

September 17, 2007

TO THE MEMBERS OF THE HOUSE COMMITTEE ON EDUCATION AND LABOR

On behalf of a broad cross-section of employers in various segments of our economy, the undersigned associations write in strong opposition to H.R. 1644, the Re-Empowerment of Skilled and Professional Employees and Construction Tradesworkers (RESPECT) Act. We urge you to oppose the RESPECT Act when it is considered by the House Committee on Education and Labor.

H.R. 1644 is not a simple, innocuous change in the definition of “supervisor” under the National Labor Relations Act, as its sponsors claim. In fact, it is a radical change to current law which would not be in the best interests of employees or employers and which would deprive employers in all industries of the long-standing right of undivided loyalty from their supervisors in labor-management relations and business operations.

Proponents of the legislation, including organized labor, claim that the bill is needed to overturn what they consider to be the erroneous decisions of the National Labor Relations Board (NLRB) in the Oakwood Healthcare cases decided in October, 2006. In reality, H.R. 1644 would go far beyond this narrow decision.

Since 1947, supervisors have been exempt from the National Labor Relations Act to avoid the conflict of them being subjected to unionization and being in the same collective bargaining unit and subject to the same union work rules and union discipline as the employees they supervise. Under long-standing, current law, all employees are presumed *not* to be exempt and a mere designation by an employer of an employee as a “supervisor” is not conclusive. To be exempt, supervisors must perform at least one of 12 supervisory functions. Moreover, their exercise of such authority cannot merely be “routine or clerical in nature” but must require the use of “independent judgment,” and their authority must be “held in the interest of the employer.” If these specific criteria are met, a supervisor does not vote in labor elections and is not represented by the union. Because supervisors participate in managing the employer’s business operations, the supervisor exemption ensures that they do not have their loyalty divided between the employer and the union.

Significantly, H.R. 1644 would eliminate the core business-related duties and functions performed by a supervisor that were included in the definition of the term “supervisor” when Congress passed the Taft-Hartley Act in 1947. In particular, the legislation would delete the duties to “assign” and “responsibly direct” employees from the statutory definition of “supervisor”. H.R. 1644 would also add a new requirement that a supervisor spend “a majority of the individual’s worktime” performing the remaining duties in the definition (essentially involving personnel and disciplinary related functions) which few, if any, supervisors perform for a majority of their working time. Thus, as a result, many individuals would lose their supervisory status.

Therefore, H.R. 1644 would subject many supervisors to the organizing tactics of a union. In essence, supervisors will be “whipsawed” between union organizers and their supervisory responsibilities to participate in managing an employer’s business. Under the bill, many supervisors would become subject to union work rules, union discipline and fines, union picketing, and strikes in the same collective bargaining units with union employees whom they currently supervise. This is not in the interests of union employees who want to be free of the conflict of interest created by having their “bosses” in the same unit. Nor is it the best interests of supervisors who, under the bill, would lose their hard-earned supervisory status, pay and recognition.

In addition, H.R. 1644 would negatively impact a broad cross-section of employees beyond the health care industry that was the subject of the NLRB’s Oakwood Healthcare case. These changes in the statutory definition of supervisors would spawn an explosion of litigation over the supervisory status of employees in any industry where individuals perform supervisory as well as non- management duties in what had been a well-settled area of labor law.

Every organization, including Congress and government agencies, operates through supervisors who assign work and direct employees in the interests of their employer. As stated in the law for over fifty years, employers have the right to manage operations through supervisors who exercise such responsibilities solely in the interest of their employer. Based on these reasons, we strongly urge you to oppose H.R. 1644. Thank you for your consideration.

American Bakers Association	International Franchise Association
American Hospital Association	National Association of Manufacturers
American Hotel & Lodging Association	National Association of Waterfront Employers
American Organization of Nurse Executives	National Council of Chain Restaurants
American Trucking Associations	National Retail Federation
Associated Builders and Contractors	National Roofing Contractors Association
Associated General Contractors of America	Printing Industries of America
Food Marketing Institute	Retail Industry Leaders Association
HR Policy Association	U.S. Chamber of Commerce
Independent Electrical Contractors, Inc.	
International Food Distributors Association	