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Is Labor Union Corruption Special?

LABOR RACKETEERING HAS ATTRACTED A GOOD DEAL OF ATTENTION from law enforcement agencies, legislators, and journalists, but surprisingly little attention from corruption scholars. While the origin of the term “labor racketeering” is obscure, it has come to be associated with a type of corruption perpetrated by union officials under the direction of, or in conjunction with, organized crime (Cohen 2003, 575–76, 587–91; Jacobs 2006, 11–12). Organized crime bosses exploit unions and union members through alliances with corrupted or intimidated union officials (Jacobs 2006, 234). In return, union officials provide mobsters access to the union treasury, pension and welfare funds, no-show jobs with the union, and support in establishing and enforcing employer cartels (Jacobs 2006, 14, 65, 80). Some organized crime members have held formal union office (Jacobs 2006, 20, 50, 203–04). In addition, of course, corrupt union officials, whether or not connected to organized crime figures, engage in “ordinary” organizational corruption, such as misappropriation of funds. The most distinctive form of corruption by union officials is taking employers’ bribes to ignore violations of the collective bargaining contract, or even to allow employer to operate nonunion shops (Jacobs 2006, 102).

A HISTORY OF UNION CORRUPTION AS A SUBFIELD OF CORRUPTION STUDIES

There are enough disparate union-corruption and racketeering studies by social scientists, historians, and journalists to constitute a union-

corruption specialty. Chicago sociologist John Landesco was the earliest social scientist to shine a light on union corruption.¹ His pioneering work, *Organized Crime in Chicago* (1929), provided an in-depth description and analysis of the symbiotic relationship between organized crime factions and corrupt union officials and employers, all this before the emergence of Italian-American organized crime. Landesco documented how gangsters leveraged control over unions into control over businesses by threatening uncooperative companies with strikes, labor troubles, and sabotage. He identified 23 racketeer-controlled trades, observing that racketeers used their control over the unions' labor monopoly to force businesses to join employer associations. They then charged the employers "dues" in exchange for enforcing cartels. Employers also paid off corrupt union officials, and the gangsters with whom they were allied, to avoid having to comply with collective bargaining agreements.

In 1938, Harold Seidman, a university-based political scientist, published *Labor Czars: A History of Labor Racketeering*, describing how labor racketeers flourished due to weak and/or corrupt law enforcement, and describing the careers of early gangster-type "labor czars." Three years later, conservative union-bashing journalist Westbrook Pegler won a Pulitzer Prize for exposing racketeering in the International Alliance of Theatrical Stage Employees (IATSE) (Witwer 2012). Pegler also revealed the relationship between Building Services Employees International Union (BSEIU) President George Scalise and mob bosses, particularly Dutch Schultz. A half century later, historian David Witwer elaborated on Pegler's account (Witwer 2003b).

After World War II, Malcolm Johnson, a reporter who previously published a Pulitzer-Prize-winning series of newspaper articles on "gangsterism" in the International Longshoremen's Association (ILA), published *Crime on the Labor Front* (1950), documenting extensive corruption and racketeering in the ILA, BSEIU, IATSE, the Waiters Union, the Cafeteria Workers Union, the International Brotherhood of Teamsters (IBT or Teamsters Union), and several construction unions. Johnson explained how mobsters take over a union: "A mobster can

break into a union by threats and violence or he can ‘fix’ an election so that one of his stooges becomes a key official. Once in power, he can bribe his opposition into cooperation, or he can sew them in sacks and drop them in the river” (Johnson 1950, 35). Johnson also illuminated the symbiotic relationship between mobsters and employers, who “in permitting themselves to become extortion victims, nearly always seek some advantage for themselves, usually at the expense of the workers” (Johnson 1950, 17).

The two labor federations, the American Federation of Labor (AFL) and the Congress of Industrial Organizations (CIO), merged in 1955, despite CIO unhappiness with the extent of corruption in the AFL-affiliated unions and AFL unhappiness with Communist elements in CIO-affiliated unions (Jacobs 2006, 41). In 1957, the AFL-CIO expelled two unions on account of corruption (AFL-CIO 2013). That same year, the US Senate Select Committee on Improper Activities in Labor and Management (the McClellan Committee Hearings) commenced its unprecedented investigation of corruption and racketeering in the labor movement (Bernstein 2002, chap. 7).² Under the leadership of Senator John McClellan (D-AR) and Chief Investigator Robert Kennedy, and over the course of three years, a 100-person staff conducted 253 investigations, served 8,000 subpoenas, held 270 days of hearings, and took testimony from 1,525 witnesses (many union officials and mobsters refused to testify on Fifth Amendment grounds) (Jacobs 2006, 47–48). The hearings resulted in passage of the 1959 Labor Management Reporting and Disclosure Act (the Landrum-Griffin Act or LMRDA), which sought to promote union democracy as the best antidote to labor racketeering. The LMRDA guaranteed democratic rights to union members and created several union-specific federal crimes (Jacobs 2006, 123; Taft 1964). Both McClellan and Kennedy published books excoriating the labor corruption they had uncovered (Kennedy 1960; McClellan 1976).

