No. 08-1319

IN THE

Supreme Court of the United States

RONNIE ADCOCK, *et al.*,
Petitioners,

v.

FREIGHTLINER LLC, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Fourth Circuit Court of Appeals correctly held that Section 302 of the Labor Management Relations Act, 29 U.S.C. §186, does not criminalize an agreement between a labor union and an employer establishing mutually acceptable ground rules for organizing campaigns at the employer's facilities.

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BRIEF IN OPPOSITION

STATUTES INVOLVED

Petitioners sued for monetary damages under the Racketeer Influenced and Corrupt Practices Act ("RICO"), 18 U.S.C. §§1962(b), (c), and (d). Petitioners alleged violations of Section 302 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. §186, as the predicate acts for the alleged RICO liability. Petitioners neglected to include the criminal penalty provisions of Section 302(d), which are set forth in the Appendix to this brief.

STATEMENT OF THE CASE

Petitioners, who are employees at two North Carolina facilities owned by Respondent Freightliner, LLC ("Freightliner") filed this lawsuit as a proposed class

action seeking treble damages against Freightliner and Respondent the United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW"). Petitioners alleged that by entering into and implementing an agreement establishing mutually agreeable ground rules for union organizing campaigns, Freightliner and the UAW engaged in a criminal conspiracy in violation of RICO, 18 U.S.C. §1962(b), (c), and (d).

Petitioners predicated their RICO claims on the allegation that three provisions of a neutrality and voluntary recognition agreement violated Section 302 of the Labor Management Relations Act, 29 U.S.C. §186, an anti-bribery statute that forbids an employer from "pay[ing], lend[ing], or deliver[ing] . . . any money or other thing of value" to a labor union. The three allegedly unlawful provisions are: 1) allowing UAW organizers "reasonable access to employees during the workday in non-work areas;" 2) providing that the UAW and Freightliner will conduct "an initial information meeting that explains the card check procedure to employees;" and 3) Freightliner's commitment that "it will not make any negative comments (written or verbal) against the UAW."[1]

The district court dismissed Petitioners' case for failure to state a claim, holding that the three challenged provisions did not violate Section 302. The district court cited the Third Circuit's holding that a similar organizing and recognition agreement was

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[1] Petitioners' description of this provision as a "gag rule" that "eliminat[es] opposition to the union" is misleading. Pet. 15, 16, 18. Freightliner voluntarily chose not to exercise its right to speak out against a union during organizing; any of Freightliner's employees who opposed the union remained free to actively organize and campaign against the union.

not a "thing of value" made illegal by Section 302, *Hotel Employees Union, Local 57 v. Sage Hospitality Resources, LLC*, 390 F.3d 206, 219 (3d Cir. 2004), *cert. denied* 544 U.S. 1010 (2005), and concluded that "it is inconceivable that Freightliner and the UAW's participation in [the agreement] was a felony." Pet. App. 17a-18a. Because the court held that Petitioners alleged no predicate criminal act, it did not reach defendants' additional arguments that the complaint failed to allege the requisite pattern of racketeering, degree of control over an alleged enterprise, or conduct or direction of the enterprise's affairs, as required to state claims under RICO, 18 U.S.C. §§1962(b), (c), and (d).

The Fourth Circuit affirmed the district court's dismissal of all of Petitioners' claims. The court of appeals concluded that the three challenged provisions did not fall within the plain meaning of "pay, lend, or deliver" any "money or other thing of value," as required to violate Section 302(a). Pet. App. 9a-10a ("Under the plain language of the statute, the concessions made by Freightliner in the Card Check Agreement do not involve the payment or delivery of a 'thing of value.'"). The court recognized that its interpretation of the plain language of Section 302(a) is "buttressed by §302's penalty provision" in Section 302(d) which hinges on the monetary amount of the bribe. *Id.* at 11a.

The court also found that this reading of the plain language of the statute is consistent with Congress' purpose in enacting Section 302. *Id.* at 10a-11a. The court explained that "§302 was enacted to curb abuses that Congress felt were 'inimical to the integrity of the collective bargaining process.'" *Id.* at 10a (quoting *Arroyo v. United States*, 359 U.S. 419, 425 (1959)).

