

EXHIBIT NO. 1

Calendar No. 172

86TH CONGRESS }
1st Session }

SENATE

{ REPORT
No. 187

LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

APRIL 14, 1959.—Ordered to be printed

Filed under authority of the order of the Senate of April 13, 1959

Mr. KENNEDY, from the Committee on Labor and Public Welfare,
submitted the following

R E P O R T

together with

MINORITY, SUPPLEMENTAL, AND INDIVIDUAL VIEWS

[To accompany S. 1555]

The Committee on Labor and Public Welfare, to whom was referred the bill (S. 1555) to provide for the reporting and disclosure of certain financial transactions and administrative practices of labor organizations and employers, to prevent abuses in the administration of trusteeships by labor organizations, to provide standards with respect to the election of officers of labor organizations, and for other purposes, having considered the same, report favorably thereon, with amendments, and recommend that the bill do pass.

The amendments are as follows:

1. In line 22, page 3, strike out the word "employees" and insert in lieu thereof the word "employers".
2. In line 12, page 7, strike out the word "receive" and insert in lieu thereof the word "received".
3. In line 22, page 15, strike out the word "constructed" and insert in lieu thereof the word "construed".
4. In line 21, page 16, insert a comma after the word "person".
5. In line 9, page 17, strike out the words "labor organization or by such employer" and insert in lieu thereof the word "person".
6. In line 9, page 30, insert the word "labor" after the word "subordinate".
7. In line 12, page 37, strike out the word "recordings" and insert in lieu thereof the word "records".

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8. In line 7, page 41, after the phrase "required by" strike the remainder of the sentence and insert in lieu thereof "its own constitution or bylaws except as otherwise provided by this title."

9. In line 17, page 44, strike out the word "expenditures" and insert in lieu thereof the word "expenditure".

10. In line 23, page 47, strike out the word "this" and insert in lieu thereof the word "the".

11. On page 49, strike out lines 8 through 13 and insert in lieu thereof the following:

tion to an employee but does not include the United States or any corporation wholly owned by the Government of the United States, or any State or political subdivision thereof."

12. In line 14, page 51, strike out the word "Railroad" and insert in lieu thereof the word "Railway".

13. In lines 5 and 6 on page 59 strike "the unit described in the petition" and substitute in lieu thereof "an appropriate unit".

All of the above amendments are of a technical, perfecting nature except No. 10. This amendment excludes unions of public employees who are not covered by the National Labor Relations Act or the Railway Labor Act from the coverage of the bill.

PART I—PURPOSE OF THE BILL

The committee reported bill is primarily designed to correct the abuses which have crept into labor and management and which have been the subject of investigation by the Committee on Improper Activities in the Labor and Management Field for the past several years. In its first interim report the McClellan committee made five legislative recommendations. One of these has been implemented in the passage of Public Law 85-836, the Welfare and Pension Plan Disclosure Act of 1958. The remaining recommendations: (1) To regulate and control union funds; (2) to insure union democracy; (3) to curb activities of middlemen in labor-management disputes; and (4) to clarify the "no man's land" between State and Federal authority; were the subject of a bill, S. 3974, which passed the Senate last year by an 88-to-1 vote, but failed to receive the approval of the House of Representatives. The committee-reported bill is based on the legislation approved by the Senate last year and thus it too implements the remaining recommendations of the McClellan committee. In brief, the bill, S. 1555, would accomplish the following:

- (1) Full reporting and public disclosure of union internal processes;
- (2) Full reporting and public disclosure of union financial operations;
- (3) All information required to be reported will be made available to union members in a manner prescribed by the Secretary;
- (4) Criminal penalties for failure to make such reports or for filing false reports;
- (5) Criminal penalties for false entries in and destruction of union records;
- (6) Full reporting and public disclosure of financial transactions and holdings, if any, by union officials which might give rise to conflicts of interest, including payments received from labor relations consultants;
- (7) Full reporting and public disclosures by employers of expenditures for the purpose of persuading employees to exercise, not to

exercise, or as to the manner of exercising their rights to organize and bargain collectively;

(8) Full reporting and public disclosure by employers of expenditures for the purpose of obtaining information concerning the activities of employees or unions in connection with a labor dispute;