In 1959, Sidney Lens, director of Local 39 of the United Service Employees Union, AFL-CIO, and a prominent radical intellectual, published *Crisis in American Labor*. He argued that gangsters gained a toehold in the labor movement when labor officials recruited employ-

ers' strike-breaking thugs (Lens 1959, 108). Lens also highlighted the importance of labor racketeering for organized crime, observing that "labor racketeering is not only a source of income for the syndicate, but a means of rounding out its empire; it is a not-too-hidden persuader, an integral part of a criminal trust that stretches across many fields" (Lens 1959, 112).

In 1972, UCLA historian John Hutchinson published *The Imperfect Union: A History of Corruption in American Trade Unions*, in which he provides a thorough account of trade union corruption—including in the ILA, the IBT, and the United Mine Workers—across different cities, industries, and time periods. However, like other twentieth-century labor scholars, he did not discuss organized crime's role in labor union corruption.³

In the late 1970s and 1980s, the US Senate Committee on Government Operations, Permanent Subcommittee on Investigations (the Senate Permanent Subcommittee), under the leadership of Senator Sam Nunn (D-GA), held several hearings on organized crime's influence in and exploitation of labor unions (Jacobs and Mullin 2003). Some witnesses and legislators criticized the Department of Labor for inadequately enforcing union members' Landrum-Griffin rights in mob-controlled unions and for failing to stop the looting of the IBT's Central States Pension Fund (Jacobs and Mullin 2003). Follow-up hearings concluded that the Department of Labor's Office of Labor Racketeering had made significant progress in combatting labor racketeering (US Congress 1996). In 1981, the Senate Permanent Subcommittee investigated organized crime infiltration of the ILA and, in 1981 and 1983, the Senate Committee on Labor and Human Resources, Subcommittee on Labor, held hearings to consider increasing penalties for fraud by union officials (Jacobs and Mullin 2003). From 1982 to 1984, the Senate Permanent Subcommittee held hearings on Chicago mob boss Anthony Accardo's influence on the Hotel Employees and Restaurant Employees International Union (HEREIU) (US Congress 1992–1994).

In 1986, the President's Commission on Organized Crime published "The Edge: Organized Crime, Business, and Labor Unions," detailing labor racketeering in the IBT, ILA, HEREIU, and Laborers International Union of North America (LIUNA). The commission urged the US Department of Justice to attack the problem by using the Racketeer Influenced and Corrupt Organizations Act's (RICO) civil enforcement provisions to impose court-monitored reform on those unions.

In 1990, the New York State Organized Crime Task Force's (OCTF) Final Report on Corruption and Racketeering in the NYC Construction Industry offered a penetrating examination and analysis of labor racketeering in New York City's construction industry. OCTF explained that racketeers are successful in penetrating unions when both racketeering "susceptibility" (the strategic importance of a union for an industry) and racketeering "potential" (the advantages that can be derived from exploitation of a union) are high. OCTF identified the following endemic corruption: extortion, bribery, theft, frauds, intimidation and violence, sabotage, and collusive bidding/bid rigging (Goldstock et al. 1990, 19–36). The report concluded that, in the past, successful criminal prosecutions had little impact on Cosa Nostra's influence over labor unions because other Cosa Nostra members or associates filled the positions vacated by incarcerated comrades. It recommended new criminal laws, a construction-industry-specific regulatory agency, and stronger support for union democracy.

In a 1994 book I coauthored with Chris Panarella and Jay Worthington III, *Busting the Mob: United States v. Cosa Nostra*, we documented and analyzed the federal attack on organized crime beginning in the late 1970s. The book presented case studies of the Department of Justice's 1982 civil RICO suit against (New Jersey) Teamsters Local 560 and the Department of Justice's 1988 civil RICO suit against the Teamsters Union's international executive board. Jacobs' 2006 book, *Mobsters, Unions and Feds: The Mafia and the American Labor Movement*, documented how Italian-American organized crime families (Cosa Nostra)

infiltrated and took control over scores of union local and regional councils, as well as four international unions: ILA, IBT, LIUNA, HEREIU. It identified dozens of unions with a history of organized crime penetration, control, and influence.

The Teamsters Union has attracted by far the most journalistic, congressional, and scholarly attention. In the 1990s, for example, Congress held nine hearings focused on corruption and racketeering in the Teamsters Union (Jacobs and Mullin 2003; US Congress 1998). David Witwer's *Corruption and Reform in the Teamsters Union* (2003a) and Stier, Anderson, and Malone's *The Teamsters: Perception and Reality* (2002) provide detail and insight into the history, causes, consequences, and strategies for combating labor racketeering in the IBT since the turn of the twentieth century. And my recent book, with Kerry Cooperman, *Breaking the Devil's Pact: The Battle to Free the Teamsters from the Mob* (2011), is a study of *United States v. International Brotherhood of Teamsters*—the massive 1988 civil RICO lawsuit against the leadership of the Teamsters Union and Cosa Nostra—and the court-supervised remediation that continues to the present day.

