

INTERNATIONAL UNION OF OPERATING ENGINEERS

LOCAL UNION NO. 150, 150B, 150A, 150C, 150RA, 150D, 150G, 150M

AFFILIATED WITH THE A.F.L.-C.I.O.

6140 JOLIET ROAD
COUNTRYSIDE, IL 60525



708-579-6663
FAX 708-588-1647

DALE D. PIERSON
ELIZABETH A. LAROSE
MELINDA S. HENSEL
BRYAN P. DIEMER
CHARLES R. KISER

LEGAL DEPARTMENT

MARC R. POULOS
MELISSA L. BINETTI
STEVE A. DAVIDSON
KARA PRINCIPLE

September 21, 2011

United States Department of Labor
Washington, DC

RE: Comment on "Persuader" Rule Advice Exception

I support the U.S. Department of Labor ("DOL") proposal to narrow the so-called "advice" exception to the Persuader Rule codified in the Labor-Management Reporting and Disclosure Act ("LMRDA"). I also believe the DOL should take whatever steps are necessary to increase compliance with the requirement that consultants and lawyers report direct persuader activity.

I have practiced labor and employment law representing unions and employees since my graduation from Northwestern University Law School in 1982. I am currently General Counsel to Local 150 of the International Union of Operating Engineers, AFL-CIO, a position I have held since 2002. Throughout my legal career I have seen employers routinely violate the basic rights guaranteed employees by Section 7 of the National Labor Relations Act to organize in pursuit of collective bargaining. It is my belief that if an employer wants to avoid a union, it is only a question of how much money it is willing to spend.

The most extreme examples of employer misconduct in opposition to union organizing appear when they hire union-busting consultants or management law firms who specialize in presenting anti-union campaigns. As has been described in the comments presented by Local 150 organizers, it is not uncommon for lawyers or consultants to misrepresent or conceal their identities in their efforts to intimidate employees or trick them into opposing the Union.

The consultants and lawyers who get rich frustrating the aspirations of working people to make their lives better should at least be required to disclose their conduct. In the hundreds of organizing campaigns I have observed, these consultants and lawyers go far beyond simply advising employers of their rights. I believe these lawyers and consultants hold themselves out and are hired to run anti-union campaigns. In their campaigns consultants and attorneys routinely have direct contact with employees in captive audience speeches and one-on-one meetings; they routinely draft and disseminate anti-union propaganda documents; and they commit all manner of unfair labor practices, such as interrogation of employees about union sympathies, polling and surveillance. The consultants and lawyers help employers identify and fire union supporters, and bribe employees with promises of benefits if they vote the union down. I think that if these



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people were required to report their activity, it would do much to discourage their illegal conduct.

While I believe that most employers are sincere, hardworking people who want to be fair to their employees, when confronted with a union organizing campaign, they do not know what to do. Out of fear of the unknown or an ingrained ideological opposition to unions, they turn to "experts" for assistance. These experts have no scruples about being honest with employees, in part because they don't have to live with the result. Employers who may be uncomfortable with lying to their employees themselves let the consultants and lawyers do it and pay handsomely for that service.

It is only fair to require disclosure of these consulting services. Unions must disclose to the world all their sources of revenue, account for every dime spent, and refund money to employees it represents who profess ideological opposition to those expenditures. Employers can legally go out of business to avoid the union, or bankrupt themselves fighting to stay "union-free," but to ask them simply to disclose the money they've spent on "consultants," or even the fact of the consultation, and they proclaim outrage.

As Local 150 President-Business Manager Jim Sweeney put it, all we want is a level playing field. The unions will prevail in organizing campaigns nearly every time in a fair fight. Most employees eagerly acknowledge a desire to earn higher wages, enjoy better health care, and a chance to secure a comfortable retirement. People search for jobs that provide them dignity and satisfaction at work. Job security through seniority clauses and "just cause" protection against layoff and discharge are rooted in centuries old traditions of fairness and due process. These are things that Americans hold dear and with good reason.

Unions are the best way for working people to achieve these goals. It is essential that the government protect them in this struggle.

Thank you for your consideration of this comment.

Very truly yours,

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 150, AFL-CIO LEGAL DEPARTMENT

Dale D. Pierson
General Counsel