Federal Register

Wednesday,
November 3, 2004

Part IV

Department of Labor

Office of Labor-Management Standards

Union Organization and Voting Rights: Criteria for Characterizing a Labor Organization as a "Local," "Intermediate," or "National or International" Labor Organization; Notice

DEPARTMENT OF LABOR

Office of Labor-Management Standards

RIN 1215–AB50

Union Organization and Voting Rights: Criteria for Characterizing a Labor Organization as a ''Local,'' ''Intermediate,'' or ''National or International'' Labor Organization

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, United States Department of Labor.

ACTION: Request for information from the public.

SUMMARY: This notice is a request for information from the public to assist the Department of Labor (''Department'') in evaluating its methods for determining when a labor organization constitutes a ''local,'' ''intermediate'' or ''national or international'' labor organization. Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (''Act''), 29 U.S.C 481–484, gives the Secretary of Labor authority to enforce the union officer election provisions of the Act. The Act calls for different election intervals and methods, depending on the type of labor union holding the election. In cases in which the labor organization at issue has no subordinate labor organizations, the Department considers the labor organization to be a local union if it exercises functions traditionally associated with local labor organizations. In cases in which an intermediate body with subordinate local unions is claimed to be a local union, the Department considers the intermediate body to be a local union if the intermediate body performs so many of the functions of the local unions that the local unions no longer continue to play a meaningful role. *See Harrington* v. *Chao,* 372 F.3d 52 (1st Cir. 2004). This analysis has been informed by the Department's interpretative regulation, found at 29 CFR 452.11, which states: ''The characterization of a particular organizational unit as a 'local,' 'intermediate,' *etc.,* is determined by its functions and purposes rather than the formal title by which it is known or how it classifies itself.'' The purpose of this Request for Information is to seek public comment on whether the Department's criteria for determining when a union is a local, intermediate or national or international union is appropriate, or whether there are alternatives that would better serve the purposes of the Act, and properly balance the interests of labor organizations and union members.

DATES: Comments must be received on or before December 3, 2004.

ADDRESSES: You may submit comments, identified by RIN 1215–AB50, by any of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov.* Please follow the instructions for submitting comments.

E-mail: *OLMS-REG-1215-AB50@dol.gov.*

FAX: (202) 693–1340. To assure access to the FAX equipment, only comments of five or fewer pages will be accepted via FAX transmittal, unless arrangements are made prior to faxing, by calling the number below and scheduling a time for FAX receipt by the Office of Labor-Management Standards (''OLMS'').

Mail: Mailed comments should be sent to Lary Yud, Deputy Director, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210. Because the Department continues to experience delays in U.S. mail delivery due to the ongoing concerns involving toxic contamination, commenters should take this into consideration when preparing to meet the deadline for submitting comments.

It is recommended that you confirm receipt of your comment by calling (202) 693–0123 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

Comments will be available for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210, *olms-public@dol.gov,* (202) 693–1233 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background

a. The Statutory, Regulatory and Administrative Framework

Under the Labor-Management Reporting and Disclosure Act, the frequency and method by which a labor organization must elect its officers depends on whether it is a local union, an intermediate union, or a national or international union. Specifically, section 401(b) of the Act requires that ''[e]very local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.'' 29 U.S.C. 481(b). Section 401(d) of the Act requires that officers of ''intermediate bodies, such as general committees, system boards, joint boards, or joint councils, shall be elected not less often than once every four years by secret ballot among the members in good standing or by labor organization officers representative of such members who have been elected by secret ballot.'' 29 U.S.C. 481(d). Section 401(a) requires that ''[e]very national or international labor organization * * * shall elect its officers not less often than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.'' 29 U.S.C. 481(a).

The Act does not define the terms ''local,'' ''intermediate,'' or ''national or international.'' The Department's regulations state: ''The characterization of a particular organizational unit as a 'local,' 'intermediate,' etc., is determined by its functions and purposes rather than the formal title by which it is known or how it classifies itself.'' 29 CFR 452.11. The same regulation provides examples of entities that are intermediate bodies, *i.e.*, ''general committees, conferences, system boards, joint boards, or joint councils, certain districts, district councils and similar organizations.'' *Id.* Various of these named intermediate bodies are described more fully elsewhere, *see* 29 CFR 451.4(f), but none of the regulations comprehensively define any of these critical terms, or provide a framework for distinguishing among local, intermediate or national and international labor organizations.

