



February 17, 2016

The Honorable Tom Cole
Chairman, Subcommittee on Labor,
Health and Human Services, Education, and
Related Agencies
House Committee on Appropriations
Washington, D.C. 20515

The Honorable Rosa DeLauro
Ranking Member, Subcommittee on Labor,
Health and Human Services, Education, and
Related Agencies
House Committee on Appropriations
Washington, D.C. 20515

Dear Chairman Cole and Ranking Member DeLauro:

On behalf of Associated Builders and Contractors (ABC), a national construction industry trade association with 70 chapters representing nearly 21,000 chapter members, I am writing to highlight existing or proposed regulatory and sub-regulatory actions from the U.S. Department of Labor (DOL) and the National Labor Relations Board (NLRB) that have or will have negative impacts on job growth and economic recovery in the construction industry. ABC urges the Committee on Appropriations to carefully examine these concerns and ensure they are addressed in the FY 2017 Labor, Health and Human Services, Education and Related Agencies Appropriations bill.

U.S. Department of Labor

“Persuader” Reporting Rulemaking

DOL is set to finalize drastic changes to how the Labor-Management Reporting and Disclosure Act (LMRDA) is interpreted and enforced (*Labor-Management Reporting and Disclosure Act; Interpretation of the “Advice” Exemption*, 76 Fed. Reg. 36178). Section 203 pertains to federal reporting and disclosure requirements for 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 true “persuaders” have long been required to file disclosure reports with DOL. However, when attorneys or consultants do not communicate directly with employees, but instead simply advise the employer, they have not been required to disclose. DOL’s proposal virtually eliminates this exemption, resulting in the drastic expansion of the types of circumstances that will trigger reporting—including communications between attorneys and their clients. If finalized, the proposal will deny employers their rights to free speech, freedom of association and legal counsel, and

deprive employees of their right to obtain balanced and informed input as they decide whether to be represented by a union.

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; accordingly, they should not be burdened with vague and intrusive reporting requirements 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, and formally requests that the Committee establish funding limitations on DOL's development of the persuader rulemaking.

Crystalline Silica Rulemaking

On Sept. 12, 2013, OSHA issued a proposal to significantly revise its standards governing workplace exposure to respirable crystalline silica, a material ubiquitous on construction sites as part of commonly used materials (*Occupational Exposure to Respirable Crystalline Silica*, 78 Fed. Reg. 56273). Despite OSHA's claims, industry experts assert that the implementation of this proposal is technologically and economically infeasible for many industries, including construction. In addition, the agency has failed to explain how a drastically lower permissible exposure limit for silica dust will reduce the number of silica-related illnesses and deaths. OSHA has also acknowledged its inability to properly enforce existing standards, which existed over a four-decade period during which American workplaces experienced a 93 percent drop in silica-related deaths.

ABC is extremely concerned about the implications this rulemaking would have on the construction industry, and supports funding limitations on OSHA's development or implementation of this proposal.

Blacklisting

On July 31, 2014, the Administration put forth The Fair Pay and Safe Workplaces Executive Order (Executive Order 13673). To protect against unnecessary, costly, burdensome and duplicative contractor responsibility determination processes associated with Executive Order 13673, ABC requests that the Committee establish funding limitations on DOL and agency-wide implementation of "blacklisting."

NLRB

"Ambush" Elections Rulemaking

ABC has been outspoken in its opposition to the NLRB's "ambush" elections rule (*Representation-Case Procedures*, 76 Fed. Reg. 36811), which has reduced the amount of time between a union filing a representation petition and a representation election taking place to a median of 24 days. A federal district court struck down the Board's initial final rule on procedural grounds and the NLRB issued another final rule thereafter. The final rule unnecessarily expedites the election time frames by eliminating procedural due process rights for employers prior to the election, including determinations on which employees are considered supervisors, and which employees constitute a potential bargaining unit. Now employees are denied access to critical information about the pros and cons of union representation, and employers are deprived of their right to free speech and the ability to fairly educate their employees.

In addition, the ambush final rule requires employers to disclose employee email addresses and phone numbers to union organizers, ignoring recent email attacks that have become part of union corporate campaigns in the construction industry.

ABC formally requests that the Committee establish funding limitations on the NLRB's "ambush" election final rule.

Browning-Ferris Industries Case

In August, 2015 the Board issued its *Browning-Ferris Industries* decision, in which the Board overturned the traditional "joint employer" standard. The unprecedented changes by the Board redefined who qualifies as a "joint employer" under the NLRA, which has the potential to create barriers to and burdens on the contractor and subcontractor relationship throughout the construction industry. Under the new interpretation, contractors may find themselves vulnerable to increased liability, making them less likely to hire subcontractors—most of which are small businesses to work on projects. We urge the Committee to include a provision within the FY 2017 Appropriations Bill restoring the long-standing "joint employer" standard.

DOL and the NLRB should be helping employers get workers back on the job, and creating opportunities for businesses to grow. Unfortunately, many of the current priorities of these agencies will unquestionably do the opposite. ABC appreciates the Committee's consideration of our members' concerns, and looks forward to working with you as funding levels and priorities are set for the 2017 fiscal year.

Sincerely,



Kristen Swearingen
Vice President, Legislative & Political Affairs