From:	Kullgren, Ian
To:	Blado, Kayla
Subject:	RE: Wilcox recusal list
Date:	Thursday, September 2, 2021 4:52:30 PM

I see, that is indeed helpful. I get that you may not have full insight into Lori Ketcham's thinking for excluding FF15, but is there a reason you can't say on the record that the DAEO didn't list FF15 as a conflict, and that's why it's not on the list? I can't throw it out there without attributing it to someone.

I could always reach out to Lori to confirm the part about the two-year window.

--

Ian Kullgren

Labor Reporter
Bloomberg/Bloomberg Law

703-341-3220
ikullgren@bloombergindustry.com
@IanKullgren

From: Blado, Kayla <Kayla.Blado@nlrb.gov>
Sent: Thursday, September 2, 2021 4:33 PM
To: Kullgren, Ian <ikullgren@bloombergindustry.com>
Subject: RE: Wilcox recusal list

Hi Ian, on the record from me: "Member Wilcox's recusal list complies with the Biden Ethics Pledge and has been prepared in accordance with recommendations from the DAEO."

On deep background: The reason the DAEO didn't include FF15 may be because the Biden Ethics Pledge only covers the last two years and she didn't have them as clients in the last two years.

Hope this helps.

Thanks,

Kayla Blado (she/her)
Press Secretary
National Labor Relations Board
202-412-9602
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From: Kullgren, Ian <ikullgren@bloombergindustry.com>
Sent: Thursday, September 2, 2021 2:57 PM
To: Blado, Kayla <Kayla.Blado@nlrb.gov>

Subject: RE: Wilcox recusal list

Thanks, appreciate it.

--

Ian Kullgren

Labor Reporter
Bloomberg/Bloomberg Law

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From: Blado, Kayla <Kayla.Blado@nlrb.gov>
Sent: Thursday, September 2, 2021 2:23 PM
To: Kullgren, Ian <ikullgren@bloombergindustry.com>
Subject: RE: Wilcox recusal list

Just wanted to let you know I'm working on this.

Kayla Blado (she/her)
Press Secretary
National Labor Relations Board
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From: Kullgren, Ian <ikullgren@bloombergindustry.com>
Sent: Thursday, September 2, 2021 12:21 PM
To: Blado, Kayla <Kayla.Blado@nlrb.gov>
Subject: Wilcox recusal list

Hi Kayla,

I wanted to follow up on member Wilcox's recusal list. I noticed that Fight for $15 isn't included. Is that because it's covered by her Levy Ratner recusal—meaning she has pledged to recuse herself from any case involving one of her former clients at Levy Ratner—or is it her belief that participating in Fight for $15 cases would not pose a conflict?

If it's the latter, did she follow the DAEO's recommendation? Were there any instances in the recusal process where Ms. Wilcox did not follow the DAEO's advice to include or exclude former employers/clients from the list?

As always, feel free to call if you'd like to discuss further.
--

Ian Kullgren

Labor Reporter
Bloomberg/Bloomberg Law

703-341-3220
ikullgren@bloombergindustry.com
@IanKullgren

From:	Iafolla, Robert
To:	Blado, Kayla
Subject:	RE: press inquiry- Wilcox recusal list
Date:	Tuesday, September 7, 2021 4:32:23 PM

There's a push to get something out tomorrow. It makes sense that FF15 would be off the list due to that 2-year window issue, so if you did have confirmation & could say that on the record, it would be helpful. I'm reaching out to some ethics folks as well, but the other relevant question is whether FF15 not being on the list makes any real difference on her ability to hear the big McD's joint employer case if the DC Circuit vacates the settlement & sends the case back to the board. It seems like the fact that Levy Ratner is on her recusal list & represents FF15 in that case would block her. That being said, sometimes what seems correct isn't actually correct! Any clarity on that would be helpful. Please don't hesitate to reach out if you want any more info on what I'm after!

From: Blado, Kayla <Kayla.Blado@nlrb.gov>
Sent: Tuesday, September 7, 2021 4:23 PM
To: Iafolla, Robert <rIafolla@bloombergindustry.com>
Subject: RE: press inquiry- Wilcox recusal list

Hi Robert, what's your deadline on this? I already told Ian on deep background that it could be because FF15 was not her client in the last two years, in accordance with the Biden Ethics Pledge, but he wanted me to confirm that with Lori.

Kayla Blado (she/her)
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National Labor Relations Board
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From: Iafolla, Robert <rIafolla@bloombergindustry.com>
Sent: Tuesday, September 7, 2021 3:56 PM
To: Blado, Kayla <Kayla.Blado@nlrb.gov>
Subject: press inquiry- Wilcox recusal list

Hello Kayla,

Just checking in on the Wilcox recusal list matter that you'd been talking with Ian about. He had to hand the story off to me, as he was called out on assignment. (I've also inherited the pressure his editor has to publish ASAP!) He mentioned that you were trying to facilitate a brief talk with Lori Ketchum to provide some clarity. Is that still possible?

Cheers,

: : : : : : : : : : : : : : : : :

Robert Iafolla

Legal Reporter

Bloomberg Law

Phone: 703-341-3971
Email: riafolla@bloomberglaw.com
Twitter: @robertiafolla

From: Daily Labor Report - Bloomberg Law
To: Rothschild, Roxanne L.
Subject: Planned vaccine rule has firms asking, what"s next?
Date: Monday, September 13, 2021 7:03:50 AM

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Monday, September 13, 2021

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Tencent Holdings Ltd

Tesla Inc

Teva Pharmaceutical Industries Ltd

Toyota Motor Corp

Uber Technologies Inc

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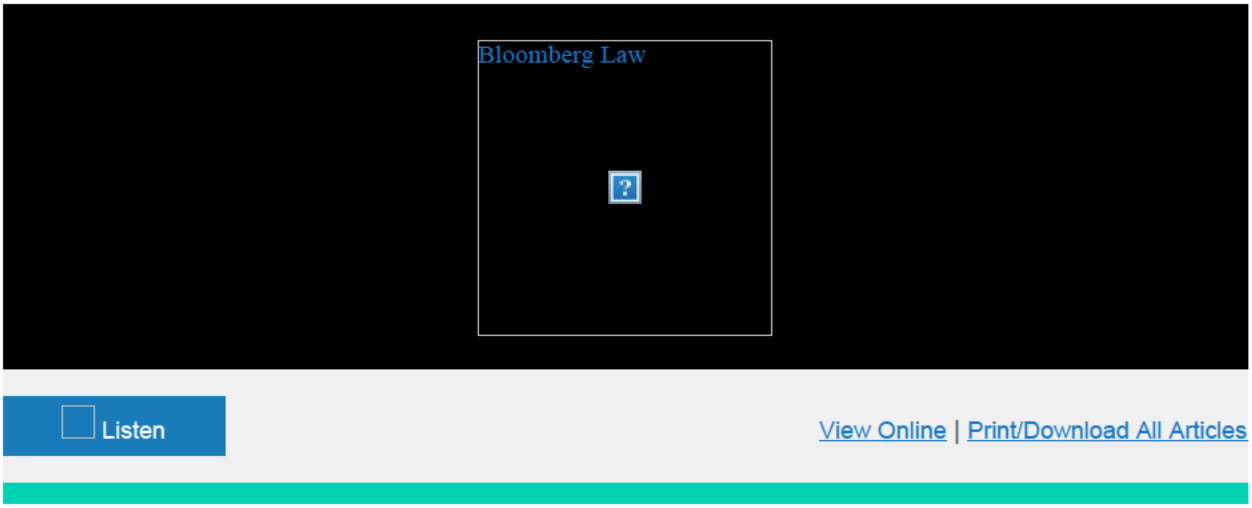

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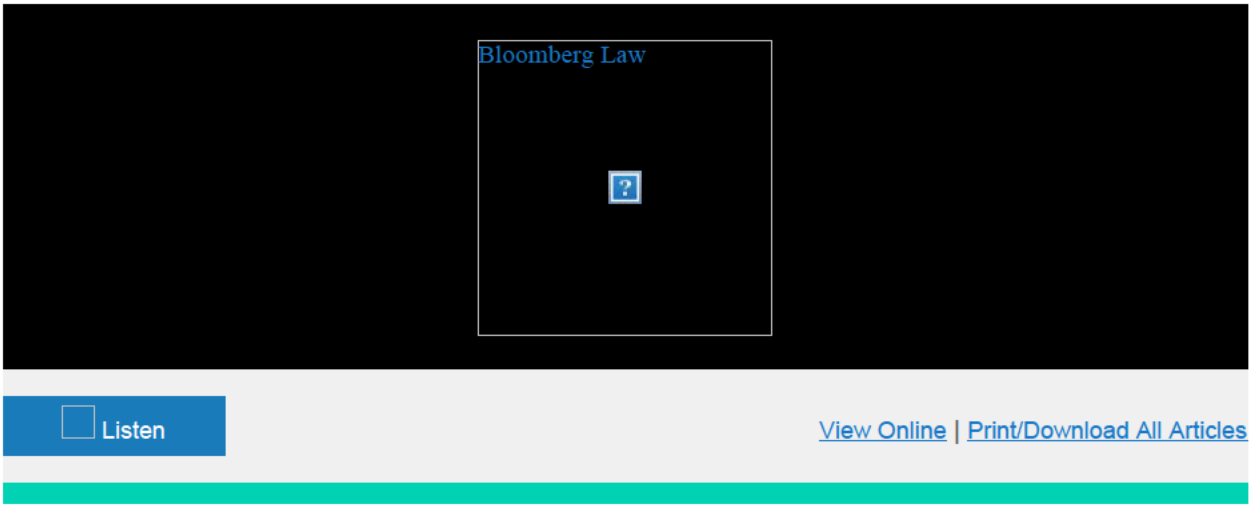

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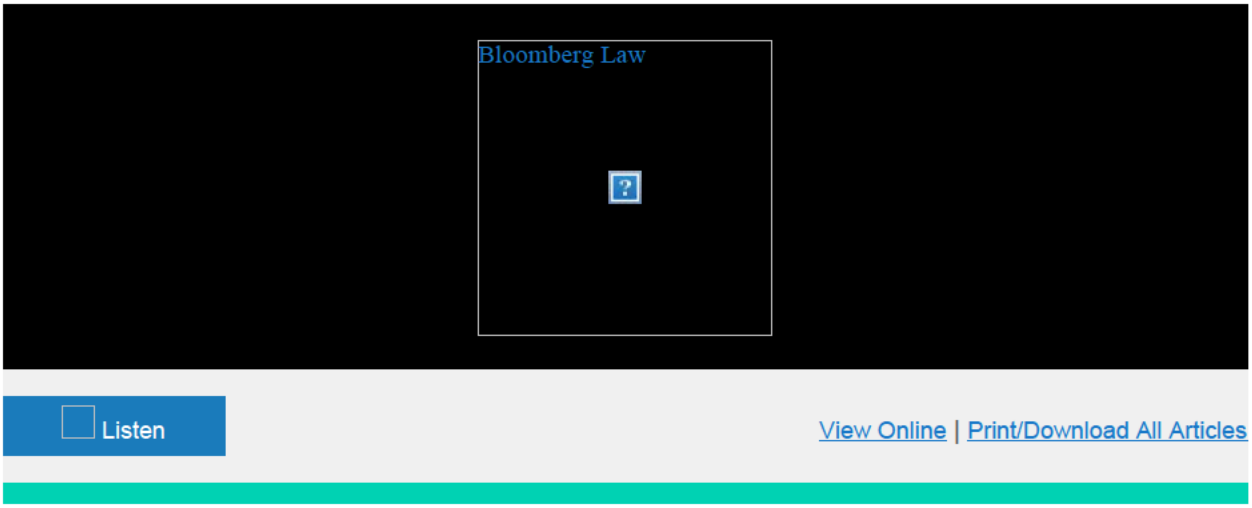

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Wilcox & the McDonald's Case | Push for UI Fix in Budget Bill

Robert Iafolla: New NLRB Member Gwynne Wilcox's recusal list doesn't include a former client that's trying to revive the agency's joint employer case against McDonald's Corp., keeping the door open—just a crack—for another ethics controversy at the labor board.

Wilcox, one of two Democratic members appointed to the National Labor Relations Board by the Biden administration, had represented **Fight for $15** in the case but stopped appearing on the union-backed worker advocacy group's filings three years ago. She did include her old law firm, Levy Ratner P.C., which continues to represent the worker group.

Her recusal list, published late last month, details former clients and employers from the two years prior to her joining the board Aug. 4. The White House's ethics standard bars her from participating in cases that involve entities on the list for two years.

Ethics considerations that would be raised if Wilcox were to participate in **the high-stakes McDonald's case** highlight the guardrails and gaps in the NLRB's protocols for warding off conflicts of interest and maintaining public trust in board rulings.

"Member Wilcox's recusal list complies with the Biden Ethics Pledge," NLRB spokeswoman Kayla Blado said, adding that it was "prepared in accordance with recommendations" from the agency's designated ethics official.

Alleged conflicts of interest are at the core of Fight for $15's appeal of the NLRB's decision authorizing a $170,000 settlement in the McDonald's case. The group has argued that former Republican NLRB Member **William Emanuel** and current GOP Member **John Ring** should have

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recused themselves from the case because of connections between their former law firms and the company.

Emanuel, whose term expired Aug. 27, also had ethics issues that prompted the withdrawal of a major joint employer decision.

The NLRB could get another shot at the McDonald's case if the U.S. Court of Appeals for the D.C. Circuit finds flaws in the board's approval of the settlement. But chances are slim that Wilcox would participate in the case if the D.C. Circuit sends it back to the board, according to government ethics specialists.

"This is the textbook definition of a conflict of interest," said **Virginia Canter**, chief ethics counsel for the watchdog group Citizens for Responsibility and Ethics in Washington.

NLRB Republican Member John Ring testifies during a House hearing in March 2020. Photographer: Sarah Silbiger/Bloomberg

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Even if Fight for $15 were to fire Levy Ratner as counsel, the NLRB's designated ethics official would most likely reject Wilcox's participation based on her earlier advocacy in the case, ethics specialists said.

NLRB ethics protocols crafted during the Trump administration provide members with the power to override the ethic official's judgment if they "insist" on participating in a case.

Walter Shaub, who led the U.S. Office of Government Ethics during the Obama administration, said that provision is illegal. Determinations from an agency's designated ethics officials are legally binding, he said.

If Wilcox were to participate in the McDonald's case over the judgment of an ethics official, it would make the board's decision in the case vulnerable on appeal. That also could trigger OGE's attention.

"In these cases, OGE will usually work behind the scenes and, if an administration is supportive of ethics, sometimes enlist the White House's help in getting a rogue agency head in line," said Shaub, now senior ethics fellow at the Project on Government Oversight.

—With assistance from Ian Kullgren

Chris Marr: Several left-leaning groups continue to advocate for using Democrats' $3.5 trillion budget reconciliation package to permanently expand unemployment benefits—and they see the Senate as their best bet.

A key player in the effort is Senate Finance Chair Ron Wyden (D-Ore.), who introduced a discussion draft of a bill in April that would require states to permanently expand the eligibility, duration, and dollar amount of unemployment benefits.

"Wyden is a great champion for UI reform," said **Judy Conti**, government affairs director at the National Employment Law Project, one of several groups pressing the issue.

Conti and others voiced disappointment that the House Ways & Means Committee didn't include unemployment expansion in legislative text that it marked up as part of the budget plan last week.

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But while the reconciliation effort is far from an endgame, **overhauling unemployment insurance** is competing for attention with a long list of social spending and tax proposals that House committees are weaving into the plan. These include climate change measures, health-care expansion, paid family and medical leave, and child care spending.

Wyden's office and Senate Finance staff didn't respond to a request for comment. The Senate is expected to move toward legislative text later this month.

Senate Finance Chairman Ron Wyden (D-Ore.) speaks during a hearing in May.
Photographer: Susan Walsh-Pool/Getty Images

President Joe Biden's proposal for the fiscal 2022 federal budget included principles of unemployment reform that mirrored much of Wyden's plan.

Getting unemployment into the reconciliation package, which can pass without GOP votes, is crucial

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to prevent state legislatures from cutting benefits to shore up their trust funds, as they did after the last recession, Conti said.

The Wyden and Biden proposals would force states to provide more generous benefits, likely **funded by raising payroll taxes on employers** in each state. Conti argued the changes still fit within the rules for budget reconciliation because all unemployment benefit money flows through trust funds held by the U.S. Treasury.

The goal for progressive groups and activists is to make benefits more accessible and more effective at supporting people financially while they seek another job.

Many unemployed people—such as part-time employees, those with a limited work history, or **independent and gig workers**—don't meet the eligibility rules to get benefits.

And the average weekly benefit amount in normal economic times (not including the enhanced federal pandemic aid that recently expired) replaces only 44% of the weekly wage a person was earning, Conti said.

The average replacement is often lower in southeastern states, which also have larger percentages of Black workers.

"The exclusions and shortcomings fall disproportionately on workers of color and women," she said. "If the administration and Congress is serious about achieving racial equity, one of the places they need to intervene right away is the unemployment insurance system."

But there's reason to doubt an unemployment overhaul will find its way into Democrats' budget package, said **Matt Weidinger**, senior fellow at the conservative-leaning American Enterprise Institute. The proposals would result in higher payroll taxes for employers, he said.

Part of the goal would be to set benefits to automatically increase in duration or dollar amount during economic downturns, but those benefit expansions historically have been done in an ad hoc way by Congress and funded through the federal budget.

"They know in the next recession they can just do what they've always done—add these extraordinary benefits to the deficit," he said.

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We're punching out. *Daily Labor Report* subscribers, please check in for updates during the week, and feel free to reach out to us.

To contact the reporters on this story: Robert Iafolla in Washington at riafolla@bloomberglaw.com; Chris Marr in Atlanta at cmarr@bloomberglaw.com

To contact the editor responsible for this story: John Lauinger at jlauinger@bloomberglaw.com

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To: Ring, John
Subject: Labor Relations
Date: Monday, September 13, 2021 5:04:14 PM

LABOR RELATIONS

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NBA Seeks to Dismiss Would-Be Agent's Antitrust Conspiracy Suit

By Peter Hayes

The NBA asked a federal court in Ohio to dismiss antitrust claims brought by an attorney who alleges the league conspired with the National Basketball Players Association to deny his request to take an exam to become a player agent.

N.D. Ohio Pleading

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LABOR RELATIONS

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LABOR RELATIONS

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LABOR RELATIONS

IN THE NEWS

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By Peter Hayes

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IN THE NEWS

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By Peter Hayes

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Reference Id: 374894539

From: Braden Campbell
To: Blado, Kayla
Subject: Re: Biden board conflicts of interest
Date: Friday, September 24, 2021 4:57:00 PM

Got it. Thanks! And will do/you too.

On Fri, Sep 24, 2021 at 4:48 PM Blado, Kayla <Kayla.Blado@nlrb.gov> wrote:

> Thanks, Braden. If you do go into Gwynne's recusal, you can use this quote from me: "Member Wilcox's recusal list complies with the Biden Ethics Pledge and has been prepared in accordance with recommendations from the DAEO."
>
> On background, you could also look at Chairman McFerran's minority response to Ring's ethics recusal report here: https://www.nlrb.gov/sites/default/files/attachments/pages/node-6353/ethics-recusal-review-incorporating-jan-9-2020-revisions.pdf
>
> Can you send me the piece when it's up?
>
> Have a good weekend!
>
> Kayla Blado (she/her)
>
> Press Secretary
>
> National Labor Relations Board
>
> 202-412-9602
>
> Follow us on Twitter: @NLRB/@NLRBGC
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> ---
>
> **From:** Braden Campbell <braden.campbell@law360.com>
> **Sent:** Friday, September 24, 2021 3:34 PM
> **To:** Blado, Kayla <Kayla.Blado@nlrb.gov>
> **Subject:** Re: Biden board conflicts of interest
>
> Thanks!

