

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

MACY’S, INC.,

Employer,

and

LOCAL 1445, UNITED FOOD AND  
COMMERCIAL WORKERS UNION,

Petitioner.

Case No. 01-RC-091163

**MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, COALITION FOR A DEMOCRATIC WORKPLACE, AMERICAN HOTEL & LODGING ASSOCIATION, HR POLICY ASSOCIATION, INTERNATIONAL COUNCIL OF SHOPPING CENTERS, INTERNATIONAL FOODSERVICE DISTRIBUTORS ASSOCIATION, INTERNATIONAL FRANCHISE ASSOCIATION, NATIONAL ASSOCIATION OF MANUFACTURERS, NATIONAL ASSOCIATION OF WHOLESALE-DISTRIBUTORS, NATIONAL COUNCIL OF CHAIN RESTAURANTS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, AND SOCIETY FOR HUMAN RESOURCE MANAGEMENT FOR LEAVE TO FILE BRIEF AS AMICI CURIAE**

The Chamber of Commerce of the United States of America, Coalition for a Democratic Workplace, American Hotel & Lodging Association, HR Policy Association, International Council of Shopping Centers, International Foodservice Distributors Association, International Franchise Association, National Association of Manufacturers, National Association of Wholesale-Distributors, National Council of Chain Restaurants, National Federation of Independent Business, and Society for Human Resource Management (collectively, the “Proposed *Amici*”) respectfully move for leave to file the accompanying brief as *amici curiae*.

**INTEREST OF *AMICI CURIAE***

The Chamber of Commerce of the United States of America (the “Chamber”) is the world’s largest federation of businesses, representing 300,000 direct members and having an underlying membership of over 3,000,000 businesses and professional organizations of every

size and in every relevant economic sector and geographic region of the country. A principal function of the Chamber is to represent the interests of its members by filing *amicus curiae* briefs in cases involving issues of vital concern to the nation's business community. The Chamber seeks permission to file the accompanying *amicus* brief because the standard for bargaining-unit determinations applied by the Acting Regional Director in this case, which is the standard established by the National Labor Relations Board ("Board") in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), is problematic in all industries covered by the National Labor Relations Act, 29 U.S.C. §§ 151-169. Because the Chamber represents employers in nearly every industry covered by the Act, the Chamber is uniquely qualified to articulate the business community's concerns with the *Specialty Healthcare* standard. *See, e.g.*, Br. *Amicus Curiae* of Chamber of Commerce of U.S., *Kindred Nursing Ctrs. E., LLC v. NLRB*, Nos. 12-1027 & 12-1174 (6th Cir. Apr. 23, 2012) (challenging *Specialty Healthcare* standard); Br. *Amici Curiae* of Chamber of Commerce of U.S. et al., *Huntington Ingalls Inc. v. NLRB*, Nos. 12-2000 & 12-2065 (4th Cir. Oct. 17, 2012) (same); Br. *Amici Curiae* of Chamber of Commerce of U.S. et al., *Nestlé Dreyer's Ice Cream Co. v. NLRB*, Nos. 12-1684 & 12-1783 (4th Cir. July 10, 2012) (same).

The Coalition for a Democratic Workplace ("CDW"), which consists of hundreds of members representing millions of employers nationwide, was formed to give its members a meaningful voice on labor reform. CDW has advocated for its members on several important legal questions, including the one implicated by this case: the standard used by the Board to determine appropriate bargaining units under the Act.

The American Hotel & Lodging Association ("AH&LA") is the only national trade association representing all segments of the lodging industry. The mission of AH&LA is to be the

voice of the lodging industry, its primary advocate, and an indispensable resource. AH&LA serves the lodging industry by providing representation at the national level and in government affairs, education, research, and communications. AH&LA also represents the interests of its members in litigation raising issues of widespread concern to the lodging industry.

The HR Policy Association is a public policy advocacy organization representing the chief human resource officers of major employers. The HR Policy Association consists of more than 330 of the largest corporations doing business in the United States and globally, and these employers are represented in the organization by their most senior human resource executive. Collectively, their companies employ more than 10 million employees in the United States, nearly 9 percent of the private sector workforce. Since its founding, one of the HR Policy Association's principal missions has been to ensure that laws and policies affecting human resources are sound, practical, and responsive to the realities of the workplace.

