Is it time to reinvigorate your labor-management cooperation committee (LMCC)? An LMCC can improve business conditions and the lives of workers, but both labor and management need to comply with the law in order to maintain the organization’s tax-exempt status.

In the years following the passage of the Labor-Management Cooperation Act of 1978 (LMCA), the number of joint labor-management cooperation committees (LMCCs) increased dramatically. The LMCC became a popular tool to allow labor and management to address issues of mutual concern.

While the use of LMCCs remains widespread, the continual turnover in leadership, coupled with the fact that LMCCs often operate without the benefit of professional advisors, has caused some groups to stray from the original purpose of their LMCC. Rather than continually evaluating and improving the operation of their program, many committees have allowed a sense of complacency to take hold. This means the contributions earmarked for the LMCC are not being put to best possible use, and in some cases, the committees may be putting the LMCC at risk of losing its tax-exempt status.

This primer will help the reader avoid common operational problems that may jeopardize his or her LMCC. When properly organized, an LMCC can serve an important role in building trust, improving business conditions and bettering the lives of workers—but it is important that labor and management understand and comply with the applicable legal requirements.

**Origins of the LMCC**

Originally enacted more than 30 years ago, LMCA authorizes the Federal Mediation and Conciliation Service (FMCS) to provide assistance and financial support to plant, area and industrywide committees that are jointly organized by employer and labor organizations. One of the goals of LMCA was to encourage and support committees “established for the purpose of improving labor management relationships, job security, organizational effectiveness, enhancing economic development or involving workers in...
Labor-Management Cooperation Committees—Fresh Look at an Old Stalwart

by Michael A. Ledbetter
decisions affecting their jobs including improving communication with respect to subjects of mutual interest and concern.\textsuperscript{1}

The legislative history of LMCA describes two reports that studied joint labor-management cooperative programs and explained:

All in all, there appears to be general agreement that improved cooperation and communication between labor and management can provide the foundation for better working relationships, more effective identification of problem areas, regardless of the subject matter, and an improved atmosphere for arriving at mutually acceptable solutions leading to improved productivity.\textsuperscript{2}

In the years since the passage of LMCA, FMCS has provided financial and administrative support to LMCCs. While no grant money is available for fiscal year 2013, the FMCS website does maintain a variety of useful information on the formation and operation of LMCCs.\textsuperscript{3}

**Role of an LMCC**

The activities of LMCCs vary widely from group to group. A survey of websites, articles and available guidance from FMCS shows that the most common function of an LMCC is the creation of a forum where the parties can discuss issues of common concern so that they can formulate workable solutions. As noted by FMCS, the standard
“win-lose” grievance and negotiation process is not conducive to solving other matters of mutual concern. LMCCs create an environment outside of the collective bargaining process to develop new and innovative solutions to problems facing the industry. They are also used as a funding mechanism for joint labor-management initiatives designed for the betterment of the industry. LMCCs sponsor educational seminars, industry award dinners and similar events that are designed to promote the common business interest of labor and management within the community.

Given the Department of Labor’s (DOL’s) recent scrutiny of joint apprenticeship plans, many groups are using their LMCC funds to help support their training programs. While DOL certainly had good cause to focus on abuses within certain programs, there is a tremendous sense of frustration within the apprenticeship community concerning a lack of clarity and consistency in enforcement efforts. Rather than risk an alleged violation of the Employee Retirement Income Security Act (ERISA), many groups have decided to use the LMCC to fill the gap and fund activities deemed reasonable and legitimate by the stakeholders closest to these programs. Such activities may include traditional graduation dinners, meaningful apprenticeship awards and joint marketing campaigns—all of which have been heavily scrutinized by DOL.

Regardless of the current activities of a particular LMCC, it is helpful to understand what Congress envisioned when it debated and passed LMCA. Section 6(b) of LMCA indicates that Congress wanted to encourage the use of labor-management committees to:

- Improve communication among representatives of labor and management
- Provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness
- Assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process
- Study and explore ways of eliminating potential problems that reduce the competitiveness and inhibit the economic development of the plant, area or industry
- Enhance the involvement of workers in making decisions that affect their working lives
- Expand and improve working relationships between workers and managers
- Encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through federal assistance to the formation and operation of labor-management committees.

