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Part III

Department of Labor

Office of Labor Management Standards

**Interpretation of the “Advice” Exemption
in Section 203(c) of the Labor-
Management Reporting and Disclosure
Act; Notice**

DEPARTMENT OF LABOR**Office of Labor-Management Standards****Interpretation of the "Advice" Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act**

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Labor.

ACTION: Notice of rescission of revised statutory interpretation.

SUMMARY: The Department is rescinding the revision of an interpretation of the "advice" exemption in section 203(c) of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA) published in the **Federal Register** on January 11, 2001. This action is being taken because, after review of the revised interpretation, the Department has concluded that the prior longstanding interpretation is the more appropriate one. Accordingly, as a matter of enforcement policy, the Department will not apply the revised interpretation.

EFFECTIVE DATE: The Notice published on January 11, 2001 at 66 FR 2782 is rescinded as of April 11, 2001.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5605, Washington, DC 20210. (202) 693-1233 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Secretary of Labor administers the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), Public Law 86-257, 73 Stat.

519-546, codified at 29 U.S.C. 401-531. Sections 203(a) and (b) of the LMRDA, 29 U.S.C. § 433(a) and (b), require employers and other persons to file certain reports with the Department of Labor in connection with persuading employees about the right to organize and bargain collectively. LMRDA section 203(c) creates an exemption from these reporting requirements if the consultant's activity is limited to "giving or agreeing to give advice" to an employer.

Since 1962, the Department has construed "advice" to include not only a consultant's review of persuasive material prepared by the employer and comments thereon, but also the consultant's preparation of material for the employer, so long as the employer is free to accept or reject the material. On January 11, 2001, the Department published a notice in the **Federal Register** (66 FR 2782) revising its interpretation of section 203(c) of the LMRDA. Under the revised interpretation, section 203(c) would exempt employers and labor relations consultants from the reporting otherwise required by sections 203(a) and (b) if the consultant reviews and revises persuasive material prepared by the employer but not if the consultant prepares or provides the material.

On February 9, the Department published a notice in the **Federal Register** (66 FR 9724) delaying the implementation date of the revised interpretation for 60 days, from February 10, 2001 to April 11, 2001, in order to enable Department officials to review and consider the matter. That notice was issued in accordance with the memorandum of January 20, 2001 from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the **Federal**

Register on January 24, 2001 (66 FR 7702).

The notice of January 11, 2001, set forth two reasons for revising the longstanding interpretation of LMRDA section 203(c): (1) "the textual basis for the prior interpretation is dubious" in that it "is in tension with the ordinary meaning of the term 'advice'"; and (2) the prior interpretation "has harmed the effectiveness of the LMRDA in requiring disclosure of persuader activities."

Upon review and reconsideration of the revised interpretation, the Department has determined that the revision is not warranted or justified. The evidence and argument presented in the notice of January 11, 2001 is insufficient to support the conclusion that the interpretation of the term "advice" taken since 1962 is inconsistent with the ordinary understanding of that term or that it is inconsistent with the intent of the LMRDA reporting requirements. See also *International Union, UAW v. Dole*, 869 F.2d 616, 618-620 (D.C. Cir. 1989) (interpretation taken since 1962 is a permissible interpretation of the statute). Moreover, the revision of the Department's longstanding interpretation was made without the benefit of input from all the parties most directly affected by the change in the reporting requirements.

Consequently, the revised interpretation of LMRDA section 203(c) issued on January 11, 2001 is rescinded and the former interpretation is reinstated.

Signed at Washington, DC this 6th day of April, 2001.

Joe N. Kennedy,

Acting Assistant Secretary of Labor for Employment Standards.

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