SPECIAL CORRUPTION VULNERABILITIES OF LABOR UNIONS

Advantages of Incumbency

In their seminal 1956 study, *Union Democracy: What Makes Democracy Work in Labor Unions and Other Organizations?*, sociologists Seymour Martin Lipset, Martin Trow, and James Coleman concluded that democratic governance does not and probably cannot flourish in labor unions. To the contrary, labor unions are generally dominated by a single clique that maintains power by means of carrots and sticks, and even “reformers” who win union elections tend to resort to their predecessors’ corrupt tactics in order to stay in power (Lipset, Trow, and Coleman 1956, 1, 6–7). Likewise, former University of Pennsylvania law professor Clyde Summers, the leading union democracy scholar, observed that “elected union leaders will continue to dominate the political struc-

ture and seek to create a monolithic bureaucracy which eliminates or immobilizes organized opposition. . .” (Summers 1984, 95). Rank and file apathy and organized crime’s support give incumbents further security (Lipset, Trow, and Coleman 1956, 10). Dissidents who challenged organized-crime-backed incumbents were blacklisted and, if that was not sufficient, beaten and even murdered.

Inadequate Monitoring

Corruption thrives where principals (the rank and file) cannot effectively control their agents (union officers) or hold them accountable. External monitoring of union officers is weak. The OCTF pointed out that “it is all too easy for racketeers to control and exploit, in part because there is no effective mechanism for policing internal union affairs. The Landrum-Griffin Act was passed in an attempt to assure that workers would be represented by democratic unions” (Goldstock et al. 1990, 49). In the 1980s, congressional hearings surfaced sharp criticism of the Department of Labor’s failure to monitor unions and their pension and welfare funds effectively (Jacobs and Mullin 2003). Because the Department of Labor’s “primary mission is to resolve labor-management problems[,] this necessarily requires good working relations with high-ranking labor officials, and makes investigating and enforcing the complaints . . . against top labor officials at best awkward and, at worst, a conflict of interest” (Goldstock et al. 1990, 181).

By contrast, public corporations are monitored by the Securities and Exchange Commission (SEC), a large and well-funded independent federal regulatory and enforcement agency (US SEC 2013a). The SEC has an annual budget of more than \$1.3 billion and, for fiscal year (FY) 2014, is requesting \$1.674 billion to support 5,180 positions (US SEC 2013a; US SEC 2013b). It employs more than 3,700 staff members, more than 2,700 of whom are deployed to enforcement and compliance (US SEC 2013a; US SEC 2013c; US SEC 2013d). Every year, the SEC brings hundreds of civil enforcement actions against individuals and compa-

nies for violations of securities laws, such as insider trading, accounting fraud, and providing false or misleading information to the SEC (US SEC 2013a). It also refers some cases for federal prosecution (US SEC 2013e). This is not to say that the SEC has been adequately effective,⁴ but the absence of anything like an equivalent external government monitor for labor unions is unfortunate.

Since 1978, the Department of Labor's Office of Labor Racketeering and Fraud Investigations Unit (OLR) "investigates labor racketeering and organized crime influence or control in unions, employee benefit plans, and the workplace" (US DOL 2004, 1). From FY 2008 through FY 2012, OLR opened 498 labor-racketeering investigation cases, obtained 722 indictments, and secured 656 convictions (US DOL 2013a). Still, OLR is not comparable to the SEC. As the OCTF explained, the OLR "has always faced an uphill battle for resources and support" (Goldstock et al. 1990, 195). Indeed, a significant portion of OLR's resources are devoted "to prevent[ing] and detect[ing] fraud and abuse in DOL programs and operations" (US DOL 2013b).

A TYPOLOGY OF UNION CORRUPTION

Bribery

The most distinctive form of union corruption is bribery. The impetus can come from either party. The corrupted union officer agrees to ignore violations of the collective bargaining agreement—for example, an employer's hiring of nonunion workers, failure to make pension and welfare fund payments, or failure to pay contractually required wages—or agrees to a collective bargaining contract with a lower-wage local (Seidman 1938, 245–46; Taft 1964, 687; Hutchinson 1972, 289). Employers may pay off union officials to obtain sweetheart contracts or "waivers" of collective bargaining provisions (Goldstock et al. 1990, 22–23).

Extortion

In practice, it can be difficult, even for participating parties, to distinguish extortion from bribery. Money passes from employers to union officials (Goldstock et al. 1990, 19). It is bribery if the employer's purpose

is to pay for a benefit, and extortion if the employer's motive is to avoid economic or physical harm (Goldstock et al. 1990, 19; US DOL 2013c). Union officers may threaten to harm an employer by: (1) assigning them only unqualified or incompetent workers (for example, *People v. Bitondo*, Ind. No. 7952/87 [N.Y. Sup. Ct. N.Y. Cnty. 1987]); (2) destroying or vandalizing materials or structures, such as by cutting electrical wires (for example, *People v. O'Connor*, Ind. No. 7953/87 [N.Y. Sup. Ct. N.Y. Cnty. 1987]); or (3) instructing workers not to perform, or to delay in performing, critical or time-sensitive tasks, such as by refusing to remove perishable cargo from ships (for example, Jacobs, Friel, and Radick 1999, 154).