The definition of the term labor organization is also relevant to identifying the status—local, intermediate, or national or international—of a labor organization. Indeed, the first step in any such inquiry is to confirm that the entity in question is in fact a labor organization. The term labor organization is defined by statute:

> ''Labor organization'' means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

29 U.S.C. 402(i).

As a related part of this inquiry, it is often necessary to determine that the entity is a distinct labor organization rather than merely a part or component of a larger labor organization. To resolve this question, the Department has adopted a methodology, found in the LMRDA Interpretative Manual, to determine whether an entity is a discrete labor organization or merely an undifferentiated portion of an encompassing labor organization. The methodology follows:

030.603 Separate Existence

To be considered a labor organization under the Act an entity must be a separate organization having an organic existence or structure of its own, in addition to having the other characteristics of a labor organization as set forth in sections 3(i) and (j) [29 U.S.C. 402(i) (j)]. It may not be a mere administrative arm or an integral, undifferentiated part of another labor organization. Various factors are considered when determining whether an entity has a separate existence. It is not feasible to prescribe a precise formula. An analysis must be made of all the facts concerning the structure and function of a particular entity and a determination made on the evidence as a whole. Factors to be considered include: Whether the existence of the entity is recognized by means of a charter, reference in the parent body's constitution, or some other manner; whether it has a distinct and identifiable membership; whether it may accept or reject applications for membership; whether it has its own officers; whether it holds meetings as a unit with some regularity or frequency; whether it has assets of its own; whether it may expend funds allocated to it or raised by it; whether it may assess and collect dues, fees or assessments; whether it may discipline its members; whether it is represented as a unit at conventions or meetings of a parent or other body; and whether it engages in collective bargaining, grievance handling, or any business arrangements.

LMRDA Interpretative Manual, 030.603.

As will be discussed in greater detail below, the definition of ''labor organization'' and the methodology for determining separate existence are critical to determining whether an entity is a labor union, whether it constitutes one or more unions, and whether it has a parent or subordinate union or unions. Many larger labor unions conform to a three tier configuration, with local unions residing at the bottom tier, in a position subordinate to intermediate bodies, which are themselves subordinate to a national or international union. Application of the definition of ''labor organization'' and the separate existence factors reveals whether a union is placed within a larger union hierarchy, and, if so, where the union is so situated. The determination of the structure of the entity and the overall union hierarchy is the first step in analyzing whether the union is a local, intermediate, or national or international labor union.

b. Unions Without Subordinate Labor Organizations

In all cases, the Department begins the analysis of whether a union is a local, intermediate, or national or international union with an analysis of the union's structure. This structural analysis is used to determine whether the entity is a labor organization, to determine whether it constitutes one or more unions, and to determine where it is situated, if at all, within a larger hierarchy of affiliated unions. Two cases illustrate the analysis that the Department applies when such a structural review reveals that an entity that has no subordinate bodies claims to be an intermediate or national or international union. In *Schultz* v. *Employees' Fed'n of the Humble Oil & Refining Co. (''Humble Oil''),* 74 L.R.R.M (B.N.A.) 2140, 1970 U.S. Dist. LEXIS 12288, 1970 WL 5445, (S.D. Tex. Mar. 31, 1970), the defendant, Employees' Federation of the Humble Oil and Refining Company, Production Department, South Texas Division, contended that it could not be a local union because it contained 26 divisions that were separate locals. The Department disagreed, and filed a civil enforcement action against the defendant. As suggested by the LMRDA Interpretative Manual, discussed above, the court first determined whether the defendant's divisions were discrete labor organizations. *Humble Oil,* 74 L.R.R.M. at 2141–42. The court determined that the divisions had no autonomy separate from the defendant. *Id.* at 2143. The divisions did not maintain any bank accounts, lease any office space, or employ any persons. *Id.* They maintained no dues records, membership lists, admission procedures, and retained no authority to expel or discipline officers or members. *Id.* The divisions were thus, the court held, ''mere administrative arms or subunits'' of the defendant, and the defendant thus had ''the non-complex structure [that] is typical of a local labor organization,'' with no discrete labor organizations subordinate to it. *Id.*

