

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

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UNITED STATES DEPARTMENT OF LABOR OFFICE OF LABOR-MANAGEMENT STANDARDS

Rescission of Rule Interpreting the
“Advice” Exemption in LMRDA § 203(c)

RIN 1245-AA 07

COMMENTS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS (IBT)

These comments are submitted on behalf of the International Brotherhood of Teamsters (“IBT”), its approximately 1,900 affiliated Joint Councils and Local Unions and its more than 1.4 million members (hereafter referred to collectively as the Teamsters”) in response to the Department of Labor’s proposed rescission of the final rule interpreting the “advice” exemption to the reporting requirements stated in § 203 of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. § 433, that became effective on April 15, 2016. 82 Fed. Reg. 26877 (June 12, 2017). The Teamsters strongly oppose the proposed rescission of the 2016 Rule.

Workers in the United States are entitled by law to know who is behind the union busting talking points and propaganda provided to them by the employer during union organizing drives. By pulling back the curtain afforded to employers and consultants by the egregiously overbroad “advice” exemption, the 2016 Rule affords workers the transparency and information needed for them to exercise their democratic right to choose whether or not to vote for union representation.

As shown in the legislative history, the Congressional hearings that preceded the drafting of the LMRDA focused as much 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 “third party” anti-union persuader activities, which go largely unregulated and unreported.

With the 2016 Rule, the DOL revised the Employer (LM-10) and Persuader Reports (LM-20) and finally brought them into compliance with the intent of Section 203 of the Labor Management Reporting and Disclosure Act, 29 U.S.C. §433. One of the most common arguments offered by employers in anti-union campaigns is that the union is a “third party” that will interfere with the ability of the employer and worker to resolve workplace issues directly. Without the implementation of the 2016 Rule, however, most “third party” persuader activities will continue to go unreported because they have been swallowed by the so-called “advice” exception, thus preventing the workers from ever knowing that their employer has already inserted its own “third party” to communicate on its behalf.

Contrary to the assertions of rescission proponents, no further review is needed to consider the effects of the Rule on the regulated entities. The Rule represents a modest common sense interpretation of the statute and it places no significant burden on the reporting entities. Issuance of the Final Rule came after five (5) years of careful study, deliberation and comment—the rulemaking process

was thorough and complete. In addition, the stakeholder filings required by the Rule are only two pages long, which of course pale in comparison to the hundreds of pages of financial disclosure forms unions are required to fill out and file under the LMRDA regulatory scheme. Unions must report all substantial expenses, with no exceptions for particular content.

While the Department will undoubtedly be inundated with comments from those who assert that the 2016 Rule was 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. In 2016, the Department finally issued a Rule that will implement the Congressional intent, as it recognized in 1961, after many years of neglect to make the “behind the scenes” persuader activities transparent to the voting employees. We fully endorse the 2016 Rule and strongly oppose the proposed rescission.

Respectfully Submitted,

A handwritten signature in black ink, reading "James P. Hoffa". The signature is written in a cursive, flowing style with a large initial "J" and a prominent "H".

James P. Hoffa
General President