CONNECTICUT HOSPITAL ASSOCIATION

TESTIMONY OF
CONNECTICUT HOSPITAL ASSOCIATION
BEFORE THE
LABOR AND PUBLIC EMPLOYEES COMMITTEE
Tuesday, February 20, 2007

SB 602, An Act Concerning Employer-Sponsored Meetings

The Connecticut Hospital Association (CHA) appreciates the opportunity to testify on **SB 602, An Act Concerning Employer-Sponsored Meetings**.

SB 602 would prohibit healthcare entities that receive over one hundred million dollars in state funds, including state Medicaid funds, from using such funds to require employees to attend employer-sponsored meetings that have as their primary purpose communications about religious or political matters. SB 602 should not be enacted for the following reasons.

SB 602 is preempted by the National Labor Relations Act (NLRA) and would be invalid if enacted. The doctrine of preemption arises from the Supremacy Clause of the United States Constitution and operates to invalidate state laws that frustrate the purpose of national legislation or impair the efficiency of agencies of the federal government entrusted to discharge the duties for which they were created. The NLRA was enacted in 1935 in large part because Congress wanted to provide an administrative mechanism to peacefully and expeditiously resolve questions concerning union representation. Section 7 of the NLRA affords employees the right "to self-organization" and "to form, join, or assist labor organizations," and "to refrain from … such activities." Section 8 creates a network of prohibitions on employer and union conduct that has a reasonable tendency to interfere with employees' Section 7 rights. Section 8(c), which was an amendment to the NLRA, sets forth an explicit "free speech" exemption for employees and employers alike, which provides that "the expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any provisions of the Act, if such expression contains no threat of reprisal or force or promise of benefit." The United States Supreme Court has ruled that Section 8(c) is a codification of the First Amendment of the United States Constitution.

Following the passage of Section 8(c), the NLRB in 1948, reversing an earlier ruling in which it prohibited employers from compelling attendance at employer speeches on self-organization, approved the use of employer captive audience speeches provided the union was given an opportunity to reply in similar circumstances. In 1953, the NLRB further refined its position and held that "an employer does not commit an unfair labor practice if he makes a preelection speech on company time and premises to his employees and denies the union's request for an opportunity to reply," provided the captive audience speech is not delivered within 24 hours preceding an election. The NLRB has consistently applied this rule since that time and it has received approval from the United

States Supreme Court. Accordingly, it is simply not the case, as some have argued in the past regarding previous iterations of this proposed bill, that federal law does not protect an employer's right to hold mandatory meetings with its employees to advise them concerning its position on labor organizing activities – federal law absolutely protects that right.

There can be no question that SB 602 seeks to overturn federal labor policy that was established by the NLRB more than 57 years ago and is, therefore, preempted.

Second, SB 602 would have the unintended effect of subjecting employees to conduct currently unlawful under the NLRA. For example, SB 602 does not prohibit employers from asking employees voluntarily to attend meetings or participate in communications regarding union activities and employees are free to choose to attend or participate in those communications as they so wish. Under the proposed law, employees would be put in the position of identifying themselves to their employer and co-workers as supporting or being against unionization when they choose or choose not to attend or participate. Such self-identification would run counter to the protection afforded by secret ballot elections and would interfere with the established body of NLRB law protecting employees in these circumstances. With mandatory attendance and participation, employees are not put in this position.

Third, enactment of SB 602 would interfere with employees' rights by creating impediments to the union organizing process since the inevitable outcome would be an increase in unfair labor practice charges and lawsuits until the law is set aside as preempted.

SB 602, which is not neutral but seeks to limit the free speech rights of employers but not unions, appears to have its genesis in a belief that federal law does not provide a balanced approach to labor relations. Although critics of the NLRA have argued the NLRA allows employers an undue opportunity to influence employees to reject unionization, it is the job of the United States Congress and not the State of Connecticut to amend federal law. There is certainly a benefit in having a national labor relations policy. Federal law encourages collective bargaining and establishes a framework that is fair, impartial, and carefully regulated to protect the rights of employees. The federal body of law has been thoughtfully crafted and refined over decades of case law to guarantee and protect employee rights while maintaining a careful balance in the critical areas of free speech and employee access to information. If SB 602 is enacted, not only would it be preempted by federal law, its anti-business message would discourage employers who have the option to relocate from moving to or staying in Connecticut.

Thank you for your consideration of our position.

For additional information, contact CHA Government Relations at (203) 294-7310.