



# RESPECT Act carries potential to bolster unions

by Carol Marshall

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The so-called RESPECT Act could have a broad-ranging effect on skilled professional employees and unions, say a pair of local attorneys.

The Re-Empowerment of Skilled and Professional Employees and Construction Trade Workers Act - which is now out of committee and likely will be coming up for a vote in the U.S. House soon - would widen the pool of those eligible to join a union by effectively changing the definition of "supervisor."

A supervisor, who currently is not eligible to be in a union, could become eligible if he does not spend at least 51 percent of his time directly supervising employees, under the act.

"The unions are in favor of this legislation, and they're behind it for one reason: If it passes, it will make it harder to be a supervisor, and that will create potentially millions of dues-paying members for the unions," said John Birmingham Jr., a Rochester attorney and partner at Foley and Lardner, where he is vice chair of the labor and employment practice group.

The proposed act is a reaction to decisions by National Labor Relations Board. The NLRB was called upon to render a decision in a case involving charge nurses at Oakwood Healthcare Inc., and whether they could be protected by union membership.

According to Birmingham, the NLRB's definition of supervisor was probably too broad, and in turn unions exaggerated the impact of the decisions.

The result has been a battle between pro-labor and pro-employer representatives in Washington.

"The biggest impact would be that there would be divided loyalties," Birmingham said. "Traditionally, someone who's in management is an agent of the company. But if your supervisors are also union members, that could create a conflict." The nature of those relationships would be complicated, he added.

"There are times when the union's interests and the company's interests are adverse to each other, even though generally speaking the union and the employees may have an excellent

relationship," Birmingham said. "During those times, even if they are limited times, the supervisors and managers have to be company people, so to speak."

Said Robert Harrison, of Bloomfield Hills-based Robert Harrison and Associates: "It's a little confusing and controversial. It's generated a lot of angry discourse between labor groups and employers."

Harrison predicted that if the act passes, it would affect large companies, particularly automotive and manufacturing companies, and any business with a lot of employees and multiple layers of supervisory control.

"It's difficult to say how it would shake out if it passes. It's being pushed by labor groups, so the employer rhetoric is that it's a means for labor groups to boost their membership. And labor groups are saying that isn't the case, and that it came out of the requirements in the Oakwood case with the charge nurses," he said.

The bill has a lot of weight behind it, with 133 sponsors.

"This act has gained a good deal of momentum, maybe because we have a Democratic majority in congress, and maybe because there hasn't been a lot of labor legislation passed during the Bush administration, so there is this pent up need for some," Birmingham said.

One thing is for sure, said Harrison: "If this passes, there will be a tremendous amount of litigation."