(9) Full reports by employers of any direct or indirect loans to a labor organization or officer or employee of a labor organization;

(10) Criminal penalties for failing to file or falsification of reports required of employers and labor relations consultants;

(11) Provides Secretary with broad investigatory power, including the power of subpoena, to prevent violation of the reporting and other provisions of the bill;

(12) Authorizes the Secretary to bring a civil injunction in a district court of the United States to compel compliance with the reporting provisions of the act or any rules or regulations which he promulgates to insure compliance with these provisions;

(13) Criminal penalties for payments by "middlemen" to union officials;

(14) Full reports by employers of any arrangement with a labor relations consultant or other independent contractor by which such person undertakes to persuade employees to exercise or not to exercise or regarding the exercise of their rights to organize or bargain collectively;

(15) Full reports by any person who has an agreement with an employer to persuade employees to exercise or not to exercise or as to the manner of their exercising their rights to organize and bargain collectively; or who supplies information to an employer concerning the activities of employees or labor organizations in connection with a labor dispute;

(16) Prohibits persons who have been convicted of certain crimes from holding union office or employment within 5 years of having served any part of a prison term as a result of such conviction;

(17) Prohibits unions from paying the legal fees or fines of any person indicted or convicted of a violation of the bill;

(18) Full reporting and public disclosure of trusteeships imposed by national or international unions;

(19) Criminal penalties for failure to file or falsification of required reports relating to trusteeships;

(20) Prescribes minimum standards for establishment of trusteeships and sets limits on their duration;

(21) Authorizes Federal court proceedings to dissolve trusteeships when not imposed in accordance with provisions of the bill;

(22) Empowers Federal courts to preserve the assets of a trustee labor organization and limits the funds which may be transferred from a trustee labor organization to the international;

(23) Requires election of constitutional officers and members of executive boards of international unions at least every 5 years by secret ballot or by delegates elected by secret ballot;

(24) Requires election of constitutional officers and members of executive boards of local unions at least every 3 years by secret ballot;

(25) Protects freedom of opportunity to nominate candidates in union elections;

(26) Protects members' right to vote in union elections without being subject to improper interference or reprisals;

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(27) Insures that every candidate for union office shall be afforded the opportunity to distribute at his own expense literature in support of his candidacy to all the members of the union;

(28) Requires that all candidates shall have the opportunity to have observers present at the balloting and at the counting of the ballots in a union election;

(29) Prohibits use of union funds to promote individual candidacy in union elections;

(30) Procedures whereby a union officer guilty of serious misconduct in office may be removed by a secret ballot vote after court proceedings if the union's constitution does not provide adequate machinery for such removal;

(31) Provides for investigations by the Secretary of members' complaints of improper procedures in union elections and court actions by the Secretary to set aside improperly conducted elections;

(32) Empowers Federal courts to direct new elections to be conducted under supervision of the Secretary where it finds union election was improperly conducted;

(33) Preserves members' rights to enforce union's constitution under State laws with respect to trusteeships and safeguarding fair procedures before an election;

(34) A congressional declaration of policy favoring voluntary self-policing, through adoption and implementation of codes of ethical practices, by labor organizations and employers;

(35) Establishment of an Advisory Committee on Ethical Practices composed of representatives of the public, labor organizations, and employers;

(36) Eliminates the "no-man's land" in labor-management relations by directing the National Labor Relations Board to exercise jurisdiction directly or with the aid of State agencies in all cases within its competence;

(37) State agencies may, by agreement with the National Labor Relations Board, administer the Federal act in accordance with procedures and substantive law applicable with regard to cases processed by the NLRB;

(38) Subjects shakedown picketing to criminal sanctions;

(39) Bans demand and acceptance by unions or union representatives of payments from interstate truckers of improper unloading fees;

(40) Permits with appropriate safeguards, prehire and 7-day union shop agreements in the building and construction industry;

(41) Clarification of the propriety of employer contributions to joint union-management apprenticeship funds;

(42) Restoration of voting rights to economic strikers;

(43) Criminal penalties for embezzlement, conversion, etc., of union funds;

(44) Establishes a prehearing election procedure with respect to labor disputes in which there are no substantive issues present in order to speed up the handling of cases by the National Labor Relations Board;

(45) Authorizes the President to appoint an acting General Counsel to the National Labor Relations Board when a vacancy occurs in that office.

