Testimony by Lori Gay, RN
Before the Subcommittee on Health, Employment, Labor and Pensions
Committee on Education and Labor
"Are NLRB and Court Rulings Misclassifying
Skilled and Professional Employees as Supervisors?"
May 8, 2007

Good Afternoon.

Thank you for the opportunity to be here today. My name is Lori Gay. I have been a critical care registered nurse for 21 years at the Salt Lake Regional Medical Center (SLRMC) in Salt Lake City, Utah.

I work in the intensive care unit, taking care of the hospital's sickest patients. It is a very physically and mentally demanding job, but I wouldn't trade it for the world. I am passionate about improving the practice of nursing.

Everyday at our hospital, nurses are asked to do more with less, and we struggle to have our voices heard, which is why we decided to form a union. We wanted to protect our patients and ourselves against management making decisions about health care based on the bottom line. Dedication to our patients and the desire to get the job done right fueled our organizing drive in 2001.

After eight months of knocking on doors with the United American Nurses to talk to the nurses in our hospital about what we could accomplish through forming a union, we voted in an NLRB representation election in May 2002.

However, the hospital's owner, Tennessee-based IASIS Healthcare, appealed the election to the regional office of the NLRB in Denver. IASIS argued that the charge nurses — about 2/3 of the nursing staff — were actually supervisors and should therefore be excluded from the bargaining unit, even though all the charge nurses rotated in and out of charge while still carrying a full patient load. Our ballots were impounded—meaning they were never opened or counted.

We hoped that a favorable ruling from the regional director would result in an order for our ballots to be opened and honored, but unfortunately after we got that favorable regional decision, the legal struggle was far from over. IASIS appealed to the NLRB in Washington, D.C.

For five years, our ballots have remained impounded while we have waited for clarification on what it means to be a supervisor. The ballot I cast in 2002 has never been opened and may never be counted—a fact I now blame more on ambiguous legal language than anything else.

When the Oakwood decisions were released last year, the Washington, D.C., NLRB remanded our case back to the regional director. According to the regional director's decision, 64 out of 153 nurses at the Salt Lake Regional Medical Center in 2002 were supervisors, including myself.

All the RNs in the neonatal intensive care unit were declared to be supervisors, essentially "supervising" each other on a rotating basis. In the inpatient rehabilitation unit, 10 of the 12 RNs were declared to be supervisors. In the newborn nursery, 10 of 12 RNs were also declared to be supervisors. In the labor and delivery unit, the ratio of supervisors to non-supervisory employees was 12 to 5. In the surgical unit, the ratio was 10 to 7.

The regional director arrived at these absurd results through an analysis of what it means to perform what is called "charge" duty.

I want to talk to you today about what it means to be a "charge nurse." Basically, as charge nurse, I am in charge of a pencil. Typically, I spend 5 minutes at the beginning of the shift filling out an assignment sheet, making sure that every patient has a bed and a nurse. I record the traffic in and out of the unit — it's as simple as that. I don't have the authority to hire, fire, evaluate or promote other nurses, nor do I have the authority to discipline another nurse for not taking an assignment, or for doing an assignment poorly.

I can't speak for every arrangement at every hospital, but at my hospital, taking charge duty is what we do to pitch in and help out, and we are expected to take it once in a while. It's just part of the job.

Any nurse who has been on the job for a year or more is automatically added to the pool of nurses who serve charge duty. There is no application process for the job. And there is no job description. Anyone who works there for a year and learns the ropes is expected to do it.

The reality of the situation that we are now dealing with is absurd. Management tells us that the only nurses who can safely engage in protected union activity are the nurses who have worked for less than a year—the younger nurses—because they are not serving charge yet. And even those nurses will only be protected for a short time— until they start serving charge.

There are some days when I come into work and look around and every last nurse on the floor is someone who at some time or another serves as a charge nurse and therefore, according to these absurd rules, is a "supervisor." Now, that just doesn't pass the common sense test. How can we all be supervisors of each other, depending on who is randomly selected to do charge that day? Everybody here in this room knows that is just not how it works in the real world.

Simply labeling someone a supervisor doesn't make them a supervisor in the true sense of the word if the institutional structure doesn't support it. When we serve charge duty, we

have responsibility without authority. We cannot and do not throw our weight around with other nurses, because we do not have that kind of authority. The only way the system of rotating charge duty works is through goodwill and cooperation among the nurses. We get the work done thanks to collegiality and collaboration.

When I am designated charge nurse, I still have a full load of my own patients. If there are nurses who have problems with the assignments I make, I refer them to the Unit Director, who is the real supervisor. The real supervisors at my hospital are paid a salary, and they get bonuses. When I serve charge duty, I get a dollar more an hour—as long as I remember to clock in correctly. The real supervisors hire, fire, discipline, evaluate and promote. All I do is put patients in beds.

At the end of the day, I don't see myself as a supervisor, and neither do my colleagues. At our hospital, there's a managerial track and there's a clinical track—and as nurses we are squarely within the clinical track. We take care of patients. That's what we do.

Management doesn't see us as supervisors either. They have regular managerial meetings, and we are not invited or welcome at those meetings.

I have been on this journey for many years now, and I can tell you that there will be no clear path to justice until Congress intervenes to solve the problem once and for all. It shouldn't be this legally convoluted and complicated to make a democratic choice to form a union.

Of course, I am not a lawyer, I am a nurse, but I think nurses will continue to lose their rights until you step in to establish rules that reflect reality and make sense to everyone. We can't afford to wait for years and years of continued litigation, with no likelihood of clarity at the end of the process.

All nurses should be able to know whether they will be protected if they engage union activity before they attempt to form a union, not after the fact. I'm here to ask you to make the law reflect the obvious reality that nurses like me just aren't supervisors in the real world. We should be protected.

The way things are now, nurses in this country will never have a clear and direct path to having their voices heard—a basic premise of democracy in this country. And that disheartens me because as a nurse for 21 years, I believe that what is good for nurses, is also what's best for patients.