INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA
General President

25 Louisiana Avenue, NW
Washington, DC 20001

KEN HALL
General Secretary-Treasurer

202.624.6800
www.teamster.org

October 3, 2017

U.S. House of Representatives
Washington, D.C. 20515

Dear Representative:

On behalf of the 1.4 million members of the International Brotherhood of Teamsters, I am writing to express our vigorous opposition to H.R. 3441, the Save Local Business Act. I strongly urge you to reject this legislation.

H.R. 3441 seeks to legislate around a century of consistent case law and established joint employer standards in labor and employment law. The bill redefines the term "employer" so narrowly that many workers will have no remedy when their employers violate wage laws or their rights to organize and bargain collectively. We believe the legislation will encourage "gaming the system" so that no one exercises enough control to be liable as an employer.

The legislation would overturn the National Labor Relations Board (NLRB) Browning-Ferris decision and leave worker protections weaker than they were prior to Congress adopting the National Labor Relations Act (NLRA) in 1935. On August 27, 2015, the NLRB, in its Browning Ferris Industries (BFI) decision, affirmed the basic principle that two or more employers are joint employers of the same employees if they are both employers under common law and they "share or co-determine those matters governing the essential terms and conditions of employment." H.R. 3441 would overturn this decision and allow employers to evade their responsibility to engage in meaningful collective bargaining.

The BFI case involves a labor-only, cost-plus staffing contract under which BFI has subcontracted the employment relationship only to a staffing agency, Leadpoint. BFI owns the facility and equipment on which Leadpoint's employees work; it directs the quality and quantity of work performed by Leadpoint workers.

BFI oversees operations with its own personnel and retains authority to approve or reject Leadpoint's workers. Leadpoint can only pay its workers amounts that comply with its staffing agreement with BFI. As the NLRB noted, the Union "assert(ed) that absent a change in the joint-employer standard, a putative employer, like BFI, that is a necessary party to meaningful collective bargaining will continue to insulate itself by the 'calculated restructuring of employment and insertion of a contractor to insulate itself from the basic legal obligation to recognize and bargain with employees' representative."

The NLRB joint employer decision is not a dramatic departure from existing law. It does not upend business as we know it, nor does it undermine the franchise business model, as many have claimed. Current law balances the interests of workers and employers by requiring a fact specific inquiry to determine whether or not there is a joint employer relationship. The NLRB joint employer decision in the BFI case is fact specific and clarifies the joint employment standard.

Workers at BFI/Leadpoint chose to exercise their right to determine whether they wanted to organize and bargain collectively. Workers voted and the ballots from that election were impounded pending a decision in the BFI case. After the NLRB issued its decision, the ballots were counted. The BFI/Leadpoint workers decisively declared their desire to bargain collectively by voting 4-1 in favor of Teamster representation. The NLRB ruling will allow these (and other) workers to negotiate with and hold accountable the employer which actually controls the terms and conditions of their jobs. This legislation will deny them the ability to do so.

Not only would H.R. 3441 overturn the BFI decision, the bill would also drastically change the definition of employment relationships under the Fair Labor Standards Act (FLSA). The FLSA currently recognizes that more than one business can be an employer. Thus, an employer cannot hide behind labor contractors, brokers, or others. For example, while there are many responsible employers in the construction industry, it is well known that abusive schemes are far too prevalent in this industry as well as others. Contractors use subcontractors or labor brokers who intentionally misclassify workers as independent contractors or pay them "off the books" to the disadvantage of responsible employers. We believe this legislation will serve as an incentive for worker misclassification to defeat employment and labor law, as well as facilitate tax avoidance.

Because the Migrant and Seasonal Agricultural Workers Protection Act (MSAWPA) refers to the definition of "employ" in the FLSA, H.R. 3441 will have an adverse effect on the ability of workers covered by the MSAWPA to effectively enforce child labor laws, and seek redress for wage theft and other employment abuses.

Again, H.R. 3441 would leave worker protections weaker than when Congress adopted the FLSA in 1938.

This legislation will fuel a race to the bottom for workers' rights, wages, benefits and workings conditions. Working men and women have fought long and hard for the rights and protections they now have under the National Labor Relations Act and the Fair Labor Standards Act. H.R. 3441 is another in a series of intensifying attacks by those who want to return to the era when working men and women were without rights, protections, and a voice in the workplace.

You will fail these workers if you do not reject H.R. 3441. I hope I can tell our members that you stood with them and other workers in their efforts to achieve and maintain meaningful worker rights and protections. The Teamsters Union urges you to vote no on H.R. 3441.

Sincerely,

James P. Hoffa
General President