



# Issue Backgrounder

13952 Denver West Parkway • Suite 400 • Golden, Colorado 80401  
www.IndependenceInstitute.org • 303-279-6536

## Setting the Standard for Pro-Worker Transparency: Ensuring Financial Disclosure from Colorado's Public Employee Unions

by Benjamin DeGrow,  
Education Policy Analyst

March 2009  
Issue Backgrounder 2009-B

### Summary

As the influence of organized labor grows in Colorado's public sector, so does the need for greater accountability and transparency. Through stricter enforcement of a federal law designed to ferret out union corruption, the U.S. Department of Labor in recent years has set the highest standard for disclosure of union finances. This enforcement has yielded real but limited gains in bringing restitution to members and fee-payers wronged by the malfeasance of certain union officials.

The examples of 13 states that require unions to make available basic financial information to requesting members and fee-payers offer a good starting place for state reform, but are still inadequate. Colorado rather ought to model its practices after federal law, providing for the online public availability of useful, thorough, and transparent financial information from labor organizations. Adopting this approach would promote healthy accountability to Colorado government workers and citizens at large.

### Introduction

In one of his first official memoranda, President Barack Obama instructed the heads of federal agencies to administer the Freedom of Information Act (FOIA) with "a presumption in favor of disclosure." Indeed, federal bureaucrats ought to honor the spirit of the public records law to the fullest extent possible. Obama made the case for his policy with a clear, persuasive opening sentence: "A democracy requires accountability, and accountability requires transparency."<sup>1</sup>

Through FOIA and similar laws at the state level,<sup>2</sup> governments are held to a very basic level of transparency. Following the federal government's lead, a movement has grown to make state

and local government revenue and expenditure information more readily accessible to citizens through online searchable databases.<sup>3</sup>

Likewise, Securities and Exchange Commission regulations governing disclosure of corporate executive compensation, spending, and financial interests provide vital transparency to shareholding investors and the general public.<sup>4</sup>

The principle should apply not only to government agencies and corporations, but also to labor organizations. Workers who pay dues or fees to a union deserve at minimum the basic rights of taxpaying citizens (to know how their money is being spent) or shareholding investors (to have access to information about how their own organization is being operated, and what the money is being used for).

## **U.S. Department of Labor and Union Disclosure**

### *Enforcing Disclosure under LMRDA*

Approved by the U.S. Congress and signed into law in 1959, the Labor-Management Reporting and Disclosure Act (LMRDA)<sup>5</sup> was designed to combat union corruption and to promote “basic standards of democracy and fiscal responsibility in labor organizations.” The law guarantees all union members under the jurisdiction of the National Labor Relations Act (NLRA) the right to fair elections, free speech, and access to bargaining documents that govern workplace relations.

Most private-sector workers are covered by NLRA. Notable exceptions are agricultural laborers, domestic workers, independent contractors, railroad workers, and airline employees. NLRA does not apply to federal, state, or local government employees.<sup>6</sup> Individual states have jurisdiction over policies of labor relations pertaining to the employees of their state and local governments, and anything else not covered by federal law.

For more than four decades, the portion of LMRDA requiring financial disclosure was weakly enforced. In 2003 the U.S. Department of Labor under then-Secretary Elaine Chao updated the rules to require unions with \$250,000 or more in revenues to provide substantial disclosure on LM-2 forms (as well as LM-3 and LM-4 forms) filed with the Department.

The information on these forms breaks down sources of income and categories of spending, with individual expenditures of \$5,000 or more itemized. Also included are salary, benefit, and expense account details for union officers and employees – as well as estimated percentages of work time spent on administrative tasks, representation, and political activities.<sup>7</sup>

During the rulemaking process union officials objected, citing costs for compliance that turned out to be drastically overstated. An AFL-CIO prediction that the organization would have to spend more than \$1 million to comply with the updated disclosure requirements overstated the cost by a factor of 20.<sup>8</sup>

### *Undermining Enforcement*

The Office of Labor-Management Standards (OLMS) enforces the provisions of the LMRDA by collecting and posting financial disclosures, and by conducting audits and investigations to root out union corruption. In 2007 Congress reduced OLMS funding. Representing less than one-half

percent of the Labor Department budget, OLMS was the only Labor Department agency to receive a cut.<sup>9</sup>

Despite a funded capability to audit less than 5 percent of incoming union financial reports, OLMS investigations yielded 46 indictments for embezzlement, theft, fraud, and related offenses in 2008 alone. The same year, OLMS effected nearly \$3 million in restitution orders to benefit union members harmed by financial misdeeds. A 2006 case against officers of the Washington [D.C.] Teachers Union resulted in more than \$4 million in restitution.<sup>10</sup>

In instituting stricter rules governing relations between lobbyists and political appointees, President Barack Obama declared: “Let me say it as clearly as I can: Transparency and the rule of law will be the touchstones of this presidency.”<sup>11</sup> However, the Obama administration has given no indication that the same principles will be applied to exposing and rooting out corruption in organized labor.

