



November 13, 2023

VIA ELECTRONIC SUBMISSION

Douglas L. Parker
Assistant Secretary of Labor for Occupational Safety and Health
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

**Re: Docket No. OSHA-2023-0008,
Representative Designation Process, RIN 1218-AD45**

Dear Assistant Secretary Parker:

Associated Builders and Contractors hereby submits the following comments to the U.S. Department of Labor's Occupational Safety and Health Administration in response to the above-referenced proposed rule published in the Federal Register on Aug. 30, at 88 Fed. Reg. 59825.

About Associated Builders and Contractors

ABC is a national construction industry trade association representing more than 22,000 member companies. ABC and its 68 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work.

ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of general contractors and subcontractors that perform work in the industrial and commercial sectors for government and private-sector customers.¹

The vast majority of ABC's contractor members are also small businesses. This is consistent with the U.S. Census Bureau and U.S. Small Business Administration Office of Advocacy's findings that the construction industry has one of the highest concentrations of small businesses (82% of all construction firms have fewer than 10 employees)² and industry workforce employment (nearly 81% of the construction

¹ For example, [ABC's 33rd Excellence in Construction Awards program from 2023](#).

² U.S. Census Bureau 2021 County Business Patterns: <https://data.census.gov/table?q=CBP2021.CB2100CBP&tid=CBP2021.CB2100CBP&hidePrevious=true> and <https://www.census.gov/programs-surveys/cbp/data/tables.html>.

The proposal allows anyone and everyone to become an authorized employee representative, such as outside union agents and community organizers. However, for decades OSHA has consistently interpreted the law, the regulations and the FOM to allow a safety inspector to be accompanied by a labor union only where such a union has been certified or recognized as representing the employees of the employer under procedures established by the National Labor Relations Board.

Under the proposed rule, OSHA's expansive interpretation of the term "authorized employee representative" as used in the OSH Act, departs from the agency's own definition of the same term in different parts of its regulations.

The statutory basis for OSHA's rulemaking regarding "authorized employee representatives" on walkarounds comes from

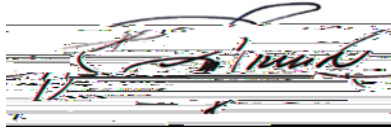
enforcement priorities. Trade secrets are yet another area of property rights that will be curtailed under the proposed rule.

ABC urges OSHA to withdraw this misguided proposed rule to avoid needless infringement on the rights of employers and the majority of their workers who have not chosen the outside third party as their authorized representative. OSHA should instead focus on promoting jobsite health and safety by building strong relationships with employers and promoting effective health and safety practices, instead of inserting itself into divisive unionization efforts and creating undue burdens on merit shop contractors.

Conclusion

For the reasons outlined above, as well as those in comments filed by the CISC and CWS, ABC urges OSHA to withdraw this proposed rule.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Greg Sizemore", is written over a horizontal line. The signature is somewhat stylized and cursive.

Greg Sizemore
Vice President, HSE and Workforce Development

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