On Fri, Sep 24, 2021 at 3:33 PM Blado, Kayla <Kayla.Blado@nlrb.gov> wrote:

> Hi, just very belatedly acknowledging receipt of this email and I'll let you know if we have a comment.
>
> Thanks,
>
> Kayla Blado (she/her)
>
> Press Secretary
>
> National Labor Relations Board
>
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>
> **From:** Braden Campbell <braden.campbell@law360.com>
> **Sent:** Friday, September 24, 2021 10:33 AM
> **To:** Blado, Kayla <Kayla.Blado@nlrb.gov>
> **Subject:** Biden board conflicts of interest
>
> Hi Kayla,
>
> Happy Friday! I'm working on a story today looking at how ethical issues may play out for the Biden board after they were a major storyline for the Trump board. The story will look at the board's ethics practices generally, as well as specifically at Gwynne Wilcox's potential conflicts stemming from her time at Levy Ratner, and the possibility that employers will raise issues after Bill Emanuel and John Ring faced criticism over conflicts from their past firm work. The story will touch on Levy Ratner's work on the McDonald's joint employer case but I don't expect that to be the main thrust.
>
> This story is planned to run today, which means filing around 6 or so, if that's doable for comment. Thanks!

--

Braden Campbell
Editor at Large, Employment

Legal News & Data
111 West 19th Street
5th Floor
New York, NY 10011
646-350-1394
Twitter: @TweetsByBraden

--

Braden Campbell
Editor at Large, Employment

Legal News & Data
111 West 19th Street
5th Floor
New York, NY 10011
646-350-1394
Twitter: @TweetsByBraden

--
Braden Campbell
Editor at Large, Employment

Legal News & Data
111 West 19th Street
5th Floor
New York, NY 10011
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From: POLITICO Pro Employment & Immigration
To: Blado, Kayla
Subject: Democrats face ethics déjà vu at NLRB
Date: Monday, October 4, 2021 5:18:54 PM

POLITICO Pro

Democrats face ethics déjà vu at NLRB

BY **REBECCA RAINEY** 10/04/2021 05:17 PM EDT

The National Labor Relations Board building is pictured. | AP Photo/Jon Elswick

Republicans and business groups are eyeing conflict-of-interest complaints against former union lawyers on the newly Democratic-controlled labor board, borrowing a strategy Democrats themselves used to undercut the board when it was dominated by Republican appointees.

Such an effort could sideline the pro-labor agenda of President Joe Biden's appointees before it even gets going, dealing a blow to their plans to reverse the pro-management tilt the National Labor Relations Board has taken in recent years.

During the Trump administration, Democrats battered the Republican-controlled board with subpoenas and investigations over Trump-appointed members' participation in cases involving their former law firms, resulting in at least one

major ruling being overturned and an internal audit .

Now, opponents of the NLRB's labor-friendly agenda are digging into the past work of its newest members, Biden appointees Gwynne Wilcox and David Prouty, to see if their participation in several pending high-profile labor disputes would violate Biden's ethics pledge.

"I have serious concerns about possible conflicts of interest involving new members of the NLRB which could put workers' and employers' rights at risk," Rep. Virginia Foxx of North Carolina, the top Republican on the Education and Labor Committee, said in a statement. "Republicans plan to review carefully the actions of these political appointees and will hold them accountable."

With a slim 3-to-2 Democratic majority, if either of those members had to step aside from an issue before the board, the NLRB would be grid-locked.

Wilcox and Prouty both formerly represented the Service Employees International Union in some capacity, ties that could spur ethics complaints from businesses and the GOP throughout the course of the board's work, and especially as it attempts to rewrite how the agency polices "joint employer" relationships.

Biden's ethics pledge requires that federal appointees recuse themselves from any "particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts," for a period of two years from their appointment.

The SEIU, which also funds the Fight for $15 minimum wage and union organizing effort, is involved in two pending legal disputes over whether the labor board should hold large companies liable as joint employers for labor abuses committed by their contractors or franchisees.

Wilcox's former law firm Levy Ratner P.C. brought one of those cases, and continues to represent Fight for $15 and the SEIU as it appeals a Trump-era NLRB settlement that relieved McDonald's Corp. of liability as a joint employer for its franchisees' firing of workers who joined Fight for $15 protests. Wilcox was working on the McDonald's case until at least 2016, according to NLRB case documents.

She has agreed to sit out of any cases involving the law firm for two years, according to her recusal list, which ethics experts say will likely include that McDonald's settlement if it is eventually sent back to the board in the appeals process.

Prouty has agreed to recuse himself from any cases involving the SEIU Local 32BJ, where he served as general counsel. But when it comes to the larger cases involving the SEIU, Prouty may be able to participate.

In 2010, the NLRB's inspector general and ethics officials determined that Craig Becker, a Democratic member of the board at the time, could participate in a case involving an SEIU local despite his past work for the union's international chapter, on the grounds that international unions are separate entities from their local chapters.

But at least one management-side attorney says that precedent doesn't apply to all situations.

Becker's particular case is "not by any means the final word on position," said attorney Michael Lotito, who represents employers for the law firm Littler. He expects there to be more legal discussion over time "on the issue of control by the international union over the locals," especially given the direct financial interests between unions and their affiliates.

"If Wilcox and Prouty proceed in some manner on these issues" that involve SEIU, "what's going to happen is that it will set a cloud over whatever the board does," Lotito added. "And as a result, their involvement will give rise to subsequent appeals."

One way the Biden-appointed members could possibly avoid running afoul of the same recusal issues that plagued the GOP-led board would be to enact policy change via the formal rulemaking process, rather than through individual case decisions, according to federal ethics experts.

"Generally, [appointees] are allowed to draft regulations that have an impact on their former employer as part of an industry, not a regulation that's just tailored to that employer," said Richard Painter, who was President George W. Bush's chief ethics lawyer.

But Democrats had denounced that tactic too during the Trump administration, accusing the administration of using it to “avoid compliance with NLRB Members’ individual ethics obligations,” as Sen. Patty Murray (D-Wash.) put it in a 2019 letter to then-board Chair John Ring.

Painter said the regulatory route “is in a way” an end run around the ethics rules. But the rules generally permit a board member to participate in formulating a broad regulation that happens to benefit their former employer “as long as you sever all economic ties.”

If it’s a matter directly involving a particular party, though, like in the instance where Wilcox’s former law firm is representing the Fight for $15 in the McDonald’s settlement fight, “you’ve got to recuse,” Painter said.

Wilcox and Prouty could soon face a test over the issue.

The SEIU filed a lawsuit in September challenging a business-friendly joint employer standard issued under the Trump administration, which makes it harder for corporations to be put on the hook for their subsidiaries’ labor violations. Wilcox’s firm is not representing the SEIU in that case.

The union has argued that both the standard and the McDonald’s settlement were tainted by Trump-appointed member William Emanuel’s participation, after the agency's inspector general criticized him for not recusing himself from a high-profile joint-employer case because of a conflict of interest with his former law firm.

The board vacated that decision and instead issued a rule — on which Emanuel signed off — to establish the business-friendly joint employer standard it sought in.

Now the shoe is on the other foot.

Government ethics experts say that Wilcox and Prouty would likely be in the clear to participate in a rulemaking to rewrite the joint-employer standard, because it affects the economy broadly and doesn’t involve any specific parties, even though a standard more friendly to workers would benefit the SEIU’s and Wilcox’s former law firm in court.

And Democrats say it was Republicans on the labor board who cemented that ethics standard.

“If we're in a situation where Emanuel is anywhere near close to having been able to participate in that rulemaking, Wilcox will definitely be able to,” a Democratic House committee aide told POLITICO.”

But that isn’t likely to stop business groups and Republicans from deploying the same fine-tooth ethics scrutiny Democrats and unions did over the Trump-era NLRB.

“It certainly seems to me that there's absolutely no way Gwynne Wilcox can justify her participation in the joint employer issue, and specifically with SEIU and McDonald's question,” said Sean Redmond, vice president of labor policy at the U.S. Chamber of Commerce.

“There's certainly going to be a question that the business community's going to be raising just as much as the unions were raising it with Bill Emanuel. You know, it's just, it's too glaring an issue not to weigh in on it.”

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From:	Glenn M. Taubman
To:	Berry, David P.; Ketcham, Lori
Cc:	McFerran, Lauren; Ring, John; Kaplan, Marvin E.; Prouty, David M.; Wilcox, Gwynne
Subject:	Letter to the Inspector General and Ethics Officer
Date:	Tuesday, October 5, 2021 5:54:28 AM
Attachments:	Wilcox and Prouty Recusal letter- SEIU v. NLRB - 10-5-21 MAM FINAL executed with attachments.pdf

---

Dear Mr. Berry and Ms. Ketcham: Please take note of the attached letter, which is directed to you for your consideration and action.

Sincerely,

Glenn M. Taubman

National Right to Work Legal Defense Foundation, Inc.

8001 Braddock Rd., Suite 600

Springfield, VA 22160

Phone: 703-321-8510

Fax: 703-321-9319

E-mail: gmt@nrtw.org

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NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.
8001 BRADDOCK ROAD • SPRINGFIELD, VIRGINIA 22160
TEL: (703) 321-8510 • FAX: (703) 321-9613 • http://www.nrtw.org

October 5, 2021

David P. Berry
Inspector General
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001
David.Berry@nlrb.gov

Lori Ketcham
Associate General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001
Lori.Ketcham@nlrb.gov

Re: Recusal of Members Wilcox and Prouty in *Service Employees International Union v. National Labor Relations Board et alia,* Civ. Action No. 21-cv-2443 (DDC)

Dear Inspector General Berry and Ms. Ketcham:

On behalf of the National Right to Work Legal Defense and Education Foundation, Inc., I write to express our opposition to Member David Prouty and Member Gwynne Wilcox exercising any involvement in, or decision making authority regarding, the above-referenced lawsuit (the "Litigation"), which was filed in the U. S. District Court for the District of Columbia on September 17, 2021. Given their recent roles as lawyers advising large locals affiliated with the Service Employees International Union ("SEIU"), both Member Prouty and Member Wilcox have significant conflicts of interest with respect to the Litigation and with regard to the Joint-Employer Rule that SEIU challenges in the Litigation.

Whether Members Prouty and Wilcox should be recused from the Litigation is of interest to the Foundation, because Foundation Staff Attorneys frequently provide free legal representation to employees involved in litigation before the National Labor Relations Board against SEIU or its affiliates. The same considerations should mandate the recusal of Member Wilcox and Member Prouty in those cases as well.

For the reasons set forth below, I urge you to take all appropriate action to remove Member Prouty and Member Wilcox from any decision making or advisory role connected with the Litigation, the Joint-Employer Rule that SEIU challenges in the Litigation, and any other matters involving SEIU and/or its affiliates. I urge you to apply the same level of vigor in examining their conflicts as was done in matters involving former Member William J. Emanuel.

***Member Prouty*:** From approximately 2017 until recently, Member Prouty served as General Counsel of SEIU Local 32BJ, one of SEIU's most powerful local unions. He was responsible for providing strategic legal advice to that union on a broad range of matters. SEIU Local 32BJ and Member Prouty played a key role in opposing the Board's final rule on joint employment, *Joint Employer Status Under the National Labor Relations*

Act, 85 Fed. Reg. 11184 (Feb. 26, 2020). Indeed, SEIU Local 32BJ and Member Prouty filed lengthy comments in opposition to that rule. See *id.* at 11192 n.45; 11196 n. 100; 11199 nn. 117 & 119; 11202 n. 149; 11203 n. 166; 11204 n. 178; 11205 nn. 192, 193 & 196; 11214 n. 280; 11222 nn. 343, 345, 347 & 353. (Comments signed by Member Prouty are attached).

Additionally, although Member Prouty was the key legal advisor to and representative of an SEIU *local union* and not the SEIU International, that distinction is meaningless in this context. The SEIU International and its local and affiliated unions are inextricably intertwined. The International, under its constitution, reserves the right to control the local unions and other affiliates and does, in fact, control them.[1] For example, the SEIU International constitution sets forth strict requirements that local unions—including 32BJ—must follow regarding membership, strikes and lockouts, and per capita tax among many other topics. Most importantly, Member Prouty worked for SEIU Local 32BJ within the past year and, as such, he has a covered relationship for purposes of the Standards of Ethical Conduct for Employees of the Executive Branch, *see* 5 C.F.R. § 2635.502(a). I note that there may be other ethics and conflict of interest rules governing Member Prouty, and this list is not exhaustive. The bottom line is that he must be recused from the Litigation, all matters concerning the Joint Employer standards, and all litigation involving SEIU and its affiliates. No reasonable person could think otherwise.

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[1] A copy of the 2020 SEIU Constitution is attached for your convenience. That constitution provides the SEIU International Union with virtually total control over its local and affiliated unions. See, e.g., Article III Jurisdiction and Membership Section 1, stating that "The International Union shall be composed of and have jurisdiction over its affiliated bodies and all Local Unions"; Section 2(a) "The International Union shall have jurisdiction over the Local Unions and their members and over all affiliated bodies"; Section 3 (c) "With the approval of the International Union, Local Unions may establish different categories of membership and rates of dues for persons represented and not represented by the Local Union for collective bargaining purposes including, but not limited to, life members, retired members, and associate members;" Section 3(d) "Any dispute respecting membership or eligibility for membership shall be decided by the International President;" Article VIII International President—Duties and Powers, Section 1(f) "the International President shall be empowered to negotiate and enter into national, regional, or areawide collective bargaining agreements, including company wide or multi employer agreements, and to coordinate activities toward this end in consultation with the Local Unions involved, and is authorized to require and direct coordinated bargaining among Local Unions;" Section 4 "The International President shall sign all charters and other official documents of this International Union; shall have the authority to direct an examination of the books and records of any Local Union or affiliated body;" Section 7(a) "Whenever the International President has reason to believe that, in order to protect the interests of the membership, it is necessary to appoint a Trustee for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of this International Union, he or she may appoint such Trustee to take charge and control of the affairs of a Local Union or of an affiliated body and such appointment shall have the effect of removing the officers of the Local Union or affiliated body." Many other provisions show the complete domination SEIU holds over its local and affiliated unions. Indeed, it is fair to say that SEIU and its locals would be considered joint or single entities under tests enunciated in Board cases like *Browning-Ferris Industries, Inc.*, 362 NLRB 1599 (2015), *affd. in part, reversed in part and remanded*, 911 F.3d 1195 (D.C. Cir. 2018).

Member Wilcox: Member Wilcox until recently served as Associate General Counsel of 1199SEIU United Healthcare Workers East, playing a pivotal role in providing it with strategic legal advice. Member Wilcox was at the forefront and actively involved in the so-called "Fight for $15," which is *specifically named as interested in, and a core part of, the Litigation.*[2] Paragraph 8 of the Complaint in the Litigation states: "SEIU's affiliate National Fast Food Workers Union – commonly known as the Fight for $15 and a Union – seeks to raise the wages and working conditions of low-wage and vulnerable workers in market sectors, such as the fast-food industry, where certain large employers often attempt to use the franchise model to evade their responsibilities to workers." *See also Fight for $15 swells into largest protest by low-wage workers in US history,* The Guardian Dec. 11, 2018 (article attached). In private practice—shortly before she was nominated—Member Wilcox sued McDonald's for "Fight for $15."[3]

Moreover, 1199SEIU United Healthcare Workers East and Member Wilcox played a key role in opposing the Board's final rule on joint employment, *Joint Employer Status Under the National Labor Relations Act,* 85 Fed. Reg. 11184 (Feb. 26, 2020). 1199SEIU United Healthcare Workers East and its law firm, Levy Ratner, of which Member Wilcox was then a partner, filed lengthy comments opposing that rule. See *id.* at 11192 n.45; 11193 n. 54; 11202 nn. 143 & 149; 11205 n. 194; 11210 n. 232; 11214 nn. 275, 276 & 280; 11220 n. 329. (Those comments are attached).

Plainly, Member Wilcox's role in these matters presents a textbook conflict of interest regarding the Litigation and the Joint Employer Rule. At a minimum, Member Wilcox's participation in the Litigation and the Joint Employer rulemaking creates the appearance of a conflict that undermines all stakeholders' trust in an independent and neutral NLRB. Furthermore, the evidence regarding SEIU's absolute control over its local unions set forth above as to Member Prouty is equally applicable to 1199SEIU United Healthcare Workers East and Member Wilcox.

For all of these reasons, you must ensure that Member Prouty and Member Wilcox are removed from any decision making authority or advisory involvement with regard to the Litigation and the Joint-Employer Rule, because both have blatant conflicts of interest that no fair-minded person can ignore. Their participation in the Litigation and issues concerning the Joint-Employer Rule and, for that matter, any SEIU cases would not only be contrary to well established ethics guidelines, but also undermine the integrity and public trust of the NLRB.

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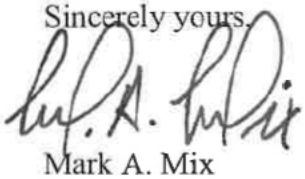
[2] *See* Gwynne A. Wilcox, *Fight for $15*, Levy Ratner, P.C., https://levyratner.com/author/gwynne/page/4/ (last accessed Sept. 21, 2021).

[3] *See* Ian Kullgren, *Biden To Nominate Gwynne Wilcox for NLRB Democratic Seat (2)*, Bloomberg Law (May 26, 2021, 3:26 PM), https://www.bloomberglaw.com/bloomberglawnews/daily-labor-report/XCD1G9T4000000?bna_news_filter=daily-labor-report#jcite; *see also* Robert Iafolla & Ian Kullgren, *Ethics Questions Await Biden's Federal Labor Board Nominee*, Bloomberg Law (May 27, 2021, 4:22 PM), https://www.bloomberglaw.com/bloomberglawnews/daily-labor-report/X2TDHILC000000?bna_news_filter=daily-labor-report#jcite.

Thank you for your attention to this matter. I look forward to a prompt reply.

Sincerely yours,



Mark A. Mix
President

cc: Chairwoman Lauren McFerran
Member John Ring
Member Marvin Kaplan
Member David Prouty
Member Gwynne Wilcox
Secretary of Labor Martin J. Walsh
Rep. Robert C. "Bobby" Scott
Rep. Virginia Foxx
Sen. Patty Murray
Sen. Richard Burr

Comments by SEIU Local 32BJ and Member Prouty

These comments are submitted by Service Employees International Union, Local 32BJ, a labor organization representing over 160,000 workers, primarily in the property services industry, in response to the Board's notice of proposed rulemaking issued on September 14, 2018.

Introduction

For the past forty years, Local 32BJ has bargained industry-wide collective bargaining agreements covering commercial office cleaners in New York City with the Realty Advisory Board on Labor Relations, Inc., a multiemployer association consisting of building owners and cleaning contractors. Local 32BJ also represents more than 25,000 workers at residential buildings in New York City. These workers are often jointly employed by the entity that owns the building and a managing agent. In addition, Local 32BJ has extensive experience bargaining with cleaning contractors and security contractors where the client shares or codetermines matters governing the employees' essential terms and conditions, but where the client does not formally participate in the bargaining process. These comments are informed by this real-world experience.

1. The Board Should Start Over in Light of the D.C. Circuit's Decision in *Browning-Ferris Industries of California v. NLRB*.

The D.C. Circuit's recent decision in *Browning-Ferris Industries of California v. NLRB,* 911 F.3d 1195 (2018) makes clear that the Board's proposed rule is not a viable starting point for determining when an entity qualifies as a joint employer. The proposed rule provides that an entity is not a joint employer where it possesses authority to control employees' terms and conditions of employment unless there is

evidence that the entity has actually exercised that authority. But, the D.C. Circuit has held that an employer's right to control is relevant to the existence of a joint employer relationship. Likewise, the proposed rule requires that a putative joint employer exercise "direct and immediate" control over employees' term and conditions, while the D.C. Circuit held that the "distinction between direct and indirect control has no anchor in the common law."

Thus, in order to survive judicial review, any final rule will necessarily depart so much from the proposed rule that it will not be the "logical outgrowth" of the proposed rule. *See Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 543 (D.C. Cir. 1983). Accordingly, the Board should start the process over with a new proposed rule. "Otherwise, interested parties [do] not know what to comment on, and notice will not lead to better-informed agency decisionmaking." *Id.* at 549.

