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August 15, 2019

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

Dear Chairman Ring:

On May 6, 2019, the House Committee on Education and Labor requested information concerning how the National Labor Relations Board (NLRB) implements its ethics and recusal policies. To date, we have received responses on June 5 and 21, 2019 that failed to produce the requested copies of written guidance to Members of the NLRB prepared by the Designated Agency Ethics Official (DAEO) in pending cases, copies of requests for guidance from Members of the NLRB to the DAEO, and the updated list of pending cases from which each Member of the Board is recused.

The NLRB's decision to withhold requested memoranda and recusal decisions is inconsistent with the position in favor of disclosure that you twice expressed to the Committee: first in a meeting on October 31, 2018, and again on January 15, 2019.

The NLRB purports to withhold the DAEO's conflict of interest guidance, Members' requests for guidance, and the list of pending cases from which Members are recused on the grounds that they are "pre-decisional" and protected by attorney-client privilege. The Committee has both the constitutional authority and duty to conduct oversight, and the NLRB's assertions of privilege do not apply to Congressional oversight requests. Further, these oversight requests pertain to recusal decisions that have already been made by the DAEO, and are thus not pre-decisional, regardless of whether the underlying case is pending.

Given that nothing presented to the Committee by the NLRB provides any legal or ethical basis for withholding such information, we reiterate the requests made in our May 6 letter and that you provide the documents as soon as possible, but not later than August 29, 2019. As a reminder, the following are the outstanding requests we have made:

1. Any memoranda or other written guidance issued by the DAEO regarding a Board Member's potential conflict of interest, including those discussing recusal from any case or proposed rulemaking since August 10, 2017;
2. Any documents, communications, or records of requests for guidance from any Member of the Board to the DAEO concerning the appropriateness of such Members' participation in a particular matter or in the consideration of any proposed rulemaking; and
3. For each Member of the Board, the most recently updated list of cases, including pending cases, from which that Member is recused for any reason, including reasons related to the Member's previous representation of a party or the Member's former employer's representation of a party in that case.

Additionally, we request updated information on the status of the NLRB's internal ethics and recusal review, which has been pending for over one year.<sup>1</sup> Please produce the following information by no later than September 5, 2019:

1. A written description of the status of this review, including findings, proposed solutions, and plans for future actions;
2. Any communications with other agencies, including the Administrative Conference of the United States (ACUS), regarding ethics and recusal obligations. If any meetings occurred with ACUS or any other agency, please detail the results of that meeting; and
3. The status of any planned rulemaking, including draft proposed rules, to amend the NLRB's Supplemental Standards of Ethical Conduct.<sup>2</sup>

For questions, please contact Kyle deCant, Labor Policy Counsel for the Committee, at [Kyle.deCant@mail.house.gov](mailto:Kyle.deCant@mail.house.gov). Please direct all official correspondence to the Committee's Chief Clerk, Tylease Alli, at [Tylease.Fitzgerald@mail.house.gov](mailto:Tylease.Fitzgerald@mail.house.gov).

Sincerely,



**ROBERT C. "BOBBY" SCOTT**  
Chairman



**FREDERICA S. WILSON**  
Chairwoman  
Subcommittee on Health Employment  
Labor and Pensions

<sup>1</sup> The Committee first requested information on this review in an October 10, 2018 letter to the NLRB, but has not received any update on this review since meeting on the January 15, 2019.

<sup>2</sup> 5 C.F.R. § 7101.