“Persuader” Reporting Requirements

OVERVIEW

Section 203 of the Labor-Management Reporting and Disclosure Act (LMRDA) contains federal reporting and disclosure requirements regarding individuals and entities hired by employers “to persuade employees to exercise or not exercise or persuade employees as to the manner of exercising, the right to organize ..." Employers and so-called “persuaders” are obligated to file exhaustive reports with the U.S. Department of Labor (DOL), disclosing finances and other information if they engage in covered activity. These reports are available on the DOL website.

Section 203(c), better known as the “advice exemption,” has long exempted attorneys, trade associations and other third party advisors from these reporting requirements when they discuss union organizing with an employer without engaging in direct contact with its employees. The employers that utilize these protected services also are currently exempt.

In June 2011, DOL proposed changes to the current persuader reporting requirements under Section 203 that would significantly narrow the advice exemption. Under the proposed rule, the “advice exemption” would no longer extend to most advisors or their employer clients. Although we do not yet know which specific activities would trigger the reporting requirements, the proposal does offer some examples. For example, employers may be required to start filing persuader reports if they seek assistance on workplace policies. Advisors could become persuaders merely by hosting conferences or meetings with a focus on labor relations. The fact that many of the proposal’s provisions are still vague and confusing is alarming considering criminal penalties could be imposed for non-compliance.

DOL’s proposal runs contrary to the congressional intent behind the LMRDA, and is not supported by any compelling justification for such drastic changes. However, the agency tentatively plans to finish its rulemaking by August 2012, with an effective date to follow.

If implemented, the new requirements will have a profound chilling effect on employers in need of advice on labor relations matters, as well as the parties from which employers seek advice. Companies, especially small businesses, will be unquestionably discouraged from seeking help. Newly minted “persuaders” also will be more reluctant to offer what previously constituted as advice due to the unreasonable burdens that could be placed on them.

It is essential that employers in the construction industry retain the ability to receive expert counsel and advice on labor relations matters. The vast majority of employers are small businesses without in-house attorneys or advisors. They deserve to remain free of vague, burdensome and intrusive reporting regimes before, during and after a union organizing campaign.

ABC SUPPORTS

- The preservation of the long-held and current interpretation of the LMRDA’s Section 503(c) “advice exemption” provision.
- Legislative efforts to block DOL from implementing its proposed “persuader” reporting rule.

ABC OPPOSES

- Implementation of DOL’s “persuader” reporting rule.
- Any current or future policy or regulation that deprives employees of valuable, balanced information regarding the union representation process by obstructing employers’ ability to communicate with their employees about union organizing.

The June 2011 proposal has generated serious concern. It will infringe on employers’ rights to free speech, freedom of association and legal counsel, as well as limit employees’ collective right to obtain balanced information to decide whether or not to be represented by a union. In turn, competitors, union organizers and others stand to benefit from having access to previously confidential information.