2. <u>The Rule Will Not Foster Predictability and Consistency</u>

In issuing the proposed rule, the Board majority asserted that the rule will provide employers and unions with "predictability and consistency" regarding determinations of joint-employer status. In fact, the rule will not provide predictability and certainty for four reasons. First, as courts have long recognized, whether an employer is a joint employer has always been a fact-intensive inquiry, and thus small factual differences may lead to different outcomes. Second, the proposed rule eliminates an aspect of *Browning-Ferris Industries of California, Inc.,* 362 NLRB No. 186 (2015) that provided greater certainty to all parties. Third, if

the intent of the proposed rule is to wipe the slate clean and start fresh with only a few examples to work from, then there will be considerable confusion until there is a substantial body of case law under the new rule. Finally, the examples in the new rule do not lend any clarity as to where the lines will be drawn.

The circuit courts have repeatedly observed that "a slight difference between two cases might tilt a case toward a finding of a joint employment." *Holyoke Visiting Nurses Assn. v. NLRB,* 11 F.3d 302, 307 (1st Cir. 1993), *quoting Carrier Corp.,* 768 F.2d 778, 781, n.1 (6th Cir. 1985); *accord North American Soccer League v. NLRB,* 613 F.2d 1379, 1382-83 (5th Cir. 1980)("minor differences in the underlying facts might justify different findings on the joint employer issue"). The proposed rule does not solve this problem, and it likely exacerbates it. In particular, the requirement that a putative joint employer exercise "substantial" control means that in any given case, the joint employer determination will turn on a determination as to whether any exercise of control is sufficiently "substantial." Likewise, the undefined term "limited and routine" creates additional unanswered questions about when exercise of control is sufficient to establish a joint employer relationship.

In light of the D.C. Circuit's *Browning-Ferris* decision, the Board must abandon its proposal that control must be exercised, rather than merely possessed. There is an additional practical reason why it makes no sense to require proof that control has actually been exercised. Whether a putative joint employer possesses the authority to set or codetermine the employees' essential terms and conditions of

employment is a fact that can often be determined from a review of documents. For instance, in *Browning-Ferris,* the agreement between BFI and Leadpoint gave BFI the authority to "reject any Personnel and … discontinue the use of any personnel for any or no reason." Thus, the contract gave BFI authority over an essential term or condition of employment. By contrast, the proposed rule requires proof that the authority was actually exercised, and that it was exercised in more than a "limited" way. According to examples 11 and 12, a single instance where the user exercises its authority is insufficient to meet this test (apparently regardless of the size of the workforce). On the other hand, if the user reminds the contractor of its authority with "some frequency" while voicing complaints about particular workers, this would be sufficient to make the user into a joint employer. Inevitably, under this proposed rule, "slight differences" in facts will lead to different outcomes – perhaps exercising the authority twice in last year would be insufficient, but three times would be deemed enough to create a joint employer relationship. Who can say?

Currently, when parties are attempting to structure their relationships and/or litigate cases presenting the joint employer question, they can look to a large body of case law to provide some guidance. Even in *Browning-Ferris,* where the Board overturned several cases, the majority cited many Board decisions that were consistent with the revised test. For instance, the Board cited five different cases where a joint employer determination relied on a finding that the user had a right to reject any of the contractor's employees. *Browning-Ferris,* slip op. at 18. Over the years, the Board has decided hundreds of joint employer cases and these cases

added up to a substantial body of common law. Now, the proposed rule would replace all of those detailed fact patterns with twelve bare-bones examples. This hardly helps provide clarity for interested parties.

We will discuss the examples contained in the proposed rule further below, but one shortcoming in the examples is that they fail to consider the interplay of multiple factors. Under existing law, both before and after *Browning-Ferris,* the Board has considered multiple factors in deciding whether an entity is a joint employer. So, for example, the type of supervision provided by a putative joint employer might be sufficient to support a joint employer relationship when combined with the right to refuse services of a particular employee, but not when standing alone. *SEIU Local 32BJ v. NLRB,* 647 F.3d 435, 444, n. 4 (2d Cir. 2011). The examples treat each term and condition of employment in isolation, so fail to consider whether, for example, the restriction on operating hours in Example 5 might support a joint employer finding when combined with other actions by the franchisor that affect the terms and conditions of the franchisee's employees.

3. <u>The Proposed Rule is at Odds With the Findings and Policies Underlying the NLRA</u>.

When Congress enacted the NLRA, it relied upon findings that "the refusal by some employers to accept the procedure of collective bargaining" led to "industrial strife and unrest." Congress further declared that it is the policy of the United States to mitigate that unrest "by encouraging the practice and procedure of collective bargaining." In order for collective bargaining to play that constructive role, it must serve as an effective mechanism for workers to address their terms and

conditions of employment. Yet, the proposed rule seems to contemplate that in many cases, workers will not be able to meaningfully bargain over wages, benefits, and working hours because the entity that effectively controls those terms cannot be brought to the table. Similarly, where workers are employed by Company A to provide services at the premises of Company B, they may lack the ability to bargain over Company B's drug testing requirement or over exposure to toxic substances at Company B's premises. This is surely not a recipe for labor peace.

The proposed rule might be based on the misguided notion that eliminating a bargaining obligation for lead firms that contract out for services will somehow insulate those lead firms from labor disputes. But nothing could be further from the truth. While Section 8(b)(4) might limit some tactics available to unions, the First Amendment still allows unions to wage robust public campaigns against any entity, even if the Board will not deem the entity to be a joint employer. So, for example, unions will still be able to use tactics such as staging a "mock funeral" outside a hospital, *see Sheet Metal Workers' Intl. Assn., Local 15 v. NLRB,* 491 F.3d 429 (D.C. Cir. 2007), and they will be able to leaflet, urge boycotts, station banners outside the entity's premises, and use the airwaves and the internet to publicize their dispute. Moreover, consistent with the Supreme Court's expansion of First Amendment protections in recent years, including, for example, its pronouncement that "a State could not ban campaigning with slogans, picketing with signs, or marching during the daytime," *Sorrell v. IMS Health Inc.,* 564 U.S. 552, 577 (2011), the scope of activity prohibited under Section 8(b)(4) will likely shrink in the years

ahead. The Act is based on the premise that it is preferable to channel disputes about wages, benefits, and working conditions to the bargaining table rather than relegating workers to the streets, and the proposed rule ignores that Congressional directive.

4. Narrowing the Joint Employer Test Will Make it More Difficult to Resolve Labor Disputes.

The cleaning contractors and security firms whose employees we represent often have contracts with their clients that give the clients the ability to set or codetermine the employees' terms and conditions of employment. In some cases, we have a bargaining relationship with the client as well. We have found that where we do not have a bargaining relationship with the client, it can be much more difficult to resolve disputes. Here are some recurring issues:

Client complaints about individual workers: One issue that often arises with cleaning contractors and security firms is that the client has lodged a complaint about a particular individual but there is no just cause to discharge the worker. Sometimes, the contractor knows up front that it lacks just cause to fire the worker. Other times, the contractor does fire the worker but an arbitrator orders reinstatement. If a union has no bargaining relationship with the client, this can create an extremely messy dispute because the contractor has no way to compel its client to allow a particular individual to work at the client's offices. These disputes have at times created standoffs between the Union and the contractor. This is especially true where the contractor has no other comparable nearby site to offer the employee. We have had a number of disputes drag on for months as we have

tried to figure out how to reach a mutually agreeable resolution with a contractor when the contractor's client has veto power over which employees are allowed to work on the premises. The Union may have tactics available to address these types of disputes (e.g. striking, if not barred by the collective bargaining agreement), but trying to put pressure on a contractor where the contractor is boxed in by its client risks poisoning the Union's relationship with the contractor.

In several instances, workers have filed charges against the Union when they were frustrated with the Union's inability to resolve one of these disputes on favorable terms, or unhappy about the settlement the Union reluctantly accepted. For instance, in Case 01-CB-107860, a worker complained that he was removed from a building and given a worse position at another building as a result of a false allegation against him. But, in that case, building management had requested his removal, and the Union had no mechanism to force building management to take the worker back even if the allegation against the worker turned out not to be true. Similarly, in Case 22-CB-227879, a worker filed a charge against the Union after the employer, a cleaning contractor, was unable to comply with a settlement because its client would not allow the worker to be placed at its building.

These types of disputes would not arise in the first place if the Union had a right to bargain with any client that has a right to reject particular employees.

Background checks or drug tests: Similar issues have arisen where clients have demanded that the contractors' employees submit to background checks or drug tests. Under the proposed rule, it is not clear if these requirements would be

sufficient to establish a joint employer relationship, particularly when they are first announced, since there would not yet be a record of workers losing their jobs as a result of these requirements. Unions have extensive experience bargaining over issues related to drug testing, but any contractual protection against arbitrary drug testing, or any guarantees regarding drug testing protocols would be irrelevant where the requirement is imposed by an entity that has no bargaining obligation.

Sexual Harassment: A contractual grievance procedure can be a very effective way to deal with sexual harassment claims. Employers are increasingly attentive to these claims, and when a credible claim is brought against a supervisor, the employer will often quickly take action to limit its own potential liability. But, in the case of cleaners or security officers, if the harasser is a property manager who does not work for the contractor, then the contractor does not have the power to address the claim. This is another reason why unions need to be able to bargain with all the entities that have control over working conditions.

Access for Union representatives: Access for Union representatives is a fairly standard part of any collective bargaining agreement. But, if the Union only has a bargaining relationship with a contractor, then the contractor must separately negotiate with its client before it can agree to terms of access for Union representatives. The Board has held that it may be unlawful for a client to deny access to the union representative of its contractor's employees, *see CDK Contracting Co.,* 308 NLRB 1117 (1992), but our Union does not want to have to

bring a case to the Board in order to secure routine access to the facility where its members work.

While control of access to the premises might not be sufficient under *Browning-Ferris* to create a joint employer relationship, by narrowing the joint employer definition, the proposed rule would make it less likely that unions will be able to bargain with entities that control access to workplaces.

Disputes about working hours: Another area where it has been more difficult to resolve disputes without having a putative joint employer at the bargaining table involves the Union's attempt to obtain full-time employment for workers who had been working part-time schedules. In some markets, the prevailing standard had been for office cleaners to work four-hour shifts, typically from 6 pm to 10 pm. In bargaining with cleaning contractors, our Union proposed converting these part-time jobs into full-time jobs. The bargaining over hours was made far more complicated because the building owners (the cleaning contractor's clients) were not at the bargaining table, yet extending the hours for the workers would have required the building owners to keep lights on and HVAC systems running for additional hours. The result was that instead of bargaining directly over the issue, the bargaining became more complex, with the contractors sometimes acting as intermediaries between the Union and the building owners, and with the Union making direct appeals to the building owners away from the bargaining table.

The proposed rule would codify this inability to bargain with entities that control the working hours of employees.

Health and Safety Issues: Contractors are sometimes unable to resolve health and safety concerns without the involvement of their clients. For instance, if office cleaners raise a concern about exposure to asbestos, the cleaning contractor cannot directly address that concern. Likewise, sometimes security officers are stationed in outdoor guard booths. In cold weather, security officers sometimes lodge complaints about the temperature in these booths, and the security contractor must appeal to its client in order to address those complaints. Similarly, where security officers have requested chairs, security contractors have been unable to provide those chairs unless the client is willing to provide them.

Contractor transition: Commercial building owners routinely switch from one cleaning contractor to another. This often occurs because of communication issues between the client and the contractor's manager, or because of some complaint about on-site supervision, but it is rarely because of a desire to replace the workforce. The commercial cleaning industry is marked by intense competition because there are no serious barriers to entry – very little capital is required, and when a contractor obtains a job it can generally hire the incumbent workforce.

Where the Union does not have a bargaining relationship with the owner, these contractor transitions can lead to major disputes. Experienced contractors understand that because labor costs represent the overwhelming percentage of their expenses, they must know those costs down to the last dollar. This includes not only hourly wages, but the exact amount of vacation and sick leave due to each worker, and any other benefit costs. Sometimes a new contractor underbids the

existing contractor without a full understanding of the workers' wages and benefits. The contractor may not have intended to reduce wages and benefits, but it may find itself hamstrung by its uninformed bid. The client may not have realized that it was risking labor unrest – it may have thought that the prior contractor was making an excessive profit. We have had situations where the new contractor had actually agreed to assume the predecessor's collective bargaining agreement, and submitted a bid based on the CBA, but without realizing that some workers were paid above-scale, or without understanding how benefit entitlements were calculated. In those cases, the contractor may try to force the Union to renegotiate the contract, or else it may go to the client and beg for more money. These kinds of disputes could have been avoided if the Union had bargained directly with the client. The client could, in the collective bargaining agreement, reserve the right to contract out the work while agreeing that any contracting out would not be used to undermine the contractual wages and benefits.

5. **Joint Employer Bargaining Works Well and Often Makes it Easier to Resolve Disputes.**

For many years, the Union has bargained with a multiemployer association in New York (the Realty Advisory Board on Labor Relations, Inc. (the "RAB") that represent both building owners and contractors, and through this bargaining relationship, it has often been able to resolve disputes efficiently, and in ways that have been mutually beneficial to workers and employers. While the dissent in *Browning-Ferris* spun out a series of hypothetical problems that might result from a finding that a cleaning contractor and its clients were joint employers, in fact, Local

32BJ's experience demonstrates that these hypothetical concerns are unfounded. When cleaning contractors and their clients bargain together, they have not demonstrated any trouble formulating coherent bargaining proposals, or providing meaningful responses to Union demands. There are some issues that clients care more about than contractors, and vice versa, but those differences are in the nature of differences that might be present in any employer bargaining committee – for instance, a finance manager might have different concerns than an operations manager or a human resources manager.

Joint employer bargaining benefits both employers and workers. The contractors and the building owners both want the owners to take part in collective bargaining because ultimately the building owners will pay the costs of any collective bargaining agreement. The contractors don't want to agree to expenses that they can't pass on to their clients, and the owners don't want to be saddled with costs that they didn't agree to pay. The building owners want to make sure they are not overcharged, but they also often want to ensure that money paid to a cleaning contractor gets passed through to workers rather than pocketed as profit by the contractor. By taking a direct role in labor negotiations, building owners can protect both of these interests.

And, contrary to the unsupported speculation in the *Browning-Ferris* dissent, in the real world we have not noticed any problem when it comes to clients and contractors dividing up bargaining responsibilities. The owners tend to drive the discussion regarding economic issues and the contractors defer to them because the

contractors understand that ultimately any costs have to be passed along to the clients. By contrast, the contractors tend to take the lead on issues such as filling open positions or workload disputes. And, when issues arise mid-contract, the Union generally approaches the contractor first, and the contractor lets the Union know if there is a need to involve the client.

6. The Proposed Rule Fails to Acknowledge How Current Board Law and Existing Contracting Practices Address the Liability Concerns of Potential Joint Employers.

In the notice of proposed rulemaking, the Board majority expresses concern about exposing business partners to joint and several liability, 83 FR 46686, but nowhere in the proposed rule does the Board even acknowledge how *Capitol EMI Music,* 311 NLRB 997 (1993) already effectively addresses this concern. Further, the proposed rule does not consider that potential joint employers may easily contract around these liability concerns.

In *Capitol EMI,* the Board held that a joint employer is not automatically jointly and severally liable for the acts of its coemployer. Instead, where a worker is fired in violation of the Act, the nonacting joint employer can avoid liability by showing that it neither knew, nor should have known of the reason for the other employer's action, or that if it knew, it took all measures within its power to resist the unlawful action. Applying this standard, in *Tradesmen Intl.,* 351 NLRB 579 (2007), the Board found no joint and several liability where the nonacting joint employer had no reason to know that a worker was fired because of his union activity. Likewise, in *America's Best Quality Coatings Corp.,* 313 NLRB 470 (1993),

the Board found that a company that recruited and supplied candidates for employment was not jointly liable with its coemployer for its coemployer's decisions to lay-off and delay recalling certain employees.

Apart from the protections afforded to joint employers in the *Capitol EMI* decision, before changing the definition of joint employer to help potential joint employers avoid liability, the Board should consider the extent to which entities can address this problem simply by altering their contracts. If a client is concerned that by hiring a contractor, it might potentially incur liability as a joint employer, the client may simply require the contractor to indemnify it for any liability that flows from the contractor's actions. Businesses routinely include these types of provisions in contracts. Any discussion of this issue must take into account that in almost every case the direct employer will have less power than the putative joint employer that it does business with. Thus, the putative joint employer will almost certainly be able to insist upon an indemnification clause, thereby solving any "problem" that the Board majority has identified.

7. The Proposed Rule Doesn't Take Into Account the Realities of Industries Like Commercial Cleaning.

There are several ways in which the proposed rule fails to take account how industries like commercial cleaning actually work.

A. The proposed rule fails to take into account the power dynamic between clients and contractors in the cleaning and security industries:

The proposed rule provides that a putative joint employer's contractual authority to control terms and conditions of employment is insufficient unless there

is evidence that the authority had been exercised in a "substantial" way. The examples, which are intended to clarify, highlight the shortcomings with this approach. Example 11 explains that the right to discipline a contractor's employees will support a joint employer relationship where (1) the client has the right to cancel its contract on short notice without cause; (2) the client has referenced its right to cancel the contract while lodging complaints about individual workers; and (3) "the record indicates" that the contractor would not have disciplined or would have imposed lesser discipline on the worker in the absence of the client's input. One problem with this example is that in the real world there would be no need for a client to reference its right to cancel the contract because the contractor would be acutely aware of that right. Cleaning contractors and security contractors understand that their livelihood depends upon keeping their clients happy, and they know they their clients can cancel their contracts at any time. The power that large clients have over cleaning or security contractors is like the power that employers have over workers. *Cf. Intl. Assn. of Machinists v. NLRB,* 311 U.S. 72, 78 (1940)("Slight suggestions as to the employer's choice between unions may have telling effect among men who know the consequences of incurring the employer's strong displeasure"). So, if a client lodges a complaint about a particular worker, concern about keeping the client happy will color the contractor's entire investigation, and it doesn't necessarily matter whether the client specifically requests that the worker be fired. Also, if a client has lodged a complaint about a

worker, it's not clear what the proper comparator would be for determining what would have happened if not for the client's input.

Another problem with trying to sort through whether the client has actually exercised its contractual right to remove workers, is that the inquiry will likely take place months, if not years, after any particular incident. If a Union names a putative joint employer in an RC petition or in a ULP charge, any inquiry under the proposed standard would presumably look back at least two or three years to see how often the putative joint employer had exercised its contractual authority. Each incident would then require a separate mini-trial to try to figure out the counterfactual of what the contractor would have done in the absence of input from the client.

B. The proposed rule fails to take into account how contract rates are set in industries where the contractor is essentially only providing labor.

The proposed rule offers two examples of how a client might exercise some control over wages and benefits of its contractor's employees, but the examples are unrealistic. In Example 1, the contract sets a maximum reimbursable labor expense "while leaving Company A free to set the wages and benefits as it sees fit." In Example 2, "Company B establishes the wage rate that Company A must pay to its employees." In the cleaning and security industries, there is generally no practical difference between Example 1 and Example 2. In most cases, the contract price will be set based on the contractor's representations about labor costs, but the contract itself may not explicitly set forth the wage rate. It is not clear from Example 1 if the intent is to say that Company B is not a joint employer as long as

Company A has any discretion to alter the mix between wages and benefits even if Company A has no discretion to increase the combined total of wages and benefits. If that was the intent, it is absurd to say that in that circumstance Company B has not exercised control over the wages and benefits of Company A's employees. It is also at odds with the policy underlying the NLRA. Congress intended that workers would be able to raise their wages through collective bargaining, not merely that they could reallocate money they are already receiving. Furthermore, in Example 1, depending upon where the maximum reimbursable cost is set, it may preclude any bargaining over wages, and at a minimum, it will almost certainly meaningfully affect the employees' wages.

C. The Proposed Rule Fails to Acknowledge That in Many Occupations, Supervision Does Not Involve Telling Workers How to Perform Their Jobs.

While the proposed rule does not specifically address the type of supervision required to make a joint employer finding, it resurrects language used in earlier cases to narrow the circumstances where the Board would make a joint employer finding. Any joint employer standard should take into account that in many occupations, supervision does not involve telling workers how to perform their jobs. The Board recognized this for cleaners in *Syufy Enterprises,* 220 NLRB 738 (1975). There, the Board observed that "while janitorial tasks may be routine they often also are of such a nature that they require a meticulous attention to detail and vigilant if not constant supervision." *Id.* at 740. In fact, in the commercial cleaning

industry, supervision generally consists of checking work after-the-fact and asking workers to redo any tasks that were not performed properly.

