



441 G St. N.W.
Washington, DC 20548

B-331913

March 11, 2020

The Honorable Lamar Alexander
Chairman
The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Robert C. "Bobby" Scott
Chairman
The Honorable Virginia Foxx
Ranking Member
Committee on Education and Labor
House of Representatives

Subject: *National Labor Relations Board: Joint Employer Status Under the National Labor Relations Act*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the National Labor Relations Board (NLRB) entitled "Joint Employer Status Under the National Labor Relations Act" (RIN: 3142-AA13). We received the rule on February 26, 2020. It was published in the *Federal Register* as a final rule on February 26, 2020. 85 Fed. Reg. 11184. The stated effective date of the rule is April 27, 2020.

NLRB issued this final rule for the purpose of carrying out the provisions of the National Labor Relations Act (NLRA) by establishing the standard for determining whether two employers, as defined in section 2(2) of the Act, are a joint employer under NLRA. 29 U.S.C. §§ 151-169. According to NLRB, this rulemaking will foster predictability and consistency regarding determinations of joint-employer status in a variety of business relationships, thereby enhancing labor-management stability, the promotion of which is one of the principal purposes of the Act. Under this final rule, an entity may be considered a joint employer of a separate employer's employees only if the two share or codetermine the employees' essential terms and conditions of employment, which are exclusively defined as wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction. More specifically, according to NLRB, to be deemed a joint employer under this final rule, an entity must possess and actually exercise substantial direct and immediate control over essential terms and conditions of employment of another employer's employees.

Enclosed is our assessment of NLRB's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Roxanne L. Rothschild
Executive Secretary
National Labor Relations Board

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
NATIONAL LABOR RELATIONS BOARD
ENTITLED
“JOINT EMPLOYER STATUS UNDER THE
NATIONAL LABOR RELATIONS ACT”
(RIN: 3142-AA13)

(i) Cost-benefit analysis

In its submission to us, the National Labor Relations Board (NLRB) indicated that it did not prepare an analysis of the costs and benefits of this final rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

NLRB prepared a Final Regulatory Flexibility Analysis for this final rule which included (1) a statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by public comments in response to the Initial Regulatory Flexibility Analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made as a result of such comments; and (3) a description and estimate of number of small entities to which the rule applies.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, NLRB is not subject to title II of the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq*

On September 14, 2018, NLRB published a proposed rule. 83 Fed. Reg. 46696. NLRB received almost 29,000 comments from interested organizations, labor unions, business owners, Members of Congress, state attorneys general, academics, and other individuals. NLRB responded to comments in this final rule. NLRB set an initial comment period of 60 days, with 7 additional days allotted for reply comments. Thereafter, the agency extended these deadlines three times, including an extension to allow interested parties to comment on the impact of the D.C. Circuit's decision in *Browning-Ferris v. NLRB*. The agency stated that it reviewed and considered the comments, and discussed them in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

NLRB determined that this final rule contains no information collection requirements under the Act.

Statutory authorization for the rule

NLRB promulgated this final rule pursuant to section 156 of title 29, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, NLRB is not subject to the Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, NLRB is not subject to the Order.