The Court concluded that the provisions at issue "do not involve bribery or other corrupt practices." *Id.* at 10a ("By no stretch of the imagination are the concessions a means of bribing representatives of the Union"). And, because the challenged provisions "eliminate the potential for hostile organizing campaigns in the workplace," "the concessions certainly are not inimical to the collective bargaining process." *Id.* at 10a-11a.

The Fourth Circuit also explained that this holding is "consistent with a decision on similar facts from the Third Circuit." *Id.* at 11a-12a (citing *Sage Hospitality*, 390 F.3d at 218-219). The court quoted extensively from the Third Circuit's holding and rationale, and concluded: "We agree with the Third Circuit that an agreement setting forth ground rules to keep an organizing campaign peaceful does not involve the delivery of a 'thing of value' to a union." *Id.* at 12a.

Finally, the Fourth Circuit noted that Petitioners' "real beef in this case seems to be with the concessions made by the Union," rather than what the employer provided to the union. *Id.* The court explained that any union bargaining concessions "do not bring §302 into play, because §302 only precludes employers from delivering (and the union or union representatives from receiving) 'things of value.'" *Id.* And the Fourth Circuit set forth in detail the numerous alternative remedies available under the NLRA that exist to address such concerns. *Id.* at 12a-13a ("it is important to note that adequate remedies under the NLRA are available to employees, allowing them to challenge agreements similar to the two agreements in this case"). Thus, the court concluded, "[t]he availability of such adequate remedies severely

undermines the Employees' attempt to stretch §302 in a manner inconsistent with both the statute's plain meaning and Congress' intent in passing the statute." *Id.* at 14a.

REASONS FOR DENYING THE PETITION

I. The Fourth Circuit's Decision Is Consistent With All Other Cases Interpreting Section 302 of the LMRA and Does Not Conflict with Any Precedent From This Court.

Every federal court to consider the precise issue raised here has held, like the Fourth Circuit, that voluntary labor-management agreements that provide mutually acceptable organizing rules do not violate Section 302. Petitioners attempt to manufacture a conflict among the courts of appeals, but the decisions they rely upon interpret *other* statutes that contain different language and structures and cover unrelated conduct.

A. Both circuits that have considered Petitioners' argument have held that a voluntary agreement providing for access, information sharing, and employer neutrality does not violate Section 302. Pet. App. 9a-14a; *Sage Hospitality*, 390 F.3d at 219. There are no decisions holding – or even suggesting – that such routine labor-management agreements violate that statute.

In *Sage Hospitality*, the Third Circuit pointedly rejected the argument that a labor-management neutrality agreement is a "thing of value" for purposes of

Section 302. 390 F.2d at 209-10.[2] In a passage quoted verbatim by the Fourth Circuit in this case (see Pet. App. 12a), the Third Circuit, per Judge Chertoff, expressly rejected the argument made by Petitioners here that any benefit of the agreement to the union satisfies the plain meaning of "other thing of value" in Section 302:

> Not surprisingly, Sage is unable to provide any legal support for the remarkable assertion that entering into a valid labor agreement governing recognition of a labor union amounts to illegal labor bribery. There are many reasons why this argument makes no sense, including the language of section 302 itself, which proscribes agreements to "pay, lend, or deliver ... any money or other thing of value." The agreement here involves no payment, loan, or delivery of anything. The fact that a Neutrality Agreement – like any other labor arbitration agreement – benefits both parties with efficiency and cost saving does not transform it into a payment or delivery of some benefit. Furthermore, any benefit to the union inherent in a more efficient resolution of recognition disputes does not constitute a "thing of value" within the meaning of the statute.

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[2] The district court opinion in *Sage Hospitality* makes clear that case involved the same contractual provisions as this case. *Hotel Employees and Rest. Employees Union v. Sage Hospitality Resources*, 299 F. Supp. 2d 461, 465 (W.D. Pa. 2003). All three district courts to consider the issue have also been unanimous in rejecting Petitioners' argument. Pet. App. 15a; *Hotel Employees Union, Local 57 v. Sage Hospitality Resources, LLC*, 299 F. Supp. 2d 461, 465 (W.D. Pa. 2003); *Patterson v. Heartland*, 428 F. Supp. 2d 714, 724 (N.D. Ohio 2006).

