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Busting the union busters

The need to improve transparency around union-busting activity

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SECTIONS

Worker organizing has surged in recent years amid the highest levels of support for unions in decades. Petitions for union representation elections are up 27% at the National Labor Relations Board and have more than doubled since 2021 (NLRB 2024b). Workers are winning a higher share of elections than they have in years. Union membership has increased in each of the last two years (BLS 2024; Shierholz et al. 2024). Research shows that nearly half of nonunion workers would vote for a union at their workplace if given the opportunity (Shierholz et al. 2024). This conservatively translates into 60 million workers who would like union representation—a huge increase from the 14 million workers who are currently union members.

The benefits of unionizing are well established. Workers represented by unions enjoy better wages and benefits than nonunion workers (U.S. Department of Treasury 2023; Shierholz, Poydock, and McNicholas 2023). They have contractual protections against harassment and discrimination, and stronger health and safety protections. Unions provide security and a collective voice for workers on issues that concern them at their workplaces, and a fair process for addressing and resolving disputes.

Given workers' interest in forming unions and the clear advantages of unionization, why don't these 60 million nonunion workers have a union yet? The fact remains that the primary U.S. labor law protecting workers' organizing and bargaining rights—the National Labor Relations Act (NLRA)—is too weak and outdated to fully protect and support worker organizing. There are no civil monetary penalties against employers that break the law and violate workers' rights by firing workers for supporting a union or that engage in other illegal retaliation. And the law gives employers too much ability to interfere when workers choose to organize a union.[1]

One of the standard anti-union lines used by employers is that the union is a "third party" that will interfere in a direct relationship between workers and management. This argument ignores the fact that unions are organizations of workers, not an unrelated third party. However, this argument is regularly used by employers as an anti-union talking point.

Employers aren't wrong about third-party involvement, but they are hiding the fact that *they're* the ones bringing in third parties to interfere in the relationship between workers and managers during union organizing campaigns. Two-thirds or more of employers hire third-party anti-union consultants, which has spawned a lucrative industry of consultants and lawyers who make thousands of dollars a day and millions of dollars a year running anti-union campaigns (Bronfenbrenner 2022).[2] EPI has estimated that employers spend at least $433 million annually on third-party union busters (McNicholas et al. 2023). Amazon drew headlines when it reported more than $3 million in anti-union campaign expenditures in a single year. But Amazon is not alone. Major corporations, including Hello Fresh, FedEx, and Laboratory Corporation of America have hired union busters to defeat worker organizing drives (McNicholas et al. 2019; McNicholas et al. 2023).

One pervasive anti-union tactic used by employers and their third-party consultants to try to defeat worker organizing campaigns is the practice of holding "captive audience" meetings. These meetings, as their name suggests, are mandatory meetings held by employers that workers are required to attend or risk discipline. At these meetings, employers express anti-union views and make dire predictions about how having a union will disadvantage workers. Employers hold captive audience meetings in at least three-quarters of all organizing campaigns (Bronfenbrenner 2022). Unions have no similar ability to talk with workers at the workplace about the *benefits* of unionization—the law is very one-sided on who has the ability to talk with workers at the workplace.

Captive audience meetings are pervasive and coercive—so much so that the general counsel of the National Labor Relations Board (NLRB) has urged the NLRB to rule that captive audience meetings are illegal because they are so inherently coercive (NLRB 2022b).

To take a recent example that illustrates the effect of captive audience meetings, over the course of a few months, a majority of workers at a Mercedes plant in Alabama signed authorization cards saying they wanted representation by the United Auto Workers union (UAW). Mercedes ran a vigorous anti-union campaign, including daily captive audience meetings (Jamieson 2024). Workers ended up voting against union representation. In contrast, workers at Volkswagen in Tennessee voted overwhelmingly in favor of UAW representation. Volkswagen, unlike Mercedes, did not hold captive audience meetings to discourage unionization. EPI has documented numerous other examples of employer anti-union campaigns utilizing captive audience meetings and other coercive tactics. (McNicholas, Poydock and Edayadi 2023; McNicholas et al. 2023).