On January 30, 2009, Obama announced a 60-day delay in the implementation of a revised LM-2 form that would reveal the value of union officials’ paid benefits, and would mandate some other changes to enhance disclosure.<sup>12</sup> Legal experts have speculated that union leaders will secure further easing of the disclosure requirements under new Secretary of Labor Hilda Solis.<sup>13</sup>

### **The Need for State-Level Union Transparency**

LMRDA does not apply to organizations that represent only government workers. Even so, organizations like the National Education Association (NEA) that represent at least one NLRA private-sector employee are required to comply. At the same time, many state and regional affiliates of the NEA and other public-sector unions effectively have been exempted from the disclosure requirements. Transparency for dues-paying educators is lost when money transferred through the organization chain is disbursed by the Colorado Education Association.

Under Secretary Chao, the U.S. Department of Labor sought to close this loophole. Several NEA affiliates responded by filing suit, which has resulted in the years-long legal battle of *Alabama Education Association v. Chao*. In March 2008, a U.S. District Court judge ruled in favor of the Labor Department’s effort to extend the enforced application of disclosure rules.<sup>14</sup>

However, the attempt to close the loophole has yet to take effect, and may never take effect. The case remains tied up in legal disputes. Regardless of the final disposition, the Obama administration is very likely to moot the rule on its own, and let state-level union affiliates off the hook. While the federal government wrestles with the decision to enhance or roll back union financial disclosure, the state of Colorado also has a responsibility to protect the rights of unionized public employees in Colorado.

### **Public Employee Unions in Colorado**

In 2008, roughly 77,000 (or 22 percent) of Colorado’s 350,000 public employees belonged to a union. An additional 15,000 (or 4.5 percent) non-union members, mostly K-12 public education employees, were covered by a union collective bargaining agreement.<sup>15</sup> Among them are many who pay mandatory fees to unions without the benefit of membership—including some employees of the city governments in Pueblo and Commerce City, and of seven Colorado school districts.<sup>16</sup>

The National Education Association boasts about half of the state's total public employee union membership.<sup>17</sup> Other public education employees belong to the American Federation of Teachers. Nearly 90 percent of Colorado's 49,000 teachers, working in 42 different school districts, are covered by an exclusive bargaining contract, as are thousands of classified employees in at least 15 different districts.<sup>18</sup>

Since Governor Bill Ritter's November 2007 executive order<sup>19</sup> opened up state government to collective bargaining, union membership among the state's 32,000 employees has started to grow. As bargaining sessions begin in 2009, the share of public employees with union representation is likely to swell dramatically.

Colorado public employee union members and fee-paying non-members also include law enforcement officers, fire fighters, and other municipal workers. Together with Colorado's public school and state government employees, they deserve greater accountability than is currently required by law.

The citizens of Colorado also deserve the benefit of greater accountability. Hundreds of thousands of Colorado taxpayer dollars subsidize the release time of local teachers union officials to perform union business.<sup>20</sup> A 2005 citizen complaint uncovered extensive evidence that staff of the Colorado Education Association and a local affiliate engaged directly in political campaign activities.<sup>21</sup> For the integrity of clean government, citizens have the right to know how subsidized union officials are spending their time and money.

Even if not directly subsidized by taxpayer funds, organizations that bargain over the operation of public services should not be immune to public scrutiny. The need is made even stronger by the fact that the Colorado Supreme Court has granted government employees the right to strike – in effect, to disrupt or cancel essential services.<sup>22</sup> (As an exception, the Colorado General Assembly in 2008 enacted legislation that makes “unlawful” any strikes or work slowdowns performed by “employees in the state personnel system.”<sup>23</sup>)

## **Union Disclosure in Other States**

Thirteen states provide for some statutory protection of the rights of government employee union members and fee-payers to see how labor organizations use their dues and fee money. Six of the 13 states also require financial reporting to be collected and kept by state agencies<sup>24</sup>:

- Alabama (for organizations representing 25 or more employees)
- Connecticut
- Florida
- Kansas (for organizations representing 100 or more employees)
- Massachusetts
- Ohio

Nevertheless, no state operates with the same level of transparency as currently operative in the federal enforcement of LMRDA. Despite the fact that state governments oversee unions negotiating with taxpayer-funded government agencies rather than with private businesses, no state currently requires online disclosure of public-sector union finances. The result is upside-

down: the transparency and accounting standards for government unions ought to be at least as strong (indeed, stronger) than the standards for private-sector unions.