**Interaction With the Taft-Hartley Act**

In addition to authorizing financial support and assistance to joint labor-management initiatives, LMCA also helped clarify the rules regarding funding of such entities. Section 302 of the Taft-Hartley Act bans nearly all payments from employers to labor organizations and/or labor representatives unless a specific exception applies. Prior to the passage of LMCA there were questions concerning whether payments from employers to support a joint labor-management committee violated the Taft-Hartley Act. As a result, many groups were reluctant to create and fund an LMCC through the collective bargaining process.

Fortunately, LMCA added a new exception to the ban on employer payments “with respect to money or other things of value paid by an employer to a plant, area or industry-wide labor management committee established for one or more of the purposes set forth in section 5(b) of the Labor-Management Cooperation Act of 1978.” This change helped facilitate and encourage the growth of LMCCs in the years that followed.

**Proper Form of a Labor-Management Cooperation Committee**

LMCA does not mandate any particular form or legal structure for joint labor-management committees. Unlike payments for pension or health benefits, the amendment to the Taft-Hartley Act to allow financial support of LMCCs...
does not require the contributions be paid to a trust fund, nor does it require that employees and employers be equally represented in the administration of the fund. As a result, LMCCs across the country take a variety of legal forms—most commonly trusts or nonprofit corporations.

Although not required, many LMCCs have applied for and received tax-exempt status under Section 501(c)(5) “Labor Organization” or Section 501(c)(6) “Business League” of the Internal Revenue Code. While it is necessary to consult tax and legal counsel to determine the classification that may be appropriate for a particular group, an LMCC that intends to operate as a tax-exempt organization must file an IRS Form 1024 “Application for Recognition of Exemption Under Section 501(a).” An IRS exempt organizations specialist will review the application to determine if the LMCC qualifies for tax-exempt status.

In some situations, the IRS may request the organization seek exemption under a different section of the Code. For example, a newly organized LMCC recently submitted articles of incorporation to IRS showing it intended to help improve communications, resolve disputes and assist with a drug testing program. Despite the fact that numerous LMCCs currently operate as business leagues, the IRS exempt organizations specialist disagreed with the proposed 501(c)(6) classification and argued:

A labor organization is commonly defined as an association of workers who have combined to protect or promote the interests of members by bargaining collectively with their employers to secure better working conditions, wages and similar benefits. The term includes labor unions, councils and committees. . . . It appears that your organization may meet the requirement under Section 501(c) (5) as a labor organization rather than under Section 501(c)(6) as a business league. . . . If you do not agree with our suggestion, please submit a written statement with your reasons.

Following consultation with tax and legal counsel, it is possible that an LMCC committee may determine that qualification as a 501(c)(5) may offer more flexibility to labor and management than a 501(c)(6) business league. An LMCC organized under Section 501(c)(6) must serve the public interest by improving business interests beyond those that directly benefit the interests of labor and management. As described in a tax management treatise, the critical inquiry in determining whether an organization qualifies as a business league is whether the organization performs substantial particular services for its members as opposed to promotion of a particular line of business. To the extent IRS determines the LMCC is serving only the interests of its members, the tax exemption may be at risk. Again, this is an issue that should be discussed with tax and legal counsel.

ERISA Coverage, Fiduciary Obligations and Potential Liability

So long as an LMCC is not providing benefits directly to participants and beneficiaries, it will not be treated as an ERISA employee benefit plan. This is an advantage because LMCCs have more flexibility and lower operating costs if they are not subject to the reporting, disclosure and fiduciary obligations of ERISA funds.

However, an LMCC that offers unemployment, retirement, welfare or similar benefits directly to participants and beneficiaries runs a significant risk of being classified as an ERISA fund. A common problem area for LMCCs involves training and education programs. Section 3(1) of ERISA defines the term employee welfare benefit plan and includes “apprenticeship or other
training programs." IRS and DOL guidance indicates that it is acceptable for an LMCC to provide financing to encourage local programs that enhance the skills and training of the workforce, to provide training grants directly to affiliated apprenticeship trusts and to sponsor seminars. However, to the extent an LMCC begins to offer training and educational opportunities directly to members, or to the extent that the primary purpose is to support other training funds, then the LMCC will likely become subject to coverage under ERISA. Thus, the LMCC needs to ensure that it does not offer benefits of the type that are provided by the affiliated funds—especially training benefits.

