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Testimony for House Commerce & Economic Development  
Committee

4/7/2016

My name is Ben Johnson. I'm the president of the Vermont AFL-CIO. That is an umbrella group that most of the unions in the state except Vermont NEA and VSEA belong to. We represent about 8,000 workers in over 80 local unions. These range from stagehands at the Flynn to librarians at Vermont Tech, my home union.

I want to thank the committee for taking the time to hear our concerns about how changes to Vermont's labor laws can affect workers' lives.

I want to do two things. First I want to try to give a little context for why you're seeing some of the reactions that you're seeing from the labor side. And then I want to talk about what I think could be a fruitful area for the committee to consider.

The fact that this is such a contentious issue I take as evidence that both sides are doing their jobs vigorously. It is not new for labor and management to have opposing views. In fact it is in their nature to have different perspectives on the same reality. With one eye management sees the opportunities in the future. With the other eye labor looks to the lessons of the past.

So one side sees that we mustn't let laws that were developed to cope with 20th century problems hobble our ability to adapt to the future. And the other side sees that we spent much of the 20th century finding ways to protect workers against extreme abuses that were a result of a “new economy”. Labor doesn't want to look up in the year 2030 and find that it's all too similar to 1930.

Now I want to give a little context for why I think you're seeing such strong and united opposition from the labor side. We have two major reasons for our concern.

First, we have a vantage point not available to many. If contract language and employment law are seen as a spear, we live all the way at the tip of the pointy end of the spear, where these words on paper are transformed into effects on real people.

The vast majority of working people can go their entire working lives and never understand just why personnel files need a log sheet (we often find that when conflict arises strange new documentation shows up in the file, outlining a fictitious history of bad behavior), or for example, why teacher's annual contracts are often required to be hand delivered (without that assurance, notification can happen in an extremely slipshod and conspiracy-theory prone way, for example was it an accident that a teacher's contract was put in the wrong inter-office mail box?).

I want to stress a point here that I think is vital to understanding how we look at language in the employment context.

There are two stages in the life of language of this sort in the employment setting. The first comes when at the bargaining table or in the legislative process when the parties agree, sometimes happily, sometimes bitterly, on language they both intend to solve a specific set of circumstances. The language then goes into effect and enters its second stage, when we all see how it actually works in practice.

Over time we develop an instinct that imagines how contract language might be applied by an ornery employer. Looking over the test for independent contractor status as it is in the bill now, I can see immediately that much of it is susceptible to implementation that I'm sure would depart very dramatically from the committee's intentions.

I can think of some examples (grievance process, successor language, librarians) where sharp readings or loose language created realities not at all obvious from a plain reading of the words. The intentions of the parties are often above reproach.

When a dispute arises, we look to the contract language first not for what the individuals at the bargaining table had in mind, but what the language they mutually agreed to allows. The responsibility of the parties is to follow what the language allows. Thus, our goal here is to ensure that by allowing some workers to participate more freely in the "new economy," we are not allowing employers to force other workers into independent contractor status, and removing their important employee protections.

The second thing I want to do is draw the committee's attention to an area where the U.S. Department of Labor have offered in-depth guidance to states and employers trying to answer these questions.

The fundamental element of the employer-employee relationship is that the employee is economically dependent on the employer.

The relationship is fundamentally one of economic power.

So it is that relationship between the hiring entity and the hired person that we must test. Is the relationship fundamentally one where the working person is economically dependent upon the hiring entity or is it really a separate business enterprise?

In fact, the test the Department of Labor use is called the “Economic Realities Test”, reminding us that the point is to discover whether there is an employment relationship. We believe that test could form the basis of a strong new approach, and I urge the committee to look in that direction for a foundation to build on.

If we accept the premise that a new economy is creating new kinds of gig-based work, that work is going to appeal first to the privileged professional class. The workers who want flexibility and choice of where and when to work will also have resources to find the work and promote themselves for it.

However, the vast majority of Vermonters are still going to have regular jobs. They will still depend on their jobs for stability and security.

In fact, many of us have no idea how many of the workplace rights we take for granted in fact flow from their very classification as employees: workplace discrimination; whistleblower protections; the minimum wage; discrimination on the basis of race, color, religion, sex, or national origin; rights under the ADA and FMLA, and the mandatory paid sick days that became law earlier this year.

We are asking you to make sure that any new law does not hollow out the protections for the entire working class to make it easier for the minority of those who want to hang out their own shingle.

That is a false choice. Whatever the 21st century economy looks like, it will be of our making. Let's make it right. Thank you for your time.