



governmentattic.org

"Rummaging in the government's attic"

Description of document:	Emails in the account of the National Labor Relations Board (NLRB) Chairman containing the word Ethics, July 1 - September 25, 2020
Requested date:	25-September-2020
Release date:	26-October-2020
Posted date:	09-November-2020
Source of document:	FOIA Officer NLRB FOIA Branch 1015 Half Street SE 4th Floor Washington, DC 20570 Fax: (202) 273-FOIA (3642)

The governmentattic.org web site ("the site") is a First Amendment free speech web site and is noncommercial and free to the public. The site and materials made available on the site, such as this file, are for reference only. The governmentattic.org web site and its principals have made every effort to make this information as complete and as accurate as possible, however, there may be mistakes and omissions, both typographical and in content. The governmentattic.org web site and its principals shall have neither liability nor responsibility to any person or entity with respect to any loss or damage caused, or alleged to have been caused, directly or indirectly, by the information provided on the governmentattic.org web site or in this file. The public records published on the site were obtained from government agencies using proper legal channels. Each document is identified as to the source. Any concerns about the contents of the site should be directed to the agency originating the document in question. GovernmentAttic.org is not responsible for the contents of documents published on the website.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FREEDOM OF INFORMATION ACT BRANCH
Washington, D.C. 20570

Via email

October 28, 2020

Re: FOIA Case No. NLRB-2020-001320

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received in this Office on September 25, 2020, seeking “a copy of emails in the email account of the NLRB Chairman during the time period July 1, 2020 to the present that contains the word ETHICS” including “TO, FROM and CC: emails.” You assumed processing fees up to \$42.00.

We acknowledged your request on September 25, 2020. On October 2, 2020, in a telephone conversation with the FOIA attorney assigned to process your request, you excluded (1) labor-related news articles routinely sent to Agency employees by the Agency’s librarian; (2) automatic out-of-office emails referencing “ethics” on the subject line; (3) emails containing an accepted meeting regarding ethics on the subject line; and (4) attachments to responsive emails that contain no reference to the subject of ethics. You also excluded all other emails deemed by the FOIA attorney to be non-responsive to your request.

Pursuant to the FOIA, a reasonable search of Chairman John Ring’s email account for the period July 1, 2020 to September 25, 2020, the date your request was received, was conducted, using the Office 365 eDiscovery tool and searching for emails containing the word “ethics.” This search yielded 84 pages of responsive, releasable records, which are attached.

After a review, I have determined that portions of the attached records are exempt from disclosure under FOIA Exemption 5, 5 U.S.C. § 552(b)(5). These records are being provided to you either in their entirety or partially redacted to the extent they were found to be reasonably segregable from the exempt portions of the responsive records. Specifically, redactions have been made pursuant to Exemption 5, which protects advice, recommendations and opinions that are part of the Agency’s deliberative a decision-making process.

Other responsive records are being withheld in their entirety pursuant to FOIA Exemptions 5 and 7(A) (5 U.S.C. § 552 (b)(5) and (b)(7)(A)).

The records identified in the search as responsive but being withheld in their entirety, include the attachments to the responsive emails such as guidance memoranda to Board members from the Agency's Designated Acting Ethics Officer (DAEO) concerning ethics and recusal issues in pending cases, and draft documents and emails between and among Board members and staff counsel, the Agency's Solicitor, and the Director of the Office of Congressional and Public Affairs addressing Congressional requests and a subpoena of certain Agency records. I have determined that these records are exempt from disclosure under FOIA Exemption 5.

Exemption 5 allows agencies to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency," and covers records that would "normally be privileged in the civil discovery context." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). The deliberative process, attorney work-product, and attorney client privileges are incorporated into Exemption 5.

The deliberative process privilege protects the internal decision-making processes of government agencies in order to safeguard the quality of agency decisions. *Competitive Enter. Inst. v. OSTP*, 161 F. Supp.3d 120, 128 (D.D.C. 2016). The basis for this privilege is to protect and encourage the creative debate and candid discussion of alternatives. *Jordan v. U.S. Dept. of Justice*, 591 F.2d 753, 772 (D.C. Cir. 1978). Two fundamental requirements must be satisfied before an agency may properly withhold a record pursuant to the deliberative process privilege. First, the record must be predecisional, *i.e.*, prepared in order to assist an agency decision-maker in arriving at the decision. *Renegotiation Bd. v. Grumman Aircraft Eng'g Corp.*, 421 U.S. 168, 184 (1975); *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 151 (D.C. Cir. 2006). Second, the record must be deliberative, *i.e.*, "it must form a part of the agency's deliberative process in that it makes recommendations or expresses opinions on legal or policy matters." *Judicial Watch, Inc. v. FDA*, 449 F.3d at 151 (quoting *Coastal States Gas Corp. v. U.S. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980)). To satisfy these requirements, the agency need not "identify a specific decision in connection with which a memorandum is prepared. Agencies are . . . engaged in a continuing process of examining their policies; this process will generate memoranda containing recommendations which do not ripen into agency decisions; and the lower courts should be wary of interfering with this process." *Sears, Roebuck & Co.*, 421 U.S. at 151 n.18 (1975). The protected status of a predecisional record is not altered by the subsequent issuance of a decision, *see, e.g.*, *Fed. Open Mkt. Comm. v. Merrill*, 443 U.S. 340, 360 (1979); *Elec. Privacy Info. Ctr. v. DHS*, 384 F. Supp. 2d 100, 112-13 (D.D.C. 2005), by the agency opting not to make a

decision, see *Judicial Watch, Inc. v. Clinton*, 880 F. Supp. 1, 13 (D.D.C. 1995), *aff'd*, 76 F.3d 1232 (D.C. Cir. 1996) (citing *Russell v. U.S. Dep't of the Air Force*, 682 F.2d 1045 (D.C. Cir. 1982)).

The attorney work-product privilege protects records and other memoranda that reveal an attorney's mental impressions and legal theories that were prepared by an attorney, or a non-attorney supervised by an attorney, in contemplation of litigation. See *United States v. Nobles*, 422 U.S. 225, 239 n.13 (1975); *Hickman v. Taylor*, 329 U.S. 495, 509-10 (1947). Additionally, the protection provided by Exemption 5 for attorney work-product records is not subject to defeat even if a requester could show a substantial need for the information and undue hardship in obtaining it from another source. See *FTC v. Grolier, Inc.*, 462 U.S. 19, 28 (1983). Further, protection against the disclosure of work product records extends even after litigation is terminated. *Id.* The privilege extends to records prepared in anticipation of both pending litigation and foreseeable litigation and even when no specific claim is contemplated at the time the attorney prepared the material. *Schiller v. NLRB*, 964 F.2d 1205, 1208 (D.C. Cir. 1992). Furthermore, the privilege protects any part of a record prepared in anticipation of litigation, not just the portions concerning opinions and legal theories, see *Judicial Watch v. U.S. Dep't of Justice*, 432 F.3d 366, 371 (D.C. Cir. 2005), and is intended to protect an attorney's opinions, thoughts, impressions, interpretations, analyses, and strategies. *Id.*; see also *Wolfson v. United States*, 672 F.Supp.2d 20, 29 (D.D.C. 2009). See *Judicial Watch*, 432 F.3d at 371 (finding that an agency need not segregate and disclose non-exempt material if a record is fully protected as work product).

The attorney-client privilege protects confidential communications from clients to their attorneys made for the purpose of securing legal advice, services, or assistance in some legal proceeding. See *Nat'l Sec. Counselors v. C.I.A.*, 960 F. Supp.2d 101, 193 (D.D.C. 2013) (citing *In re Grand Jury*, 475 F.3d 1299, 1304 (D.C. Cir. 2007)). In the context of FOIA, "the agency is the 'client' and the agency's lawyers are the 'attorneys' for the purposes of attorney-client privilege." *Judicial Watch v. Dep't of Treasury*, 802 F.Supp.2d 185, 200 (D.D.C. 2001) (citation omitted). Attorney-client privilege "exists to protect 'open and frank communication' between counsel and client." See *Harrison v. BOP*, 681 F. Supp.2d 76, 82 (D.D.C. 2010); see also *Mead Data Cent. Inc. v. U.S. Dep't of the Air Force*, 586 F.2d 242, 252 (D.D.C. 1977). The privilege is not limited to communications made in the context of litigation, but it extends to all situations in which an attorney's counsel is sought on a legal matter. *Coastal States Gas Corp. v. U.S. Dep't of Energy*, 617 F.2d 854, 862 (D.C. Cir. 1980). Moreover, the attorney-client privilege covers attorney-client communications when the specifics of the communications are confidential, even though the underlying subject matter is known to third parties. *Upjohn Co. v. United States*, 449 U.S. 383, 395-396 (1981); see also *United States v. Cunningham*, 672 F.2d 1064, 1073 n.8 (2d Cir. 1982) ("[W]e do not suggest that an attorney-client privilege is

lost by the mere fact that the information communicated is otherwise available to the public. The privilege attaches not to the information but to the communication of the information.”).

Here, the withheld records meet the requirements of Exemption 5’s deliberative process, attorney work-product, and the attorney client privileges. The records contain predecisional discussions regarding guidance from the DAEO and her legal staff to Board members concerning their compliance with ethics and recusal standards in participating in case adjudication, and draft documents and emails between the Solicitor and the Board addressing legal issues raised in Congressional requests and a subpoena for various Board records. Because these records analyze various legal theories and policies, they reflect the deliberative and consultative process of the Agency that Exemption 5 protects from forced disclosure. *Sears, Roebuck and Co.*, 421 U.S. at 150-52. In addition, because many of the records reflect the legal analysis and opinions of the DAEO and Solicitor to assist Board members in complying with ethics and recusal standards, and of the Solicitor regarding the extent of the duty to disclose records in response to Congressional requests and a subpoena, they are protected by the attorney work-product privilege. And finally, since many of the records contain confidential communications of the DAEO and the Solicitor in providing legal advice to Board members regarding the foregoing legal issues, they are also protected by the attorney-client privilege. *In re County of Erie*, 473 F.3d 413, 418 (2d Cir. 2007) (“attorney-client privilege protects most confidential communications between government counsel and their clients that are made for the purpose of obtaining or providing legal assistance”). Accordingly, for the foregoing reasons, the records discussed above are exempt from disclosure under FOIA Exemption 5.

In addition, other responsive records are being withheld in their entirety under FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A). Exemption 7(A) allows an agency to withhold records included in an open investigatory file where disclosure could reasonably be expected to interfere with enforcement proceedings. See *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 236 (1978). The protections of Exemption 7(A) extend to any record whose release would enable a respondent or potential respondent to tailor a defense or otherwise obtain an unfair litigation advantage by premature disclosure. See *Ehringhaus v. FTC*, 525 F. Supp. 21, 23-24 (D.D.C. 1980); *Swan v. SEC*, 96 F.3d 498, 499-500 (D.C. Cir. 1996). Accordingly, because some of the records involve two open cases currently pending before the Board, and could interfere with those enforcement proceedings, the email records involving those cases are exempt and are withheld pursuant to Exemption 7(A).

For the purpose of assessing fees, we have placed you in Category D, the “all other requesters” category, because you do not fall within any of the other fee categories. Consistent with this fee category, you will be assessed charges to

October 28, 2020

Page 5

recover the reasonable direct costs for searching for the requested records, except that you will not be charged for the first two hours of search. NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(2)(ii)(D). Charges for all categories of requesters are \$9.25 per quarter hour of professional time. 29 C.F.R. § 102.117(d)(2)(i).

Less than two hours of professional time was expended in searching for the requested material. Accordingly, there is no charge assessed for this request.

You may contact Ed Hughes, the FOIA attorney who processed your request, at (202) 273-1773 or by email at ed.hughes@nrlb.gov, as well as the Agency's FOIA Public Liaison, Patricia A. Weth, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the FOIA Attorney, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the Agency's FOIA Public Liaison is:

Patricia A. Weth
FOIA Public Liaison
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: FOIAPublicLiaison@nrlb.gov
Telephone: (202) 273-0902
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
Telephone: (202) 741-5770
Toll free: (877) 684-6448
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

October 28, 2020

Page 6

Nancy E. Kessler Platt
Chief FOIA Officer
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: DLCFOIAAppeal@nrlrb.gov

Any appeal must be postmarked or electronically submitted within 90 days of the date of this letter, such period beginning to run on the calendar day after the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the FOIA Attorney, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

Patricia A. Weth

Patricia A. Weth
Acting FOIA Officer

Attachment: (84 pages)

From: [Jacob, Fred](#)
To: [Ring, John](#); [Kaplan, Marvin E.](#); [Emanuel, William](#)
Cc: [Carlton, Peter J.](#); [Cocuzza, Amy L.](#); [Free, Douglas](#); [Gartner, Rachel](#); [Krafts, Andrew J.](#); [Kraus, Grant](#); [Lucy, Christine B.](#); [Murphy, James R.](#); [Rothschild, Roxanne L.](#); [Schoone-Jongen, Terence G.](#); [Zick, Lara S.](#)
Subject: FW: NLRB Ethics Rule
Date: Monday, July 20, 2020 7:40:42 AM
Attachments: [2020-14544.pdf](#)

Chairman Ring and Members Kaplan and Emanuel:

Please find attached the amendment to the Board's Supplemental Ethics Regulations, which the Federal Register published today. Farah had checked in with OFR last week about status, but OFR did not inform her when the rule would be published.

For your reference, we submitted the rule to OFR on July 1; it took 19 days to publish it.

Thanks,

Fred

Rules and Regulations

Federal Register

Vol. 85, No. 139

Monday, July 20, 2020

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

NATIONAL LABOR RELATIONS BOARD

5 CFR Part 7101

RIN 3209-AA57

Supplemental Standards of Ethical Conduct for Employees of the National Labor Relations Board

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board ("NLRB" or "Board"), with the concurrence of the U.S. Office of Government Ethics (OGE), is issuing this final procedural rule amending the Supplemental Standards of Ethical Conduct for Employees of the National Labor Relations Board (NLRB Supplemental Ethics Regulations) to eliminate an out-of-date and unnecessary reference to the identity of its Designated Agency Ethics Official (DAEO) and Alternate Designated Agency Ethics Official (ADAE) from its regulations.

DATES: This amendment is effective July 20, 2020.

FOR FURTHER INFORMATION CONTACT: Roxanne Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, (202) 273-1940 (this is not a toll-free number), 1-866-315-6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published the Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards). See 57 FR 35006-35067, as corrected at 57 FR 48557, 57 FR 52483, and 60 FR 51167. The OGE Standards, codified at 5 CFR part 2635, established uniform standards of ethical conduct that apply to all executive branch personnel.

Pursuant to 5 CFR 2635.105, executive branch agencies are

authorized to publish, with the concurrence of OGE, agency-specific supplemental regulations that are deemed necessary to properly implement their respective ethics programs. On February 12, 1997, the NLRB, with OGE's concurrence, published in the **Federal Register** an interim final rule to establish the NLRB Supplemental Ethics Regulations. 62 FR 6445. The NLRB is now amending the NLRB Supplemental Ethics Regulations to remove an out-of-date provision, 5 CFR 7101.101(b), which designates the Director of the NLRB's Division of Administration as the NLRB's DAEO and the Deputy Director of Administration as the NLRB's ADAEO.

The NLRB, in concurrence with OGE, is making this change because these provisions are inconsistent with the NLRB's current organizational structure. The Board restructured its headquarters offices in 2013 and 2016, resulting in a separate Ethics Office that is apart from the Division of Administration. The Board, in 2016, designated the head of the Ethics Office as the DAEO and submitted that designation to OGE. The Board notified the public of these organizational changes at the time they occurred in **Federal Register** notices. 81 FR 4069 (Jan. 25, 2016); 78 FR 44981 (July 25, 2013). The Board intends no change to its 2016 DAEO designation with this rulemaking.

The NLRB is also removing provisions in § 7101.101(b) that list some of the DAEO's responsibilities, which are similarly out of date. Detailed qualifications and responsibilities for DAEOs and ADAEOs at all agencies are found in OGE's regulations at 5 CFR 2638.104. Thus, removing the redundant provisions from paragraph (b) will eliminate confusion that could result from any inconsistencies between the two regulations.

The deletion of § 7101.101(b) will therefore update the NLRB's Supplemental Ethics Regulations so that they are no longer inconsistent with the NLRB's current organizational structure. This change will make the NLRB Supplemental Ethics Regulations consistent with those of most other executive branch agencies, which do not designate ethics officials or delineate their responsibilities in their supplemental ethics regulations.

The Board is also revising the introductory sentence of the

redesignated § 7101.101(b) (formerly § 7101.101(c)) to read "Agency's designee" instead of "Agency designees" because the revised regulation solely refers to the DAEO, and no longer refers to both the DAEO and ADAEO.

II. Matters of Regulatory Procedure

Administrative Procedure Act

This rule is published as a final rule. The NLRB considers this rule to be a procedural rule that is exempt from notice and public comment, pursuant to 5 U.S.C. 553(b)(3)(A), as a rule of "agency organization, procedure, or practice."

Paperwork Reduction Act

The amended regulations contain no additional information-collection or record-keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Part 7101

Conflict of interests, Government employees.

For the reasons set forth in the preamble, the NLRB amends 5 CFR part 7101 as follows:

PART 7101—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL LABOR RELATIONS BOARD

■ 1. The authority citation for 5 CFR part 7101 continues to read as follows:

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 29 U.S.C. 141, 156; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42457, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.402(c), 2635.803, and 2638.202(b).

§ 7101.101 [Amended]

■ 2. Amend § 7101.101 by

■ a. Removing paragraph (b) and redesignating paragraph (c) as paragraph (b);

■ b. Amending newly redesignated paragraph (b) by removing the words "Agency's designees" and adding in their place "Agency designee."

Dated: June 2, 2020.

Roxanne L. Rothschild,

Executive Secretary, National Labor Relations Board.

Emory Rounds,

Director, U.S. Office of Government Ethics.

[FR Doc. 2020-14544 Filed 7-17-20; 8:45 am]

BILLING CODE 7545-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2020-0617; Project Identifier MCAI-2020-00391-E; Amendment 39-21170; AD 2020-15-07]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (Type Certificate Formerly Held by Rolls-Royce plc) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Rolls-Royce Deutschland Ltd & Co KG RB211-524G2-19, RB211-524G2-T-19, RB211-524G3-19, RB211-524G3-T-19, RB211-524H2-19, RB211-524H2-T-19, RB211-524H-36 and RB211-524H-T-36 model turbofan engines. This AD requires replacement of the low-pressure turbine (LPT) stage 1 disk before it reaches its new Declared Safe Cycle Limit (DSCL) or within 25 flight cycles after the effective date of this AD, whichever occurs later. This AD was prompted by a determination by the manufacturer that the affected LPT stage 1 disks cannot operate until their former published life limit. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 4, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 4, 2020.

The FAA must receive comments on this AD by September 3, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-

30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, 15827, Blankenfelde-Mahlow, Germany; phone: +49 (0) 33 708 6 0; website: <https://www.rolls-royce.com/contact-us.aspx>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781-238-7759. It is also available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-0617.

Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-0617; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Kenneth Steeves, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7765; fax: 781-238-7199; email: kenneth.steeves@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2020-0059, dated March 17, 2020 (referred to after this as “the MCAI”), to address an unsafe condition for the specified products. The MCAI states:

A review of operational flight data revealed that some RB211-524 engines may have been operated beyond the currently valid datum flight profile (FP) published in the applicable Aircraft Maintenance Manuals. The purpose of the datum FPs is to establish the operational limits (life limits) within which

the corresponding critical parts are allowed to remain installed. In addition, as this FP exceedance was investigated, it was realised that the current life limits of certain P/N corresponding to reworked LPT Stage 1 discs (time since new, or since entry into service following rework) could no longer be supported.

This condition, if not corrected, could lead to disc failure, possibly resulting in engine in-flight shut-down and high energy debris release, with consequent damage to, and reduced control of, the aeroplane.

Prompted by these findings, Rolls-Royce published worldwide (WW) communication, reference WW11575-1, which identified certain parts, some of which were believed to have exceeded their respective safe cyclic life, to collect information in relation to the history of affected parts and to inform current operators and owners of the affected parts of an imminent life reduction. Rolls-Royce also published the NMSB, providing instructions for timely removal from service of the affected parts.

For the reasons described above, this AD requires removal from service of the affected parts. This AD also prohibits (re)installation of affected parts that have exceeded the new reduced limits.

You may obtain further information by examining the MCAI in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-0617.

Related Service Information Under 14 CFR Part 51

The FAA reviewed Rolls-Royce plc Alert Non-Modification Service Bulletin (NMSB) RB.211-72-AK422, Revision 1, dated March 2, 2020. The NMSB describes procedures for reducing the Declared Safe Cyclic Limit for LPT stage 1 disks. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by EASA and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this AD because it evaluated all the relevant information provided by EASA and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires replacement of the LPT stage 1 disk before it reaches its new DSCL or within 25 flight cycles

From: [Jacob, Fred](#)
To: [Ring, John](#)
Cc: [Lucy, Christine B.](#)
Subject: RE: NLRB Ethics Rule
Date: Monday, July 20, 2020 7:48:09 AM

(b) (5)



From: Ring, John <John.Ring@nlrb.gov>
Sent: Monday, July 20, 2020 8:47 AM
To: Jacob, Fred <Fred.Jacob@nlrb.gov>
Cc: Lucy, Christine B. <Christine.Lucy@nlrb.gov>
Subject: RE: NLRB Ethics Rule

(b) (5)



From: Jacob, Fred <Fred.Jacob@nlrb.gov>
Sent: Monday, July 20, 2020 8:39 AM
To: Ring, John <John.Ring@nlrb.gov>; Kaplan, Marvin E. <Marvin.Kaplan@nlrb.gov>; Emanuel, William <William.Emanuel@nlrb.gov>
Cc: Carlton, Peter J. <Peter.Carlton@nlrb.gov>; Cocuzza, Amy L. <Amy.Cocuzza@nlrb.gov>; Free, Douglas <Douglas.Free@nlrb.gov>; Gartner, Rachel <Rachel.Gartner@nlrb.gov>; Krafts, Andrew J. <Andrew.Krafts@nlrb.gov>; Kraus, Grant <Grant.Kraus@nlrb.gov>; Lucy, Christine B. <Christine.Lucy@nlrb.gov>; Murphy, James R. <James.Murphy@nlrb.gov>; Rothschild, Roxanne L. <Roxanne.Rothschild@nlrb.gov>; Schoone-Jongen, Terence G. <Terence.Schoone-Jongen@nlrb.gov>; Zick, Lara S. <Lara.Zick@nlrb.gov>
Subject: FW: NLRB Ethics Rule

Chairman Ring and Members Kaplan and Emanuel:

Please find attached the amendment to the Board's Supplemental Ethics Regulations, which the Federal Register published today. Farah had checked in with OFR last week about status, but OFR did not inform her when the rule would be published.

