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November 2, 2005

The Honorable Robert A. Battista
Chairman
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570-0001

Dear Chairman Battista:

We are requesting that the National Labor Relations Board (NLRB) correct a grave injustice visited upon horse racing employees more than 30 years ago. The Committee on Energy and Commerce's Subcommittee on Oversight and Investigations has been conducting an investigation into the health and welfare of individuals in the horse racing industry. During our investigation we discovered that the NLRB has abrogated its responsibility to protect the rights of jockeys, exercise riders, or any employees of the horse or dog racing industries to petition for protection under the National Labor Relations Act (29 CFR 103.3).

Whatever the basis of the Board's 1973 determination, circumstances today simply will not support the arbitrary exclusion of these workers from the National Labor Relations Act (NLRA) protections. Horse racing is not a local business. It is a $26 billion industry operating in some 38 States. In fact, racetracks make most of their racing profits not from fees and wagers on race days at the track but from the "simulcasting" of races from around the country. Jockeys, exercise riders, and other workers that handle racehorses move about from State to State following the racing calendar in widely disparate locations.

The old argument that jockeys and freelance exercise riders are independent contractors should be laid to rest. Certainly jockeys agree to ride specific horses for specific trainers on any given card or at any given meet. It is neither, however, the owners of the racehorses nor the trainers that set the conditions of employment. The workplace is provided and the work rules are established by the racetracks. Purses, the basis of most compensation, are set by agreements between the horsemen's associations and the tracks. Jockeys and the exercise riders are not free to negotiate compensation or working conditions. These are at the discretion of the de facto employer, the racetracks. The tracks reserve the right to determine who can ride in their races.

Furthermore, the tracks themselves are consolidating across interstate lines. Magna Entertainment Corp. and Churchill Downs, Inc. own racetracks in locations all over the country. Despite its own conglomerate status, Churchill Downs in particular has turned to the antitrust statutes to prevent its "independent contractors" from taking collective action to improve their working conditions. This is precisely the type of legal intimidation that the Wagner Act (NLRA) intended to preclude from workplace disputes.

We urge you to reconsider 29 CFR 103.3 at the earliest possible opportunity. Employees that work under some of the most dangerous conditions of any workers in the country deserve the protection of the law that the Board has applied to similarly situated workers.

Sincerely,

BART STUPAK
RANKING MEMBER
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS

DIANA DeGETTE
MEMBER
SUBCOMMITTEE ON OVERSIGHT
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JOHN D. DINGELL
RANKING MEMBER
COMMITTEE ON ENERGY AND COMMERCE

cc: Ms. Wilma B. Liebman, Board Member
National Labor Relations Board

Mr. Peter C. Schaumber, Board Member
National Labor Relations Board