The International Council of Shopping Centers ("ICSC") is the global trade association of the shopping center industry with 58,288 members worldwide, 48,000 in the United States. ICSC has nearly 5,600 retailer members in the United States. Other members include developers, owners, lenders, and others that have a professional interest in the shopping center industry. Shopping centers account for more than \$2.3 trillion in retail sales per year and generate \$138 billion in state sales tax revenue. More than 12 million people rely on America's shopping center related industries for employment, making shopping centers one of the largest economic forces in the nation.

The International Foodservice Distributors Association ("IFDA") is the non-profit trade association that represents more than 135 companies in the foodservice distribution industry. Its members are found across North America and internationally and include leading broadline,

system, and specialty distributors who operate more than 700 distribution facilities and represent annual sales of more than \$110 billion. These companies help make the food-away-from-home industry possible, delivering food and other related products to restaurants and institutions, ranging from casual to formal dining local restaurants to foodservice in nursing homes and hospitals to military mess halls and school cafeterias. IFDA provides research, educational opportunities, and business forums to its members that make them more competitive. In the United States, IFDA also provides important representation on Capitol Hill and before government agencies, sharing the perspective of leading foodservice distributors with lawmakers and federal officials to shape the legislative and regulatory process.

The International Franchise Association (“IFA”) is the world’s oldest and largest organization representing franchising worldwide. Celebrating over 50 years of excellence, education, and advocacy, IFA works through its government relations and public policy, media relations, and educational programs to protect, enhance, and promote franchising. Through its media awareness campaign highlighting the theme, *Franchising: Building Local Businesses, One Opportunity at a Time*, IFA promotes the economic impact of the more than 825,000 franchise establishments, which support nearly 18 million jobs and \$2.1 trillion of economic output for the United States economy. IFA members include franchise companies in over 300 different business format categories, individual franchisees and companies that support the industry in marketing, law, and business development.

The National Association of Manufacturers (“NAM”) is the nation’s largest industrial trade association representing small and large manufacturers in every industrial sector and in all 50 States. NAM’s mission is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to United States economic growth and to

increase understanding among policymakers, the media, and the general public about the vital role of manufacturing to America's economic future and living standards.

The National Association of Wholesaler-Distributors ("NAW") is comprised of direct member companies and a federation of national, regional, state, and local associations and their member firms, which collectively total approximately 40,000 companies with locations in every State in the United States. NAW members are a constituency at the core of our economy—the link in the marketing chain between manufacturers and retailers as well as commercial, institutional, and governmental end users. Industry firms vary widely in size, employ millions of American workers, and account for over \$4 trillion in annual economic activity.

The National Council of Chain Restaurants ("NCCR") is the leading trade association exclusively representing chain restaurant companies. For more than 40 years, NCCR has worked to advance sound public policy that best serves the interests of restaurant businesses and the millions of people they employ. NCCR members include the country's most-respected quick-service and table-service chains.

The National Federation of Independent Business ("NFIB") is the nation's leading small business association, representing members in Washington, D.C., and all 50 state capitals. Founded in 1943 as a non-profit, non-partisan organization, NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents about 350,000 member businesses nationwide, and its membership spans the spectrum of business operations, ranging from sole proprietor enterprises to firms with hundreds of employees.

The Society for Human Resource Management ("SHRM") is the world's largest association devoted to human resource management. SHRM represents over 250,000 human resources professionals who make up its membership. The purposes of SHRM, as set forth in its bylaws,

are to promote the use of sound and ethical human resources management practices in the profession, and (a) to be a recognized world leader in human resources management; (b) to provide high-quality, dynamic, and responsive programs and service to its customers with interests in human resources management; (c) to be the voice of the profession on human resources management issues; (d) to facilitate the development and guide the direction of the human resources profession; and (e) to establish, monitor, and update standards for the profession.