Union-buster reporting requirements in the Labor-Management Reporting and Disclosure Act

The Labor-Management Reporting and Disclosure Act (LMRDA) of 1959 requires employers and the consultants they hire to file disclosure reports on agreements under which the consultant "undertakes activities where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing."[3] These reports are known as "persuader" reports.

Three different persuader (union buster) reports are required by the LMRDA. Employers are required to file annual reports (LM-10 reports) detailing their arrangements with consultants within 90 days of the end of the employer's fiscal year (DOL OIG 2024). Consultants are required to file reports within 30 days of entering into an arrangement with an employer (LM-20 reports), and they are required to file annual reports within 90 days of the end of the consultant's fiscal year detailing the payments they have received from persuader arrangements (LM-21 reports) (DOL OIG 2024).

The 'advice' loophole in union-buster reporting

The Labor-Management Reporting Disclosure Act explicitly excludes "advice" from the union-buster reporting requirements.[4] The statute also exempts attorneys from reporting any information that is privileged under the attorney-client privilege.[5] Employers and consultants have exploited these two exemptions to avoid reporting on a significant amount of union-busting activity. As one illustration of the scope and impact of this underreporting, when the U.S. Department of Labor sought to restrict and better define the "advice" loophole in 2016, it estimated that consultant reports would increase almost tenfold, and employer reports would double.[6]

One of the main ways that employers and consultants have exploited the "advice" exemption is to claim that all the work done by third-party union busters is "advice," and not reportable, as long as the consultants avoid direct contact with an employer's workers. Under this theory, if a consultant creates an anti-union campaign and writes the actual scripts for the employer's anti-union captive audience meetings, neither the employer nor the consultant will disclose the tens or hundreds of thousands of dollars paid by the employer for their services, as long as the consultant avoids direct contact with workers. This leaves workers in the dark, with no way to know that the anti-union campaign being run by their employer, and the anti-union words they are speaking, were written by a high-priced third-party consultant that their employer is paying.

Table 1

Number of late reports filed with the Office of Labor-Management Standards

Reports filed between January 1, 2021, and August 22, 2023

Percentage of late employer reports (LM-10)	Percentage of late consultant reports (LM-20)	Percentage of late consultant financial reports (LM-21)
49%	83%	47%

Source: Department of Labor, Office of Inspector General (DOL OIG), *OLMS Can Do More to Protect Workers' Rights to Unionize Through Enforcing Persuader Activity Disclosure*, May 3, 2024.

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In 2001, the Clinton administration attempted to narrow the "advice" loophole. It issued subregulatory guidance explaining that indirect persuader activity is reportable.[7] The policy was quickly repealed by the Bush administration.[8] The Obama administration conducted notice and comment rulemaking and issued rules detailing the reporting requirements for persuader activity, including indirect activity.[9] The rules made clear that reports were required when consultants engaged in certain activities, regardless of whether the consultant had direct contact with workers, including when a consultant "(a) plans, directs, or coordinates activities undertaken by supervisors or other employer representatives, including meetings and interactions with employees; (b) provides material or communications to the employer, in oral, written, or electronic form for dissemination or distribution to employees; or (c) develops or implements personnel policies, practices, or actions for the employer."[10] The rules were challenged by consultants, employers, and employer associations in several federal district courts and were ultimately enjoined and later withdrawn (Von Wilpert 2017). However, it remains the case that the LMRDA requires reporting of indirect persuader activity, and the Office of Labor-Management Standards (OLMS) continues to publicize this requirement (OLMS 2022).

Underreporting or late reporting is rampant

The underreporting of persuader expenditures was the subject of a recent report by the Department of Labor's Inspector General (DOL OIG 2024). The report was conducted at OLMS's request. Among the IG's findings were that a large percentage of employers and consultants failed to file required reports and that almost half of employer and consultant reports were filed late. **Table 1** shows a summary of reports filed late between January 2021 and August 2023, according to the DOL Inspector General.