For your reference, we submitted the rule to OFR on July 1; it took 19 days to publish it.

Thanks,

Fred

From: [Egee, Edwin W.](#)
To: [Jacob, Fred](#)
Cc: [Lucy, Christine B.](#); [Ring, John](#); [Petroccione, Kevin M.](#)
Subject: Re: NLRB Ethics Rule
Date: Monday, July 20, 2020 7:56:51 AM

Noted. Thanks. Kevin, please let me know if we get any press inquiries on this.

Ed

From: Jacob, Fred <Fred.Jacob@nlrb.gov>
Sent: Monday, July 20, 2020 8:52 AM
To: Egee, Edwin W.
Cc: Lucy, Christine B.; Ring, John
Subject: FW: NLRB Ethics Rule

Ed –

Just an fyi that the attached housekeeping amendment to the Board's Supplemental Ethics regulations issued today.

(b) (5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Also, the regulation was issued jointly with OGE, as shown by the OGE Director's concurrence. And, indeed, we initiated this amendment at OGE's suggestion to eliminate any potential conflict between our regulation and the DAEO designation on file at OGE.

If you have any questions on this, please don't hesitate to reach out to me.

Thanks,

Fred

From: Jacob, Fred
Sent: Monday, July 20, 2020 8:39 AM
To: Ring, John <John.Ring@nlrb.gov>; Kaplan, Marvin E. <Marvin.Kaplan@nlrb.gov>; Emanuel, William <William.Emanuel@nlrb.gov>
Cc: Carlton, Peter J. <Peter.Carlton@nlrb.gov>; Cocuzza, Amy L. <Amy.Cocuzza@nlrb.gov>; Free, Douglas <Douglas.Free@nlrb.gov>; Gartner, Rachel <Rachel.Gartner@nlrb.gov>; Krafts, Andrew J. <Andrew.Krafts@nlrb.gov>; Kraus, Grant <Grant.Kraus@nlrb.gov>; Lucy, Christine B.

<Christine.Lucy@nlrb.gov>; Murphy, James R. <James.Murphy@nlrb.gov>; Rothschild, Roxanne L. <Roxanne.Rothschild@nlrb.gov>; Schoone-Jongen, Terence G. <Terence.Schoone-Jongen@nlrb.gov>; Zick, Lara S. <Lara.Zick@nlrb.gov>

Subject: FW: NLRB Ethics Rule

Chairman Ring and Members Kaplan and Emanuel:

Please find attached the amendment to the Board's Supplemental Ethics Regulations, which the Federal Register published today. Farah had checked in with OFR last week about status, but OFR did not inform her when the rule would be published.

For your reference, we submitted the rule to OFR on July 1; it took 19 days to publish it.

Thanks,

Fred

From: [Ketcham, Lori](#)
To: [Ring, John](#)
Cc: [Allen, Jamal](#); [Lucy, Christine B.](#); [Rothschild, Roxanne L.](#); [Jacob, Fred](#)
Subject: (b) (5)
Date: Monday, July 20, 2020 10:40:26 AM
Attachments: (b) (5)

Chairman Ring – (b) (5)



Please let us know if you have any questions.

Lori

Lori W. Ketcham
Associate General Counsel, Ethics
Designated Agency Ethics Office
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570
(202)273-2939
lori.ketcham@nrlrb.gov

From: [Lucy, Christine B.](#)
To: [Ring, John](#)
Subject: Re: OGE 278e follow up Request from Citizens for Responsibility and Ethics in Washington
Date: Tuesday, July 21, 2020 6:12:48 PM

Ha!

Get [Outlook for iOS](#)

From: Ring, John <John.Ring@nlrb.gov>
Sent: Tuesday, July 21, 2020 6:41 PM
To: Lucy, Christine B.
Subject: RE: OGE 278e follow up Request from Citizens for Responsibility and Ethics in Washington

Thanks for the heads up. They're going to be very disappointed.

From: Lucy, Christine B. <Christine.Lucy@nlrb.gov>
Sent: Tuesday, July 21, 2020 6:21 PM
To: Ring, John <John.Ring@nlrb.gov>
Subject: OGE 278e follow up Request from Citizens for Responsibility and Ethics in Washington

John -

(b) (5)
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Christine

UNITED STATES GOVERNMENT
National Labor Relations Board
Memorandum



July 21, 2020

TO: Tiffany Tam
Citizens for Responsibility and Ethics in Washington (CREW)
1101 K Street NW, Suite 201
Washington, D.C. 20005

FROM: Lori W. Ketcham */s/*
Associate General Counsel, Ethics
Designated Agency Ethics Official

SUBJECT: OGE Form 278 – Chairman John F. Ring

Pursuant to your recent submission of OGE Form 201, attached you will find a copy of the most recent Public Financial Disclosure Report, OGE Form 278, for Chairman John F. Ring.

As a reminder, pursuant to section 105(c) of the Ethics in Government Act of 1978 (EIGA) and 5 C.F.R. § 2634.603(f) of the implementing OGE regulation, it is unlawful for any person to obtain or use a report: for any unlawful purpose; for any commercial purpose, other than by news and communications media for dissemination to the general public; for determining or establishing the credit rating of any individual; or for use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

The U.S. Attorney General may bring a civil action against any person who obtains or uses a report for any such prohibited purpose as set forth above. The court may assess against such a person a penalty in any amount not to exceed \$20,489. Such remedy shall be in addition to any other remedy available under statutory or common law.

Enclosed:
OGE Form 201 Chairman Ring – Tiffany Tam CREW July 21, 2020
Chairman Ring OGE 278e 2020

From: [Egee, Edwin W.](#)
To: [Ring, John](#); [Robb, Peter](#); [Lucy, Christine B.](#); [Stock, Alice B.](#); [Boda, Dolores](#)
Cc: [Petroccione, Kevin M.](#)
Subject: RE: FY21 House Approps Comm Rpt TA FINAL
Date: Monday, July 27, 2020 5:18:03 PM
Attachments: [FY21 House Approps Comm Rpt TA FINAL2.docx](#)

Thanks to everyone for the contributions.

Redrafted with handful of additional edits. Includes updated FTE numbers. All comments resolved. Will send tomorrow AM.

Ed

From: Egee, Edwin W.
Sent: Monday, July 27, 2020 9:52 AM
To: Ring, John <John.Ring@nlrb.gov>; Robb, Peter <Peter.Robb@nlrb.gov>; Lucy, Christine B. <Christine.Lucy@nlrb.gov>; Stock, Alice B. <Alice.Stock@nlrb.gov>; Boda, Dolores <Dolores.Boda@nlrb.gov>
Cc: Petroccione, Kevin M. <Kevin.Petroccione@nlrb.gov>
Subject: FY21 House Approps Comm Rpt TA FINAL

All-

Kevin and I have incorporated all changes to this doc. Please take one last look and send me any changes. Would like to get it out the door tomorrow if possible.

Ed

National Labor Relations Board

Memorandum



To: Laura Friedel, Senate Appropriations
Fr: Kevin Petroccione and Ed Egee, NLRB OCPA
Re: Technical Assistance re: FY21
House Approps Committee Report
Date: July 28, 2020

Electronic Voting – Provides \$1 million for the Board to develop and implement a new electronic voting system

It is crucially important for the Board to guard employees' freedom of choice concerning their representation. For decades, the most effective and preferred method of determining the will of a particular group of employees when it comes to representation is to conduct an in-person manual election via secret ballot. When a Board Agent conducts manual/in-person elections, strict procedures are in place in the voting area to ensure and maintain the secrecy of the ballots, which are a key part of providing "the surrounding conditions [to] enable employees to register a free and untrammelled choice for or against a bargaining representative." *General Shoe Corp.*, 77 N.L.R.B. 124 (1948). Given the Agency's lack of control of the "surrounding conditions" in the electronic voting context, procedures would need to be put in place to ensure the secrecy of elections and the security of the vote. It is unclear to us whether electronic voting can meet this high standard.

Additionally, there are significant logistical challenges to overcome for the Agency to conduct representation elections electronically. We imagine that we would incur substantial costs that would require readjustment of budget priorities. Further, based on our experience with contract acquisition and project management, we believe that implementing electronic voting would likely take substantial time of approximately one year. Once the Agency concluded its research and developed a proposed process, it would then need to take the following additional steps:

- Amended rules and regulations governing electronic election procedures would need to be developed and promulgated, with notice and comment rulemaking required if any of those rules implicated the parties' substantive rights;
- The Representation Case Handling Manual would have to be substantially revised once the new rules and regulations become final.
- Special technology for conducting electronic elections would need to be identified, acquired through competitive bidding or built internally, and implemented;

- Internal procedures, forms, and protocols for Regional staff to use in carrying out the elections would need to be established; and
- Internal and external training would need to be developed and conducted regarding the new process to familiarize NLRB employees and the voting public on how to properly utilize the technology.

Finally, and most importantly, the Agency would have to be sure that in each election in which electronic voting is authorized, the eligible voters have the electronic equipment and access necessary to participate in an electronic vote.

Staffing – Requires the Agency to fill remaining open regional director positions and expand the number of regional fulltime equivalent staff beyond the amount on-board at the end of the fourth quarter of fiscal year 2019. The Agency is also required to provide a report to the Appropriations Committee detailing the resources available to each regional office and monthly staffing reports and to brief the committee on the Agency’s plans to fill vacancies.

The Agency has been providing both Appropriations Committees with monthly staffing reports, as requested in the FY 2020 Labor HHS Appropriations bill. At the end of FY2019, the Agency had 1279 FTEs with 830 in the field offices. With respect to the Regional Director positions, at the end of FY2019, there were six regions which were headed by Acting Regional Directors: Region 1 (Boston), Region 5 (Baltimore), Region 8 (Cleveland), Region 9 (Cincinnati), Region 10 (Atlanta) and Region 14 (St. Louis). As of June 2020, there were 796 FTEs in the field, plus another 13 FTEs in the hiring process. The decrease in staffing occurred through attrition – there were no involuntary terminations or transfers. With respect to the Regional Director positions, in FY2020, positions were posted for all six regions in which there was an Acting Regional Director (Region 1, Region 5, Region 8, Region 9, Region 10 and Region 14). The Board appointed new Regional Directors for two of those regions – Region 5 (Baltimore) and Region 9 (Cincinnati).

When considering hiring for our field offices, the Agency must evaluate its caseload overall as well as the caseload of each Regional office. The Regional offices are staffed to meet the case processing needs of the Agency. Staffing numbers should be understood in the larger context of case intake. Over the past two decades, case filings have decreased approximately 3% per year. From FY2012 to FY2019, unfair labor practice case intake dropped from 21,622 to 18,913 – a nearly 13% decrease.

More recently that decrease has accelerated. For FY20, through June 8, 2020, total case intake (representation and unfair labor practices) was 10,842, while for the same period in FY19, total cases were 13,080. This represents a 17% decrease in cases in a single year.

The current number of FTEs in the field is meeting the case processing needs of the Agency. At the beginning of FY2019, a strategic plan was instituted to reduce case processing time throughout the Agency. In the field, the goal was to reduce case processing time by 5% per year for 4 years for a total of 20% over 4 years. The Regional Directors were given discretion to decide how to reduce case processing time in their own Region without decreasing quality. They did so, and, by the end of FY2019, average case processing time was reduced by 17.5%.

The Regions also reduced the time from informal settlement to final disposition of an unfair labor practice case from 173 days to 153 days, a decrease of 11.5% and improved the timeliness of representation case handling by processing 90.9% of representation cases in 100 days or less. The Regional Office settlement rate was 99.1% this in FY2019, resolving over 5,000 cases prior to issuing complaint and over 800 cases post-complaint. Additionally, compliance was achieved in over 400 cases in which Board orders issued. The Regions also collected over \$56.5 million in backpay, fees, dues fines and reimbursements for employees.

Given this record of continued maintenance of the Agency's case processing time reduction targets and the steep decline in case in-take during FY2020, additional hiring for the field, except for a few critical positions, cannot be justified at this time.

Restructuring of Agency – Prohibits the GC or Board from restructuring the agency unless the NLRB submits its plan 240 days in advance to the Committees on Appropriations and to the Comptroller General.

For the past two decades prior to this fiscal year, the Agency's caseload has dropped an average of 3% annually. As noted above, our case intake has dropped considerably – approximately 17% – in FY 2020. Accordingly, restructuring may be necessary to best serve stakeholders nationwide.

Ethics/Rulemaking – Requires the Board to provide the Appropriations Committees a report no less than 90 days of enactment of this Act on the involvement of Board members in any rulemakings conducted by the Board on a subject matter that any entity listed on any current or past Board Member Recusal List. (sic)

We categorically reject any suggestion that there are ethics problems at the NLRB or that the Board has undertaken rulemaking to enable individual members to avoid compliance with their ethical obligations. To the contrary, the NLRB maintains and follows a rigorous process to ensure there are no conflicts of interest, and the Board and their staffs strictly adhere to all ethics requirements. In November 2019, the Board finalized a comprehensive internal review of its ethics and recusal processes, the final report of which is available [here](#). The review, which included benchmarking against the standards and practices of other federal agencies, confirmed that the Board's internal ethics and recusal safeguards are strong. As a part of that report, all Board member recusal lists were made public and posted on the Agency's website.

GC Memo – Requires the Agency to provide a report to the Appropriations Committees within 90 days of enactment on the General Counsel's March 13, 2019 memo. The report should include information regarding impact of that guidance, including: the impact on the

rate of case deferral and the impact on the number of cases settled prior to complaints being filed during fiscal year 2020 compared to the three previous fiscal years.

The General Counsel issued Memorandum OM 19-05 to encourage Regional Directors to issue complaints without waiting to obtain additional information from investigative subpoenas if they believe they have enough evidence to issue a complaint and to recommend that Regional Directors use trial subpoenas to obtain the additional information for use at trial.

This memorandum was issued by the General Counsel because he had found that some cases were being delayed for years due to the issuance of investigative subpoenas. In these cases, the Agency and parties subpoenaed were spending time and resources litigating about the issuance of the investigatory subpoenas, rather than the substance of the case. The delay caused by the litigation over the investigatory subpoenas favors the party that wishes to delay the proceedings, which is typically the charged party. In virtually all instances, this is the employer.

The reason that complaint issuance is delayed by investigative subpoenas is that the request for an investigative subpoena goes to a federal judge, who must open a new case, hear the facts, and make a ruling. This can be a time-consuming process. On the other hand, when a federal judge makes a decision concerning a trial subpoena, the federal judge is reviewing an Agency decision rather than developing a record and hearing the case from scratch. Because of this difference in the posture of the case, a federal judge is more reluctant to issue an investigative subpoena (and will take more time to do so, if an investigative subpoena request is granted), but is more likely to issue the trial subpoena (and will do so more quickly).

We believe that the issuance of OM 19-05 is favorably affecting the success of the Office of the General Counsel's prosecutions of unfair labor practice cases by improving the quality of initial Agency investigations and the earlier issuance of complaints where merit is found.

The memorandum does not appear to have any impact on the rate of merit findings in FY2019 and the first half of FY2020 – just as many charges have been found to have merit as in the past. Over the past decade the average rate of merit findings has remained constant at between 35% and 37% across administrations and General Counsels, and that was true this past year as well. Thus, , fewer investigative subpoenas have had no impact on the rate of merit findings.

RD Discretion – Directs the Agency to restore regional directors' unfettered discretion to protect employee health and safety. Including: continuing telework designations, physical office closures, mail ballot representation elections, and remote representation hearings.

The Office of the General Counsel through the Division of Operations-Management is responsible for the operations of the Regional Offices, including the protection of employee health and safety. The Board has delegated authority to the Regional Directors to make initial determinations concerning the running of elections, which are subject to review by the Board. Thus, the Regional Directors never possessed "unfettered discretion" to protect employee health and safety or to make determinations concerning telework designations, physical office closures, mail ballot representation elections, and remote representation hearings. In any event, this provision is unnecessary in that the Agency has taken no action to deny Regional Directors their

traditional discretion in their efforts to protect employee health and safety. They continue to make decisions about these issues in their own Region's offices.

While the Agency ended mandatory telework at Headquarters on June 8, 2020 and in the field on June 15, 2020, no Agency employee has been required to work from an Agency office. The General Counsel's memorandum concerning suggested [protocols](#) for manual elections for the Regional Directors to consider when making determinations concerning whether to conduct a manual or mail ballot election explicitly stated that nothing in the memo mitigated the Regional Directors' authority—delegated by the Board—to conduct elections. Regional Directors are continuously assessing the situation on the ground in their respective Regions and possess the authority to make determinations regarding how and when to conduct elections.

Whistleblower Protections – Directs the Agency to respect and enforce the whistleblower rights of its employees.

We have no concerns about this provision.

Health Units – Directs the Agency to restore the previously discontinued health units

Health units in Headquarters and in the field were discontinued in 2018 as a cost saving measure. The elimination was recommended by a joint team of management and union representatives. Moreover, since the onset of the pandemic in March 2020, very few employees have visited or worked in Agency facilities.

Joint Employer Rule – Prohibits use of funds for implementation of the Agency's Joint Employer rule

The final Joint Employer rule restores and clarifies the joint-employer standard that the Board applied for decades prior to the 2015 *Browning-Ferris* decision. The joint-employer standard under the NLRA is a matter of consequence, because it determines whether a business is an employer of employees directly employed by another employer altogether. If two entities are joint employers, both must bargain with the union that represents the jointly employed employees, both are potentially liable for unfair labor practices committed by the other, and both are subject to union picketing or other economic pressure if there is a labor dispute.

Representation Elections Rule – Prohibits use of funds for implementation of the Agency's Representation-Case Procedures rule

In December, the Board made a series of modifications to the Agency's representation case procedures. Retaining the essentials of the Agency's existing representation rules, the selective changes create a fairer and more-efficient election process. Among other changes, the modifications better ensure the opportunity for litigation and resolution of unit scope and voter eligibility issues prior to an election and allow workers to be informed of their rights and simplify the representation process to the benefit of all parties.

From: [Burow, Kathy](#)
To: [ML-HQ-Div of Judges](#); [ML-HQ-Judges \(NY\) \(R\)](#); [ML-HQ-Judges \(SF\) \(R\)](#); [ML-HQ-Judges \(Wash\) \(R\)](#); [DG-Everyone \(R\)](#)
Subject: RE: Hatch Act: A Brief Overview (15 min)
Date: Tuesday, August 4, 2020 1:20:28 PM

Good afternoon,

As we near November 3, 2020, we wanted to remind everyone of our short scenario-based training module that was designed to flag Hatch Act restrictions that apply to “lesser restricted” and “further restricted” employees. The information provided in the module is intended to help everyone avoid inadvertently violating the Hatch Act.

The training takes less than 20 minutes to complete and can be accessed through the following link:

[The Hatch Act: A Brief Overview](#)

You can also access the training from the Ethical Highway’s [Hatch Act Library](#) or via [OED’s Skillport](#)

[Learning Library](#) (Search The Hatch Act, then click on the  icon).

Kathy

From: Burow, Kathy
Sent: Thursday, March 26, 2020 8:28 AM
To: ML-NLRB-Everyone (R) <ML-NLRB-Everyone@nlrb.gov>; ML-HQ-Div of Judges <ML-HQ-DivisionofJudges@nlrb.gov>; ML-HQ-Judges (NY) (R) <ML-HQ-JudgesNY@nlrb.gov>; ML-HQ-Judges (SF) (R) <ML-HQ-JudgesSF@nlrb.gov>; ML-HQ-Judges (Wash) (R) <ML-HQ-Judges@nlrb.gov>
Subject: Hatch Act: A Brief Overview (15 min)

Good Morning,

Have you ever wanted to show your support for a partisan political candidate, but were concerned that your interactions with other people, in person or on social media, would violate political activity rules for federal employees? Even though the Ethics Office can help you with your questions, it’s a good idea for federal employees to be familiar with the Hatch Act’s prohibitions to help avoid potential missteps that could lead to serious consequences. This is why the Ethics Office continues to provide resources designed to help you fully understand these prohibitions during the 2020 election cycle. For example, the Hatch Act permits a range of political activities *outside the workplace and on non-work time*, but there are also some *24/7 restrictions* that we need to keep in mind.

This week, we invite you to review a short scenario-based training module that flags Hatch Act restrictions that apply to “lesser restricted” and “further restricted” employees. At the NLRB, “further restricted” employees are ALJs and SES employees. This training module should take roughly 20 minutes to complete and will help you understand the Hatch Act’s prohibitions so that you can participate in the political process to the full extent permissible under the law. This information is intended to help you make good decisions, including knowing when to contact the Ethics Office for guidance, so that you do not risk disciplinary action.

The training module can be accessed through the following link [The Hatch Act: A Brief Overview](#)
You can also access the training from the Ethical Highway's [Hatch Act Library](#) or via [OED's Skillport](#)

[Learning Library](#) (Search The Hatch Act, then click on the  icon).

Kathy H. Burow
Senior Ethics Specialist
Deputy Designated Agency Ethics Official
National Labor Relations Board
1015 Half Street SE, Room 4148, Washington DC 20570
Office - 202-273-0903 * Mobile – 202-430-4815 * Fax – 202-208-0048

From: [Bashford, Jo Ann](#)
To: [Ring, John](#)
Subject: FW: RILA's Retail Law Conference
Date: Wednesday, August 19, 2020 6:15:02 AM
Attachments: [RLAW invitation to chair ring 8-17-20.docx](#)

John: This event has been approved by ethics with the following note:

(b) (5)
[Redacted text block]

Jo Ann Bashford
*Confidential Assistant,
Legal Administrative Specialist
Office of the Chairman
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
(202) 273-0837
joann.bashford@nrlb.gov*

From: Burow, Kathy <Kathy.Burow@nrlb.gov>
Sent: Tuesday, August 18, 2020 4:58 PM
To: Bashford, Jo Ann <JoAnn.Bashford@nrlb.gov>
Cc: Ketcham, Lori <Lori.Ketcham@nrlb.gov>
Subject: RE: RILA's Retail Law Conference

Jo Ann,
The Chairman may accept the Retail Industry Leaders Association's (RILA) invitation to participate on the Keynote Panel for the 2020 Retail Law Conference on October 22, 2020.

(b) (5)
[Redacted text block]
is

(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Please let us know if you have any additional questions regarding this guidance.

