



**STATEMENT OF ERIC OPPENHEIM, SPHR  
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REPUBLIC FOODS, INC., ROCKVILLE, MARYLAND**

**ON BEHALF OF THE  
SOCIETY FOR HUMAN RESOURCE MANAGEMENT**

**SUBMITTED TO  
U.S. HOUSE SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, &  
PENSIONS**

**LEGISLATIVE HEARING ON  
“H.R.2346, SECRET BALLOT PROTECTION ACT AND  
H.R. 2347, REPRESENTATION FAIRNESS ACT”**

**JUNE 26, 2013**

## **Introduction**

Chairman Roe, Ranking Member Andrews and distinguished members of the Subcommittee, my name is Eric Oppenheim. I am Chief Operating Officer and Franchisee at Republic Foods of Rockville, Maryland, and I appear before you today on behalf of the Society for Human Resource Management (SHRM). I have been a human resource professional and a member of SHRM since 1997, and I am the co-lead for SHRM's Special Expertise Panel on Labor Relations. In addition to being a human resource professional, I am a Burger King franchisee and have been in the restaurant business for over 15 years. My family and I own and operate 17 Burger King restaurants in Maryland and two in Washington, D.C. Thank you for the invitation to appear before you on behalf of SHRM's more than 260,000 members in over 140 countries.

SHRM is the world's largest association devoted to human resource (HR) management. The Society serves the needs of HR professionals and advances the interests of the HR profession. Founded in 1948, SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China and India.

SHRM is very concerned that the August 2011 National Labor Relations Board (NLRB or the Board) decision in *NLRB v. Specialty Healthcare* will needlessly harm employee morale, deprive employees of valuable training and development and compel employers to manage unnecessarily small bargaining units of similar employees. In my testimony, I will outline SHRM's views on employee rights under federal labor law, provide background about Republic Foods' restaurants and workforce, and share SHRM's serious concerns about the NLRB's imbalanced *Specialty* decision and strong support for H.R. 2347, the Representation Fairness Restoration Act.

## **SHRM views on employee representation**

Enacted in 1935, the National Labor Relations Act (NLRA) is the principal statute governing collective bargaining activities in the private sector. The NLRA was enacted to ensure the right of employees to assemble and collectively bargain with employers on matters of workplace welfare, including wages, hours, working conditions and benefits.

SHRM supports balanced labor-management relations. SHRM recognizes the inherent rights of employees to form, join, assist in or refrain from joining a labor organization. Employee NLRA rights to form, join, assist or refrain from joining a union without threats, interrogation, promises of benefits or coercion by employers or unions must be protected. SHRM believes an employee's decision on unionization should be based on relevant information and free choice, and that representation without a valid majority of employee interest is fundamentally wrong.

Ultimately, SHRM believes that HR professionals have a responsibility to understand, support and champion employment-related actions that are in the best interests of their organizations and their employees with regard to third-party representation by labor unions.

## **The restaurant industry and Republic Foods, Inc.**

As a business owner, my goal is to be profitable so that my restaurants can prosper and create jobs. Traditionally, restaurants are an ultra-competitive industry and operate with very slim profit margins. We rely on a large number of customers to fill our restaurant seats and our drive-thrus to be profitable. There is great pressure on our product pricing because our customers have many restaurant options and they are looking for value when they enter our restaurants. Yet, especially in the sluggish economy of the past several years, any cost increases in food and ingredient prices, labor expenses, or new regulations cause restaurants – especially a small business like ours with thin margins – to raise prices, reduce services, eliminate jobs or potentially close their doors.

Republic Foods, Inc. is a franchise of Burger King Corporation and was established in 1982. We greatly value our employees, and they represent a broad spectrum of individuals. Our restaurants currently have 531 employees, including 54 restaurant managers or assistant managers, 8 administrative and supervisory personnel and 469 restaurant crew members. About one-third of our employees work over 35 hours per week, about one-third work between 25 and 35 hours per week, and one-third work less than 25 hours per week. Each restaurant has about 30 crew members.

Our restaurant crew members perform a wide variety of job functions. These job functions include cashier (individuals who field meal orders from customers), porter (clean facilities and equipment), guest ambassador (maintain dining room cleanliness and field customer requests), expediter (deliver food to customers at the counter), kitchen prep (keep food, paper goods and other supplies stocked and filled), line cook (cook and prepare food in kitchen) and shift leader (manage flow of business and crew member activities).

Cross-training and multitasking is critical for our employees to effectively serve customers. Each of the job functions described above is distinct, but it is very common for crew member employees to perform multiple roles and job functions in a given shift. For example, during busy meal hours, a line cook may need to work at a register and take meal orders from customers or, conversely, a cashier may need to work on the line and prepare food in the kitchen.

