

August 12, 2011

Mr. Andrew R. Davis
Chief of the Division of Interpretations and Standards
Office of Labor-Management Standards,
US Department of Labor
200 Constitution Avenue, N.W.
Room N-5609

Re: RIN 1245-AA03
Proposed Rulemaking: Interpretation of the Advice Exemption in Section 203(c) of
the LMRDA

Dear Mr. Davis:

Please accept this as the comment of The Lowenbaum Partnership, LLC law firm of St. Louis, Missouri.

The Proposed Rules published in the Federal Register on June 21, 2011 seek to reverse an interpretation which has governed Employer and lawyer reporting obligations for almost fifty (50) years without any credible data supporting a need for such a drastic reversal. The proposed rules effectively eviscerate the Advice exemption and require reporting in every instance, regardless of the purpose of the attorney's drafting, editing, or communication with an Employer if a *potential* byproduct of that advice is that it might somehow play some role in persuading an employee regarding union representation.

Under the proposed Rules, a lawyer cannot even advise an Employer on what is and is not a lawful policy regarding solicitation and distribution in the workplace without creating a reporting obligation. Solicitation and Distribution policies are a subject with which the National Labor Relations Board has struggled for years, and the legal requirements for such a rule have vacillated. Such advice on how to lawfully draft a policy or how to revise a policy to bring it into compliance with the current law is no different than advising an Employer on what it may or may not lawfully ask applicants for hire under EEOC Guidelines. The statute was specifically drafted originally to exempt such advice, and the proposed Rules will render that exemption completely and utterly meaningless. Employers simply cannot be expected to know and understand the complexities involved in labor relations which are set forth in the 357 volumes of NLRB precedent which govern labor relations and what is and is not lawful for Employers to communicate to their employees regarding unionization without sound legal advice. Federal labor policy is much better served by continuing the current interpretation of advice so that lawyers can freely advise and counsel Employers on the lawful ways of communicating with their employees and helping them remain in compliance with federal labor laws, thereby

Mr. Andrew R. Davis
August 12, 2011
Page 2

avoiding costly re-run elections, NLRB investigations, hearings, delays and interference with employee free choice – whether that free choice is for or against union involvement.

The proposed rules also must not be reviewed in a vacuum, but must take into account the NLRB's proposed rules issued on June 21, 2011. The NLRB's proposed rules will result in substantially expedited elections. Those elections, and therefore the campaigns that precede them, will occur *prior* to any reporting requirement for either Employers or their attorneys. Accordingly, the reports themselves, and the information they contain, will not be made public prior to the overwhelming majority of union elections, and the very stated purpose of having this information available to employees *prior* to voting will never be accomplished even if the proposed DOL rules are implemented. Employers and attorneys will therefore be forced to unnecessarily file reports which will not serve the stated purpose set forth in the proposed rules.

In conclusion, the Proposed Rules are unnecessary, a fundamental invasion into the attorney-client relationship and serve no legitimate purpose other than causing Employers and their attorneys to file additional reports and paperwork which in reality would not serve the stated purpose. The proposed rules could well cause Employers to act without the assistance of counsel, thereby increasing the likelihood of unfair labor practices, re-run elections and further instability in peaceful industrial relations. The proposed rules should not be implemented as drafted.

Very truly yours,



R. Michael Lowenbaum

RML/te