

September 19, 2011

VIA: www.regulations.gov

Mr. Andrew R. Davis
Chief of the Division of Interpretations and Standards
Office of Labor Management Standards
U.S. Department of Labor
200 Constitution Avenue, NW, Room N-5609
Washington, D.C. 20210

Re: RIN 1245- AA03; 1215-AB79
Proposed Rule of Office of Labor Management Standards, Department of Labor: Labor
Management Reporting and Disclosure Act; Reporting of Labor Relations Consultants
Persuader Agreements; Restriction of Advice Exemption; 29 CFR Part 406

Dear Mr. Davis:

The US Airline Pilots Association (USAPA) respectfully submits these comments in support of the Department of Labor's ("DOL") proposed rules, published in the *Federal Register* on June 21, 2011 which will, by virtue of limiting the "advice exception" in Section 203 (c) of the Labor Management Reporting and Disclosure Act, 29 USC 433 (c), enhance public disclosure of labor consultants' activities in labor relations.

It has been the experience of USAPA that the airline industry has engaged the services of individuals, sometimes retired or previously employed company officers with histories of actual or perceived anti-union animus, to represent them in collective bargaining, as well as human resources policy development and implementation. Such individuals will, upon information and belief, prepare material or communications for distribution to bargaining unit members designed to influence the membership concerning such matters as the company's positions in collective bargaining, their rights and risks in the event of a job action and various policies advanced by the employer. To be sure, these individuals often blur and cross the line from merely representing management at the bargaining table to engaging in persuader activity to achieve their objectives. In these all too regular circumstances, the employer becomes, as the DOL has characterized it, "[T]he conduit for persuasive communications or material developed by an outside consultant or lawyer." *Federal Register*, Vol. 76, No. 119, June 21, 2011, p.36183.

USAPA believes successful, progressive labor relations are best achieved by honest, direct discussions between Union and employer representatives. When an employer utilizes an outside labor consultant, or as Professor Archibald Cox called him/ her in his testimony on the adoption of the LMRDA, "a middle man," to persuade employees concerning their

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organizational or collective bargaining rights, fairness requires the scope and financial details of those arrangements be disclosed. The LMRDA's intended reporting obligations require no less. See, *Wirtz v. Fowler*, 372 F.2d 315, fn.25 (5th Cir., 1966) [Professor Cox explained to the Subcommittee on Labor and Public Welfare on Labor Management legislation, 86th Cong., 1st Sess., 128 (1959), one kind of expenditure of the bill, which would become the LMRDA, properly required publication through compulsory reporting was, "Expenditures to a labor relations consultant or similar middle man in exchange for his undertaking to influence employees in the exercise of the rights of self-organization and collective bargaining or to furnish information concerning their activities.]"

The DOL has aptly observed, "Congress viewed such disclosures as mitigating the disruptive impact of labor relations consultants, or as Congress called them, 'middlemen,' on peaceful and stable labor relations." *Federal Register*, Vol. 76, No. 119, June 21, 2011, p.36182.

The DOL's proposed rule will advance fairness and stability in labor relations by enforcing one of Congress' original purposes of the LMRDA. Requiring the reporting of labor consultant and other persuader agreements, where such agreements call for persuader activity directly or indirectly intended to persuade employees in the exercise of their rights to join a union or bargain collectively, will result in an informed membership better able to exercise their organizational and collective bargaining rights. USAPA supports this effort and urges adoption of the proposed rule.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michael Cleary".

Captain Michael Cleary, President
US Airline Pilots Association