

## Specialty Healthcare: A Legislative Solution

*Legislation Addresses Job Killing Activities of the NLRB*

*Organized labor is pushing unelected bureaucrats at the National Labor Relations Board (NLRB) to make sweeping policy changes aimed at increasing union membership rolls at the expense of employees and employers. One of the Board's most controversial actions—which promises to hamstring job creators—is its decision in Specialty Healthcare, which allows for the formation of "micro-unions." The Representation Fairness Restoration Act (S. 1166 and H.R. 2347 in the 113<sup>th</sup> Congress), would roll back this economically damaging Board action.*

### **THE PROBLEM**

In *Specialty Healthcare*, the Board announced a new standard for determining composition of bargaining units, allowing organized labor to gerrymander units and disenfranchise employees that oppose unionization. This new standard makes it easier for unions to divide the workplace into multiple siloed bargaining units. For example, a union may attempt to organize a small group of employees working on one machine or one product rather than all machinists in a manufacturing facility if the majority of machinists do not want union representation. Likewise a union may now organize only the 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 will also suffer from reduced job opportunities, such as promotions and transfers.

The *Specialty Healthcare* decision is already negatively impacting employers and employees alike. For example, in a recent case, one of the Board's Regional Directors ruled that full- and part-time employees in the fragrance and cosmetics department of a single Macy's store constituted 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. On July 22, the Board ruled against Macy's, determining the bargaining unit was in fact an appropriate unit, because the employees made up a single department within the store. *Macy's* thus makes clear the insidious effect of *Specialty Healthcare*, allowing unions to pick apart groups of employees who for decades would have been considered a single bargaining unit and instead focus on isolated sub-groups.

### **THE SOLUTION: THE REPRESENTATION FAIRNESS RESTORATION ACT**

In light of the Board's radical actions, both the House and Senate introduced versions of the Representation Fairness Restoration Act last Congress 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.

The Coalition for a Democratic Workplace supports the Representation Fairness Restoration Act and looks forward to its introduction this Congress.