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November 28, 2011

The Honorable John Boehner  
Minority Leader  
H-232, U.S. Capitol  
Washington, DC 20515

The Honorable Nancy Pelosi  
Minority Leader  
H-204, U.S. Capitol  
Washington, DC 20515

Dear Speaker Boehner and Leader Pelosi:

On behalf of the Retail Industry Leaders Association (RILA), I write to express our support of the Workforce Democracy and Fairness Act (H.R. 3094). The legislation is scheduled for a vote on the House floor later this week.

By way of background, RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

The "Workforce Democracy and Fairness Act," H.R. 3094, would return balance to our workplace laws, and allow employees to have time to make informed decisions on whether or not they should unionize. By reinstating the long standing Board criteria for determining the appropriateness of a bargaining unit, employees will continue to have the ability to pick up extra hours, as well as increase job opportunities, such as transfers and promotions.

*Specialty Healthcare* dealt with a nursing home and a union's petition to represent certified nursing assistants as a discrete group, versus a larger unit proposed by the employer that would have included other non-professional employees. Even though *Specialty Healthcare* involved a nursing home, the impact of the case is much broader. Since the decision reaches out across multiple industries, there is no doubt that there will be an exceedingly unfavorable impact on the retail industry.

The most striking negative effect of *Specialty Healthcare* is the extent to which it allows for what many have termed as “micro unions,” or bargaining units composed of small groups of employees from one department or shift. For example, in a retail store greeters, cashiers and floor associates could now each form a separate unit. Similarly, gardening and paint departments in a hardware store could form separate bargaining units. Formally, these employees throughout the store most likely would have consisted of one unit as the employees in an individual department or shift would not have been found to be “*sufficiently distinct* from those of other employees to warrant the establishment of a separate unit.” The Board articulated this standard as recently as August 27, 2010 in its decision in *Wheeling Island Gaming*.

When all workers in a retail establishment are in the same unit, covered by the same contract, there are mechanisms for cross-training, for covering absences between departments or in nearby stores—in other words, for employees to expand their horizons, earn extra money by picking up additional shifts—and for continuity of operations and enhanced customer service. Opening the door to multiple contracts, enhances confusion, adds a substantial administrative burden, and usually expands the timing restraints on negotiations to bargain once every few years.

These issues are particularly important in retail. Retailers encourage employees to learn about their business by working in multiple departments. They recognize the value to cross-train employees and employees also appreciate the variety in their day-to-day work activities. It is especially important in the current economy, when many are looking for additional shifts, which are more available when free movement between departments can take place.

Among the executive ranks of RILA’s members, and across the retail industry, are many who started their careers working on the floor of a store. Micro-unions would contribute to preventing employees from developing this knowledge base and advancing their careers. Not only does internal growth benefit the employee, but employers find that it provides for better employee retention and a healthier connection between senior management and the employees in their stores.

RILA members are leaders in the workforce arena and we offer our support to help maintain an appropriate balance between employer and employee rights under the National Labor Relations Act. Absent Congressional action, the actions of the NLRB will increase economic uncertainty that will have negative ramifications for the retail industry, its millions of employees, and consumers.

RILA welcomes the bill and believes it should move forward. We look forward to continuing to work with you on this and other important issues.

If you have any questions or concerns, please contact Kelly Kolb, vice president, government affairs at ([kelly.kolb@rila.org](mailto:kelly.kolb@rila.org)) or 703.600.2064

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Hughes". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bill Hughes  
Senior Vice President, Government Affairs