

May 24, 2007

Leadership Council

Dear Representative:

Anna Burger  
Chair  
Change to Win  
International  
Secretary-Treasurer  
Service Employees  
International Union (SEIU)

I am writing on behalf of the six million members of Change to Win's affiliate unions to urge you to cosponsor legislation introduced by Sen. Chris Dodd and Rep. Robert Andrews – the Re-empowerment of Skilled and Professional Employees and Construction Trade-workers Act, or the **RESPECT Act (S. 969 and H.R. 1644)**.

Edgar Romney  
Secretary-Treasurer  
Change to Win  
Executive Vice President  
UNITE HERE

Recent decisions by the National Labor Relations Board (NLRB), collectively known as the *Oakwood/Kentucky River trilogy* of cases, dramatically expanded the number of workers in the private sector who can be classified as supervisors by their employer. (The three cases are *Oakwood Healthcare, Inc.*, *Golden Crest Healthcare Center*, and *Croft Metals, Inc.*) These rulings, which could affect millions of workers, would deny workers many rights on the job including the right to be in a union and to collectively bargain for good wages and benefits.

Joseph Hansen  
International President  
United Food and  
Commercial Workers  
International Union (UFCW)

The RESPECT Act would make two modest corrections to the National Labor Relations Act (NLRA) to restore the law to its original intent and protect the key workplace rights of employees who are not and have never previously been viewed as “supervisors.”

James P. Hoffa  
General President  
International Brotherhood  
of Teamsters (IBT)

The NLRA has 12 criteria for determining who is a supervisor, including the authority to hire, transfer, suspend, lay off, recall, discharge, reward, or discipline employees, or adjust their grievances. [Section 2(11)] The statute also defines a supervisor as someone who has the authority to “assign” or “responsibly to direct” employees and it is these two responsibilities that were the focus of the *Oakwood/Kentucky River* decisions.

Geralyn Luty  
International Vice President  
United Food and  
Commercial Workers  
International Union (UFCW)

It is clear from the NLRA's legislative history that Congress intended the term “supervisor” to include only workers who are part of management and who exercise genuine management prerogatives, that is, someone who exercises significant control over an employee on a *regular* basis, and who plays a role in hiring, firing, disciplining, evaluating or promoting employees they supervise. Workers who exercise only minor or sporadic supervisory authority – limited to assigning tasks and providing some direction on the job – and whose jobs are closely aligned with rank-and-file employees were not to be considered supervisors. For several decades the NLRB made decisions based on this interpretation of the law.

Douglas J. McCarron  
General President  
United Brotherhood  
of Carpenters  
and Joiners  
of America (UBC)

Terence M. O'Sullivan  
General President  
Laborers' International Union  
of North America (LIUNA)

Bruce Raynor  
General President  
UNITE HERE

Arturo S. Rodriguez  
President  
United Farm Workers  
of America (UFW)

Andrew L. Stern  
International President  
Service Employees  
International Union (SEIU)

Unfortunately, the NLRB's recent *Oakwood/Kentucky River* decisions sweeps those workers exercising only minor or sporadic supervisory authority into an expanded definition of who is a supervisor. It does this in two ways:

- **The decisions greatly expand the meaning of the term “assign:”** To be considered a supervisor under the NLRB ruling, employees would only have to *assign* their co-workers to perform certain tasks on an *intermittent* basis. This assignment can be as infrequent as for one shift or overtime period.
- **The decisions greatly expand the meaning of the term “responsibly to direct:”** The NLRB ruling removed much of the distinction between a worker who performs “essential management duties” and one who performs only “minor supervisory” duties. The effect will be that workers who provide even minor instructions to another worker may now be considered a supervisor.

As a result, under the NLRB decision, an employee who spends as little as 10% of his or her time in a supervisory capacity could be deemed a supervisor and denied their rights. In a dissenting opinion, NLRB board members found that this decision threatens to create “a new class of workers ... who have neither the genuine prerogatives of management, nor the statutory rights of ordinary employees.” [*Oakwood*, p. 15]

Here are a few examples of the types of workers who have been or could be misclassified as supervisors:

- **Nurses:** An NLRB Regional Director’s decision in February 2007, based on the *Oakwood/Kentucky River* precedent, found that in 2006 most nurses in key departments at the Salt Lake Regional Medical Center were “supervisors,” largely rendering the term meaningless. For example, all the RNs in the inpatient rehabilitation unit were declared to be supervisors, 17 of the 20 RNs in the intensive care unit and 6 out of 7 nurses in the medical unit were declared to be supervisors, and the ratio of supervisors to non-supervisors was declared to be 11 to 6 in the labor and delivery unit and 9 to 2 in the neonatal ICU. (*Salt Lake Regional Medical Center, Inc.*, pp. 31-33)
- **Grocery Store Workers:** Grocery managers, meat managers, produce managers and other department heads who work in retail food stores have historically been viewed as non-supervisory employees covered by the NLRA. They are included in the vast majority of bargaining units represented by the United Food and Commercial Workers in the retail food industry. Despite the inclusion of the word “manager” in their titles, these individuals spend the large majority of their time performing manual labor such as processing, stocking and displaying food products, and servicing customers. However, they also spend some time directing and assigning work to the stockers, meat wrappers or clerks who work in their departments. But they usually play no role in their hiring, firing, disciplining, evaluation or promotion.
- **Food Processing Workers:** Lead persons in most, if not all, food processing and other manufacturing plants, are considered employees rather than supervisors. They spend most of their time working side-by-side with, and doing the same work as, rank-and-file employees. However, these individuals also direct the work of their fellow employees even though they play no role in their hiring, firing, disciplining, evaluations or promotions. Lead persons in manufacturing plants are the quintessential “straw bosses, leadmen, set-up men, and other minor supervisory employees” that the 1947 Congress intended to exempt from the statutory definition of “supervisor.” [S. Rep. No. 105 80<sup>th</sup> Cong., 1<sup>st</sup> Sess. 4-5 (1947)]

- **Skilled Construction Workers:** Journeymen construction workers, such as carpenters and bricklayers, are considered skilled, professional employees. They typically give assignments and direct apprentices and helpers because of their higher skill level, but they are not considered supervisors. The *Oakwood/Kentucky River* decision threatens to make them supervisors and eliminate their union rights.

For decades, disagreements over the interpretation of who is a supervisor and the terms “assign” and “responsibly to direct” have consumed large amounts of time at the NLRB, and have been before the federal courts of appeal numerous times and the Supreme Court twice. It is time to end the lengthy litigation and confusion in the workplace that bedevil employers and employees alike. The RESPECT Act would do this by removing the terms “assign” and “responsibly to direct” from the many other factors used to define a supervisor. It also would establish a bright line test for who is a supervisor by providing that the term “supervisor” includes only workers who have genuine supervisory duties during a majority of their work time.

Estimates in the NLRB dissent and by the Economic Policy Institute using Bureau of Labor Statistics job classification data are that millions of workers could be misclassified under a broadened NLRB definition of who is a supervisor. It is essential that Congress fix this problem and ensure that those employees who are not supervisors have their rights to join a union and collectively bargain protected. Please cosponsor the RESPECT Act.

Sincerely,



Anna Burger  
Chair