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September 16, 2014

The Honorable Richard Griffin
General Counsel
National Labor Relations Board
1099 14th Street, NW
Washington, D.C. 20570

Dear General Counsel Griffin:

Your office recently filed an amicus brief indicating the National Labor Relations Board (NLRB) should adopt a broader standard to determine joint-employer status under the *National Labor Relations Act* (NLRA). A month later, your office authorized complaints against McDonald's, USA, LLC and McDonald's franchisees as joint-employers. To better understand these recent actions, we write to request documents and information regarding the joint-employer test under the NLRA.

Since 1984, to determine whether two separate entities should be considered joint-employers, the NLRB analyzes whether alleged joint employers share the ability to control or co-determine essential terms and conditions of employment.¹ Essential terms and conditions of employment include hiring, firing, discipline, supervision, and direction of employees. The joint-employers' control over these employment matters must be direct and immediate.²

On May 12, 2014, the NLRB issued a notice and invitation to file briefs in *Browning-Ferris Industries* as to what standard the NLRB should apply to determine joint-employer status under the NLRA.³ On June 26, 2014, your office filed an amicus brief in this case encouraging the NLRB to adopt a new, significantly broader joint-employer test.⁴ According to your brief, the NLRB should find joint-employer status "where 'industrial realities' make an entity essential for

¹ *TLL, Inc.*, 271 NLRB 798 (1984).

² *Id.*

³ 32-RC-109684

⁴ Amicus Brief of the General Counsel *Browning-Ferris Industries*, 16-23, 32-RC-109684.

meaningful bargaining.”⁵ Such a test would find joint employment where an employer has “indirect control over certain terms and conditions of employment.”⁶


On July 29, 2014, your office authorized 43 complaints against McDonald’s, USA, LLC and McDonald’s franchisees as joint-employers, alleging they “violated the rights of employees as a result of activities surrounding employee protests.”⁷ It is our understanding such complaints are unprecedented.

To help inform the committee regarding the joint-employer test under the NLRA, please provide the following by September 30, 2014:


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.

If you have any questions regarding this request, please contact Marvin Kaplan, House Committee on Education and the Workforce, at (202) 225-7101.

Respectfully submitted,



JOHN KLINE
Chairman
Committee on Education and the Workforce



PHIL ROE, M.D.
Chairman
Subcommittee on Health, Employment,
Labor, and Pensions

⁵ *Id.*

⁶ *Id.*

⁷ NLRB Office of the General Counsel Authorizes Complaints Against McDonald’s Franchisees and Determines McDonald’s, USA, LLC is a Joint Employer, National Labor Relations Board (July 29, 2014) (available at <http://www.nlr.gov/news-outreach/news-story/nlrb-office-general-counsel-authorizes-complaints-against-mcdonalds>).