



**STATEMENT OF STEVEN J. BROWNE, SPHR
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**ON BEHALF OF THE
SOCIETY FOR HUMAN RESOURCE MANAGEMENT**

**SUBMITTED TO
U.S. HOUSE COMMITTEE ON EDUCATION AND THE WORKFORCE
HEARING ON
"CULTURE OF UNION FAVORITISM: THE RETURN OF THE NLRB'S
AMBUSH ELECTION RULE"**

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Introduction

Chairman Kline, Ranking Member Miller and distinguished members of the Committee, my name is Steve Browne. I am the Executive Director of Human Resources at LaRosa's, Inc., in Cincinnati, Ohio. I am appearing before you today on behalf of the Society for Human Resource Management (SHRM). I have been a human resources professional for over 25 years in the manufacturing, consumer products and professional services industries, and a member of SHRM since 2000. I currently serve on SHRM's Membership Advisory Council representing 10 states in the North Central region, and I am the past State Director of the Ohio SHRM State Council. LaRosa's is a family-owned regional pizzeria restaurant chain in Southwest Ohio and Southwest Indiana with 15 pizzerias and over 1,200 team members. Thank you for the invitation to appear before you on behalf of SHRM's more than 278,000 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 has deep concerns and strong reservations with regard to the February 5 Notice of Proposed Rulemaking (NPRM) issued by the National Labor Relations Board (NLRB) on the rules and regulations governing representation case elections. As the Committee is aware, the NLRB unsuccessfully proposed changes to the Board's rules governing election processes, otherwise known as the "Ambush Election Rule," in December 2011. The rule was challenged in U.S. District Court for the District of Columbia, in the case *Chamber of Commerce et. al. v. National Labor Relations Board*. The rule was declared invalid due to NLRB procedural errors. The case is currently on appeal.

As was the case with the rule from December 2011, the February 5 NPRM Ambush Election Rule will fundamentally and needlessly alter the delicate balance that exists in current law that provides for the opportunity for an employee to make an educated and informed decision to form, join or refrain from joining a labor organization. If adopted, the proposed regulation would severely hamper an employer's right to exercise free speech during union organizing campaigns and cripple the ability of employees to learn the employer's perspective on the impact of collective bargaining on the workplace. Finally and equally troubling is that the NLRB is proposing this regulation absent any evidence that it is needed.

In my testimony, I will outline SHRM's views on employee rights under federal labor law, provide background about our company and its workforce and the practical challenges this rule raises for my organization, as well as share SHRM's specific concerns over the proposed NLRB regulation.

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 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 and timely 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 LaRosa's

LaRosa's, Inc. is unique in the restaurant industry in that it's celebrating its 60th anniversary this year. This is uncommon because most restaurants, and companies in general, don't last this long. In order to continue to be successful, we do our best to be profitable in an industry marked by steep price competition from global and national pizza chains as well as other business pressures. Ohio's minimum wage is already ahead of the national minimum wage and average pay, and as a result we are dealing with wage compression throughout our organization to find and secure talent.

LaRosa's has 15 pizzerias that are Family Italian restaurants ranging from full-service dine-in locations to delivery/carry-out locations. We also have a call center, manufacturing commissary and a Corporate Office. Our workforce is made up of 85 percent part-time and 15 percent full-time employees. The majority of our employees, 71 percent, work in our pizzerias as location managers, cooks, delivery drivers, servers and hosts. Our average employee tenure in the pizzerias is 4 years. However, 25 percent of our pizzeria team members have worked over 5 years and 12 percent have worked over 10 years for the company. We have 11 employees with 25+ years of service in our stores.

LaRosa's, Inc. has been an employer of choice since its founding in 1954. We have literally had employees from different generations of the same families work for us. Turnover ranges from 17-20 percent for our general workforce depending on the season, compared to 29 percent for the restaurant industry overall, according to SHRM data. We have a very open environment that follows our company philosophy of "Reach Out and Make Smiles." Taking care of our team members in turn gives our guests a great experience when they purchase our great food. We have a long tradition of promoting from within at our company. In fact, all of our Assistant Managers and General Managers started out on the

front line. We also have Executives and Corporate staff who began their career on the front line in the pizzerias.