Kathy

From: Bashford, Jo Ann <JoAnn.Bashford@nlrb.gov>
Sent: Tuesday, August 18, 2020 6:59 AM
To: SM-Ethics <ethics@nlrb.gov>
Subject: FW: RILA's Retail Law Conference

Good morning all. Please review and advise as to the Chairman's acceptance/participation in the referenced conference.

Thank you and be well.

Jo Ann Bashford

*Confidential Assistant,
Legal Administrative Specialist
Office of the Chairman
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
(202) 273-0837
joann.bashford@nlrb.gov*

From: Lucy, Christine B. <Christine.Lucy@nlrb.gov>
Sent: Monday, August 17, 2020 5:58 PM
To: Ring, John <John.Ring@nlrb.gov>
Cc: Bashford, Jo Ann <JoAnn.Bashford@nlrb.gov>
Subject: Fwd: RILA's Retail Law Conference

John - see attached invitation from the **Retail Industry Leaders Assn's** for you to speak on the keynote panel at their upcoming retail law conference (Oct 22). The attached letter provides additional detail. As you'll see below Janet Dhillon's agreed to attend. (The email introduction to me of the RILA GC/EVP was sent by Janet's new COS, Haley Wodjowski. Tabitha just left the EEOC for a position with United Way - I kept meaning to tell you - she and I connected before she left just a week ago.) As you'll see in the letter, RILA is also inviting Gene Scalia and (unnamed) others.

Copying Jo Ann for tracking and scheduling purposes.

Christine

Get [Outlook for iOS](#)

From: HALEY WOJDOWSKI <HALEY.WOJDOWSKI@EEOC.GOV>

Sent: Monday, August 17, 2020 3:04 PM

To: Lucy, Christine B.

Cc: Deborah White

Subject: RILA's Retail Law Conference

Hi Christine,

I hope you had a nice weekend!

Please let me introduce you to Deborah White, the President of the Retail Litigation Center, and General Counsel and Senior Executive Vice President of Retail Industry Leaders Association (RILA). Chair Dhillon will be speaking on the Keynote Panel at RILA's Retail Law Conference on October 22. On behalf of RILA, Deborah would like to invite Chair Ring to speak on the panel as well, please see the attached letter. Would it be possible for you to pass this along to Chair Ring?

Please feel free to reach out with any questions. Thank you!

Best,
Haley

Haley A. Wojdowski
Chief of Staff to Chair Dhillon
U.S. Equal Employment Opportunity Commission
131 M Street NE
Washington, D.C. 20507
o: 202.663.4160
c: 202.227.1091
haley.wojdowski@eeoc.gov



RETAIL INDUSTRY LEADERS ASSOCIATION

99 M Street, SE
Suite 700
Washington, DC 20003

www.rila.org

August 17, 2020

Via Electronic Mail

The Honorable John Ring
Chair, National Labor Relations Board
1015 Half Street, SE
Washington DC 20570-0001

Re: Keynote Panel for 2020 Retail Law Conference (October 22 at 12:15 ET)

Dear Chair Ring,

The purpose of this letter is to invite you to participate in a Keynote general session panel discussion at the Retail Industry Leaders Association's (RILA's) upcoming Retail Law Conference (October 20-22). The purpose of the panel is to provide the legal leadership of the retail industry's largest employers with perspectives on the relevant public policy landscape and is preliminarily entitled, "Key Public Policy Considerations for Retail Employers in 2021 and Beyond." This session will be held from 12:15 to 1:15 eastern on Thursday October 22. We also intend to invite other public policy leaders, such as Janet Dhillon, Chair of the Equal Employment Opportunity Commission, and Department of Labor Secretary Gene Scalia, to participate in this session.

RILA is the U.S. trade association for retailers that have earned leadership status by virtue of their sales volume, innovation or aspiration. We convene decision-makers to collaborate and gain from each other's experience. We advance the industry through public-policy advocacy and promote operational excellence and innovation. And through research and thought leadership, we propel developments that foster both economic growth and sustainability. (You can find the logos of RILA's retail members [here](#).)

As a result of the public health situation, we will be holding the Retail Law Conference virtually this year. RILA is arranging for a production company to host the conference as a whole, as well as to work with speakers to facilitate their presentations.

Moreover, because the conference is virtual, we are expecting very high attendance. As you may recall, the Retail Law Conference attracts a significant number of the legal leadership from the major retail companies; last year, we welcomed 250 in-house counsel, 50 of whom were general counsel. This year, we are inviting entire legal departments to register for a single fee; this program has already been very successful and led the legal departments from Best Buy, The Home Depot, Lowe's and Target to register – even before we announced the program.

We hope you will be able to participate in RILA's Retail Law Conference 2020. The National Labor Relations Board and the laws that it oversees are critically important to the retail industry. Given the uncertainty surrounding the election, it will be particularly helpful to hear from you with respect to your views on the NLRB's priorities, especially since your tenure extends into 2022, beyond any immediate changes that might happen as a result of the election.

Thank you for considering our invitation. Please let us know if you have any questions or need any additional information.

Sincerely,

Deborah White

Sr. Executive Vice President & General Counsel

From: [Ring, John](#)
To: [Bashford, Jo Ann](#)
Subject: RE: Media Release Request for 73rd Annual NYU Conference on Labor Webinar
Date: Monday, August 31, 2020 5:39:00 PM
Attachments: [image001.png](#)

Yes, please. Thanks.

From: Bashford, Jo Ann <JoAnn.Bashford@nlrb.gov>
Sent: Monday, August 31, 2020 11:05 AM
To: Ring, John <John.Ring@nlrb.gov>
Subject: FW: Media Release Request for 73rd Annual NYU Conference on Labor Webinar

After speaking with Torrey Whitman, this is a modified form from previous years. I've cleared this with Ethics. If you like, I can respond on your behalf and will make clear that they should not use your official authority to imply endorsement of their program. Please let me know if you would like for me to respond.

Thanks.

Jo Ann Bashford

*Confidential Assistant,
Legal Administrative Specialist
Office of the Chairman
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
(202) 273-0837
joann.bashford@nlrb.gov*

From: Burow, Kathy <Kathy.Burow@nlrb.gov>
Sent: Monday, August 31, 2020 11:01 AM
To: Bashford, Jo Ann <JoAnn.Bashford@nlrb.gov>
Subject: RE: Media Release Request for 73rd Annual NYU Conference on Labor Webinar

Good Morning,

Yes. He can agree to this and I would advise him to include the addendum with his response so that it is clear to NYU that they should not use his official authority to imply endorsement of their program.

Thanks
Kathy

From: Bashford, Jo Ann <JoAnn.Bashford@nlrb.gov>
Sent: Monday, August 31, 2020 10:57 AM
To: Burow, Kathy <Kathy.Burow@nlrb.gov>
Subject: FW: Media Release Request for 73rd Annual NYU Conference on Labor Webinar

Hello. The below "media release" is a modified speaker release form. Is it okay for the Chairman to sign it and should I also include the addendum?

Can you please let me know? Thanks.

Jo Ann Bashford

*Confidential Assistant,
Legal Administrative Specialist
Office of the Chairman
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
(202) 273-0837
joann.bashford@nlrb.gov*

From: Whitman, Torrey <WhitmanT@mercury.law.nyu.edu>
Sent: Monday, August 31, 2020 10:45 AM
To: Bashford, Jo Ann <JoAnn.Bashford@nlrb.gov>
Subject: RE: Media Release Request for 73rd Annual NYU Conference on Labor Webinar

It's in the email below! I modified the form slightly to make it easier for speakers to reply. Instead of having to print it out, have it signed, scan and send it back, I changed it to simply have the email recipient reply to the email, writing only "I AGREE." In your case, assuming the chairman agrees, you could just write "On behalf of Chairman Ring, I agree" or, perhaps better, "Chairman Ring agrees."

From: Bashford, Jo Ann [<mailto:JoAnn.Bashford@nlrb.gov>]
Sent: Monday, August 31, 2020 10:40 AM
To: Whitman, Torrey <WhitmanT@mercury.law.nyu.edu>
Subject: RE: Media Release Request for 73rd Annual NYU Conference on Labor Webinar

Ok, thanks for the update. I don't see where you've requested a speaker release form; did I miss that entirely? Happy to get it signed for you, just let me know.

Many thanks.

Jo Ann Bashford
*Confidential Assistant,
Legal Administrative Specialist
Office of the Chairman
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
(202) 273-0837
joann.bashford@nlrb.gov*

From: Whitman, Torrey <WhitmanT@mercury.law.nyu.edu>
Sent: Monday, August 31, 2020 10:25 AM
To: Bashford, Jo Ann <JoAnn.Bashford@nlrb.gov>
Subject: RE: Media Release Request for 73rd Annual NYU Conference on Labor Webinar

Jo Ann,

In the past, as part of our confirmation form we send to speakers we have asked speakers to consent to our recording and using their presentations for photos in our newsletter and on our website and for making the program available on the Law School's website for later viewing. This form, as I understand it, is a new requirement from the University's general counsel's office and IT Department. I don't know why they have started requiring it, though.

Torrey

From: Bashford, Jo Ann [<mailto:JoAnn.Bashford@nlrb.gov>]
Sent: Monday, August 31, 2020 9:08 AM
To: torrey.whitman@nyu.edu
Subject: FW: Media Release Request for 73rd Annual NYU Conference on Labor Webinar

Hi Torrey: Is this media release something new? I don't recall one from last year and I don't find one in my electronic files. Can you please let me know?

Thanks.

Jo Ann Bashford
*Confidential Assistant,
Legal Administrative Specialist
Office of the Chairman
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
(202) 273-0837
joann.bashford@nlrb.gov*

Subject: Media Release Request for 73rd Annual NYU Conference on Labor Webinar

**Center for Labor and Employment Law
NYU School of Law
Wilf Hall, 139 Macdougal Street
New York, NY 10012
212.992.6289
labor.center@nyu.edu**

MEDIA RELEASE FORM

I hereby give permission to New York University to make and use photographs, videos, screen captures and/or audio recordings (collectively or individually, "AV Recordings") during the Event specified below in which my picture, image or voice appears for all purposes and in all media and formats now known or later created including, without limitation, all promotional materials. I hereby waive any right that I may have to inspect or approve the finished product or products or promotional, advertising or printed matter that may be used in connection with this video, audio or photographs or the use to which it may be applied.

I hereby irrevocably release and discharge NYU and its officers, directors, employees, and agents, from all claims, demands, and causes of action that I now have or in the future may have relating to the permitted use of my likeness. I agree that NYU will be the sole owner of all rights in the above-mentioned recordings. This release is governed in accordance with the laws of the State of New York. By signing below, I represent that I am over 18 years of age.

NAME: JOHN F. RING

EVENT: NYU 73rd Annual Conference on Labor: Addressing Pay Equity and Issues of Inequality at Work

DATE OF EVENT: October 1-2, 2020

**➔ To agree to the foregoing, please Reply
to this email with the words "I agree."**

From: [Egee, Edwin W.](#)
To: [Ring, John](#); [Lucy, Christine B.](#)
Cc: [Emanuel, William](#); [Kaplan, Marvin E.](#); [McFerran, Lauren](#)
Subject: Fwd: Letter to Chairman Ring
Date: Tuesday, September 1, 2020 4:13:00 PM
Attachments: [Letter to NLRB Chairman Ring.pdf](#)

Another letter from Scott

From: deCant, Kyle <Kyle.deCant@mail.house.gov>
Sent: Tuesday, September 1, 2020 5:07:34 PM
To: Egee, Edwin W. <Edwin.Egee@nlrb.gov>
Cc: Mooney, Katelyn <Katelyn.Mooney@mail.house.gov>; Miller, Richard <Richard.Miller@mail.house.gov>; Yu, Cathy <Cathy.Yu@mail.house.gov>; Nsor, Janice <Janice.Nsor@mail.house.gov>; Hovland, Eli <Eli.Hovland@mail.house.gov>; Fitzgerald-Alli, Tylease <Tylease.Fitzgerald-Alli@mail.house.gov>; Martin, Jaria <Jaria.Martin@mail.house.gov>; Mowbray, Mariah <Mariah.Mowbray@mail.house.gov>; Brunner, Ilana <Ilana.Brunner@mail.house.gov>
Subject: Letter to Chairman Ring

Hi Ed,

Please make sure that Chairman Ring receives the attached letter regarding the NLRB's refusal to produce the DAEO memorandum in *McDonald's*, the comment categories for the joint employer rulemaking, and the accompanying instructions for those categories. Please confirm receipt of this email.

Thanks,

Kyle A. deCant | **Labor Policy Counsel**
Committee on Education and Labor
Chairman Robert C. "Bobby" Scott
Office: 202-226-9416
Cell: 202-317-0285

MAJORITY MEMBERS:

ROBERT C. "BOBBY" SCOTT, VIRGINIA,
Chairman

SUSAN A. DAVIS, CALIFORNIA
RAÚL M. GRIJALVA, ARIZONA
JOE COURTNEY, CONNECTICUT
MARCIA L. FUDGE, OHIO
GREGORIO KILILI CAMACHO SABLÁN,
NORTHERN MARIANA ISLANDS
FREDERICA S. WILSON, FLORIDA
SUZANNE BONAMICI, OREGON
MARK TAKANO, CALIFORNIA
ALMA S. ADAMS, NORTH CAROLINA
MARK DESAULNIER, CALIFORNIA
DONALD NORCROSS, NEW JERSEY
PRAMILA JAYAPAL, WASHINGTON
JOSEPH D. MORELLE, NEW YORK
SUSAN WILD, PENNSYLVANIA
JOSH HARDER, CALIFORNIA
LUCY MCBATH, GEORGIA
KIM SCHRIER, WASHINGTON
LAUREN UNDERWOOD, ILLINOIS
JAHANA HAYES, CONNECTICUT
DONNA E. SHALALA, FLORIDA
ANDY LEVIN, MICHIGAN
ILHAN OMAR, MINNESOTA
DAVID TRONE, MARYLAND
HALEY M. STEVENS, MICHIGAN
SUSIE LEE, NEVADA
LORI TRAHAN, MASSACHUSETTS
JOAQUIN CASTRO, TEXAS



COMMITTEE ON
EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

MINORITY MEMBERS:

VIRGINIA FOXX, NORTH CAROLINA,
Ranking Member

DAVID P. ROE, TENNESSEE
GLENN THOMPSON, PENNSYLVANIA
TIM WALBERG, MICHIGAN
BRETT GUTHRIE, KENTUCKY
BRADLEY BYRNE, ALABAMA
GLENN GROTHMAN, WISCONSIN
ELISE M. STEFANIK, NEW YORK
RICK W. ALLEN, GEORGIA
LLOYD K. SMUCKER, PENNSYLVANIA
JIM BANKS, INDIANA
MARK WALKER, NORTH CAROLINA
JAMES COMER, KENTUCKY
BEN CLINE, VIRGINIA
RUSS FULCHER, IDAHO
RON WRIGHT, TEXAS
DAN MEUSER, PENNSYLVANIA
DUSTY JOHNSON, SOUTH DAKOTA
FRED KELLER, PENNSYLVANIA
GREGORY F. MURPHY, NORTH CAROLINA
JEFFERSON VAN DREW, NEW JERSEY

September 1, 2020

The Honorable John Ring
Chairman
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dear Chairman Ring:

I write in response to our telephone conversation on May 14, 2020, and with reference to the National Labor Relations Board's (NLRB) letters to the Committee on September 5 and October 4, 2019. Throughout the approximately 18 months that I have been Chairman of the Committee, I have sought information from the NLRB on its handling of conflicts of interest and recusal obligations to better understand how the NLRB rectified the deficient process that permitted an NLRB Member to participate in the consideration of the *Hy-Brand*¹ case in violation of his ethics pledge.² Regrettably, the NLRB has refused to fully comply with key oversight requests from the Committee to confirm that the NLRB is, in fact, protecting the NLRB's deliberative process from actual conflicts of interest and the appearance of such. I have also sought information regarding the NLRB's decision to contract out work related to its rulemaking on the agency's joint employer standard to verify that the contracted assignment did not violate federal laws and regulations designed to protect the public interest.³ However, the NLRB has refused to produce the list of categories into which the contractor sorted public comments, as well as the instructions provided to the contractors tasked with categorizing comments.

Throughout this oversight process, the Committee has accommodated the NLRB's requests by arranging for Committee staff to review requested documents *in camera* without waiving the right to full production, and by postponing the review of requested documents involving pending

¹ 365 NLRB No. 156 (2017), *vacated* by 366 NLRB No. 26 (relying on findings by the Designated Agency Ethics Official that Member Emanuel violated his ethics pledge by participating in this case which involved his former law firm).

² Ian MacDougall, *NLRB Member is Under Investigation for a Conflict of Interest*, ProPublica (Feb. 1, 2018 11:40 AM), <https://www.propublica.org/article/william-emanuel-nlr-member-is-under-investigation-for-a-conflict-of-interest>.

³ 5 U.S.C. § 706; 31 U.S.C. § 501 note, at § 5(2)(A); OMB Circular A-76, Attachment A, at §(B)(1)(a).

cases until the resolution of those cases. However, on our May 14 phone call, you announced a change in position by refusing to cooperate with congressional oversight even once cases are completed. The NLRB's failure to produce the requested documents is an obstruction of the Committee's constitutional authority and duty to conduct oversight of the NLRB's expenditures and activities. Furthermore, this change in position and the continued refusal to give the Committee certain documents indicate that the NLRB has something to hide regarding decisions that are likely tainted by a defective process, such as the *McDonald's* case⁴ and the joint employer rulemaking.⁵

Without production from the NLRB, the Committee is left to conclude that the NLRB will not produce documents because they substantiate allegations of misconduct.

The Committee is left to conclude that the NLRB's sole motivation for refusing to produce requested documents is to cover up misconduct.⁶ The only facts the Committee has to consider, at this point, are those that are publicly available, which reveal processes tainted with conflicts of interest and prejudicial error.

With respect to the *McDonald's* case, it is a matter of public record that Member William Emanuel—who was previously embroiled in the *Hy-Brand* ethics scandal—participated in the *McDonald's* decision⁷ despite the fact that McDonald's paid Member Emanuel's former law firm, Littler Mendelson, to establish a hotline for franchisees regarding the legal issues before the agency.⁸ This hotline is still operational, and had been the entire time the *McDonald's* case was pending before the Board. Member Emanuel participated in the *McDonald's* case as early as January 2018, more than one year before the completion of any memorandum by the Designated Agency Ethics Official (DAEO) evaluating Member Emanuel's conflict of interest.⁹ The Committee is also aware that the DAEO's memorandum on the *McDonald's* case was addressed to you in addition to Member Emanuel, raising questions about whether you were assigned to this case and recused yourself, despite your previous statements that you were never assigned to this panel.¹⁰ On November 19, 2019, one month prior to issuing the *McDonald's* decision, the

⁴ 368 NLRB No. 134 (2019).

⁵ *Joint Employment Status Under the National Labor Relations Act*, 85 Fed. Reg. 11,184 (Feb. 26, 2020) (to be codified at 29 C.F.R. pt. 103).

⁶ Emily Bazelon, *Why Are Workers Struggling? Because Labor Law Is Broken*, New York Times (Feb. 19, 2020), <https://www.nytimes.com/interactive/2020/02/19/magazine/labor-law-unions.html> (detailing Member Emanuel's participation in *McDonald's* despite the fact that McDonald's hired his former law firm to provide legal advice to franchisees on the NLRA issues that were before the agency).

⁷ 368 NLRB No. 134 (2019).

⁸ Hassan A. Kanu, *McDonald's Versus 'Fight for \$15: Documents Reveal Strategy*, Bloomberg Law (Sept. 11, 2018 12:27PM), <https://news.bloomberglaw.com/daily-labor-report/mcdonalds-versus-fight-for-15-documents-reveal-strategy>.

⁹ *McDonald's USA, LLC*, 02-CA-093893 et al. (Jan. 16, 2018) (not reported in Board volumes).

¹⁰ *Compare Privilege Log* provided by the NLRB to Committee staff (May 6, 2019) (describing memorandum issued by the DAEO to both Member Emanuel and Chairman Ring on April 29, 2019) with Subcomm. on the Departments of Labor, Health and Human Services, Education, and Related Agencies of the H. Comm. on Appropriations, *National Labor Relations Board Budget Request for FY 2021* (May 11, 2020), <https://appropriations.house.gov/events/hearings/national-labor-relations-board-budget-request-for-fy-2021> (statement of Chairman John Ring).

NLRB issued its report on ethics and recusal standards that authorized Members to “insist on participating” in a case even if the DAEO “disqualifies” a Member from participating.¹¹ In light of the NLRB’s refusal to produce the DAEO memorandum, the Committee can logically conclude from these facts that one or more of the below may be true:

- You and/or Member Emanuel failed to disclose all relevant facts to the DAEO;
- The DAEO advised you and/or Member Emanuel to recuse yourselves from the case, and Member Emanuel insisted on participating; and
- You and/or Member Emanuel have taken steps to undermine the independence of the DAEO.

By refusing to produce all relevant DAEO guidance or memoranda related to this case, you have failed to answer these questions and rebut the inference that there is something to hide.

Without the requested documents, the Committee is also left to conclude that the NLRB acted unlawfully when it hired Ardelle Associates to categorize comments filed in the joint employer rulemaking. The Committee articulated its concern on March 14, 2019,¹² that the NLRB could be violating the Federal Activities Inventory Reform Act of 1998, by contracting out “inherently governmental functions” in violation of the public trust.¹³ In response, on March 22, 2019, the NLRB stated it “would share [the Committee’s] concern about a private contractor performing the substantive review of comments” and that the contracted work would “not involve any substantive, deliberative review of the comments.”¹⁴ The NLRB then contradicted that statement by asserting that the categories “are attorney work product and constitute an integral part of the Board’s deliberative process.”¹⁵ The NLRB also failed to alleviate concerns that it committed a prejudicial error in its supervision of the contract, and concerns that it violated the Federal Acquisition Regulation’s “impeccable standard of conduct” when it entered into a contract with Ardelle, despite Ardelle’s statement that it was a member of two organizations that filed comments in the rulemaking.¹⁶ The NLRB’s refusal to provide the comment categories and accompanying instructions indicates that it is hiding information that fuels these concerns.

¹¹ Compare NLRB’s Ethics and Recusal Report (Nov. 19, 2019), <https://www.nlr.gov/reports/regulatory-reports-and-notice/ethics-recusal-report> (stating that a Board Member can “insist on participating in” a matter despite a DAEO’s determination that the Member cannot participate) with 5 CFR § 2635.502(c)(1) (“Where the agency designee determines that the employee’s participation should not be authorized, the employee will be disqualified from participation in the matter...”).