There are many other occupations where supervision does not generally include telling someone how to perform their work. The First Circuit recognized in *Holyoke Visiting Nurses Assn. v. NLRB,* 11 F.3d 302 (1st Cir. 1993) that even though nurses hired through a referral agency were professionals who did not need instruction about how to perform their work, "that does not negate the power of supervision and direction that Holyoke exercised over them once they reported to work." *Id.* at 307.

8. **Routine Components of Contracting Often Implicate Terms and Conditions of Employment.**

In remanding the *Browning-Ferris* case, the D.C. Circuit directed the Board to clarify which types of indirect control would be relevant in a joint employer determination. In doing so, the court observed that "routine contractual terms, such as a very generalized cap on contract costs, or an advance description of the tasks to be performed under the contract, would seem far too close to the routine aspects of company-to-company contracting to carry weight in the joint-employer analysis." As the Board considers this guidance, it must bear in mind that in some cases a "routine contractual term" will directly implicate the terms and conditions of employment. This is particularly true in industries such as commercial cleaning or security where the cost of a contract is almost entirely the cost of labor.

If a client is purchasing a product or a combination of goods and services, then a "generalized cap on contract costs" might not directly implicate the terms

and conditions of employment for the employees of the contractor because the contractor would have a variety of options to stay within the cap on costs. But, on the other hand, where the client is purchasing cleaning or security services, a cap on contract costs effectively means a cap on wages and benefits, and thus, it does directly implicate the essential terms and conditions of employment.

At the same time, the Board can easily alleviate the concerns raised by Judge Randolph regarding an individual who hires a lawn service company. It's true that if he owned a vast estate and, as a result, hired a lawn service company to work on his premises full-time, and he set the hours of work, the wage rate, and required the use of certain equipment, he would be a joint employer. But, if he only paid the lawn service company for two hours a week, and the same employees who worked on his property also worked for many other clients, then he would not be their joint employer. The question is how much control a particular client has over the terms and conditions of the contractor's employees, and the more time the contractor's employees spend on the client's premises, the more likely the client will be their joint employer. Figuring out the precise place to draw the line is something better left to adjudication where the Board has a full record with all the relevant facts.

9. <u>Collective Bargaining Can Be Meaningful Even if it is Limited in Scope</u>.

Twenty-four years ago in *Management Training Corp.,* 317 NLRB 1355 (1995), the Board recognized that "judging in each case the employer's ability to bargain about certain specified topics invites lengthy litigation and controversy which the parties and the Board can ill afford." *Id.* at 1358. Since the Board

decided *Management Training,* unions have often bargained with government contractors even though the governmental entity controls some of the terms and conditions of employment. While this is less than ideal, the bargaining can still be "meaningful." In fact, in *Browning-Ferris,* the dissenting Board Members cited *Management Training* for the proposition that bargaining can still be meaningful even if an employer lacks control over a substantial number of essential terms and conditions of employment. *Browning-Ferris,* slip op. at 43 (Members Miscimarra and Johnson dissenting). The difference between *Management Training* and the Board's approach to the joint employer issue is that the bargaining in *Management Training* was circumscribed because the Board lacked jurisdiction over one of the employers. Thus, the choice was between limited bargaining and no bargaining, and clearly limited bargaining was preferable. By contrast, if there is no jurisdictional bar, the Board should not artificially narrow the scope of bargaining.

Moreover, experience under *Management Training* shows that bargaining over a limited range of terms and conditions can be "meaningful." In addition, there is no evidence that *Management Training* has led to a flood of Board cases where unions have tried to force employers to bargain over issues that were out of the employer's control. At the same time, trying to determine how many terms and conditions, or which terms and conditions a putative joint employer must control in order for bargaining to be "meaningful" is impractical, if not impossible. For this same reason, the Board should follow the advice of former Board Member Raudabaugh and consider a putative joint employer's involvement in determining

all terms and conditions, rather than limiting the inquiry to "essential" terms. *See Pitney Bowes, Inc.,* 312 NLRB 386, 386, n.1 (1993). At a minimum, if the Board continues to look to "essential" terms, the Board should follow the approach it took in *Browning-Ferris,* where it explained that essential terms include not only wages and benefits, and hiring, firing, and discipline, but also include scheduling, assigning work, setting staffing levels, controlling overtime, and more.

Even when unions and employers have had the opportunity to bargain over the full range of issues, strikes and lockouts have often occurred or been extended over a single issue. *See, e.g., TNS, Inc.* 309 NLRB 1348 (1992)(workers struck over health and safety); *Gazette Publishing Co.,* 101 NLRB 1694, 1698 (1952)(workers struck in support of proposal prohibiting employer from firing workers without just cause); *Eastern Massachusetts Street Railway Co.,* 110 NLRB 1963, 2004 (1954)(union spokesperson stated that reinstatement of 19 employees was sole remaining strike issue in a strike affecting 1,700 employees). Obviously, in any case where a single issue has led to a strike, bargaining over that issue was certainly viewed as "meaningful" by the parties.

If an entity has control over or co-determines any terms and conditions of employment, the Board should find that the entity is an employer, and it should allow the parties to decide whether bargaining will be fruitful. If an entity has no control over particular terms and conditions, it can just notify the union that its co-employer has exclusive control over those terms. Unions have nothing to gain by trying to bargain over an issue that an entity does not control.

10. **<u>The Challenge of Determining When an Entity is a Joint Employer Does Not Lend Itself to Rulemaking</u>.**

Many years ago, the Supreme Court observed that a

> problem may be so specialized and varying in nature as to be impossible of capture within the boundaries of a general rule. In those situations, the agency must retain power to deal with the problems on a case-by-case basis if the administrative process is to be effective. There is thus a very definite place for the case-by-case evolution of statutory standards.

SEC v. Chenery Corp., 332 U.S. 194, 203 (1947). The determination of when an entity is a joint employer is exactly this type of problem. As the Board has acknowledged in promulgating the proposed rule, "the Board's joint-employer standard … must be consistent with the common law agency doctrine." 83 FR 46683. In *Browning-Ferris,* the Board recognized that in light of the multi-factor common law test for determining the existence of an employment relationship, the Board "cannot attempt today to articulate every fact and circumstance that could define the contours of a joint employment relationship." *BFI,* slip op. at 16.

The examples included in the proposed rule only hint at the wide variety of settings where the joint employer issue arises. For instance, when a building owner contracts for security services, the contract typically provides a fixed number of workers and the precise hours of coverage. Thus, when the building owner agrees to a price for that contract, it is necessarily codetermining the wages paid to the security officers who provide the service. By contrast, there may be other services where the price of the contract leaves the contractor with a great deal of flexibility over how to provide the service.

Rulemaking might make sense if it were possible to replace a multi-factor test with a bright-line rule, but the proposed rule makes clear that this is not the case. Instead, the proposed rule would replace a multi-factor test with a different multi-factor test. And, even if the rule included twenty-four or thirty-six examples instead of twelve, it would inevitably leave many unanswered questions since it cannot possibly anticipate and account for the "specialized" and "varying" nature of circumstances where the joint employer issue arises.

Conclusion

The Board should abandon the proposed rule because it is at odds with the policies underlying the Act, it will not foster predictability and consistency, and it will make it more difficult to resolve labor disputes.

January 28, 2019

SERVICE EMPLOYEES INT'L
UNION, LOCAL 32BJ

By: /s/

Andrew Strom
David Prouty
Office of the General Counsel
SEIU Local 32BJ
25 West 18th Street
New York, NY 10011

SEIU Constitution
(2020)

UNIONS FOR ALL

SEIU 2020 Constitution and Bylaws

AS ADOPTED at the 2020 Convention

Service Employees International Union, CTW, CLC

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CONSTITUTION AND BYLAWS

PREAMBLE

As almost every improvement in the condition of working people has been accomplished by the efforts of organized labor and as the welfare of wage, salary, and professional workers can best be protected and advanced by their united action in one International Union, we have organized the Service Employees International Union and have adopted the following Constitution:

SEIU MISSION STATEMENT

We are the Service Employees International Union, an organization of more than 2.1 million members united by the belief in the dignity and worth of workers and the services they provide and dedicated to improving the lives of workers and their families and creating a more just and humane society.

We are public workers, health care workers, building service workers, office workers, professional workers, and industrial and allied workers.

We seek a stronger union to build power for ourselves and to protect the people we serve.

As a leading advocacy organization for working people, it is our responsibility to pursue justice for all. We believe in and will fight for a just society where all workers are valued and people respected, where all families and communities thrive, and where we leave a better and more equal world for generations to come.

Vision for a Just Society

People of every race, ethnicity, religion, age, physical ability, gender, gender expression, and sexual orientation, we are the standard-bearers in the struggle for social and economic justice begun nearly a century ago by janitors who dared to dream beyond their daily hardships and to organize for economic security, dignity, and respect.

Our vision is of a union and a society:

Where all workers and their families live and work in dignity.

Where work is fulfilling and fairly rewarded.

Where workers have a meaningful voice in decisions that affect them and have the opportunity to develop their talents and skills.

Where the collective voice and power of workers is realized in democratic, equitable and progressive unions.

Where union solidarity stands firm against the forces of discrimination and hate, against structural racism, and against the unfair employment practices of exploitative employers.

Where working people can live in safe and healthy communities.

Where government plays an active role in improving the lives of working people.

To achieve this vision:

We must organize unorganized service workers, extending to them the gains of unionism, while securing control over our industries and labor markets.

We must build political power to ensure that workers' voices are heard at every level of government to create economic opportunity and foster social justice.

We must provide meaningful paths for member involvement and participation in strong, democratic unions.

We must develop highly trained, motivated and inclusive leaders at every level of the union who reflect the diversity of the membership and the communities where we organize.

We must bargain contracts that improve wages and working conditions, expand the role of workers in workplace decision-making, build a stronger union, and build stronger and healthier communities.

We must build coalitions and act in solidarity with other organizations who share our concern for social, environmental, racial, and economic justice.

We must engage in direct action that demonstrates our power and our determination to win.

We must hold corporations and capital accountable for the common good.

We must commit to dismantling structural racism which holds us back from achieving the unity and strength we need.

We must pave the way for immigrant justice.

We must always be open to change that enables us to adapt and be more effective in an ever changing world.

To accomplish these goals we must be unified—inspired by a set of beliefs and principles that transcends our social and occupational diversity and guides our work.

We believe we can accomplish little as separate individuals, but that together we have the power to create a just society.

We believe unions are the means by which working people build power—by which ordinary people accomplish extraordinary things.

We believe our strength comes from our unity, and that we must not be divided by forces of discrimination based on gender, race, ethnicity, religion, age, physical ability, sexual orientation, or immigration status.

We believe our power and effectiveness depend upon the active participation and commitment of our members, the development of inclusive SEIU leaders, and solidarity with each other and our allies.

We believe we have a special mission to bring economic and social justice to those most exploited in our community—especially to women and workers of color—and to dismantle structural racism against Black Americans.

We believe our future cannot be separated from that of workers in other parts of the world who struggle for economic justice, a decent life for their families, peace, dignity and democracy.

We believe unions are necessary for a democratic society to prevail, and that unions must participate in the political life of our society.

We believe we have a moral responsibility to leave the world a more just, healthy and safe place for our children—and everyone's children.

Article I

NAME

Name and Organization

This organization shall be known as the Service Employees International Union, affiliated with Change to Win and the Canadian Labour Congress, and shall consist of an unlimited number of Local Unions chartered by it, and the membership thereof, and such

affiliated bodies as may be established from time to time. In order to add the strength of this great union to the efforts of its members at every level of the Union, the name of every Local Union and affiliated body shall begin with "SEIU."

Article II

OBJECTS AND PURPOSES

Goals of the Union

The objects and purposes of this International Union shall be to benefit its members and improve their conditions by every means, including but not limited to:

Securing economic advantages

A. By securing economic advantages, including better wages, hours and working conditions, through organization, collective bargaining, legislative and political action, and the utilization of other lawful means;

Organizing and uniting working people

B. By organizing and uniting in this International Union all working men and women eligible for membership herein;

Engaging in activities that advance union's standing in community and labor movement

C. By engaging in all such civic, social, political, legal, economic, cultural, educational, charitable, and other activities, whether on local, national, or international levels, as will advance this International Union's standing in the community and in the labor movement and further the interests of this organization and its membership, directly or indirectly;

Collective bargaining

D. By advancing and strengthening the rights of working men and women to bargain collectively, and introducing innovative ways to carry out this work;

Providing benefits and advantages

E. By providing benefits and advantages to individual union members, officers, and employees through education, training, access to new technology, member resource centers, a 21st century communications system, pensions, and death and welfare benefits;

Helping Local Unions coordinate

F. By helping Local Unions to share experiences, pool resources, learn from each other's best practices, and be accountable to each other;

Cooperating with labor and other organizations

G. By cooperating with and assisting, by moral, monetary or other means, other labor organizations, whether or not affiliated with this International Union, or any other groups or organizations, having objectives which are in any way related or similar to those of this International Union, or which are of a nature beneficial to this International Union or to its members, directly or indirectly;

Safeguarding the Union

H. By strengthening and safeguarding this International Union by every lawful means so that it may carry out its purposes, objects and obligations;

Utilizing Union's resources to achieve its goals

I. By utilizing, in every lawful way, including but not limited to every kind of use, expenditure and investment, the property and funds of this International Union, in order to achieve its purposes and objects and perform its obligations, and for such other purposes directly or indirectly furthering the interests of this International Union and its members;

Affiliating independent organizations

J. By affiliating workers in independent organizations through agreements which recognize the long history, unique needs and traditions, and successes of such organizations, and making every effort possible to provide such organizations the same types of services which have benefited our existing members;

Empowering Members

K. By empowering SEIU members to lead and participate in all aspects of the Union's program to secure a better future for all, including organizing, bargaining, political work, direct action, and community partnerships.

Creating new forms of worker organization

L. By creating new forms of worker organization to build collective economic and political power for working people; and

Building a wider movement

M. By building a wider movement for justice.

Article III

JURISDICTION AND MEMBERSHIP

Jurisdiction over Local Unions and affiliated bodies

Section 1. The International Union shall be composed of and have jurisdiction over its affiliated bodies and all Local Unions composed of working men and women who are employed or engaged in any phase of private, nonprofit or public employment, including without limitation employees of colleges, schools or universities, public employers (including cities, counties, states, provinces, territories, commonwealths, governmental districts, federal agencies, and multiple agencies or authorities and any subdivisions thereof), institutions or agencies, hospitals, nursing homes or other health facilities, and private and public utilities, department stores, industrial plants, law enforcement agencies, insurance companies and all employees thereof, including clericals, technicians, professionals, paraprofessionals and paramedicals, or those who are engaged in maintenance, sales, servicing, protection or operation

of all types of institutions, buildings or structures, commercial, mercantile or other establishments, edifices and grounds, and their environs, whether private, public or nonprofit, and all categories of employees therein and thereabout, including places of assembly, amusement, recreation, entertainment, and the presentation of sporting events.

The International President is empowered to construe the jurisdiction above defined to embrace all classifications of workers within any establishment anywhere in the world.

Section 2(a). The International Union shall have jurisdiction over the Local Unions and their members and over all affiliated bodies.

(b). The term "affiliated bodies" shall include State and Provincial Councils, Joint Councils, Service Councils, area, regional, or industry Conferences and Divisions, organizing committees, and provisional locals, and such other bodies on the local, national or international level as the International Union shall from time to time establish, but shall not include Local Unions. The term "Local Union" shall not include any other affiliated body.

Eligibility for membership

Section 3(a). Any person employed in any employment over which this International Union claims or exercises jurisdiction shall be eligible to be considered for membership in the International Union, a Local Union, organizing committee, provisional local or other authorized body of this organization. A Local Union may adopt additional membership requirements in the Local Union's Constitution and Bylaws. Jurisdiction may also be construed as including service within a Local Union or affiliated body of the International Union but each Local Union shall have the option to determine whether a person with such service may be eligible for membership in the Local Union. The International Executive Board may set eligibility requirements and other criteria (including rates of dues) for associate members, retired members (who do not have a Local Union retired member program), and other special categories of membership in the International or in affiliated bodies established in accordance with this Constitution.

Additional Local Union membership requirements

Special categories of membership

Eligibility of self-employed workers

(b). Self-employed individuals doing work within the jurisdiction of this International Union may be eligible for membership in Local Unions, subject to any additional requirements provided for in a Local Union's Constitution and Bylaws. The International President shall have the right to make all necessary rules and regulations respecting self-employed workers, under the jurisdiction of this International Union.

Special categories of Local Union membership authorized

(c). With the approval of the International Union, Local Unions may establish different categories of membership and rates of dues for persons represented and not represented by the Local Union for collective bargaining purposes including, but not limited to, life members, retired members and associate members.

Resolution of membership disputes

(d). Any dispute respecting membership or eligibility for membership shall be decided by the International President, with the Local Union or the applicant having a right to appeal his or her decision to the International Executive Board, in writing, within 10 days after notice of said decision is received.

Discrimination forbidden

Section 4. No member shall discriminate or advocate discrimination against any other member on the basis of race, creed, color, religion, sex, gender expression, sexual orientation, national origin, citizenship status, marital status, ancestry, age or disability.

Article IV

CONVENTION—REPRESENTATION THEREIN

International conventions

Section 1. The Convention of this International Union shall meet every four years and shall convene at such time and place as the International Executive Board may determine upon the recommendation of the International President. If circumstances outside of the International Union's control would make it impracticable, impossible or unsafe to convene the Convention, the International Executive Board may postpone the Convention and/or convene the Convention electronically or by other means consistent with applicable law. In the event of a postponement, all officers and members of the Board of Auditors shall remain in office until the Convention convenes and successors are elected pursuant to this Constitution and Bylaws.

Emergency provision

Special conventions

Section 2. Special Conventions may be called upon order of the International Executive Board to convene at such time and place as the Board may determine, and any and all business, including appeals from suspensions and decisions of the International Executive Board, may come before such Special Convention unless specifically limited by the call. Notice of such call shall be given to each Local Union at least 60 days prior to the date of the Special Convention along with the number of delegates to which said Local Union is entitled. All other provisions of this Article shall control all Special Conventions.

Eligibility and election of delegates

Section 3. The International Convention shall consist of duly elected delegates from their Local Unions, and none but delegates duly elected in accordance with all applicable statutes and the provisions of this Constitution and Bylaws shall be eligible to represent any Local Union at the International Convention or be entitled to vote except that all full-time International officers shall by virtue of their office be delegates with a voice but no vote to any Convention which is held during their term of office. All officers of a Local Union elected in conformity with all applicable statutes shall by virtue of such election be considered to be eligible delegates to any International Convention which may take place during their term of office. If at the time of the receipt of the Convention call it shall appear that such number of elected officers is less than the number of delegates to which the Local Union will be entitled at an International Convention, then arrangements may be made at the option of the Local Executive Board for nomination and secret ballot election, if required, of an additional number of eligible members as Convention delegates. Nominees for such position, if unopposed, shall be deemed elected without necessity for further procedures. The Local Union must designate in its Constitution and Bylaws the order in which the officers would be designated as delegates and alternates if less than all the officers are entitled to go to the Convention as delegates, provided that the chief executive officer of the Local Union shall, if otherwise eligible, be deemed entitled even in the event the Local Union fails to so designate. Any Local Union may by provision in its Local Constitution and Bylaws dispense with the foregoing provision that officers of the Local Union be ex officio delegates to the International Convention and may provide for nomination and, if required, secret ballot election of such delegates. Further, subject to applicable statutes, the International Executive Board may establish representation rules for delegates from groups of associate members or other special categories of membership or locals, which shall be set forth in the notice of Convention Call for the International or Special Convention. In no event shall the basis of representation for such groups be greater in numbers than the formula set forth in Section 4 below. Any voting rights extended to such delegates must comply with applicable law.