Our HR operations are very lean in working with multiple locations, many types of operations and a variable workforce. I have myself and one full-time HR Manager as well as three part-time staff who are specialists handling payroll, benefits and call center recruiting. We take an intentional, individual approach to HR across our organization versus a “one size fits all” approach. This takes effort, but it allows us to have a culture of communication and development so that we “meet people where they are” to do all we can to allow them to perform to the best of their ability.

Concerns with the NLRB’s NPRM Ambush Election Rule

The NPRM Ambush Election Rule, first, would substantially shorten the period of time between when a representation petition is filed with the NLRB and when an election is held; and, second, would require employers to more quickly provide union representatives with employee contact information, including personal telephone and e-mail information.

At LaRosa’s, we dedicate a significant amount of time and effort to communicating to our team members about important workplace decisions, like employee benefits, compensation and health care. These are important decisions that impact not only our team members, but often the team members’ families as well. As mentioned above, our 1,200 employees are spread across two states in 15 locations over variable schedules and shifts. Whenever we are communicating to our employees about workplace issues, a great deal of planning and preparation goes into the effort. In many situations, it requires multiple meetings over multiple days and times in order to make sure that we are able to communicate and educate our team members directly and to answer any questions they may have.

A recent example of this is when LaRosa’s converted its health care plan from a Point of Service (POS) option to a high-deductible Health Savings Account (HSA) plan. We had a mandatory meeting set up at an offsite location and paid all team members to attend so they could learn of this significant shift because it affected everyone who was eligible for, as well as currently enrolled in, our Group Health Plan. We wanted everyone to be clear as to the new plan offering and how it affected each of them. We brought in our insurance broker as well as people from the health insurance carrier. We offered employees a chance to talk individually with representatives from the carrier to get answers to any personal questions the employees had. Having this meeting altered production, put pressure on shifts to be covered in our restaurants and asked people to alter their schedules significantly versus what they were used to. Despite making every effort we could to make it easier for people to attend, we still had many employees who didn’t come to the session. Although LaRosa’s has never experienced an effort to organize the workplace, I suspect it would require a similar significant response of time and focus from our management team to educate our supervisors, staff and employees about the rights, requirements and our opinions on the organizing drive. Considering we have had two years now to educate our workforce on the continuing changes of the ever-evolving Patient Protection and Affordable Care Act, I

cannot envision how we could possibly educate our team members about an organizing drive in 10 days.

After all, unions can prepare their entire organization campaign before making it public. Unless employers have adequate time to prepare their educational materials, employees will not have full information about the pros and cons of unionization. While the precise length of time for the election process will vary under the proposed Ambush Election Rule, the rule could shorten the process to as little as 10 days.

As I stated at the beginning of my testimony, I have been an HR professional for over 25 years, and I am extremely familiar with an employer's rights and responsibilities under the NLRA. However, under the Ambush Election expedited process, LaRosa's would not be prepared to effectively respond to the organization effort, nor would we be able to inform our 1,200 employees adequately about our perspective on the organizing effort prior to the election.

SHRM believes if the Ambush Election Rule is adopted, shortening the time between filing a petition and the election, it will create an imbalance between the rights of employees, employers and labor organizations in the pre-election period. In turn, this will severely impact an employer's freedom of speech and ability to share its perspective with employees about the organizing drive, thus creating a distinct disadvantage for employers in the organizing process.

Another major concern for SHRM is that the proposed Ambush Election Rule will significantly impair small employers in responding to petitions in an accelerated manner and will present significant burdens in responding to petitions for large employers with diverse and large voting units. For example, a small employer may not have an HR professional on staff or access to legal counsel that specializes in labor issues. A large employer, on the other hand, may have such a geographically dispersed workforce and centralized operations where communicating with its employees in such an expedited manner is almost impossible.