## Conclusion and Recommendations

As public-sector union membership and representation grow in Colorado, so does the need for accountability and transparency. Following the actions of other states, the Colorado General Assembly should consider reform to ensure greater financial disclosure from public-sector labor organizations.

Each year unions should provide detailed financial reports both to members and non-member agency fee-payers, as well as the state Department of Labor. Further, Colorado should become a leader in union financial disclosure by classifying the reports as public information and making them available online in an accessible and searchable format.

Detailed financial reports submitted annually to the state Department of Labor should include the following information<sup>25</sup>:

- A complete listing of assets and liabilities at the beginning and end of the year
- Amount of total receipts and their respective sources, including the value of services provided by other labor organizations
- Salaries, allowances, and disbursements to all union officers and staff
- Estimated percentages of work time spent on general overhead, administration, representational activities, and lobbying and political activities
- Information on all law firms, public relations firms, and lobbyists employed by the labor organization
- A list of all organizations to which the labor organization contributed, including dollar amounts
- Details on all direct and indirect loans made to officers, employees, and members
- Details on all direct and indirect loans made to any business enterprise
- A listing of all individual expenditures, including the purpose of the expenditure

Just as shareholders must be apprised of corporate financial activities, so union members deserve to be informed how their dues funds are being spent at every level. Because some public-sector unions are taxpayer-subsidized and many have the right to strike and disrupt public services, citizens at large also have a right to know. Increased government union transparency will enhance both public accountability and workplace democracy.

## Notes<sup>26</sup>

---

<sup>1</sup> Barack Obama, Memorandum for the Heads of Executive Departments and Agencies, "Subject: Freedom of Information Act," January 21, 2009, [http://www.whitehouse.gov/the\\_press\\_office/FreedomofInformationAct/](http://www.whitehouse.gov/the_press_office/FreedomofInformationAct/)

<sup>2</sup> Includes the Colorado Open Records Act, Colo. Rev. Stat. § 24-72-201 *et seq.*

<sup>3</sup> The Federal Funding Accountability and Transparency Act of 2006, co-sponsored by then-Senator Barack Obama, resulted in the creation of an online financial database at <http://www.USASpending.gov> - For more information on activities at the state and local level, see Americans for Tax Reform, Center for Fiscal Accountability (<http://www.fiscalaccountability.org/>) and Colorado Spending Transparency (<http://transparency.i2i.org/>)

<sup>4</sup> "Companies with more than \$10 million in assets whose securities are held by more than 500 owners must file annual and other periodic reports." See <http://www.sec.gov/about/laws.shtml> - Reports are searchable online on the EDGAR database at <http://www.sec.gov/edgar/quickedgar.htm>

<sup>5</sup> Also known as the Landrum-Griffin Act, to denote the names of its primary legislative sponsors.