Despite the fact that LMCCs are not subject to ERISA, many of the same fiduciary rules apply. IRS regulations and state nonprofit laws will require the LMCC to be operated in accordance with both the 501(c) framework and the initial articles of incorporation. The committee will have an obligation to the bargaining parties to safeguard the assets of the LMCC, to invest and use assets prudently, and to fully account for all expenditures. In short, the committee should operate the LMCC using the same fiduciary principles that apply to ERISA funds—the duties of care, prudence, loyalty and obedience.

Finally, it is very important that every LMCC work with a competent insurance broker to determine what coverage may be necessary to protect the assets of the organization and the individual committee members. A number of brokers around the country specialize in providing coverage to joint labor-management funds and affiliated entities. These brokers will work with an LMCC to evaluate the program and identify potential areas of exposure. Committee members who serve an LMCC without investigating insurance needs put themselves and their program at risk.

Potential Problem Areas for Tax-Exempt LMCCs

The activities of the LMCC must be consistent with its governing documents and tax-exempt purpose. Monitoring compliance is a challenge because the boundaries that delineate permissible versus nonpermissible activities are not clear. Those who operate LMCCs need to make reasonable judgments with respect to their operations. Nonetheless, common pitfalls that should be avoided include:

- Conflicts of interest: As a tax-exempt entity, the LMCC must ensure there are no conflicts of interest in its dealings with third parties—especially when the third party may be an employer, the union or employer association. It is important every LMCC adopt a conflict-of-interest policy and make certain the policy is well-communicated. Each committee member has a legal obligation to ensure the assets of the LMCC are used to further the purposes of the organization. The LMCC risks excise taxes and disqualification if it allows improper or excessive payments to affiliated individuals or entities.

- Charitable support: An LMCC generally may support charitable endeavors and community service projects so long as the committee deems the activity useful in meeting the LMCC’s exempt purpose. The group’s minutes should document the rationale for the decision, and the committee must be prepared to show why the activity will further the purposes for which the exemption was granted.

- Engaging in business: An LMCC should not, as its primary purpose, engage in a regular business of a kind ordinarily carried on by a for-profit entity. IRS guidance indicates that organizations cannot abuse their tax exemption to create competitive advantage in the marketplace. This is a facts-and-circumstances test, and some limited business activity is acceptable so long as it is not the primary purpose of the LMCC.

- Unrelated business income tax: If the LMCC regularly carries on a trade or business unrelated to its exempt purposes, then the committee must pay taxes on the income generated from such activity. Committee

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members should talk with their auditors about any unusual sources of income to determine whether such income would be subject to unrelated business income taxes.

- State and federal filings: LMCCs established as non-profit corporations under state law must ensure their registration and statutory agent information is updated regularly. Groups frequently miss notices from the state and inadvertently allow their registration to lapse. Likewise, tax-exempt LMCCs must file an Annual Return (Form 990) with the IRS. Failure to do so can cause a group to lose its tax exemption.

Conclusion

Modern LMCCs fill a vital role by helping labor and management build trust, improve business conditions and better the lives of workers. An active, vibrant LMCC can be invaluable in supporting joint initiatives designed to increase market share and create new employment opportunities.

However, to reach these goals, committee members must ensure their LMCC is operated in a manner consistent with LMCA and IRS rules governing tax-exempt organizations. To avoid unnecessary problems, LMCCs should work with their professional advisors and conduct periodic reviews. Committee members have an obligation to ensure they understand these legal restrictions and how they can best use the LMCC as a tool to advance the mutual interests of labor and management. Only by doing so can the committee ensure the LMCC is being operated as efficiently and effectively as possible.

Endnotes

5. See, e.g., DOL FAB 2012-01.
8. See, e.g., DOL Advisory Opinion 2012-06A (“The Department has concluded that generalized industry and workplace improvements of the sort that may be generated by the activities of a labor management cooperation committee are not ‘benefits’ covered by Section 3(1)(B) of ERISA . . . ”).
9. 29 USC §1002.
10. DOL Advisory Opinion 95-05A.
11. DOL Advisory Opinion 98-01A.
12. DOL Advisory Opinion 91-08A.