COALITION FOR A
DEMOCRATIC WORKPLACE

Specialty Healthcare: A Legislative Solution

Legislation Addresses Job Killing Activities of the NLRB

During this time of economic uncertainty, our country cannot afford to allow unelected bureaucrats to abuse their power in favor of special interests and at the expense of our economic vitality and job growth. Unfortunately that is exactly what is happening at the National Labor Relations Board (NLRB or Board), where unelected members and general counsel are forcing radical changes to the law in order to appease politically powerful labor unions. The NLRB has been working through administrative rulings and regulations to enact sweeping policy changes in an effort to promote the goals of the Employee Free Choice Act (EFCA). One of the Board's most controversial actions—which promises to hamstring job creators—is its decision in *Specialty Healthcare*, which sets the stage for the formation of micro-unions. Fortunately, the Representation Fairness Restoration Act (S. 1166 and H.R. 2347), bills introduced in the Senate and the House, would roll back this economically damaging Board action. More details are set forth below.

THE PROBLEM

In *Specialty Healthcare*, the Board announced a new standard for determining composition of bargaining units, allowing organized labor to gerrymander bargaining units and disenfranchise employees that oppose unionization. The case will make it easier to establish very small micro-units. For example, a union may organize a small group of employees working on one machine rather than all machinists in a manufacturing facility, because the majority of machinists do not want union representation. Likewise, a union may now organize greeters at a retail store, because cashiers and floor associates don't want to unionize. These micro-unions or fractured units would greatly limit an employer's ability to cross train and meet customer and client demands via lean, flexible staffing as employees could not perform work assigned to another unit. Employees also will suffer from reduced job opportunities, such as promotions and transfers.

The *Specialty Healthcare* decision is already impacting employers and employees alike with cases currently pending before the Board. For example, retailer Bergdorf Goodman is before the Board fighting a Regional Director's Decision and Direction of Election ruling that sales employees in the women's shoe department—as opposed to all sales employees—constituted an appropriate bargaining unit for purposes of a representation election. In a similar case, Macy's is fighting an Acting Regional Director's ruling that full and part-time employees in the fragrance department of a single store constitute an appropriate bargaining unit. This ruling came approximately a year and a half after the petitioning union had lost an election involving a proposed unit that included all store sales employees. *Macy's* thus makes clear the insidious effect of *Specialty Healthcare*, allowing unions to divide and conquer, picking apart groups of employees who for decades would have been considered a single bargaining unit and focusing on isolated sub-groups.

THE SOLUTION: THE REPRESENTATION FAIRNESS RESTORATION ACT (S. 1166 AND H.R. 2347)

In light of the response to the Board's radical actions, both chambers of Congress have introduced versions of the Representation Fairness Restoration Act in order to return balance to our workplace laws and provide an atmosphere that is conducive to economic growth. The Representation Fairness Restoration Act, which has received bi-partisan support, will accomplish this by enacting the following common-sense measures:

- Ensuring the Board would determine the appropriateness of a proposed bargaining unit before conducting an election;
- Ensuring employees in a proposed unit share a sufficient community of interest based on:
  - similarity of wages, benefits and working conditions;
  - similarity of skill and training;
  - centrality of management and common supervision;
  - extent of interchange and frequency of contact between employees;
  - integration of the work flow and interrelationship of the production process;
  - the consistency of the unit with the employer's organizational structure; and
  - the bargaining history in the particular unit and industry.

- Ensuring employees would not be excluded from a proposed unit unless the interests of the group are sufficiently distinct from those of other employees to warrant establishment of a separate unit; and
- Ensuring application of the "overwhelming community of interest" standard would be applied consistently with longstanding Board law—only in cases of the accretion (that is, the addition) to an existing unit.

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The Coalition for a Democratic Workplace supports the Representation Fairness Restoration Act. The bills will return much-needed balance to our labor laws. Not only will they ensure employees are permitted to make a fully informed decision regarding unionization, but they will also provide a sense of certainty for our country's job creators, who have recently found themselves unfairly targeted by the runaway Board.