Ex-officio delegates

Additional delegates

Designation of ex-officio delegates and alternates

Representation of special categories of membership or locals

Convention delegate representation formula

Section 4. The basis of representation shall be one delegate for 500 members or less, and one additional delegate for every additional 500 members or major fraction thereof up to 5,000 members, and then one additional delegate for every additional 1,000 members or

major fraction thereof. A determination to be represented by less than a full complement of delegates shall not affect the Local Union's eligible votes. The Executive Board of a Local Union shall determine the number of delegates which shall represent it at the Convention. For the purpose of voting, the computation of membership for a Local Union shall not include life members, retired members paying less than the full dues required for working members of their Local Union, associate members or agency fee payers.

Exclusions

Retired member delegates

Section 5. In addition to the representation in Section 4, each Local Union with a retired members group of more than 500 members shall be entitled to one retired member delegate who shall serve with a voice and a vote at the Convention. Only retired members who have been members in good standing for 60 days prior to the Convention as either members, retired members, or life members of the Local Union shall serve as a retired member delegate. The retired member delegate shall be selected by the procedures provided for in the Local Union's Constitution and Bylaws for selecting such a retired member delegate or by the Local Union's Executive Board where no procedures are provided for in the Local Union's Constitution and Bylaws. The retired member delegate shall not be permitted to vote on dues or to nominate or vote for officers at the Convention.

Limitation on voting rights

No dual representation

Section 6. No delegate shall be permitted to represent more than one Local Union.

One month requirement

Section 7(a). No Local Union that has not been chartered, affiliated, and in good standing for at least one month prior to the opening of the Convention shall be entitled to representation in the Convention, and each Local Union to be entitled to said representation must have paid into the International treasury at least one month's per capita tax prior to the opening of the Convention.

Good standing requirement

(b). For a Local Union to be entitled to representation at the Convention, all moneys (i) due the International Union, whether by per capita tax or otherwise, (ii) due to any affiliated bodies, whether by per capita tax or otherwise, as determined or waived by the International Executive Board and (iii) all moneys due for any pension or welfare funds provided for in this Constitution, must be paid at least 15 days prior to the opening of the Convention.

Convention call

Section 8. The International Secretary-Treasurer shall issue a Call for the Convention and notify each Local Union at least 100 days prior to the date of the Convention of the number of delegates to which

said Local Union is entitled, and shall furnish to the Local Union a certification of delegation form containing the names of registered delegates to the Local Union and spaces for the signatures of the President and Secretary of the Local Union.

Certification of delegation forms (credentials)

Section 9. The certification of delegation form containing the names of delegates to the International Convention and bearing the signatures of the President and Secretary of the Local Union must be in the hands of the International Secretary-Treasurer at least 30 days prior to the opening of the Convention. A delegate who is eligible to attend the Convention shall not be disqualified because of the failure of a Local Union officer to forward the delegate's name on a certification of delegation form.

Deadline for receipt of credentials

Section 10. In addition to the delegates selected in the manner provided in Section 3 of this Article, a Local Union may provide for selection of such number of alternates as it may determine are reasonably required to serve if regularly elected delegates are unable to do so; such alternates shall be selected or elected in the manner provided in Section 3 of this Article. Each delegate or alternate must be a member of the Local Union employed in the jurisdiction of the Local Union. This requirement, however, shall not be construed to bar any member who is an officer or employee of the Local Union or of the International Union, or any affiliate thereof, or who is elected to public office or to a position with an organization with which this International Union is affiliated.

Alternate delegates

Membership requirement

Section 11. Any member who wishes to protest the election of any delegate or the right of any Local Union officer to serve as a delegate pursuant to Article IV, Section 3, must file a written protest with the International Secretary-Treasurer within 15 days after such election or after the decision by a Local Union that no election is required pursuant to Article IV, Section 3. Any such protest shall be referred to the Credentials Committee, in care of the International Secretary-Treasurer. The Credentials Committee may waive the time limit for filing protests upon a showing that the protesting member did not know of the basis for his or her protest within sufficient time to file a timely protest and he or she filed a protest immediately upon discovery of the basis for his or her protest. The Credentials Committee shall consider all timely protests and shall include its decision on all protests in its report to the Convention. It may, in its discretion, hold a hearing on any protest upon reasonable notice to all affected parties.

Protests of delegate elections

Computation of voting strengths

Section 12. The number of votes which each Local Union shall be entitled to vote in the Convention shall be determined by averaging the 12 most recent regular monthly per capita tax payments for members which are received by the International Union on or before December 31 of the year immediately preceding the calendar year in which the Convention is held. In the case of a newly chartered local without a twelve-month payment period before December 31, the number of votes shall be determined by averaging regular monthly per capita tax payments for members received by the International Union, up to a maximum of twelve months. The computation of voting strength shall not include associate members, life members or agency fee payers. Where there are two or more delegates in attendance from one Local Union, the vote shall be divided equally between them. In the case of a newly chartered local union created as a result of a reorganization of members under Article XIV, the International Executive Board shall determine the computation of voting strength for the affected local unions in order that the members are included in the voting strength of only one local union.

Exclusions from voting strength computation

Credentials Committee

Section 13. The International President shall, before each Convention, appoint from the delegates-elect a committee of at least seven to act as a committee on credentials. The International President and International Secretary-Treasurer shall be members of said committee. All credentials shall be referred to this committee. This committee shall submit its report in writing to the Convention.

Convention resolutions

Section 14. All Resolutions to be acted upon by the Convention proposed by a Local Union must be submitted in writing to the International Secretary-Treasurer at least 30 days prior to the Convention and unless so submitted may not be considered by the Convention except on unanimous consent of the delegates present. Resolutions may be presented to the Convention by the International Executive Board at any time during the Convention without requiring unanimous consent.

Convention quroum

Section 15. Delegates representing one-fourth of the votes entitled to be cast at the Convention shall constitute a quorum for the transaction of business.

Interim rules

Section 16. The rules and order of business governing the preceding Convention shall be enforced from the opening of any Convention of this International Union until new rules have been adopted by action of the Convention.

Article V

ELECTION OF OFFICERS

Nomination and election of International Union officers

Section 1. All nominations for International officers shall be made in open Convention and elections shall be by roll call where there is more than one candidate for any office. The roll call shall be conducted by voice and/or open written ballot, as set forth in the Rules of the Convention. Officers shall be elected by plurality vote.

No nonmember support

Section 2. No candidate (including a prospective candidate) for any International office or office in a Local Union or affiliated body or supporter of a candidate may solicit or accept financial support or any other direct or indirect support of any kind from any nonmember of the International Union.

Protests of candidate eligibility or manner of conducting election

Section 3. Any member wishing to protest the election of any International Officer pertaining to candidate eligibility or the manner in which the election was conducted must lodge a protest in conformity with the requirements of the Rules of the Convention.

Other election protests

Section 4. Any member wishing to submit an election protest pertaining to any issue other than those governed by Section 11 of Article IV or Section 3 of this Article must file such protest within 15 days after the Convention. All such protests shall be filed with the International President. The International President shall endeavor to have a hearing held within 30 days of the filing of the protest, if the International President deems a hearing to be necessary, and shall attempt to render his or her decision within 30 days thereafter. Within 15 days after the final action of the International President, a petition for review may be filed with the International Executive Board. In the alternative, the International President may forward an election protest directly to the International Executive Board for decision.

Article VI

OFFICERS

International Union officers

Section 1. The officers of this International Union shall consist of an International President, an International Secretary-Treasurer, five full-time Executive Vice Presidents, 25 Vice Presidents (at least two of whom shall be members of Canadian Local Unions), and 40 Executive Board Members (at least two of whom shall be members of Canadian Local Unions and one of whom shall be a Retired Member).

The International President, the International Secretary-Treasurer, and the five Executive Vice Presidents shall be elected at large by all delegates assembled at the International Convention. Two Canadian Vice Presidents and two Canadian Executive Board Members shall be elected on the following basis: A Vice President and Board Member shall be nominated and elected from all of the provinces other than the Province of Quebec. A Vice President and Board Member shall be nominated and elected from the Province of Quebec only, provided, however, that the Vice President from Quebec and the Executive Board Member from Quebec may not be members of the same Local Union. These Canadian Vice Presidents and Executive Board Members shall be elected by the Canadian Council at its Convention composed of delegates elected in accordance with this Constitution and applicable law and which shall be held within 90 days prior to the International Convention at which the International Union officers are elected. All other Vice Presidents and Executive Board Members (including the Retired Member) shall be nominated and elected at large.

Canadian officers

IEB term of office

Section 2. These officers shall constitute the International Executive Board, and their term of office shall begin immediately following their election and they shall hold office for four years or until their successors are duly elected and qualify.

Duties

(a). Each Vice President and Executive Board Member shall be responsible for such duties as assigned by the International President.

Executive Committee

(b). The International President may appoint an Executive Committee from among the members of the International Executive Board. The Executive Committee shall meet at the call of the International President. The Executive Committee shall be charged with advising the International President on how best to carry out the administrative duties of his or her office, and with making recommendations to the International Executive Board on policies and programs for the International Union. The Executive Committee also may be delegated specific functions and powers of the International Executive Board under the Board's authority in Article XI, Section 6 (b). Minutes of all meetings of the Executive Committee shall be kept by the International Secretary-Treasurer, who shall render reports to the International Executive Board.

Advises President, makes recommendations to IEB

Board of Auditors

Section 3. Each regular Convention of this International Union shall also elect a Board of Auditors consisting of eight members. The

Board of Auditors shall examine and review the books and accounts of the International Secretary-Treasurer at least once during each twelve-month period, utilizing the assistance of Certified Public Accountants designated by the International President. Such review of the books and accounts of the International Secretary-Treasurer shall include the books respecting all properties and facilities under the custodianship of the International Secretary-Treasurer. A copy of such annual reports of the Board of Auditors shall be submitted to the International Executive Board. The Board of Auditors shall also give a written report to the International Convention. In the event of the unavailability or temporary disability of an Auditor, the remaining Auditors shall perform the duties set forth herein. The Auditors shall receive such per diem compensation and expense allowance as may be fixed by the International Executive Board.

Review books and accounts, reports to IEB and Convention

Section 4. No person shall be eligible for office in this International Union who has not been a member in continuous good standing for at least two years immediately preceding his or her election in the International Union or Local Unions chartered by this International Union or in any labor organization which becomes affiliated with this International Union. This requirement may be reduced by the International Executive Board to no less than 60 days if necessary to expand eligibility for office to members of organizations newly associated with the International Union pursuant to Article XI, Section 6. In the case of the Retired Member position on the International Executive Board, only retired members who have been members in good standing for two years prior to the Convention as either members, retired members or life members of the Local Union shall be eligible to serve. No person who has been convicted of a felony as defined in Section 504 of the Landrum-Griffin Act (or an indictable offense in Canada) shall, in accordance with the provisions of applicable law, be eligible to hold office in this International Union.

Qualifications for International Union offices

Section 5. Associate members, life members or those retired members paying less than the full dues required for working members of their Local Union shall not be eligible for nomination as an International officer, except that such retired members may be eligible for the Retired Member position on the International Executive Board.

Exclusions

Section 6. No full-time officer of the International Union may receive compensation of any kind, except for benefits paid by a pension plan, from any Local Union or from any entity owned or controlled by a Local Union. Notwithstanding the foregoing,

Multiple compensation barred

the International President is authorized to approve a temporary transition plan (not to exceed six months) for other new full-time officers transitioning from a Local Union to the International Union, provided that any such individual does not receive compensation from the International Union and a Local Union for the same time period.

Retired members advisory committee

Section 7. The International President shall appoint a Retired Members Advisory Committee which shall consist of leaders of local union retired members groups and retired International Executive Board Members. It shall be chaired by a retired member appointed by the International President.

Emeritus status

Section 8. The future grant of emeritus status to an International officer shall be limited to an individual who has been elected as International President at no fewer than three international conventions. Such status shall entitle the individual to be an honorary guest at the SEIU International Convention and he/she may be appointed by the International President as a delegate or alternate delegate on the SEIU delegation to a national or international federation convention. Additional assignments may be made by the International President, upon mutual agreement.

Article VII

FILLING VACANCIES

Filling officer vacancies

In the event of a vacancy in the office of International President by reason of death, resignation or otherwise, it shall be the duty of the International Secretary-Treasurer, in addition to his or her other duties, to assume the duties of International President. The International Secretary-Treasurer shall serve in this capacity for a period of not longer than 30 days during which time the International Executive Board shall be convened for the purpose of filling the vacancy for the unexpired term by majority vote. In the event of a vacancy in the office of International Secretary-Treasurer by reason of death, resignation or otherwise, it shall be the duty of the International President, in addition to his or her other duties, to assume the duties of International Secretary-Treasurer. The International President shall serve in this capacity for a period of not longer than 60 days during which time the International Executive Board shall be convened for the purpose of filling the vacancy for the unexpired term by majority vote. In the event of a vacancy among the Vice Presidents, or on the Board of Auditors, by reason of death,

President

Secretary-Treasurer

Vice Presidents, Board of Auditors

resignation or otherwise, the International Executive Board shall, within 90 days after such vacancy has occurred, fill the vacancy for the unexpired term by majority vote. In the event of a vacancy among the Executive Vice Presidents or International Executive Board Members, by reason of death, resignation or otherwise, the International Executive Board may in its discretion fill such vacancy for the unexpired term by a majority vote. In the event of a concurrent vacancy in both the office of the International President and the office of the International Secretary-Treasurer by reason of death, resignation or otherwise, the International Executive Board shall be convened in Washington, D.C., within 10 days upon the joint call of at least four International Vice Presidents for the purpose of filling the unexpired terms by majority vote. In the case of a vacancy in the office of International President, International Secretary-Treasurer or Executive Vice President, the vote of an officer on the International Executive Board (except for the full-time officers and the Retired Member) shall be proportionate to the numerical strength of his/her local, as determined by the Local's payment of per capita tax to the International Union, excluding associate members, life members, retired members paying less than the full dues required for working members of their Local Union, and agency fee payers. If more than one officer is from the same Local Union, the voting strength shall be divided equally among those officers for this purpose.

Executive Vice Presidents, Executive Board Members

Concurrent vacancies

Voting strength to fill certain vacancies

Article VIII

INTERNATIONAL PRESIDENT—DUTIES AND POWERS

Presides at Conventions, IEB meetings

Appoints committees, boards

Section 1(a). It shall be the duty of the International President to preside at the Convention of the International Union and at meetings of the International Executive Board, and conduct them in accordance with parliamentary rules and in conformity with this Constitution. The International President shall appoint all committees and boards and be a member ex officio of all committees and boards.

Casts deciding vote in case of tie

(b). The International President shall have the deciding vote in case of a tie on any question.

(c). The International President shall act to the best of his or her ability in furthering the purposes and objects of the organization and the interests of its members.

Supervises and directs Union affairs

(d). The International President shall have general supervision and direction over the affairs of the International Union. The International President shall be authorized to call and make arrangements for such meetings, seminars and conferences as he or she may deem necessary; and shall direct all departments, functions and programs of the International Union.

Supervises and directs organizing efforts

(e). The International President shall have general supervision and direction of the organizing efforts of this International Union. The International President shall have power to appoint organizers, representatives, coordinators and organizing committees and to make such loans or grant such subsidies to Local Unions and affiliated bodies as he or she deems necessary.

Authority for collective bargainig

(f). Consistent with the programs and policies adopted by the SEIU Convention delegates, the International President shall be empowered to negotiate and enter into national, regional, or areawide collective bargaining agreements, including company-wide or multi-employer agreements, and to coordinate activities toward this end in consultation with the Local Unions involved, and is authorized to require and direct coordinated bargaining among Local Unions. An industry division of the International Union also may recommend to the International President situations in which coordinated bargaining is warranted or where a comprehensive unionwide strategy of employer relations is needed for key strategic global, national or regional employers. Accordingly, the industry divisions shall develop a process to identify such circumstances and in each case, the proposed structure for carrying out the decisionmaking (including membership authorization for strike action and membership voting on contract ratification), and the financing of the bargaining process itself. The division's recommendation shall address whether there is a need for the delegation of bargaining authority to the International Union or to a national or regional bargaining committee, appointed by the International President. The affected locals shall pay for the expenses of their participation after their input into the elements of such financing.

Coordinated bargaining process

Bargaining committees

Authority to employ staff

(g). The International President shall be empowered to employ necessary staff and retain counsel, accountants and other professional personnel as he or she may require to assist in the duties of the office and to fix their compensation. He or she shall be empowered to fix the compensation of the International Executive Vice Presidents. With respect to the office of International Vice President and International Executive Board member, the

International officer salaries

International Executive Board has phased out salary entitlements and is authorized to adopt an alternative compensation policy that recognizes any financial hardship on locals by this change in policy, as well as additional responsibilities that may be assigned to particular individuals.

Authority to interpret the Constitution

(h). The International President shall have authority to interpret this Constitution and Bylaws and decide on all points of law submitted to him or her by Local Unions or the membership thereof, or by affiliated bodies, subject to appeal to the International Executive Board, and the next Convention.

Right to petition the President to appeal actions of a Local Union or affiliate body

Section 2. Any member or officer of a Local Union aggrieved by any action of his or her Local Union or affiliated body not covered by the provisions of Article XVII of this Constitution (including determinations of election protests) may petition the International President within 15 days after the act complained of, or may petition the International Executive Board, within 15 days after the action of the International President thereon, to review the action of the Local Union or affiliated body. The President will endeavor to have a hearing held within 30 days of the petition or protest, if the President deems a hearing to be necessary, and shall attempt to render his or her decision within 30 days thereafter.

Hearing to review actions of Local Union or affiliate body

Representing International Union at conventions

Section 3. The International President shall, by virtue of his or her office, represent the International Union at the conventions of labor organizations with which this International Union is affiliated and shall appoint all other delegates to such conventions.

Charters, audits, and vouchers

Section 4. The International President shall sign all charters and other official documents of this International Union; shall have the authority to direct an examination of the books and records of any Local Union or affiliated body; and shall draw vouchers on the International Secretary-Treasurer for such sums of money as his or her activities require, and the same shall be paid by the International Secretary-Treasurer.

Appointment of assistants

Section 5. The International President shall have power to appoint upon recommendation of the International Secretary-Treasurer such office assistants as may from time to time be required.

Monitoring finances

Section 6. All vouchers of the International Union shall be submitted to the International President for approval. The International President may at any time appoint a member of the Board of Auditors or such other representative or accountant as he or

she may designate to examine any matter affecting the finances of the International Union.

Authority to impose trusteeships

Section 7(a). Whenever the International President has reason to believe that, in order to protect the interests of the membership, it is necessary to appoint a Trustee for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of this International Union, he or she may appoint such Trustee to take charge and control of the affairs of a Local Union or of an affiliated body and such appointment shall have the effect of removing the officers of the Local Union or affiliated body.

Powers and duties of trustee

(b). The Trustee shall be authorized and empowered to take full charge of the affairs of the Local Union or affiliated body and its related benefit funds, to remove any of its employees, agents and/or trustees of any funds selected by the Local Union or affiliated body and appoint such agents, employees or fund trustees during his or her trusteeship, and to take such other action as in his or her judgment is necessary for the preservation of the Local Union or affiliated body and for the protection of the interests of the membership. The Trustee shall report on the affairs/transactions of the Local Union or affiliated body to the International President. The Trustee and all of the acts of the Trustee shall be subject to the supervision and direction of the International President.

Moneys, books, property

(c). Upon the institution of the trusteeship, all moneys, books and property of the Local Union or affiliated body shall be turned over to the Trustee.

Bonding required of trustee

(d). The Trustee shall be bonded for the faithful discharge of his or her duties relating to the handling of funds or other property of the Local Union or affiliated body.

Financial responsibilities of trustee

(e). The Trustee shall take possession of all the funds, books, papers and other property of the Local Union or affiliated body. The Trustee shall pay all outstanding claims, properly proved, if funds are sufficient. When self-government is restored, the Trustee shall return all funds, books, papers and other property to the Local Union or affiliated body. If, however, the Local Union or affiliated body is dissolved by the revocation of its charter, then any balance remaining to the credit of the Local Union or affiliated body shall be forwarded

to the International Secretary-Treasurer and shall become the property of the International Union.