The IG report also pointed to the lack of civil monetary penalties for failure to file timely

Table 2

Comparison of LM-10 reports for persuader arrangements with NLRB union representation elections

Fiscal year	NLRB representation elections	LM-10 persuader reports	Percentage of reports compared with elections
2021	954	172	18%
2022	1,522	235	14%
2023	1,525	235	14%

Sources: National Labor Relations Board (NLRB), "Number of Elections Held per FY" (web page), accessed on August 13, 2024; Office of Labor-Management Standards (OLMS), "Historical Filing Data" (web page), last updated, November 15, 2023.

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reports as an impediment to compliance. Employers or consultants who fail to file the required persuader reports, or who file them after the deadline, face no financial consequences. As a result, there is pervasive underreporting.

The IG found 605 employers in the 20-month period identified in LM-20s or LM-21s who did not file an LM-10 (note that the mere filing of an LM-20 obligates the employer to file an LM-10). The IG found that 1,478 consultants named in LM-10s did not file their required LM-20 or -21 reports, and 142 consultants named in LM-20 reports did not file the required LM-21 annual report.

LaborLab has researched underreporting of LM reports and, like the IG, has found rampant underreporting and noncompliance. LaborLab recently issued a report finding that only one-third of employers and only 40% of consultants filed the required reports in 2023 (LaborLab 2024a). In 2024 alone, as of July 29, LaborLab has identified 782 missing or incomplete reports.[11] LaborLab has filed a complaint with the Office of Labor-Management Standards over each of these violations. LaborLab's research into missing LM-10 reports mirrors the IG's findings (LaborLab 2024b).

Further evidence of underreporting is found in a comparison of persuader reports with the number of union representation elections at the NLRB. The U.S. Department of Labor estimates that 78% of employers hire third-party union busters during organizing campaigns.[12] Minimally, then, the Department of Labor should expect to receive persuader reports for approximately this percentage of NLRB elections. However, the number of persuader reports falls far short of 78% as shown in **Table 2**. The Department of Labor's Inspector General made a similar finding in its recent report on OLMS's operations.[13]

OLMS's efforts to improve reporting and compliance

The Office of Labor-Management Standards under its current leadership has worked to raise awareness of and compliance with the union-buster reporting requirements. OLMS's recent efforts include:

- establishing a tip line for workers and others to report persuader activity that is going unreported (OLMS 2024)
- greater education and outreach on the persuader reporting requirements, including updated fact sheets, outreach to employers and consultants, and a webinar on the persuader reporting requirements
- increased efforts to achieve compliance with reporting requirements, including federal district court litigation to enforce subpoenas aimed at obtaining information to determine if employers should have filed persuader reports (McNicholas and Funk 2024). The litigation is against Amazon and Starbucks and is the first litigation of this kind in OLMS's history
- partnering with the National Labor Relations Board and entering into a memorandum of understanding (MOU) to obtain information from the NLRB on pending representation cases so that the Office of Labor-Management Standards can contact the employer about persuader reporting obligations
- publishing a new fact sheet on consultant reporting and common mistakes
- re-establishing and expanding the Persuader Reporting Orientation Program (PROP), which was stopped during the Trump administration. Under the PROP program, OLMS sends letters to employers and unions involved in NLRB representation proceedings regarding persuader reporting obligations in an effort to ensure employer and union awareness of these requirements and achieve greater compliance with them
- improving transparency by putting a direct link on OLMS's home page to the database of persuader reports to make searching easier
- establishing a special enforcement unit of four dedicated investigators focused on persuader reporting (Kullgren and Rainey 2024)

In addition, OLMS conducted a notice and comment rulemaking to amend the LM-10 (employer) form to require employers to check a box indicating whether the persuader payments or arrangements they are reporting concern employees working on a federal contract or subcontract, and if so, to provide information on which agency or agencies the

employer contracts with.[14] Since this requirement took effect, eighteen LM-10 reports have been filed by employers who checked the box indicating that the reported activity relates to employees working under a federal contract or subcontract. The reports include several large employers who hold contracts with major government contracting agencies as shown in **Table 3**.

The Office of Labor-Management Standards has indicated that it intends to conduct a rulemaking on "split income" reporting —that is, the percentage of a supervisor's income that is spent on persuader activities. This effort to obtain information on in-house union-busting expenditures is important and novel. A proposed split income rule was submitted to the Office of Management and Budget for review in July 2024.[15]

OLMS's efforts have yielded some results. For example, the number of LM-20 consultant reports has increased significantly in the last two years as shown in **Table 4**.