These and other provisions of the bill not included in the foregoing brief summary represent a major attack on the abuses and problems

identified by recent investigations. No bill in the committee's view can be written which will close completely the many avenues which the criminal can devise to carry on his nefarious activity, without at the same time wrecking important institutions, violating cardinal precepts of law, and undermining the principles upon which a free society is based.

The bill is designed to prevent, discourage, and make unprofitable improper conduct on the part of union officials, employers, and their representatives by requiring reporting of arrangements, actions, and interests which are questionable. In some instances, the matters to be reported are not illegal and may not be improper. But only full disclosure will enable the persons whose rights are affected, the public and the Government to determine whether the arrangements or activities are justifiable, ethical, and legal.

In addition to comprehensive reporting the bill provides criminal penalties for actions which are clearly improper such as the embezzlement of union funds, tampering with or destroying union records, bribing employee representatives, and violation of the trusteeship or election provisions of the bill.

The Subcommittee on Labor held intensive hearings on all of the relevant bills before it. It considered all of the proposals and suggestions made during the hearings and studied each of the bills pending. S. 505, on which S. 1555 is based, was modified to include those recommendations which strengthened the bill and increased its effectiveness. The Committee on Labor and Public Welfare carefully considered the bill reported by the subcommittee and made a number of substantial changes.

The committee reports this bill favorably after lengthy consideration this year and on the basis of a substantial record and extensive debate on a similar bill in the 85th Congress. The committee recognizes that in addition to the major steps to correct labor and management abuses taken by this bill, further attention should be directed to amendments in the laws governing labor-management relations. To assist it in this task, the committee has appointed a distinguished panel of experts to advise it on appropriate modifications in existing law. This advisory panel is expected to make its report later in the session, and it is the intention of the committee to move forward in the area of major revision of our labor-management law as soon as practicable.

PART II—BACKGROUND AND GENERAL APPROACH OF THE BILL

A strong independent labor movement is a vital part of American institutions. The shocking abuses revealed by recent investigations have been confined to a few unions. The overwhelming majority are honestly and democratically run. In providing remedies for existing evils the Senate should be careful neither to undermine self-government within the labor movement nor to weaken unions in their role as the bargaining representatives of employees.

It is plain that the trade union movement in the United States is facing difficult internal problems and—because of these internal problems—tensions with the surrounding community. The problems of this now large and relatively strong institution are not unlike the difficulties faced by other groups in American society which aspire

to live by the same basic principles and values within their group as they hold ideal for the whole community. But equal rights, freedom of choice, honesty, and the highest ethical standards are built into changing institutions only after struggle. Trade unions have grown well beyond their beginnings as relatively small, closely knit associations of workmen where personal, fraternal relationships were characteristic. Like other American institutions some unions have become large and impersonal; they have acquired bureaucratic tendencies and characteristics; their members like other Americans have sometimes become apathetic in the exercise of their personal responsibility for the conduct of union affairs. In some few cases men who have risen to positions of power and responsibility within unions have abused their power and neglected their responsibilities. In some cases the structure and procedures necessary for trade unions while they were struggling for survival are ill adapted to their new role and to changed conditions; they are not always conducive to efficient, honest, and democratic practices.

Whatever the causes, the problems are recognized by those within as well as those outside the union movement. The action of the American Federation of Labor-Congress of Industrial Organizations in recognizing the importance of adherence to traditional principles of ethical conduct and trade union democracy and in formulating and implementing codes of ethical practices to carry out these established principles, is a dramatic and convincing demonstration of the trade union movement's desire to conduct its internal affairs democratically and in accordance with high standards of trust. Nevertheless, effective measures to stamp out crime and corruption and guarantee internal union democracy, cannot be applied to all unions without the coercive powers of government, nor is the present machinery of the federation demonstrably effective in policing specific abuses at the local level.

