

U.S. Department of Labor

Office of the Assistant Secretary for  
Congressional and Intergovernmental Affairs  
Washington, D.C. 20210

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August 26, 2013

COMMITTEE ON EDUCATION  
AND THE WORKFORCE

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The Honorable John Kline  
Chairman  
Committee on Education and the Workforce  
U.S. House of Representatives  
2181 Rayburn House Office Building  
Washington, D.C. 20515-6100

Dear Chairman Kline:

I am writing in response to your July 23, 2013, letter to Secretary Thomas E. Perez regarding “worker centers” and whether they qualify as labor organizations subject to the Labor-Management Reporting and Disclosure Act (LMRDA). The Department of Labor’s Office of Labor-Management Standards (OLMS) is responsible for the administration of the LMRDA. The Department appreciates the opportunity to clarify the actions it takes when it receives information that an organization may be covered by the LMRDA but is not complying with LMRDA requirements.

In making a determination<sup>1</sup> as to whether an entity is a labor organization, OLMS applies the statutory test as provided for in section 3(i) of the LMRDA:<sup>2</sup>

Labor organization “means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment...”.

Therefore, an entity constitutes a labor organization covered by the LMRDA if it (1) is an organization engaged in an industry affecting commerce; (2) has employees who participate in the organization; and (3) exists for the purpose, in whole or part, of dealing with employers concerning terms and conditions of employment.<sup>3</sup> OLMS has applied this test for over 40 years to all organizations, regardless of type, including worker centers, based on the unique facts and circumstances in each case.

Your letter specifically identifies six entities. To protect the integrity of its enforcement process, OLMS cannot disclose whether or not there exists an ongoing investigation with respect to these entities;

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<sup>1</sup> As a matter of course, OLMS does not provide advisory opinions and, therefore, cannot provide you with an official determination as to the LMRDA filing requirements of worker centers in general. Rather, OLMS considers the facts on a case-by-case basis when determining whether an organization is covered by the LMRDA.

<sup>2</sup> 29 U.S.C. § 402(i).

<sup>3</sup> Section 3(j), 29 U.S.C. § 402(j), defines what it means to be “engaged in an industry affecting commerce.”

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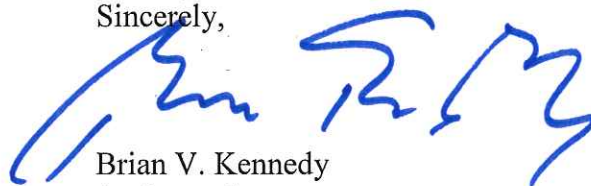
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however, the Department is able to provide you with additional information with regard to the Restaurant Opportunities Center (ROC) and the Organization United for Respect at Walmart (OUR Walmart).

- OLMS has twice concluded – in 2004 and 2008 – that ROC is not a labor organization under the LMRDA. In reaching that conclusion, OLMS applied the test outlined above, and found all three factors lacking. First, OLMS found that ROC did not represent employees as their exclusive bargaining representative, had not signed any collective bargaining agreements or organized employees for such purposes, and did not negotiate terms and conditions of employment with employers. There was also no evidence that ROC existed for those purposes. Indeed, OLMS found there was no evidence of any interchange of any kind between ROC and employers and, therefore, no dealing or intent to deal existed between ROC and employers. In its analysis, OLMS noted that the routine activities of legal service providers and activities targeting employers such as picketing, handbilling, and protesting, did not constitute dealing. Next, OLMS found that no employees participated in ROC's governance or operations. Finally, OLMS concluded that ROC was not engaged in an industry affecting commerce under section 3(j) of the Act.<sup>4</sup>
- In 2013, the Department received a complaint from the law firm of Gibson, Dunn & Crutcher that OUR Walmart had failed to fulfill the annual financial reporting requirements for labor organizations. In response to the complaint, OLMS explained that the United Food and Commercial Workers International Union (UFCW) reported on its annual financial disclosure report that OUR Walmart is a subsidiary of the UFCW, and, as a result, the UFCW included within its reports the financial transactions of OUR Walmart.

If you or members of your staff have any questions about this response, please contact Kate Garza in the Department's Office of Congressional and Intergovernmental Affairs. She may be reached at (202) 693-4600.

Sincerely,



Brian V. Kennedy  
Assistant Secretary  
Office of Congressional and Intergovernmental Affairs

cc: The Honorable George Miller  
Senior Democratic Member  
Committee on Education and the Workforce

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<sup>4</sup> 29 U.S.C. § 402(j).