390 F.3d at 219. The Third Circuit further explained that the proposed reading of Section 302 was also contrary to the structure and purposes of the federal labor laws that include Section 302:

> Apart from the plain language of section 302, the structure of other provisions of the labor law also militates against Sage's position. Issues of labor-unit recognition and bargaining are comprehensively regulated by the NLRA. Courts have repeatedly upheld labor-management agreements providing for arbitration over recognition disputes. *See, e.g., Hotel & Rest. Employees Union Local 217 v. J.P. Morgan Hotel*, 996 F.2d 561 (2d Cir. 1993); *Hotel Employees, Rest. Employees Union, Local 2 v. Marriott Corp.*, 961 F.2d 1464, 1468 (9th Cir. 1992). Sage's interpretation of section 302 would wreak havoc on the carefully balanced structure of the laws governing recognition of and bargaining with unions.

Id.

As the Fourth Circuit expressly recognized, its holding in this case is squarely aligned with the holding of the Third Circuit in *Sage Hospitality*. Pet. App. 11a-12a. In the sixty-two years since Congress enacted Section 302, no court has ever reached the contrary conclusion that an employer has committed a crime by entering into the neutrality and access provisions routinely found in voluntary recognition agreements.[3]

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[3] Section 302 is a criminal provision. During the lengthy sixty-two-year period since its enactment, there is no record of any prosecution taking the position that an employer or union have violated the law by entering into voluntary agreements providing for mutually acceptable organizing rules.

The Third and Fourth Circuit decisions did not occur in a vacuum. They are consistent with long-standing law from both this Court and the National Labor Relations Board upholding the legality of an employer's agreement to voluntarily recognize a union upon a showing of majority employee support, and an employer's agreement to remain neutral with respect to the employees' choice of representative. *United Mine Workers of America v. Arkansas Oak Flooring Co.*, 351 U.S. 62, 72 n.8, 75 (1956) (voluntary recognition lawful); *see also Rockwell Int'l Corp.*, 220 N.L.R.B. 1262, 1263 (1975) (voluntary recognition by agreement is a procedure "long accepted and sanctioned by the [National Labor Relations] Board"); *Verizon Information Systems*, 335 N.L.R.B. 558, 559-60 (2001) (enforcing neutrality and voluntary recognition agreement).[4]

B. The only two Section 302 cases relied upon by Petitioners to try to justify a purported conflict among the courts of appeals are consistent with, rather than contrary to, the holding in this case. Pet. 29 (citing *NLRB v. BASF Wyandotte*, 798 F.2d 849 (5th Cir. 1986) and *United States v. Schiffman*, 552 F.2d 1124 (5th Cir. 1997)).

Contrary to Petitioners' description (Pet. 8, 29), in *BASF Wyandotte*, the court of appeals never addressed the issue of whether payment to a union officer and lending him an office and copier fall within

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[4] This Court has also made clear that an employer's right to choose to communicate its opposition, neutrality, or support for a union to its employees is protected by both the National Labor Relations Act ("NLRA") and the First Amendment. 29 U.S.C. §158(c); *Chamber of Commerce of U.S. v. Brown*, 128 S. Ct. 2408, 2414 (2008); *NLRB v. Virginia Electric & Power Co.*, 314 U.S. 469, 477 (1941).

the scope of §302(a). The court held only that the payments at issue in that case fell within an exception in Section 302(c)(1) for payments to employees related to bone fide employment activities. *Id.* at 855-56.[5] Moreover, that case did not involve a neutrality and voluntary recognition agreement, but rather, a company that appeared to be "paying a substantial part of the union's administrative expenses." *Id.* at 858 (Jolly, J., concurring). And, the Fifth Circuit relied upon the same understanding of the purpose of Section 302 as the Third and Fourth Circuit. *Id.* ("[T]he purpose of § 302 was the limited one of preventing bribery, extortion, shakedowns and other corrupt practices.") (citations, quotation marks and brackets omitted).

Similarly, *Schiffman* did not hold that the "use of hotel rooms" is a "thing of value." Pet. 29. The thing of value in that case was money – actual savings resulting from a discounted hotel rate demanded by a union official. 552 F.2d at 1126 ("[T]he special rate was a thing of value demanded by appellant from the hotel, in violation of the statute.").

