



United States Government

NATIONAL LABOR RELATIONS BOARD

Office of the Chairman

1015 Half Street, SE

Washington, DC 20570

The Honorable Mike Braun
United States Senate
404 Russell Senate Office Building
Washington, DC 20510

The Honorable Virginia Foxx
U.S. House of Representatives
2462 Rayburn House Office Building
Washington, DC 20515

The Honorable Richard Burr
United States Senate
217 Russell Senate Office Building
Washington, DC 20510

The Honorable Rick W. Allen
U.S. House of Representatives
570 Cannon House Office Building
Washington, DC 20515

November 5, 2021

Dear Members of Congress:

Thank you for your October 13, 2021 letter regarding the importance of preserving the integrity of the National Labor Relations Board's decisionmaking process and addressing possible conflicts of interest. As Chairman, I am head of the Agency's government ethics program and am deeply committed to ensuring both the Agency's and my own compliance with ethical rules and regulations. I know that all of my fellow Board Members share that commitment. Each of us takes very seriously our obligation to discharge our duties in a manner that instills trust and confidence in the public we serve, and I appreciate the opportunity to address this matter with you.

Your letter expresses concern about whether Members Gwynne Wilcox and David Prouty can ethically participate in the Board's consideration of its response to a lawsuit recently filed by the Service Employees International Union. I write to assure you that Members Wilcox and Prouty have carefully considered this issue, in accordance with the agency's internal ethics protocols, and have sought and received appropriate guidance from our Designated Agency Ethics Official (DAEO). In agreement with the DAEO's conclusions and recommendations, they have each determined that their participation in the Board's decisionmaking regarding this matter is appropriate. For the reasons that follow, I am comfortable with their determinations.

As you may know, under the leadership of former Chairman John F. Ring, the Board issued an Ethics Recusal Report that comprehensively examined the Board's ethics protocols. The Report recognized that one of the primary roles of the DAEO is to provide guidance to Board Members regarding recusal determinations on a case-by-case basis. Accordingly, upon learning of the filing of the SEIU lawsuit and before taking any action to consider that matter, Members Wilcox and Prouty each presented the DAEO with the very same question your letter poses: are there any ethics rules, regulations, or considerations that require or suggest their recusal from this matter? The DAEO concluded that there are none.

Specifically, the DAEO found that nothing in 18 U.S.C. § 208 (the financial conflict of interest statute), 5 C.F.R. § 502(a)(1) (covered relationships), or the Biden Ethics Pledge requires Member Wilcox or Member Prouty to recuse themselves from the Board's consideration of the lawsuit. Moreover, the DAEO assessed the relevant circumstances and relationships and recommended that neither Member Wilcox's nor Member Prouty's participation would raise appearance concerns under the catch-all provision in 5 C.F.R. § 502(a)(2). Finally, the DAEO concluded that their participation would not be prohibited by the relevant provisions of the applicable legal ethics rules or as a matter of due process. Members Wilcox and Prouty then made their respective decisions to participate based on this expert advice, which was also shared with the other Board Members.

Again, I take very seriously my obligation to ensure that the Agency is serving the public in a manner that complies with our ethical obligations and preserves the public trust. I hope this response resolves the concern expressed in your letter. Please do not hesitate to contact Adam Naill (202-273-1704) or Matt Hayward (202-273-1718) in our Office of Congressional and Public Affairs if you have any additional questions on this matter.

Sincerely,



Lauren McFerran
Chairman
National Labor Relations Board

Cc: Sen. Bill Cassidy, M.D.
Sen. Roger Marshall
Sen. Tommy Tuberville
Sen. Jerry Moran
Rep. Joe Wilson
Rep. Tim Walberg
Rep. Jim Banks
Rep. Diana Harshbarger
Rep. Mary E. Miller
Rep. Scott Fitzgerald
Chair Patty Murray
Chairman Robert C. "Bobby" Scott