

Statement on:

**To: U.S. House Committee on Education and the Workforce,
Subcommittee on Health, Employment, Labor and
Pensions**

**By: Ed Braddy, BURGER KING®
Franchisee, Baltimore, MD**

Date: September 29, 2015

Chairman Roe, Ranking Member Polis and members of this Subcommittee, thank you for the opportunity to submit my testimony today. My name is Ed Braddy and I am a BURGER KING® franchisee, owning 1 restaurant in Baltimore, Maryland. I would like to note that I am a small business owner; speaking on behalf of myself and my association, the National Franchisee Association, which represents BURGER KING® franchisees. NFA is a member of the Council to Save Local Businesses, which works to protect small business owners from harmful regulations. My statements may not reflect those of Burger King Corporation or other franchisees within the BURGER KING System.

Growing up in inner city Baltimore, my life was similar to that of many of my current employees. I was the youngest of 3 children and struggled to stay off the streets. I dropped out of high school in 11th grade, and then returned the next year when I saw my life heading in the wrong direction. After graduation, I joined the Baltimore City Police Department and worked there for four years before beginning my career in the food service industry.

In 1978, I began working at a local BURGER KING® restaurant; I worked there as a crew leader, assistant manager, restaurant manager, district manager and eventually the Director of Operations for 15 BURGER KING locations in the Baltimore city area. In 1988, I purchased my first BURGER KING® restaurant, but had to close it 5 years later due to low sales volume. After managing several Pizza Hut restaurants and starting a payphone company, I decided to rejoin the BURGER KING system in 2001 by becoming part-owner of n BURGER KING® restaurants throughout the city. In 2009, the partnership was disbanded and I used my equity to purchase the most challenging restaurant of the group yet also the one which would provide me the ideal opportunity to impact the community.

Today, I run that BURGER KING with the help of my 27 employees. All the men whom I employ have had a run in with the criminal justice system - I intentionally hired them to give them an opportunity at a better life. There are 10 single mothers who work for me. All work part-time and are on some form of government assistance program. I also have 4 high school students who work at the restaurant after school and weekends in order to

help their families, earn money for themselves and receive valuable training and experience. Everyone on my five-member management staff started as a regular crew member. As an employer in a lower-income neighborhood, I often lend money to my employees before payday so that they can afford food at home and transportation to get to and from work.

As a one-store operator, I receive over 25 applications for employment a day. I often employ applicants provided by America Works, the Jobs, Housing and Recovery program of Baltimore, Women in Transition and other recovery and development programs to provide jobs to those in need. I also started a program with 3 local churches wherein I donate to the church 15% of the proceeds for food purchased at my restaurant by their members to help fund food programs for the needy.

My Burger King restaurant has become a staple of the community. It is located 2 blocks from the epicenter of the Baltimore unrest that occurred several months ago. During that terrible time, many local neighbors stood outside of my restaurant throughout the night to protect it from being destroyed. With their help, and because of my ties with the people in the community, my BURGER KING was one of the only restaurants open in that community for business the next day.

I am here today to talk to you about how the joint employer standard, as proposed by the National Labor Relations Board (NLRB), would harm my restaurant and the thousands of communities held together by small business owners like me. I urge you to support H.R. 3459, the Protecting Local Business Opportunity Act, which restores the joint employer standard to its original definition.

The Franchise Model

Those with experience in the industry or with knowledge of the franchise model understand that most franchisees and franchisors are not joint employers. As a franchisee, I am required to carry certain trademarks and other identifiers consistent with the BURGER KING® brand. This means that I must make my WHOPPER® Sandwiches the same way as my fellow franchisees and design my restaurant according to certain requirements. However, I signed my franchise agreement specifically identifying myself as an independent owner and operator of my BURGER KING® restaurant. That means that I am my own boss. I am in complete control of the hiring, firing, scheduling, and duty assignments of my employees among many, many other responsibilities.