C. Petitioners claim that the Fourth Circuit's holding creates a split of authority with other courts of appeals that have interpreted the words "thing of value" or "anything of value." But the cases cited by Petitioners involve different, completely unrelated federal statutes, and none involve the application of

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[5] Petitioners' description of the case as *holding* that "use of company property is a 'thing of value' to a union under §302(a)" at 798 F.2d at 856 & n.5 is not accurate. Pet. 8, 29. The Fifth Circuit does not discuss the term "thing of value" or the scope of Section 302(a) in the cited section or elsewhere in that decision. An assumption reached *sub silentio* does not create a circuit conflict.

those disparate statutes to otherwise lawful labor-management agreements. Pet. 26-32.

There is simply no conflict with decisions interpreting other statutes. Contrary to Petitioners' representation that this case involves a "term of art," the language in each of these statutes, and the context in which that language appears, differs significantly. None of these statutes uses Section 302's operative language: "pay, lend, or deliver, or agree to pay, lend or deliver, any money or other thing of value." *Compare* 29 U.S.C. §186(a) *with* 18 U.S.C. §201; 18 U.S.C. §641; 18 U.S.C. §666(a)(1)(B); 18 U.S.C. §876; and 18 U.S.C. §1954.

Interpretation of each of these disparate statutes depends, as this Court has consistently instructed, on the words used by Congress and the context in which those words are used. *Abuelhawa v. United States*, 129 S. Ct. 2102, 2105 (2009) ("statutes are not read as a collection of isolated phrases"); *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340-341 (1997) ("The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.").

Moreover, Petitioners' argument that the Third and Fourth Circuits' interpretation of "thing of value" conflicts with other Circuits' interpretations of unrelated statutes also ignores the word "deliver" in Section 302, relied upon by the courts of appeals. Pet. App. 9a, 12a; *Sage Hospitality*, 390 F.3d at 219 ("The agreement here involves no payment, loan, or delivery of anything."). None of the statutes at issue in Petitioners' cases use the phrase "pay, lend, or deliver" used in Section 302. 18 U.S.C. §201(b)

("corruptly gives, offers or promises"); 18 U.S.C. §666(a)(1)(B), ("corruptly solicits or demands"); 18 U.S.C. §201(c)(1)(B) ("demands, seeks, receives, accepts, or agrees to receive"); 18 U.S.C. §641 ("embezzles, steals, purloins, or knowingly converts to his use or the use of another"); 18 U.S.C. §876 ("with intent to extort from any person any . . . ."); 18 U.S.C. §1954 ("receives or agrees to receive or solicits").

Finally, none of the cases cited by Petitioners apply these diverse statutory prohibitions to provisions of a labor-management agreement establishing organizing rules comparable to the agreement at issue here. The Third and Fourth Circuit's holdings extend no further than the issue that was directly before those courts: did Congress intend Section 302 to criminalize an employer's agreement to rules governing union organizing campaigns. Petitioners' assertion that Third and Fourth Circuits' decisions regarding Section 302 will somehow "limit[] the scope" of these vastly different criminal statutes, thereby somehow creating a circuit conflict, is plainly wrong. Pet. 33-34.

II. The Fourth Circuit Properly Rejected Petitioners' Proposed Expansion of Section 302 to Make Employers and Unions Criminally Liable for Entering Into Neutrality and Voluntary Recognition Agreements.

The Fourth Circuit correctly held that the plain language of Section 302(a) does not extend to mutually agreeable ground rules for union organizing campaigns, and that its reading of the statute is consistent with the purpose of Section 302. Pet. App. 9a-11a.

The court of appeals properly determined the plain meaning of "pay, lend, or deliver . . . any money or other thing of value" in light of "'the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.'" Pet. App. 9a (*quoting Robinson*, 519 U.S. at 341). As both the Fourth Circuit and the Third Circuit in *Sage Hospitality* held, an employer's agreement to mutually acceptable organizing rules does not "involve the delivery of any tangible or intangible items to the union." Pet. App. 9a; *Sage Hospitality*, 390 F.3d at 219.[6] Moreover, the Fourth Circuit's conclusion that Congress intended Section 302 to apply to items with "ascertainable value" and not to mutually acceptable organizing rules is "buttressed by §302's penalty provision," (Pet. App. 11a), which hinges the determination of whether a violation is a felony or misdemeanor on the monetary value of the bribe. 29 U.S.C. §186(d)(1),(2) ("if the value of the amount of money or thing of value involved in any violation of the provisions of this section does not exceed $1,000, such person shall be guilty of a misdemeanor . . . .").

