

January 7, 2014

The Honorable Barbara Mikulski  
Chairwoman  
Senate Committee on Appropriations  
Washington, DC 20510

The Honorable Richard Shelby  
Vice Chairman  
Senate Committee on Appropriations  
Washington, DC 20510

The Honorable Tom Harkin  
Chairman, Subcommittee on Labor,  
Health and Human Services, Education, and  
Related Agencies  
Senate Committee on Appropriations  
Washington, DC 20510

The Honorable Jerry Moran  
Ranking Member, Subcommittee on Labor,  
Health and Human Services, Education, and  
Related Agencies  
Senate Committee on Appropriations  
Washington, DC 20510

Dear Chairwoman Mikulski, Vice Chairman Shelby, Chairman Harkin and Ranking Member Moran:

On behalf of Associated Builders and Contractors (ABC), a national trade association with 70 chapters representing 22,000 member firms from more than 19,000 construction and industry-related companies, 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 upcoming omnibus appropriations package for fiscal year 2014.

### **U.S. Department of Labor**

#### **“Persuader” Reporting Rulemaking**

In March 2014, DOL plans 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 e





implications such a policy would have on the safety integrity of their worksites. ABC supports any language preventing the Occupational Safety and Health Administration (OSHA) from implementing these alarming sub-regulatory policy revisions.

## **NLRB**

### **“Ambush” Elections Rulemaking**

ABC has been outspoken in its opposition to the NLRB’s “ambush” elections proposal (*Representation-Case Procedures*, 76 Fed. Reg. 36811), which, if implemented, will drastically reduce the amount of time between a union filing a representation petition and a representation election taking place from the current average of approximately 40 days to as few as 10. A federal district court struck down the Board’s initial final rule on procedural grounds. The NLRB has indicated, however, that it plans to issue another final rule in the near future. A new final rule would unnecessarily expedite 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. These changes will ensure that employees are denied access to critical information about the pros and cons of union representation, and that employers are deprived of their right to free speech and the ability to fairly educate their employees.

In addition, the ambush proposal would require employers to disclose employee email addresses and phone numbers to union organizers. Such a requirement ignores recent email attacks that have become part of union corporate campaigns in the construction industry. A recent example is described in the case of *Pulte Homes, Inc. v. LIUNA Construction*, where union organizers deliberately flooded an employer’s email system in order to disrupt the employer’s operations. It should also be noted that a long-standing Board case, titled *Excelsior Underwear Inc. 156 NLRB 1236 (1966)*, limits the information an employer must provide to names and home addresses of employees eligible to vote in a union representation election.

ABC formally requests that the Committee establish funding limitations on the NLRB’s development of the ambush elections rulemaking.

### **Secret Ballot Protection**

Currently, workers decide whether they want to be represented by a union through a federally supervised secret ballot election. Strict procedures are followed to ensure fair elections, free of coercion by employers and unions alike. Although employer and union representatives are present for

While it is true that existing procedures for fair elections call for secret ballot elections, these procedures must be protected from misguided and politically motivated attempts by the NLRB to curtail, circumvent and ultimately eliminate them through regulation. What was true in the days of the ironically named Employee Free Choice Act (EFCA) remains true today—the secret ballot is one of the cornerstones of the democratic process, and it deserves the utmost protection from those who wish to eliminate it.

ABC supports the protection of workers’ right to anonymous, secret ballot elections when deciding whether to be represented by a union, and the prohibition of policies that mandate so-called “card check” campaigns.

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