- 
- <sup>6</sup> [http://www.nlr.gov/workplace\\_rights/employees\\_or\\_employers\\_not\\_covered\\_by\\_nlra.aspx](http://www.nlr.gov/workplace_rights/employees_or_employers_not_covered_by_nlra.aspx)
- <sup>7</sup> Michael Reitz, "Is the Sun Setting on Union Accountability?", Capital Research Center *Labor Watch* (January 2008), <http://www.capitalresearch.org/pubs/pdf/v1199377703.pdf> - A searchable database of LM-2 forms is available at <http://unionreports.gov>
- <sup>8</sup> Reitz, "Is the Sun Setting on Union Accountability?"
- <sup>9</sup> "Union Watchdog Agency Has Budget Cut," *Washington Times*, July 30, 2007, <http://www.washingtontimes.com/news/2007/jul/30/union32watchdog32agency-has32budget-cut-91601303/>; National Right to Work Committee, "Congress Winks at Corrupt Union Bosses," *National Right to Work Newsletter* (January 2008), <http://www.nrtwc.org/nl/nl200801p4.pdf>; Reitz, "Is the Sun Setting on Union Accountability?"
- <sup>10</sup> Office of Labor-Management Standards (OLMS), Criminal & Civil Actions, "Recent Criminal Actions", [http://www.dol.gov/esa/olms/regs/compliance/enforcement\\_1.htm](http://www.dol.gov/esa/olms/regs/compliance/enforcement_1.htm); NRTW, "Congress Winks at Corrupt Union Bosses"; Reitz, "Is the Sun Setting on Union Accountability?"
- <sup>11</sup> Christina Bellantoni and Jon Ward, "Obama pushes ethics, troop withdrawal," *Washington Times*, January 22, 2009, <http://www.washingtontimes.com/news/2009/jan/22/obama-starts-day-1-with-tougher-ethics-rules/>
- <sup>12</sup> U.S. Department of Labor, Employment Standards Administration, 29 CFR Parts 403 and 408, "Labor Organization Annual Financial Reports; Final Rule," *Federal Register* 74, no. 12 (January 21, 2009): 3678 ff, <http://edocket.access.gpo.gov/2009/pdf/E9-503.pdf>; Michael Reitz, "Obama likes transparency, except for rank-and-file union members," *Liberty Live: The Official Blog of the Evergreen Freedom Foundation*, January 30, 2009, [http://www.libertylive.org/blog\\_main/post.php?post\\_id=1147](http://www.libertylive.org/blog_main/post.php?post_id=1147). Other proposed changes include more detailed disclosures of "travel reimbursements indirectly paid on behalf of labor organization officers and employees" and greater itemization of moneys received under different revenue categories. The Labor Department estimates that the new rules would require an additional 150 hours from each reporting organization in the first year and about 15 hours per year thereafter.
- <sup>13</sup> Holly Rosenkrantz, "Unions win fast under Obama, target financial, organizing rules," *Bloomberg Press*, February 11, 2009, <http://www.bloomberg.com/apps/news?pid=20601103&sid=aNM7XDto9mII&refer=us> - George Washington University law professor Charles Craver is quoted as saying: "Labor will still have to maintain certain financial reports, but it will wind up less burdensome."
- <sup>14</sup> OLMS, "District Court Grants Summary Judgment in Favor of Department in *Alabama Education Association v Chao*," OLMS News (April 6, 2008), [http://www.dol.gov/esa/olms/regs/compliance/OLMS\\_News/olms\\_news\\_2008/olmsnews0608.htm](http://www.dol.gov/esa/olms/regs/compliance/OLMS_News/olms_news_2008/olmsnews0608.htm); Jennifer Hickey, "Courts Side With Workers on Union Financial Disclosure," Capital Research Center *Labor Watch* (May 2008), <http://www.capitalresearch.org/pubs/pdf/v1210085334.pdf>; Scott Dilley, "Public Sector Unions Must Disclose Financial Dealings, District Court Rules," *Budget and Tax News* (June 2008), <http://www.heartland.org/publications/budget%20tax/article/23190/PublicSectorUnionsMustDiscloseFinancialDealingsDistrictCourtRules.html>
- <sup>15</sup> Union Membership and Coverage Database, <http://unionstats.com>
- <sup>16</sup> All Commerce City police officers are obligated to pay "fair share" fees to the Fraternal Order of Police, and all Pueblo police officers, fire fighters, and other non-supervisory employees are obligated to pay a "service charge" or "service fee" equivalent or nearly equivalent to the rate of full union membership for the ostensible purposes of administering their respective collective bargaining agreements. Non-union member teachers in Colorado Springs School District 11, Pueblo City Schools, Pueblo County Schools, Alamosa School District, and South Conejos School District are required to opt out of paying full union "dues equivalency" - in most cases on an annual basis. Some or all non-union member classified public school employees in Denver, Pueblo City, Pueblo County, and Brighton have the same opt-out requirement. In an unusual "modified union shop" arrangement, Lake County School Districts classified employees are required to join the union within 30 days of employment or lose their jobs.
- <sup>17</sup> The Colorado Education Association (CEA), state affiliate of the NEA, reported 35,463 active members at the close of 2008. See Education Intelligence Agency *Communiqué*, February 23, 2009, <http://www.eiaonline.com/archives/20090223.htm>
- <sup>18</sup> Colorado Department of Education (CDE), Colorado Education Statistics and Data, [http://www.cde.state.co.us/index\\_stats.htm](http://www.cde.state.co.us/index_stats.htm); CDE, Colorado School Districts Collective Bargaining Agreements, <http://www.cde.state.co.us/cdefinance/sfCBA.htm>
- <sup>19</sup> State of Colorado, Office of the Governor, Executive Order D 028 07, "Authorizing Partnership Agreements with State Employees."
- <sup>20</sup> Benjamin DeGrow, *Take Public Funds Off the Negotiating Table: Let Teachers' Unions Finance Their Own Business*, Independence Institute Issue Paper-5-2004, <http://www.independenceinstitute.org/articles/5-2004.pdf>; DeGrow, *Adams 12 School District Increases Subsidy*, Issue Backgrounder-2005-A, <http://www.i2i.org/articles/IB%202005-A.pdf>