The Fourth Circuit also correctly concluded that while the plain meaning of the statute is conclusive, its interpretation is supported by the Congressional purpose. Pet. App. 10a. Relying on this Court's decision in *Arroyo v. United States*, 359 U.S. 419 (1959), the Fourth Circuit pointed out that Congress enacted Section 302 to prevent the "'corruption of collective bargaining through bribery of employee representatives by employers.'" Pet. App. 10a (*quoting Arroyo*, 359 U.S. at 425-26). The court held that the neutral-

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[6] An employer's agreement to remain neutral, to allow access, and to participate in an informational meeting are odd direct objects to the verbs "pay," "lend," and "deliver."

ity and access provisions challenged here do not threaten the integrity of collective bargaining because "the concessions serve the interests of both Freightliner and the Union, as they eliminate the potential for hostile organizing campaigns in the workplace. In this sense, the concessions certainly are not inimical to the collective bargaining process." Pet. App. 10a-11a.

In contrast, Petitioners' limitless interpretation of the phrase "pay, lend, or deliver . . . any money or other thing of value" in Section 302 as anything with "value" to a union would lead to absurd results contrary to the purposes of the statute and this Court's precedent. Extending Section 302 (and RICO) as Petitioners advocate – to anything with "value" to a union – would criminalize voluntary recognition agreements, and other forms of valued labor-management cooperation. This would be directly contrary to this Court's long-standing holding that an employer's agreement to voluntarily recognize a union upon a showing of majority support is lawful. *United Mine Workers of America v. Arkansas Oak Flooring Co.*, 351 U.S. 62, 71-72 (1956).[7]

Petitioners' theory would criminalize business decisions that an employer has the freedom to make. An employer, faced with a union organizing campaign at its plant, is free to actively and vocally oppose the campaign. *See, e.g., Brown*, 128 S. Ct. at 2414. But

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[7] Such a holding would also completely undermine the NLRA's important goal of fostering cooperative labor-management relationships. *See, e.g., MGM Grand Hotel, Inc.*, 329 N.L.R.B. 464, 466 (1999) ("It is a long-established Board policy to promote voluntary recognition and bargaining between employers and labor organizations, as a means of promoting harmony and stability of labor-management relations.").

an employer might evaluate factors such as the potential disruption caused by a prolonged and acrimonious organizing campaign and decide – legally – not to oppose the union. Similarly, based on practical considerations, such as the economic impact of a rancorous union organizing campaign, an employer can choose to enter into an agreement with the union that sets forth ground rules for the organizing campaign – terms that can include limited access to a plant and employer neutrality. However, under Petitioners' extreme premise, these actions would be "things of value" under Section 302(a) because they have subjective value to the union. By not fighting union organization with every weapon in its arsenal, the employer would have committed a crime.

Moreover, as the Third Circuit in *Sage Hospitality* recognized, extending Section 302 to anything of "value" to a union would "wreak havoc" on the "carefully balanced" legal structure of collective bargaining. 390 F.3d at 219; *see also* Pet. App. 17a. Successful collective bargaining virtually always results in agreements that contain non-monetary provisions that could be characterized as benefitting the union. Petitioners' theory would criminalize, for example, many common garden-variety collective bargaining clauses that provide utility to both the union as an institution and to its employee members:

- Access to employer facilities. Access is a mandatory subject of bargaining under the NLRA. *See Arizona Portland Cement Co.*, 302 N.L.R.B. 36, 44 (1991).
- Exclusive grievance rights. Bargaining agreements typically grant the union, not employees, the exclusive right to file and pursue

employee grievances. *See Vaca v. Sipes*, 386 U.S. 171, 191-92 (1967).

- Union security clauses. Another mandatory subject of bargaining. *See, e.g.*, 29 U.S.C. §158(a)(3); *Marquez v. Screen Actors Guild*, 525 U.S. 33 (1998).