Still, these numbers fall far below the number of union organizing campaigns taking place across the country, and given the prevalence of employer use of anti-union consultants, one would have expected significantly more reports to have been filed.

Table 3

Persuader activity directed at employees working on a federal contract

Employer	Persuader	Federal agency	LM-10 form
PPG Industries, Inc.	LRI Consulting Services, Inc.	Restricted	https://olmsapps.dol.gov/query/orgReport.do?rptId=886182&rptForm=LM10Form
Dead River Company	The Bennett Law Firm, P.A.	Postal Service	https://olmsapps.dol.gov/query/orgReport.do?rptId=889064&rptForm=LM10Form
Pfizer Inc.	LRI Consulting Services, Inc.	Defense Department, Veterans Affairs Department, Agency not listed, Indian Health Service, Prisons Bureau	https://olmsapps.dol.gov/query/orgReport.do?rptId=874979&rptForm=LM10Form
Flowers Baking Co. of Oxford, Inc.	Kulture Consulting, LLC	Agency not listed	https://olmsapps.dol.gov/query/orgReport.do?rptId=892598&rptForm=LM10Form
Quest Diagnostics Incorporated	The Vindex Group	Prisons Bureau/ Veterans Affairs Department	https://olmsapps.dol.gov/query/orgReport.do?rptId=888162&rptForm=LM10Form
Carrier Corporation	LRI Consulting Services, Inc.	General Services Administration/ Defense Department	https://olmsapps.dol.gov/query/orgReport.do?rptId=890008&rptForm=LM10Form
Engert, LLC	RoadWarrior Productions, LLC	Energy Department	https://olmsapps.dol.gov/query/orgReport.do?rptId=875724&rptForm=LM10Form
Woodward, Inc.	LRI Consulting Services, Inc.	Air Force Department, Coast Guard, Navy Department, Army Department, Defense Logistics Agency	https://olmsapps.dol.gov/query/orgReport.do?rptId=892790&rptForm=LM10Form

Table 3 (cont.)

Employer	Persuader	Federal agency	LM-10 form
The Cooper Health System	LRI Consulting Services, Inc.	Veterans Affairs Department, Agency not listed	https://olmsapps.dol.gov/query/orgReport.do?rptId=879452&rptForm=LM10Form
10 Roads Express LLC	LRI Consulting Services, Inc.	Postal Service	https://olmsapps.dol.gov/query/orgReport.do?rptId=881139&rptForm=LM10Form
Republic Services of Arizona Hauling, LLC	Action Resources	Agency not listed	https://olmsapps.dol.gov/query/orgReport.do?rptId=887636&rptForm=LM10Form
Caney Fork Electric Cooperative, Inc.	LRI Consulting Services, Inc.	Rural Utilities Service	https://olmsapps.dol.gov/query/orgReport.do?rptId=881702&rptForm=LM10Form
Caney Fork Electric Cooperative, Inc.	LRI Consulting Services, Inc.	Rural Utilities Service	https://olmsapps.dol.gov/query/orgReport.do?rptId=895430&rptForm=LM10Form
K&I Field Services, LLC	Jackson Lewis P.C.	Air Force Department	https://olmsapps.dol.gov/query/orgReport.do?rptId=883826&rptForm=LM10Form
Coca-Cola Southwest Beverages LLC	LRI Consulting Services, Inc.	Defense Department	https://olmsapps.dol.gov/query/orgReport.do?rptId=886258&rptForm=LM10Form
Perdue AgriBusiness LLC	Government Resources Consultants of America Inc.	Agency not listed	https://olmsapps.dol.gov/query/orgReport.do?rptId=894703&rptForm=LM10Form
Trident Military Systems, LLC	Action Resources	General Services Administration	https://olmsapps.dol.gov/query/orgReport.do?rptId=894959&rptForm=LM10Form

Source: EPI/LaborLab analysis of LM-10 data filed after August 28, 2023.