Embezzlement and Theft

From a corruption scholar's perspective, a union official's embezzlement of union and pension funds would probably look like a familiar story of organizational corruption. However, the array of opportunities for diverting union resources into the pockets of corrupt union officials stands out. In addition to simply stealing funds, union officers can provide no-show union jobs to associates, pay themselves and designees extravagant "consulting" fees, pay illegal sums to suppliers of goods and services, and invest union funds in projects controlled by friends, business partners, or organized crime figures without expectation of a reasonable return or repayment.

Frauds

Common frauds committed by labor union officials include:

- ▶ *Pension and Welfare Fund Fraud* (union officials permitting employers to avoid making required contributions to employee benefit funds, or trustees using the benefit funds to enrich themselves, friends, and associates) (Goldstock et al. 1990, 27);
- ▶ *Defrauding Union Treasuries* (union officers reimbursing themselves for nonunion-related expenses) (Johnson 2012; Costello 2013);
- ▶ *Vote Fraud in Union Elections* (stuffing ballot boxes or miscounting ballots in union elections) (Greenhouse 2000); and

- ▶ *Fraudulent Disclosure, Accounting, and Tax Filings* (for example, *United States v. Hemphill*, Nos. 06-3088, 06-3089, 07-3016 [D.C. Cir. 2008], where officers of the Washington Teachers Union filed fraudulent accounting and tax forms with the Department of Labor and the IRS).

Intimidation and Violence

Unlike corporate, government, and eleemosynary corruption, physical intimidation and violence have been a regular feature of labor racketeering (Goldstock et al. 1990, 31).

RECENT EXAMPLES OF UNION CORRUPTION AND RACKETEERING

Organized-Crime-Related Union Corruption

While organized crime is much weaker in 2013 than it was a generation ago, recent investigations and prosecutions prove organized crime influence in several labor unions. In January 2011, for example, the Department of Justice indicted 91 Cosa Nostra members and associates, along with several ILA and Cement and Concrete Workers Union officials and members, for murder, loansharking, and/or racketeering (US DOJ 2011). In February 2013, Louis Fazzini, a Philadelphia Cosa Nostra member, was sentenced to four-and-a-half years in prison for theft from an employee benefit plan (US DOL 2013d). And in July 2013, a Manhattan grand jury indicted a nine-member Bonanno crime family crew, as well as the president of IBT Local 917 (representing 1,900 workers in the liquor, automotive, parking, and other NYC businesses), who was charged with enterprise corruption, grand larceny, criminal usury, and perjury for his activities in connection with the indicted Bonanno crew (New York County District Attorney's Office 2013).

Non-Organized-Crime Labor Corruption

Most instances of union corruption do not involve an organized-crime connection.

AFSCME District Council 37. Leaders of District Council 37 (DC 37), American Federation of State, County and Municipal Employees (AFSCME), comprised of 125,000 low-wage NYC workers in 56 locals, were charged for (among other things) misappropriating \$5.7 million (Boehm 2002a; Boehm 2002b). In November 1998, Joseph DeCanio, president of one DC 37 affiliate, pled guilty to vote fraud and embezzling \$50,000 (*Bennett v. Saunders*, No. 99 CIV. 0854 [SAS], 1999 WL 529539 [S.D.N.Y. July 23, 1999]). Ultimately, 32 DC 37 officials were convicted on corruption charges, including embezzlement and theft; falsification of business records; and vote fraud (Boehm 2002a; Boehm 2002b). The scandal removed 10 presidents of DC 37 local union affiliates (Boehm 2002b).

Brian McLaughlin Case. About a decade later (2009), Brian McLaughlin, one of the most powerful labor officials in New York City, was convicted of corruption. McLaughlin was president of the NYC Central Labor Council, a federation of 400 union locals representing more than 1 million members (*United States v. McLaughlin*, Indictment [S.D.N.Y. Oct. 17, 2006]). He simultaneously served in the state assembly (Weiser 2009). Prosecutors charged that McLaughlin misappropriated \$275,000 dollars from a union local and \$268,000 from the Central Labor Council; maintained a secret interest in a company doing business with union employers; and took bribes from contractors (FBI 2009; Zambito 2009). At sentencing, Judge Richard Sullivan observed that McLaughlin's conduct confirmed "the harshest critics of organized labor, who accuse the leadership of corruption, and point to you as an example of that corruption" (Steier 2014, 77).

