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May 11, 2011

The Honorable Wilma B. Liebman
Chairman
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Dear Chairman Liebman:

Thank you for your partial response to the March 7, 2011 letter from Chairman Issa and myself requesting documents and communications referring or relating to *Specialty Healthcare and Rehabilitation Center of Mobile and United Steelworkers, District 9*, case 15-RC-8773; and the *Specialty* notice and invitation to file briefs.¹

Serious concerns regarding the National Labor Relations Board's (NLRB or Board) actions in this case have been raised by Board Member Hayes, which require immediate oversight to protect "industrial stability and the Board's reputation as an impartial overseer of the representation election process."² In his dissent to the NLRB's notice and invitation to file briefs, Member Hayes raised concerns as to the manner, breadth, and motives behind the Board's inquiry.

The issue in *Specialty* is whether certified nursing assistants represent an appropriate bargaining unit at a nursing home. When Congress amended the National Labor Relations Act (NLRA) in 1974 to include health care institutions, it clearly intended for the Board to take a special approach toward health care institutions.³ Despite the narrow scope of *Specialty* and the legislative history with regard to health care institutions, the Board invited briefs on bargaining unit determinations broadly that have stood for at least 50 years.⁴

In this respect, the Board's requests more closely resemble a broad-scale rulemaking, which sets rules of general applicability for future conduct, rather than an adjudication, which normally applies to individual parties for past conduct. Although the NLRB has discretion to make rules through the adjudicatory process, as noted by Member Hayes and the Ninth Circuit, "abuse of discretion may be present 'where the new standard, adopted

¹ Letter from John Kline and Darrell Issa, U.S. Congressmen, to Wilma Liebman, Chairman National Labor Relations Board (March 8, 2011)(on file with author).

² *Notice and invitation to file briefs Specialty Healthcare and Rehabilitation Center of Mobile and United Steelworkers, District 9*, case 15-RC-8773, 6 (NLRB 2011).

³ *Id.* at 4.

⁴ *Id.* at 6.

The Honorable Wilma B. Liebman

May 11, 2011

Page 2

through adjudication, departs radically from the agency's previous interpretation of the law, where the public has relied substantially and in good faith on the previous interpretation...and where the new standard is very broad and general in scope and prospective in application'.⁵

The Board has begun this inquiry even though "there is little in the intervening two decades to suggest that [the NLRB's] policies are in any way problematic, that the public wants [the NLRB] to reconsider precedent, or that intervening changes in the nursing home industry warrant a new and different approach."⁶ Absent a clear explanation of the need for the inquiry, I share Member Hayes's concern that the Board's "ultimate purpose is to use this case as a vehicle for abnegating the statutory requirement of Section 9(c)(5)" of the NLRA.⁷

In light of these concerns and pursuant to our authority to conduct congressional oversight within our jurisdiction under Article I of the Constitution,⁸ I again request that you provide the following no later than May 25, 2011.

1. All documents and communications relating to *Specialty Healthcare and Rehabilitation Center of Mobile and United Steelworkers, District 9, Case 15-RC-8733*.
2. All documents and communications relating to the *Specialty Healthcare and Rehabilitation Center of Mobile and United Steelworkers, District 9, Case 15-RC-8733* notice and invitation to file briefs.

In no way does this request seek to influence the adjudication of the issue in *Specialty*. To ensure the integrity of the adjudicatory process, I intend to treat these documents as if they were received by the Committee in executive session.

Thank you for your cooperation in this matter. If you have any questions regarding this request, please contact Marvin Kaplan, House Education and the Workforce Committee, at (202) 225-7101.

Sincerely,



JOHN KLINE
Chairman

cc: The Honorable Darrell Issa, Chairman, House Committee on Oversight and Government Reform

cc: The Honorable Elijah Cummings, Ranking Member, House Committee on Oversight and Government Reform

⁵*Id.* at 6, quoting *Pfaff v. U.S. Department of Housing & Urban Development*, 88 F.3d 739, 748 (1996).

⁶*Id.* at 5.

⁷*Id.* at 6.

⁸*Nixon v. Administrator of General Services*, 433 U.S. 435 (1977); *Eastland v. United States Servicemen's Fund*, 421 U.S. 491 (1975); *Barnblatt v. United States*, 360 U.S. 109 (1959); *Watkins v. United States*, 354 U.S. 178 (1957); *McGrain v. Daugherty*, 273 U.S. 135 (1927).