

ISSUE BRIEF

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Extend Whistle-Blower Protections to Union Employees

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Whistle-blower laws prevent employers from retaliating against employees who report illegal activity. These laws encourage employees to reveal illegal behavior—and discourage employers from breaking the law in the first place. However, whistle-blower protections do not protect employees of labor unions. Unions can legally fire their own employees for raising allegations of corruption.

This happened to several veteran employees of the United Food and Commercial Workers (UFCW) Local 700 in Indianapolis. They reported alleged financial impropriety by the local's president to the union's executive board. The president fired them the next day. Extending whistle-blower protections to union officials would discourage corruption and protect honest union employees.

Whistle-Blower Protections. Illegal activity often comes to light when an honest employee alerts the authorities. Unsurprisingly, employers rarely look kindly on employees who call them out. Consequently, Congress has passed many laws preventing employers from retaliating against whistle-blowers. Employers may not fire or demote employees who report (among other things) the illegal dumping of toxic waste, racial discrimination, child labor, or discrimination against union supporters.

Union Officials Excluded. One group of employees is conspicuously absent from whistle-blower protections: employees of labor unions. Existing whistle-blower provisions prohibit retaliation against an employee for reporting violations of the laws that the employer is included in. So unions cannot fire employees who report their unions for dumping toxic waste or using child labor. Unions rarely break these laws.

The Labor-Management Reporting and Disclosure Act outlaws union corruption. However, the Supreme Court has ruled that the act's protections¹ apply only to rank-and-file members—not employees—of labor unions.² A union president

can legally fire employees for exposing corruption.³

Union employees who belong to a separate union for union staff may be covered by a collective bargaining agreement (CBA). However, senior union officials are not covered by CBAs; they belong to the union's management. A union president can legally fire these officials for virtually any reason—including reporting misconduct. Nothing in the law shields union officials from retaliation for whistle-blowing, even though they are the people most likely to uncover corruption.

Congress never expressly excluded union employees from whistle-blower protections. It simply never passed separate whistle-blowing laws to cover them.

An Impossible Situation. Union employees need whistle-blower protections as much as employees of other organizations. The union movement is itself a big business. Labor unions collected an estimated \$14 billion in dues and other assessments in 2010.⁴ Union officials have a fiduciary responsibility to use this money for the sole benefit of the union and its members. Union members may sue their union for breach of this fiduciary duty.

This paper, in its entirety, can be found at <http://report.heritage.org/ib3615>

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Union officers are only human. The Office of Labor-Management Standards convicts about 100 union officials a year for embezzling or misappropriating funds.⁵ The people most likely to witness such abuses are union employees. The law puts them in an impossible situation: If they keep silent, they can be sued for breach of their fiduciary duty. But if they speak up, they can be fired.

UFCW Local 700. Senior employees of the UFCW Local 700 in Indianapolis faced this dilemma in 2005. Members of the executive board suspected the local's president, C. Lewis Piercey, and secretary treasurer, Richard Fitzgerald, of misusing union funds. Concerned about their fiduciary responsibility, they brought their concerns to several senior employees: Rian Wathen, the director of collective bargaining; Peggy Collins, a vice president; and Herman Jackson, the organizing director. They had worked for the UFCW for 15, 12, and 10 years, respectively. They secretly conducted an internal investigation, concluding that Piercey and Fitzgerald had:

- Allowed the local's general treasury to shrink to just \$100,000 and subsidized the general treasury with unauthorized transfers from the strike fund;

Principle Whistleblower Laws

Age Discrimination in Employment Act
Americans with Disabilities Act
Civil Rights Act of 1964 (Title VII)
Clayton Act (antitrust)
Clean Air Act
Comprehensive Environmental Response, Compensation and Liability Act ("Super Fund")
Employee Retirement Income Security Act
Energy Reorganization Act
Equal Pay Act
Fair Labor Standards Act (Wage and Hour, Child Labor, Minimum Wage, Overtime)
False Claims Act
Family and Medical Leave Act
National Labor Relations Act
Occupational Safety and Health Act
Safe Drinking Water Act
Sarbanes-Oxley Act
Solid Waste Disposal Act
Toxic Substances Control Act
Source: WhistleblowerLaws.com, maintained by the law offices of Grant & Eisenhofer P.A.