Procedure for imposing trusteeship

Appointment of hearing officer

(f). In order to ensure that no trusteeship is imposed without an adequate right to be heard or without other appropriate safeguards, prior to the imposition of a trusteeship the International President shall appoint a hearing officer or officers (who need not be a member or members of this organization), and shall issue a notice, which shall be distributed in a timely fashion, setting a time and place for a hearing, for the purpose of determining whether a Trustee should be appointed. Said hearing officer or officers shall issue a report and recommendations, orally, or in writing, to the International President, who shall thereupon make his or her determination; provided that where in the judgment of the International President an emergency situation exists within the Local Union or affiliated body, a Trustee may be appointed prior to a hearing; provided further that in an emergency situation, the International Executive Board shall appoint a hearing officer or officers (who need not be a member or members of the organization) who shall conduct such a hearing within 30 days after imposition of the trusteeship, and a decision by the International Executive Board shall be made within 60 days after the appointment of such Trustee. These time limits may be extended by the International President for good cause which decision shall be final and binding. Pending the International Executive Board's decision, the trusteeship shall remain in full force and effect.

Emergency trusteeship

Personal representative

Internal needs hearing

Monitor

(g). The International President may appoint a representative to meet with the officials of Local Unions or affiliated bodies and to attend any meetings of Local Unions or affiliated bodies where, in the judgment of the International President, there is a need to assist the Local Unions or affiliated bodies with respect to their internal needs. The International President may appoint a hearing officer to examine the internal needs of the Local Union or affiliated body, and to assist him/her in determining what remedial action(s), if any, should be implemented by the Local Union or affiliated body. At any time, the International President also may designate his/her representative as a Monitor with additional oversight responsibility to review compliance with the International President's recommendations and/or otherwise assist in addressing the internal needs of the Local Union or affiliated body. Among the internal needs to be considered is whether a Local Union or affiliated body has met applicable standards endorsed by the International Convention or satisfied such procedures, rules and/or regulations duly adopted by

the International Executive Board to carry out the goals set by the International Convention.

Officer assistance

Section 8. The International President shall have power to call upon any and all officers for assistance and advice when the occasion demands or requires it.

Duty to report

Section 9. The International President shall make a full report to each International Convention and at Executive Board meetings.

Article IX

DUTIES OF INTERNATIONAL SECRETARY-TREASURER

Record of proceedings

Section 1. The International Secretary-Treasurer shall keep a correct record of all the proceedings of the International Convention and of the International Executive Board.

Safeguarding money

Section 2. The International Secretary-Treasurer shall receive and collect all moneys due to the International Union, which shall be deposited in such banks as may be designated by the International Executive Board.

Charter applications

Section 3. The International Secretary-Treasurer shall conduct all official correspondence, receive all applications for charters, countersign and issue charters as may be granted, and have charge of the official seal.

Expenditures

Section 4. The International Secretary-Treasurer shall draw and sign or authorize the signing of all checks covering expenditures of the International Union, upon the co-signature or approval of the International President.

Membership records

Section 5. The International Secretary-Treasurer shall maintain records of the membership of the International Union and shall report to the International President and the International Executive Board as required.

Convention reports

Section 6. The International Secretary-Treasurer shall make a full report of all matters relating to his or her office to each International Convention.

Obligation to successor

Section 7. The International Secretary-Treasurer shall, at the end of his or her term of office, turn over to his or her successor in office all books, moneys, property and other belongings of the International Union.

Officer inspection of books

Section 8. The books and records of the International Secretary-Treasurer shall be open for inspection by the officers of the International Union.

Maintenance of Union records

Section 9. The International Secretary-Treasurer shall keep all records pertaining to income, disbursements, and financial transactions of any kind for a period of at least six years, or longer if required by applicable law.

Article X

DUTIES OF THE EXECUTIVE VICE PRESIDENTS

Supervision by President

Section 1. The International Executive Vice Presidents shall work under the supervision of the International President.

Duties assigned by President

Section 2. The International Executive Vice Presidents shall perform such duties as are assigned to him or her by the International President.

Article XI

DUTIES OF THE INTERNATIONAL EXECUTIVE BOARD

Meeting requirement

Section 1. The International Executive Board shall hold sessions at least two times within each year. The meetings of the International Executive Board shall be upon the call of the International President at times and places which, in his or her judgment, best serve the needs of the International Union. Whenever a majority of the International Executive Board requests the International President to call a meeting thereof, it shall be mandatory upon him or her to do so. A meeting of the International Executive Board may be held by telephone or video conference at the discretion of the International President. All necessary expenses for such meetings shall be paid by the International Union. The International Executive Board shall have power to transact all business of the International Union between Conventions. A majority of the members of the International Executive Board shall constitute a quorum for the transaction of its business.

Majority may initiate meeting

Quorum

Notification to Local Unions

Section 2. The International Secretary-Treasurer shall notify all Local Unions and affiliated bodies of the time and place of

Right to present grievances

International Executive Board meetings. Any Local Union or affiliated body may present any grievance or matter which it deems to be for the welfare of the International Union or any of its Local Unions or affiliated bodies at any meeting of the International Executive Board.

Decide appeals

Section 3. The International Executive Board shall act upon and decide all appeals presented to it by Local Unions or individual members or by affiliated bodies.

Bonding

Section 4. The International Executive Board shall provide for the bonding of officers and employees of the International Union in accordance with the requirements of applicable statutes or as the International Executive Board shall deem necessary.

Polling

Section 5. When the International Executive Board is not in meeting and the International President deems it necessary for the International Executive Board to act promptly, the International Secretary-Treasurer shall poll the International Executive Board and such action and vote may be taken by letter, telegram, teletype, facsimile, telephone or any other appropriate means of communication. Such action so taken on vote of the majority of the International Executive Board shall constitute official action of the International Executive Board.

Executive Board is governing body

Section 6. The International Executive Board shall, subject to action of an International Convention, be the final authority and the highest governing body of this International Union.

General authority of Board

The Board is hereby authorized and empowered to take any and all lawful action not inconsistent with this Constitution to safeguard and protect this International Union, the rights, duties and privileges of the officers and members of this International Union and its Local Unions or any of its affiliated bodies; to guide, manage, conduct, and direct the activities, affairs, and functions of this International Union and to, in every way, including but not limited to expenditure, investment, and management, utilize the property and funds of this International Union towards the fulfillment of the purposes and objects of this organization. In addition to the general and specific powers conferred upon the Board elsewhere in this Constitution, and in addition to any lawful powers appertaining thereto, the Board is specifically authorized to:

Establishment of rules and regulations

A. Establish, adopt, prescribe and order such procedures, rules and regulations, consistent with this Constitution, as are required for the direction and management of the affairs of this International

Union and its constituent subordinate bodies and to repeal or amend the same;

Delegation of powers

B. Delegate, consistent with this Constitution, to any of its officers or agents any of the functions and powers herein set forth, except the power to fill vacancies in office;

Authority regarding salaries for employees and agents.

Establishment of trust funds

C. Establish and/or approve the payment of salaries, wages, expenses, allowances, and disbursements for its officers, agents and employees; and adopt, maintain or amend any pension or health and welfare trust agreement or plan which it deems to be in the interest of the officers and employees of the International Union or its Local Unions or other affiliated bodies or employees represented by the International Union or any of its Local Unions or other affiliated bodies and the families of said officers and employees, provided that no accrued rights of a participant shall be impaired;

Authority to take legal action

D. Take such legal action as it deems necessary to protect the interests of this International Union, its officers, representatives, agents, employees, members, or constituent Local Unions or its affiliated bodies, including the initiation, prosecution, and defense of lawsuits and arbitrations, the settlement or compromising of any claim whether defended or prosecuted, and the payment of expenses and costs of all such proceedings and actions; or abstain from enforcing any claim;

Investment of funds

E. Invest or reinvest the funds of this International Union in such property, real or personal, tangible or intangible, as it shall consider desirable for the effectuation of the purposes and objects of this International Union and the interest of its members, or permit such funds to remain uninvested;

Acquisition of property

F. Lease, buy, and in every lawful manner acquire, on behalf of this International Union, all property, rights, and privileges, as it shall think desirable for the effectuation of the purposes and objects of this International Union and the interests of its members, at such prices, terms and conditions as this Board shall, in its discretion, determine;

Disposal of property

G. Sell, lease, rent, mortgage, pledge, exchange, or otherwise dispose of any property, real or personal, tangible or intangible, and any rights or privileges appertaining or belonging to or in the possession of this International Union or its membership, whenever in its discretion the Board considers that the purposes and objects of this International Union and the interests of its members will

be thereby effectuated for such prices and upon such terms and conditions or for such consideration as the Board in its discretion determines;

Authority to borrow

H. Obtain loans from any banks, firms, corporations or institutions, upon such terms and conditions as the Board shall determine, and for the sums so borrowed, issue its promissory notes or other evidence of indebtedness;

Mortgages and trusts

I. Enter into, issue and create, effectuate and terminate such mortgages, deeds, trust agreements, and negotiable instruments, however secured, as the Board in its discretion believes will effectuate the objects and purposes of this International Union and the interests of its members;

Affiliating with other organizations

J. Affiliate this International Union or otherwise enter into or discontinue a relationship with such organizations and bodies, local, national and international, as the Board believes will effectuate the objects and purposes of this International Union and the interests of its members;

Bringing other labor organizations into SEIU

Waiving constitutional provisions

K. Affiliate to this International Union by merger, partnership, alliance, consolidation, charter or otherwise any existing labor organization or other organization as the Board may approve and in connection therewith may grant to such labor organization until the next International Convention such executive positions and/or representation on the International Executive Board in the form of additional Vice Presidents and Executive Board Members in excess of the total number provided in Article VI, Section 1. The terms and conditions of such relationships, including affiliations, partnerships, alliances, mergers, or consolidations may include waiver of other provisions of this Constitution for such periods of time as shall be set forth in the agreement;

Local Union jurisdiction

L. Decide questions of jurisdiction relating to Local Unions and other bodies affiliated to the International Union, and conclude organizational and jurisdictional agreements with other labor organizations;

Authority to lend

M. Make such loans, either direct or indirect, whether to individuals or organizations, as are lawful and not inconsistent with this Constitution, with such security and with such arrangement for repayment as the Board may deem appropriate, and as the Board considers will effectuate the purposes and objects of this International Union and the interests of its members;

Agency and other fee procedures

N. Establish, adopt and order such procedures as it deems necessary for the International Union, Local Unions, and affiliated bodies pertaining to agency shop fees, fair share fees and similar fees, and repeal or amend the same; and

New arrangements to expand outreach

O. In order to build strength for working women and men in the 21st century, the International Executive Board is authorized to enter into new types of arrangements including, but not limited to, partnerships, affiliations and/or alliances on a national or global scale, for expanding the Union's outreach to, and involvement with, organizations and people with common goals. Accordingly, the authority set forth in this Article should be broadly interpreted to carry out the intent and purpose of this mission as well as to take advantage of new opportunities available through advances in technology and the internet. In entering such arrangements, the International Executive Board may grant such waivers from the provisions of the Constitution until the next Convention as will advance this objective.

Constitutional authority

The International Executive Board shall be the final authority in fulfilling, interpreting and enforcing this Constitution, subject to review by an International Convention.

Protection from liability

The opinion of any attorney, accountant, or other professional consultant or expert hired pursuant to this Constitution shall be full and complete authority and protection with respect to any action taken, suffered or omitted by this Board or any member thereof in good faith and in accordance with such opinion. The International Executive Board, or any member of it, shall not be liable to any person or organization, for any act, which is not willful misconduct or in bad faith, done by this Board or said member in effectuation of the purposes and objects of this Constitution and the interests of the members of this organization.

Article XII

STRIKES AND LOCKOUTS

Strike notification requirement

No Local Union or affiliated body shall strike without previous notification to the International President, or, where prior notice is not practicable, without notification as soon as possible after commencement of the strike, in which notice the Local Union or affiliated body has stated that it has complied with all applicable notice requirements. If the Local Union or the affiliated body fails to

give such notice, the International President may withhold sanction for the strike called by the Local Union or affiliated body. Based on the recommendation of the industry divisions of the International Union, the International Executive Board may limit this strike notification to fewer situations.

Article XIII

REVENUE

Per capita taxes

Section 1(a). The revenue of this International Union shall be derived from per capita tax, initiation fees, charter fees, assessments or from any other source that the International Executive Board may determine.

The per capita tax from Local Unions shall continue to be $7.65 per member per month on all dues received by the Local Union.

Retired, associate and organizing committee members

For a retired member, associate member or organizing committee member paying less than the full dues required for working members of his or her Local Union, the per capita shall be $1.00 per month.

The International Union shall not set aside any segregated funds from per capita tax payments received from Local Unions on behalf of retired, associate or organizing committee members.

Per capita tax for retired and associate members

Upon the recommendation of the International President, the International Executive Board shall have the authority to adjust the per capita tax required from Local Unions (i) for nonworking members, including retired members and associate members; provided, however, that notwithstanding the provisions of Article XV, Life Members granted such status pursuant to this Constitution on or before May 1, 2000, shall have no continuing dues obligations, but they shall nonetheless be eligible to enjoy all the benefits and privileges of retired members in the International Union, including continued participation in the International Union's Death Gratuity Program if otherwise eligible; and (ii) that are affiliated with another international union.

Political fund

(b). An amount of money which shall be determined annually by the International Executive Board shall be set aside from the per capita tax and shall be expended by the International Union directly or indirectly for political education and political action purposes, but solely in accordance with the provisions of applicable law.

Strike and Defense Fund

(c). For 2012, the International Union shall continue to set aside out of the per capita tax, the sum of 40 cents per member per month on all monthly dues received by the Local Union as a Strike and Defense Fund to aid Local Unions engaged in authorized strikes, in defending against lockouts, and in defending the integrity and welfare of the Local Union, as defined under criteria established by the International Secretary-Treasurer, and shall credit each Local Union with the amount which such Local Union has paid into the Strike and Defense Fund. 25 cents of the 40 cents shall be used by the International Union to maintain current programs and support the implementation of the 2012 Convention program.

Use of Strike and Defense Fund to support International program

Beginning January 1, 2013, the International Union shall use from the per capita tax the sum of 40 cents per member per month on all monthly dues received by the Local Union in the Strike and Defense Fund for the purpose of maintaining a fund to support the International Union's program to elect and hold accountable national public officials for a pro-working family agenda.

Such moneys shall not be used from or set aside out of per capita tax payments received from Local Unions on behalf of retired, associate, or organizing committee members.

Prior to January 1, 2013, a Local Union may request approval from the International Secretary-Treasurer to substitute an alternative payment plan for the 25 cents. This plan may include the option for the International Union to retain funds that would otherwise be paid back to the local union under Article XV, Section 18.

Withdrawals from Strike and Defense Fund

For any amounts accumulated in the Fund prior to January 1, 2013, subject to the criteria established by the International Secretary-Treasurer, a Local Union may after no less than one year of contributions draw on the Strike and Defense Fund, or from such other funds of the International Union as shall be determined by the International Executive Board, to the extent of the total unexpended funds remaining to its credit, plus an additional sum equal to the amount set aside out of its required payments in the preceding 12 months. Once such an additional payment has been drawn by the Local Union, no further payment shall be made to the Local Union pursuant to this Section. The International Executive Board is authorized to direct that a Local Union's 2012 contributions to the Strike and Defense Fund be used to satisfy the Local Union's outstanding financial liability to the International Union or, pursuant to a decision of the International Executive Board after appropriate

proceedings, to another affiliated body or Local Union if such liability is at least 90 days past due. In such circumstances, the Local Union will receive 15 days' notice before such action is initiated.

Secretary Treasurer interprets strike fund policy

Questions concerning the application or interpretation of this subsection shall be resolved by decision of the International Secretary-Treasurer, subject to appeal to the International Executive Board.

Unity Fund (except Canada)

(d). In addition to the per capita tax set forth in Section 1(a), each Local Union, except those based in Canada, shall pay to the International Union a per capita tax to finance the Unity Fund. Through the Unity Fund, all local unions will pool resources in order to have the new strength to win improved pay, benefits and security for members in the 21st century. This additional per capita tax per member per month shall be $5.00.

Low-wage worker exemption

Notwithstanding the above, this additional per capita tax for the Unity Fund shall not be paid on dues from any member who is paid gross wages of less than $433 per month. The additional per capita tax for the Unity Fund shall also not be payable on dues from members who have not achieved a first collective bargaining agreement.

Canadian Unity Fund

(e). Based on the recommendation of the Canadian Council, the International Executive Board may require each Local Union based in Canada to pay to the International Union a per capita tax in addition to the per capita tax set forth in Section 1(a) to finance a Canadian Unity Fund. Through this Unity Fund, all Canadian local unions will pool resources in order to have the new strength to win improved pay, benefits and security for members in the 21st century. The amount of the additional per capita tax shall be determined by the International Executive Board, based on the recommendation of the Canadian Council.

"Member" and "dues" defined

(f). For the purposes of this section, the term "member" shall include agency fee payer and Rand Formula payer and comparable fee payers, and the term "dues" shall include agency service fees, Rand Formula fees and comparable fees.

Payment of dues

Section 2. Dues of members are due and payable on or before the last day of the current month and in order for a member to be in good standing his or her dues must be paid on or before the last day of each month. All other financial obligations of the Local Union must likewise be paid on or before the last day of the month in which they fall due.

Maintenance of good standing by Local Unions

Section 3. For a Local Union to be considered in good standing, per capita tax and all other fees and payments must be paid by each Local Union to the International Union before the end of the month following the month in which the Local Union received dues or other payments on account of which per capita tax or fees are payable to the International Union. If the monthly per capita tax, or any part thereof, is not submitted by the end of the month following that in which it is due, the Local Union shall be deemed delinquent in its payment and shall be charged a late payment fee, at an interest rate to be determined periodically by the International Executive Board, on that portion of the per capita tax which has not been paid by the due date, except that the International President may waive this penalty charge for good cause shown. If a Local Union fails to make the payments herein required within 30 days of the date due, the International Secretary-Treasurer shall notify the Local Union that it is no longer in good standing and shall within 30 days thereafter refer the matter to the International President for such action as the International President shall deem appropriate, including without limitation, suspension of the Local Union, revocation of its charter, or the appointment of a Trustee as provided in Article VIII, Section 7 of this Constitution and Bylaws. The International President, and in the event of an appeal from his or her decision, the International Executive Board, may lift any suspension or stay revocation of the charter upon such terms and conditions as may be prescribed.

Sanctions for nonpayment

Priority of per capita payment

Section 4. No Local Union shall have any right to pay any bills before it pays its full obligation to the International Union each month.

Reporting requirements of Locals (membership lists)

Section 5(a). The Local Union by its Secretary-Treasurer shall forward to the International Secretary-Treasurer the correct names and addresses (including email address, home and cell phone numbers, if available) of all its members, and other membership information as specified by the International Executive Board. Each month it shall submit all changes of addresses; the names and addresses of all members initiated or readmitted, of all other persons from whom revenue is derived, and of those suspended for nonpayment of dues or for any other cause; and a correct list of those who take transfer or withdrawal cards. In addition, the International Union must be notified of the names and addresses of all officers elected to office within 15 days of such action. The proper ZIP code shall be included for each address. Each Local Union must provide the same membership list to the State Council with which

it is affiliated. Based on the recommendation of the International Secretary–Treasurer, the International Executive Board may approve a modification to this section which limits the frequency and/or content of this requirement. The International Union's use of the member information provided by Local Unions pursuant to this Section 5(a) shall be fully consistent with the use granted by the member and with applicable law.

Average gross wage rate of membership

(b). Upon request, each Local Union shall forward to the International Secretary-Treasurer, by April 1 of each year, information and supporting documentation showing the average gross wage rate of its membership for the previous calendar year. The Secretary-Treasurer may issue specific guidance on the nature of the supporting documentation required.

Examination of Local Union books and records

Section 6(a). Local Union officers or the officers of any other affiliated body shall furnish to any person designated by the International President to examine its books and records, all of its books, records, accounts, receipts, vouchers and financial data whenever requested. All Local Unions and other affiliated bodies shall promptly forward to the International Secretary-Treasurer copies of all annual audit reports and copies of all financial reports setting forth a statement of assets and liabilities and a statement of receipts and disbursements which are required by law.