¹² Letter from Robert C. “Bobby” Scott, U.S. Representative, and Frederica Wilson, U.S. Representative, to John Ring, NLRB Chairman (Mar. 14, 2019), <https://edlabor.house.gov/imo/media/doc/2019-03-14%20Letter%20to%20NLRB%20about%20Contracting%20Review%20of%20Joint%20Employer%20Rule.pdf>.

¹³ 31 U.S.C. § 501 note, at § 5(2)(A).

¹⁴ Letter from Chairman John Ring, National Labor Relations Board, to Chairman Robert C. “Bobby” Scott and Chairwoman Frederica S. Wilson, Committee on Education and Labor and Subcommittee on Health, Employment, Labor and Pensions (Mar. 22, 2019).

¹⁵ Letter from Chairman John Ring, National Labor Relations Board, to Chairman Robert C. “Bobby” Scott and Chairwoman Frederica S. Wilson, Committee on Education and Labor and Subcommittee on Health, Employment, Labor and Pensions (Oct. 4, 2019).

¹⁶ Letter from Chairman Robert C. “Bobby” Scott and Chairwoman Frederica S. Wilson, Committee on Education and Labor and Subcommittee on Health, Employment, Labor and Pensions, to Chairman John Ring, National Labor Relations Board (Sept. 10, 2019) (citing 48 C.F.R. § 3.101-1).

The NLRB has failed to cite a privilege that justifies withholding documents responsive to the Committee's oversight requests.

On May 6, 2019, the Committee requested documents related to the NLRB's handling of ethics and recusal matters, including memoranda produced by the DAEO regarding whether a Board Member may participate in a specific case. After the NLRB refused to produce these memoranda on May 23, 2019, I noted in a letter on August 15, 2019, that this refusal is inconsistent with the agency's stated position in favor of disclosure, which has been expressed to the Committee on multiple occasions.

In the NLRB's September 4, 2019, reply, the agency claimed that the DAEO's memoranda were deliberative, and in a privilege log the agency claimed that these documents were subject to attorney-client privilege. None of these are sufficient to justify obstructing congressional oversight, as the Committee is not bound by common law legal privileges as a basis for withholding responsive documents. In any event, the Committee's request for DAEO determinations are limited to those that have already been made by the DAEO, and are thus not pre-decisional.¹⁷ Moreover, communications between a federal government employee and a DAEO are not protected by attorney-client privilege;¹⁸ even if they were privileged, the Board waived that privilege by permitting other DAEO memoranda to be viewed *in camera*.

Similarly, on March 14, 2019, the Committee requested information relating to the NLRB's outsourcing of work related to its rulemaking on the standard for determining joint employer status.¹⁹ After the NLRB refused to provide the categories into which the contracted staff would sort public comments and accompanying instructions on how to categorize comments, the Committee followed up on September 10, 2019, raising concerns that, among other issues, the agency committed a prejudicial error in its rulemaking based on the NLRB's characterization of the comment categories.²⁰ The NLRB's response on October 4, 2019, did not claim any privilege, and yet did not comply with the oversight request.²¹ Although the NLRB claimed in

¹⁷ For this reason, the NLRB cannot compare this oversight request to its 2011 response to a request for "[a]ll documents and communications referring or relating to the *Specialty Healthcare*...notice and invitation to file briefs," including internal agency deliberations in that case. See Letter from Chairman John Ring, National Labor Relations Board, to Chairman Robert C. "Bobby" Scott, Committee on Education and Labor (Sept. 4, 2019) (citing Letter from Solicitor William B. Cowan, National Labor Relations Board, to Chairman John Kline, Committee on Education and the Workforce (May 25, 2011)). Unlike the 2011 request, which did not limit its oversight request to documents related to the scope of its investigation, the Committee's current request has sought DAEO guidance unrelated to the merits of any particular adjudication or rulemaking.

¹⁸ 5 C.F.R. § 2635.107(b).

¹⁹ Letter from Robert C. "Bobby" Scott, U.S. Representative, and Frederica Wilson, U.S. Representative, to John Ring, NLRB Chairman (Mar. 14, 2019), <https://edlabor.house.gov/imo/media/doc/2019-03-14%20Letter%20to%20NLRB%20about%20Contracting%20Review%20of%20Joint%20Employer%20Rule.pdf>.

²⁰ Letter from Chairman Robert C. "Bobby" Scott and Chairwoman Frederica S. Wilson, Committee on Education and Labor and Subcommittee on Health, Employment, Labor and Pensions, to Chairman John Ring, National Labor Relations Board (Sept. 10, 2019).

²¹ Letter from Chairman John Ring, National Labor Relations Board, to Chairman Robert C. "Bobby" Scott and Chairwoman Frederica S. Wilson, Committee on Education and Labor and Subcommittee on Health, Employment, Labor and Pensions (Oct. 4, 2019).

its October 4 reply that the list of categories is deliberative, it drafted those categories prior to conducting any review of the comments, and the NLRB has repeatedly stated that the outsourced work was not substantive in nature.²²

The NLRB has changed its position regarding its compliance with congressional oversight, raising serious concerns that the agency has something to hide.

Throughout the oversight process, the Committee has consistently acted to accommodate the NLRB by agreeing to *in camera* reviews, without ever waiving its right to full production of the requested documents. Although the NLRB previously permitted Committee staff to conduct *in camera* reviews of DAEO memoranda involving pending cases, it changed its position to refuse those reviews, claiming that its previous compliance was “made in error.”²³ In accordance with its new policy, the NLRB emailed Committee staff on December 4, 2019, stating: “We will be happy to allow you access to the *McDonald’s* memo as soon as the case has been issued.” The NLRB then issued the *McDonald’s* decision on December 12, 2019.

Based on this change in the agency’s position, I expected the NLRB to comply with congressional oversight after it issued the *McDonald’s* decision on December 12, 2019, and after it issued the final rule in the joint employer rulemaking on February 26, 2020. When Committee staff again requested production of both the DAEO memorandum in *McDonald’s* and the comment categories in the joint employer rulemaking over email on March 18, 2020, the NLRB’s Director of Congressional and Public Affairs responded on March 23, 2020, stating: “We are happy to work with you on this request,” and that “we are happy to provide you opportunity for an in-camera review of the document once Headquarters is safely reopened.”²⁴

As you know, the COVID-19 pandemic has made accommodation through *in camera* review, rather than production of the requested documents, impossible. When we discussed this matter during our telephone call on May 14, you again changed your position by abandoning any effort to comply with congressional oversight during the pandemic and instead stated that the NLRB would not comply with congressional requests for these documents short of a court order. Yet again, no privilege that would justify refusing to comply with congressional oversight was provided for this new position.

²² Letter from Chairman John Ring, National Labor Relations Board, to Chairman Robert C. “Bobby” Scott and Chairwoman Frederica S. Wilson, Committee on Education and Labor and Subcommittee on Health, Employment, Labor and Pensions (Mar. 22, 2019); Letter from Chairman John Ring, National Labor Relations Board, to Chairman Robert C. “Bobby” Scott and Chairwoman Frederica S. Wilson, Committee on Education and Labor and Subcommittee on Health, Employment, Labor and Pensions (Oct. 4, 2019).

²³ See email from National Labor Relations Board Office of Congressional and Public Affairs to Committee on Education and Labor staff (Dec. 4, 2019) (explaining inconsistency between NLRB permitting *in camera* review of DAEO memoranda regarding Member William Emanuel’s participation in *Caesars Entertainment* and the joint employer rulemaking, and its new refusal to permit *in camera* review of DAEO memoranda in other pending cases).

²⁴ The Committee’s request over email also included a reiteration of the Committee’s request for production of the DAEO memorandum regarding Member Emanuel’s participation in the joint employer rulemaking, of which Committee staff has previously conducted an *in camera* review.

The Hon. John Ring
September 1, 2020
Page 6

It can only be presumed that the continued refusal, paired with the change of position, is indication that the NLRB is attempting to cover up malfeasance or misfeasance in the *McDonald's* adjudication, the joint employer rulemaking, or both. While the Committee would prefer to resolve this matter voluntarily, the Committee is prepared to exercise its subpoena authority if needed.²⁵ Accordingly, please let Committee staff know by 5:00 PM on September 4, 2020, if the NLRB will be complying with the Committee's request.

If you have any questions, please contact Cathy Yu at Cathy.Yu@mail.house.gov. Please direct all official correspondence to the Committee's Chief Clerk at Tylease.Alli@mail.house.gov. Thank you for your attention to this matter, and I look forward to reviewing the documents.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chairman

CC: The Honorable Virginia Foxx, Ranking Member, Committee on Education and Labor

²⁵ See Rules of the Committee on Education and Labor, https://edlabor.house.gov/imo/media/doc/116th_Ed_and_Labor_Committee_Rules.pdf. The Committee's rule further provides that "to the extent practicable, the Chair shall consult with the Ranking Member at least 24 hours in advance of a subpoena being issued under such authority."

From: [Egee, Edwin W.](#)
To: [Ring, John](#); [Emanuel, William](#); [McFerran, Lauren](#); [Kaplan, Marvin E.](#)
Cc: [Lucy, Christine B.](#); [Petroccione, Kevin M.](#)
Subject: RE: Subpoena Notice: NLRB
Date: Tuesday, September 15, 2020 2:01:42 PM

WaPo <https://www.washingtonpost.com/business/2020/09/15/nlr-subpoena-house-democrats/>

From: Egee, Edwin W.
Sent: Tuesday, September 15, 2020 2:25 PM
To: Ring, John <John.Ring@nlrb.gov>; Emanuel, William <William.Emanuel@nlrb.gov>; McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Kaplan, Marvin E. <Marvin.Kaplan@nlrb.gov>
Cc: Lucy, Christine B. <Christine.Lucy@nlrb.gov>; Petroccione, Kevin M. <Kevin.Petroccione@nlrb.gov>
Subject: RE: Subpoena Notice: NLRB

Two pieces on the subpoena have already posted:

Bloomberg:

[**House Democrats to Subpoena NLRB Over Joint-Employer Documents**](#)

ProPublica:

<https://www.propublica.org/article/cover-up-house-democrats-subpoena-documents-that-nlr-refused-to-share-in-ethics-investigation>

From: Egee, Edwin W.
Sent: Monday, September 14, 2020 5:43 PM
To: Ring, John <John.Ring@nlrb.gov>; Emanuel, William <William.Emanuel@nlrb.gov>; McFerran, Lauren <Lauren.McFerran@nlrb.gov>; Kaplan, Marvin E. <Marvin.Kaplan@nlrb.gov>
Cc: Lucy, Christine B. <Christine.Lucy@nlrb.gov>; Petroccione, Kevin M. <Kevin.Petroccione@nlrb.gov>
Subject: FW: Subpoena Notice: NLRB

Please see below. Subpoena from E&L Maj expected tomorrow afternoon. (b) (5)
(b) (5) .

Ed

Edwin Egee

Director, Office of Congressional & Public Affairs
National Labor Relations Board

(o) 202-273-0108
(m) 202-247-8646

From: Green, Rob <Rob.Green@mail.house.gov>
Sent: Monday, September 14, 2020 4:45 PM
To: Egee, Edwin W. <Edwin.Egee@nrlrb.gov>
Subject: FW: Subpoena Notice: NLRB

FYI

Begin forwarded message:

From: "Brunner, Ilana" <Ilana.Brunner@mail.house.gov>
Date: September 14, 2020 at 12:26:16 PM EDT
Subject: Subpoena Notice: NLRB

Hello.

Pursuant to Committee Rule 9, I am reaching out to notify and consult with you about the Chairman's intent to issue a subpoena to The Honorable John Ring, Chairman of the National Labor Relations Board (NLRB), in order to require the production of books, records, correspondence, memoranda, papers, and documents necessary in the conduct of investigations into rulemaking on joint employer status and potential conflicts of interest related to litigation in *McDonald's*. The Committee has reason to believe that the NLRB has documents related to these investigations. Over the last 18 months, the Committee has attempted to engage thoughtfully with the NLRB to obtain information related to these matters, but the NLRB has repeatedly refused to provide these documents. The Chairman has deemed it necessary to ensure the NLRB's response through the issuance of a subpoena. The subpoena is expected to be issued tomorrow afternoon.

Please let me know if you have any questions or would like to discuss this matter.

Ilana

Summary of the Committee on Education and Labor's work on the COVID-19 response:
<https://edlabor.house.gov/committee-response-to-covid-19>

ILANA R. BRUNNER
General Counsel
Committee on Education and Labor – Majority Staff
The Honorable Robert C. "Bobby" Scott, Chairman
U.S. House of Representatives
202-225-1531

[<image001.png>](#)

[<image002.png>](#)

[<image003.png>](#)

[<image004.png>](#)

From: [Jacob, Fred](#)
To: [Ring, John](#); [Kaplan, Marvin E.](#); [Emanuel, William](#); [McFerran, Lauren](#)
Cc: [Lucy, Christine B.](#); [Egee, Edwin W.](#); [Petroccione, Kevin M.](#)
Subject: FW: Service of Congressional Subpoena
Date: Tuesday, September 15, 2020 6:23:05 PM
Attachments: [Ring Subpoena.pdf](#)
[Ring Subpoena Cover Letter.pdf](#)
[NLRB Subpoena Instructions.pdf](#)
[NLRB Subpoena Schedule.pdf](#)

Chairman Ring and Members Kaplan, Emanuel, and McFerran:

As expected, I have just received the attached subpoena and associated documents from the House Committee on Education and Labor for DAEO memos regarding the *McDonald's* case and the Joint Employer Rulemaking, the categories used to analyze public comments during the Joint Employer Rulemaking, and documents containing instructions provided to the paralegal contractors on how to code the public comments in the Joint Employer Rulemaking. The attached Schedule describes the requested documents in more detail.

I am reviewing now and happy to answer any questions you may have.

Thanks,

Fred

From: Martin, Jaria <Jaria.Martin@mail.house.gov>
Sent: Tuesday, September 15, 2020 7:09 PM
To: Jacob, Fred <Fred.Jacob@nlrb.gov>
Cc: Brunner, Ilana <Ilana.Brunner@mail.house.gov>; Martin, John R. (Education & the Workforce) <john.martin@mail.house.gov>
Subject: Service of Congressional Subpoena

Good Evening Mr. Jacob,

See the attached subpoena for documents related to the Committee's investigations into conflicts of interest and the NLRB's contract with a private entity related to the joint employer rulemaking. As you will notice, the subpoena requires full production by 5:00 P.M. on September 22. Please respond confirming that you voluntarily accept service at your earliest convenience.

Do not hesitate to reach out if you have any questions.

Jaria Martin | Clerk & Special Assistant to the Staff Director
Committee on Education and Labor
Chairman Robert C. "Bobby" Scott
2176 Rayburn House Office Building

Phone: 202-225-3725
Jaria.Martin@mail.house.gov

Jaria Martin | Clerk & Special Assistant to the Staff Director
Committee on Education and Labor
Chairman Robert C. "Bobby" Scott
2176 Rayburn House Office Building
Phone: 202-225-3725
Jaria.Martin@mail.house.gov

MAJORITY MEMBERS:

ROBERT C. "BOBBY" SCOTT, VIRGINIA,
Chairman

SUSAN A. DAVIS, CALIFORNIA
RAÚL M. GRIJALVA, ARIZONA
JOE COURTNEY, CONNECTICUT
MARCIA L. FUDGE, OHIO
GREGORIO KILILI CAMACHO SABLÁN,
NORTHERN MARIANA ISLANDS
FREDERICA S. WILSON, FLORIDA
SUZANNE BONAMICI, OREGON
MARK TAKANO, CALIFORNIA
ALMA S. ADAMS, NORTH CAROLINA
MARK DESAULNIER, CALIFORNIA
DONALD NORCROSS, NEW JERSEY
PRAMILA JAYAPAL, WASHINGTON
JOSEPH D. MORELLE, NEW YORK
SUSAN WILD, PENNSYLVANIA
JOSH HARDER, CALIFORNIA
LUCY MCBATH, GEORGIA
KIM SCHRIER, WASHINGTON
LAUREN UNDERWOOD, ILLINOIS
JAHANA HAYES, CONNECTICUT
DONNA E. SHALALA, FLORIDA
ANDY LEVIN, MICHIGAN
ILHAN OMAR, MINNESOTA
DAVID TRONE, MARYLAND
HALEY M. STEVENS, MICHIGAN
SUSIE LEE, NEVADA
LORI TRAHAN, MASSACHUSETTS
JOAQUIN CASTRO, TEXAS



COMMITTEE ON
EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

MINORITY MEMBERS:

VIRGINIA FOXX, NORTH CAROLINA,
Ranking Member
DAVID P. ROE, TENNESSEE
GLENN THOMPSON, PENNSYLVANIA
TIM WALBERG, MICHIGAN
BRETT GUTHRIE, KENTUCKY
BRADLEY BYRNE, ALABAMA
GLENN GROTHMAN, WISCONSIN
ELISE M. STEFANIK, NEW YORK
RICK W. ALLEN, GEORGIA
LLOYD K. SMUCKER, PENNSYLVANIA
JIM BANKS, INDIANA
MARK WALKER, NORTH CAROLINA
JAMES COMER, KENTUCKY
BEN CLINE, VIRGINIA
RUSS FULCHER, IDAHO
RON WRIGHT, TEXAS
DAN MEUSER, PENNSYLVANIA
DUSTY JOHNSON, SOUTH DAKOTA
FRED KELLER, PENNSYLVANIA
GREGORY F. MURPHY, NORTH CAROLINA
JEFFERSON VAN DREW, NEW JERSEY

September 15, 2020

The Honorable John Ring
Chairman
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dear Chairman Ring:

I write to follow up on the Committee's letter dated September 1, 2020 regarding the Committee's outstanding document requests regarding the Designated Agency Ethics Official's (DAEO) determination in the *McDonald's* decision,¹ the DAEO's determination in the rulemaking on joint employer status,² the categories for public comments in the joint employer rulemaking,³ and the instructions provided to the individuals on categorizing comments.⁴

Unfortunately, the NLRB declined to provide a formal response to that letter. The NLRB's position has been that the DAEO's determinations and the comment categories are deliberative and/or protected by attorney-client privilege is without merit.⁵ As the Committee has communicated to you on numerous occasions, it is not obligated to accept the assertion of common law legal privileges.

¹ 368 NLRB No. 134 (2019).

² *Joint Employment Status Under the National Labor Relations Act*, 85 Fed. Reg. 11,184 (Feb. 26, 2020) (to be codified at 29 C.F.R. pt. 103).

³ *Id.*

⁴ *Id.*

⁵ See Letter from John Ring, Chairman, National Labor Relations Board to Robert C. "Bobby" Scott, Chairman, U.S. House of Representatives Education and Labor Committee, and Frederica S. Wilson, Chairwoman, Subcommittee on Health, Employment, Labor, and Pensions (Oct. 4, 2019); Letter from John Ring, Chairman, National Labor Relations Board to Robert C. "Bobby" Scott, Chairman, U.S. House of Representatives Education and Labor Committee, and Frederica S. Wilson, Chairwoman, Subcommittee on Health, Employment, Labor, and Pensions (Sept. 10, 2019).

Moreover, although the NLRB has claimed that it did not provide any accompanying instructions regarding how to categorize comments,⁶ the Committee has since learned, through the course of its investigation, that an instruction manual was indeed provided by the NLRB to the individuals contracted to categorize comments to the joint employer rulemaking.

The Committee would have preferred to have resolved these issues voluntarily. Committee staff first reached out to the NLRB on March 14, 2019, regarding the NLRB's contract with a private entity to assist in the joint employer rulemaking,⁷ and on May 6, 2019, regarding the DAEO's memoranda regarding Members' conflicts of interest.⁸ Since then, the NLRB has refused to produce the requested documents. As I noted in my September 1, 2020 letter, the Committee is left to conclude that the NLRB's sole motivation for refusing to produce the requested documents is to cover up misconduct. In a telephone call on May 14, 2020, the NLRB stated that it would not comply with congressional oversight short of a court order. Yet again, no privilege that would justify refusing to comply with congressional oversight was provided for this new position.

The requested information is necessary for the Committee to conduct thorough and necessary oversight of the *McDonald's* case and the NLRB's process for responding to comments in the joint employer rulemaking. Accordingly, the Committee hereby issues the attached subpoena. The compelled documents are detailed in the attached Schedule A, and are required to be produced by no later than September 22, 2020.

If you have any questions, please contact Cathy Yu at Cathy.Yu@mail.house.gov. Please direct all official correspondence to the Committee's Clerk and Special Assistant to the Staff Director, Jaria Martin, at Jaria.Martin@mail.house.gov.

Thank you for your attention to this matter, and I look forward to your response.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chairman

⁶ See Letter from John Ring, Chairman, National Labor Relations Board to Robert C. "Bobby" Scott, Chairman, U.S. House of Representatives Education and Labor Committee, and Frederica S. Wilson, Chairwoman, Subcommittee on Health, Employment, Labor, and Pensions (May 6, 2019).

⁷ See Letter from Robert C. "Bobby" Scott, Chairman, U.S. House of Representatives Education and Labor Committee, and Frederica S. Wilson, Chairwoman, Subcommittee on Health, Employment, Labor, and Pensions to John Ring, Chairman, National Labor Relations Board (May 6, 2019).

⁸ See Letter from Robert C. "Bobby" Scott, Chairman, U.S. House of Representatives Education and Labor Committee, and Frederica S. Wilson, Chairwoman, Subcommittee on Health, Employment, Labor, and Pensions to John Ring, Chairman, National Labor Relations Board (Mar. 14, 2019).

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

The Honorable John Ring, Chairman, National Labor Relations Board

To _____

You are hereby commanded to be and appear before the
Committee on Education and Labor

_____ of the House of Representatives of the United States at the place, date, and time specified below.

- ☒ to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 2176 Rayburn House Office Building, Washington, DC 20515

Date: 9/22/2020

Time: 5:00 P.M.

- ☐ to testify at a deposition touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____

Time: _____

- ☐ to testify at a hearing touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____

Time: _____

To any authorized staff member or the U.S. Marshals Service

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at
the city of Washington, D.C. this 15th day of September, 2020.

