

Browning-Ferris “All In” On Joint Employer Battle With NLRB

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Browning-Ferris (“BFI”) appears to have moved all of its chips into the middle of the table and is “all in” in poker parlance in its battle with the NLRB over the Board’s new approach to “joint employer” liability. [As we have discussed on this blog](#), a Teamster organizing campaign brought against BFI and Leadpoint, the temporary staffing company that supplies BFI with employees for its recycling facility in Milpitas, California, gave the NLRB the opportunity to expand its definition and application of the joint employer theory. The Teamsters petitioned the Board for an election for a unit that would include both companies as employers and signatories to a collective bargaining agreement. BFI and Leadpoint both objected to the proposed bargaining unit – BFI contending that the temps were not its employees. The Board determined that BFI was a joint employer with Leadpoint.

Following that decision, the Board tallied the ballots from the previously held election and the Teamsters won by 73 to 17. Upon certification of that election, the Board directed both BFI and Leadpoint to begin negotiations with the Teamsters. BFI refused to bargain with the Union because the workers were not their employees. An unfair labor practice charge was filed against BFI for its refusal to bargain and, this week, the Board concluded that BFI had committed an unfair labor practice. BFI’s strategy and the entry of the order certainly signals BFI’s intention to put the NLRB’s new joint employer theory to the test of appellate scrutiny. In crafting this new test, the pro-union board majority overturned a prior legal standard under which two separate business entities could only be joint employers if both actually exercised direct immediate control over the employment of the same workers. The Board dramatically weakened that standard to find joint employer status even where there is only indirect control over the temporary employees or if the target company had simply reserved some right to control those employees.

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