- Spent hundreds of thousands of dollars from the general treasury without executive board authorization;
- Made political contributions in excess of legal limits and transferred money from the general treasury to political accounts without authorization;
- Used money from the local's strike fund to pay for personal meals;
- Used union funds to pay Piercey's flight, hotel, and \$1,200 entry fee for a charity golf tournament in Montreal;
- Collected double reimbursement from Local 700 and the

1. For example, 29 U.S. Code §411 guarantees union members the right to free speech—which includes the right to discuss potentially corrupt activities—and 29 U.S. Code §529 prevents unions from retaliating against union members who exercise these rights.
2. *Finnegan et al. v. Leu et al.*, 456 U.S. 431 (1982).
3. An exception is if the financial misconduct involves misappropriating pension funds. The Employee Retirement Income Security Act has whistle-blower protections that apply to union officials.
4. National Institute for Labor Relations Research, "Labor Unions Receive \$14 Billion in Dues per Year from CBAs," March 31, 2012, <http://www.nilrr.org/2012/03/31/unions-rake-in-over-14-9-billion-in-dues-per-year-from-cbas/> (accessed May 23, 2012).
5. News release, "U.S. Labor Department's Office of Labor-Management Standards Obtains 900th Criminal Conviction for the Decade," Office of Labor-Management Standards, October 21, 2008, <http://www.dol.gov/opa/media/press/esa/archive/esa20081483.htm> (accessed May 22, 2012).

international union for airfare, hotel, and meal expenses at the Democratic National Convention in Boston; and

- Allowed union contracts to expire without bargaining for new ones.⁶

On August 19, 2005, Wathen, Collins, and Jackson brought these allegations to the executive board.⁷ On August 20, Piercey fired them, and the UFCW International denied their appeals of their terminations.

Protect Union Whistle-Blowers. Union employees should be free to speak up about corruption or

violations of their unions' fiduciary duties. A union employee should not have to choose between paying his mortgage and following his conscience. This is a bipartisan principle. As George Miller (D-CA), ranking Democrat on the House Education and the Workforce Committee, stated when arguing for other whistle-blower reforms, "It's deeply troubling that workers who risk everything to blow the whistle on fraud and other serious matters remain exposed to employer retaliation and other harms."⁸

Unions should not be permitted to retaliate against employees

who expose corruption. Congress should create whistle-blower protections for union employees under the Labor-Management Reporting and Disclosure Act. This would protect honest union officers and encourage them to reveal corruption—helping to root out corruption in the union movement. A union employee who witnesses misconduct should not have to choose between his conscience and his job.

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6. Charges filed by Rian Wathen against C. Lewis Piercey, former president, and Richard Fitzgerald, former secretary treasurer, before the executive board of UFCW Local 700. Copy available from the author upon request.

7. Local 700's executive board found the allegations highly credible and voted unanimously to suspend Piercey and Fitzgerald pending the resolution of a union trial on the charges. However, Piercey ignored the suspension and called the police when the executive board tried to remove him from the building. The police recognized Piercey as the president of the union. He remained in office—with full access to records and documents—for four months before the trial. Normally, the union trial would be held before the executive board. In this case the International UFCW intervened and selected officers from other UFCW locals to hear the case. This jury acquitted Piercey and Fitzgerald. However, the International UFCW subsequently placed the local in trusteeship, removed the president and secretary treasurer from office, and required them to pay restitution for some expenses. Wathen, Collins, and Jackson were not re-hired. Piercey was subsequently placed on the payroll of the International UFCW. Source: telephone interview with Rian Wathen, May 14, 2012.

8. News release, "GAO: Nation's Whistleblower Laws Inadequately Enforced, Needs Additional Resources," Committee on Education and the Workforce, U.S. House of Representatives, February 26, 2009, <http://democrats.edworkforce.house.gov/press-release/gao-nation%E2%80%99s-whistleblower-laws-inadequately-enforced-needs-additional-resources> (accessed May 22, 2012).