Attest:

Glenn J. Lott, Deputy Clerk
Clerk



Chairman or Authorized Member

PROOF OF SERVICE

Subpoena for **The Honorable John Ring, Chairman, National Labor Relations Board**

Address **National Labor Relations Board**

1015 Half Street S.E., Washington, DC 20570

before the **Committee on Education and Labor**

*U.S. House of Representatives
116th Congress*

Served by (print name) **Jaria Martin**

Title **Clerk & Special Assistant to the Staff Director, Committee on Education and Labor**

Manner of service **Email**

Date _____

Signature of Server _____

Address _____

RESPONDING TO COMMITTEE SUBPOEANS

In responding to the document request, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents in unredacted form that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.
4. Each document should be produced in a form that may be copied by standard copying machines.
5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.
6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.
8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
9. The Committee requests electronic documents in addition to paper productions. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should immediately consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients), identify any and all third parties in possession, custody, or control of the document, and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of any third party.

11. If any document responsive to this request was, but no longer is, in your possession, custody or control, state:

- a. how the document was disposed of;
- b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
- c. the date of disposition;
- d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.

12. If any document responsive to this request cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.

13. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents that would be responsive as if the date or other descriptive detail were correct.

14. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

15. All documents should be Bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

16. Two sets of the documents should be delivered to the Committee, one set to the majority staff and one set to the minority staff. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.

17. In the event that a responsive document is withheld on any basis, including a claim of privilege, you should provide a log containing the following information concerning every such document: (i) the reason the document is not being produced; (ii) the type of document; (iii) the general subject matter; (iv) the date, author and addressee; (v) the relationship of the author and addressee to each other; and (vi) any other description necessary to identify the

document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, “claim of privilege” includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.

- (a) Any objections or claims of privilege are waived if you fail to provide an explanation of why full compliance is not possible and a log identifying with specificity the ground(s) for withholding each withheld document prior to the request compliance date.
- (b) In complying with the request, be apprised that (unless otherwise determined by the Committee) the Committee does not recognize: any purported non-disclosure privileges associated with the common law including, but not limited to, the deliberative-process privilege, the attorney-client privilege, and attorney work product protections; any purported privileges or protections from disclosure under the Freedom of Information Act; or any purported contractual privileges, such as non-disclosure agreements.
- (c) Any assertion by a request recipient of any such non-constitutional legal bases for withholding documents or other materials, for refusing to answer any deposition question, or for refusing to provide hearing testimony, shall be of no legal force and effect and shall not provide a justification for such withholding or refusal, unless and only to the extent that the Committee (or the chair of the Committee, if authorized) has consented to recognize the assertion as valid.

18. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

19. Upon completion of the document production, you must submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee’s request or in anticipation of receiving the Committee’s request, and (3) all documents identified during the search that are responsive have been produced to the Committee, identified in a log provided to the Committee, as described in (17) above, or identified as provided in (10), (11) or (12) above.

20. When representing a witness or entity before the Committee in response to a document request or request for transcribed interview, counsel for the witness or entity must promptly submit to the Committee a notice of appearance specifying the following: (a) counsel’s name, firm or organization, and contact information; and (b) each client represented by the counsel in connection with the proceeding. Submission of a notice of appearance constitutes acknowledgement that counsel is authorized to accept service of process by the Committee on

behalf of such client(s), and that counsel is bound by and agrees to comply with all applicable House and Committee rules and regulations.

DEFINITIONS

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (“e-mail”), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term “document” includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto.
2. The term “documents in your possession, custody or control” means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.
3. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in an in-person meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
4. The terms “and” and “or” should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms “person” or “persons” or “individuals” mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms “referring” or “relating,” with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

7. The term “employee” means agent, borrowed employee, casual employee, consultant, de facto employee, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, contract employee, contractor, or any other type of service provider.

8. “You” or “your” means and refers to you as a natural person and the United States and any of its agencies, offices, subdivisions, entities, officials, administrators, Board Members, General Counsel, employees, attorneys, agents, advisors, consultants, staff, contractors, or any other persons acting on your, the Board Members’, or the General Counsel’s behalf or under your, the Board Members’, or the General Counsel’s control or direction; and includes any other person(s) defined in the document request letter.

SCHEDULE A

In accordance with the attached instructions, you, John Ring, Chairman of the National Labor Relations Board (NLRB), are required to produce complete and unredacted versions of the following:

1. Documents sufficient to show the categories into which individuals referred by Ardelle Associates sorted public comments in the rulemaking *Joint Employer Status Under the National Labor Relations Act*, 85 Fed. Reg. 11,184 (Feb. 26, 2020) (*to be codified at 29 C.F.R. Part 103*).
2. All documents provided by the NLRB to Ardelle Associates or any individuals referred by Ardelle Associates containing instructions on how to categorize public comments in the rulemaking *Joint Employer Status Under the National Labor Relations Act*, 85 Fed. Reg. 11,184 (Feb. 26, 2020) (*to be codified at 29 C.F.R. Part 103*).
3. All documents and communications, including all memoranda and other written guidance, issued by the Designated Agency Ethics Official (DAEO) referring or relating to Member William Emanuel's and Chairman John Ring's potential conflict of interest in *McDonald's*, Cases 02-CA-093893 et al.
4. All documents and communications, including all memoranda and other written guidance, issued by the DAEO referring or relating to any Member's potential conflict of interest in the rulemaking *Joint Employer Status Under the National Labor Relations Act*, 85 Fed. Reg. 11,184 (Feb. 26, 2020) (*to be codified at 29 C.F.R. Part 103*).

From: [Murphy, Terrence H.](#)
To: [Ring, John](#)
Cc: [Lotito, Michael J.](#); [Bashford, Jo Ann](#)
Subject: RE: American Employment Law Council - October 2020 Meeting
Date: Thursday, September 24, 2020 8:41:53 AM
Attachments: [image001.png](#)
[image002.png](#)

One other thought following up on the below – since this will be virtual, we can tell the audience and any questioners up front what the limits of any current Board member are and we can screen out any improper question in the presentation.

Thanks,
Terry

Terrence H. Murphy

Shareholder
412.201.7621 direct, 412.860.4521 mobile
TMurphy@littler.com



Fueled by ingenuity. Inspired by you.

Labor & Employment Law Solutions | Local Everywhere
EQT plaza, 625 Liberty Avenue, 26th Floor, Pittsburgh, PA 15222-3110

From: Murphy, Terrence H. <TMurphy@littler.com>
Sent: Wednesday, September 23, 2020 8:32 PM
To: Ring, John <John.Ring@nlrb.gov>
Cc: Lotito, Michael J. <MLotito@littler.com>; Bashford, Jo Ann <JoAnn.Bashford@nlrb.gov>
Subject: RE: American Employment Law Council - October 2020 Meeting

John,

Thanks for getting back to me.

I do not think the concern the ethics group at the NLRB will be a problem. Here's why: I do not see this session as posing questions about how the Board will rule on future issues - this particular issue or that. We should avoid that. Rather, I see it as addressing:

- What, if any, are the labor movements' opportunities post-pandemic?
- Is a strong labor movement important for the U.S., post-pandemic?
- How might the labor movement change?
- What constraints does the existing labor law impose on such changes, or not? Why?
- If the existing labor law has deficiencies, what might they be?
- What reforms to the labor law might be considered, if any?

I will address what is above with the AELC planners. The additional points, it seems to me, are that Phil and I can address any issues that might pose touchier ethical issues for you, and as moderator, I will have control over that. You have my assurance that I will not put you in a difficult position.

Let me know your thoughts. I think this will work fine.

Best,
Terry

Terrence H. Murphy

Shareholder

412.201.7621 direct, 412.860.4521 mobile

TMurphy@littler.com

Littler

Fueled by ingenuity. Inspired by you.

Labor & Employment Law Solutions | Local Everywhere

EQT plaza, 625 Liberty Avenue, 26th Floor, Pittsburgh, PA 15222-3110

From: Ring, John <John.Ring@nlrb.gov>

Sent: Wednesday, September 23, 2020 7:06 PM

To: Murphy, Terrence H. <TMurphy@littler.com>

Cc: Lotito, Michael J. <MLotito@littler.com>; Bashford, Jo Ann <JoAnn.Bashford@nlrb.gov>

Subject: RE: American Employment Law Council - October 2020 Meeting

Terry,

Thanks again for the invitation to speak at your October meeting. I've been cleared to participate although we have one request that I hope will not be too troublesome. The session you have proposed is titled "*NLRB Perspectives on Future Workforce/Workplace*." You've explained that you would like me to participate in a "discussion about the NLRA and the changes occurring and to occur in the workplace." Because I am prohibited from commenting, predicting, or answering questions about the future of the NLRB or how the Board will approach cases in the future, we will need to refocus the session or consider me for another slot. Our ethics folks are concerned that the session, as planned, suggests that I will be predicting how the NLRA will be applied to future cases before the Board.

Let me know.

Thanks,
John

John F. Ring

Chairman

National Labor Relations Board

1015 Half Street SE Washington, DC 20570
john.ring@nlrb.gov | 202-273-2722

From: Murphy, Terrence H. <TMurphy@littler.com>
Sent: Monday, September 14, 2020 8:21 AM
To: Ring, John <John.Ring@nlrb.gov>
Subject: American Employment Law Council - October 2020 Meeting

John,

Although we will not be together in person at AELC's Annual Conference in October 2020, AELC's Annual Conference will occur virtually through live webinar sessions on October 15 and 16, plus two recorded sessions.

We would like to put together an NLRB panel to kick off Day Two, Friday, October 16 (although it might move to Thursday), and have in mind something like the following: "NLRB Perspectives on Future Workforce / Workplace". We are envisioning a 45 – 60 minute program. It would not be a review of NLRB developments – that will take place in another session. Rather, we were hoping to have a discussion about the NLRA and the changes occurring and to occur in the workplace. I am inviting you to participate on this panel with me as moderator. Phil Miscimarra will also be participating.

Please let me know if you would be willing to join us.

Trust that you and your family have been well through these unusual times.

Thanks,
Terry

Terrence H. Murphy
Shareholder
412.201.7621 direct, 412.860.4521 mobile
TMurphy@littler.com



Labor & Employment Law Solutions | Local Everywhere
EQT plaza, 625 Liberty Avenue, 26th Floor, Pittsburgh, PA 15222-3110

This email may contain confidential and privileged material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you are not the intended recipient (or authorized to receive for the recipient), please contact the sender by reply email and delete all copies of this message.

Littler Mendelson, P.C. is part of the international legal practice Littler Global, which operates worldwide through a number of separate legal entities. Please visit www.littler.com for more information.

This email may contain confidential and privileged material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you are not the intended recipient (or authorized to receive for the recipient), please contact the sender by reply email and delete all copies of this message.

Littler Mendelson, P.C. is part of the international legal practice Littler Global, which operates worldwide through a number of separate legal entities. Please visit www.littler.com for more information.

From: [Egee, Edwin W.](#)
To: [Ring, John](#); [Emanuel, William](#); [Kaplan, Marvin E.](#); [McFerran, Lauren](#)
Cc: [Jacob, Fred](#); [Lucy, Christine B.](#); [Petroccione, Kevin M.](#)
Subject: FW: Letter from Senator Warren, Reps. DeLauro, Pocan, Lee to NLRB Chairman John Ring
Date: Thursday, September 24, 2020 11:02:48 AM
Attachments: [Letter from Sen Warren, Reps DeLauro, Pocan, Lee to NLRB 9-24-20.pdf](#)
[Letter from Sen Warren, Reps DeLauro, Pocan, Lee to Member Emanuel 9-24-20.pdf](#)
[Letter from Sen Warren, Reps DeLauro, Pocan, Lee to Member Kaplan 9-24-20.pdf](#)
[Letter from Sen Warren, Reps DeLauro, Pocan, Lee to Chairman Ring 9-24-20.pdf](#)
[Letter from Sen Warren, Reps DeLauro, Pocan, Lee to Member McFerran 9-24-20.pdf](#)

Board Members-

Please see attached letters from Warren, DeLauro, Pocan and Lee.

Ed

From: Kugler, Sara (Warren) <Sara_Kugler@warren.senate.gov>
Sent: Thursday, September 24, 2020 10:43 AM
To: Egee, Edwin W. <Edwin.Egee@nlrb.gov>; Petroccione, Kevin M. <Kevin.Petroccione@nlrb.gov>
Cc: Elizabeth.Albertine@mail.house.gov; leslie.zelenko@mail.house.gov; Damavandi, Samira <Samira.Damavandi@mail.house.gov>
Subject: RE: Letter from Senator Warren, Reps. DeLauro, Pocan, Lee to NLRB Chairman John Ring

Hi Ed,

Thank you again for this response. Please find attached a follow-up letter from Senator Warren and Reps. DeLauro, Pocan, and Lee to Chairman Ring ("to NLRB"). In addition, please find letters from them to each member of the Board (addressed to each Member individually).

Thanks very much, and I hope you and your loved ones are safe and well.

Sara

From: Egee, Edwin W. <Edwin.Egee@nlrb.gov>
Sent: Tuesday, April 7, 2020 1:53 PM
To: Kugler, Sara (Warren) <Sara_Kugler@warren.senate.gov>; Siegel, Julie (Warren) <Julie_Siegel@warren.senate.gov>; Tizzani, Philip <Philip.Tizzani@mail.house.gov>; andrew.o'neill@mail.house.gov; Emma.Mehrabi@mail.house.gov
Cc: Petroccione, Kevin M. <Kevin.Petroccione@nlrb.gov>
Subject: RE: Letter from Senator Warren, Reps. DeLauro, Pocan, Lee to NLRB Chairman John Ring

All-

Please see attached response to your letter of March 11. Our sincere thanks for your cooperation on the timing of our response. Of course, happy to discuss further if need be.

Stay safe,

Ed

Edwin Egee

Director, Office of Congressional & Public Affairs

National Labor Relations Board

(o) 202-273-0108

(m) 202-247-8646

From: Kugler, Sara (Warren) <Sara_Kugler@warren.senate.gov>
Sent: Tuesday, March 24, 2020 4:43 PM
To: Egee, Edwin W. <Edwin.Egee@nlrb.gov>; Siegel, Julie (Warren) <Julie_Siegel@warren.senate.gov>; Tizzani, Philip <Philip.Tizzani@mail.house.gov>; andrew.o'neill@mail.house.gov; Emma.Mehrabi@mail.house.gov
Cc: Petroccione, Kevin M. <Kevin.Petroccione@nlrb.gov>
Subject: RE: Letter from Senator Warren, Reps. DeLauro, Pocan, Lee to NLRB Chairman John Ring

Hi Ed – absolutely. I hope you're safe and well. Thanks,

Sara

From: Egee, Edwin W. [<mailto:Edwin.Egee@nlrb.gov>]
Sent: Tuesday, March 24, 2020 1:22 PM
To: Kugler, Sara (Warren) <Sara_Kugler@warren.senate.gov>; Siegel, Julie (Warren) <Julie_Siegel@warren.senate.gov>; Tizzani, Philip <Philip.Tizzani@mail.house.gov>; andrew.o'neill@mail.house.gov; Emma.Mehrabi@mail.house.gov
Cc: Petroccione, Kevin M. <Kevin.Petroccione@nlrb.gov>
Subject: RE: Letter from Senator Warren, Reps. DeLauro, Pocan, Lee to NLRB Chairman John Ring

All-

Appreciate this inquiry. In light of ongoing events, we respectfully request two additional weeks to respond to your letter of March 11.

Regards,
Ed

Edwin Egee

Director, Office of Congressional & Public Affairs

National Labor Relations Board

(o) 202-273-0108

(m) 202-247-8646

From: Coleman, Jocelyn <Jocelyn.Coleman@nlrb.gov>
Sent: Wednesday, March 11, 2020 2:31 PM
To: Egee, Edwin W. <Edwin.Egee@nlrb.gov>
Cc: Coleman, Jocelyn <Jocelyn.Coleman@nlrb.gov>
Subject: FW: Letter from Senator Warren, Reps. DeLauro, Pocan, Lee to NLRB Chairman John Ring

Jocelyn I Coleman

Confidential Assistant
Office of the General Counsel
National Labor Relations Board
(202) 273-4048; M: (202) 374-1863

From: Kugler, Sara (Warren) <Sara_Kugler@warren.senate.gov>
Sent: Wednesday, March 11, 2020 2:24 PM
To: ed.egee@nlrb.gov; Stock, Alice B. <Alice.Stock@nlrb.gov>; Coleman, Jocelyn <Jocelyn.Coleman@nlrb.gov>
Cc: Siegel, Julie (Warren) <Julie_Siegel@warren.senate.gov>
Subject: Letter from Senator Warren, Reps. DeLauro, Pocan, Lee to NLRB Chairman John Ring

Good afternoon,

Please find attached a letter from Senator Warren and Representatives Rosa DeLauro, Mark Pocan, and Barbara Lee to Chairman John Ring regarding the NLRB ethics recusal report.

Thanks!

Sara

—
Sara Kugler
Legislative Aide
Office of Senator Elizabeth Warren
309 Hart Senate Office Building
sara_kugler@warren.senate.gov
(202) 224-5188

Congress of the United States
Washington, DC 20510

September 24, 2020

The Honorable John Ring
Chairman
National Labor Relations Board
1015 Half St., S.E.
Washington, D.C. 20570

Dear Chairman Ring:

Thank you for your recent response to our letter regarding the National Labor Relations Board's (NLRB or the Board) Ethics Recusal Report, which formed the basis for and contained new ethics guidance that is now in place for you and other Board members.¹ We wrote you on March 11, 2020 expressing concern that this guidance "is based on a twisted legal analysis that ignores basic tenets of ethics law and public integrity" and effectively allows NLRB Members to unilaterally decide to ignore an ethics officer's recusal recommendation and take part in cases in which they have a conflict of interest; and we requested that the Board rescind the guidance and establish new guidance consistent with the law.² You have not done so – leaving a fundamentally flawed set of ethics rules in place. The NLRB has been plagued with ethics problems since you became Chairman,³ and your response raises new questions about your commitment to an open and transparent ethics process that will let the NLRB make decisions that are not clouded by questions about the Board's ethics and integrity.

In our March 11 letter, we explained that your new report and guidance suggest "that it is not only permissible, but preferable for a potentially-conflicted board member, rather than a third party, to make the final determination of whether they should recuse [which] belies common sense and decades of relevant legal precedent."⁴ We noted that the guidance "allows a Member

¹ National Labor Relations Board, "NLRB Board Member Recusal Process: E.S. Memo 19-1," Memorandum, November 18, 2019, <https://www.warren.senate.gov/imo/media/doc/NLRB%20Ethics%20Recusal%20Report%20Nov%202019.pdf>.

² Letter from Senator Elizabeth Warren and Representatives Rosa DeLauro, Mark Pocan, and Barbara Lee to NLRB Chairman John Ring, March 11, 2020, <https://www.warren.senate.gov/download/20200311-letter-from-senator-warren-reps-de-lauro-pocan-lee-to-nlrp-on-ethics-recusal-report>.

³ Letter from Senators Elizabeth Warren, Kirsten Gillibrand, Mazie Hirono, Tammy Baldwin, and Cory A. Booker to NLRB Chairman John Ring, September 17, 2018, <https://www.warren.senate.gov/imo/media/doc/2018.09.17%20Letter%20to%20NLRB%20on%20Purple%20Communications%20COI.pdf>.

⁴ Letter from Senator Elizabeth Warren and Representatives Rosa DeLauro, Mark Pocan, and Barbara Lee to NLRB Chairman John Ring, March 11, 2020, <https://www.warren.senate.gov/download/20200311-letter-from-senator-warren-reps-de-lauro-pocan-lee-to-nlrp-on-ethics-recusal-report>.

to simply ‘[reach] his or her own decision’ on recusal and puts NLRB members and staff at risk of discipline for violating ethics rules or criminal conflicts of interest laws.”⁵

You responded to our letter on April 7, 2020.⁶ This response was wholly inadequate, exacerbating our concerns about the process by which you developed this guidance, your commitment to comply with the federal ethics program, and your capacity to uphold the integrity of the NLRB. We have also learned your response to our offices contained citations to portions of the report that the Office of Government Ethics (OGE) flagged as incorrect and requested you “clarify the text of”⁷ – leading us to question whether you are taking this critical matter seriously, or if your intent was to mislead the public and Congress regarding your new ethics protocols and your discussions with ethics experts. We are requesting your agency provide clarity to our offices and to the public regarding the ethics protocols you are now implementing at the NLRB.

NLRB’s Lack of Transparency about Ethics Guidelines

Public documents indicate that OGE sent the NLRB a letter on December 19, 2019 raising concerns that “portions of the [NLRB ethics] Report characterize ethics requirements and processes in ways that could be misconstrued.”⁸ In particular, OGE requested that the NLRB “clarify various portions of the Report that could be misconstrued to suggest that the U.S. Office of Government Ethics (OGE) will adjudicate disagreements between Board members and the NLRB Designated Agency Ethics Official.”⁹ On January 9, 2020, the NLRB replied to OGE stating your agency was “willing to amend our report,” and included edits you described as “our attempt to amend the provisions of the report as [OGE] request[ed].”¹⁰ In the NLRB’s April 7 response letter to our offices, you state that the NLRB, “confirmed every one of our conclusions with OGE, through the Board’s Designated Agency Ethics Officer.”¹¹

In our own conversations with OGE, we learned that OGE has come to an understanding with the NLRB that the edits to the report that you sent to OGE in your January 9, 2020 letter addressed their concerns – but those edits and a final version of the report and guidance appear to not be available to the public in any form.¹²

⁵ Letter from Senator Elizabeth Warren and Representatives Rosa DeLauro, Mark Pocan, and Barbara Lee to NLRB Chairman John Ring, March 11, 2020, <https://www.warren.senate.gov/download/20200311-letter-from-senator-warren-reps-de-lauro-pocan-lee-to-nlr-on-ethics-recusal-report>.

⁶ Letter from NLRB Chairman John Ring to Senator Elizabeth Warren and Representatives Rosa DeLauro, Mark Pocan, and Barbara Lee, April 7, 2020, <https://www.nlr.gov/sites/default/files/attachments/pages/node-6353/ring-to-warren-de-lauro-pocan-lee-final2.pdf>.

⁷ Letter from OGE Director Emory A. Rounds, III to NLRB Chairman John Ring, December 19, 2019, [https://oge.gov/web/OGE.nsf/0/46A7F0E553CB5A20852585B9006C48F7/\\$FILE/Letter%20to%20NLRB%20Chair.pdf](https://oge.gov/web/OGE.nsf/0/46A7F0E553CB5A20852585B9006C48F7/$FILE/Letter%20to%20NLRB%20Chair.pdf).

⁸ *Id.*

⁹ *Id.*

¹⁰ Letter from NLRB Chairman John Ring to OGE Director Emory A. Rounds, III, January 9, 2020, <https://www.nlr.gov/sites/default/files/attachments/pages/node-6353/letter-chairman-ring-oge-director-rounds-1-9-2020-errata-sheet.pdf>.