The Ambush Election NPRM expanded requirement for providing personal, confidential information about employees is also very disconcerting to SHRM. We believe this new requirement to provide so much confidential information about an employer's employees constitutes an invasion of privacy for employees and an unnecessary data collection burden on employers. At LaRosa's, we do not collect employees' personal e-mail addresses or unlisted phone numbers for any other business function, as employees are reluctant to share this information. I can only speak for LaRosa's, but I surmise this would be a similar reaction at many workplaces, that employees will be dismayed, if not outright angry, to learn that this type of personal, confidential information is being shared with a third-party without consent. Finally, protecting employee privacy and personal information is important to employees and employers. Unfortunately, it does not appear that Ambush Election Rule has in place any safeguards to protect this employee information from disclosure.

Third-party access to this information also creates an invitation to distract employees during the workday, which, depending on the workplace setting, may create unsafe working conditions.

Equally troubling is the new proposed requirement in the NPRM for the voter eligibility list and employee contact information to be provided to the organizing union within two workdays of the Direction of Election instead of the current law requirement allowing seven workdays. While we update our employee contact information frequently at LaRosa's, I am positive there are instances where the information is outdated or incorrect. I suspect that is true for the bulk of employers in the United States. Additionally, for security reasons, employee information may be housed in different software programs or databases, meaning it may be next to impossible in some circumstances to compile this information in two business days let alone guarantee its accuracy.

The proposed Ambush Election Rule appears to be a solution in search of a problem. For example, union density has declined for decades in America. According to the Bureau of Labor Statistics, only 11.3 percent of wage and salary workers in the public and private sectors were members of a union in 2013, compared to 20.1 percent in 1983.¹ Labor organization leaders have long argued that current laws on union representation favor management and hinder employees' ability to organize a union. However, data produced on the NLRB's website in 2013 reveals that the median time from a representation petition to an election was 38 days—proof that the period is generally reasonable for employees to weigh the important choice of whether or not to unionize.² It appears the proposed rule is not justified by the data that demonstrates that elections are held rather expeditiously, and the NLRB has not demonstrated why the 38-day average time period needs to be shortened. Therefore, SHRM believes the proposed Ambush Election Rule's reduced timeframe is unnecessary because the current 38-day average period gives employees ample time to hear from both the union and employer prior to a representation election.

Finally, SHRM believes it's important to raise a concern over the potential impact that the Ambush Election Rule could have taking into consideration the NLRB's decision in *NLRB v. Specialty Healthcare and Rehabilitation Center of Mobile (Specialty)* of Aug. 26, 2011. In *Specialty*, the Board established a new standard in which it 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. In essence, the *Specialty* decision allows labor organizations to form "micro-bargaining units" and "fragmented units" by permitting them to target only subsets of employees who are most likely to support the union. The combination of the NPRM with the *Specialty* decision seems to tip the scale to a near certainty that a business unit would in fact be organized as it could

¹ Bureau of Labor Statistics, U.S. Department of Labor (2014). <http://www.bls.gov/news.release/union2.nr0.htm>

² National Labor Relations Board (2014). Median Days to Elections Graph, Fiscal Year 2004-2013, <http://www.nlr.gov/news-outreach/graphs-data/petitions-and-elections/median-days-petition-election>

make it very difficult for an employer to respond quickly and effectively to be able to present information to employees to make an informed decision.

Conclusion

Mr. Chairman, thank you again for allowing me to share SHRM's views on the NLRB's proposed Ambush Election Rule. SHRM believes that this reissued rule is imbalanced and would limit employer free speech during union organizing campaigns. The rule will also prevent many employees from receiving adequate information to make an informed decision on whether to join or not to join a union. SHRM believes the Ambush Election Rule would have a chilling effect on labor-management relations and therefore, it should be abandoned. I welcome your questions.