NLRB HATES SMALL BUSINESS

QUICK STATS

- ✕ **CONFERENCE:** Regulation
- ✕ **TEAM:** National Labor Relations Board
- **FUMBLE:** Lost jobs; stunted economy; devastated small businesses
- **HOW TO RECOVER THE BALL:** Pass the Protecting Local Business Opportunity Act, and rein in the NLRB with greater oversight

Americans love small businesses, especially locally owned franchises. Franchise employees—such as those at a fast food restaurant—are considered employed by the person who owns the local franchise, not the main company. That seems simple and straightforward, right?

Enter NLRB.

NLRB recently expanded the definition of joint employer through a rule that says any "indirect and unexercised control" also warrants classification as a joint employer. That means that all franchise employees—whether local or national—will be treated not as employees of the local small business but of the corporate entity. As a result, many more businesses will face a litany of obligations and liabilities they did not expect or want. In the words of dissenters of the decision, the new and improved arbitrary definition has the potential to "subject countless entities to unprecedented new joint-bargaining obligations that most do not even know they have, to potential liability for unfair labor practices and breaches of collective bargaining agreements, and to economic protest activity, including what have heretofore been unlawful secondary strikes, boycotts and picketing."[385]

So what does all this mean? Consider these hypotheticals. Steve of Ardmore, Oklahoma, lost his last job and turned to a temp agency to help him find new work. His agency used to work with a customer service call center to place temp workers who were eventually hired full-time by the call center. But under this new rule, the call center faces obligations under the new joint-employer standard and cannot take the risk of accepting temp workers. So Steve's agency cannot place him. Or what about Ann in Oklahoma City, who has successfully worked as a subcontractor for a construction business? Ann can no longer find work because the employers for whom she used to subcontract cannot take the risk of having subcontractors.[386] Who loses here? Real people.

RECOVERY

The majority of NLRB says that, "It is not the goal of joint-employer law to guarantee the freedom of employers to insulate themselves from their legal responsibility to workers,"[387] which is great as long as workers can actually find work. NLRB would have Americans believe that Steve and Ann are "law-school-exam hypothetical of doomsday scenarios."[388] Congress should disagree. S. 2015, the Protecting Local Business Opportunity Act, would codify the original joint-employer standard and relieve businesses of NLRB's unnecessary intrusion. Congress should pass this bill and also provide greater oversight of NLRB to prevent it from further overreach. Congress should encourage more small business, not force people to work for megacorporations.

For more information, please visit:
NLRB: Board Issues Decision in Browning-Ferris Industries
The Wall Street Journal: NLRB's Joint Employer Attack