AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

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LEGISLATIVE**ALERT**

EXECUTIVE COUNCIL

RICHARD L. TRUMKA
PRESIDENT

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TEFERE GEBRE
EXECUTIVE VICE PRESIDENT

October 27, 2015

Dear Representative:

On behalf of the AFL-CIO, a federation of 56 national and international unions representing more than 12 million working men and women across the United States, I am writing to urge you to oppose H.R. 3459, the “Protecting Local Business Opportunity Act.”

H.R. 3459 overturns the National Labor Relations Board’s (NLRB) recent decision in Browning-Ferris Industries (August 27, 2015) and substitutes a confusing and restrictive test for finding two employers to be “joint employers” under the National Labor Relations Act. The legislation is misguided and will undermine the ability of workers to speak up together for higher wages and better working conditions.

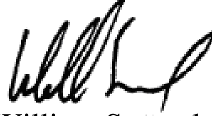
In Browning-Ferris¸ the NLRB decided that its previous decisions had taken an overly narrow view of the joint employer issue, resulting in situations where workers could not join together for improved employment conditions. Browning-Ferris contracted with a staffing agency—Leadpoint Business Solutions—to supply workers for its recycling operation. The company established the line speed, staffing levels, and shift times, and set a cap on pay. The NLRB found that, under these circumstances, Browning-Ferris was—with Leadpoint—a joint employer of workers supplied to Browning-Ferris by Leadpoint. The decision means that the Leadpoint workers at Browning-Ferris will have the opportunity to join together to demand better working conditions from the entity that holds the real economic power—Browning-Ferris.

As the employment relationship becomes more fractured and companies continue to contract with staffing agencies and other suppliers for personnel, it is essential that our workplace laws keep pace with these changes and ensure the protection of workers’ rights. The Browning-Ferris decision affirmed and strengthened the NLRB’s longstanding joint employer test by adjusting it to the realities of today’s workplaces. Congress should applaud the decision— not overturn it.

H.R. 3459 overturns the Browning Ferris decision and substitutes a requirement that two employers can only be considered joint employers if each employer “shares and exercises control over essential terms and conditions of employment and such control over these matters is actual, direct, and immediate.” In other words, Browning-Ferris could avoid being a joint employer with the staffing agency. It could deny Leadpoint workers the opportunity to demand better employment conditions by maintaining an on-site Leadpoint supervisor who would act as a buffer between Browning-Ferris and Leadpoint workers—even if Browning-Ferris continued to hold the economic power in the workplace. This legal maneuvering and manipulation to deny workers’ rights is exactly the type of practice we should try to avoid. But H.R. 3459 would encourage and incentivize the practice, weakening the power of working people at the time they need it the most.

The NLRB's recent decision in Browning-Ferris Industries accurately took a broader view of joint employer relationships—substituting a test that the "Protecting Local Business Opportunity Act" would overturn. For this reason, I urge you to oppose H.R. 3459.

Sincerely,



William Samuel, Director
Government Affairs Department

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