As I understand it, the NLRB would like to use a broader, subjective standard in determining whether franchisors and franchisees should be considered “joint employers” for labor claims. In fact, the recent NLRB ruling in *Browning-Ferris Industries of California, Inc.*, would allow those who indirectly affect my business- such as my landscapers and waste disposal company- to become my joint employer. In addition to

¹ *BFI Newby Island Recyclery*, 362 NLRB No. 186 (2015).

overturning over 30 years of legal precedent, this decision will have disastrous consequences on not only the franchise model, but on all businesses across the country. H.R. 3459, the Protecting Local Business Opportunity Act, restores the original definition of a joint employer to require *actual, direct and immediate control* over the *essential* terms and conditions of employment.

Effect on Franchisors and Franchisees

Among other devastating consequences, the new joint employer standard will destroy smaller restaurant operators like me. By expanding liability, I believe franchisors will be forced to protect themselves in one of three ways. Whichever the result, the NLRB ruling will destroy the franchise model and franchisee small business owners along with it.

The first option franchisors may take is to repurchase the franchise upon expiration of the franchisee's agreement. This will allow the corporation to fully consolidate and control all labor practices. As a result, franchisees and the relationships they have with their neighbors and communities will be destroyed. In a brand that is almost 100% franchised, thousands of BURGER KING® owners and operators will be forced to sell their business and leave their employees uncertain of their futures.

Franchisors may also choose to consolidate operations by selecting larger operators (with more resources and often internal human resource staff) to buy out other franchisees. As a result, only those who can financially afford to purchase hundreds of restaurants will remain in business. For a one-store operator like me, my contract will not be renewed; I will either close my restaurant or be forced to sell it to a more sophisticated buyer who may not live in the area and be involved in day-to-day business decisions like me.

The third option is to keep the current franchise model in place. Under the new standard, however, franchisors, inundated with lawsuits, will be forced to implement extreme oversight policies in local franchises across the country. In order to protect themselves, franchisors will implement detailed franchisee and employee policies and I will be no more than a glorified manager in my own restaurant.

I became a franchisee so that I could run my own business and help those in my community. The new joint employer standard will not only destroy that dream, but the dreams of other young men and women who hope to create a better future for themselves.

Small Businesses Will Pay

In the franchise model, and despite well-known names and trademarks, it is the local franchisee who is most impacted by government mandates and new legal interpretations like those set forth in the new joint employer standard.

Like most franchisees, I sign an agreement which includes a clause indemnifying Burger King Corporation (“BKC”) against most business-related legal claims. Specifically, the clause indemnifies BKC against

Claims, demands, losses, obligations, costs, expenses, liabilities, debts or damages, (including but not limited to reasonable attorney’s fees) unless resulting from the negligence of BKC. BKC’s right to indemnity under this Agreement shall arise and be valid notwithstanding that joint or concurrent liability may be imposed on BKC by statute, ordinance, regulation or other law.....[t]his indemnity obligation shall include, but not be limited to, claims related to the employment of Franchisee’s employees.

A new joint employer standard will result in an increase in lawsuits by those seeking “deep pockets.” Unknown to most plaintiffs, however, and because of the indemnification clause I signed, all legal and financial obligations related to those claims will fall on my shoulders. Additionally, my costs for employer liability coverage will likely skyrocket. As a one-store operator, the time and cost required to protect myself from and defend claims will take time away from running my business, drain my resources and will very likely cause me to go out of business.

Conclusion

For these reasons, I ask that you support H.R. 3459, the Protecting Local Business Opportunity Act. I am concerned that those who created this new standard believe it will help the “little guy” and put more mandates on large corporations. As a one-store operator in an inner-city neighborhood, I can tell you that nothing is further from the truth. The new joint employer standard will hurt me, my employees and the neighborhood I support. Please restore the definition to require actual, direct, immediate control over the essential terms of employment.

I am often the banker, preacher and even father-figure for my employees. I would hate to tell them that I am being forced out by the rulings handed down by the NLRB. Worse, I’d hate to close my doors and let go of those for whom my employment is their only source of pride, hope and independence.

I thank you for your time and consideration of this very important issue.

i BURGER KING® Franchise Agreement (Entity) Exhibit D (04/2014, as amended 10/2014) BK#2008.