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Table 4

Total number of LM-20 consultant reports, 2021–2023

Fiscal year	Number of consultant reports
2021	314
2022	747
2023	761

Source: EPI/LaborLab analysis of LM-20 forms filed with the Office of Labor-Management Standards.

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Recommendations for executive actions to improve reporting and transparency

As outlined above, OLMS has made significant strides under its current leadership to improve compliance with the union-buster reporting requirements. Additional actions would improve transparency around employer spending on union busters and improve compliance.

Requiring employers who hire union busters to disclose federal funding

As previously noted, in 2023, OLMS finalized a rule requiring employers who file LM-10 forms to indicate whether the persuader arrangements they are reporting concern employees who work on a federal contract or subcontract, and if so, which agency or agencies the employer has contracts with.[16] This information gives workers and the public important context on the persuader expenditures—that is, it tells them that their employer is receiving federal tax dollars to perform work for the government. Workers and others may find it significant that their employer is hiring union busters and also benefiting from taxpayer-funded federal contracts.

OLMS should expand this "check box" requirement to include federal grants and loans so that employers who receive any federal financial assistance are required to disclose whether persuader (union buster) arrangements concern employees working under a grant, loan, or other federal financial assistance. This change can be readily accomplished by amending the LM-10 form.

The Office of Management and Budget should establish mechanisms for ensuring that federal funds are not used for union busting

In 2009, then-President Obama issued an executive order (E.O. 13494) directing that the costs related to federal contractors persuading employees whether or not to form or join a union are "unallowable," meaning they cannot be reimbursed by the federal government.[17] Regulations were issued to implement the executive order. Both the executive order and regulations remain in effect; neither was repealed during the Trump administration.

In 2021, President Biden established the White House Task Force on Worker Organizing and Empowerment and directed federal agencies across the government to find ways to support worker organizing and collective bargaining. Under the leadership of Vice President Kamala Harris, agencies identified and implemented more than 100 actions to

increase workers' knowledge of their organizing rights and to support worker organizing in other ways (The White House 2023).

The task force recommended that the Department of Labor work with the Office of Federal Procurement Policy (OFPP) at the Office of Management and Budget (OMB) to develop a mechanism for ensuring that contracting officers are aware of contractor persuader activity and ensuring compliance with E.O. 13494 prohibiting the use of federal funds for union-busting expenses (The White House 2023). In addition, compliance with E.O. 13494 was listed as a topic for a working group of agency labor advisers from agencies across the government—another recommendation of the White House Task Force (OMB 2023). However, it is not clear that any specific action has been taken by the Department of Labor and OMB to develop the specific mechanism recommended in the task force report. Developing and implementing such a mechanism would increase contractors' knowledge of the executive order and their persuader reporting requirements.

For example, OFPP could require federal contractors to provide copies of LM-10 forms to the agencies they contract with so the agencies have awareness of these activities. At the same time, agencies that become aware of contractor union-busting activity through an LM-10 form or information from workers or other stakeholders could follow up with a letter to the contractor reiterating the contractor's obligations under E.O. 13494. Contracting officers or other agency officials could then follow up with the contractors, as appropriate, through audits, requests for attestations of compliance, and other measures, to ensure that federal funds are not being used for persuader activities. Agencies could consult with OLMS about the persuader reporting requirements as needed. These actions would help ensure compliance with E.O. 13494.

Relatedly, the Office of Federal Financial Management (OFFM), which oversees requirements for federal grants and loans, could develop and implement a similar mechanism to ensure that federal grant funds are not used for persuader activities. Several grant programs include this prohibition against using federal funds for union-busting activities, and OFFM could develop and implement measures to assure compliance along the lines of those described above.

OMB and the Department of Labor should engage the Contract Labor Advisory Group established pursuant to the White House Task Force on Worker Organizing and Empowerment on the persuader reporting requirements and E.O. 13494 to improve compliance with these requirements. The agency labor advisers are point people within their agencies with knowledge about labor requirements applicable to federal contractors, and they should be trained and engaged on increasing awareness of and compliance with the reporting requirements and E.O. 13494.

Finally, OMB and the Department of Labor should provide training and technical assistance to interested stakeholders so that workers, unions, and other interested parties can learn about how to access and utilize this information and ensure compliance with these requirements.

