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...Trump deletes union-buster disclosure rule

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The LMRDA itself says that any time an employer hires a consultant to "directly *or indirectly*" persuade employees not to exercise their right to unionize, both the employer and the consultant have to disclose that an agreement exists, and how much is being paid for it. The law makes an exception for legal-type "advice" given to the employer.

When LMRDA took effect in 1960, reports had to be filed when consultants wrote and furnished anti-union speeches to employers. But in 1962, the Labor Department broadened its interpretation of that "advice" exemption, saying union-busting consultants and employers would only have to file if the consultant met *directly* with workers to persuade them; everything else would considered "advice."

After that, anti-union consultants could for all intents and purposes stage manage every detail of an anti-union campaign and still remain exempt from disclosure, as long as the consultants themselves didn't speak to workers. By the 1980s, it was standard practice among professional union-busters to avoid disclosure by working behind the scenes to train managers and supervisors to deliver the anti-union message.

Bringing professional union-busters back into the light became an enduring goal for the labor movement. Unfortunately, labor's "friends" in the White House haven't been in a hurry to help. Under President Bill Clinton, the Labor Department returned to the original 1960 understanding of the law … nine days before George W. Bush was sworn into office. The Bush Administration undid the change three months later, re-imposing the 1962 interpretation.

After the election of Barack Obama, union leaders again hoped to win back the full disclosure of union-busting agreements that LMRDA had clearly intended. On Dec. 5, 2008, lawyers and labor officials from 22 unions and labor federations met with Obama's transition team and asked the Obama Administration to reinstate the Clinton interpretation within 100 days of taking office.

The Administration waited seven years. Its so-called "persuader rule" — which required union-buster disclosures whether the persuasion was direct to workers or indirect through managers — was announced March 24, 2016. It was to take effect April 25, 2016, and be enforced as of July 1.

Then opponents swung into action. The U.S. Chamber of Commerce and other business groups howled in the media, saying the rule change would be an intolerable burden on employers. [The "burden" was to be a two-page report that the Labor Department estimated that 3,414 employers and 2,601 advisers would have to file each year.] Republicans in the U.S. House held a hearing entitled, "The Persuader Rule: The Administration's Latest Attack on Employer Free Speech and Worker Free Choice." Fifteen Republican state attorneys general wrote to the Labor Department saying the regulation would increase legal costs for employers and undermine "the long-standing and sacred attorney-client privilege." Business groups filed suit in several U.S. District Courts to block the rule.

They got their wish. A U.S. District judge in Texas issued an injunction blocking the persuader rule from taking effect, saying the Labor Department had violated employers' free speech rights and overstepped its authority. Obama's attorney general Eric Holder appealed the injunction, and the two sides prepared for a trial that would resolve the question.

But the trial never came. Instead, Trump was inaugurated. His attorney general, Jeff Sessions, dropped the government's appeal. And the Trump Labor Department announced it would reconsider the rule. The Labor Department officially withdrew the rule July 18, 2018.

HOW TO SEE UNION-BUSTER REPORTS ONLINE

Most of a union-buster's work is training managers to be anti-union campaigners – and scripting and managing the campaign behind the scenes. The longstanding loophole the Trump administration restored means they don't have to report any of that. But unionbusters do have to report when they speak to workers. You can see those reports at https://olms.dol-esa.gov/Disclosure. LM-10s are the employer reports, LM-20s disclose that an agreement exists, and LM-21s show what consultants are paid. You can also sign up for regular updates at unionbusteralerts.com