"Garden Variety" Labor Corruption

For September 2013 alone, the National Legal and Policy Center (NLPC) reported on dozens of instances of union-related arrests, indictments, convictions, and sentences:

- ▶ IATSE District 9 treasurer charged with embezzling \$76,768;
- ▶ American Federation of Government Employees (AFGE) Local 2384

- president and vice president indicted for concealment of embezzled funds;
- ▶ former AFGE Local 1765 president ordered to pay \$18,662 restitution;
 - ▶ former AFGE Local 1380 president pled guilty to 24 counts of wire fraud;
 - ▶ former AFGE Local 3601 treasurer indicted for making false statements in the union's records;
 - ▶ former United Food and Commercial Workers Local 638C president pled guilty to embezzling \$24,028;
 - ▶ former American Postal Workers Union Local 6768 president ordered to pay \$20,000 restitution;
 - ▶ former ILA Local 1422-A secretary-treasurer charged with embezzling \$55,000;
 - ▶ former Detroit Federation of Teachers business manager charged with fraud;
 - ▶ Somers Classified Education Association secretary-treasurer charged with embezzling \$9,000;
 - ▶ former International Association of EMTs and Paramedics Local 43 president indicted for theft;
 - ▶ former United Electrical, Radio, and Machine Workers Local 8410 bookkeeper pled guilty to embezzling \$12,059;
 - ▶ United Electrical, Radio, and Machine Workers Local 121 financial secretary charged with embezzling \$24,000;
 - ▶ International Brotherhood of Boilermakers sales and marketing director pled guilty to embezzlement;
 - ▶ former United Teachers of Suwannee County president and treasurer charged with embezzling \$50,000;
 - ▶ former IBT-affiliated Graphic Communications International Union Local 537M president and secretary-treasurer ordered to pay \$4,042 restitution;
 - ▶ former International Association of Fire Fighters Local 2046 member charged with theft and tax fraud;

- ▶ former United Steelworkers Local 480 financial secretary pled guilty to falsifying records to conceal embezzlement;
- ▶ former United Steelworkers Local 635 secretary-treasurer pled guilty to falsifying records to cover up embezzlements;
- ▶ former United Steelworkers Local 805 financial secretary pled guilty to embezzling \$8,467;
- ▶ former Glass, Molders, Pottery, Plastics, and Allied Workers International Union Local 99 secretary-treasurer charged with embezzling \$5,688;
- ▶ former International Association of Machinists and Aerospace Workers Local Lodge W443 secretary-treasurer ordered to pay \$16,368 restitution;
- ▶ former Sheet Metal Workers Local 270 business manager indicted for embezzling \$12,825;
- ▶ former United Brotherhood of Carpenters and Joiners Local 247 office manager ordered to pay \$5,509 restitution; and
- ▶ former United Brotherhood of Carpenters and Joiners Local 943 office secretary indicted for embezzling \$13,015 (National and Legal Policy Center 2013).

THE DISTINCT CRIMINAL LAW OF UNION CORRUPTION

There is a substantial body of labor-corruption-specific criminal law.

Hobbs Act

The 1946 Hobbs Act, 18 U.S.C. § 1951, is one of the earliest, and perhaps the most famous, federal criminal law aimed at union corruption and racketeering. Section 1951(a) provides that:

Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to

do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

The Hobbs Act defines extortion as “the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right” (Lindgren 1988). Here are some examples of high-profile Hobbs Act labor-racketeering prosecutions:

- ▶ *United States v. Green*, 350 U.S. 415 (1956): Several union officials convicted of Hobbs Act extortion for threatening to force an employer to pay for fictitious and superfluous services unless the employer paid them off;
- ▶ *United States v. Kramer*, 355 F.2d 891 (7th Cir. 1966), *cert. granted in part*, decision vacated in part, 384 U.S. 100 (1966): Bridge, Structural Reinforcing Steel and Ornamental Ironworkers Local 393 secretary-treasurer convicted of Hobbs Act extortion for threatening labor difficulties unless employer paid off; and
- ▶ *United States v. Iozzi*, 420 F.2d 512 (4th Cir. 1970): Baltimore Building and Construction Trade Council (an association of 25 local building trade unions) president convicted for obtaining money from building contractors by threatening labor difficulties.

In *United States v. Emmons*, 410 U.S. 396, 400 (1973), the Supreme Court held that the Hobbs Act could not be applied to union members who used firearms and explosives during a labor strike because their conduct was in furtherance of a “legitimate union objective.” In response, conservative members of Congress and law enforcement officials have repeatedly, but unsuccessfully, urged an amendment, called the Freedom from Union Violence Act, that would prohibit violence whether or not it is in furtherance of legitimate union activity (Kerrigan 2002).

In the 1980s, 1990s, and 2000s, the Hobbs Act was used as a predicate offense in high-profile criminal and civil RICO cases involving labor racketeering (Jacobs 2006, 149–50). For example, in 2007 federal prosecutors indicted International Union of Operating Engineers Local 17 officers and members for violation of RICO based on attempted Hobbs Act extortion of contractors (*United States v. Larson*, No. 07CR304S, 2012 WL 4112026, *1 [W.D.N.Y. Sept. 18, 2012]).

National Labor Relations Act

The 1935 National Labor Relations Act (NLRA), 29 U.S.C. §§ 151–169, as amended in 1947 by the Labor-Management Relations Act, made it a federal crime for union officials to (1) coerce or restrain workers in the exercise of their NLRA rights; (2) cause an employer to discriminate against workers; or (3) threaten, coerce, or restrain any person for the purpose of forcing or requiring an employer to assign particular work to employees in one union rather than another union, or forcing or requiring a person to cease dealing in the products of another producer or manufacturer.