Having determined that the defendant's structure was consistent with a local labor organization, the court reviewed the defendant's functions. The court wrote: ''The defendant performs the basic local union functions. It settles grievances; collects dues and establishes wages, benefits and working conditions by contract negotiations with the employer; and disciplines its members and officers.'' *Id.*

A second case also reflects the Department's method for determining whether a labor union is a local, under circumstances where a structural analysis has revealed that a union that claims not to be a local union is the entity closest to the union members. In *Donovan* v. *Nat'l Transient Div., Int'l Bhd. of Boilermakers, (''Boilermakers''),* 736 F.2d 618 (10th Cir. 1984), the defendant, National Transient Division (''NTD''), characterized itself as a division of an international labor organization. It represented craftsmen who traveled throughout the United States. *Id.* at 619. The court first held that the NTD was a labor organization itself, and not merely a division of the international labor organization. *Id.* at 621–22. Next, the court determined that the NTD was a local, rather than an international, labor organization. *Id.* at 622–23. The court observed that the NTD was ''subordinate to the International, and has no subordinate labor organizations.'' *Id.* at 623. Thus, the court held, the NTD ''has the relatively simple organizational structure characteristic of local labor organizations.'' *Id.*

The court also reviewed the functions of the union. ''Most important, NTD performs the functions of a local. NTD officials negotiate the basic terms of collective bargaining agreements, ensure that those agreements are enforced, handle grievances, collect dues from members, maintain out-of-work lists, hold meetings at which members express their views, and provide a number of other services directly to NTD members.''

In both *Boilermakers* and *Humble Oil,* the Department advanced the position that the structure of a union must be closely analyzed to determine whether the entity in question is part of another labor organization or whether it has subordinate labor organizations. In both cases, this analysis revealed that the labor organization in question was the labor organization closest to the members. At that point, the Department looked to whether the union exercised a variety of functions traditionally associated with local labor unions, and if so, took the position that the union was a local labor organization.

c. Intermediate Bodies With Subordinate Labor Organizations

In a recent case, the Department examined the methodology used to distinguish an intermediate union from a local union. *Harrington* v. *Chao,* 372 F.3d 52, 63 (1st Cir. 2004). In this case, the labor organization in question was

structurally intermediate, in that it was subordinate to a national union and oversaw local labor organizations, but it performed a number of important functions generally performed by local unions. The ''inquiry in determining whether an entity designated by the union as an intermediate body should instead be considered a local body,'' the Department explained, ''is whether the intermediate body has taken on so many of the traditional functions of a local union that it must in actuality be considered a local union.'' January 31, 2003, Supplemental Statement of Reasons for Dismissing the Complaint of Thomas Harrington, p 3. ''If the subordinate organizations in fact continue to perform functions and exist for purposes traditionally associated with local labor unions, the union's characterization of an entity placed structurally between such organizations and the international union as an 'intermediate body' will be upheld even though the intermediate body also performs some other functions traditionally associated with local unions.'' *Id.* at 4. This analysis was upheld by the U.S. Court of Appeals for the First Circuit. *Harrington,* 372 F.3d at 63.

The Department's extensive explanation of the method for distinguishing intermediate unions from local unions was the result of a union member's complaint, and subsequent litigation. In 1999, several union members filed an election protest with the Secretary pursuant to Title IV of the Act, 29 U.S.C. 482, arguing that the New England Regional Council of Carpenters (''NERCC'') was not an ''intermediate body,'' but a ''local labor organization'' required by section 401(b) of the Act to ''elect its officers not less often than once every three years by secret ballot among the members in good standing.'' 29 U.S.C. 481(b). The NERCC comprised 27 affiliated locals and was subordinate to the United Brotherhood of Carpenters and Joiners of America (''UBC''), a national labor organization. The NERCC was created in 1996, when the UBC combined state and district councils, as well as independent local unions, into larger regional councils. In New England, the NERCC, a single, regional council overseeing a number of pre-existing local unions, had over 25,000 members. The NERCC's subordinate bodies constituted separate labor organizations.

