BEFORE THE
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 SCREEN ACTORS GUILD – AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS

These comments on behalf of Screen Actors Guild – American Federation of Radio and Television Artists (SAG-AFTRA) are submitted 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, 29 U.S.C. § 433, that became effective on April 15, 2016. 82 Fed. Reg. 26877 (June 12, 2017). SAG-AFTRA strongly opposes the proposed rescission of the rule.

Pursuant to Section 203 of the Act, Employers and labor relations consultants are obligated to report on "any agreement or arrangement . . . which [the consultant] undertakes activities where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively." 29 U.S.C. § 433(a)(4). *See also id*. § 433(b)(1). Moreover, the Act carves out an exemption to these reporting requirements. Specifically, an employer or consultant is not required to "file a report covering the services of [the consultant] by reason of [the consultant] giving or agreeing to give advice to such employer." 29 U.S.C. § 433(c). The 2016 Rule interprets LMRDA § 203 as "requir[ing] employers and their consultants to report not only agreements or arrangements pursuant to which a consultant directly contacts employees, but also where a consultant engages in activities 'behind the scenes,' where an object is to persuade employees concerning their rights to organize and bargain collectively." 82 Fed. Reg. at 26,879. The proposed rescission of the 2016 Rule would take the "position that only direct communication between a consultant and employees trigger[s] the reporting requirement, and that any other activity [i]s exempt 'advice.'" *Ibid.*

Employees today have limited resources with respect to making an informed decision about whether to elect union representation, and unions are at a disadvantage relative to Management when it comes to communicating to employees. Management, having access to their employees for the entirety of their work schedules, has a wide variety of tactics it can invoke to capture their employees' attention – for example, by holding employee orientation sessions for new employees during which they discourage unionization or by requiring employee attendance at meetings where supervisors discourage union representation. As a result, employees are primarily exposed to a one-sided dialogue in the workplace

with respect to the pros and cons of unionization. Therefore, it is of the utmost importance that employees have a thorough knowledge about the third parties their employer hires to challenge the employees' efforts to unionize as well as how much the employer is paying the third party and what specifically the third party is being hired to do.

The Department, to advance its position, notes that it seeks to rescind the Rule to allow for an opportunity "to give more consideration to several important effects of the Rule on the regulated parties." 82 Fed. Reg. at 26,879. However, before adopting the present interpretation of the LMRDA § 203, the Department had already conducted extensive research to assess the practical effects of minimizing the reporting requirements. The Department (1) held a public meeting to discuss whether it should change its interpretation (81 Fed. Reg. 15,924, 15,936 (March 24, 2016)0, published its proposal (76 Fed. Reg. 36,178 (June 21, 2011)) and extended the comment period on the proposal to three months, and (3) ultimately received and reviewed thousands of comments. 82 Fed. Reg. at 15,945-16,000, 26,879. The Board has not shown what additional substantive information it could stand to gain that it has not already made an effort to obtain previously.

The Department also notes it will conserve resources by rescinding the Rule and encouraging underreporting. The Department notes that the present interpretation of the Rule relies on "evidence that the use of outside consultants to contest union organizing efforts ha[s] proliferated, while the number of reports filed remain[s] consistently small." 82 Fed. Reg. at 26,879. The Department explains that underreporting will "[reduce] the investigative resources devoted to enforcing the rules on filing timely and complete reports." 82 Fed. Reg. at 26,881. However, saving investigative resources at the expense of employees by encouraging underreporting is counter to the purpose of the Act as a whole and certainly not conducive to a healthy employer-employee relationship.

Respectfully submitted,

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