Labor-Management Relations Act

The 1947 Labor-Management Relations Act, 29 U.S.C. §§ 141–187, commonly known as the Taft-Hartley Act, amended the NLRA “to prevent bribery of union officials by employers and extortion of employers by union officials” (29 U.S.C. § 141(b)). As explained in *United States v. Phillips*, 19 F.3d 1565 (11th Cir. 1994), a key purpose of the Taft-Hartley Act is “to eliminate practices that have the potential for corrupting the labor movement.” Sections 186(a) and (b) of the act make it a federal crime for an employer to give or lend anything of value to a union, union official, or union welfare fund, and for a labor official to demand or accept anything of value from an employer (regardless of whether a quid pro quo could be proved). In 1956, the Supreme Court, in *United States v. Ryan*, 350 U.S. 299 (1956), upheld the conviction of ILA President Joseph Ryan under this act for taking bribes

from a stevedoring employer. And in 1990, United Steelworkers of America International Labor Union officials were convicted, in *United States v. Phillips*, 19 F.3d 1565 (11th Cir. 1994), for receiving payments from a steel company official.

The Taft-Hartley Act, 29 U.S.C. § 158(b)(6), also prohibited “featherbedding,” defined as “caus[ing] or attempt[ing] to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.”⁵ It further empowered the National Labor Relations Board (NLRB) to remedy violations but did not criminalize violation (although it is criminal, under Section 162 of the Act, to willfully resist, prevent, or interfere with an NLRB investigation).

Labor-Management Reporting and Disclosure Act

In passing the 1959 LMRDA, 29 U.S.C. § 401(b), Congress recognized, “from recent investigations in the labor and management fields, [that] there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct.” The act included several new labor crimes:

- ▶ 29 U.S.C. § 530: Any person who uses force, violence, or threats of force or violence to restrain, coerce, or intimidate a union member (or to attempt to do so) in order to interfere with the member’s exercise of his or her rights under the LMRDA may be subject to a \$1,000 fine and/or up to a year in prison;
- ▶ 29 U.S.C. § 501(c): A union officer’s or union employee’s embezzlement, stealing, or conversion of any moneys, funds, securities, property, or other assets of the union may be penalized by a \$10,000 fine and/or imprisonment for up to five years;
- ▶ 29 U.S.C. § 503: A union official who causes the union to loan another union official or union employee more than \$2,000 in

union funds commits an offense punishable by up to \$5,000 in fines and/or a year in prison;

- ▶ 29 U.S.C. § 522: A union official or member who engages in “extortionate picketing,” defined as “carry[ing] on picketing on or about the premises of any employer for the purpose of, or. . . in furtherance of any plan or purpose for, the personal profit or enrichment of any individual. . . by taking or obtaining any money or other thing of value from such employer against his will or with his consent,” faces up to 20 years’ imprisonment and/or a \$10,000 fine; and
- ▶ 29 U.S.C. §§ 436, 439(a): A person who willfully fails to satisfy the LMRDA’s filing or recordkeeping requirements may be punished by up to a \$10,000 fine and/or a year in prison.

In *United States v. Bertucci*, 333 F.2d 292 (3d Cir. 1964), several members of (Philadelphia) IBT Local 107 were convicted under the LMRDA for beating “dissidents” who attempted to enter the union hall to vote against a proposed collective-bargaining contract. Union officials have also been convicted under the LMRDA for filing false reports with the Department of Labor and for failing to maintain required records. For example, in *United States v. Improto*, 542 F. Supp. 904 (E.D. Pa. 1982), the IBT Local 830 president was convicted for filing a false LM-2 (annual union financial statement), and in *United States v. Chittenden*, 530 F.2d 41 (5th Cir. 1976), the ILA Local 1418 president was convicted for failing to maintain required records.

Employment Retirement Income Security Act (ERISA)

Congress enacted ERISA in 1974 to protect union pension and welfare funds. Under 18 U.S.C. § 664, any individual who embezzles, steals, or converts the funds or assets of an employee welfare benefit plan or employee pension benefit plan may be fined and/or imprisoned up to five years. ERISA also makes it criminal, under 18 U.S.C. § 1954, to offer, solicit, or receive anything of value because of or with the intent to be influenced with respect to any actions or decisions relating to an employee benefit

plan. In addition, under 18 U.S.C. § 1027, a person who knowingly makes a false statement, or conceals or fails to disclose required information in an employee benefit plan document, commits a felony.⁶

In December 2012, the founder and president of the National Association of Special Police and Security Officers (representing private security guards) was convicted under ERISA for, among other things, theft of union pension funds (amounting to at least \$100,000) (US DOJ 2012). In April 2010, the Waterfront Guard Association Local 1852 president was sentenced to 30 months in prison under ERISA for embezzling money from employee welfare and pension plans (US DOJ 2010).

