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From:
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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 Avenue, NW
Room N—5609
Washington, DC 20570

Re: Labor-Management Reporting and Disclosure Act – Interpretation of the "Advice" Exemption; RIN 1245-AA03

Dear Mr. Davis:

I am writing to request that the U.S. Department of Labor immediately withdraw the above-referenced proposed rulemaking. As an employer in the construction industry, I find the agency's proposal completely unnecessary and an infringement on my rights, the rights of my company's employees, create further tension between labor and management and, most importantly, make it much harder to create jobs.

For over 50 years, when an employer like me hired a third party, such as a consultant or attorney, to influence employees about a union organizing campaign, the employer was required to disclose such activity to the federal government. The "persuader," as the third party is referred to under the law, also had to report. The reports had to contain information about the persuasion activities, and about all of the persuader's other labor-related services and clients—even those that have nothing to do with persuasion activities.

The law, however, plainly excluded "advice" from the definition of persuasion. This exception has allowed businesses to hire lawyers and consultants for advice about communicating with employees, or rely on materials obtained through associations or seminars without triggering the reporting requirement. As long as my company was free to accept or reject anything prepared by the third party, it was considered advice, not persuasion. This common sense approach preserved my right to seek advice and counsel.

DOL's proposal, however, would virtually eliminate the advice exception. As a result, my business and any third parties we hire will need to report an otherwise confidential agreement when the third parties—whether consultants, attorneys, associations or even seminar presenters—provide materials used to

communicate with my employees, such as policies or prepared speeches, or revised drafts of such documents prepared by company management. This would be the case even if a consultant, attorney, association or seminar presenter never actually interacts with my employees. In fact, in some cases, it is entirely possible that the so-called "persuader" will know nothing about my company or its employees. Indeed, the employer and the persuader may not have even spoken to one another.

The proposed changes will effectively deprive me of my right to counsel, and increase the risk that we might unknowingly say or do something illegal in the course of a given campaign. If by suggesting any revision to documents, speeches or policies, an attorney would suddenly be required to file government reports that include detailed information—including fee arrangements—many attorneys will simply cease providing such services. If an attorney reviews materials prepared by my company, and he/she is limited to declaring that the materials *do* or *do not* violate the law, but would otherwise be unable to suggest revisions without engaging in persuasion and triggering the excessive reporting requirements, clearly there is little value in such limited services for either party.

The proposed rule would in effect force me to either say nothing at all, or risk saying something inaccurate—or even illegal—to my employees, simply because the company will no longer be able to obtain quality advice on what to say. Either way, my ability to communicate with my employees about a subject of vital importance will be severely restricted, and my employees' right to receive balanced information will be virtually eliminated.

* * * *

In conclusion, the proposed rule changes would deprive my company of its right to free speech and legal counsel, and would deprive my employees of the right to obtain balanced and informed input as they decide whether union representation is a good idea. The new rules would harm my business, and impair its ability to grow and create new jobs. For the reasons outlined above, I request that DOL reconsider its rulemaking proposal and withdraw it without delay.

Thank you for the opportunity to submit comments on this matter.

Sincerely,

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