¹¹ Letter from NLRB Chair John Ring to Senator Elizabeth Warren, April 7, 2020, available at <https://www.nlr.gov/sites/default/files/attachments/pages/node-6353/ring-to-warren-de-lauro-pocan-lee-final2.pdf>.

¹² Call between the Office of Senator Elizabeth Warren and the U.S. Office of Government Ethics, June 18, 2020.

This is troubling. The public has a right to know about the ethics rules under which NLRB officials are operating, and the process that was followed to put them in place – but even the most interested, diligent member of the public who scrutinizes the documents you have made available online would be left to guess what your new policy is.

This sequence of events also raises questions about the fact that you appear to be providing misleading information to the public and to Congress. Currently, your agency’s “NLRB’s Ethics Recusal Report” webpage lists six separate documents as links, including the original November 19, 2019 report, OGE’s letter to your agency, and your response to OGE.¹³ But there is no final version of the report and guidance, with the corrections you shared with OGE, available anywhere – nor an explanation that the text edits at the end of your letter to OGE constitute final corrections of the report, nor documentation that OGE has told the NLRB that those edits address their concerns.

This failure to provide clarity means that several changes that you appear to have made to the ethics policy are not presented clearly or in final form. In particular, OGE informed the NLRB that the original report language could be interpreted to state that “there is a right to review or appeal recusal disagreements to OGE.”¹⁴

Misleading or Incomplete Information Provided to Congress and the Public

These concerns are exacerbated by the fact that you reiterated uncorrected information – with no clarity about what was or was not final – in your April 7, 2020 response to our offices. In that response, you wrote, “after significant work, and in consultation with OGE through our DAEO, we confirmed what we state in the report,” followed by a passage from the report indicating that a Board member can “invoke statutory process to” challenge the DAEO’s recusal determination.¹⁵ But that quoted phrase is part of the language you told OGE you would strike from the report in January,¹⁶ months before your response to us, because OGE told you, “portions of the Report characterize ethics requirements and processes in ways that could be misconstrued.”¹⁷

It is our understanding from discussions with OGE that your agency is aware you sent our offices a formal response with incorrect information.¹⁸ But you have not corrected this error

¹³ National Labor Relations Board, “NLRB’s Ethics Recusal Report,” <https://www.nlr.gov/reports/regulatory-reports-and-notice/ethics-recusal-report>.

¹⁴ Letter from OGE Director Emory A. Rounds, III to NLRB Chairman John Ring, December 19, 2019, [https://www.oge.gov/web/oge.nsf/0/43485A2A24C0CCDB852584D60062B3A5/\\$FILE/Letter%20to%20NLRB%20Chair.pdf](https://www.oge.gov/web/oge.nsf/0/43485A2A24C0CCDB852584D60062B3A5/$FILE/Letter%20to%20NLRB%20Chair.pdf).

¹⁵ Letter from NLRB Chair John Ring to Senator Elizabeth Warren and Representatives Rosa DeLauro, Mark Pocan, and Barbara Lee, April 7, 2020, available at <https://www.nlr.gov/sites/default/files/attachments/pages/node-6353/ring-to-warren-de-lauro-pocan-lee-final2.pdf>.

¹⁶ Letter from NLRB Chairman John Ring to OGE Director Emory A. Rounds, III, January 9, 2020, <https://www.nlr.gov/sites/default/files/attachments/pages/node-6353/letter-chairman-ring-oge-director-rounds-1-9-2020-errata-sheet.pdf>.

¹⁷ Letter from OGE Director Emory A. Rounds, III to NLRB Chairman John Ring, December 19, 2019, [https://www.oge.gov/web/oge.nsf/0/43485A2A24C0CCDB852584D60062B3A5/\\$FILE/Letter%20to%20NLRB%20Chair.pdf](https://www.oge.gov/web/oge.nsf/0/43485A2A24C0CCDB852584D60062B3A5/$FILE/Letter%20to%20NLRB%20Chair.pdf).

¹⁸ Call between the Office of Senator Elizabeth Warren and the U.S. Office of Government Ethics, June 18, 2020.

in your letter to our offices, and that letter with uncorrected report language is still posted online along with other documents related to your ethics report.¹⁹

Your response letter also fails to clearly inform our offices of your arrangement with OGE, that you are treating the edits you proposed in your January 9 letter as operative language modifying the November report, and that you are implementing the report based on those changes. Instead, you claim that OGE assured your agency that the report conclusions are correct.²⁰ These assertions are unchallenged, because, as you note, other than OGE Director Rounds' letter to you,²¹ OGE has chosen to only communicate orally with NLRB staff regarding the report.²² We still have no public clarification on whether OGE accepted modified language you proposed as permissible.

We are certain you understand that agencies create agency-specific ethics policies, and agency heads like yourself are "responsible for, and will exercise personal leadership in, establishing and maintaining an effective agency ethics program and fostering an ethical culture in the agency."²³ While OGE provides technical assistance about what is and is not permissible, your dangerous, precedent-setting recusal policy is yours alone.

Questions

The Standards of Ethical Conduct for Employees of the Executive Branch state that "public service is a public trust."²⁴ The public belief in the integrity of the government is a critical regulatory goal, which is codified in requirements for government employees to "avoid any actions creating the appearance that they are violating the law or the ethical standards set forth" in federal ethics regulations.²⁵ That means that even the appearance of a conflict of interest must be avoided in order to ensure that "every citizen can have complete confidence in the integrity of the Federal Government."²⁶

In our previous letter, we noted the problems with your new recusal guidance that harms our federal ethics program and the integrity of the NLRB, and asked that you abandon this policy and start over. Given your failure thus far to provide clarity to Congress and the public about this ethics guidance, we request that you provide the following information no later than October 8, 2020.

¹⁹ National Labor Relations Board, "NLRB's Ethics Recusal Report," <https://www.nlr.gov/reports/regulatory-reports-and-notice/ethics-recusal-report>.

²⁰ Letter from NLRB Chair John Ring to Senator Elizabeth Warren and Representatives Rosa DeLauro, Mark Pocan, and Barbara Lee, April 7, 2020, available at <https://www.nlr.gov/sites/default/files/attachments/pages/node-6353/ring-to-warren-de-lauro-pocan-lee-final2.pdf>.

²¹ Letter from OGE Director Emory A. Rounds, III to NLRB Chairman John Ring, December 19, 2019, [https://www.oge.gov/web/oge.nsf/0/43485A2A24C0CCDB852584D60062B3A5/\\$FILE/Letter%20to%20NLRB%20Chair.pdf](https://www.oge.gov/web/oge.nsf/0/43485A2A24C0CCDB852584D60062B3A5/$FILE/Letter%20to%20NLRB%20Chair.pdf).

²² Letter from NLRB Chairman John Ring to OGE Director Emory A. Rounds, III, January 9, 2020, <https://www.nlr.gov/sites/default/files/attachments/pages/node-6353/letter-chairman-ring-oge-director-rounds-1-9-2020-errata-sheet.pdf>.

²³ 5 CFR § 2638.107.

²⁴ 5 CFR § 2635.101.

²⁵ 5 CFR § 2635.101(b)(14).

²⁶ 5 CFR § 2635.101(a).

1. Provide our offices, and make publicly available online, a final version of your report and guidance, and an explanation of the changes that were made in response to OGE's concerns.
2. An explanation of what would happen in the case that an NLRB Member is advised by an agency ethics official to recuse from a case due to a conflict of interest, and the Member decides to ignore that advice.

Sincerely,

Elizabeth Warren
United States Senator

Rosa DeLauro
Chair
Subcommittee on Labor, Health, and Human
Services, Education, and Related Agencies
House Committee on Appropriations

Mark Pocan
Member of Congress

Barbara Lee
Member of Congress

Congress of the United States
Washington, DC 20510

September 24, 2020

The Honorable William J. Emanuel
Board Member
National Labor Relations Board
1015 Half St., S.E.
Washington, D.C. 20570

Dear Member Emanuel:

We are writing to seek confirmation that you will uphold your commitment as a public official to abide by our nation's ethics laws, and take steps to ensure that the American public can have faith in the integrity of the National Labor Relations Board (NLRB).

In November 2019, the NLRB released a report and new guidance on procedure regarding instances when a Member ignores the advice of a Designated Agency Ethics Official (DAEO) to recuse themselves from a case due to a conflict of interest.¹ We believe the answer to this question is straightforward – Members should follow the DAEO's guidance, consistent with decades of practice across agencies and federal ethics laws. And we have provided a lengthy response to the NLRB's report outlining how the report is based on a twisted legal analysis that ignores basic tenets of ethics law.²

The NLRB initiated the report after the NLRB Inspector General (IG) and DAEO found that you violated your ethics pledge in the case *Hy-Brand Industrial Contractors, Ltd. and Brandt Construction Co.*³ Rather than undertaking a good-faith effort to restore public confidence in the Board's integrity, the NLRB's ethics report is a thinly veiled effort to post-hoc validate your insistence you should have been permitted to participate in the *Hy-Brand* decision, contrary to the NLRB DAEO's determination. The report states, "Member Emanuel contends that he strongly disagreed with the substance of the recusal determination but was unable to seek

¹ National Labor Relations Board, "National Labor Relations Board's Ethics Recusal Report," November 19, 2019, <https://www.warren.senate.gov/imo/media/doc/NLRB%20Ethics%20Recusal%20Report%20Nov%202019.pdf>.

² Letter from Senator Elizabeth Warren and Representatives Rosa DeLauro, Mark Pocan, and Barbara Lee to NLRB Chairman John Ring, March 11, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.03.11%20Letter%20from%20Senator%20Warren,%20Reps%20DeLauro,%20Pocan,%20Lee%20to%20NLRB%20on%20Ethics%20Recusal%20Report.pdf>.

³ National Labor Relations Board, "National Labor Relations Board's Ethics Recusal Report," November 19, 2019, pp. 2; 40-43, <https://www.warren.senate.gov/imo/media/doc/NLRB%20Ethics%20Recusal%20Report%20Nov%202019.pdf>.

review of it.”⁴ The NLRB’s new guidance changes the rules to appease your objections, creating a legally dubious roadmap for Members to ignore a recusal determination, rather than reinforcing NLRB Members’ requirement to comply with ethics officials’ determinations.

This represents a chilling continuation of ongoing concerns about the public integrity of the NLRB. Senators wrote to you in November 2017, shortly after your confirmation as a new member of the NLRB, expressing concern that your “long history of representing employers wishing to make it harder for workers to bargain collectively” would present “a number of conflicts.”⁵ The senators requested that you “publicly disclose all potential conflicts created by your former clients and those of your firm” so that the public could “evaluate your ability to impartially apply the law.”⁶ You responded on November 21, 2017 with a list of 162 former clients.⁷ You also stated:

As I pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself in all Board cases in which my “former employer,” Littler Mendelson, or my own “former clients,” are a party or represent a party.⁸

In a response to Questions for the Record from Senator Patty Murray, you also listed *Browning-Ferris Industries of California, Inc., d/b/a BFI Newby Island Recyclery and FPR-II, LLC, d* (BFI) as one of the cases pending before the NLRB in which your former employer, Littler Mendelson, represented a party.⁹

Members of Congress wrote to you again on February 6, 2018, warning that your participation in “directing the General Counsel to ask the Court to remand [the case *BFI*] back to the Board for reconsideration consistent with precedent set out in the *Hy-Brand* decision and more favorable to [your former employer’s] client ... appears to be in direct contravention of your commitments to the Office of Government Ethics, to the requirements of the Ethics Pledge, and to the requirements of federal regulations.”¹⁰

⁴ National Labor Relations Board, “National Labor Relations Board’s Ethics Recusal Report,” November 19, 2019, pp. 45, <https://www.warren.senate.gov/imo/media/doc/NLRB%20Ethics%20Recusal%20Report%20Nov%202019.pdf>.

⁵ Letter from Senators Elizabeth Warren, Patty Murray, Sherrod Brown, et al. to NLRB Member William Emanuel, November 6, 2017, https://www.warren.senate.gov/files/documents/2017_11_7_Emanuel_Ethics_Obligations.pdf.

⁶ *Id.*

⁷ Letter from NLRB Member William Emanuel to Senator Elizabeth Warren, November 21, 2017, https://www.warren.senate.gov/files/documents/2017_11_21_Letter_to_Senator_Warren_from_Member_Emanuel_re_Ethics_Obligations.pdf.

⁸ *Id.*, pp. 2.

⁹ Response from William Emanuel to Questions for the Record submitted by Senator Patty Murray for July 13, 2017 hearing on William Emanuel’s Nomination for Member of the NLRB, <https://www.help.senate.gov/imo/media/doc/Emanuel%20BFI%20Remand%20-%20Attachment%20A.PDF>.

¹⁰ Letter from Senator Patty Murray, Representative Bobby Scott, Senator Elizabeth Warren, et al. to NLRB Member William Emanuel, February 6, 2018, <https://www.help.senate.gov/imo/media/doc/02052018%20NLRB%20Emanuel%20Letter.pdf>.

The IG released a report several days later on February 9, 2018, finding that “the *Hy-Brand* and *Browning-Ferris* matters are the same ‘particular matter involving specific parties,’” and concluding, as a result, that “Member Emanuel’s participation in the *Hy-Brand/Browning-Ferris* matter when he otherwise should have been recused exposes a serious and flagrant problem and/or deficiency in the Board’s administration of its deliberative processes and the National Labor Relations Act.”¹¹ The IG further wrote that your participation in the decision “calls into question the validity of that decision and the confidence that the Board is performing its statutory duties.”¹²

Senators Elizabeth Warren and Patty Murray wrote to you on February 26, 2018, noting that the IG report “make[s] clear that your actions created a serious flaw in the *Hy-Brand* decision-making process, tainted the outcome of that process, and undermined the ability of the public to trust in the integrity of the Board’s decision-making processes.”¹³

On March 23, 2018, Senator Warren called on you to resign, noting, “Mr. Emanuel violated his ethics agreement and participated in a case where he had a clear conflict of interest ... Mr. Emanuel’s job is to give workers a fair shake—and he no longer has the credibility to do so.”¹⁴

You did not resign, and the NLRB then undertook a lengthy process¹⁵ to double down on your insistence that Members should have the authority to circumvent our nation’s ethics laws and standards if they so choose.

In our March 11, 2020 letter to the NLRB, we explained that the agency’s new report and guidance suggest “that it is not only permissible, but preferable for a potentially-conflicted board member, rather than a third party, to make the final determination of whether they should recuse [which] belies common sense and decades of relevant legal precedent.”¹⁶ We also noted that the

¹¹ National Labor Relations Board, Office of Inspector General, “Notification of a Serious and Flagrant Problem and/or Deficiency in the Board’s Administration of its Deliberative Process and the National Labor Relations Act with Respect to the Deliberation of a Particular Matter,” memorandum, February 9, 2018, pp. 5, https://www.nlr.gov/sites/default/files/attachments/basic-page/node-1535/OIG%20Report%20Regarding%20Hy_Brand%20Deliberations.pdf.

¹² *Id.*

¹³ Letter from Senators Elizabeth Warren and Patty Murray to NLRB Member William Emanuel, February 26, 2018, https://www.warren.senate.gov/imo/media/doc/2018_02_26_Letter_to_NLRB_Member_Emanuel_on_2_20_IG_report.pdf.

¹⁴ Bloomberg Law, “Warren Wants Labor Board Member Out Over Ethics Questions,” Chris Opfer and Hassan A. Kanu, March 23, 2018, <https://news.bloomberglaw.com/daily-labor-report/warren-wants-labor-board-member-out-over-ethics-questions>.

¹⁵ National Labor Relations Board, “National Labor Relations Board’s Ethics Recusal Report,” November 19, 2019, <https://www.warren.senate.gov/imo/media/doc/NLRB%20Ethics%20Recusal%20Report%20Nov%202019.pdf>.

¹⁶ Letter from Senator Elizabeth Warren and Representatives Rosa DeLauro, Mark Pocan, and Barbara Lee to NLRB Chairman John Ring, March 11, 2020,

new guidance suggests a Member can simply “[reach] his or her own decision” on recusal, putting NLRB members and staff at risk of discipline for violating ethics rules or criminal ethics laws,¹⁷ including the nation’s criminal conflicts of interest statute, 18 U.S. Code, Section 208.¹⁸

In a letter we sent to Chairman Ring today, we raised concerns that the NLRB has provided incomplete and incorrect information about the new guidance to the public and to Congress. The Office of Government Ethics (OGE) sent the NLRB a letter on December 19, 2019 raising concerns that “portions of the [NLRB ethics] report characterize ethics requirements and processes in ways that could be misconstrued.”¹⁹ In particular, OGE requested that the NLRB “clarify various portions of the Report that could be misconstrued to suggest that [OGE] will adjudicate disagreements between Board members and the NLRB Designated Agency Ethics Official.”²⁰

The NLRB responded to OGE with edits to passages identified by OGE as “characteriz[ing] ethics requirements and processes in ways that could be misconstrued.”²¹ It is our understanding that OGE has told the NLRB those edits to the report address their concerns, and that the NLRB is treating those edits as operative language for the purposes of implementing the November guidance.²² However, there is no publicly available final report incorporating those edits, or explanation that the currently posted ethics report and guidance reflect incorrect information. In fact, the NLRB sent unedited, incorrect report language to our offices, which is posted publicly online, and has not bothered to provide a correction to us or to the public.²³

Between the legally tenuous guidance, obfuscated internal process, and misrepresentations to Congress and the public, there is little clarity about the ethics and integrity rules that govern the NLRB and its members, and what process the NLRB is actually implementing regarding recusal decisions and other components of the agency’s ethics program.

The Standards of Ethical Conduct for Employees of the Executive Branch state that “public service is a public trust.”²⁴ The public belief in the integrity of the government is a critical regulatory goal, which is codified in requirements for government employees to “avoid any actions creating the appearance that they are violating the law or the ethical standards set

<https://www.warren.senate.gov/imo/media/doc/2020.03.11%20Letter%20from%20Senator%20Warren,%20Reps%20DeLauro,%20Pocan,%20Lee%20to%20NLRB%20on%20Ethics%20Recusal%20Report.pdf>.

¹⁷ *Id.*

¹⁸ 18 U.S. Code § 208.

¹⁹ Letter from OGE Director Emory A. Rounds, III to NLRB Chairman John Ring, December 19, 2019, [https://www.oge.gov/web/OGE.nsf/0/43485A2A24C0CCDB852584D60062B3A5/\\$FILE/Letter%20to%20NLRB%20Chair.pdf](https://www.oge.gov/web/OGE.nsf/0/43485A2A24C0CCDB852584D60062B3A5/$FILE/Letter%20to%20NLRB%20Chair.pdf).

²⁰ *Id.*

²¹ *Id.*

²² Call between the Office of Senator Elizabeth Warren and the U.S. Office of Government Ethics, June 18, 2020.

²³ Letter from NLRB Chairman John Ring to Senator Elizabeth Warren and Representatives Rosa DeLauro, Mark Pocan, and Barbara Lee, April 7, 2020, <https://www.nlr.gov/sites/default/files/attachments/pages/node-6353/ring-to-warren-delauro-pocan-lee-final2.pdf>.

²⁴ 5 CFR § 2635.101.

forth” in federal ethics regulations.²⁵ That means that even the appearance of a conflict of interest must be avoided in order to ensure that “every citizen can have complete confidence in the integrity of the Federal Government.”²⁶

In order to provide clarity to the public and to Congress on the key issue of concern with the new ethics guidance, we request that you provide us with an answer to the following question no later than October 8, 2020.

Will you commit to follow the guidance of the NLRB Designated Agency Ethics Official if you are advised to recuse yourself from a case or other official matters?

Sincerely,

Elizabeth Warren
United States Senator

Rosa DeLauro
Chair
Subcommittee on Labor, Health, and Human
Services, Education, and Related Agencies
House Committee on Appropriations

Mark Pocan
Member of Congress

Barbara Lee
Member of Congress

²⁵ 5 CFR § 2635.101(b)(14).

²⁶ 5 CFR § 2635.101(a).

Congress of the United States
Washington, DC 20510

September 24, 2020

The Honorable Marvin E. Kaplan
Board Member
National Labor Relations Board
1015 Half St., S.E.
Washington, D.C. 20570

Dear Member Kaplan:

We are writing to seek confirmation that you will uphold your commitment as a public official to abide by our nation's ethics laws, and take steps to ensure that the American public can have faith in the integrity of the National Labor Relations Board (NLRB).

In November 2019, the NLRB released a report and new guidance on procedure regarding instances when a Member ignores the advice of a Designated Agency Ethics Official (DAEO) to recuse themselves from a case due to a conflict of interest.¹ We believe the answer to this question is straightforward – Members should follow the DAEO's guidance, consistent with decades of practice across agencies and federal ethics laws. And we have provided a lengthy response to the NLRB's report outlining how the report is based on a twisted legal analysis that ignores basic tenets of ethics law.²

The NLRB initiated the report after the NLRB Inspector General (IG) and DAEO found that Member William Emanuel violated his ethics pledge in the case *Hy-Brand Industrial Contractors, Ltd. and Brandt Construction Co.*³ Rather than undertaking a good-faith effort to restore public confidence in the Board's integrity, the NLRB's ethics report is a thinly veiled effort to post-hoc validate Member Emanuel's insistence he should have been permitted to participate in the *Hy-Brand* decision, contrary to the NLRB DAEO's determination. The report states, "Member Emanuel contends that he strongly disagreed with the substance of the recusal

¹ National Labor Relations Board, "National Labor Relations Board's Ethics Recusal Report," November 19, 2019, <https://www.warren.senate.gov/imo/media/doc/NLRB%20Ethics%20Recusal%20Report%20Nov%202019.pdf>.

² Letter from Senator Elizabeth Warren and Representatives Rosa DeLauro, Mark Pocan, and Barbara Lee to NLRB Chairman John Ring, March 11, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.03.11%20Letter%20from%20Senator%20Warren,%20Reps%20DeLauro,%20Pocan,%20Lee%20to%20NLRB%20on%20Ethics%20Recusal%20Report.pdf>.

³ National Labor Relations Board, "National Labor Relations Board's Ethics Recusal Report," November 19, 2019, pp. 2; 40-43, <https://www.warren.senate.gov/imo/media/doc/NLRB%20Ethics%20Recusal%20Report%20Nov%202019.pdf>.

determination but was unable to seek review of it.”⁴ The NLRB’s new guidance changes the rules to appease Member Emanuel’s objections, creating a legally dubious roadmap for Members to ignore a recusal determination, rather than reinforcing NLRB Members’ requirement to comply with ethics officials’ determinations.

