COALITION FOR A
DEMOCRATIC WORKPLACE

June 22, 2015

Dear Chairman Blunt and Ranking Member Murray:

On behalf of the millions of American businesses concerned with the rights of their employees, the fragile economy, and the need for balance in federal regulation, the Coalition for a Democratic Workplace (CDW) writes to express our support for several important provisions in the FY 2016 Labor, Health and Human Services, Education and Related Agencies Appropriations Bill.

CDW is a broad-based coalition of over 600 organizations united in opposition to the tenets of the so-called "Employee Free Choice Act" (EFCA) and alternatives that pose a similar threat to workers, businesses, and the American economy. In recent years, the National Labor Relations Board (NLRB or Board) and the Department of Labor (DOL) have attempted to enact many EFCA-like policies through administrative rulings and regulations. In response, much of CDW's focus has been directed toward the NLRB.

The first provision stops the NLRB from invalidating the existing joint employer standard. As such, the NLRB recently issued an invitation to the public to file amicus briefs in the Browning Ferris Industries case on whether the Board should revisit its 30-year-old joint employer standards. The unprecedented changes the Board is considering would redefine who qualifies as a "joint employer" under the NLRA, potentially imposing unnecessary barriers to and burdens on the employer and subcontractor relationship throughout the business community. Employers may find themselves vulnerable to increased liability— making them less likely to hire subcontractors, most of which are small businesses. If the Board overturns the current standard, it would change decades of recognized law while damaging the relations between a brand company and local franchise business owners.

The second provision would effectively address the NLRB's final rule establishing "ambush" elections (*Representation-Case Procedures*, 79 *Fed. Reg.* 74307). The "ambush" rule drastically changes the process for union representation elections and severely limits worker access to information needed to make an informed decision about whether or not to vote in favor of a union. This provision would prevent the Board's implementation of the ambush elections rulemaking, and allow employers to communicate with their employees prior to a representation election, while providing employees with an opportunity to receive balanced information with which to make their decision. It would also prohibit the use of funds to implement any regulations or decisions of the NLRB expanding or otherwise modifying an employer's legal obligation to provide a union with a list of names and home addresses of employees eligible to vote in a union representation election. Required disclosure of personal email addresses and phone numbers is an unprecedented, improper intrusion on employee privacy rights.

The third provision would address the Board's August 2011 decision in *Specialty Healthcare and Rehabilitation Center of Mobile and United Steelworkers, District 9, 357 NLRB No. 83 (2011)*., which has opened the door to proliferation of micro-unions within a workplace. In *Specialty Healthcare,* the NLRB radically changed the standard for determining an appropriate bargaining unit for all of the estimated six million workplaces covered by the NLRA. Unions can now gerrymander representation

elections and organize bargaining units that purposely exclude similarly-situated employees who oppose unionization, leaving them effectively disenfranchised while greatly benefitting organizing drives. Prior to the *Specialty Healthcare* decision, bargaining units had to include employees with a shared "community of interest." Less inclusive units were permissible only where the Board found a group of employees had interests that were "sufficiently distinct from those of other employees to warrant the establishment of a separate unit." The pre-*Specialty Healthcare* standard prevented gerrymandering and swarms of "fractured units" from overwhelming a business.

Now, under the *Specialty Healthcare* ruling, businesses face the possibility of having to manage multiple bargaining units of similarly situated employees with increased chances of work stoppages, as well as potentially different pay scales, benefits, work rules and bargaining schedules. As a result of workplace "silos" that multiple bargaining units create, employees will have much less flexibility to cross-train and gain new skills outside their own unit, and employers could find themselves unable to meet customer and client demands through lean, flexible staffing. Not surprisingly, employees could experience reduced job opportunities, as promotions and transfers will be hindered by organizational unit barriers.

The last provision would prohibit funds from being used to implement the DOL's controversial "persuader" rulemaking (Labor-Management Reporting and Disclosure Act; Interpretation of the "Advice" Exemption, 76 Fed. Reg. 36178). In June 2011, DOL proposed radical changes to the regulations interpreting Section 203 of the Labor-Management Reporting and Disclosure Act (LMRDA), which contains federal reporting and disclosure requirements regarding individuals and entities hired by employers "to persuade employees to exercise or not exercise or persuade employees as to the manner of exercising, the right to organize...." DOL stated in its most recent regulatory agenda that it plans to release the final "persuader" rule this coming December.

Employers and "persuaders" are obligated to file public reports with DOL, disclosing finances and other information if they engage in covered activity. Since LMRDA was enacted, however, attorneys, trade associations and other third party advisors and their clients (employers) have been exempt from these reporting requirements when they discuss union organizing with an employer as long as they do not directly interact with employees. DOL's proposed rule would eliminate this "advice" exemption, and in doing so trample on rights to confidential legal advice. Furthermore, employers will likely be required to start filing persuader reports if they seek assistance on general workplace policies. Advisors could become persuaders merely by hosting conferences or meetings with a focus on labor relations. These changes are alarming, particularly considering criminal penalties could be imposed for non-compliance.

Each of these provisions would help address the drastic labor law changes put forth by the NLRB and DOL. If left unchecked, the actions of these agencies will fuel economic uncertainty and have serious negative ramifications for millions of employers, U.S. workers they have hired or would like to hire, and consumers.

Sincerely,

Geoffrey Burr
Chair, the Coalition for a Democratic Workplace