

This letter is to comment regarding your Notice of Proposed Rulemaking narrowing the “advice exception” under the LMRDA.

The proposed rule is unnecessary, in so far as it attempts to fix a non-existent problem with an unrelated solution.

I am a private sector human resource and labor relations professional with 30+ years of experience, both as an in-house labor attorney as well as a senior level human resources executive. I have worked for union and non-union employers and have been involved in numerous union campaigns, several decertification attempts and countless hours of supervisor training, targeting legal compliance and positive employee relations. This training has kept management and supervision from running afoul of the law during periods of union activity and has advanced principles of management that make union representation unnecessary.

Over this period of time I have received advice from numerous labor law firms in all areas of the country, ranging in size from small local boutique firms to the largest national law firms. I have also used consultants who specialize in employee opinion surveys, creating peer review programs, as well as “persuaders” who have spoken directly to my employees.

In all of my years in this business, I have never intentionally committed an unfair labor practice, advised anyone to do so, nor have I received advice to do so from a labor law firm or consultant. The “research” cited in the proposed rule making is based on anecdotes related by union organizers who have lost elections. I have yet to meet an organizer who will admit that the reason that they lost an election is that the product that they are selling may not be relevant in today’s environment. This research gives new meaning to the term “junk science”.

The proposed “solution” is to make it difficult for employers to educate their supervisors and managers on the law and proper behavior during a union campaign. It will also make it difficult to instruct supervisors and managers on the principles of positive employee relations. Finally it will make it difficult to do such everyday activities as attending trade association meetings, or having a handbook reviewed by an outside expert.

The underlying intent of this regulation is to disclose “direct contact” persuader activities with the hope that this will discourage employers from engaging in such activity. By expanding the definition of this activity in the ambiguous manner proposed by the rule, the result will be to discourage employers from seeking advice, counsel and training from attorneys and consultants on any subject involving employee relations. Failure to educate managers and supervisors on the intricacies of labor law and positive employee relations will ultimately result in a diminution of employee rights rather than an advancement of those rights.

There is nothing in the text of the LMRDA or the legislative history that suggests that Congress intended employers to report basic HR activities. The Department has overstated the need for this rule based on the specious studies cited. The Department has also grossly understated the cost of compliance. The proposed rule is clearly driven by doing what is best for labor unions, at the expense of employers and their employees. I strongly urge that the proposed rule be withdrawn and the current common sense approach be retained.