OLMS and OMB should publicize the employers that receive federal funding and hire union busters

Workers and the public deserve to know whether employers who hire and spend money on union-busting consultants are also recipients of federal financial assistance. This information may affect their view of these employers and their anti-union activities. Workers who are involved in a union organizing campaign deserve to know not only that their employer has hired a third-party union buster to craft and deliver anti-union campaign messages, but also that their employer is a recipient of federal financial assistance. Particularly given long-standing national policy in favor of union organizing and collective bargaining, this information about employer activity is significant.

The Office of Labor-Management Standards should regularly compile and publish on its website the names of employers that file LM-10 reports indicating that their persuader activities concern employees working under a federal contract or subcontract, grant, or loan, along with the names of the agency or agencies the employers receive funding from. This will allow workers to more easily and readily access this information, and it will assist contracting officials in ensuring compliance with E.O. 13494, which prohibits the use of federal contract dollars for persuader activity. OLMS should share this information with OMB.

Relatedly, the Office of Management and Budget should implement mechanisms to regularly publicize the names of employers that qualify as federal contractors on its website in conjunction with sharing this information with OLMS. Given the annual filing of LM-10 forms, this more proactive approach will enable real-time monitoring for potential violations of federal contractor rules.

The administration should use the bully pulpit to discourage union busting by recipients of federal funding

The Biden-Harris administration has been unequivocal in its support for the right of workers to form and join unions and engage in collective bargaining and for workers' freedom to choose to unionize without coercion or interference. As one example, President Biden recently issued an executive order directing agencies to consider prioritizing funding awards to companies that have positive labor relations, with neutrality in union organizing listed as one indicator (The White House 2024). The administration should continue to express its expectation that companies receiving federal funds should respect their workers' freedom to choose whether to form or join a union without coercion or interference.

OLMS should continue and expand efforts to improve persuader reporting, including outreach to workers and unions

As described, OLMS under its current leadership has prioritized education, outreach, enforcement, and other efforts to improve compliance with persuader reporting requirements by employers and consultants. OLMS should continue with these efforts and also prioritize greater outreach to workers and unions so that workers have greater awareness of the requirements and of OLMS's tip line for registering complaints of noncompliance. The Department of Labor's Inspector General recently recommended that OLMS make more efforts to promote the tip line.

OLMS should continue and expand its efforts on surveillance reporting

A little-known provision of the Labor-Management Reporting and Disclosure Act requires employers and consultants to include in their persuader reports arrangements and payments for "obtain[ing] information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer"—in other words, surveillance activities.[18] Employer surveillance of worker organizing activity is common in organizing campaigns, and it is sometimes the subject of unfair labor practice proceedings. The NLRB General Counsel has issued a memorandum on unlawful electronic surveillance (NLRB 2022a). Obtaining disclosure of these surveillance activities has taken on increased importance in light of the growth of artificial intelligence and various means of electronically surveilling the activities of workers. Recent research shows that two-thirds of workers report being subjected to some form of electronic surveillance on the job.[19] OLMS has highlighted the reporting requirement for surveillance and has worked to raise awareness of this requirement (Freund 2022). OLMS should continue and expand its efforts to obtain greater transparency around employer and consultant surveillance activities, including closer coordination with the National Labor Relations Board and guidance documents.

Statutory reforms

Congress should address several weaknesses in the LMRDA that undermine OLMS's ability to obtain timely and accurate persuader reports.

Narrow the 'advice' exception to require greater reporting of persuader activities

OLMS has been hindered in its efforts to narrow the "advice" loophole that employers and consultants exploit to avoid reporting on union-busting activities. The Protecting the Right to Organize (PRO) Act would more clearly define the persuader activity that must be reported, which would prevent abuse of the advice exception and result in greater

reporting of persuader activity.[20] The PRO Act would also ban captive audience meetings—one of the primary strategies that union busters use to defeat union organizing campaigns. Lawmakers should prioritize passage of the PRO Act.

