

# LM-30 reporting changes for 2008

In mid-2007, the Department of Labor issued its Final Rule revising Form LM-30. The Final Rule contains some significant changes in the reporting requirements for officers and employees of labor unions. The BLET initially reported on these changes at [www.ble-t.org](http://www.ble-t.org) and in the September 2007 issue of the *Locomotive Engineers and Trainmen News*.

All changes are explained in detail by DOL in a lengthy 56 page, single-spaced report published at 72 Federal Register 36106. Here is a brief explanation of the changes in the reporting requirements that we believe will be most important to the BLET and its members:

- These changes become effective for fiscal years beginning after August 2006. For those filers operating on a calendar year basis, this means that 2008 is the first reporting year that will be affected, with reports due by March 30, 2008. (Note that it is the official's fiscal year not the union's fiscal year, that governs LM-30 filing.) For the 2007 fiscal year, the existing rules remain in place.
- No report has to be filed if the payments a union official receives from any employer total \$250 or less. Further, payments of \$20 or less do not count at all and do not have to be aggregated in determining whether the \$250 level has been reached unless those payments are part of a scheme to evade reporting (such as, taking more than \$250 worth of season tickets on a game-by-game basis where each ticket costs less than \$20). According to DOL, "[b]y excluding expenses of \$20 or less from the \$250 computation...

[t]here will be no need to keep records of coffee and pastry service, modest lunches, or similar 'hospitality gifts'"

- Union officials may attend up to two "widely attended gatherings without incurring a reporting obligation provided the employer or business paying for the event spent \$125 or less per person attending the gathering. "Widely attended" means that a large number of persons, both union officials and people with no relationship to the union, are expected to attend.
- Company employees who are permitted to conduct union business on company time without loss of pay are considered employees of the union during that no-docking period and must report the value of the pay they get from their company employer if that pay is pursuant to a collective bargaining agreement and they spend more than 250 hours per year doing that. Any such payments that are not made pursuant to arrangements set forth in a collective bargaining agreement must be reported regardless of how many hours they cover. Persons covered by this requirement now include union stewards, which likely will be read to encompass local committeemen handling grievances, claims, and discipline investigations on behalf of the union. If a report must be filed "[t]he filer must also calculate the hourly monetary value of any fringe benefits received, and include this figure in the total." Needless to say, this is a very onerous requirement.
- Payment to a union official from any employer or consultant the purpose of which is "to influence the

outcome of an internal union election" is now also a reporting event.

- A payment from or other financial interest in "a not-for-profit employer that receives or is actively and directly soliciting (other than by mass mail, telephone bank, or mass media) money, donations, or contributions from an official's union" is now reportable.
- Redefining when a union is "actively seeking to represent" an employer's employees, the Department now distinguishes "between situations where a union has taken concrete steps to organize and those where the union merely has an interest in organizing the employees of the employer in question." The latter does not trigger the reporting obligation.
- Officers (but not employees) of national and intermediate levels of a union must report payments they receive from employers that do business with their level of the union and/or with lower levels of the union. This is referred to as DOL's "top-down" approach. Officers and employees of intermediate and local levels of a union do not have to report payments they receive from employers or businesses that deal with higher levels of the union. Payments received by spouses and minor children of officers from employers who deal with lower levels of the officer's union are excepted from the reporting requirement. However, officers and employees (and their spouses and minor children) of all levels of unions still must report payments from employers who do business with the level of the union with which they are associated/employed.

- Payments that officers or employees receive from a trust are treated the same as payments received from an employer or business that deals with the union.
- DOL has now defined what constitutes a “substantial part” of an employer’s business. If a union official or his or her spouse or minor child has an interest in or receives payments from a vendor that buys, sells, leases or otherwise deals with the business of an employer whose employees are represented by the official’s union, the official must report those payments if the vendor’s dealings with that employer generate more than 10% of the vendor’s annual receipts. If the vendor won’t tell the union official, then the official “should make a good faith estimate, based on information reasonably available, whether the 10% threshold has been met.” If no report is filed, the Department instructs that the written request to the vendor and the worksheet to arrive at the figure less than 10% should be retained. Then, “[i]f an investigation is conducted, there is no risk of prosecution absent unusual circumstances calling into doubt the legitimacy of the good faith estimate.”
- Purchase or sales of stock in an employer whose employees the union represents must now be reported (DOL has eliminated the previous exception). This includes the payments that a union official receives for selling back to an employer options he obtained as an employee of the employer.
- Payments that an official of one union receives from a different union are now considered payments from employers for LM-30 reporting purposes. (This does not include payments received from unions that are affiliated with the union the officer or employee serves as an officer or employee — i.e., locals, intermediate bodies, and parents of the same union). These are the circumstances in which a report will be due: the paying union “(1) has employees represented by the official’s union; (2) has employees in the same occupation as those represented by the official’s union; (3) claims jurisdiction over work that is also claimed by the official’s union; (4) is a party to or will be affected by any proceeding in which the official has voting authority or other ability to influence the outcome of the proceeding; or (5) has made a payment to the filer for the purpose of influencing the outcome of an internal union election.”
- “Potential vendors or service providers attempting to win business with a union will be considered to be ‘dealing’ with the union to the same extent as vendors who are already doing business with the union... Under certain circumstances, the payment itself will be evidence of the solicitation of business, such as a potential vendor who treats a union official to a golf outing and dinner to discuss the vendor’s products.”
- DOL has explicitly identified designated legal counsel as employers from whom cash payments “or items of value such as trips and golf clubs” are reportable items. It does not matter if the attorney is providing the payment in hope of becoming designated is not successful in getting a designation.
- DOL has also issued new or modified definitions for certain key terms:
  - Actively seeking to represent — *See above;*
  - Arrangement — *Very broad, including unwritten understandings;*
  - Benefit with monetary value — *Virtually anything over \$20;*
  - Bona fide employee — *Redefined to exclude employee working for union on company time;*
  - Bona fide investment — *Nothing received as a gift;*
  - Dealing — *Payments must be reported even if they do not lead to consummated business transactions (includes soliciting business);*
  - Directly or indirectly — *“By any course, avenue or method;”*
  - Filer/Reporting Person/You — *Now synonymous and interchangeable;*
  - Income — *All income from whatever source derived;*
  - Labor organization — *“Top-down” approach;*
  - Labor organization employee — *Now includes stewards and company employees on paid leave to do union work (Doesn’t include independent contractors of the union);*
  - Labor organization officers — *Now includes trustees who are appointed to oversee a trusteeship (Does not apply to those solely with auditing responsibility in the union);*
  - Legal or equitable interest — *Explanatory bullets added to definition;*
  - Minor child — *Under age 21, regardless of marital status;*
  - Substantial part — *10% or more.*
- You should be aware that the layout of the form itself has been significantly overhauled. Supposedly, this will make it easier to fill out.
- Finally, these changes do not revise LM-10 filing rules (the requirements that govern what employers must report). DOL says that those changes will be announced in the form of revisions to LM-10 FAQs sometime in the future. •