This represents a chilling continuation of ongoing concerns about the public integrity of the NLRB. Senators wrote to Member Emanuel in November 2017, shortly after his confirmation as a new member of the NLRB, expressing concern that his “long history of representing employers wishing to make it harder for workers to bargain collectively” would present “a number of conflicts.”⁵ The senators requested that Member Emanuel “publicly disclose all potential conflicts created by [his] former clients and those of [his] firm” so that the public could “evaluate [his] ability to impartially apply the law.”⁶ He responded on November 21, 2017 with a list of 162 former clients.⁷ He also stated:

As I pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself in all Board cases in which my “former employer,” Littler Mendelson, or my own “former clients,” are a party or represent a party.⁸

In a response to Questions for the Record from Senator Patty Murray, Member Emanuel also listed *Browning-Ferris Industries of California, Inc., d/b/a BFI Newby Island Recyclery and FPR-II, LLC, d (BFI)* as one of the cases pending before the NLRB in which his former employer, Littler Mendelson, represented a party.⁹

Members of Congress wrote to Member Emanuel again on February 6, 2018, warning that his participation in “directing the General Counsel to ask the Court to remand [the case *BFI*] back to the Board for reconsideration consistent with precedent set out in the *Hy-Brand* decision and more favorable to [his former employer’s] client ... appears to be in direct contravention of

⁴ National Labor Relations Board, “National Labor Relations Board’s Ethics Recusal Report,” November 19, 2019, pp. 45, <https://www.warren.senate.gov/imo/media/doc/NLRB%20Ethics%20Recusal%20Report%20Nov%202019.pdf>.

⁵ Letter from Senators Elizabeth Warren, Patty Murray, Sherrod Brown, et al. to NLRB Member William Emanuel, November 6, 2017, https://www.warren.senate.gov/files/documents/2017_11_7_Emanuel_Ethics_Obligations.pdf.

⁶ *Id.*

⁷ Letter from NLRB Member William Emanuel to Senator Elizabeth Warren, November 21, 2017, https://www.warren.senate.gov/files/documents/2017_11_21_Letter_to_Senator_Warren_from_Member_Emanuel_re_Ethics_Obligations.pdf.

⁸ *Id.*, pp. 2.

⁹ Response from William Emanuel to Questions for the Record submitted by Senator Patty Murray for July 13, 2017 hearing on William Emanuel’s Nomination for Member of the NLRB, <https://www.help.senate.gov/imo/media/doc/Emanuel%20BFI%20Remand%20-%20Attachment%20A.PDF>.

[his] commitments to the Office of Government Ethics, to the requirements of the Ethics Pledge, and to the requirements of federal regulations.”¹⁰

The IG released a report several days later on February 9, 2018, finding that “the *Hy-Brand* and *Browning-Ferris* matters are the same ‘particular matter involving specific parties,’” and concluding, as a result, that “Member Emanuel’s participation in the *Hy-Brand/Browning-Ferris* matter when he otherwise should have been recused exposes a serious and flagrant problem and/or deficiency in the Board’s administration of its deliberative processes and the National Labor Relations Act.”¹¹ The IG further wrote that Member Emanuel’s participation in the decision “calls into question the validity of that decision and the confidence that the Board is performing its statutory duties.”¹²

Senators Elizabeth Warren and Patty Murray wrote to Member Emanuel on February 26, 2018, noting that the IG report “make[s] clear that [his] actions created a serious flaw in the *Hy-Brand* decision-making process, tainted the outcome of that process, and undermined the ability of the public to trust in the integrity of the Board’s decision-making processes.”¹³

On March 23, 2018, Senator Warren called on Member Emanuel to resign, noting, “Mr. Emanuel violated his ethics agreement and participated in a case where he had a clear conflict of interest ... Mr. Emanuel’s job is to give workers a fair shake—and he no longer has the credibility to do so.”¹⁴

Member Emanuel did not resign, and the NLRB then undertook a lengthy process¹⁵ to double down on his insistence that Members should have the authority to circumvent our nation’s ethics laws and standards if they so choose.

¹⁰ Letter from Senator Patty Murray, Representative Bobby Scott, Senator Elizabeth Warren, et al. to NLRB Member William Emanuel, February 6, 2018, <https://www.help.senate.gov/imo/media/doc/02052018%20NLRB%20Emanuel%20Letter.pdf>.

¹¹ National Labor Relations Board, Office of Inspector General, “Notification of a Serious and Flagrant Problem and/or Deficiency in the Board’s Administration of its Deliberative Process and the National Labor Relations Act with Respect to the Deliberation of a Particular Matter,” memorandum, February 9, 2018, pp. 5, https://www.nlr.gov/sites/default/files/attachments/basic-page/node-1535/OIG%20Report%20Regarding%20Hy_Brand%20Deliberations.pdf.

¹² *Id.*

¹³ Letter from Senators Elizabeth Warren and Patty Murray to NLRB Member William Emanuel, February 26, 2018, https://www.warren.senate.gov/imo/media/doc/2018_02_26_Letter_to_NLRB_Member_Emanuel_on_2_20_IG_report.pdf.

¹⁴ Bloomberg Law, “Warren Wants Labor Board Member Out Over Ethics Questions,” Chris Opfer and Hassan A. Kanu, March 23, 2018, <https://news.bloomberglaw.com/daily-labor-report/warren-wants-labor-board-member-out-over-ethics-questions>.

¹⁵ National Labor Relations Board, “National Labor Relations Board’s Ethics Recusal Report,” November 19, 2019, <https://www.warren.senate.gov/imo/media/doc/NLRB%20Ethics%20Recusal%20Report%20Nov%202019.pdf>.

In our March 11, 2020 letter to the NLRB, we explained that the agency’s new report and guidance suggest “that it is not only permissible, but preferable for a potentially-conflicted board member, rather than a third party, to make the final determination of whether they should recuse [which] belies common sense and decades of relevant legal precedent.”¹⁶ We also noted that the new guidance suggests a Member can simply “[reach] his or her own decision” on recusal, putting NLRB members and staff at risk of discipline for violating ethics rules or criminal ethics laws,¹⁷ including the nation’s criminal conflicts of interest statute, 18 U.S. Code, Section 208.¹⁸

In a letter we sent to Chairman Ring today, we raised concerns that the NLRB has provided incomplete and incorrect information about the new guidance to the public and to Congress. The Office of Government Ethics (OGE) sent the NLRB a letter on December 19, 2019 raising concerns that “portions of the [NLRB ethics] report characterize ethics requirements and processes in ways that could be misconstrued.”¹⁹ In particular, OGE requested that the NLRB “clarify various portions of the Report that could be misconstrued to suggest that [OGE] will adjudicate disagreements between Board members and the NLRB Designated Agency Ethics Official.”²⁰

The NLRB responded to OGE with edits to passages identified by OGE as “characteriz[ing] ethics requirements and processes in ways that could be misconstrued.”²¹ It is our understanding that OGE has told the NLRB those edits to the report address their concerns, and that the NLRB is treating those edits as operative language for the purposes of implementing the November guidance.²² However, there is no publicly available final report incorporating those edits, or explanation that the currently posted ethics report and guidance reflect incorrect information. In fact, the NLRB sent unedited, incorrect report language to our offices, which is posted publicly online, and has not bothered to provide a correction to us or to the public.²³

Between the legally tenuous guidance, obfuscated internal process, and misrepresentations to Congress and the public, there is little clarity about the ethics and integrity rules that govern the NLRB and its members, and what process the NLRB is actually implementing regarding recusal decisions and other components of the agency’s ethics program.

¹⁶ Letter from Senator Elizabeth Warren and Representatives Rosa DeLauro, Mark Pocan, and Barbara Lee to NLRB Chairman John Ring, March 11, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.03.11%20Letter%20from%20Senator%20Warren,%20Reps%20DeLauro,%20Pocan,%20Lee%20to%20NLRB%20on%20Ethics%20Recusal%20Report.pdf>.

¹⁷ *Id.*

¹⁸ 18 U.S. Code § 208.

¹⁹ Letter from OGE Director Emory A. Rounds, III to NLRB Chairman John Ring, December 19, 2019, [https://www.oge.gov/web/OGE.nsf/0/43485A2A24C0CCDB852584D60062B3A5/\\$FILE/Letter%20to%20NLRB%20Chair.pdf](https://www.oge.gov/web/OGE.nsf/0/43485A2A24C0CCDB852584D60062B3A5/$FILE/Letter%20to%20NLRB%20Chair.pdf).

²⁰ *Id.*

²¹ *Id.*

²² Call between the Office of Senator Elizabeth Warren and the U.S. Office of Government Ethics, June 18, 2020.

²³ Letter from NLRB Chairman John Ring to Senator Elizabeth Warren and Representatives Rosa DeLauro, Mark Pocan, and Barbara Lee, April 7, 2020, <https://www.nlr.gov/sites/default/files/attachments/pages/node-6353/ring-to-warren-delauro-pocan-lee-final2.pdf>.

The Standards of Ethical Conduct for Employees of the Executive Branch state that “public service is a public trust.”²⁴ The public belief in the integrity of the government is a critical regulatory goal, which is codified in requirements for government employees to “avoid any actions creating the appearance that they are violating the law or the ethical standards set forth” in federal ethics regulations.²⁵ That means that even the appearance of a conflict of interest must be avoided in order to ensure that “every citizen can have complete confidence in the integrity of the Federal Government.”²⁶

In order to provide clarity to the public and to Congress on the key issue of concern with the new ethics guidance, we request that you provide us with an answer to the following question no later than October 8, 2020.

Will you commit to follow the guidance of the NLRB Designated Agency Ethics Official if you are advised to recuse yourself from a case or other official matters?

Sincerely,

Elizabeth Warren
United States Senator

Rosa DeLauro
Chair
Subcommittee on Labor, Health, and Human
Services, Education, and Related Agencies
House Committee on Appropriations

Mark Pocan
Member of Congress

Barbara Lee
Member of Congress

²⁴ 5 CFR § 2635.101.

²⁵ 5 CFR § 2635.101(b)(14).

²⁶ 5 CFR § 2635.101(a).

Congress of the United States
Washington, DC 20510

September 24, 2020

The Honorable John F. Ring
Board Member
National Labor Relations Board
1015 Half St., S.E.
Washington, D.C. 20570

Dear Chairman Ring:

We are writing to seek confirmation that you will uphold your commitment as a public official to abide by our nation's ethics laws, and take steps to ensure that the American public can have faith in the integrity of the National Labor Relations Board (NLRB).

In November 2019, the NLRB released a report and new guidance on procedure regarding instances when a Member ignores the advice of a Designated Agency Ethics Official (DAEO) to recuse themselves from a case due to a conflict of interest.¹ We believe the answer to this question is straightforward – Members should follow the DAEO's guidance, consistent with decades of practice across agencies and federal ethics laws. And we have provided a lengthy response to the NLRB's report outlining how the report is based on a twisted legal analysis that ignores basic tenets of ethics law.²

The NLRB initiated the report after the NLRB Inspector General (IG) and DAEO found that Member William Emanuel violated his ethics pledge in the case *Hy-Brand Industrial Contractors, Ltd. and Brandt Construction Co.*³ Rather than undertaking a good-faith effort to restore public confidence in the Board's integrity, the NLRB's ethics report is a thinly veiled effort to post-hoc validate Member Emanuel's insistence he should have been permitted to participate in the *Hy-Brand* decision, contrary to the NLRB DAEO's determination. The report states, "Member Emanuel contends that he strongly disagreed with the substance of the recusal

¹ National Labor Relations Board, "National Labor Relations Board's Ethics Recusal Report," November 19, 2019, <https://www.warren.senate.gov/imo/media/doc/NLRB%20Ethics%20Recusal%20Report%20Nov%202019.pdf>.

² Letter from Senator Elizabeth Warren and Representatives Rosa DeLauro, Mark Pocan, and Barbara Lee to NLRB Chairman John Ring, March 11, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.03.11%20Letter%20from%20Senator%20Warren,%20Reps%20DeLauro,%20Pocan,%20Lee%20to%20NLRB%20on%20Ethics%20Recusal%20Report.pdf>.

³ National Labor Relations Board, "National Labor Relations Board's Ethics Recusal Report," November 19, 2019, pp. 2; 40-43, <https://www.warren.senate.gov/imo/media/doc/NLRB%20Ethics%20Recusal%20Report%20Nov%202019.pdf>.

determination but was unable to seek review of it.”⁴ The NLRB’s new guidance changes the rules to appease Member Emanuel’s objections, creating a legally dubious roadmap for Members to ignore a recusal determination, rather than reinforcing NLRB Members’ requirement to comply with ethics officials’ determinations.

This represents a chilling continuation of ongoing concerns about the public integrity of the NLRB. Senators wrote to Member Emanuel in November 2017, shortly after his confirmation as a new member of the NLRB, expressing concern that his “long history of representing employers wishing to make it harder for workers to bargain collectively” would present “a number of conflicts.”⁵ The senators requested that Member Emanuel “publicly disclose all potential conflicts created by [his] former clients and those of [his] firm” so that the public could “evaluate [his] ability to impartially apply the law.”⁶ He responded on November 21, 2017 with a list of 162 former clients.⁷ He also stated:

As I pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself in all Board cases in which my “former employer,” Littler Mendelson, or my own “former clients,” are a party or represent a party.⁸

In a response to Questions for the Record from Senator Patty Murray, Member Emanuel also listed *Browning-Ferris Industries of California, Inc., d/b/a BFI Newby Island Recyclery and FPR-II, LLC, d* (BFI) as one of the cases pending before the NLRB in which his former employer, Littler Mendelson, represented a party.⁹

Members of Congress wrote to Member Emanuel again on February 6, 2018, warning that his participation in “directing the General Counsel to ask the Court to remand [the case *BFI*] back to the Board for reconsideration consistent with precedent set out in the *Hy-Brand* decision and more favorable to [his former employer’s] client ... appears to be in direct contravention of

⁴ National Labor Relations Board, “National Labor Relations Board’s Ethics Recusal Report,” November 19, 2019, pp. 45, <https://www.warren.senate.gov/imo/media/doc/NLRB%20Ethics%20Recusal%20Report%20Nov%202019.pdf>.

⁵ Letter from Senators Elizabeth Warren, Patty Murray, Sherrod Brown, et al. to NLRB Member William Emanuel, November 6, 2017, https://www.warren.senate.gov/files/documents/2017_11_7_Emanuel_Ethics_Obligations.pdf.

⁶ *Id.*

⁷ Letter from NLRB Member William Emanuel to Senator Elizabeth Warren, November 21, 2017, https://www.warren.senate.gov/files/documents/2017_11_21_Letter_to_Senator_Warren_from_Member_Emanuel_re_Ethics_Obligations.pdf.

⁸ *Id.*, pp. 2.

⁹ Response from William Emanuel to Questions for the Record submitted by Senator Patty Murray for July 13, 2017 hearing on William Emanuel’s Nomination for Member of the NLRB, <https://www.help.senate.gov/imo/media/doc/Emanuel%20BFI%20Remand%20-%20Attachment%20A.PDF>.

[his] commitments to the Office of Government Ethics, to the requirements of the Ethics Pledge, and to the requirements of federal regulations.”¹⁰

The IG released a report several days later on February 9, 2018, finding that “the *Hy-Brand* and *Browning-Ferris* matters are the same ‘particular matter involving specific parties,’” and concluding, as a result, that “Member Emanuel’s participation in the *Hy-Brand/Browning-Ferris* matter when he otherwise should have been recused exposes a serious and flagrant problem and/or deficiency in the Board’s administration of its deliberative processes and the National Labor Relations Act.”¹¹ The IG further wrote that Member Emanuel’s participation in the decision “calls into question the validity of that decision and the confidence that the Board is performing its statutory duties.”¹²

Senators Elizabeth Warren and Patty Murray wrote to Member Emanuel on February 26, 2018, noting that the IG report “make[s] clear that [his] actions created a serious flaw in the *Hy-Brand* decision-making process, tainted the outcome of that process, and undermined the ability of the public to trust in the integrity of the Board’s decision-making processes.”¹³

On March 23, 2018, Senator Warren called on Member Emanuel to resign, noting, “Mr. Emanuel violated his ethics agreement and participated in a case where he had a clear conflict of interest ... Mr. Emanuel’s job is to give workers a fair shake—and he no longer has the credibility to do so.”¹⁴

Member Emanuel did not resign, and the NLRB then undertook a lengthy process¹⁵ to double down on his insistence that Members should have the authority to circumvent our nation’s ethics laws and standards if they so choose.

¹⁰ Letter from Senator Patty Murray, Representative Bobby Scott, Senator Elizabeth Warren, et al. to NLRB Member William Emanuel, February 6, 2018, <https://www.help.senate.gov/imo/media/doc/02052018%20NLRB%20Emanuel%20Letter.pdf>.

¹¹ National Labor Relations Board, Office of Inspector General, “Notification of a Serious and Flagrant Problem and/or Deficiency in the Board’s Administration of its Deliberative Process and the National Labor Relations Act with Respect to the Deliberation of a Particular Matter,” memorandum, February 9, 2018, pp. 5, https://www.nlr.gov/sites/default/files/attachments/basic-page/node-1535/OIG%20Report%20Regarding%20Hy_Brand%20Deliberations.pdf.

¹² *Id.*

¹³ Letter from Senators Elizabeth Warren and Patty Murray to NLRB Member William Emanuel, February 26, 2018, https://www.warren.senate.gov/imo/media/doc/2018_02_26_Letter_to_NLRB_Member_Emanuel_on_2_20_IG_report.pdf.

¹⁴ Bloomberg Law, “Warren Wants Labor Board Member Out Over Ethics Questions,” Chris Opfer and Hassan A. Kanu, March 23, 2018, <https://news.bloomberglaw.com/daily-labor-report/warren-wants-labor-board-member-out-over-ethics-questions>.

¹⁵ National Labor Relations Board, “National Labor Relations Board’s Ethics Recusal Report,” November 19, 2019, <https://www.warren.senate.gov/imo/media/doc/NLRB%20Ethics%20Recusal%20Report%20Nov%202019.pdf>.

In our March 11, 2020 letter to the NLRB, we explained that the agency’s new report and guidance suggest “that it is not only permissible, but preferable for a potentially-conflicted board member, rather than a third party, to make the final determination of whether they should recuse [which] belies common sense and decades of relevant legal precedent.”¹⁶ We also noted that the new guidance suggests a Member can simply “[reach] his or her own decision” on recusal, putting NLRB members and staff at risk of discipline for violating ethics rules or criminal ethics laws,¹⁷ including the nation’s criminal conflicts of interest statute, 18 U.S. Code, Section 208.¹⁸

In a letter we sent to Chairman Ring today, we raised concerns that the NLRB has provided incomplete and incorrect information about the new guidance to the public and to Congress. The Office of Government Ethics (OGE) sent the NLRB a letter on December 19, 2019 raising concerns that “portions of the [NLRB ethics] report characterize ethics requirements and processes in ways that could be misconstrued.”¹⁹ In particular, OGE requested that the NLRB “clarify various portions of the Report that could be misconstrued to suggest that [OGE] will adjudicate disagreements between Board members and the NLRB Designated Agency Ethics Official.”²⁰

The NLRB responded to OGE with edits to passages identified by OGE as “characteriz[ing] ethics requirements and processes in ways that could be misconstrued.”²¹ It is our understanding that OGE has told the NLRB those edits to the report address their concerns, and that the NLRB is treating those edits as operative language for the purposes of implementing the November guidance.²² However, there is no publicly available final report incorporating those edits, or explanation that the currently posted ethics report and guidance reflect incorrect information. In fact, the NLRB sent unedited, incorrect report language to our offices, which is posted publicly online, and has not bothered to provide a correction to us or to the public.²³

Between the legally tenuous guidance, obfuscated internal process, and misrepresentations to Congress and the public, there is little clarity about the ethics and integrity rules that govern the NLRB and its members, and what process the NLRB is actually implementing regarding recusal decisions and other components of the agency’s ethics program.

¹⁶ Letter from Senator Elizabeth Warren and Representatives Rosa DeLauro, Mark Pocan, and Barbara Lee to NLRB Chairman John Ring, March 11, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.03.11%20Letter%20from%20Senator%20Warren,%20Reps%20DeLauro,%20Pocan,%20Lee%20to%20NLRB%20on%20Ethics%20Recusal%20Report.pdf>.

¹⁷ *Id.*

¹⁸ 18 U.S. Code § 208.

¹⁹ Letter from OGE Director Emory A. Rounds, III to NLRB Chairman John Ring, December 19, 2019, [https://www.oge.gov/web/OGE.nsf/0/43485A2A24C0CCDB852584D60062B3A5/\\$FILE/Letter%20to%20NLRB%20Chair.pdf](https://www.oge.gov/web/OGE.nsf/0/43485A2A24C0CCDB852584D60062B3A5/$FILE/Letter%20to%20NLRB%20Chair.pdf).

²⁰ *Id.*

²¹ *Id.*

²² Call between the Office of Senator Elizabeth Warren and the U.S. Office of Government Ethics, June 18, 2020.

²³ Letter from NLRB Chairman John Ring to Senator Elizabeth Warren and Representatives Rosa DeLauro, Mark Pocan, and Barbara Lee, April 7, 2020, <https://www.nlr.gov/sites/default/files/attachments/pages/node-6353/ring-to-warren-delauro-pocan-lee-final2.pdf>.

As the head of your agency, you are responsible for “establishing and maintaining an effective agency ethics program and fostering an ethical culture in the agency.”²⁴ The Standards of Ethical Conduct for Employees of the Executive Branch state that “public service is a public trust.”²⁵ The public belief in the integrity of the government is a critical regulatory goal, which is codified in requirements for government employees to “avoid any actions creating the appearance that they are violating the law or the ethical standards set forth” in federal ethics regulations.²⁶ That means that even the appearance of a conflict of interest must be avoided in order to ensure that “every citizen can have complete confidence in the integrity of the Federal Government.”²⁷

In order to provide clarity to the public and to Congress on the key issue of concern with the new ethics guidance, we request that you provide us with an answer to the following question no later than October 8, 2020.

Will you commit to follow the guidance of the NLRB Designated Agency Ethics Official if you are advised to recuse yourself from a case or other official matters?

Sincerely,

Elizabeth Warren
United States Senator

Rosa DeLauro
Chair
Subcommittee on Labor, Health, and Human
Services, Education, and Related Agencies
House Committee on Appropriations

Mark Pocan
Member of Congress

Barbara Lee
Member of Congress

²⁴ 5 CFR § 2638.107.