It is also plain that there are important sections of management that refused to recognize that the employees have a right to form and join unions without interference and to enjoy freely the right to bargain collectively with their employer concerning their wages, working conditions, and other conditions of employment. The hearings of the McClellan committee have shown that employers have often cooperated with and even aided crooks and racketeers in the labor movement at the expense of their own employees. They have employed so-called middlemen to organize "no-union committees" and engage in other activities to prevent union organization among their employees. They have financed community campaigns to defeat union organization. They have employed investigators and informers to report on the organizing activities of employees and unions. It is essential that any legislation which purports to drive corruption and improper activities out of labor-management relations contain provisions dealing effectively with these problems.

The internal problems currently facing our labor unions are bound up with a substantial public interest. Under the National Labor Relations Act and the Railway Labor Act, a labor organization has vast responsibility for economic welfare of the individual members whom it represents. Union members have a vital interest, therefore, in the policies and conduct of union affairs. To the extent that union

procedures are democratic they permit the individual to share in the formulation of union policy. This is not to say that in order to have democratically responsive unions, it is necessary to have each union member make decisions on detail as in a New England town meeting. What is required is the opportunity to influence policy and leadership by free and periodic elections.

In acting on this bill the committee followed three principles:

1. The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses; hence the committee believes that only essential standards should be imposed by legislation. Moreover, in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents.

2. Given the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully competent to regulate union affairs. The committee strongly opposes any attempt to prescribe detailed procedures and standards for the conduct of union business. Such paternalistic regulation would weaken rather than strengthen the labor movement; it would cross over into the area of trade union licensing and destroy union independence.

3. Remedies for the abuses should be direct. Where the law prescribes standards, sanctions for their violation should also be direct. The committee rejects the notion of applying destructive sanctions to a union, i.e., to a group of working men and women, for an offense for which the officers are responsible and over which the members have, at best, only indirect control. Still more important the legislation should provide an administrative or judicial remedy appropriate for each specific problem.

The committee does not believe that the record demonstrates that the imposition of indirect sanctions, such as penalizing the union and its members for malpractices of its officers, would be effective in insuring compliance. Moreover, on the basis of information available to the committee, it is clear that the requirements of present law with respect to the filing of financial and other data have hampered the administration of the National Labor Relations Act, have disrupted labor-management relations and have been expensive to administer.

The bill reported by the committee, while it carries out all the major recommendations of the Senate select committee, does so within a general philosophy of legislative restraint. The bill does not spell out in detail all the standards which every trade union should follow. It recognizes the variety of situations to which its provisions must apply and, especially, the inadvisability and injustice of compelling unions to conform to a uniform statutory rule with respect to unimportant details of administration.

The test of a sound bill in this complex and relatively new legislative area is whether it is workable and will produce the desired results without destroying valued free institutions. The committee believes that the bill now reported possesses these attributes.

PART III. PRINCIPAL AREAS COVERED BY THE BILL, UNION FINANCIAL AND ADMINISTRATIVE PRACTICES

→ Labor organizations are creations of their members; union funds belong to the members and should be expended only in furtherance of their common interest. A union treasury should not be managed as the private property of union officers, however well intentioned, but as a fund governed by fiduciary standards appropriate to this type of organization. The members who are the real owners of the money and property of the organization are entitled to a full accounting of all transactions involving their property.

The financial conduct of labor unions and their officers is a proper concern of the Federal Government. This is so because the funds that pass through union treasuries and for which unions and their officers are responsible are very large, and the uses to which these funds are put have a substantial impact on the Nation's economy. Furthermore, if unions are to enjoy the protection of rights such as are guaranteed to them by the National Labor Relations Act and the Railway Labor Act, they ought also to be held responsible for abuses that have accompanied the exercise of these rights by some union leaders.

Similarly, the rules governing the conduct of the union's business, such as dues and assessments payable by members, membership rights, disciplinary procedures, election of officers, provisions governing the calling of regular and special meetings—all should be known to the members. Without such information freely available it is impossible that labor organizations can be truly responsive to the members which they serve.

This bill insures that full information concerning the financial and internal administrative regulations of labor organizations shall be in the first instance available to the members of such organization. In addition, this information is to be made available to the Government, and through the Secretary of Labor, is open to the inspection of the general public. By such disclosure, and by relying on voluntary action by members of labor organizations, abuses can be eradicated effectively.

