

Testimony on RESPECT Act
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Good afternoon, Chairman Andrews, and members of the committee. I am pleased to offer testimony on the RESPECT Act. I will focus my remarks on the implications of the bill for labor management relations in the acute care hospital setting, in terms of recent decisions by the National Labor Relations Board.

I also will use Cooper University Hospital as an example with which I have some familiarity, having been the Hospital's legal counsel during labor negotiations with its unionized nurses, who are represented by HPAE.

What distinguishes the supervisory role, particularly of those employees involved in nursing care at Cooper are three attributes:

1. the individual is involved in setting compensation;
2. the individual is involved in decisions regarding hiring and termination;
3. the individual is involved in scheduling decisions regarding assignment of staff on a weekly and monthly basis.

These criteria clarify the boundary between professional nursing staff that are part of the bargaining unit, and those employees who are genuinely supervisory and act in a managerial capacity. At Cooper University Hospital, charge nurses do not fit that practical criteria and are not considered supervisors or management employees. Rather, they are part of the existing registered nurses professional bargaining unit. That said, charge nurses at Cooper University Hospital do use independent judgment to assign and responsibly direct other nurses and technicians and licensed practical nurses with respect to patient care (i.e., they have the kind of authority that the Board has found to be supervisory). Charge nurses must exercise these duties to provide effective patient care. In addition, charge nurses at Cooper are responsible for staff assignment within the narrow confines of a given shift, not longer term assignment between shifts and units.

I would point out that ALL Cooper's nurses, not just charge nurses, use their independent judgment in the course of their professional practice as nurses. For example, all nurses to some

degree assign and responsibly direct other employees such as technicians and licensed practical nurses.

Nevertheless, the performance of these duties by charge nurses does not in the Cooper model make charge nurses supervisors. This system works because management's prerogative and authority in the workplace remain intact and is exercised only via real supervisors, there is no issue with these charge nurses having divided loyalties, and we value having a collective bargaining relationship with these professional workers.

If the RESPECT Act were enacted, it would not change anything for Cooper because we already do not treat our charge nurses who assign and responsibly direct other nurses and technicians and licensed practical nurses with respect to patient care as supervisors. Furthermore, the RESPECT Act would not interfere with managerial prerogatives.

From my own vantage point, in terms of having practiced labor law in bargaining table negotiations and courtroom litigation, I believe that the RESPECT Act provides clarity to the current situation, in light of recent conflicting decisions by the NLRB. The Act eliminates the highly ambiguous terms "assign" and "responsibly to direct" from the

definition of supervisor - terms open to confusion/misinterpretation and inconsistent application - and the clarity achieved by the RESPECT Act reflects both the original intent of the NLRA's framers and everyone's common sense and practical notions of who a supervisor is in the workplace. So long as these employees are not engaging in other supervisory duties (or have the authority to do so) more than 50% of the time, if all they are doing is assigning or responsibly directing, that's not reason enough to treat them as supervisors. An employer like Cooper University Hospital recognizes this and is able to maintain effective labor relations within that framework.

The decision of the Board in Oakwood Healthcare together with the comprehensive dissent to that decision does little to resolve the issue from a practical standpoint for those of us in the field, at the bargaining table or at counsel table. The Board's observation that "debating linguistic niceties does little to realistically assist in formulating workable definitions that fit both the language of Section 2(11) and the overall intent of the provision" has become a self fulfilling prophesy begetting yet more debate of linguistic niceties. Accordingly, it is in everyone's best interest to temper the debate and

focus on the practicalities of what can work in the workplace as Cooper University Hospital has done.

Mr. Chairman, I appreciate the opportunity to testify here today and I would be happy to answer any questions you may have.