In April 2000, the Department issued a Statement of Reasons explaining why it had determined that the NERCC was an ''intermediate bod[y]'' within the meaning of section 401(d) of the Act, 29 U.S.C. 481(d), and could therefore elect its officers every four years either by secret ballot among the members in good standing or by a vote of delegates who had been elected by secret ballot by the members in good standing of NERCC's subordinate locals.

The complainants challenged this determination in United States District Court, which rejected the suit. *Harrington* v. *Herman,* 138 F. Supp. 2d 232 (D. Mass. 2001). The complainants appealed to the United States Court of Appeals for the First Circuit, which reversed the district court and vacated the Department's Statement of Reasons. *Harrington* v. *Chao,* 280 F.3d 50 (1st Cir. 2002). The statement was flawed, the court held, because it left two questions unanswered. *Id.* at 57. First, the statement suggested that the Department had rejected a ''functional'' analysis in determining whether a labor organization is a local or an intermediate labor organization, notwithstanding a regulation holding that the ''characterization of a particular organizational unit * * * is determined by its functions and purposes.'' *Id.*; *see* 29 CFR 425.11. Second, the statement failed to discuss two relevant cases, leaving it unclear whether the Department's approach was consistent with these precedents, and the positions that the Department had taken while litigating them. *Id.* at 57–58, citing *Donovan* v. *Nat'l Transient Div., Int'l Bhd. of Boilermakers, (''Boilermakers''),* 736 F.2d 618 (10th Cir. 1984), and *Schultz* v. *Employees' Fed'n of the Humble Oil & Refining Co. (''Humble Oil''),* 1970 U.S. Dist. LEXIS 12288, 1970 WL 5445, 74 LRRM 2140 (S.D. Tex. Mar. 31, 1970).

On remand, the Department issued a lengthy Supplemental Statement of Reasons that explained why the NERCC was properly characterized as an intermediate body under the Act, the regulations, and the applicable precedent. First, the statement recognized that the Department's regulations, specifically 29 CFR 452.11, made it clear that whether an entity is a local or intermediate body is dependent upon its ''functions and purposes'' as opposed to ''the formal title by which it is known or how it classifies itself.'' In construing this language, the Department reasoned that an entity designated by the union as an intermediate body should instead be considered a local body if the intermediate body ''has taken on so many of the traditional functions of a local union that it must in actuality be considered a local union.'' Although the statement recognized that the Department has never found an organization at the middle tier of a union structure to be a local, the statement observed that Congress' requirement of direct elections for local unions demonstrated its view that local unions perform meaningful functions. Viewing the regulation in light of this history and Congressional intent, the Department concluded, ''If the subordinate organizations in fact continue to perform functions and exist for purposes traditionally associated with local labor unions, the union's characterization of an entity placed structurally between such organizations and the international union as an 'intermediate body' will be upheld even though the intermediate body also performs some other functions traditionally associated with local unions.'' Supplemental Statement of Reasons, p.4.

Second, the Department analyzed the legislative history of the Act and the actual practices of unions when the Act was passed to conclude that intermediate, national, and international labor organizations at that time engaged in important representational activity both in conjunction with, and in lieu of, subordinate local unions. Specifically, the Department noted that the Act's legislative history makes it clear that intermediate bodies may wield ''responsible governing power'' within a labor union without being considered local unions under the Act. S. Rep. No. 187, 86th Cong., 1st Sess. at 20, *reprinted in* 1959 U.S.C.C.A.N. 2318, 2336. National Labor Relations Board decisions issued prior to enactment of the Act, the Department noted, made plain the practice of superior labor organizations to bargain collectively on behalf of subordinate entities.

Third, the statement observed that the organization's placement within the structure of a union was ''highly relevant in determining whether it is a 'local' or 'intermediate' union.'' The statute itself identifies intermediate bodies by their structural placement within the hierarchy of affiliated unions, or by a name historically associated with a particular tier within the union. The term Congress used to denominate these entities—intermediate bodies—suggests the relevance of an organization's placement within the overall structure of the union. The language of the statute, the Department concluded, authorized the Department to take into account the entity's structural placement when considering whether it is an intermediate body or a local union.

The Department also reviewed the case law for consistency with its analysis of the regulation, statute, and legislative history. The statement

concluded that the positions that the Department took in *Boilermakers* and *Humble Oil,* and the dispositions in those cases, did not compel a different analysis. In both cases, there were no labor organizations subordinate to the union whose status was at issue, and categorization as a local union was thus consistent with both the union's structure and functions. The cases, the statement concluded, provided no controlling authority when a union's structure and functions were not aligned.