→ Title I of the bill reported by the committee requires a labor organization which represents or seeks to represent employees in an industry or activity affecting commerce to file with the Secretary of Labor detailed information concerning its internal procedures and rules governing conduct of union business. The organization is required by this title to make this and the financial information referred to below available to its members in a manner prescribed by the Secretary of Labor. The information required to be filed by unions under this title is similar to that required by section 9(f) of the National Labor Relations Act. However, in this bill, all unions, whether or not they wish to use the facilities of the National Labor Relations Board, are required to file reports.

Section 101(b) of this title requires unions to file annual financial reports. In addition to a statement of assets and liabilities and a statement of receipts and expenditures, the report would show in detail salaries and allowances made to all officers and to each employee receiving income of more than \$10,000 from labor organizations affiliated in the same international union. The salaries required to

be reported by this subsection would include reimbursed expenses and other direct or indirect disbursements to officers and employees. The report would list loans made either to employers or to union officers, employees, or members, with a statement of purpose, the security, if any, and arrangements for repayment of the loan.

If any person who is required to make a report under this title fails to file or files a report which the Secretary of Labor believes is incomplete or false, the Secretary is directed to institute a full investigation armed with the power of subpoena and to make a report to persons having a legitimate interest in such information. This provision insures that union members will have all the vital information necessary for them to take effective action in regulating affairs of their trade union, either through voluntary compliance of the labor organization with the reporting requirements of the act or as a result of investigation and reports by the Secretary of Labor. The committee is confident that union members armed with adequate information and having the benefit of secret elections, as provided in title III of this bill, would rid themselves of untrustworthy or corrupt officers. In addition, the exposure to public scrutiny of all vital information concerning the operation of trade unions will help deter repetition of the financial abuses disclosed by the McClellan committee. Where union financial and other practices do not meet reasonable standards, although not willfully dishonest, this bill would have a remedial effect.

The financial and administrative reporting sections of this bill cover substantially the same ground as similar provisions in S. 748, introduced by Senator Goldwater on behalf of the administration. The principal difference between the bills is in the penalties imposed for violation. In addition to the criminal penalties provided by both bills, S. 748 would deny to the members, employers, and the public the protections offered by National Labor Relations Act in settling labor disputes. Under S. 748, where a union officer failed, willfully or otherwise, to file a report required by the bill, no representation case or other proceeding could be processed by the National Labor Relations Board. The committee bill, on the other hand, places both the labor organization and the officer under a positive obligation to make full and accurate reports, subject to criminal penalties.

To deny a union access to the National Labor Relations Board because its officers did not file a proper report is unwise for four reasons. First, it would be ineffective in the case of strong unions not dependent upon NLRB facilities; second, it is unfair to the members who have done no wrong but who would suffer both the denial of information and the loss of NLRB protection; third, the rights and duties created by the National Labor Relations Act exist for the benefit of the public, and such legal obligations should be enforced equally in all cases, not traded off against one another as a system of rewards and punishments; and, finally, experience with a similar provision in the present law clearly demonstrates that conditioning the use of the NLRB processes on compliance with not wholly related requirements such as this can result in a frustration of the principal purpose of the Labor Management Relations Act, that is, settlement of labor disputes in an orderly, efficient, and expeditious manner. In short, the committee is convinced that such a procedure is costly, cumbersome, and of doubtful efficacy.

The committee finds that it would also be unsound and unfair to use the labor unions' present freedom from the income tax (if indeed union receipts are susceptible to conventional taxation standards) as a method of coercing obedience to legal duties. In some cases the penalty would be negligible. In other cases the financial penalties might be heavy and out of proportion to the offense. As a result the enforcement agency would be forced to choose between imposing an excessive penalty and overlooking the violation. To create such dilemmas makes for unsound law enforcement. Again, the purpose of the legislation is to protect union members. Violations will be essentially a wrong done by the officers against the members. To deny the union the usual income-tax exemption would levy a heavy penalty upon the members who were the ultimate owners of the union's property and who committed no offense.