Submission of annual audit reports

Records must be maintained for at least six years

(b). All records of a Local Union or other affiliated body pertaining to income, disbursements and financial transactions of any kind whatsoever must be kept for a period of at least six years or longer if required by applicable law.

Revocation of charter

Section 7. When the charter of a Local Union or other affiliated body is revoked, the Local Union or other affiliated body and its officers shall return all books, documents, property and funds to the International Union.

Canadian Local Union per capita taxes

Section 8. The revenue from per capita taxes paid by Canadian Local Unions shall be spent by International Union for activities that support Canadian Local Unions.

Article XIV

ISSUANCE OF CHARTERS

Application for charter

Section 1. Twenty-five or more persons within the jurisdiction of this International Union may apply to the International Secretary-

Treasurer for the issuance of a charter. In any event, the International President or the International Executive Board may issue a charter whenever it is deemed advisable. The application for a charter shall be accompanied by the required initiation fees and charter fee.

Local Union jurisdiction

Section 2. The International Executive Board shall establish the policy and procedures governing the issuance of charters and shall determine all questions of jurisdiction between Local Unions. Local Unions in existence at the time of the formation of the International Union shall retain the jurisdiction which they held at that time. If there be any contested question in connection with the matters referred to in this Section, action of the International Executive Board shall be after a hearing upon reasonable notice before it or a hearing officer or officers (who need not be a member or members of this organization) designated by the International Executive Board.

Consolidation and merger

Section 3. The International Executive Board may consolidate or merge existing Local Unions under such terms and conditions as the International Executive Board may determine when, in the opinion of the International Executive Board, the interests and welfare of the International Union and the membership thereof will be better served by such action.

Merger hearings

Section 4. Such merger or consolidation of existing Local Unions shall be conditioned upon the consent of the Local Unions or shall be effectuated after a hearing upon reasonable notice before the International Executive Board or a hearing officer or officers (who need not be a member or members of this organization) designated by the International Executive Board.

Provisional locals

Section 5. The International President may designate such coordinators and establish such organizing committees or provisional Local Unions for the purpose of organizing workers, and may establish other bodies for other purposes he or she deems appropriate, with or without requiring the payment of dues, initiation fees or per capita tax, as he or she may deem advisable, and the International President shall be authorized and empowered to name provisional officers for and to expend and control the finances of such organizing committees or provisional Local Unions or other bodies. The International President shall thereafter report such matters to the International Executive Board.

Article XV

DUTIES OF LOCAL UNIONS

Bonding of Locals

Section 1. All Local Unions and affiliated bodies shall secure and maintain surety bonds in the amounts and the form required by applicable statutes. The International Secretary-Treasurer may direct an increase in the amount of any bond whenever he or she deems it necessary and advisable and may direct bonding by any Local Union not required by statute to secure a bond.

Eligibility requirements for Local officers

Section 2. No person shall be eligible for nomination as an officer, member of the Executive Board, delegate, or any other office in a Local Union who has not been a member in continuous good standing in the Local Union for at least two years immediately preceding the nomination and has, during all of that time, paid the full dues required for working members of the Local Union within each month when due. Notwithstanding the above, a Local Union may adopt a Local Union bylaw that reduces this continuous good standing requirement from two years to no less than six months. No person who has been convicted of a felony as defined in Section 504 of the Landrum-Griffin Act (or indictable offense in Canada) shall in accordance with the provisions of applicable law be eligible for nomination under the terms of this Section. If the Local Union has been chartered less than two years, the required period of continuous good standing shall be the entire time that the Local Union has been chartered. The International President may waive the foregoing requirements for good cause shown. Any Local Union may provide in its Constitution and Bylaws for further limitations upon eligibility for nomination, provided such provisions are approved by the International Union. Upon the request of a Local Union Executive Board, the International President may waive Local Union eligibility requirements for good cause shown. Associate members, life members, and those retired members paying less than the full dues required for working members of the Local Union shall not be eligible for nomination as an officer, member of the Executive Board, delegate, or any other office in the Local Union. Proxy voting shall not be permitted in any election for an officer, member of the Executive Board, delegate or any other office in the Local Union. Write-in candidates shall not be permitted in any election for an officer, member of the Executive Board, delegate or any other office in the Local Union, except if expressly approved by the International President upon request of the Local Union Executive Board.

Waiver of eligibility requirements

Proxies, write-ins prohibited

Approval of Local Constitutions

Section 3. The Constitution and Bylaws of all Local Unions and affiliated bodies and amendments thereto must be submitted to the International Union and be approved before they become valid; provided, however, that notwithstanding such approval, the Constitution and Bylaws of all Local Unions and affiliated bodies shall at all times be subordinate to the Constitution and Bylaws of the International Union as it may be amended from time to time. If a Local Union or an affiliated body shall not have secured the approval of a valid Constitution and Bylaws, the provisions contained in the Constitution and Bylaws of the International Union as it may be amended from time to time shall govern said Local Union and affiliated body insofar as applicable. Regardless of approval, if any conflict should arise between the Constitution and Bylaws of a Local Union and affiliated bodies or any amendments thereto, and the Constitution and Bylaws of the International Union as it may be amended from time to time, the provisions of the Constitution and Bylaws of the International Union shall govern.

Priority of International Constitution

Distribution of Constitution

Section 4. Each Local Union shall provide its members upon request with a copy of the Constitution and Bylaws of the International Union and the Local Union. Copies of the International Constitution and Bylaws will be provided by the International Union to the Local Unions at cost.

Local meeting requirements

Section 5. All Local Unions must provide for meetings of the membership on a general, division, chapter or worksite basis at least once every two months, except during the months of July and August. The Executive Board of each Local Union shall in any case meet at least once a month. However, if approved by the Local Union membership, the requirements of this section may be modified in the Local Union's Constitution and Bylaws.

Minimum dues

Section 6(a). Effective January 1, 2016, for all members with annual earnings of $16,000 or more, the minimum dues shall be equal to $36.00 per month. Effective January 1, 2016, for all members with annual earnings between $5,500 and $16,000, the minimum dues shall be equal to $31.00 per month.

Dues increases

Effective January 1, 2017, through January 1, 2020, the minimum monthly dues for all members with annual earnings of $5,500 or above shall be increased by $1.00 annually, effective January 1 of each year.

Dues for certain membership categories

Notwithstanding the above, by action of the Local Union the minimum dues may be reduced for retired members, organizing

committee members, and associate members. The Local Union may establish minimum dues for members with annual earnings which are less than $5,500.

Upon request, these requirements may be waived by the International President, as provided in subsection 6(d)below.

Dues caps prohibited

(b). A Local Union's dues system shall not contain a maximum limitation on the dues amount per member otherwise applicable under the Local Union's dues formula. Upon request, this requirement may be waived by the International President, as provided in subsection 6(d) below provided that any maximum limitation permitted by the International President is indexed for inflation.

Percentage dues systems

(c). Local Unions in which the Constitution and Bylaws provide for a dues system other than a flat rate system (e.g., a scale, hourly or percentage formula system) shall maintain the formula necessary to generate a dues minimum equal to the flat rates specified in this section.

The percentage rate minimum required in converting to a percentage dues system shall be the rate that provides the Local Union with revenue equal to what it otherwise would have received under its prior dues system as of that date. The calculation of revenue otherwise receivable under the prior dues system shall be based on the Local Union's average monthly membership for the six-month period ending one month prior to the date of conversion.

Questions concerning the application or interpretation of this subsection shall be resolved by decision of the International Secretary-Treasurer, subject to appeal to the Executive Board.

Dues waivers

(d). The International President, with ratification by the International Executive Board, may waive the requirements of this section for such period as he or she deems advisable upon a showing of good cause as set forth below so long as such waiver does not impair the ability of the Local Union to properly represent its members.

Alternative dues structure

A full waiver will be granted to any Local Union which has established, in accordance with its Constitution and Bylaws, an alternative dues structure and/or dues increases which satisfy the goals of this Section.

Waiver considerations

Full or partial waivers of any of the requirements of this section may be granted taking into consideration the resources of the Local Union, the Local Union's dues rate, whether the Local Union has

recently implemented a dues increase, the percentage of workers represented by the Local Union covered by a union security clause and the wage rate of the Local Union's members. A waiver also may be granted to Local Unions in right to work states that are engaged in active and strategic organizing efforts in accordance with approved industry division plans.

(e). Nothing in this Section shall apply to Local Unions based in Canada.

Canadian Local Union dues

Section 7(a). The minimum dues of all members of any Canadian Local Union shall be $10.00 per month except that by action of a Local Union they may be reduced to not less than $2.50 per month for retired members and organizing committee members and $2.00 per month for associate members.

Canadian percentage dues

For Canadian Local Unions employing a percentage dues system, the minimum dues of all members of any Local Union shall be 1 percent of gross monthly salary per month or $10.00 per month, whichever is greater, except that by action of a Local Union they may be reduced for retired members, organizing committee members and associate members.

Waiver

The International President, with the approval of the International Executive Board, may waive these requirements for such period as he or she deems advisable as long as such waiver does not, in his or her judgment, impair the ability of the Local Union to properly represent its members.

Canadian dues increases

(b). All dues in Canadian Local Unions may be increased by an amount to be set by the International Executive Board based on the recommendation of the Canadian Council.

Dues payments, good standing

Section 8. In order to be considered in good standing and to be eligible to participate in all of the gratuities and benefits of the Local Union and the International Union, members must pay on time the full dues and other payments prescribed by the Constitution of the Local Union.

Dues credits

Section 9. When a member is laid-off from employment or is absent from work due to employer lockout or union-authorized strike for more than 20 days in any calendar month, such member may be entitled, if so provided in the Local Union's Constitution and Bylaws, to credit for membership dues for the period of unemployment but not to exceed six months in any calendar year.

Dues receipt

Section 10. Each member shall be entitled to receive a proper receipt or acknowledgement for any payment of dues.

Withdrawal cards

Section 11. Any Local Union may order that withdrawal cards be taken out by members working outside the trade or jurisdiction of the Local Union.

Notification of collective bargaining agreements

Section 12. The International Union shall be notified in writing when any collective bargaining negotiations or memoranda of understanding have been concluded and be advised of the number of employees covered and the expiration date of the contract. For the purpose of maintaining a file, and for informational uses, copies of collective bargaining agreements and contracts entered into by a Local Union shall, after signing, be sent to the Research Department of the International Union. Such notification to or filing with the International Union shall not operate to impose any liability on the International Union or its officers or to make them parties to any such collective agreement or memorandum of understanding.

Permission to conduct fundraising

Section 13. No Local Union or affiliated body or any subdivision thereof, or member or group of members, including Councils, Conferences, leagues, clubs or any association composed of members of this International Union, or subdivision thereof, shall in any manner, directly or indirectly, use, exploit, or trade upon the name of this International Union, or Local Union or affiliated body or any similar name or designation, nor in the name of this International Union or Local Union, or affiliated body, levy or collect any tax, dues, or other moneys, nor in the name of this International Union or Local Union, or affiliated body, conduct any affair or other activity for the purpose of raising funds, including programs or soliciting advertisements in any publication, either directly or indirectly, without first obtaining written permission from the International President.

Authority to audit

All of the aforesaid matters covered by this Section, including without limitation funds, solicitations, gifts, and donations collected in the name of this International Union, or Local Union, or affiliated body, shall at all times be subject to audit by this International Union, and all books, records and documents pertaining to matters covered by this Section shall be available for inspection, copying and audit by this International Union.

The International President shall have authority to formulate such rules and regulations as he or she deems necessary and proper to carry out the purpose of this Section.

Local Union committees

Section 14. The Executive Board of each Local Union shall appoint such committees as it deems necessary to carry out the organizing, political action, social and economic justice and retiree programs and policies of this International Union. Where a committee(s) is not appointed for a specific purpose, the Local Union Executive Board shall serve in that capacity.

Local Unions shall not establish federal PACs

Section 15. No Local Union shall establish its own registered federal political committee or any political candidates fund for contributions in connection with federal elections, provided, however, that the International President may in his or her discretion waive this provision or establish such conditions as the International President may deem necessary.

Local Union 20% organizing budget

Section 16. (a). Every Local Union shall continue to implement an annual local union organizing budget equivalent to 20 percent of the local's budget (after payment of all per capita tax obligations), to be spent consistent with the principles and plan of the applicable industry division of the International Union. Each industry division shall submit its principles and plan for approval by the International Executive Board on an annual basis.

Separate organizing account

(b). Every Local Union shall establish a separate account or accounting for the money that comprises its annual organizing budget.

International review of use of organizing budget

(c). In the event that the applicable industry division of the International Union believes that a Local Union has failed, without good cause, to implement this 20 percent organizing budget commitment or to spend the Local Union's organizing budget consistent with the unionwide strategic unity plan and/or division plan, it may refer the matter to the International Secretary-Treasurer for a review of the Local Union's organizing account and expenditures. If the review reveals that the Local Union is not implementing its organizing budget as obligated under this provision, the Secretary-Treasurer may direct that only certain planned expenditures may continue to be made by the Local Union from its organizing account until the division and Local Union mutually agree upon a broader resolution of the matter pursuant to an expedited procedure established by the International Secretary-Treasurer.

Hearing on organizing budget

(d). If no agreement is reached, the applicable division may refer the matter to the International President who may designate the matter for hearing before a hearing officer appointed by the International Executive Board. Based on the hearing officer's report,

the International Executive Board may order the Local Union to pay all or a portion of the organizing account and the local union's next annual organizing budget to an organizing campaign(s) identified in the national plan for that particular division.

Performance standards

Section 17. Industry Divisions of the International Union may establish additional Local Union performance and accountability standards to ensure that Local Unions implement the democratically and lawfully established policies of the Industry Divisions, subject to their approval by the International Executive Board.

C.O.P.E. contributions

Section 18 (a). Every U.S. Local Union shall contribute an annual amount equivalent to at least $6.00 per member per year, or as determined annually by the International Executive Board, to support the overall SEIU political education and action program. This annual SEIU C.O.P.E. fund-raising obligation may be satisfied by voluntary member contributions to SEIU C.O.P.E. or a designated organization approved by the International President or a combination thereof. All contributions to SEIU C.O.P.E. collected by local unions shall be sent to SEIU C.O.P.E. Any contributions in excess of $6.00 per member per year or such other amount as determined by the International Executive Board shall be returned to the Local Union for its political program. If a Local Union fails to meet its annual SEIU C.O.P.E. fund-raising obligation, it shall contribute an amount in Local Union funds equal to the deficiency plus 50 percent, or such other amount determined by the International Executive Board, to support the overall SEIU political education and action program.

C.O.P.E. 20% goal

(b). A goal of every Local Union shall be to enroll and maintain at least 20 percent of its members as voluntary participants in an employer check-off or regular deduction program assigned to SEIU C.O.P.E. or to an organization approved by the International President.

Article XVI

MEMBERS' INTERESTS AND TRANSFERS

Members' interests safeguarded

Section 1. No member of this International Union shall injure the interests of another member by undermining such member in connection with wages or financial status or by any other act, direct or indirect, which would wrongfully jeopardize a member's office or standing.

Transfers from Local Union to Local Union

Section 2. Any member may transfer from one Local Union to another within this International Union, subject to the approval of the

Local Union into which such member seeks admission, provided there shall be no interruption of continuous payment of monthly dues if continuous good standing is to be maintained or upon presentation of a current withdrawal card.

Article XVII

TRIALS AND APPEALS

PREAMBLE. In order to ensure members' protection from the filing of frivolous charges, the following procedures shall apply:

Bases for charges against Locals, officers, and members

Section 1. Local Unions, their officers or members, and officers of any affiliated body, and officers of the International Union, as the case may be, may be charged with:

(Whenever used in this Article, the term "Local Union" shall include any affiliated body or Local Union chartered by this International Union.)

(1) Violation of any specific provision of this Constitution or of the Constitution and Bylaws of the Local Union;

(2) Violation of an oath of office;

(3) Gross disloyalty or conduct unbecoming a member;

(4) If an officer, gross inefficiency which might hinder and impair the interests of the International Union or the Local Union;

(5) Financial malpractice;

(6) Engaging in corrupt or unethical practices or racketeering;

(7) Advocating or engaging in dual unionism, including but not limited to aiding a rival labor organization, or secession in violation of Article XXV;

(8) Violation of democratically and lawfully established rules, regulations, policies or practices of the International Union or of the Local Union, including democratically and lawfully established rules, regulations, policies and practices of the International Union's Industry Divisions, subject to their approval by the International Executive Board.

(9) The wrongful taking or retaining of any money, books, papers or any other property belonging to the International Union or Local Union; or the wrongful destruction, mutilation or erasure of any

books, records, bills, receipts, vouchers, or other property of the International Union or the Local Union;

(10) Working as a strikebreaker or violating wage or work standards established by the International Union or a Local Union; and

(11) The bringing of false charges against a member or officer without good faith or with malicious intent.

Charges must be specific and in writing.

Filing charges

Section 2(a). Charges against any member or officer of a Local Union shall be filed in duplicate with the Secretary of the Local Union, who shall serve a copy thereof on the accused either personally or by registered or certified mail, directed to the last known address of the accused, at least 10 days before the hearing upon the charges. The charges must specify the events or acts which the charging party believes constitute a basis for charges and must state which subsection(s) of Section 1 of this Article the charging party believes has been violated. If the charges are not specific, the trial body may dismiss the charges either before or at the hearing, but the charging party shall have the right to refile more detailed charges which comply with this Section. No charges may be filed more than six months after the charging party learned, or could have reasonably learned, of the act or acts which are the bases of the charges.

Specificity requirement

Six-month deadline

Trial procedure

(b). The Executive Board of the Local Union shall act as or appoint the trial body, unless the Constitution and Bylaws of the Local Union provide for another trial procedure. The accused may appear in person and with witnesses to answer the charges against him or her and shall be afforded a full and fair hearing. The accused may select a member of his or her Local Union, or an attorney if the Constitution and Bylaws of the Local Union so permit,to represent the accused in the presentation of a defense.

Judgment and discipline

(c). If the charges, or any portion thereof, are sustained, then the trial body shall render judgment and impose disciplinary action as provided for in this Constitution. If the charges are not sustained, the same shall be dismissed and the accused restored to full rights of membership or office in the Local Union.

Reporting trial results

(d). If the Constitution and Bylaws of the Local Union so provides, the decision of the trial body shall be reported to the next regular membership meeting of the Local Union for such action as is provided for in the Constitution and Bylaws of the Local Union.

Suspension

(e). If the International President believes that charges filed against an officer of a Local Union involve a situation which may seriously jeopardize the interests of the Local Union or the International Union, the International President may suspend such officer from office in the Local Union until a decision has been reached.

Bases for original jurisdiction of International President

(f). The International President may assume original jurisdiction:

i. If the Local Union, the Local Union Executive Board, a Local Union officer or a Local Union member, or members, believe that the charges filed against a member or officer of a Local Union involve a situation which may seriously jeopardize the interests of the Local Union or the International Union or that the hearing procedure of the Local Union will not completely protect the interests of a member, officer or Local Union and such party requests that the International President assume original jurisdiction.

ii. If the International President as a result of an investigation believes that the charges filed against a member or officer involve a situation which may seriously jeopardize the interests of the Local Union or the International Union.

Original jurisdiction procedure

Upon the International President assuming original jurisdiction, the International President may remove the proceedings from the trial body of the Local Union and, upon at least 10 days' notice, hold a hearing on the charges either personally or before a hearing officer or officers (who need not be a member or members of this organization) designated by the International President. The International President shall make the decision upon the record taken at the hearing and the report of the hearing officer or officers.

Filing charges against Local or International officer

Section 3. Charges against a Local Union or an officer of the International Union shall be filed in duplicate with the International Secretary-Treasurer, who shall serve a copy thereof upon the accused either personally or by registered or certified mail, directed to the last known address of the accused, at least 10 days before the hearing upon the charges. The International Executive Board may hold a hearing on the charges either itself or before a hearing officer or officers designated by it or it may determine to dismiss the charges without the need for a hearing to be conducted. If the hearing is conducted by a hearing officer or officers, the International Executive Board shall make its decision upon the record taken at the hearing and the report of the hearing officer or officers.

