SYMPTOMS OF CORRUPTION AND UNION DENIAL

Charles A. Carberry

Labor Racketeering is often the result of collusion between employers and employee representatives in which in exchange for something of value the employee representative ignores his obligation to union members. Given the limited investigative resources of unions, proving the receipt of a bribe is most often beyond their ability. However, the artifacts of racketeering such as inexplicable substandard contracts or lax contract enforcement remain evident. The harm to the members remains the same. As a consequence, in disciplining union employees, unions should sanction them for involvement in the creation of these artifacts as if bribes were proven.

Among the impressive features of James B. Jacobs’ Mobsters, Unions, and Feds (2006), is its concise presentation of indicia of the presence of labor racketeering in the contract negotiation and enforcement processes. Jacobs defines labor racketeering to include most frequently instances where labor leaders, influenced by organized crime or not, accommodate employers in exchange for something of value and cause injury to union members. In the 16 years that the Independent Review Board (IRB) and its predecessor court-appointed officers have investigated allegations of corruption in the International Brotherhood of Teamsters and its subordinate entities, it has always been difficult to find evidence of employer payments or gifts of other things of value to union officials for allowing substandard contracts, non-union workers to perform union work or lax contract enforcement. It is even more difficult for a union entity to find such evidence. Deliberately inferior contracts, unenforced contracts, and contracts obtained and entered into outside required union procedures are harmful to members, regardless of whether a bribe can be proven. When the result of intentional acts, they run afoul of the fiduciary obligations of union representation, local bylaws and union constitutions. Because those very practices are harmful to members under the IBT Constitution as interpreted by the IRB, intentionally engaging in those practices has been found to be a disciplinary violation. There is no union purpose that explains deliberately inferior or unenforced controls. Absent such explanation, the reasonable inference is that they are artifacts of labor racketeering and are evidence of underlying corruption. Those who produce them should be sanctioned in the union context as severely as if the bribes were proven because the harm to members is the same.
Internal reactions within unions, however, are that these are not serious offenses, absent proof of receipt of a thing of value from an employer. This analysis does not focus on the harm the union employee caused or the absence of any mitigating explanation for such action. Indeed, substandard and unenforced contracts are often symptoms of labor racketeering, incapable of being explained as acceptable union employee conduct. The harm to the members or workers left outside the contract is the same whether or not a bribe is proven. The damage to the union's reputation and image is the same among workers whether a bribe is proven or not. Moreover, these artifacts of racketeering are easy to discover and to sanction within internal union processes. Union entities can monitor and develop sufficient evidence to present in a union disciplinary proceeding against responsible local officials. There is no need for extensive investigative resources to discover it. Yet, the historic reaction within unions is not to treat these situations as evidence of corruption.

As an example of this conduct, the IRB has found Local IBT contracts that dues paying members work under that have the federal minimum wage as the starting salary with nonexistent or illusory benefits. Others have no wage provisions. Often these substandard contracts are not submitted to members for approval before the Business Agent agrees to it, as local bylaws require. This scenario should automatically provoke union investigation and, except for some rare mitigating circumstances, result in the discipline of the union employee involved. If it is a pattern in a local, this selling out of members, even without proof of a gratuity to the union official, should lead to a Trusteeship. Yet, higher union bodies are reluctant to deal seriously with such conduct in a local.

Similar situations, seemingly explainable only as the artifacts of labor racketeering, arise in shops in which only certain privileged employees, often management, are allowed union membership, although on its face the contract may call for broader inclusion. Often, the manager's motivation for membership is for health benefits for themselves provided through the union membership and to deny them to otherwise eligible employees because of cost. Again, in a time of shrinking union membership in the private sector, when every union employee is self-interestedly aware of the need to ensure the largest possible membership, let alone to satisfy his obligations to ensure contract enforcement to serve the members, allowing workers to remain outside the contract almost never can be explained in a manner consistent with the business agent's obligations. Yet this is a not an uncommon occurrence. As part of any union's anti-racketeering effort, it should be a priority of the internationals and intermediate bodies to ensure that those entitled to union membership are provided it. Moreover, to deter labor racketeering, those involved must be sanctioned. Ignoring it for lack of proof of a bribe, allows the racketeering to become entrenched and ignores the substantial harm to members.

In both the above situations, if the union employee was proven to have received something of value, currently there would have been universal recognition within international bodies that the local employee had engaged in wrongful conduct.