Applying the Department's analysis, which reviewed the NERCC's structural placement within the hierarchy of affiliated unions, the NERCC's functions, and the functions of the NERCC's locals, the Department determined that the NERCC was an intermediate union. Dissatisfied with the Supplemental Statement of Reasons, the complainants renewed the litigation in the United States District Court of Massachusetts, which granted judgment for the complainants. *Harrington* v. *Chao,* 286 F.Supp. 2d 80 (D. Mass. 2003). The Department appealed, bringing the issue once again before the Court of Appeals for the First Circuit.

In a split decision, the Court of Appeals ruled that the Department did not act arbitrarily and capriciously in declining to bring suit against the NERCC. *Harrington* v. *Chao*, 372 F.3d 52 (1st Cir. 2004). The court reversed the district court, upholding the Department's determination that the NERCC is an ''intermediate'' labor organization and therefore not required to elect its officers directly. *Id.*

The complainant's primary argument was that the Department did not focus upon the NERCC in conducting its analysis, in order to determine whether the NERCC exercised local rather than intermediate functions, but improperly focused on the locals themselves. *Id.* at 60. Circuit Judge Lynch, writing for the court, observed that the Department examined the functions of the NERCC, as well as those of the locals, and noted that some of those functions, such as collective bargaining and disciplining members, have historically been the province of both locals and intermediate bodies dating back prior to the passage of the Act. *Id.* at 60. Further, the court rejected the argument that because a local traditionally performed collective bargaining and grievance handling, any labor organization, regardless of its placement within the union's structure, would also be local if it performs these functions. The court reasoned that this assumption would contradict the Congressional observation that intermediate bodies exercise ''responsible governing powers,'' and nothing in the statute required the Department to draw up a list of functions that could be performed by one kind of entity but not any others. *Id.* at 62. The court concluded that although the Department's approach had shifted in emphasis, the Department was permitted some flexibility in interpreting the Act and the regulations provided it furnished some explanation, which it did here. *Id.* at 63.

In a concurring opinion, Circuit Judge Lipez expressed concern that Congress did not intend intermediate bodies to hold the degree of power held by the NERCC, but nonetheless upheld the Department's conclusion because of the ''highly deferential standard'' under which the courts review the Department's decision not to sue. *Id.* at 63–70. In a dissenting opinion, Circuit Judge Torruella faulted the Department's analysis for focusing on the powers retained by the subordinate bodies, and not on the NERCC's powers, and stated that this represented an impermissible departure from past administrative practice. *Id.* at 70–75.

d. Review of the Method of Determining the Status of Labor Organization

The judicial decision upholding the Department's method of determining whether a union is a local or an intermediate held that the Department's position was lawful, but did not address whether the position struck the most favorable balance between protecting union members' interests and preserving unions' ability to structure themselves in a manner they deem most advantageous.

In its initial opinion, the Court of Appeals indicated that if the Secretary should wish to change the governing regulation, 29 CFR 452.11, she must do so in accord with the general rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. 553. *Harrington* v. *Chao*, 280 F.3d at 59. Congress has implicitly delegated the authority to the Secretary to interpret the union officer election provisions of the Act by charging her with a variety of substantial responsibilities under the statute, not the least of which is the Secretary's authority to investigate allegations of election violations. *See* 29 U.S.C. 481. The delegation of legal interpretive power is also evident in her exclusive authority to file a civil action in U.S. district court, seeking an order that a union election be declared void, and a new election be conducted under the supervision of the Department of Labor. *See* 29 U.S.C. 482.

The determination of the status of a labor organization is a complex matter. To better understand the effect of the Department's current regulatory and interpretive framework on unions, union members, and the public, the Department seeks additional information. This information will permit the Secretary to determine whether the Department's position adequately meets the needs of labor organizations and their members, and to determine whether additional rulemaking is necessary to fully realize the purposes of the Act.

