

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Re: The Standard for Determining Joint-Employer Status

RIN 3142-AA13

AFL-CIO'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO FURTHER  
EXTEND COMMENT PERIOD

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) files this supplemental memorandum in support of its motion for a further 30-day extension of time for interested parties to file comments in response to the Board's September 14, 2018, Notice of Proposed Rule Making (NPRM) concerning "The Standard for Determining Joint Employer Status," 83 Fed. Reg. 46681 (Sept. 14, 2018). In further support of the motion the AFL-CIO states:

The AFL-CIO received a "partial response" to its Freedom of Information Act request after business hours on December 6, 2013 – seven days before comments are currently due. *See* Keeling to Becker, FOIA Case No. NLRB-2019-000007 (Dec. 6, 2018).

Without a complete response to the FOIA request, the AFL-CIO and other interested parties will be prejudiced in commenting on the proposed rules.

Moreover, the voluminous materials provided one week before the current due date cannot be analyzed in time to include the analysis in the comments under the current schedule. Five sets of documents were provided: one spread sheet containing 4,425 entries; a second spread sheet containing 2,236 entries; a third spread sheet that is 26 pages long and appears to contain 72 entries per page or over 1,800 entries; a 50-page document; a 49-page document; and a six-page document.

In addition, the information in the three spread sheets is meaningless without further detailed analysis because all three spread sheets simply contain the names, numbers, filing dates

and various other identifying information for individual cases. The spread sheets contain no substantive information about the cases. Therefore, without review of documents filed in those cases, we will be unable to analyze and explain their relevance and importance for the rulemaking process. That is an enormous undertaking that cannot be completed in a week and may not be possible even within the additional 30 days that have been requested.

Finally, the disclosures reveal for the first time that various employer organizations had extensive input into the formulation of the NPRM. The International Franchise Association, the Coalition for a Democratic Workplace, the Coalition to Save Local Business, the Associated Builders and Contractors, the American Hotel and Lodging Association, the Chamber of Commerce, the HR Policy Association, the Independent Electrical Contractors, the International Foodservice Distributors Association, the National Association of Manufacturers, the National Wholesaler-Distributors, the National Council of Chain Restaurants, the National Federation of Independent Business, the National Restaurant Association, the National Retail Federation, the Restaurant Law Center, and the Retail Industry Leaders Association filed a 29 page Rulemaking Petition in addition to shorter petitions filed by the International Franchise Association and the Restaurant Law Center. As far as we are aware, the filing of these petitions has never been disclosed. The existence of these petitions was not disclosed in the NPRM and the petitions are not in the rulemaking record. Nevertheless, the petitions appear to have had a substantial impact on the Board's formulation of the proposed rule. The AFL-CIO and other interested parties are entitled to a reasonable period of time to analyze and respond to the arguments that have already been considered by the Board in this process.

For the above-stated reasons as well as those stated in our original motion, the AFL-CIO requests that the Board extend the comment period for 30 days, up to and including January 14, 2019.

Respectfully submitted,

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