Require more timely reporting

The LMRDA requires consultants to report on persuader arrangements within 30 days of entering into the arrangement, but there is no corresponding statutory requirement for employers to file a report upon entering into an arrangement (although arguably the LMRDA gives OLMS authority to require such reports). As a result, employers are not currently required to report on their persuader arrangements until 90 days after the conclusion of their fiscal year. This deprives workers involved in an organizing campaign of timely information on their employer's activities (although the information is still important and relevant, including for future organizing campaigns). Congress should require that employers, like consultants, file reports within 30 days of entering into a persuader arrangement.

Conclusion

Workers have a right to know that their employers are hiring high-priced third-party union busters to block workers when they want to organize a union. More can and should be done through agency practices and policies to bring about greater transparency of employer union-busting practices and to ensure that taxpayer money is not subsidizing union-busting practices.

Acknowledgments

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Notes

1. Not all employers oppose their workers forming a union. For example, Microsoft has adopted organizing principles by which it agrees to respect its workers' decisions over whether to organize a union (Robertson, Rebert, and Rhinehart 2023). Other companies have similarly chosen not to campaign against union organizing and to respect their workers' choice. (Glass 2023).

2. Interpretation of the "Advice" Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act, 81 Fed. Reg. 15924-16051 (March 24, 2016). See p. 16004 on using the estimate of 78%.

3. 29 U.S.C. 433(a)(4).

4. "Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer." 29 U.S.C. 433(c).

5. 29 U.S.C. 434.

6. Interpretation of the "Advice" Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act, 81 Fed. Reg. 15929 (March 24, 2016). OLMS estimated that the number of employer LM-10 reports would increase to 2,777 from 957, and the number of LM-20 reports would increase to 4,194 from 387.

7. Interpretation of the "Advice" Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act, 66 Fed. Reg. 2782-2788 (January 11, 2001).

8. Interpretation of the "Advice" Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act, 66 Fed. Reg. 18864 (April 11, 2001).

9. Interpretation of the "Advice" Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act, 81 Fed. Reg. 15924-16051 (March 24, 2016).

10. Interpretation of the "Advice" Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act, 81 Fed. Reg. 15924-16051 (March 24, 2016).

The rules provided additional examples of reportable union-busting activity at p. 16027: Specific examples of activities that either alone or in combination would trigger the reporting requirements include but are not limited to: • planning or conducting individual employee meetings; • planning or conducting group employee meetings; • training supervisors or employer representatives to conduct such meetings; • coordinating or directing the activities of supervisors or employer representatives; • establishing or facilitating employee committees; • drafting, revising, or providing speeches, written material, website, audiovisual or multimedia content for presentation, dissemination, or distribution to employees, directly or indirectly (including the sale of "off-the-shelf" materials where the consultant assists the employer in the selection of such materials, except as noted below where such selection is made by trade associations for member-

employers); • developing employer personnel policies designed to persuade, such as when a consultant, in response to employee complaints about the need for a union to protect against arbitrary firings, develops a policy under which employees may arbitrate grievances; • identifying employees for disciplinary action, reward, or other targeting based on their involvement with a union representation campaign or perceived support for the union; • coordinating the timing and sequencing of union avoidance tactics and strategies.

11. EPI/LaborLab analysis of LM reports filed as of July 29, 2024.

12. Interpretation of the "Advice" Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act, 81 Fed. Reg. at 16004 (March 24, 2016).

13. See DOL OIG 2024 at p. 3.

14. Revision of the Form LM-10 Employer Report, 87 Fed. Reg. 55952-55974 (September 9, 2022).

15. Office of Information and Regulatory Affairs (OIRA), "Split-Income" Reporting for the Form LM-10 Employer Report", accessed on August 15, 2024.

16. Revision of the Form LM-10 Employer Report, 88 Fed. Reg. 49230-49265 (July 28, 2023).

17. Economy in Government Contracting, 74 Fed. Reg. 6101-6102 (January 30, 2009).

18. 29 U.S.C. 434(a)(3).

19. This is from a forthcoming paper by Alex Hertel-Fernandez for the Washington Center for Equitable Growth.

20. See Section 202 of The Richard L. Trumka Protecting the Right to Organize Act of 2023, [H.R.20] 118th Cong. (2023).

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