Each of the Proposed *Amici* has been actively engaged in addressing the significant legal questions presented by the Board's splintered decision in *Specialty Healthcare*, which has great potential impact on the Proposed *Amici*'s members. In *Specialty Healthcare*, a majority of the Board held that "in cases in which a party contends that a petitioned-for unit containing employees readily identifiable as a group who share a community of interest is nevertheless inappropriate because it does not contain additional employees, the burden is on the party so contending to demonstrate that the excluded employees share an overwhelming community of interest with the included employees." 357 NLRB No. 83, slip op. at 1. The legality of the *Specialty Healthcare* standard remains subject to considerable doubt pending the outcome of the *Specialty Healthcare* employer's appeal and the Board's cross-application for enforcement. See *Kindred Nursing Ctrs. E., LLC v. NLRB*, Nos. 12-1027 & 12-1174 (6th Cir.) (oral argument held January 23, 2013); see also *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163 (2011) (applying *Specialty Healthcare* standard), *cross-appeals pending sub nom. Huntington Ingalls Inc. v. NLRB*, Nos. 12-2000 & 12-2065 (4th Cir.) (oral argument scheduled for March 22, 2013); *Nestlé Dreyer's Ice Cream Co.*, No. 31-RC-66625, 2011 WL 6835227 (NLRB Dec. 28, 2011) (declining to review Regional Director's application of *Specialty Healthcare* standard), *cross-appeals pending sub*

*nom. Nestlé Dreyer's Ice Cream Co. v. NLRB*, Nos. 12-1684 & 12-1783 (4th Cir.) (oral argument not yet scheduled).

The Acting Regional Director applied the *Specialty Healthcare* standard in this case. The Board subsequently granted review to determine whether that was appropriate. The Proposed *Amici* thus have a significant interest in this case and in demonstrating why *Specialty Healthcare* was wrongly decided and should be overruled. *See also Neiman Marcus Group, Inc.*, Case No. 02-RC-076954 (NLRB June 29, 2012) (granting many of the Proposed *Amici* leave to file an *amicus* brief addressing the foregoing issues in a similar case pending before the Board).\*

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\* The United States Court of Appeals for the District of Columbia Circuit recently held that the Board lacks a lawful quorum because of invalid recess appointments. *See Noel Canning v. NLRB*, --- F.3d ---, Nos. 12-1115 & 12-1153, 2013 WL 276024, at \*8-23 (D.C. Cir. Jan. 25, 2013). The Proposed *Amici* believe *Noel Canning* was decided correctly and that the Board should cease issuing decisions. However, the Board has announced that it disagrees with *Noel Canning* and that it will continue to issue decisions. *See* Press Release, NLRB, Statement by Chairman Pearce on Recess Appointment Ruling (Jan. 25, 2013). The Board has also declined to rule on the issue of the validity of recess appointments. *See Ctr. for Soc. Change, Inc.*, 358 NLRB No. 24 (2012). The Proposed *Amici* therefore submit this motion in light of the Board's announcement that it will continue deciding cases in spite of the appellate court's ruling. By submitting this motion, none of the Proposed *Amici* waive any right or argument they may have with respect to the recess-appointment issue.

**CONCLUSION**

For the foregoing reasons, the Board should grant the Proposed *Amici* leave to file the accompanying *amicus* brief.

Dated: February 27, 2013

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on this twenty-seventh day of February, 2013, he caused the foregoing Motion of the Chamber of Commerce of the United States of America, Coalition for a Democratic Workplace, American Hotel & Lodging Association, HR Policy Association, International Council of Shopping Centers, International Foodservice Distributors Association, International Franchise Association, National Association of Manufacturers, National Association of Wholesale-Distributors, National Council of Chain Restaurants, National Federation of Independent Business, and Society for Human Resource Management for Leave to File Brief as *Amici Curiae* to be filed using the National Labor Relations Board's E-Filing Program. The foregoing motion was also served by e-mail upon the following counsel of record for the parties:

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A courtesy copy of the foregoing motion was also served by e-mail upon:

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/s/ Ronald E. Meisburg  
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