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Political Spending by Organized Labor: Background and Current Issues

Joseph E. Cantor
Specialist in American National Government
Government Division

Summary

Labor unions have traditionally played a strong role in American elections, assisting favored candidates through their direct and indirect financial support, as well as through manpower and organizational services. While direct financing of federal candidates by unions is prohibited under federal law, unions can and do establish political action committees (PACs) to raise voluntary contributions for donation to federal candidates. This PAC money is also known as “hard money,” because certain federal limits on contributions make it harder to raise. It is also fully disclosed under federal law. Other aspects of labor’s political support take the form of “soft money,” which is not limited by federal law and is not as hard to raise. Soft money is generally considered to be a formidable factor in organized labor’s political strength. This spending is largely unregulated, either because it is restricted to seeking to influence only its members and their families or because it does not advocate specific candidates’ election or defeat. The soft money aspect of labor’s political activity has aroused controversy because of fundraising methods and the relative dearth of disclosure.

ORIGIN OF DISTINCTION BETWEEN HARD AND SOFT MONEY

During World War II, the War Labor Disputes Act of 1943, known as the Smith-Connally Act, prohibited unions from making contributions in federal elections.¹ In 1947, the Taft-Hartley Act made this wartime measure permanent and expanded it to include primary elections and any expenditures in connection with federal campaigns.²

Organized labor responded to the 1943 prohibition on donating union treasury money by creating the first separate segregated fund (SSF), commonly known as a PAC. Through

¹ 57 Stat. 167. Earlier in the century, the Tilman Act of 1907 [34 Stat. 864] had banned contributions from corporations and national banks.

² The Labor Management Relations Act of 1947; 61 Stat. 159.

CIO-PAC, the Congress of Industrial Organization established the precedent of collecting voluntary contributions from its members, which could be dispensed to favored candidates. Other national and local unions followed suit: 17 national labor PACs gave \$2.1 million to federal campaigns in 1956, and 37 such PACs spent \$7.1 million in 1968.³ This money, raised and spent according to federal regulation, came to be known as *hard money*.

The concept of soft money arose during the several decades before the Federal Election Campaign Act (FECA) of 1971 was enacted [P.L. 92-225]. During that period, unions used money from their treasuries—as opposed to PAC money—for political activities other than donations in federal elections. These included: (1) contributions to state and local candidates, where union donations were allowed; (2) such “educational,” “non-partisan,” activities as get-out-the-vote and registration drives and distribution of voting records; and (3) public service activities to promote their philosophy through union newspapers and radio shows.⁴ It was generally understood at that time that spending on such activities might influence federal elections less directly or overtly than candidate contributions; hence, it was not subject to federal limits or disclosure rules. Thus, the term *soft money* has come to mean money that is raised and spent outside the purview of federal election law and that is not permitted in federal elections, but which might have at least an indirect impact on those elections.

The 1971 FECA incorporated the concept of union and corporate SSFs in federal law for the first time. This landmark legislation also distinguished between political activities that were and were not to be federally regulated and thus, without using the term, provided the legal basis for union (and corporate) soft money. The Act amended 18 U.S.C. §610 (which banned union, corporate, and national bank spending in federal elections) to give specific authority for these organizations to use their general treasury money for political activities. It thus exempted certain union and corporate activities from FECA definitions of “contribution” and “expenditure,” if the activities are aimed at restricted classes (for unions, members and their families, and, for corporations, stockholders and their families). The specified activities were communications (including partisan ones), nonpartisan registration and get-out-the-vote drives, and costs of establishing, administering, and soliciting contributions to an SSF. The 1976 FECA Amendments (P.L. 94-283) recodified this provision as 2 U.S.C. § 441b, added executive and administrative personnel and their families to corporations’ restricted class, and allowed membership organizations, cooperatives, and corporations without capital stock to set up SSFs.

The FECA thus created a legal framework for unions to set up PACs to raise and spend money directly in federal elections, subject to federal regulation (hard money), and

³ Alexander, Herbert E. *Financing the 1976 Election*. Washington, Congressional Quarterly Press, 1979. P. 559.

⁴ Alexander, Herbert E. *Money in Politics*. Washington, Public Affairs Press, 1972. p. 170; Heard, Alexander. *The Costs of Democracy*. Chapel Hill, University of North Carolina Press, 1960. p. 177-8.

to use its treasury money for specified activities aimed only at its restricted class and not subject to federal regulation (soft money).⁵

CURRENT REGULATIONS

Under recently amended regulations, unions (and corporations) were acknowledged to have great latitude in communications with their restricted classes. Under these regulations, unions are exempt from FECA definitions of “contribution” and “expenditure” for communications on any subject, registration and get-out-the-vote drives (not just “nonpartisan” efforts), and costs of setting up, administering, and fundraising for an SSF. Such efforts, however, may only be aimed at union members, executive or administrative personnel, and their families.⁶

New regulations, promulgated to implement the intent of various Supreme Court decisions,⁷ also introduced the standard of *express advocacy* in deciding what types of communications are permitted by and to whom.