- Successorship clauses. These maintain the union's status as the exclusive collective bargaining representative and are mandatory subjects of bargaining. *See, e.g., United Mine Workers (Lone Star Steel Co.)*, 231 N.L.R.B. 573, 574-75 (1977), *enf. granted in relevant part and denied in other part*, 639 F.2d 545, 550-56 (10th Cir. 1980).

As the Fourth Circuit recognized, Section 302 was intended to *promote* collective bargaining, not to criminalize it by equating concessions made by an employer to a union as a bribe. Pet. App. 10a-11a.

Petitioners' argument rests entirely on allegations regarding what the union provided the employer (Pet. 19-24) - in the Fourth Circuit's words, this is Petitioners' "real beef." Pet. App. 12a. But, as the Fourth Circuit held, what a union allegedly provided to an employer "do[es] not bring Section 302 into play," because that provision only covers employer bribes of unions. Pet. App. 12a-13a.

In rejecting Petitioners' Section 302 claims, the Fourth Circuit emphasized that the NLRA contains a variety of mechanisms to deal with Petitioners' accusations of improper union concessions. Pet. App. 12a-13a ("it is important to note that adequate remedies under the NLRA are available to employees, allowing them to challenge agreements similar to the two

agreements in this case").[8] For example, Sections 8(a)(2) and 8(b)(1)(A) of the NLRA prohibit employers and unions from bargaining over wages, fringe benefits, and other terms and conditions of employment before the union receives the support of a majority of bargaining unit employees. 29 U.S.C. §§158(a)(2) and (b)(1)(A); *see, e.g., International Ladies' Garment Workers' Union v. NLRB (Bernhard-Altman Texas Corp.),* 366 U.S. 731, 737 (1961). The NLRB regulates the line between lawful labor-management cooperation, and unlawful employer dominance, interference or financial support for a union under 29 U.S.C. §158(a)(2) and (b)(1)(a), and has a carefully created system of remedies under these provisions. *See, e.g., Longchamps, Inc.*, 205 N.L.R.B. 1025, 1031 (1973). And, courts provide damages or injunctive relief if a union violates its duty of fair representation. *See, e.g., Air Line Pilots v O'Neill,* 499 U.S. 74 (1991); *Vaca v, Sipes*, 386 U.S. 171 (1967). Thus, as the Fourth Circuit concluded, "[t]he availability of such adequate remedies severely undermines the Employees' attempt to stretch §302 in a manner inconsistent with both the statute's plain meaning and Congress' intent in passing the statute." Pet. App. 14a.

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[8] The Fourth Circuit noted that "[in] this case, unfair labor practice charges were, in fact, filed against Freightliner and the Union and were settled to the satisfaction of the NLRB." Pet. App. 14a.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX

§ 186. Restrictions on financial transactions

. . . .

(d) Penalties for violations

(1) Any person who participates in a transaction involving a payment, loan, or delivery of money or other thing of value to a labor organization in payment of membership dues or to a joint labor-management trust fund as defined by clause (B) of the proviso to clause (5) of subsection (c) of this section or to a plant, area, or industry-wide labor-management committee that is received and used by such labor organization, trust fund, or committee, which transaction does not satisfy all the applicable requirements of subsections (c)(4) through (c)(9) of this section, and willfully and with intent to benefit himself or to benefit other persons he knows are not permitted to receive a payment, loan, money, or other thing of value under subsections (c)(4) through (c)(9) violates this subsection, shall, upon conviction thereof, be guilty of a felony and be subject to a fine of not more than $15,000, or imprisoned for not more than five years, or both; but if the value of the amount of money or thing of value involved in any violation of the provisions of this section does not exceed $1,000, such person shall be guilty of a misdemeanor and be subject to a fine of not more than $10,000, or imprisoned for not more than one year, or both.

(2) Except for violations involving transactions covered by subsection (d)(1) of this section, any person who willfully violates this section shall, upon conviction thereof, be guilty of a felony and be subject to a fine of not more than $15,000, or imprisoned for not more than five years, or both; but if the value of

the amount of money or thing of value involved in any violation of the provisions of this section does not exceed $1,000, such person shall be guilty of a misdemeanor and be subject to a fine of not more than $10,000, or imprisoned for not more than one year, or both.