

Thursday, February 27, 2019

The Honorable Bobby Scott
Chairman
House Committee on Education and Labor
2176 Rayburn House Office Building
Washington DC 20515

The Honorable Virginia Foxx
Ranking Member
House Committee on Education and Labor
2176 Rayburn House Office Building
Washington DC 20515

Re: Investigating NLRB Gutting of Joint Employer Liability

Dear Chairman Scott and Ranking Member Foxx:

I write to you with an urgent request that you investigate the decision-making process that led to yesterday's announcement from the National Labor Relations Board (NLRB) promulgating a new rule that guts joint employer liability.

The NLRB's new rule will weaken protections for workers by limiting the circumstances in which companies can be held accountable for labor violations against subcontracted employees and employees hired by franchisees.

Such a move will let major corporations like Google and McDonald's that rely on franchise and subcontractors largely off the hook, reducing the likelihood that they will be held responsible for the labor violations of those they rely on to turn a profit.¹

This troubling development has been spearheaded, in part, by William Emanuel, an NLRB member appointed by President Trump who has repeatedly refused to recuse himself from decisions that may pose a conflict of interest.

In fact, the NLRB inspector general issued a report stating that Emanuel should have recused himself from a seminal ruling killing an Obama-era regulation that involved a company represented by his most recent employer.²

While Emanuel claimed he forgot about the conflict despite noting it in his White House ethics pledge,³ the inspector general wrote in its report that "this was one of the most important issues that this Board was going to deal with and everyone knew that his firm was involved."⁴

¹ [NLRB Issues New Joint Employer Rule Requiring Direct Control, *Bloomberg Law*, 2/25/20](#)

² [NLRB Office Of The Inspector General Memorandum, 2/09/18](#)

³ [Trump Labor Board Member Forgot About Conflict of Interest, Watchdog Says, *Bloomberg Law*, 3/23/18](#)

⁴ [Labor Board Scraps Controversial Joint Employer Decision \(Updated\), *Bloomberg Law*, 2/26/18](#)

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So serious was Emanuel's breach of the public trust that the inspector general ultimately stated that he had violated his ethics pledge by failing to recuse and that the NLRB's decision should be vacated.⁵

Because Emanuel is similarly conflicted on the new joint employer liability rule, we fear the same ethically challenged circumstances are playing out once again.

McDonald's hired the law firms Morgan Lewis and Littler Mendelson to fight against an NLRB joint employer liability complaint where the company did not want to be held accountable for its franchisee's labor violations.⁶

Despite the fact that Emanuel previously worked for Littler Mendelson and faced calls that he recuse himself from the decision, he refused and instead helped McDonald's secure a roughly \$170,000 settlement.⁷

Emanuel's involvement in the NLRB's employer liability rule is equally conflicted, and his refusal to step aside despite these conflicts of interest is deeply troubling given his history of flouting his ethics agreement.

We, therefore, call on the House Education and Labor Committee to launch a thoughtful and thorough investigation of Emanuel's conflicts of interest and his role in the decision-making process surrounding the NLRB's new rule.

Respectfully,

Kyle Herrig
President,
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⁵ [NLRB Office Of The Inspector General Memorandum, 2/09/18](#)

⁶ [McDonald's Versus 'Fight for \\$15': Documents Reveal Strategy, Bloomberg Law, 9/11/18](#)

⁷ [McDonald's Case Raises More Ethics Issues for NLRB Republicans, Bloomberg Law, 8/15/18](#)