Expressly advocating means any communication that ... uses phrases ... which in context can have no other meaning than to urge the election or defeat of one or more clearly identified candidate(s)....⁸

Communications containing express advocacy are permitted by unions if limited to the restricted class; correspondingly, communications without express advocacy may be made to the public, if done independently of any candidate.⁹

HARD MONEY ACTIVITY: UNION PACs

Given the rising costs of elections and the higher contribution limits for PACs than individuals in federal elections (\$5,000 versus \$1,000), PACs became a growing source of campaign funds in the past 20 years.¹⁰ As the pioneers in the PAC field, labor PACs grew in both overall numbers and money contributed, although by both measures, they have been increasingly overshadowed by corporate and other types of PACs.

⁵ The 1976 FECA Amendments required disclosure of internal communications once they exceed \$2,000, the only exempt activity subject to federal disclosure requirements.

⁶ 11 C.F.R. §114.1(a)(2)(i)-(iii)

⁷ Most notably, *FEC v. Massachusetts Citizens for Life, Inc.* [479 U.S. 238 (1986)].

⁸ 11 C.F.R. §100.22

⁹ 11 C.F.R. §114.3(a),(b),(c)(1) and 114.4(c)(1). (If public communications are coordinated with a candidate, they would constitute prohibited in-kind contributions, regardless of content.)

¹⁰ 2 U.S.C. §441a(a)(1) and (2); to be eligible for the \$5,000 limit, most PACs easily meet the criteria for “multicandidate committees” (i.e., they must be registered for at least 6 months, receive contributions from more than 50 persons, and donate to 5 or more federal candidates).

When the Federal Election Commission (FEC) first recorded PAC activity in January 1975, 201 of the 608 PACs (one-third) were labor PACs. As of January 1998, there were 332 labor PACs, only 8.6% of the total 3,844 PACs.¹¹

Another common gauge of federal PAC activity is the money contributed to congressional candidates (relatively little is given to presidential candidates). In 1974, labor PACs contributed \$6.3 million to congressional candidates, half of the \$12.5 million from all PACs;¹² in 1996, labor PACs gave \$46.6 million, 23% of the \$203.9 million from all PACs.¹³

While union PACs do not play as large a role among all PACs as they did 20 years ago, they have been able to remain competitive by giving larger donations than most PACs. While there are far fewer labor than corporate PACs, labor PAC contributions, on average, tend to be larger than those of corporate PACs. Given labor's traditional ties with the Democratic Party, it is not surprising that labor PAC donations are largely directed to Democrats. In 1996, for example, 93% of labor PAC contributions went to Democrats, compared with 27% for corporate PACs, 40% for non-connected (unsponsored) PACs, and 35% for the FEC's trade/membership/health category.¹⁴ The relative political uniformity among labor PACs is viewed by some as another way in which labor maximizes its political power.

SOFT MONEY ACTIVITY: UNION TREASURIES

Although there are no complete, publicly available data on amounts of union treasury money spent. One press account expressed a widely held view:

Labor's real importance to candidates, though, is not so much the PAC dollars unions contribute directly to campaigns as the expenditures they make from their treasuries to lobby among their members. In each election, labor spends millions of dollars in advocating its preferred candidates before the union rank and file, but how many millions is unknown, and estimates vary widely.¹⁵

¹¹ U.S. Federal Election Commission. *FEC Release Semi-Annual Federal PAC Count* (press release): Jan. 27, 1998.

¹² Common Cause. Campaign Finance Monitoring Project. *1974 Congressional Campaign Finances. Vol. 5—Interest Groups and Political Parties*. Washington, 1976. p. xii.

¹³ U.S. Federal Election Commission. *PAC Activity Increases in 1995-95 Cycle* (press release): Apr. 22, 1997.

¹⁴ *Ibid.*

¹⁵ Brownstein, Ronald, and Maxwell Glen. Money in the Shadows. *National Journal*, v. 18, Mar. 15, 1986. p. 633.

Forms of Support¹⁶

Two of the major types of activities financed by union treasuries to promote labor's political philosophy are: (1) the exempt activities aimed at their restricted class (as described); and (2) non-express advocacy communications aimed at the public (also referred to as issue advocacy or public education).