²⁵ 5 CFR § 2635.101.

²⁶ 5 CFR § 2635.101(b)(14).

²⁷ 5 CFR § 2635.101(a).

Congress of the United States
Washington, DC 20510

September 24, 2020

The Honorable Lauren M. McFerran
Board Member
National Labor Relations Board
1015 Half St., S.E.
Washington, D.C. 20570

Dear Member McFerran:

We are writing to seek confirmation that you will uphold your commitment as a public official to abide by our nation's ethics laws, and take steps to ensure that the American public can have faith in the integrity of the National Labor Relations Board (NLRB).

In November 2019, the NLRB released a report and new guidance on procedure regarding instances when a Member ignores the advice of a Designated Agency Ethics Official (DAEO) to recuse themselves from a case due to a conflict of interest.¹ We believe the answer to this question is straightforward – Members should follow the DAEO's guidance, consistent with decades of practice across agencies and federal ethics laws. And we have provided a lengthy response to the NLRB's report outlining how the report is based on a twisted legal analysis that ignores basic tenets of ethics law.²

The NLRB initiated the report after the NLRB Inspector General (IG) and DAEO found that Member William Emanuel violated his ethics pledge in the case *Hy-Brand Industrial Contractors, Ltd. and Brandt Construction Co.*³ Rather than undertaking a good-faith effort to restore public confidence in the Board's integrity, the NLRB's ethics report is a thinly veiled effort to post-hoc validate Member Emanuel's insistence he should have been permitted to participate in the *Hy-Brand* decision, contrary to the NLRB DAEO's determination. The report states, "Member Emanuel contends that he strongly disagreed with the substance of the recusal

¹ National Labor Relations Board, "National Labor Relations Board's Ethics Recusal Report," November 19, 2019, <https://www.warren.senate.gov/imo/media/doc/NLRB%20Ethics%20Recusal%20Report%20Nov%202019.pdf>.

² Letter from Senator Elizabeth Warren and Representatives Rosa DeLauro, Mark Pocan, and Barbara Lee to NLRB Chairman John Ring, March 11, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.03.11%20Letter%20from%20Senator%20Warren,%20Reps%20DeLauro,%20Pocan,%20Lee%20to%20NLRB%20on%20Ethics%20Recusal%20Report.pdf>.

³ National Labor Relations Board, "National Labor Relations Board's Ethics Recusal Report," November 19, 2019, pp. 2; 40-43, <https://www.warren.senate.gov/imo/media/doc/NLRB%20Ethics%20Recusal%20Report%20Nov%202019.pdf>.

determination but was unable to seek review of it.”⁴ The NLRB’s new guidance changes the rules to appease Member Emanuel’s objections, creating a legally dubious roadmap for Members to ignore a recusal determination, rather than reinforcing NLRB Members’ requirement to comply with ethics officials’ determinations.

This represents a chilling continuation of ongoing concerns about the public integrity of the NLRB. Senators wrote to Member Emanuel in November 2017, shortly after his confirmation as a new member of the NLRB, expressing concern that his “long history of representing employers wishing to make it harder for workers to bargain collectively” would present “a number of conflicts.”⁵ The senators requested that Member Emanuel “publicly disclose all potential conflicts created by [his] former clients and those of [his] firm” so that the public could “evaluate [his] ability to impartially apply the law.”⁶ He responded on November 21, 2017 with a list of 162 former clients.⁷ He also stated:

As I pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself in all Board cases in which my “former employer,” Littler Mendelson, or my own “former clients,” are a party or represent a party.⁸

In a response to Questions for the Record from Senator Patty Murray, Member Emanuel also listed *Browning-Ferris Industries of California, Inc., d/b/a BFI Newby Island Recyclery and FPR-II, LLC, d (BFI)* as one of the cases pending before the NLRB in which his former employer, Littler Mendelson, represented a party.⁹

Members of Congress wrote to Member Emanuel again on February 6, 2018, warning that his participation in “directing the General Counsel to ask the Court to remand [the case *BFI*] back to the Board for reconsideration consistent with precedent set out in the *Hy-Brand* decision and more favorable to [his former employer’s] client ... appears to be in direct contravention of

⁴ National Labor Relations Board, “National Labor Relations Board’s Ethics Recusal Report,” November 19, 2019, pp. 45, <https://www.warren.senate.gov/imo/media/doc/NLRB%20Ethics%20Recusal%20Report%20Nov%202019.pdf>.

⁵ Letter from Senators Elizabeth Warren, Patty Murray, Sherrod Brown, et al. to NLRB Member William Emanuel, November 6, 2017, https://www.warren.senate.gov/files/documents/2017_11_7_Emanuel_Ethics_Obligations.pdf.

⁶ *Id.*

⁷ Letter from NLRB Member William Emanuel to Senator Elizabeth Warren, November 21, 2017, https://www.warren.senate.gov/files/documents/2017_11_21_Letter_to_Senator_Warren_from_Member_Emanuel_re_Ethics_Obligations.pdf.

⁸ *Id.*, pp. 2.

⁹ Response from William Emanuel to Questions for the Record submitted by Senator Patty Murray for July 13, 2017 hearing on William Emanuel’s Nomination for Member of the NLRB, <https://www.help.senate.gov/imo/media/doc/Emanuel%20BFI%20Remand%20-%20Attachment%20A.PDF>.

[his] commitments to the Office of Government Ethics, to the requirements of the Ethics Pledge, and to the requirements of federal regulations.”¹⁰

The IG released a report several days later on February 9, 2018, finding that “the *Hy-Brand* and *Browning-Ferris* matters are the same ‘particular matter involving specific parties,’” and concluding, as a result, that “Member Emanuel’s participation in the *Hy-Brand/Browning-Ferris* matter when he otherwise should have been recused exposes a serious and flagrant problem and/or deficiency in the Board’s administration of its deliberative processes and the National Labor Relations Act.”¹¹ The IG further wrote that Member Emanuel’s participation in the decision “calls into question the validity of that decision and the confidence that the Board is performing its statutory duties.”¹²

Senators Elizabeth Warren and Patty Murray wrote to Member Emanuel on February 26, 2018, noting that the IG report “make[s] clear that [his] actions created a serious flaw in the *Hy-Brand* decision-making process, tainted the outcome of that process, and undermined the ability of the public to trust in the integrity of the Board’s decision-making processes.”¹³

On March 23, 2018, Senator Warren called on Member Emanuel to resign, noting, “Mr. Emanuel violated his ethics agreement and participated in a case where he had a clear conflict of interest ... Mr. Emanuel’s job is to give workers a fair shake—and he no longer has the credibility to do so.”¹⁴

Member Emanuel did not resign, and the NLRB then undertook a lengthy process¹⁵ to double down on his insistence that Members should have the authority to circumvent our nation’s ethics laws and standards if they so choose.

¹⁰ Letter from Senator Patty Murray, Representative Bobby Scott, Senator Elizabeth Warren, et al. to NLRB Member William Emanuel, February 6, 2018, <https://www.help.senate.gov/imo/media/doc/02052018%20NLRB%20Emanuel%20Letter.pdf>.

¹¹ National Labor Relations Board, Office of Inspector General, “Notification of a Serious and Flagrant Problem and/or Deficiency in the Board’s Administration of its Deliberative Process and the National Labor Relations Act with Respect to the Deliberation of a Particular Matter,” memorandum, February 9, 2018, pp. 5, https://www.nlr.gov/sites/default/files/attachments/basic-page/node-1535/OIG%20Report%20Regarding%20Hy_Brand%20Deliberations.pdf.

¹² *Id.*

¹³ Letter from Senators Elizabeth Warren and Patty Murray to NLRB Member William Emanuel, February 26, 2018, https://www.warren.senate.gov/imo/media/doc/2018_02_26_Letter_to_NLRB_Member_Emanuel_on_2_20_IG_report.pdf.

¹⁴ Bloomberg Law, “Warren Wants Labor Board Member Out Over Ethics Questions,” Chris Opfer and Hassan A. Kanu, March 23, 2018, <https://news.bloomberglaw.com/daily-labor-report/warren-wants-labor-board-member-out-over-ethics-questions>.

¹⁵ National Labor Relations Board, “National Labor Relations Board’s Ethics Recusal Report,” November 19, 2019, <https://www.warren.senate.gov/imo/media/doc/NLRB%20Ethics%20Recusal%20Report%20Nov%202019.pdf>.

In our March 11, 2020 letter to the NLRB, we explained that the agency’s new report and guidance suggest “that it is not only permissible, but preferable for a potentially-conflicted board member, rather than a third party, to make the final determination of whether they should recuse [which] belies common sense and decades of relevant legal precedent.”¹⁶ We also noted that the new guidance suggests a Member can simply “[reach] his or her own decision” on recusal, putting NLRB members and staff at risk of discipline for violating ethics rules or criminal ethics laws,¹⁷ including the nation’s criminal conflicts of interest statute, 18 U.S. Code, Section 208.¹⁸

In a letter we sent to Chairman Ring today, we raised concerns that the NLRB has provided incomplete and incorrect information about the new guidance to the public and to Congress. The Office of Government Ethics (OGE) sent the NLRB a letter on December 19, 2019 raising concerns that “portions of the [NLRB ethics] report characterize ethics requirements and processes in ways that could be misconstrued.”¹⁹ In particular, OGE requested that the NLRB “clarify various portions of the Report that could be misconstrued to suggest that [OGE] will adjudicate disagreements between Board members and the NLRB Designated Agency Ethics Official.”²⁰

The NLRB responded to OGE with edits to passages identified by OGE as “characteriz[ing] ethics requirements and processes in ways that could be misconstrued.”²¹ It is our understanding that OGE has told the NLRB those edits to the report address their concerns, and that the NLRB is treating those edits as operative language for the purposes of implementing the November guidance.²² However, there is no publicly available final report incorporating those edits, or explanation that the currently posted ethics report and guidance reflect incorrect information. In fact, the NLRB sent unedited, incorrect report language to our offices, which is posted publicly online, and has not bothered to provide a correction to us or to the public.²³

Between the legally tenuous guidance, obfuscated internal process, and misrepresentations to Congress and the public, there is little clarity about the ethics and integrity rules that govern the NLRB and its members, and what process the NLRB is actually implementing regarding recusal decisions and other components of the agency’s ethics program.

¹⁶ Letter from Senator Elizabeth Warren and Representatives Rosa DeLauro, Mark Pocan, and Barbara Lee to NLRB Chairman John Ring, March 11, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.03.11%20Letter%20from%20Senator%20Warren,%20Reps%20DeLauro,%20Pocan,%20Lee%20to%20NLRB%20on%20Ethics%20Recusal%20Report.pdf>.

¹⁷ *Id.*

¹⁸ 18 U.S. Code § 208.

¹⁹ Letter from OGE Director Emory A. Rounds, III to NLRB Chairman John Ring, December 19, 2019, [https://www.oge.gov/web/OGE.nsf/0/43485A2A24C0CCDB852584D60062B3A5/\\$FILE/Letter%20to%20NLRB%20Chair.pdf](https://www.oge.gov/web/OGE.nsf/0/43485A2A24C0CCDB852584D60062B3A5/$FILE/Letter%20to%20NLRB%20Chair.pdf).

²⁰ *Id.*

²¹ *Id.*

²² Call between the Office of Senator Elizabeth Warren and the U.S. Office of Government Ethics, June 18, 2020.

²³ Letter from NLRB Chairman John Ring to Senator Elizabeth Warren and Representatives Rosa DeLauro, Mark Pocan, and Barbara Lee, April 7, 2020, <https://www.nlr.gov/sites/default/files/attachments/pages/node-6353/ring-to-warren-delauro-pocan-lee-final2.pdf>.

The Standards of Ethical Conduct for Employees of the Executive Branch state that “public service is a public trust.”²⁴ The public belief in the integrity of the government is a critical regulatory goal, which is codified in requirements for government employees to “avoid any actions creating the appearance that they are violating the law or the ethical standards set forth” in federal ethics regulations.²⁵ That means that even the appearance of a conflict of interest must be avoided in order to ensure that “every citizen can have complete confidence in the integrity of the Federal Government.”²⁶

In order to provide clarity to the public and to Congress on the key issue of concern with the new ethics guidance, we request that you provide us with an answer to the following question no later than October 8, 2020.

Will you commit to follow the guidance of the NLRB Designated Agency Ethics Official if you are advised to recuse yourself from a case or other official matters?

Sincerely,

Elizabeth Warren
United States Senator

Rosa DeLauro
Chair
Subcommittee on Labor, Health, and Human
Services, Education, and Related Agencies
House Committee on Appropriations

Mark Pocan
Member of Congress

Barbara Lee
Member of Congress

²⁴ 5 CFR § 2635.101.

²⁵ 5 CFR § 2635.101(b)(14).

²⁶ 5 CFR § 2635.101(a).

From: [Egee, Edwin W.](#)
To: [Ring, John](#); [Lucy, Christine B.](#); [Jacob, Fred](#)
Subject: Fwd: Clarification request...
Date: Friday, September 25, 2020 1:03:37 PM

Oh...

From: deCant, Kyle <Kyle.deCant@mail.house.gov>
Sent: Friday, September 25, 2020 2:02:43 PM
To: Egee, Edwin W. <Edwin.Egee@nlrb.gov>
Cc: Mooney, Katelyn <Katelyn.Mooney@mail.house.gov>; Yu, Cathy <Cathy.Yu@mail.house.gov>;
Nsor, Janice <Janice.Nsor@mail.house.gov>; Miller, Richard <Richard.Miller@mail.house.gov>;
Petroccione, Kevin M. <Kevin.Petroccione@nlrb.gov>
Subject: RE: Clarification request...

Hi Ed,

We will interpret the below email as a request for an extension of time, and will grant until close of business Tuesday, September 29 to comply with the subpoena.

Thanks,
Kyle

From: Egee, Edwin W. <Edwin.Egee@nlrb.gov>
Sent: Tuesday, September 22, 2020 4:43 PM
To: deCant, Kyle <Kyle.deCant@mail.house.gov>
Cc: Mooney, Katelyn <Katelyn.Mooney@mail.house.gov>; Yu, Cathy <Cathy.Yu@mail.house.gov>;
Nsor, Janice <Janice.Nsor@mail.house.gov>; Miller, Richard <Richard.Miller@mail.house.gov>;
Petroccione, Kevin M. <Kevin.Petroccione@nlrb.gov>
Subject: RE: Clarification request...

Kyle:

As our Solicitor acknowledged, we are in receipt of the subpoena the Committee served at 7:09 p.m. last Tuesday, September 15, 2020. The subpoena's return date is today, September 22, 2020 at 5 p.m.

The Board is working diligently to prepare a response for the Committee. Unfortunately, given the short seven day return window, the need to consult with agency counsel, and the intervening Jewish holidays, the Board will not be able to meet today's deadline. The Board expects to provide a response to the subpoena promptly and without significant delay.

Thank you for your understanding.

Ed

Edwin Egee

Director, Office of Congressional & Public Affairs

National Labor Relations Board

(o) 202-273-0108

(m) 202-247-8646

From: deCant, Kyle <Kyle.deCant@mail.house.gov>

Sent: Monday, September 14, 2020 9:45 AM

To: Egee, Edwin W. <Edwin.Egee@nlrb.gov>

Cc: Mooney, Katelyn <Katelyn.Mooney@mail.house.gov>; Yu, Cathy <Cathy.Yu@mail.house.gov>;

Nsor, Janice <Janice.Nsor@mail.house.gov>; Miller, Richard <Richard.Miller@mail.house.gov>

Subject: RE: Clarification request...

Hi Ed,

This is just to confirm that we have not received the documents, or any response, from Chairman Ring. If an email was sent to Tylease.Alli@mail.house.gov, you would have received a bounce-back directing official correspondence to Jaria.Martin@mail.house.gov or Mariah.Mowbray@mail.house.gov.

Thanks,
Kyle

From: deCant, Kyle

Sent: Friday, September 11, 2020 1:50 PM

To: Egee, Edwin W. <Edwin.Egee@nlrb.gov>

Cc: Mooney, Katelyn <Katelyn.Mooney@mail.house.gov>; Yu, Cathy <Cathy.Yu@mail.house.gov>;

Nsor, Janice <Janice.Nsor@mail.house.gov>; Miller, Richard <Richard.Miller@mail.house.gov>

Subject: RE: Clarification request...

Hi Ed,

When we said we expect full production by the end of today, we meant that the Committee rejects offers for *in camera* review, as the Committee is entitled to these documents and has always maintained its right to have them produced directly.

Thanks,
Kyle

From: Egee, Edwin W. <Edwin.Egee@nlrb.gov>
Sent: Friday, September 11, 2020 12:10 PM
To: deCant, Kyle <Kyle.deCant@mail.house.gov>
Cc: Mooney, Katelyn <Katelyn.Mooney@mail.house.gov>; Yu, Cathy <Cathy.Yu@mail.house.gov>;
Nsor, Janice <Janice.Nsor@mail.house.gov>; Miller, Richard <Richard.Miller@mail.house.gov>
Subject: RE: Clarification request...

Kyle,

In an effort to resolve this informally, we are happy to accommodate you for an *in camera* review of the joint employer DAEO memo on Monday, September 14 at 10:00 AM. For the McDonald's DAEO memo (assuming the case has closed), we can accommodate you for an *in camera* review on Friday, September 18 at 10:00 AM.

Ed

Edwin Egee

Director, Office of Congressional & Public Affairs
National Labor Relations Board
(o) 202-273-0108
(m) 202-247-8646

From: deCant, Kyle <Kyle.deCant@mail.house.gov>
Sent: Thursday, September 10, 2020 6:13 PM
To: Egee, Edwin W. <Edwin.Egee@nlrb.gov>
Cc: Mooney, Katelyn <Katelyn.Mooney@mail.house.gov>; Yu, Cathy <Cathy.Yu@mail.house.gov>;
Nsor, Janice <Janice.Nsor@mail.house.gov>; Miller, Richard <Richard.Miller@mail.house.gov>
Subject: RE: Clarification request...

Hi Ed,

The documents Chairman Scott requests are:

1. Documents showing the categories to which public comments were sorted in the joint employer rulemaking;
2. All documents provided by the NLRB to Ardelle Associates or any individuals referred by Ardelle Associates containing instructions on how to categorize public comments;
3. All documents and communications, including memoranda and other written guidance, issued by the DAEO referring or relating to Member Emanuel and Chairman Ring's participation in the *McDonald's* adjudication; and
4. All documents and communications, including all memoranda and other written guidance, issued by the DAEO referring or relating to any Member's participation in the joint employer

rulemaking.

Although we understand the Board's claim with respect to the instructions, the Committee has information revealing that the contractors were indeed provided instructions on how to categorize public comments.

With respect to the *in camera* reviews, the Committee has requested the ethics memoranda since May 6, 2019, and is entitled to all of the documents listed above. The NLRB still has not provided a date for voluntary production, and Chairman Scott respectfully rejects further delay. Accordingly, the Committee expects production before the close of business tomorrow, and if not will proceed with the subpoena.

Thanks,
Kyle

From: Egee, Edwin W. <Edwin.Egee@nlrb.gov>
Sent: Thursday, September 10, 2020 10:00 AM
To: deCant, Kyle <Kyle.deCant@mail.house.gov>
Subject: Clarification request...

Kyle-

In order to prepare a proper and formal response to Chairman Scott's letter, we want to make sure we understand exactly which documents the Committee seeks. As we understand Chairman Scott's letter, you are seeking two memos from the DAEO to Board Members regarding their participation in drafting the Joint Employer Rule and in the *McDonald's* case, and two additional documents you believe were created to advise agency contractors who provided support for during the preparation of the final Joint Employer Rule.

Let me say at the outset that the argument raised repeatedly in Chairman Scott's letter that the Board has "changed our position" on disclosure of these documents is categorically false. We have been consistent throughout these discussions. We have been as transparent as possible, while still maintaining the right of the current Board Members – and future Board Members – to freely receive candid, deliberative advice from their own staff.

We address each of the documents you request below:

1. Joint Employer DAEO Memo: Since our last discussion on the matter over three months ago, the Agency ended the mandatory telework policy at our headquarters. Accordingly, we are happy to meet at an agreeable time in September and allow your staff to view this document *in camera* at NLRB Headquarters. We ask, of course, that you follow all COVID-related protocols, including social distancing and the wearing of face masks at all times. Also, the usual *in camera* rules apply: no photographing any documents, only by hand notetaking, and no taking documents from the building or copying them in any form.
2. *McDonald's* DAEO Memo: Regarding this case, a motion for reconsideration remains pending

before the Board, and the case is still open. We anticipate it closing imminently, and, once it closes, we will alert you that the DAEO's memo is available for your review. Consistent with past practice, you may come to NLRB Headquarters and review this document *in camera*.

3. "Comment categories" for the Joint Employer Rule: Allow me to reiterate our position, which has not changed over the past 18 months. In 2019, the Board engaged temporary support on a limited, short-term basis to perform the initial sorting of the public comments. This preliminary work was provided through a GSA-approved temporary staffing agency and contracted through the GSA bid process. During that process, NLRB contracting staff reviewed the proposed scope of work and certified, pursuant to federal acquisition regulations, that it did not implicate any inherently governmental functions. Once the contract began, NLRB staff oversaw all the paralegals' work, which did not involve any substantive, deliberative review of the comments; rather, the work was limited to sorting comments into categories in preparation for substantive review by Agency labor-law professionals. NLRB employees formulated the categories, not employees of the staffing agency. Throughout, only Agency personnel advised the Board in the exercise of its deliberative functions in connection with the joint-employer rulemaking process.

The list of categories that the Board developed to analyze, summarize, and evaluate the public's comments – which it provided to the two paralegal contractors to conduct an initial sort – are attorney work product and deliberative. As the Board has previously explained to this Committee across administrations, the Board withholds attorney work product and deliberative documents to ensure that its Members receive candid legal advice; that rule applies equally to disclosure of drafts of decisions and to analytical tools developed to draft rules, such as the categories of comments. The categories were developed by NLRB labor law experts on each of the Board Members' offices, all of whom are Agency staff. Communications between Board Members and their staff about the development of such categories constitutes deliberative process and attorney work product.

4. "Instructions provided to the contractors tasked with categorizing comments" for the Joint Employer Rule. As Chairman Ring stated in his letter dated Oct 4, 2019, "(n)o separate 'instructions' were provided to the contractors – the categories were the only written instructions the contractors received." The agency has no responsive documents to this request.

Ed

Edwin Egee

Director, Office of Congressional & Public Affairs

National Labor Relations Board

(o) 202-273-0108

(m) 202-247-8646