



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

November 4, 2014

The Honorable John Kline
Chairman, Education and the Workforce Committee
The Honorable Phil Roe, M.D.
Chairman, Subcommittee on Health, Education, Labor, and Pensions
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Chairman Kline and Chairman Roe:

I write in response to your letter dated September 16, 2014, wherein you request certain information and documents to better inform the Committee about the joint-employer test under the National Labor Relations Act (NLRA).

Your letter references our recent filing of an amicus brief in *Browning-Ferris Industries* regarding the joint-employer standard, as well as our recent authorization to issue complaints against McDonald's USA, LLC and McDonald's franchisees as joint-employers. Specifically, you seek the following:

- 1) A list of all open complaints in which joint-employer status is an issue;
- 2) Any documents and communications related to closed complaints in which joint-employer status was an issue; and
- 3) A thorough description of the current joint-employer test the General Counsel's office is applying, particularly regarding its application to franchises.

In response to your first inquiry, I am enclosing the list of open complaints in which joint-employer status is an issue. The same list was provided to your staff on October 15, 2014.

Regarding your second request, I am enclosing a list of closed complaints in which joint-employer status was an issue. This information was provided to your staff on October 28, 2014. The Office of the Chief Information Officer is now engaged in identifying the universe of responsive documents and communications related to those closed cases. Once it has concluded its efforts in that regard, we will be able to more fully respond to this request.


As to your final inquiry, the Board's recent decision in *CNN News Network and Team Video Services, LLC*, 361 NLRB No. 47 (2014), details the current joint-employer standard. That is the current joint-employer standard that the Office of the General Counsel continues to apply to all, including franchises.

As you note in your letter, on May 12, 2014, the National Labor Relations Board (Board) issued a notice and invitation to file briefs in *Browning-Ferris Industries*, seeking briefing on various joint-employer issues. Among the questions on which the Board's notice sought input was whether the Board should adhere to its existing joint-employer standard or adopt a new standard. In response to the Board's notice, the Office of the General Counsel filed an amicus brief, a copy of which is attached for your reference. The brief is the best statement of the Office of the General Counsel's view of what the Board's joint-employer standard should be.

I conclude with the following comments. First, there are no open cases where the General Counsel's office is alleging that an entity is a joint-employer solely under the test that the *Browning-Ferris Industries* amicus brief urges the Board to adopt. Secondly, it is not unprecedented for the Office of the General Counsel to pursue complaints against franchisors and franchisees as joint employers. See, for example, *Love's Barbeque Restaurant*, 245 NLRB 78 (1978). Lastly, I note that, as stated in our amicus brief in *Browning-Ferris Industries*, my office is not seeking to have the Board overturn the line of cases that stand for the proposition that, where franchisors' indirect control over employee working conditions is merely related to the franchisors' legitimate interest in protecting the quality of their brand or product, such indirect control is insufficient to make the franchisors joint employers with their franchisees.

I trust this letter responds to the concerns you raised in your inquiry. We will continue to work to provide you with the documents and communications you requested. I am committed to working with the Committee to accommodate its oversight needs. If you have additional questions, please do not hesitate to contact Celine McNicholas, Director of the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,



Richard F. Griffin, Jr.
General Counsel

Enclosure