In the exempt activities category, unions have a ready infrastructure (phone banks, office space, etc.) and a ready pool of volunteers to make their internal communications and voter drives a significant force. While these efforts may only involve a restricted class and while corporations have the same rights as unions in all soft money activities, the Bureau of Labor Statistics (BLS) reports that labor's restricted class totaled 16.3 million people in 1996, plus families.¹⁷

In terms of public education and issue advocacy, unions engage in the same type of efforts as many other groups in the public arena. These often involve media ads to influence public opinion on policy issues. By avoiding overt appeals to elect or defeat specific candidates, these groups may promote their political and philosophical goals without triggering federal campaign finance regulation.

Source of Funding and Compulsory Dues Issue¹⁸

Union treasuries are financed in large part through dues paid by members. In addition, under some union security agreements, workers who do not join a union must pay a form of dues called agency fees. There are no available data on how many workers pay agency fees, but the BLS data indicate that some 2 million workers were represented by unions but who were not union members. Some portion of these workers pay agency fees as a condition of employment.

Due to the compulsory nature of agency fees, some workers have objected to the unions' political uses of their payments. Among several relevant rulings, the Supreme Court, in *Communication Workers of America v. Beck* [487 U.S. 735 (1988)], said that a union may not, over the objections of dues paying nonmember employees, spend funds collected from them on activities unrelated to collective bargaining. Hence, objecting employees could get a pro rata refund of their agency fees representing costs of non-collective bargaining activities.

¹⁶ For a discussion of methods used by business and labor to promote their political and policy agendas, see: U.S. Library of Congress. Congressional Research Service. *Business and Labor Spending in U.S. Elections*, by Joseph E. Cantor. Washington, 1997.

¹⁷ U.S. Department of Labor. Bureau of Labor Statistics. *Employment and Earnings*, v. 44. Jan. 1997. p. 211.

¹⁸ For fuller discussions of these issues, see: U.S. Library of Congress. Congressional Research Service. *The Use of Compulsory Union Dues for Political Purposes: A Legal Analysis*. CRS Report 97-618A, by John Contrubis and Margaret Mikyung Lee. Washington, 1997.; ———. *The Use of Union Dues for Political Purposes and Agency Fee Objectors*. CRS Report 97-555E, by Gail McCallion. Washington, 1998.

Although the court rulings have left no doubt that dissenting workers are entitled to such refunds if requested, issues have arisen as to the extent to which unions should notify such workers of these rights. On April 13, 1992, President Bush issued Executive Order 12800, requiring federal contractors to post notices to employees informing them of “Beck” rights; this was rescinded by President Clinton on February 1, 1993 (Executive Order 12836). Bills have been introduced in recent Congresses either to require greater notification of non-members’ rights regarding the use of their agency fees or to require prior authorization from all workers (union and non-union members alike) before dues money can be used for political purposes.

Dollar Value of Union Soft Money

The only soft money unions must disclose under the FECA are express advocacy communications with members, but only when they exceed \$2,000 per candidate, per election, and excluding communications primarily devoted to other subjects.¹⁹ In 1996, unions reported \$5.7 million on such activities.²⁰

While unions are required to file financial reports under the Labor Management Reporting and Disclosure Act of 1959 (P.L. 86-257), these reports are arranged by type of expenditure (e.g., salaries, administrative costs) rather than by functional category (e.g., contract negotiation and administration, political activities). Under President Bush, the Department on Labor proposed regulations to change reporting to require functional categories (October 30, 1992); in a proposed rulemaking notice on September 23, 1993, the Department, under President Clinton, rescinded the change to functional categories.²¹

Due to the limitations of public disclosure, one must look to estimates of the total value of labor soft money. Such estimates, which amount to educated guesses and may be influenced by the political orientation of the observer, range from the \$20 million labor supporters claim is its value in presidential campaigns,²² to the \$400-\$500 million critics estimate for total labor soft money in a presidential election year.²³

¹⁹ 11 C.F.R. §100.8(b)(4) and 104.6.

²⁰ U.S. Federal Election Commission. *Communication Cost Index*. Mar. 8, 1997.

²¹ U.S. Department of Labor. Labor Organization Annual Financial Reports. *Federal Register*, v. 58, no. 243, Dec. 21, 1993. p. 67595).

²² Alston, Chuck. Republicans Seek to Reduce Labor’s Clout at the Polls. *Congressional Quarterly Weekly Reports*, v. 48, Mar. 31, 1990. p. 963.

²³ Testimony of Reed Larsen (National Right To Work Committee) and Professor Leo Troy (Rutgers University). U.S. Congress. House of Representatives. House Oversight Committee. March 19, 1996.