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Vice President,
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February 22, 2011

Mr. Lester A. Heltzer
Executive Secretary
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570

By Electronic Submission: www.regulations.gov

Re: RIN 3142-AA07 – Proposed Rules Governing Notification of Employee Rights Under the National Labor Relations Act

Dear Mr. Heltzer:

On behalf of the National Association of Manufacturers (NAM), I submit these comments in response to the National Labor Relations Board's (NLRB) Notice of Proposed Rulemaking on "Proposed Rules Governing Notification of Employee Rights Under the National Labor Relations Act."

The NAM is the nation's largest manufacturing trade association, representing small and large manufacturers in every industrial sector and in all 50 states. The NAM's mission is to enhance the competitiveness of the manufacturing economy by advocating for policies that are conducive to U.S. economic growth. Most manufacturers in the United States are subject to the jurisdiction of the NLRB and are impacted by the Board's proposed rulemaking related to the notification of employee rights under the National Labor Relations Act (NLRA).

Manufacturers are committed to the practice of positive employee relations. The Official Policy Positions of the NAM clearly state that: "Labor relations should be conducted in a spirit of cooperation and mutual respect. Since employees, unions and employers all have a vital stake in maintaining workplaces that are productive and competitive, emphasis and resources should be placed on solving problems and resolving issues rather than on conflict and confrontation."

As a leading member of the Coalition for a Democratic Workplace (CDW), the NAM strongly supports the comments submitted by the Coalition in response to the NLRB's proposed rule. The NAM's comments reinforce the comments submitted by the CDW to better reflect the interests of manufacturers in this proposed rulemaking.

We believe the Board's proposed rule goes beyond its legal authority to impose such obligations and penalties on employers. Further, the proposed rule runs counter to longstanding legal precedent and lacks the necessary clarity for employers to effectively comply.

Authority of the NLRB

As the comments of the CDW clearly note, the NLRA authorizes the Board to administer the Act once a representation petition or unfair labor practice is filed. The proposed rulemaking seeks to require all employers covered by the NLRA to post a notice describing employees' rights under the NLRA – and would further require certain employers to transmit such a notice to employees via electronic communications. Unlike many other federal statutes that cover employment issues, the NLRA does not require employers to post notices informing employees of their rights under the Act. The NLRA is conspicuously silent on the Board's authority to impose posting requirements on all employers, while other acts explicitly grant agencies this authority. This demonstrates congressional intent to limit the authority of the NLRB to those instances in which there is a representation election or an unfair labor practice. It is our belief that any such employer obligation could only be required through congressional action amending the NLRA to grant the Board such authority.

Proposed Employee Rights

The NAM responded with formal regulatory comments to a similar proposed rulemaking by the Department of Labor's (DOL) Office of Labor Management Standards in September 2009.ⁱ The NLRB's Notice of Proposed Rulemaking noted that the Board has received petitions requesting that it develop rulemaking to require the posting of employee rights. Further, the Board noted in its justification for promulgating the proposed rule President Obama's recent executive order requiring federal contractors to post notices of employees' rights under the NLRA through rulemaking by the DOL.ⁱⁱ

In the NAM's response to the previous rulemaking, we clearly noted that employee rights expressed in the prior rule are neither guaranteed nor absolute and that such rights are nuanced and conditional upon over 70 years of interpretation by the Board and federal courts. As the description of rights under this proposed rulemaking is identical to the rights set forth by previous DOL regulations, we share similar concerns with the rights outlined in this proposal from the NLRB.ⁱⁱⁱ

The proposed employee rights required to be posted by employers under the NLRB's proposed rulemaking would present employees with an inaccurate description of their rights under the NLRA and does not serve employees' interests.

The proposed notice sets out an extensive description of illegal employer activities, however, it is noticeably deficient in fully describing employee rights related to union membership and illegal labor union activities. Specifically, the proposed notice fails to acknowledge numerous employee rights, such as:

- The right to refrain from being a full dues-paying member of a labor union but still possibly be required to pay certain representational fees in certain states;
- The right to resign from formal union membership;
- The right to refuse to pay any union dues if employees work in a "Right to Work" state;
- The right to refuse to pay union dues for political purposes;
- The right to be fairly represented by the union if an employee is included in a bargaining unit, regardless of the employee's union membership status; and

- The right to petition for an election to oust a recognized or certified union or to eliminate the union's ability to collect forced dues.

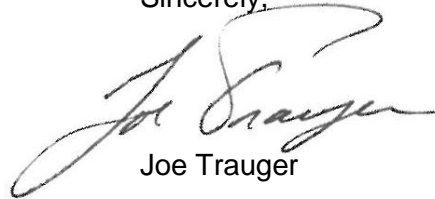
Posting Requirements

In addition to requiring employers to physically post a notice of employee rights, the Board's proposed rule would also require employers to distribute the notice to certain applicable employees electronically. As we have noted, the NLRB does not have the statutory authority to require employers to post such a notice without a petition being filed or violation being issued. In addition to lacking authority under the NLRA, there is no legal precedent that would allow the Board to require employers to post notices to employees electronically. The Board fails to provide any evidence that it has statutory authority or legal precedent to require employers to use their company's e-mail, Intranet or Internet systems to communicate such a notice to employees in its proposal. This requirement would break new ground and establish a troubling precedent of utilizing employer e-mail systems to communication information related to union membership.

Conclusion

For these reasons, the NAM respectfully submits that the NLRB does not have the authority to issue this proposed rule. The Board should not continue to develop such a rule when Congress has not granted it the authority to do so under the NLRA. We request that the NLRB abandon further efforts to promulgate this new rule.

Sincerely,



Joe Trauger

ⁱ Comments of the National Association of Manufacturers Responding to RIN 1215-AB70; Notification of Employee Rights Under Federal Labor Laws; 74 Fed. Reg. 38488 (August 3, 2009) Document ID: LMSO-2009-0002-0069.

ⁱⁱ 29 CFR Part 471 and 75 Fed.Reg. 80,411.

ⁱⁱⁱ 29 CFR Part 471.