

# International Union of Operating Engineers

LOCALS 542, 542-RA, 542-C, 542-D

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September 16, 2011

Andrew R. Davis, Chief  
Division of Interpretations and Standards  
Office of Labor-Management Standards  
U.S. Department of Labor  
200 Constitution Avenue, N.W., Room N-5609  
Washington, DC 20210

Re: RIN 1215-AB79 and 1245-AA03

Dear Mr. Davis:

The International Union of Operating Engineers Local 542, Fort Washington, Pennsylvania submits these comments in response to the Department of Labor's notice of proposed rulemaking with regard to the "advice" exemption to the reporting requirements set forth in § 203 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 433.

IUOE Local 542 supports the proposed rule and urges better enforcement of existing reporting obligations. In IUOE Local 542's experience, it is a widespread practice for employers to bring in outside consultants in an effort to derail organizing campaigns. Following the filing of NLRB petitions by IUOE Local 542, employers have brought in unidentified union busters for the purpose of intimidating and harassing workers, disparaging the IUOE and its officer and labor unions in general, and collecting information from workers and spreading misinformation to them. The IUOE has encountered consultants who research NLRB filings to learn of new representation petitions for the purpose of soliciting clients with offers of assistance in union busting strategies.

The IUOE can provide numerous examples of overt persuader activity that has gone unreported. An employer's covert use of consultants is, by its very nature, more difficult for unions to detect. IUOE Local 542 includes in these comments three examples of direct persuader activity involving the use unnamed consultants during IUOE organizing campaigns, and one example of a consultant who offered an employer a guarantee package under which the consultant refunds half the costs charged if the employer does not prevail in the election.

### Valley Forge Colonial Campaign

Valley Forge Colonial is a hotel and convention center in Valley Forge, Pennsylvania that is being refurbished for operation as a casino. In June 2011, IUOE Local 542 filed an NLRB petition in Case No. 4-RC-060294 seeking to represent a unit of 17 maintenance workers employed at Valley Forge Colonial. Three days after IUOE Local 542 stipulated to an election, the employer instituted captive audience meetings between two outside consultants and two to four employees at a time. The meetings were held during work time from Monday through Thursday over the course of at least three weeks and lasted from about a half hour to two hours.

At the meetings, a female consultant identified herself by first name only and claimed to be a member of the New Jersey Casino Board. A male consultant also identified himself by first name only and claimed that he was a former member of an unidentified union and had worked for a casino.

At the meetings, the consultants presented an anti-union slide show and gave handouts to the workers, including a copy of IUOE Local 542 bylaws, the IUOE Constitution, information about IUOE salaries, and general information about union density and health benefits. The consultants falsely claimed that the Local Union had money invested in Valley Forge Colonial. The consultants also sought to persuade the workers that unions had served a useful purpose at one time, but are unnecessary now that there are laws in place to protect workers.

In addition to using the consultants for direct persuasion, the employer also promoted a key union supporter to a supervisory position and gave him a 300 percent raise. The promoted supervisor also had one-on-one meetings with employees and promised that he personally could get the employees a better deal than the union, and most importantly, in a more expedient manner. The union busters and the supervisor emphasized that it would take months for employees to get anything at the bargaining table if the union prevailed in the election. As a result of the impact of the employer's tactics, the IUOE withdrew the petition but intends to seek to organize the unit in the future.

### Quality Roofing Supply Company Campaign

During a campaign that began in 2007 in which IUOE Local 542 sought to organize about 28 boom truck operators employed by Quality Roofing Supply Company, Inc. at five locations, Allentown Pa, Eddystone PA, North Wales Pa, Yeadon Pa and York Pa. the employer used two unnamed consultants to directly spread its anti-union message in one-on-one conversations with employees during work time. The consultants performed minor tasks alongside Quality Roofing workers while engaged in conversations with them.

