{*DATE*}

The National Labor Relations Board

1015 Half Street, SE

Washington, D.C., 20570

Comments related to the NLRB’s Notice of Proposed Rulemaking regarding the Standard for Determining Joint Employer Status. (CFR 29 CFR Part 103, Document ID NLRB02022-0001-0001)

My name is {*name}* and I am {*title}* at {*company name}.* I welcome to the opportunity to submit the following comments related to the National Labor Relations Board’s (Board) Notice of Proposed Rulemaking regarding the Standard for Determining Joint Employer Status.

I write today to encourage the National Labor Relations Board to withdraw its proposed rulemaking relating to the joint employer standard. The proposed definition is far too broad and vague to be workable. A functional and workable joint employer standard must be clearly defined and require direct control to be exercised over a worker’s essential terms and conditions of employment. The open-ended nature of the definition of “essential terms and conditions of employment” in the proposal is just one problem for employers attempting to comply with the proposal.

By leaving the regulatory definition of “essential terms and conditions of employment” non-exhaustive the proposal creates uncertainty. My business will be unable to properly analyze any of our current or proposed contractual relationships to determine whether or not those contracts could eventually cause us to be determined to jointly employ workers from the other company. The Board should retain the exhaustive list of what constitutes “essential terms and conditions of employment” found in the 2020 rule. That will provide necessary clarity on that major portion of the proposal.

The Board should also abandon the provision of its proposal which states that simply possessing the right to control just one of the essential terms and conditions of employment, even if such a right is never exercised, creates a joint employer situation. Contractual fine print, when never actually put into force, should not result in a joint employment finding by any regulatory entity. Joint employer status should hinge on only the actually exercised right to control such terms or conditions, not the hypothetical ability to do that.

Furthermore, the rule should hinge on only direct control of such terms and conditions. The inclusion of the possibility of “indirect control” is another piece of this puzzle which makes the rule overly vague and unworkable. To properly apply this analysis, I would have to know how valuable my company’s contract is to the employment of the other company’s workers. Would cancelling my contract cost some of their workers their jobs? There is really no way for me to know this without knowing information belonging to the other company that is likely confidential and proprietary. I am unlikely to be able to get access to that information. This makes the rule unworkable.

Additionally, any such rule governing the determination of joint employer status should include items that are common to convenience store operations but do not rise to the level of direct control of essential terms and conditions of employment.

For example:

Due to the smaller footprint of our stores, many of our suppliers do not simply drop their products at a loading dock and leave but actually enter the store and restock sections of their goods. In order to maintain a convenient and free flowing experience for our customers we often require those deliveries to take place between specific hours when customer traffic is lower. These delivery drivers are not our employees, nor should a limited window of delivery constitute a joint employment finding.

We have similar arrangements with our fuel supplier. The presence of large tanker trucks on our lot, while obviously necessary at times, can be quite disruptive to the flow of traffic in and out of our properties. Therefore, we also keep regularly scheduled deliveries during certain times of day. Exactly like the in-store products example above, this arrangement should be exempted from a joint employer status examination.

{If you are part of a branding agreement please edit this paragraph to include specifics. If not under such an agreement, please remove}

*Our industry, including my business, has a branding agreement arrangement which is unique to most of retail. My stores are branded as {oil brand} but I am not a franchisee of that company, I have entered into a branding and fuel supply agreement with them in order to use a nationally recognizable logo to help draw customers and to have a consistent supplier of motor fuels. They do not control my stores or who I hire and/or fire etc. I have contractually agreed to a number of terms and conditions governing the presentation of their brand but none make me a joint employer of any of their employees nor they of mine. This type of branding agreement, wholly separate from any kind of franchise arrangement, should be expressly exempt in the determination of joint employer status.*

I also disagree with the Board’s determination of the regulatory burden this proposed rule would force on businesses like mine. The proposal claims that the regulatory burden would be minimal as it would only require a one time regulatory compliance check, this is simply not accurate. Every supplier or contract negotiation my business enters into will need additional scrutiny for its possible exposure to a joint employer finding. Those suppliers and contracts can change from time-to-time so the regulation will require me to regularly hire legal counsel to ensure that an arrangement does not inadvertently create a joint employer situation. Further, the vagueness of the proposed rule makes it a near certainty that at some point my business will be subject to such a claim and the costs associated with involvement in such a case are significant not minimal.

In conclusion, the Board should withdraw this current proposal as it is unworkable in real world operations of businesses like mine. The proposed rules are much too vague and unclear to be able to conduct a proper evaluation of our business practices with an eye towards a possible determination of joint employer status with contractual partners. I encourage the Board to instead reinstitute the rule the Board put into place in 2020 as that does provide the necessary clarity and specificity needed to properly evaluate its impact on my business.

 Sincerely,