It should be clearly understood, however, that the committee's bill would lay penalties directly upon labor organizations which violated the act. A labor organization is a "person" under the definition in section 501(c). Therefore if a labor organization fails to file a financial report or files a false report, it can be prosecuted and fined as much as \$10,000 on each count under section 108. The union officers charged with filing reports could also be prosecuted under the same action, for subsection (d) provides for personal as well as organizational responsibility. Furthermore, if any union officer is convicted under these sections, the labor organization is required by section 305(b) to remove him. If the union fails, it is subject to criminal prosecution under section 305(c). The committee bill also forbids payment of fines or defense costs by a labor organization or employer for a person indicted or convicted of a violation of the act. However, in the event that any such person is acquitted of such charges, he may be reimbursed for the expenses involved.

MANAGEMENT REPORTING AND THE PROBLEM OF THE MIDDLEMAN

The committee notes that in almost every instance of corruption in the labor-management field there have been direct or indirect management involvements. The report of the McClellan committee describes management middlemen flitting about the country on behalf of employers to defeat attempts at labor organization. In some cases they work directly on employees or through committees to discourage legitimate organizational drives or set up company-dominated unions. These middlemen have been known to negotiate sweetheart contracts. They have been involved in bribery and corruption as well as unfair labor practices. The middlemen have acted, in fact if not in law, as agents of management. Nevertheless, an attorney for the National Labor Relations Board has testified before the McClellan committee that the present law is not adequate to deal with such activities.

The committee believes that employers should be required to report their arrangements with these union-busting middlemen. Further, the Committee on Labor and Public Welfare has received evidence in prior hearings showing that large sums of money are spent in organized campaigns on behalf of some employers for the purpose of interfering with the right of employees to join or not to join a labor organization of their choice, a right guaranteed by the National Labor Relations

Act. Sometimes these expenditures are hidden behind committees or fronts; however the expenditures are made, they are usually surreptitious because of the unethical content of the message itself. The committee believes that this type of activity by or on behalf of employers is reprehensible. These expenditures may or may not be technically permissible under the National Labor Relations or Railway Labor Acts, or they may fall in a gray area. In any event, where they are engaged in they should be exposed to public view, for if the public has an interest in preserving the rights of employees then it has a concomitant obligation to insure the free exercise of them.

Similarly, expenditures have been made in the past by employers surreptitiously and through labor spies, to obtain information about employees and unions. This type of activity certainly is not conducive to sound and harmonious labor relations.

The committee bill attacks these problems on three fronts.

First, it makes improper payments by management middlemen criminal offenses under section 302 of the Labor-Management Relations Act. Section 302 already prohibits any payment by an employer to any representative of any of his employees except for wages, checked-off dues, payments to specified kinds of trust funds. Section 111 of the committee bill would make section 302 applicable to—

any person who acts as a labor relations expert, adviser or consultant or who acts in the interest of an employer.

Under the bill the management middlemen who make illicit payments can be prosecuted without proof that the payments were authorized or ratified by the employer or otherwise within the scope of the middleman's employment.

Second, the committee bill expands section 302 to cover both payments made to employees for the purpose of influencing their organizational activities and also payments made to union officials with intent to influence them in the performance of such duties. This amendment is necessary to prosecute activities such as Nathan Shefferman conducted in the interest of his management clients.

Third, the committee bill relies upon a system of reporting and disclosure to apply further corrective curbs on improper employer activity. Under section 103(a) an employer will be required to disclose any payments made by him to persuade employees not to exercise or as to the manner of exercising their right to organize and bargain collectively. Under this section an employer is required to report any direct expenditures during any fiscal year for the purpose of persuading employees in the exercise of their right to organize and bargain collectively as long as such expenditures do not involve regular wage payments or expenditures to improve working conditions or provide other employee benefits. Also exempt from the reporting requirements are expenditures which an employer makes in his own name to communicate information to his employees including any kind of written or oral statement or advertisement. Under this subsection an employer would not be required to report expenditures made to obtain information for use solely in a judicial administrative or arbitration proceeding, nor would he be required to report expenditures to obtain legal advice in connection with labor management relations. An employer who has not made any such expenditures would not be required to file any reports under this bill. An employer

