



## COALITION FOR A **DEMOCRATIC WORKPLACE**

February 15, 2022

Honorable Lauren McFerran, Chair  
John F. Ring, Member  
Marvin E. Kaplan, Member  
Gwynne A. Wilcox, Member  
David M. Prouty, Member

National Labor Relations Board  
1015 Half Street SE  
Washington, D.C. 20570-0001

To the Chair and Members of the National Labor Relations Board:

On behalf of the Coalition for a Democratic Workplace (“CDW”), I write to you as a follow up to our previous letter<sup>1</sup> submitted to the Board on January 14, 2022, in which we called on the Board to disqualify Members Wilcox and Prouty, due to their past employment and work on before the SEIU, from participating in (1) the lawsuit styled *Service Employees International Union v. National Labor Relations Board*, No. 21-2443 (D.D.C) (“SEIU suit”), (2) any other legal proceeding involving the SEIU (or its National Fast Food Workers Union) or the joint-employer rule, and (3) any rulemaking on the joint-employer standard. We have not yet received a response to our request for information, so we again ask the Board to provide us with a prompt response on these important issues.

CDW consists of nearly 500 organizations nationwide.<sup>2</sup> CDW’s members are or represent the interests of “employers” as defined by the National Labor Relations Act (“Act”), and they are therefore affected by the SEIU Suit, other suits involving the SEIU (or its National Fast Food Workers Union), and proceedings on the joint-employer standard. CDW advocates for its members on numerous issues of significance related to Board policy and interpretation of the Act. CDW has an abiding interest not only in the proper development of the law under the Act but also in the efficient operation of the Board, unhindered by conflicts and bias or the appearance of the same that only serve to undermine confidence in the Board’s decisions in matters of national importance.

Our request for information and questions posed to the Board in our January 14 letter are repeated here.

- Has either Member [Wilcox or Prouty] submitted the issue of their recusal for a determination by the agency’s designated ethics official? 5 C.F.R. § 2635.502(a).

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<sup>1</sup> The January 14, 2022, letter is available at [http://myprivateballot.com/wp-content/uploads/2022/01/CDW-Letter-to-NLRB-Urging-Recusals\\_Jan-2022.pdf](http://myprivateballot.com/wp-content/uploads/2022/01/CDW-Letter-to-NLRB-Urging-Recusals_Jan-2022.pdf).

<sup>2</sup> A full list of CDW’s members is available at <https://myprivateballot.com/about/>.



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- If not, has the agency designee made an “independent determination as to whether a reasonable person with knowledge of the relevant facts would be likely to question” the Members’ participation in these matters? *Id.*, § 2635.502(c).
- If the Members have not done so and the agency designee has not acted independently, why not?
- If, on the other hand, the agency designee has made that determination, what was the result? Did the agency designee authorize the Members to proceed notwithstanding the fact that their participation reasonably raises questions about their partiality? 5 C.F.R. § 2635.502(d).
- If so, what was the basis for the agency designee’s decision? Which factors, if any, under 5 C.F.R. § 2635.502(d) did the designee determine favored participation?
- Did the Members request that any such determination be documented in writing? *Id.* Was the determination documented in writing regardless of any such request? Will you provide a copy of that determination?
- Please list all matters (including relevant case numbers) on which Member Prouty or Member Wilcox previously performed any work and which are still pending before the NLRB or remain on appeal.
- Please list all entities for which Member Prouty or Member Wilcox provided any legal services since August 28, 2019. This includes without limitation any advice or counseling work even if Member Prouty or Member Wilcox did not appear as an attorney of record on behalf of the entity during litigation.
- Has Member Prouty or Member Wilcox ever provided legal advice to or participated in conversations which either member would consider to be protected by the attorney-client privilege with the Service Employees International Union, the National Fast Food Workers Union, or any other SEIU affiliate (other than Local 32BJ in the case of Member Prouty and 1199SEIU United Health Care Workers East in the case of Member Wilcox), or any agents thereof? If so, please provide: (i) the name of the entity and (ii) the most recent date Member Prouty or Member Wilcox provided such advice or participated in such conversations.
- Please provide any documents reviewed by Member Prouty or Member Wilcox in creating or considering their recusal lists.
- Please list all cases in which Levy Ratner represents or has represented a party (a) before the NLRB or its General Counsel (including all regional offices) or (b) in any courts in a proceeding in which the NLRB is or was also a party.



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Once again, we respectfully request your prompt response on these important issues. We further request that in the interim, Members Wilcox and Prouty be recused from participating in any of the matters for which recusal is requested in this letter.

Sincerely,

Kristen Swearingen  
Chair  
Coalition for a Democratic Workplace

cc: Roxanne L. Rothschild, Executive Secretary  
Jennifer A. Abruzzo, General Counsel