The consultants claimed to be former union members and provided only their alleged first names to the workers. They informed the workers that Quality Roofing brought them in to discuss the IUOE with them. In response to direct questions about their identity, the consultants informed the employees that the employees did not need to know their names and that the consultants were on site to "get information" for the employer.

While engaging in their “information” gathering function, the consultants learned of a breakfast meeting at a local restaurant between IUOE Local 542 Director of Organizing Frank Bankard and the Quality Roofing workers employed at one of the five locations. The consultants appeared at the meeting and took pictures of the workers in attendance. The IUOE filed an unfair labor practice based upon the employer’s use of the consultants for surveillance of the workers. The NLRB issued a complaint in Case No. 04-CA-36143-001.

At a Quality Roofing site in Pennsauken, New Jersey (NLRB Case No. 04-RC-21775), after the IUOE stipulated to an election for a two-worker unit in December 2010, the employer conducted meetings with both workers at this location. At one such meeting, the CEO spoke about how the employer had stonewalled the IUOE through legal remedies with representation from the Reed Smith law firm. Quality Roofing hired Reed Smith for union-avoidance assistance during the IUOE campaign. The Reed Smith law firm represented another employer, Hanson Aggregates, which stonewalled the IUOE Local 542 for seven years in achieving a first time contract.

#### Pirtek a/k/a Mid Atlantic Hose

IUOE Local 542 entered into another RC-Election (NLRB Case No. 04-RC-21390) in February 2008. Frank Bankard worked there as an unknown salt and made acquaintance with all the workers from clericals to shop personnel, and was able to learn about an outside consultant’s solicitation of the employer with an offer to launch an anti-union campaign.

On February 29, 2008, after the IUOE filed an NLRB petition for election, Tim Hunt (918-455-9955) of Labor Research Institute (LRI) contacted Pirtek to offer his union-busting services. Hunt discovered the IUOE petition while monitoring NLRB petitions for the purpose of reaching out to employers to offer assistance in union avoidance. Hunt uses a team of ex-union organizers who intimidate workers so they lose all interest in supporting the union. One such ex-union organizer used by LRI is Joe Bock, a former Teamster. According to Hunt, once Joe gets done with the workers, LRI guarantees that the employer will prevail in the election. The cost of LRI services is about \$25,000 plus expenses for the ex-union organizer, which would be minimal in Bock’s case since he lived in the area. Hunt stated that LRI has a guarantee package under which it refunds half the costs charged if the employer does not prevail in the election.

IUOE Local 542 lost the election by a tie. The employer isolated Bankard and another supporter and committed numerous unfair labor practices. The Local Union ultimately obtained a contract with the employer and the Election was tossed out because of the number of unfair labor practices which the employer committed.

#### Sims Metal Management 04-RC-21626

In January of 2010, immediately following a stipulation for election where the union had overwhelming support (25 authorization cards in a unit of 30 workers), Simms hired a union busting firm.

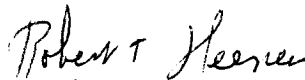
The union buster held captive audience meetings with four or five workers at a time for about four weeks with a **paid** Saturday meeting at the Sheraton Hotel in Middletown, Pennsylvania on the Saturday before the vote. The employees were promised that once the union drive was defeated, the employer would make amends and correct the grievances of the employees. The union buster told the unit that he knew Frank Bankard and that he had formerly been a member of the IUOE, and that the workers had been misinformed by

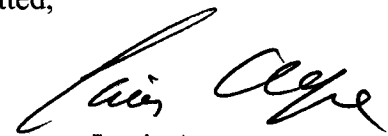
the union. The union buster had obtained information about the IUOE from LM reports and the NLRB.

IUOE Local 542 handed out information at the Sheraton until Simms had the police remove us from the facility. IUOE Local 542 received only nine votes in the election, and the employer used outsiders to usher the IUOE off the premises immediately after the vote.

IUOE Local 542 appreciates the opportunity to comment on the proposed rule.

Respectfully submitted,

  
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Business Manager

  
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In-house counsel