



United States Government

**NATIONAL LABOR RELATIONS BOARD**

Office of the Chairman

1015 Half Street, SE

Washington, DC 20570

March 22, 2019

The Honorable Robert C. "Bobby" Scott  
Chairman  
Committee on Education and Labor  
2176 Rayburn House Office Building  
Washington, DC 20515

The Honorable Frederica S. Wilson  
Chairwoman  
Subcommittee on Health,  
Employment, Labor & Pensions  
2445 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Scott and Chairwoman Wilson:

Thank you for your letter of March 14, 2019, regarding concerns over reports that the National Labor Relations Board intends to outsource review of public comments received in response to its Notice of Proposed Rulemaking (NPRM) on the joint-employer standard. I would share your concern about a private contractor performing the substantive review of comments in this important matter, particularly with respect to appearance of conflicts of interest and undermining confidence in the Board's deliberative process. It appears, however, that you were misinformed, and I very much regret that this misunderstanding created unnecessary alarm. The Board has not outsourced, and will not outsource, the substantive review of the joint-employer rulemaking comments. We are in the process of compiling the specific information your letter requested, and a supplemental response to your letter will be provided. In the meantime, and to promptly allay any concerns, I want to fully explain the Board's plans for reviewing the comments submitted in response to the joint-employer NPRM.

Preliminarily, I am pleased to report that the response to the NPRM has been outstanding. As we have publicly reported, the Agency received nearly 29,000 comments from interested organizations, unions, academics, business owners and individual workers all over the United States. This level of participation confirms the importance of the Board's rulemaking on the joint-employer standard, and we look forward to giving full consideration to all comments received.

To ensure each public comment submitted to the Board is appropriately reviewed and considered, we have decided to engage temporary support on a limited, short-term basis to perform the initial sorting and coding of the public comments. This support work will be provided through a GSA-approved temporary employment agency, contracted through the GSA bid process and taking all conflict-of-interest issues into consideration. We will ensure, of course, that appropriate confidentiality protections are in place. Again, I emphasize that this

work, which will be overseen by NLRB staff, will not involve any substantive, deliberative review of the comments but will be limited to sorting comments into categories in preparation

for their substantive review. The Agency's own labor-law professionals will perform the first substantive review of the comments, in aid of the Board's exercise of its deliberative functions in connection with the overall rulemaking process.

We believe this approach makes sense for a number of reasons. First, it is cost-effective. Through this process, the Board can engage individuals who specialize in this type of initial sorting and coding on a short-term basis at a fraction of what it would cost for full-time equivalent employees to perform. As our Agency continues to meet its budget challenges while ensuring we carry out the NLRB's critical mission, finding cost-effective ways of accomplishing our work is important. Moreover, it is our understanding that other federal agencies have used this approach in the initial sorting of public comments in rulemaking.

Additionally, as your letter points out, the NLRB is fortunate to employ talented and seasoned attorneys. Although these expert attorneys are certainly capable of sorting and coding the comments, we believe this work is not the highest and best use of their time or skills. Since not requiring skilled attorneys to perform ministerial document-processing work is fairly customary, it should come as no surprise that the Board has not received any negative reaction from Agency staff and no outreach from the Agency's unions on this issue.

Avoiding any adverse effect on the processing of cases also figured significantly in our decision to contract out this initial sorting work. By not assigning our Agency professionals to do this work, those attorneys are able to remain focused on pending cases. As I have shared with Chairman Scott, one of my primary objectives as NLRB Chairman is to improve the timeliness with which the Board issues decisions. The NLRB has long been criticized on this score, and the Board cannot claim to be effectively advancing the purposes and policies of the Act when cases remain on our docket for years and years. To address this problem, the Board initiated a case expediting pilot program last September in an attempt to increase case-processing efficiency. We will be assessing that pilot in the near future as well as looking – with input from the members' staffs – for additional ways to ensure we process cases as efficiently as possible.

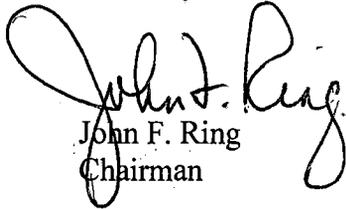
In fact, it was as part of a discussion of this case-processing pilot at a February 13 all-hands staff meeting that I explained our intent to use temporary support for the initial sorting and coding of the joint-employer rulemaking comments. At that all-hands meeting, I explained this decision in the same terms I have explained it here: to avoid having our professionals perform ministerial document-processing work that, if assigned to attorneys on the Board members' staffs, would adversely impact our renewed focus on expediting case processing. I did not receive any negative reaction to this information when I shared it with the staff.

I hope this clears up any misunderstanding based on the apparently erroneous reports you received and that I have allayed your concerns. The requested information is forthcoming.

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If you have any additional questions or concerns about this or any other matter, please do not hesitate to contact me.

Sincerely,



John F. Ring  
Chairman