



NLRB FACT SHEET

Ethics Recusal Report

BACKGROUND

The NLRB has always maintained high standards of ethical compliance, to include comprehensive procedures regarding Board member recusals. In 2017, significant recusal and ethics issues were raised in the wake of the Board's decision in *Hy-Brand Industrial Contractors, Ltd. and Brandt Construction Co.*, 365 NLRB No. 156 (December 14, 2017) (*Hy-Brand*). That case was unique because it involved the retroactive recusal of a Board member based on the Board's deliberative process in deciding the case. On June 8, 2018, NLRB Chairman John F. Ring announced that the Board would undertake a comprehensive internal evaluation of its policies and procedures governing ethics requirements for Board member recusals. That review has been completed and the results are reported in the National Labor Relations Board's Ethics Recusal Report. This Fact Sheet provides an overview of the review and the resulting findings and conclusions, which are detailed in the Report.

OBJECTIVES OF THE REVIEW

The established objectives of the review were as follows:

- Review and evaluate all policies regarding the ethical obligations and recusal requirements of Board members and other Agency personnel; review and evaluate procedures for identifying ethically-required recusals; and review roles and responsibilities of Agency personnel in connection with ethics and recusal issues;
- Explore the possibility of seeking a general advisory opinion from the Office of Government Ethics (OGE) regarding whether the Board's Designated Agency Ethics Official (DAEO) has authority to make binding determinations regarding presidential appointees;
- Compare Board policies regarding the above issues with those of similar agencies, including possibly seeking assistance from the Administrative Conference of the United States; if and as necessary, revise Board policies and procedures governing ethical issues and recusals; and, as necessary, direct the implementation of new procedures to ensure the Board's full compliance with all ethics and recusal obligations.

PROCESS

Working with the DAEO, the Solicitor, the Executive Secretary, and other Board staff, the Board conducted an exhaustive examination of controlling legal authority, internal policies and procedures, and governmental best practices covering Board member recusals. The Board also obtained extensive guidance from OGE and benchmarked against best practices of other multi-member, independent agencies with adjudicatory functions.

FINDINGS AND CONCLUSIONS

The Board's review established that the Agency's ethics program for Board member recusals is strong, fully compliant with all applicable government ethics requirements and merits the full confidence of the Agency's stakeholders. Where gaps in the recusal protocol were identified, the Board recommended and adopted changes that will serve to further enhance the Agency's recusal processes and enhance the Agency's ethics compliance. Those enhancements include:

- ***Mandatory Organizational Disclosure Filing Requirement*** – The Board will implement a new filing obligation requiring all parties appearing before it to file an organizational disclosure statement. The statement will require identification of any parent/subsidiary relationships parallel to the disclosure requirements regularly applied in federal and state courts (Modeled on Federal Rule of Civil Procedure 7.1 and Federal Rule of Appellate Procedure 26-1).
- ***Board Member Recusal Lists to be Made Public*** – The Board will make member recusal lists available on the Agency's public website.
- ***Enhanced Recusal List Procedures*** – The Board will adopt procedures for maintaining and supplementing Board member recusal lists to ensure better coordination between the DAEO, the Office of the Executive Secretary, and the individual Board members, including Board member sign-off of all revisions made to his/her own recusal list.
- ***Acknowledgement and Incorporation into Ethics Training DAEO "Red Flags" Guidance*** – The Board has acknowledged the guidance of the Designated Agency Ethics Officer (DAEO) identifying atypical situations in which conflicts could arise and have directed this guidance be incorporated into Board member and staff ethics training.
- ***Protocol for Board Member Recusal Motions*** – The Board will adopt a written protocol for handling motions to recuse a Board member to ensure that the process is easily understood and fully transparent.
- ***Protocol for Board Member Recusal Determinations*** – The Board adopted a recusal protocol to ensure full compliance with ethics standards including external notifications. The protocol will ensure that difficult recusal matters are addressed consistently in the future as well as ensuring transparency to the overall recusal process.

The Board's comprehensive review established that its ethics recusal process is strong and that its stakeholders should have full confidence in its processes. Through the improvements being undertaken by the Agency, the recusal protocol will be even further enhanced. Details of the Agency's review and findings are provided in the NLRB's Ethics Recusal Report.