September 21, 2011

RE: Opposition of DOL Proposed Rules on Persuader Activities

To Whom It May Concern:

On behalf of MACNY, The Manufacturers Association and its collective membership of hard working manufacturers and businesses throughout New York State, I write you in opposition to the recent proposal changing rules on persuader activities for businesses.

In June, sweeping changes to the rules that administer the Labor-Management Reporting and Disclosure Act by drastically expanding the definition of "persuader" activity were proposed that include many activities currently recognized as labor law advice. This proposed change would make it more difficult for employers to access legal assistance to help them comply with the complex laws governing labor relations—effectively "gagging" them and keeping many employees from hearing both sides of the unionization debate.

Current law requires employers, law firms and other labor union experts to disclose when employers seek assistance from consultants who intend to directly "persuade" employees regarding union members. For decades, the law has included a very important exemption: employers are allowed to obtain legal advice from attorneys to remain compliant with current law. Many small and medium sized manufacturers and companies don't have the headcount to ensure experts in this area are on staff, and therefore must rely on outside help in order to assure they remain in compliance. Under the proposed rule, it is so broad based, that it would cover activities unrelated to traditional "persuader" activities, such as planning a response to a union campaign; delivering draft communications for the employer to use, training supervisors on how to comply with the NLRA, and drafting or revising policies.

Additionally, the expanded definition is so broad it encompasses reliance on counsel or consultants for routine HR matters. For example, assistance in developing a personnel policy or creating supervisor training on how to comply with the NLRA may be deemed "persuader" activity. This will have a negative effect on routine employee relations advice. The expanded definition of reportable activity would require law firms, if they report as a "persuader" for one client, to disclose all fees and arrangements from all clients for all labor relations services. This may have a crippling effect on consultants choosing to provide labor relations counsel, and it may prevent employers from seeking critical guidance on how to comply with federal law.

During such crippling financial times, it is imperative we do what we can to ensure our businesses and manufacturers can conduct their business efficiently and effectively, in order to bring us back onto financial footing. We urge you to not implement this proposal, and in doing so, allow the state and nation's business community to remain accessible to legal counsel, remain compliant, and operate in a business climate where they can sustain and grow those businesses we so desperately need.

Thank you again for your continued support and efforts in this critical issue for manufacturers and businesses not only in New York State, but the United States as a whole.

Sincerely,

Randy Wolken
President
MACNY, The Manufacturers Association