Working in our restaurants is many individuals' first employment experience. While some of our employees have worked in restaurants for more than 20 years, others are high school students who joined our team within the past week and look to work their way up to higher-paying jobs in the future. Since we employ so many entry-level individuals, we have significant employee turnover, similar to the larger restaurant industry. Of Republic Foods' 531 crew members, nearly half have been employed for less than 90 days. As a consequence of our high turnover, we spend a great deal of time training our employees. It is essential that our employees have good communication skills and the flexibility to learn and perform multiple job functions (or cross-train) to serve our customers.

## **Concerns with the NLRB's *Specialty Healthcare* decision**

Union density has declined for decades in America. According to the Bureau of Labor Statistics, only 11.3 percent of wage and salary workers were members of a union in 2012,

compared to 20.1 percent in 1983.<sup>1</sup> Labor organization leaders have long argued that current laws on union representation favor management and hinder employees' ability to organize a union. However, SHRM and others cite the NLRB's 2012 operations report that reveals that the median time from a representation petition to an election was 38 days as proof that the period is generally reasonable for employees to weigh the important choice of whether or not to unionize.<sup>2</sup>

The Obama Administration has advanced significant labor-management relations policy through the regulatory process. In particular since 2011, the NLRB and U.S. Department of Labor have been very active issuing case decisions and substantive regulations.

One of the NLRB's most significant decisions was *NLRB v. Specialty Healthcare and Rehabilitation Center of Mobile (Specialty)* on Aug. 26, 2011, in which the Board overruled the established *Park Manor* precedent for determining appropriate bargaining units. In *Specialty*, the Board established a new standard in which the Board will find that a unit is appropriate unless the employer demonstrates that employees in a larger unit share an "overwhelming" community of interest with those in the petitioned-for unit. Meeting this new standard is a significant burden for employers, and thus the *Specialty* decision allows labor organizations to form "micro-bargaining units" by permitting them to target only subsets of employees who are most likely to support the union.

SHRM is very concerned the *Specialty* decision may compel HR professionals and employers to manage multiple bargaining units of similarly situated employees who have different wages, hours and working conditions. A proliferation of unnecessarily small bargaining units will burden employers with significant time, expense and employee morale challenges associated with administering a number of different contracts covering only a few of its employees.

At Republic Foods stores, the *Specialty* decision could eventually mean that our workforce becomes needlessly fragmented. Currently, our restaurant crew members regularly perform the job functions of cashier, porter, guest ambassador, expediter, kitchen prep, line cook and shift leader often during the same shift as the flow of work may demand. Our employees cross-train on multiple job functions and cover for one another during busy hours without hesitation in order to effectively serve customers. HR professionals and business owners like me are very concerned that the *Specialty* decision may complicate how we cover various job functions by restricting our ability to train and manage our employees. As an example, a line cook may be contractually prohibited from covering for a cashier and working at a register during a busy dinnertime rush. Such restrictions would be endlessly frustrating for employees and supervisors.

Furthermore, the workforce fragmentation caused by *Specialty* may deprive employees of autonomy at work. Employees want to take on new duties and progress professionally, but micro-bargaining units may restrict their ability to perform other job functions and impose

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<sup>1</sup> Bureau of Labor Statistics, U.S. Department of Labor (2012). <http://www.bls.gov/news.release/union2.nr0.htm>

<sup>2</sup> National Labor Relations Board (2013). Summary of Operations, Fiscal Year 2012. January 11, 2013.

unnecessary barriers to employee training and professional development opportunities. What's more, the *Specialty* decision would be detrimental to employee work-life balance because smaller, superfluous bargaining units will mean fewer shifts available to employees.

The impact of *Specialty* may also have a negative impact on employee morale. Collective bargaining contracts determine virtually every aspect of a covered employee's compensation, benefits and working conditions. If employees are fragmented into smaller units, then employees working side-by-side may have different wages or benefits and have animosity about the disparities.

For these reasons, SHRM supports H.R. 2347, the Representation Fairness Restoration Act, which was introduced by Rep. Tom Price of Georgia. The bill would reinstate the 20-year-old standard from prior to the *Specialty* decision for determining which employees will vote in a union election. SHRM believes the pre-*Specialty* standard was balanced for employees, employers and labor unions and should be restored.

### **Conclusion**

Mr. Chairman, thank you again for allowing me to share SHRM's views on *Specialty Healthcare* and our support for H.R. 2347, the Representation Fairness Restoration Act. SHRM is very concerned that the micro-union standard established in the NLRB's *Specialty* decision is imbalanced and may harm employee morale, deprive employees of professional development opportunities and compel employers to negotiate with, and manage, unnecessarily small bargaining units of similar employees. Small businesses like ours with thin margins can't afford the time and expense required to negotiate and manage crew members working under different collective bargaining contracts. The costs of *Specialty* may unfortunately compel employers of all sizes to raise prices, reduce services or eliminate jobs.

We urge support for H.R. 2347. I welcome your questions.

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