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

Re: Notice of Proposed Rulemaking
LM-10 and LM-20 Reports
RIN 1215-AB 79; 1245-AA03

Dear Mr. Davis:

The International Brotherhood of Teamsters and its 1.4 million members commends the Department for its proposals to revise the Employer (LM-10) and Persuader Reports (LM-20) and bring them into compliance with the intent of Section 203 of the Labor Management Reporting and Disclosure Act, 29 U.S.C. §433. We particularly applaud the Department's review of the relevant legislative history. It is worth reminding practitioners and commentators that the Congressional hearings that preceded the drafting of the LMRDA focused equally on the inappropriate influence of employer consultants or middlemen, as they did on the inappropriate actions of union officials. Regrettably, after promulgating regulations to protect workers from such undisclosed employer agents, the Department abandoned its enforcement role by permitting gaping loopholes in the reporting requirements and lackluster oversight. The post-1962 focus on an ever-expanding "advice" exception has permitted the rampant expansion of persuader activities, which go largely unregulated and unreported.

The proposed regulations and revised reporting forms will advance the Congressional intent that the activities of persuaders be disclosed to the workers they intend to influence. Of primary concern in this regard is the LM-20 report,

which is required to be filed by a persuader "within thirty days after entering into" an "agreement or arrangement" with an employer. The relatively short time for filing a persuader report reflects the intent that information regarding arrangements by their employers with third parties be available to employees in time for them to evaluate the source of materials or communications disseminated by their employers during organizing campaigns while those campaigns are ongoing. Thus, it is a more meaningful resource for employees involved in deciding whether they want union representation than is the LM-10, which must be filed on an annual basis.

This is especially so because one of the most common arguments offered by employers in anti-union communications is that the union is a "third party" that will interfere with the ability of the employer and worker to resolve workplace issues directly. Unfortunately, because of the interpretation currently utilized by the Department, most persuader activities are not reportable because they have been swallowed by the "advice" exception. Thus, employees do not realize that their employer has already inserted a "third party" to communicate on its behalf. Additionally, even a cursory examination of the LM-20 reports filed with the Department reveals that few are filed in compliance with the thirty day requirement. Indeed, many are filed many years after the consultant entered into an agreement or arrangement with the employer, and long after the conclusion of any organizing campaign. We are unaware of any enforcement actions commenced against late filers or any efforts to compel compliance comparable to the Department's efforts against unions that fail to file their annual financial reports in a timely manner.

An additional observation regarding the current filings is that many consultants do not disclose the financial arrangements with the employer. In order for employees to fully appreciate and evaluate an employer's assertion that it cannot afford increased labor costs, employees should be aware of the amount of money paid by their employer to one or more persuaders. It does not appear that the revised LM-20 form explicitly requires the disclosure of the financial terms of the arrangement. While the LM-10 does require the employer to reveal the amount of such payments, those annual reports are filed at a time too remote from the organizing campaign to provide meaningful disclosure. Thus, it is respectfully suggested that the instructions and forms explicitly require the consultant to reveal the financial arrangements with the employer, in addition to the information regarding the nature of the persuader activities in which it has engaged.

With regard to seminars, webinars or conferences conducted by attorneys and consultants on union avoidance techniques, we believe the Department has closed a major loophole by refocusing on the persuader activities, rather than on whether "advice" was included in a presentation. Although the proposed regulation can be read as requiring reporting where the consultant disseminates "generic" persuader material that can be adapted by the employer to its individual needs, it is suggested that the regulation explicitly identify such materials as triggering the filing of a report. This will avoid a creative argument that the materials were not intended to be utilized with respect to any particular anti-union campaign but, rather, were merely illustrative of the types of legal communications from employers to their employees. To the extent the proposed regulations leave even a crack suggesting that generic persuader materials unconnected to a specific ongoing campaign do not require reporting, that gap should be filled with explicit instructions requiring disclosure. It should also be clear that the employer and consultant must report even if there is an "agreement or arrangement" whereby the employer merely purchases the anti-union materials disseminated at a seminar that it does not attend.

While the Department will undoubtedly be inundated with comments from those who assert that the proposed regulations are a sop to organized labor, the real beneficiaries of this proposal are the employees – the class of individuals for which the protections in Section 203 were intended. Thus, the Department has finally drafted rules that will implement the Congressional intent, as it recognized in 1961, after many years of neglect. We endorse the proposed rules and urge their swift implementation.

Sincerely,

James P. Hoffa

James P. Hoffa
General President

JPH/ndm