown to be affected by the violation. This imposes unnecessary expense and difficulty for the Union and the membership.

Candidates and their supporters who do not observe the requirements of the law and the

Election Rules also place at risk their own eligibility to run and hold office, depending on the circumstances and severity of election violations. It is also important to note that receiving anything of value from an employer or employer representative may constitute a criminal offense, punishable by a large fine and imprisonment.