

Who Really Benefits From NLRB, DOL Actions?

By Anthony K. Smith

Can anyone remember a worse time in our state's history to start or maintain a business?

Small businesses, which generate most of the new jobs and employ half of the state's private workforce, have been getting kicked around a lot lately. But these blows were not delivered by uncontrollable world or economic forces alone. Many of the challenges facing businesses today have been exacerbated by new rules and regulations, some by way of legislation, others handed down by government administrators.

Here in Oregon, we've recently seen the state muscle its way into the management of retirement plans for private-enterprise, adopt new laws for mandatory paid sick leave, and prohibit employers from asking about the criminal backgrounds of job-applicants until the final stages of the interviewing process. But wait, there's more!

Political gridlock in Washington, D.C. has prompted unelected bureaucrats at the National Labor Relations Board and the U.S. Department of Labor to take action by way of administrative rule-making.

The former has come up with a new joint-employer rule completely upending three decades of relationships businesses have had with their subcontractors by making those businesses responsible for the subcontractors' employees. The biggest whack will be felt by franchisees.

"There are tens of thousands of brand-name businesses, like fast food restaurants, that are actually small businesses," said attorney Beth Milito of the National Federation of Independent Business. "They are owned and operated independently of the big corporations. If those corporations are suddenly responsible for the franchise employees, they'll be forced to exert more control over the franchisees or eliminate the franchise model entirely and take direct control over the locations."

By the way, you didn't think the NLRB's rule change had anything to do with philosophical differences in employee-employer relationships, did you? It stemmed from the Leadpoint Business Services, Browning-Ferris Industries of California case. "The board decided that Browning-Ferris exerted enough control over Leadpoint's workers to qualify as a 'joint-employer,' opening the door for a union seeking to represent Leadpoint's employees to also negotiate with Browning-Ferris," reported the New York Times.

Ah, ha! The culprit is exposed. It just so happens that labor unions have a much harder time unionizing workers at franchises, or when workers opt to be independent contractors, meaning self-employed, a.k.a. small-business owners themselves.

The Department of Labor has proved a worthy tag-team partner for the business-bashing NLRB. It has cooked up a proposed rule change increasing the number of employees eligible for time-and-a-half overtime pay, boosting the threshold for exempt employees from \$23,660 to \$50,440 per year.

Milito's NFIB colleague, Amanda Austin, vice president of public policy, tells of the real-world consequence. "The proposed rule is divorced from reality. DOL managed to both greatly overestimate the increased pay that would result from the rule and underestimate how much businesses would need to spend to comply. Small-businesses owners can't print money to raise wages. The steps they will take

to comply will hurt the very workers the administration claims they want to help.” Austin warned that small businesses will demote managers back to hourly employees and enforce no-overtime policies to keep payroll in line with revenue.

Again, there appears to be an angle for the labor unions here. If DOL is successful demoting thousands of managers back to hourly employees, the pool of potential private-enterprise union members increases overnight.

As we analyze these issues we should always ask ourselves whether or not the proposed policies are actually helping small businesses and working families achieve their respective goals, regardless of the intentions of the rule-makers, which may or may not be well-intended.

It’s difficult to see how we achieve a net positive from administrative policies that prevent workers from taking the next step toward a managerial promotion, self-employment or franchise ownership. Even if the unions successfully enroll every single worker on their new lists, we can predict exactly how many new jobs and new opportunities will be created for people looking to advance their careers.

You guessed it, zero.

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Anthony K. Smith is Oregon state director for the National Federation of Independent Business.