Racketeer Influenced and Corrupt Organizations Act

The RICO statute, 18 U.S.C. §§ 1961–1968, enacted as Title IX of the Organized Crime Control Act of 1970, created new civil and criminal instruments to combat organized-crime infiltration of legitimate economic enterprises, especially labor unions (Jacobs 2006, 50–51). Congress explained, in S. Rep. No. 91–617, 91st Cong., 1st sess. 78 (1969), that RICO was necessary because

organized crime has moved into legitimate unions. Control of labor supply through control of unions can prevent the unionization of some industries or can guarantee sweetheart contracts in others. It provides the opportunity for theft from union funds, extortion through the threat of economic pressure, and the profit to be gained from the manipulation of welfare and pension funds and insurance contracts. . . . As the takeover of organized crime cannot be tolerated in legitimate business, so, too, it cannot be tolerated here.

Sections 1962(a), (b) and (c) of the RICO statute created three new federal crimes, all applicable to labor racketeers: (1) to invest the

proceeds of racketeering activity or collection of an unlawful debt in any legal enterprise; (2) to obtain an interest in any enterprise through a pattern of racketeering activity or collection of an unlawful debt; and (3) to conduct or participate in the affairs of an enterprise through a pattern of racketeering activity or collection of an unlawful debt. It is also a crime, under Section 1962(d), to conspire to commit any of the three substantive RICO offenses.

In the early 1980s, the FBI made labor racketeering a top priority in its war on organized crime because of the “thoroughly documented” fact that labor racketeering is one of Cosa Nostra’s “fundamental sources of profit, national power, and influence” (FBI 2013). Federal prosecutors frequently used RICO against labor racketeers. In *United States v. Norton*, 867 F.2d 1354 (11th Cir. 1989), for example, they convicted several members of LIUNA for conspiring to participate in racketeering activity involving unlawful payments and receipts of money from employee welfare benefit plans. In *United States v. Solfi*, 889 F.3d 378 (2d Cir. 1989), two officers of IBT Local 875 were convicted of violating RICO by receiving bribes (\$5,000 per month each and additional cash payments) from an employer in exchange for labor peace and for being able to use nonunion labor on certain projects; and embezzling money from the union’s welfare fund through false insurance claims and kickbacks from the fund.

State Laws to Combat Union Corruption

New York’s legislature enacted an “enterprise corruption” statute, New York Penal Law § 460.00, because “organized crime continues to expand its corrosive influence in the state through illegal enterprises engaged in such criminal endeavors as . . . labor racketeering.” The penal law also makes it a felony to bribe a labor official or for a labor official to receive a bribe. New York’s Labor Law prohibits union officials receiving anything of value from an employer whose employees are union members and prohibits employers’ giving anything of value to a union official. New Jersey, and other states, have similar laws.⁷

Union Corruption-Specific Prophylactics and Remedies

Federal law also includes a variety of union corruption-specific punishments. Under LMRDA Section 504(a), for instance, a person convicted of a crime, including robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, and certain types of assault, is barred from serving as a union officer, representative, or consultant for 13 years from the date of conviction or the termination of sentence, whichever comes later. Under LMRDA Section 504(d), a person barred from union office is prohibited from receiving a union salary—that is, from working for a union.

The LMRDA further requires that officers, agents, or other union representatives “who handle [union] funds or other property” must be “bonded to provide protection against loss by reason of acts of fraud or dishonesty on his part directly or through connivance with others.” LMRDA Section 462 authorizes international unions to remedy corruption in their local union affiliates:

Trusteeships shall be established and administered by a labor organization over a subordinate body . . . for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objections of such labor organization.

Department of Justice lawyers have used RICO’s civil remedy to obtain court-ordered injunctions against labor racketeering. Indeed, from its first civil RICO case against IBT Local 560 in 1982 through 2010, The Department of Justice obtained relief in 24 civil RICO lawsuits involving employer associations and labor unions (including IBT, LIUNA, and HEREIU), and such relief has generally included appointment of court-approved monitors to oversee the organization’s operations, supervision of elections, and discipline or expulsion of corrupt

officials and members (Jacobs, Cunningham, and Friday 2004, 419-20; US DOJ 2013). In the case of the Teamsters Union, court-appointed election and disciplinary monitors have been on the job for more than 25 years (Jacobs and Cooperman 2011, 215-30).

Law Enforcement Units Targeting Union Corruption

For many years, the Department of Justice's Organized Crime and Racketeering Section included a unit dedicated to investigating and prosecuting labor racketeering. Recently, OCRS has been reorganized as the Organized Crime and Gang Section (OCGS), which has a unit responsible for "support[ing] federal criminal prosecution and civil RICO litigation in cases involving labor-management relations, internal labor union affairs, and the operation of employee pension and health care plans in the private sector" (US DOJ 2013). OCGS explains that its mission "involves combating the infiltration by organized criminal groups of labor unions, employer organizations and their affiliated employee benefit plans in the private sector of the economy" (US DOJ 2013). One of the functions of the Department of Labor's Office of Labor Racketeering and Fraud Investigations is "to conduct criminal investigations to combat the influence of labor racketeering and organized crime in the nation's labor unions" (US DOL 2013e).

