

September 26, 2003

The Honorable Charles E. Grassley
Chairman
Senate Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Max S. Baucus
Ranking Member
Senate Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Baucus:

The undersigned unions urge Congress to include section 631 of the Prescription Drug and Medicare Improvement Act of 2003 (S.1) in the final version of the Medicare reform and prescription drug coverage legislation. This provision clarifies that the coordination of employer-provided retiree medical benefits with Medicare (or a counterpart State plan) does not violate the Age Discrimination in Employment Act ("ADEA"), and will permit employers – and unions negotiating on behalf of employees and retirees – to continue to take Medicare into account when designing employer-provided retiree medical benefit programs.

The clarification is necessary because of the unfortunate and unfounded decision of the United States Court of Appeals for the Third Circuit in Erie County Retirees Ass'n v. County of Erie. In Erie County, the court held that it is a violation of the ADEA for an employer to provide more costly or less valuable medical benefits to retirees who are not eligible for Medicare than to retirees who are eligible for Medicare. Under this holding, the basic design that is used by most employers who provide medical benefits to retired employees is legally suspect.

In all sectors of the private and public sector workforce, employees are increasingly facing the prospect that their employer-provided post-retirement medical benefits will be reduced or eliminated. In addition to the economic factors that threaten the continuation of medical benefits for retirees, those benefits have been placed in further jeopardy by Erie County.

The Honorable Charles E. Grassley
The Honorable Max Baucus
September 26, 2003
Page 2

Under Erie County, employers will be forced to make a choice in order to avoid potential ADEA liability – either to enhance the medical benefits for those retirees who are eligible for Medicare, or reduce or eliminate the benefits for those who are not eligible. One need not be omniscient to recognize that most employers will choose the latter option: unpredictable and largely uncontrollable medical inflation has made the cost of providing medical benefits extremely volatile, and employers will be unlikely to increase their financial exposure by providing enhanced medical benefits to those retirees who are eligible for Medicare. It follows that, as long as employers are subject to potential ADEA liability under the reasoning of Erie County, fewer and fewer employees will be able to retire with the same employer-provided medical benefits that they receive as active employees, and many such employees will lose their employer-provided retiree medical benefits entirely.

In many industries it is common for employees to retire prior to Medicare-eligibility age. For many – if not most – of these employees retirement before Medicare-eligibility age would not be possible without adequate employer-provided retiree medical benefits, and the continued viability of Erie County could therefore result in grave economic consequences for both the employees and their employers.

Erie County was wrongly decided because the resource allocation decisions that result in providing less costly employer-provided medical benefits to retirees who are eligible for Medicare are not based on age – or stereotypical notions about older persons – but rather on the availability of medical benefits from sources other than the employer. Congress should now clarify that such decisions do not violate the ADEA.

We urge Congress to include section 631 of S.1 in the final version of the Medicare reform and prescription drug coverage legislation.

American Federation of State, County and Municipal Employees
American Federation of Teachers
International Association of Fire Fighters
National Education Association