II. Information Sought

The Secretary seeks public comment from interested parties regarding the Department's analyses for determining whether a labor organization constitutes a local, intermediate, or national or international labor organization. In particular, the Secretary is seeking written submissions on the following topics:

The terms ''local labor organization'' and ''intermediate bod[y]'' and ''national or international labor organization'' are not defined in the Act but they are crucial in the Title IV scheme for democratic union elections. Should the Secretary issue a regulation defining these terms? If so, what should these definitions be? What elements or factors should be considered when formulating definitions for these terms?

Are there certain functions that are so inextricably related to the fundamental purpose of unions and the daily work life of their members that labor organizations exercising these functions must be considered local unions?

If so, what are these functions? Are these functions limited to labor relations functions such as negotiating collective bargaining agreements, ratifying collective bargaining agreements, handling grievances, handling arbitration, controlling work referral systems, controlling business agents, controlling organizers, controlling stewards, calling strikes, etc.? Or should other functions such as disciplining members, raising rates of dues, or controlling a large part of the dues paid by members also be considered?

If a list of such functions could be compiled, how would the functions be applied to determine local union status? For example, should such a method require that an entity exercise a certain number of the functions to be considered a local or are one or two of the functions so critical that exercising them would be evidence of local status?

Are there any functions uniquely associated with national or international unions, suggesting that any entity with such characteristics would be considered a national or international

union? Similarly, are there functions that are uniquely associated with intermediate bodies?

The factors that the Department uses in determining whether an entity has a separate organic existence or structure of its own, as described in the LMRDA Interpretative Manual, are:

- Whether the existence of the entity is referenced through a charter, referenced in the parent body's constitution and bylaws, or some other manner
- Whether it has its own constitution and bylaws, or other governing rules
- Whether it has a distinct and identifiable membership
- Whether it may accept or reject applications for membership
- Whether it has its own officers
- Whether it holds meetings as a unit with some regularity or frequency
- Whether it has assets of its own sessments
- Whether it may discipline its members
- Whether it is represented as a unit at conventions or meetings of a parent or other body
- Whether it engages in collective bargaining
- Whether it engages in grievance handling
- Whether it engages in any business arrangements

LMRDA Interpretative Manual, 030.603.

Are all of these factors relevant to determining whether a labor organization has a separate existence? Are relevant factors missing from this list? At what point has an entity lost so many of these attributes that it becomes an administrative arm of another labor organization, rather than a separate labor organization?

How much significance should be attributed to an entity's placement above a local labor organization within a hierarchy of affiliated labor organizations in determining if it is a local or intermediate body? Would the application of a strictly functional test to determine the status of a labor union be consistent with the Act?

What concerns, if any, would arise from an intermediate body being reclassified as a local union? What effect, if any, would classification of an intermediate body as a local union have on the local status of its subordinate unions (assuming the subordinate unions retain sufficient functions and attributes distinct from the purported intermediate body to constitute discrete labor organizations)? Can a union supervise other local unions and still maintain status as a local union?

There appear to be cases in which an intermediate body, or a national or international union, has members that are not members of a local union. What elections do these members participate in? Should the existence of such members be a factor in determining the status of a labor organization as a local union? If so, what weight should this factor be given?

Have any unions changed their structure in reliance on the Department's existing positions? Have unions developed plans to devolve additional responsibility to intermediate or national or international labor organizations, based on the Department's articulated positions?

What is the proper analysis to distinguish a national or international union from a local? Should a different analysis apply if the entity at issue has constituent labor organizations? Should the method of distinguishing a national or international union from a local union be the same or different than that used to distinguish an intermediate body from a local?

In addition to these questions, the Department seeks information and evidence on the following topics:

- The functions performed by a typical local in 1959
- The functions performed by a typical intermediate body in 1959
- The difference in the functions of locals today as compared to 1959
- The difference in the functions of intermediate bodies today as compared to 1959
- Situations in which union bodies other than a local union perform functions such as negotiating collective bargaining agreements, ratifying collective bargaining agreements, handling first stage grievances, handling arbitration, controlling work referral systems, controlling business agents, controlling organizers, controlling stewards, calling strikes, etc.

Signed at Washington, DC, this 27th day of October, 2004.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Don Todd,

Deputy Assistant Secretary for Labor-Management Programs.

[FR Doc. 04–24452 Filed 11–2–04; 8:45 am]

BILLING CODE 4510–CP–P