Some state and local law enforcement agencies have or had similar units devoted to combating labor corruption and racketeering. The Manhattan District Attorney's Office, for example, has a Labor Investigations and Construction Fraud Unit (previously "the Labor Racketeering Unit") (Eligon 2010). New York State's Department of Labor also has a Special Investigations Unit that focuses on labor union corruption (New York State Department of Labor 2013). In 1953, in response to pervasive labor racketeering at the Port of New York-New Jersey, New York and New Jersey formed the Waterfront Commission of New York Harbor, with broad statutory authority to deter, combat, and remedy labor racketeering in the port (Waterfront Commission of New York Harbor 2013).

POLITICIZATION OF UNION CORRUPTION

Corruption control in the labor union context is also distinctive for the responses that its illumination provokes. Allegations, charges, and prosecutions of labor racketeering are often criticized as motivated by anti-labor animus. Take, for example, the firestorm of high-profile opposition from politicians and labor leaders to the filing of the blockbuster civil RICO lawsuit against the Teamsters Union in 1988 (*United States v. International Brotherhood of Teamsters*), despite the fact that organized crime's influence in the IBT and its Central States Pension and Welfare Fund had been exposed over many years by dozens of criminal prosecutions, media exposés, and Congressional hearings. Detroit Mayor Coleman Young denounced the lawsuit as "a danger to the freedom of the American people" (Jacobs and Cooperman 2011, 34–36). AFL-CIO President Lane Kirkland said that the lawsuit "doesn't sound to me like the proper relationship between government and a private institution in a free society" (Weinstein 1987).

The California Federation of Labor's secretary-treasurer complained that "what the government is proposing [that is, the lawsuit] would smear millions of union members who are in no way involved" (Alcott 1987). Senator Orrin Hatch (R-UT) said that the lawsuit "flies in the face of democratic principles" and "smacks of totalitarianism" (Wallentine 1990, 346; Zuckerman, Samghabadi, and Shannon 1988). Congressman Jack Kemp (R-NY) observed that "the United States government is not meant to be in the business of taking things over. . . . It shouldn't take over your union" (Jacobs and Cooperman 2011, 35–36). Senator Paul Simon (D-IL) said that the lawsuit "ought to frighten every American" (Jacobs and Cooperman 2011, 36). And Ohio Governor Richard Celeste called the lawsuit "just plain wrong" (Jacobs and Cooperman 2011, 36). Remarkably, given the documented history of organized crime penetration of the IBT and the fact that the politicians had not yet even seen the Department of Justice's complaint, 264 members of Congress delivered a petition

to Attorney General Edwin Meese in December 1987 urging that the Department of Justice not file the RICO lawsuit (Jacobs and Cooperman 2011, 211).

The insistence that attacking or even studying labor union corruption and racketeering is bad for the labor movement (and is even “anti-labor”) has a long history. No doubt some investigators, critics, and students of labor racketeering and corruption are unfriendly to labor unions, some perhaps because of what they learned from their research. Nevertheless, it is a plausible hypothesis that corruption and racketeering have done incalculable harm to the goals of the labor movement, while efforts to expose and combat labor corruption and racketeering are a positive contribution to the labor movement.

NOTES

1. Many authors have published influential works that, while not focused primarily on labor racketeering, make important contributions to the literature (see Russo 2011; Blakey and Goldstock 1980).
2. From 1952 to 1953, the New York State Crime Commission also held several hearings on corruption and racketeering in the Port of New York (Jensen 1964).
3. In 1958, Professor Philip Taft published *Corruption and Racketeering in the Labor Movement*, a very general discussion that does not discuss organized crime’s role in labor union corruption.
4. A stream of scandals and prosecutions in the last two decades, including the high-profile Bernard Madoff, Enron, and WorldCom scandals, revealed massive corporate corruption. Recent high-profile Foreign Corrupt Practices Act prosecutions also illuminate corporate corruption that the SEC is responsible for identifying and prosecuting (US SEC 2013f).
5. The US Supreme Court, however, has narrowly construed this prohibition. See *N.L.R.B. v. Int’l Longshoremen’s Ass’n, AFL-CIO*, 473

U.S. 61, 82 n. 22 (1985), explains that this provision “does not prohibit payment for work actually done or offered, even if that work might be viewed as unnecessary or inefficient”; *Scofield v. N.L.R.B.*, 394 U.S. 423, 424 (1969), which states that this is a “narrow prohibition.”

6. ERISA, 18 U.S.C. §§ 411, 501, 511, 519, contains other criminal provisions addressing prohibitions against certain persons holding certain positions, willful violations of certain ERISA mandates, coercive interference with certain ERISA rights, and prohibitions against false statements and representations in connection with the marketing/sale of a Multiple Employer Welfare Arrangement.
7. For example, New Jersey’s Casino Control Act, N.J. Stat. Ann. § 5:12-93, sets forth anticorruption requirements for labor unions operating in the casino industry, and makes the violation of such requirements a criminal act.

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