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AGC maintains that the Department should promulgate rules that encourage employers to seek expert advice rather than rules that hinder them from doing so, as the Final Rule does. We, therefore, commend the Department for initiating the present rulemaking and reiterate our full support for rescission of the Final Rule.

Thank you for your consideration.

Sincerely,

Denise S. Gold
Associate General Counsel

Enc.

KRISTINE L. YOUNG, President
[redacted], Senior Vice President
AGC of America

September 21, 2011

Andrew R. Davis
Chief of the Division of Interpretations and Standards
Office of Labor-Management Standards
U.S. Department of Labor
200 Constitution Avenue, NW
Room N-5609
Washington, DC 20210
Submitted online at http://www.regulations.gov

RE: Labor-Management Reporting and Disclosure Act, Interpretation of the "Advice" Exemption; RIN 1215-

AGC is the leading association in the construction industry. Founded in 1918 at the express request of President Woodrow Wilson, AGC is now the nation's largest and most diverse trade association in the commercial construction industry, representing more than 33,000 firms in nearly 100 chapters throughout the United States. AGC members include approximately 7,500 of general contractors, 12,500 specialty contractors, and 13,000 suppliers and service providers working in the building, highway, heavy, industrial, municipal utility, and virtually all other sectors of the construction industry. The LELC is a network of attorneys who regularly assist and represent AGC chapters and members on labor and employment matters. AGC and the LELC proudly represent both union and open shop companies.

AGC is a member of the Coalition for a Democratic Workplace ("CDW") and fully supports the comments submitted to the Department by CDW. We submit these separate comments to supplement CDW's submission in order to emphasize certain points and to point out particular implications for our association and for the construction industry.

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The Proposed Rule Appears to Inappropriately Include Association-Provided Advice and Education as Persuader Activity Outside the "Advice" Exemption

AGC has 95 chapters. There is an AGC chapter in all 50 states and in the District of Columbia and Puerto Rico. Each AGC chapter has its own chapter manager and staff whose job is to sup

Another example is whether a reporting obligation is triggered when a chapter manger advises an employer regarding how to communicate with employees concerning the employer's right to hire temporary or permanent replacements during a labor dispute. While ordinarily providing such information would not trigger a reporting obligation, the proposed rule fosters litigation over whether the manner in which such advice is communicated to employees was to enhance its persuasive message so as to deter employees from engaging in a strike or other protected activity.

We believe it is unfair and inappropriate for trade associations, such as AGC and AGC chapters, to be so burdened in their receipt of advice or in their providing of advice from consultants and attorneys to its members. If the proposed rule becomes final, AGC national and chapter staff are likely to cease dispensing guidance on these and other potentially reportable issues; they will simply refrain from putting themselves in a position where their advice could be construed after the fact as persuader activity under the vague and amorphous rule. We are confident that the advice and planning assistance that such associations provide are beneficial for labor relations in the industry, and we think that the effect of the proposed rule would be to simply create more bad decisions as construction employers rely only on "self-help" in the decision-making process in these areas.

The Proposed Rule Would Have a Particularly Damaging Impact on the Construction Industry

The construction industry is the only industry (other than healthcare) covered by numerous specialized legal provisions and case law determinations under the NLRA. These include the authorization of "pre-hire collective bargaining agreements" under Section 8(f) of the Act (illegal for all other employers) and a very complex set of secondary boycott, picketing and "bannering" provisions and case law determinations. All of these relate largely to the construction industry, because of the fact that construction work sites usually include numerous employers at the same location. In addition, the temporary nature of construction work and the multiplicity of temporary work sites in numerous geographical areas for the same company generate specific issues concerning the terms of employment (often at-will, even for union signatories) and the nature of construction bargaining units. Special provisions of the law also govern the issue, most significantly in the construction industry, of competing union jurisdictions for the same groups of employees or types of work. Further, con28 Tw -(s)-1 (f)3 (or)3 (t.k s)-1 (ioups)-1. aseovisssonse (l

Employers, particularly in the construction industry, need all the good advice they can get, not artificial restrictions on that advice. Existing law covers bad decisions by employers (creating

First, the premise that disclosure of the source of persuasive information will somehow benefit decision making is incorrect. The Department states that the reporting of persuader activity "enables workers to become more informed as they determine whether to exercise, and the manner of exercising, their protected rights t

with unlawful practices, it is looking in the wrong place. Unlawful labor practices are not prohibited by the reporting requirements of the LMRDA but under the remedial provisions of the NLRA – the province of the NLRB, not the Department of Labor.

Moreover, if the Department's misplaced concern is with *reducing* unfair labor practices, the proposed interpretation could have the opposite consequence. As indicated above, we submit that the chilling effect of the proposed interpretations will result in less informed employers and employees and more unfair labor practices. The proposed rules will greatly reduce any incentive for employers to engage experienced counsel on labor relations issues because of the burdensome and invasive reporting requirements – leaving them to their own devices for determining the best and legal course of conduct. As a result, they will be less informed about the consequences of union representation – good, bad or other – meaning that their employees will also be less informed. For these reasons, the Department should promote rules that *encourage*, not discourage, the confidential and routine assistance of counsel.

Conclusion

For all of the foregoing reasons as well as those set forth in comments submitted by the CDW, AGC urges the Department to withdraw its proposed rule re-interpreting the "advice exemption" of the LMRDA. We thank the Department for considering our views and are available to provide additional information on the issues presented should the Department desire any.

Sincerely,

Denise S. Gold
Associate General Counsel, Associated General Contractors of America
Staff Associate, AGC Labor and Employment Law Council

Ryan McCabe Poor
Chairman, AGC Labor and Employment Law Council