---

<sup>21</sup> Benjamin DeGrow, "Teachers Union in Poudre Puffs Bacon's Election," Independence Institute opinion-editorial, July 26, 2006, [http://www.i2i.org/main/article.php?article\\_id=1298](http://www.i2i.org/main/article.php?article_id=1298); Face The State editorial, "Court decision kills hope for real campaign finance reform," May 28, 2008, <http://facethestate.com/articles/court-decision-kills-hope-real-campaign-finance-reform>. Overturning a Court of Appeals decision, the Colorado Supreme Court ruled that union officials did not illegally coordinate with a state senate campaign. See *Colorado Education Association v Rutt*, 184 P.3d 65 (Colo.2008), [http://www.courts.state.co.us/Courts/Supreme\\_Court/opinions/2006/06SC559.pdf](http://www.courts.state.co.us/Courts/Supreme_Court/opinions/2006/06SC559.pdf)

<sup>22</sup> *Martin v. Montezuma-Cortez School District RE-1*, 841 P.2d 237, 239-41, 79 Ed. Law Rep. 256 (Colo. 1992).

<sup>23</sup> Colo. Rev. Stat. § 8-1-126.

<sup>24</sup> Evergreen Freedom Foundation, Labor Policy Center, *State Labor Policy Reform Guide* (2007). Alabama Code § 25-7-5b; Connecticut General Statutes § 31-77; Florida Statutes Ch. 447.305; Kansas Statutes § 75-4337; General Laws of Massachusetts Ch. 150.E § 14; Ohio Revised Code § 4117.19. States that have encoded union members' rights to financial disclosure but lack the requirement for labor organizations to file a report with a state agency are: California, Hawaii, Iowa, Maryland, New York, Oregon and Texas.

<sup>25</sup> Recommendations for types of information to be disclosed are based on the "Union Financial Responsibility Act," a piece of model legislation adopted by the American Legislative Exchange Council, <http://alec.org>

<sup>26</sup> Special thanks to Scott Dilley, labor policy analyst, Evergreen Freedom Foundation, for providing helpful comments in review of a draft of this paper.

Copyright ©2009, Independence Institute

INDEPENDENCE INSTITUTE is a non-profit, non-partisan Colorado think tank. It is governed by a statewide board of trustees and holds a 501(c)(3) tax exemption from the IRS. Its public policy research focuses on economic growth, education reform, local government effectiveness, and Constitutional rights.

JON CALDARA is President of the Independence Institute.

DAVID KOPEL is Research Director of the Independence Institute.

PAMELA BENIGNO is the Director of the Education Policy Center.

BENJAMIN DEGROW is a Policy Analyst for the Education Policy Center. He is the author of numerous Issue Papers and Issue Backgrounders, including *Take Public Funds off the Negotiating Table: Let Teachers' Unions Finance Their Own Business*; *Nullifying the Probationary Period: Extra Job Protection for Many New Jeffco Teachers Takes Priority over Kids*; *HB 1072: Empowering Union Leaders, Not Workers*; *Denver's ProComp and Teacher Compensation Reform in Colorado*; *A Shaky Foundation, A Potential Threat: Analyzing Colorado State Union "Employee Partnerships"*; *Amendment 49 and Government Payroll Reform*, and *Shining the Light on Colorado School Spending*.

ADDITIONAL RESOURCES on this subject can be found at:

<http://www.independenceinstitute.org/>

NOTHING WRITTEN here is to be construed as necessarily representing the views of the Independence Institute or as an attempt to influence any election or legislative action.

PERMISSION TO REPRINT this paper in whole or in part is hereby granted provided full credit is given to the Independence Institute.