Hearing procedure

Recusal or absence

Section 4. In all hearings or trials provided for herein, if the member filing charges is a member of the trial body, he or she may appear and be heard in support of the charges, but shall be ineligible to participate in the consideration of or the decision on such charges. If the accused is unable or unwilling to be present at any hearing provided for herein, a defense may be presented in writing. In default of appearance or defense, the trial body shall proceed with the hearing regardless of the absence of the accused.

Possibility of penalty

Section 5. The trial body, after requisite due process has been afforded, may impose such penalty as it deems appropriate and as the case requires.

Appeals to International Executive Board

Section 6. An appeal to the International Executive Board may be taken by either the accused or the member filing the charges from any decision of a Local Union with respect to such charges, provided such decision is a final decision under the terms of the Constitution and Bylaws of the Local Union; or from a decision of the International President. Any such appeal shall be filed in writing with the International Secretary-Treasurer, by registered or certified mail, within 15 days after the decision. No specific form or formality shall be required, except that such appeal shall clearly set forth the decision being appealed and the grounds for the appeal. During the pendency of any appeal, the decision appealed from shall remain in full force, unless it is stayed by the International Executive Board. The International Executive Board may decide the appeal on the record made by the trial body or may in its discretion, upon at least 10 days notice, hear argument or hold a rehearing either itself or before a hearing officer or officers designated by it. The International Executive Board may affirm, reverse or modify the decision appealed from.

Filing appeals

Appeals procedure

Appeals to Convention

Section 7. Appeals from any decision of the International Executive Board with respect to charges may be taken to the next Convention. Any such appeal shall be filed in the same manner and within the same time as appeals to the International Executive Board. During the pendency of such appeal, the decision appealed from shall remain in full force. The appellant shall have the right to appear before an appeals committee of the Convention and, if the appellant is a Local Union or a member appealing an expulsion from membership, shall have the right to appear before the Convention itself under such conditions and for the period of time fixed by the Convention. An individual appellant, other than one appealing an expulsion from membership, shall have the right to appear before the

Appellant rights

Convention itself only with the consent of the Convention. The action of the Convention on all appeals shall be final and binding.

Obligation to exhaust remedies

Section 8. Subject to the provisions of applicable statutes, every Local Union or member or officer thereof or officer of the International Union against whom charges have been preferred and disciplinary action taken as a result thereof or who claims to be aggrieved as a result of adverse rulings or decisions rendered, agrees, as a condition of membership or affiliation and the continuation of membership or affiliation, to exhaust all remedies provided for in the Constitution and Bylaws of the International Union and the Local Union and further agrees not to file or prosecute any action in any court, tribunal or other agency until those remedies have been exhausted.

Exclusive enforcement of Member Bill of Rights and Responsibilities

Section 9. The SEIU Member Bill of Rights and Responsibilities in the Union shall be enforced exclusively through the procedures provided in this Article and any decision rendered pursuant to the procedures provided for herein, including any appeals, shall be final and binding on all parties and not subject to judicial review.

Article XVIII

AFFILIATIONS WITH INTERMEDIATE BODIES

Local Union obligation to affiliate

Section 1. Local Unions shall affiliate with local, regional, national or international bodies, where such exist, under rules to be established by the International Executive Board. The International President may in his or her discretion waive this requirement for individual Locals for good cause.

Establishment of intermediate bodies

Section 2. The International Executive Board shall from time to time establish intermediate bodies including, but not limited to, State and Provincial Councils, and Canadian Regional Conferences as well as other bodies, when in its judgment such bodies are necessary to further the aims of the International Union and the interests of Local Unions. The International Executive Board shall establish the jurisdiction of such bodies, and shall issue rules prescribing the activities and financing of such bodies. For administrative purposes of collection and distribution, the International Executive Board may require Local Unions to forward to the International Union per capita tax payments or other financial obligations owed by the Local Union to affiliated bodies or entities. Upon receipt, the International Union shall forward such payments to the applicable affiliated body or entity.

Local affiliation and per capita requirements

Section 3. All Local Unions determined by the International Union to be within the jurisdiction of any intermediate body shall affiliate with such bodies and comply with their bylaws, including provisions in such bylaws requiring the payment of per capita taxes to the intermediate body, together with interest on late payment if so authorized by the intermediate body. The International Executive Board may in its discretion modify these requirements. Any proposal to set or change an intermediate body's per capita tax obligation or assessment shall be submitted to the International President for his/her approval prior to its submission for approval by the intermediate body. In the case of State Councils, a Local Union shall affiliate with each State Council having jurisdiction over the primary worksite(s) of its members, and shall pay each such State Council per capita tax on those members whose primary worksite is within that State Council's jurisdiction.

Conformance to International Constitution

Local voting strength

Section 4. The bylaws of such intermediate bodies shall not conflict with the Constitution and Bylaws of the International Union. Such bylaws shall provide that the number of votes a Local has in such bodies shall be proportionate to its numerical strength as determined by the payment of per capita tax, excluding associate members, life members and agency fee payers, to the intermediate body. This requirement may be waived by the International President, subject to his/her approval of an alternative voting procedure. Such bylaws and any amendments must be submitted to and approved by the International President before becoming valid. Notwithstanding such approval, each intermediate body shall resubmit its bylaws to the International President for consideration and approval within 120 days following the conclusion of each regular International Convention.

Eligibility of local officers as delegates

Additional delegates

Section 5. The bylaws of the Regional Conferences and Joint and State Councils shall provide that all officers of a Local Union elected in conformity with all applicable statutes shall by virtue of such election be considered to be eligible delegates to any Convention of such body which may take place during their term of office. If under the rules of the particular intermediate body a Local Union is entitled to additional delegates at said Convention, then arrangements may be made at the option of the Local Union Executive Board for nomination and secret ballot election, if required, of an additional number of Convention delegates. The Local Union must designate in its own bylaws the order in which the officers would be designated as delegates if fewer than all the officers are entitled to go to the

Convention as delegates, provided that the chief executive officer of the Local Union shall, if otherwise eligible, be deemed entitled even in the event the Local Union fails to so designate. Any Local Union may by provision in its Local Constitution and Bylaws dispense with the foregoing provision that officers of the Local Union be ex officio delegates to the Convention of such intermediate bodies and may provide for nomination and, if required, secret ballot election of such delegates.

Restrictions on compensation

Section 6. No officer of an intermediate body may receive compensation of any kind from the intermediate body, except for a minimal stipend or expenses as appropriate. This limitation shall not apply to intermediate bodies in Canada.

Article XIX

PAYMENTS IN CONNECTION WITH DEATHS OF MEMBERS

Death gratuities

For members of any Local Union who were in good standing in connection with this Article XIX on September 1, 1984, the Service Employees International Union Death Gratuity Program, as amended effective September 1, 1984, shall be maintained in effect for those members who meet the eligibility and participation requirements set forth in such amended Program. When the International Executive Board in its discretion determines that it is necessary or advisable to abolish, curtail or limit any payments provided for in the Program or to amend or modify any provisions governing such payments, it shall have authority to do so. The International Union shall notify each Local Union 60 days before the effective date of any changes in the provisions of the Program.

Article XX

PENSION FUND FOR OFFICERS AND EMPLOYEES OF LOCAL UNIONS AND AFFILIATED BODIES

Maintenance of pension fund

Section 1. The Pension Fund known as the "SEIU Affiliates' Officers and Employees Pension Fund," heretofore established pursuant to mandate of this Constitution and existing by virtue of a Trust Agreement entered into between the International Executive Board and the Trustees shall continue to be maintained in accordance

with the terms of said Trust Agreement. The SEIU Affiliates' Officers and Employees Pension Fund shall be divided into two distinct sections, the United States Section and the Canadian Section.

Pension sponsor

Section 2. The International Union shall be the "Plan Sponsor" as that term is defined in the Employee Retirement Income Security Act of 1974.

Executive Board authority

Section 3. The International Executive Board shall have the power to:

Designate pension trustees

(a). Designate the number and appoint all of the individual Trustees of the Pension Fund; and to remove any such Trustee and to fill any vacancy as may exist from time to time; provided, however, that at least two Trustees shall be officers or employees of Local Unions and at least two Trustees shall be members of the International Executive Board; and provided further that there shall be no less than the number of Canadian Trustees required by Canadian law.

Agreements to amend

(b). On behalf of the International Union, enter into agreements with the Trustees to amend the Trust Agreement in such manner as it may deem necessary or desirable.

Local waivers

(c). Upon recommendation of the Trustees of the Pension Fund, waive participation in, or payments in whole or in part to, the Pension Fund by any Local Union, or affiliated body, upon a finding that contributions are not advisable or are not necessary or required, and upon such terms as the International Executive Board may require, including directing that participating Local Unions remit the amount waived directly to the International for such purposes as the Board deems appropriate and

Waivers upon merger or affiliation

(d). Waive, in whole or in part, or increase the payments required by Section 8 of this Article XX, upon the merger or affiliation of any labor organization or Local Union with the International Union or any of its Local Unions, upon a finding that such action is necessary or required.

Pension fiduciaries

Section 4. The Trustees of the Pension Fund shall be the "Named Fiduciaries" as that term is defined in the Employee Retirement Income Security Act of 1974.

Pension plan regulations

Section 5. The Trustees shall be and the same are hereby empowered to adopt a Pension Plan or Plans and Rules and Regulations for the administration thereof which they deem appropriate, provided, however, that such Plan or Plans and Rules and

Regulations shall, to the extent permitted by applicable law, provide that:

Coverage

(a). Only officers, full-time permanent employees who have gross compensation at an annual rate of $4,000 and part-time and temporary employees who work more than six months in any 12-month period and who have gross annual compensation of $4,000 or more in that period shall be eligible for coverage. Gross compensation shall include only the regular salary paid by a Local Union, or affiliated body, or if accepted for participation by the Trustees, any organization related to a Local Union or affiliated body which furthers the purposes of or benefits the membership of such Local Union or affiliated body. Gross compensation shall be defined so as to preclude the award of credits for what the Trustees may consider special or unusual compensation (as, for example, payment for attending meetings or participating in picket duty), including but not limited to part or all of any compensation as may be received from a second or additional employer. In the event that applicable law requires employee participation and/or the granting of pension credits for employment which would otherwise be precluded by the foregoing, then, in such event, the Trustees shall endeavor to limit such participation and granting of service credit in accordance with the foregoing to the extent permitted by law.

Adjusting contribution requirements

The Trustees shall be empowered to adjust the $4,000 and/or the six-month contribution requirements, should the Trustees determine that said change(s) would be actuarially sound.

Employees of related organizations

(b). Employees of related organizations may be eligible for participation in the Pension Fund subject to such Rules and Regulations as the Board of Trustees may adopt.

Board of Trustees authority

Section 6. The Board of Trustees shall have the following powers, in addition to those which may be granted to them by the Trust Agreement:

Hiring advisers

(a). To employ the services of any actuary, legal counsel and other professional advisers as they deem necessary to assist them with the formulation of the Pension Plan or Plans, the determination and monitoring of the contribution rate to support the Plan on a sound actuarial basis and maintenance of the Pension Fund, and to pay for such services from the Pension Fund.

Access to records

(b). To require the Secretary-Treasurer of any Local Union or affiliated body to furnish to them such records as they may deem necessary for the proper administration of the Pension Fund.

Pension Plan amendments

(c). To make all necessary amendments to the Pension Plan or Plans as may be required to render the Pension Trust Fund qualified and tax exempt under applicable provisions of the Internal Revenue Code and the Income Tax Act (Canada) or which may be deemed by them to be necessary to conform the Pension Plan or Plans and Trust Fund to all other applicable laws.

Exceptions from coverage

(d). To provide exceptions from coverage in the case of officers or employees who are entitled to be covered under an employee pension benefit plan maintained by a public employer or public utility, under such uniform and nondiscriminatory rules as the Board of Trustees may establish, for the purpose of preventing duplication of pension coverage or benefits for such persons, if such exceptions do not conflict with applicable law or adversely affect the tax exempt status of the Pension Plan or Trust.

Changing payments

(e). To increase or decrease the payments required by Section 8 of Article XX as permitted by law.

General authority

(f). To take all such steps as they deem necessary to effectuate the purposes of this Article XX and to protect the rights and interests of the participants of the Pension Fund.

Safeguarding of assets

Section 7. The Trustees shall keep all assets of the Pension Fund separate and distinct from all other revenue and income received by the International Union; shall transfer said Pension Fund assets to Corporate Trustee(s) or Corporate Custodian(s) which they may appoint; may remove any such Corporate Trustee(s) or Corporate Custodian(s) and appoint a successor; and may pay the fees of such Corporate Trustee(s) or Corporate Custodian(s) from the Pension Fund.

Pension contributions

Section 8(a). Subject to any changes and amendments made by the International Executive Board or the Trustees pursuant to their authority set forth herein, each Local Union and affiliated body within the United States shall pay to the Pension Fund an amount equal to 14 percent of the gross monthly compensation of each eligible officer and employee, and each Local Union and affiliated body within Canada shall pay to the Pension Fund an amount equal to 14 percent of the gross monthly compensation of each eligible officer and employee.

Time of contribution to Pension Fund

(b). The contribution provided for above shall be paid to the Pension Fund before the end of the month following the month in which the eligible officer or employee receives any compensation on which a pension contribution is payable. Contributions shall

commence from the first date of employment of the eligible officer or employee.

Sanctions for nonpayment

(c). If a Local Union or affiliated body required to contribute to the Pension Fund fails to make payments required herein, the provision of Article XIII, Section 3 of this Constitution and Bylaws shall be applicable.

Limitation of Trustees' liability

Section 9. The International Union shall indemnify all Trustees, the Fund Coordinator and Fund office employees from and against any liability which they may incur while acting in their official capacities, except for liability resulting from their gross negligence, willful misconduct, fraud or criminal act, including the cost of all legal expenses incurred in connection with the defense against any such charge.

Article XXI

LOCAL ENFORCEMENT OF INTERNATIONAL CONSTITUTION

Obligation to enforce Constitution

Any Local Union or affiliated body willfully neglecting to enforce the provisions of this Constitution and Bylaws shall be subject to suspension or revocation of its charter or such other sanctions as may be determined by the International President.

Article XXII

NONLIABILITY OF INTERNATIONAL UNION

Lack of authorization to obligate International

Except as is otherwise specifically provided in this Constitution, no Local Union, or affiliated body, nor any officer, employee, organizer or representative of a Local Union or affiliated body or of this International Union shall be authorized to make contracts or incur liabilities for or in the name of the International Union unless authorized in writing by the International President and the International Secretary-Treasurer, or the International Executive Board.

Article XXIII

LITIGATION

Obligation to exhaust procedural remedies

A. Subject to applicable law, no member, Local Union or affiliated body shall bring any action against the International Union or any other Local Union or affiliated body or any officers thereof, with respect to any matter arising out of the affairs of the International Union or its Local Unions or affiliated bodies unless he or she has exhausted all procedures available under this Constitution and the laws promulgated thereunder. Any member, or Local Union or affiliated body, filing suit in violation of this provision may, in addition to other penalties, be ordered to reimburse the organization or officers sued for the costs and attorneys' fees expended, or a portion thereof.

Authority to defend

B. The International Union is authorized upon affirmative vote of the International Executive Board to pay all expenses for investigation services, employment of counsel and other necessary expenditures in any cause, matter, case or cases where an International Union officer, representative, employee, agent or one alleged to have acted on behalf of the International Union is charged with any violation or violations of any law or is sued in any civil actions with respect to any matter arising out of his or her official duties on behalf of the International Union, except if such officer, representative, employee or agent is charged with a breach of trust to the International Union, or any affiliate or member thereof, in which event he or she may be indemnified only if the action is terminated favorably to him or her.

Limitation of International liability

C. Neither the International Union nor any of its officers shall be responsible or liable for the wrongful or unlawful acts of any Local Union or affiliated body or officers, members, or agents thereof, except where the International Union or its officers have actually participated in or actually authorized such acts, or have ratified such acts after actual knowledge thereof.

Service of process

D. Only the elected officers of the International Union are authorized to be its agents for service of process. General organizers, staff members and employees of the International Union and the officers and employees of subordinate bodies are not authorized to be agents of the International Union for service of process under any circumstances.

Article XXIV

AMENDMENTS

Amendment procedure

This Constitution and Bylaws may be amended by action of any regular Convention of the International Union or Special Convention called for that purpose. Amendments may be proposed at such Convention in the same manner as is provided herein for the submission of Convention resolutions. A majority of the Convention votes cast on such amendment shall be necessary for adoption. Except as otherwise provided, all amendments shall be effective immediately upon adoption by the Convention.

Article XXV

DISSOLUTION

Dissolution procedure

Section 1. This International Union cannot dissolve while there are seven dissenting Locals. No Local Union, provisional local or organizing committee can dissolve, secede or disaffiliate while there are seven dissenting members; no other affiliated bodies can dissolve, secede or disaffiliate while there are two dissenting Local Unions. The International Union shall be notified by registered or certified mail of any meeting, scheduled by a Local Union or affiliated body for the purpose of taking a vote on disaffiliation from the International Union at least 60 days prior to the date of such scheduled meeting, and a representative of the International Union shall be afforded an opportunity to speak at such meeting. The International President shall direct whether the membership vote shall be conducted by secret ballot at a membership meeting and/or by mail referendum, and, if appropriate, a separate method by which dissenting Local Unions or members may assert their dissent. The vote shall be counted by an independent neutral party. In the event of secession, dissolution or disaffiliation, all properties, funds and assets, both real and personal, of such Local Union or affiliated body shall become the property of the International Union. Under no circumstances shall any Local Union or affiliated body distribute its funds, assets or properties individually among its membership.

Disaffiliation vote

Reversion of property, funds

No officer support

Section 2. Except as may be expressly permitted under an affiliation agreement or approved by the International Union, no officer of a local union or affiliated body shall support or assist any efforts to dissolve, secede or disaffiliate from the International Union. Except for these two limited circumstances, the International

President or International Executive Board may take any and all action provided under this Constitution to safeguard the members' and union's interests in the event of an attempt at a local union or affiliated body to dissolve, secede or disaffiliate, including but not limited to action under Article VIII, Section 7.

Article XXVI

SAVINGS PROVISION

Executive Board authority

If any provision of this Constitution shall be modified or declared invalid or inoperative by any competent authority of the executive, judicial or administrative branch of a state, provincial or federal government, including, but not limited to, any provision concerning dues or per capita tax, the Executive Board shall have the authority to suspend the operation of such provision during the period of its invalidity or modification and to substitute in its place and stead a provision which will meet the objections to its validity and which will be in accord with the intent and purposes of the invalid or modified provision. In the case of a challenge to a dues or per capita tax provision, this authority shall also apply in the event the Executive Board determines that such actions are necessary at an earlier stage of judicial or administrative proceedings in order to ensure the effective implementation of the intent of the Constitutional provision at issue. If any Article or Section of this Constitution should be modified or held invalid by operation of law or by any tribunal of competent jurisdiction, the remainder of this Constitution or the application of such Article or Section to persons or circumstances, other than those as to which it has been held invalid or modified, shall not be affected thereby.

APPENDIX A: SEIU MEMBER BILL OF RIGHTS AND RESPONSIBILITIES IN THE UNION

Rights

The right to have opinions heard and respected, to be informed of union activity, to be educated in union values and union skills.

The right to choose the leaders of the union in a fair and democratic manner.

The right to a full accounting of union dues and the proper stewardship over union resources.

The right to participate in the union's bargaining efforts and to approve union contracts.

The right to have members' concerns resolved in a fair and expeditious manner.

Responsibilities

The responsibility to help build a strong and more effective labor movement, to support the organizing of unorganized workers, to help build a political voice for working people, and to stand up for one's co-workers and all workers.

The responsibility to be informed about the internal governance of the union and to participate in the conduct of the union's affairs.

The responsibility to contribute to the support of the union.

The responsibility to treat all workers and members fairly.

The responsibility to offer constructive criticism of the union.

APPENDIX B: SEIU MEMBER BILL OF RIGHTS AND RESPONSIBILITIES ON THE JOB

Rights

The right to have work that is worthwhile to society, personally satisfying to the worker, and which provides a decent standard of living, a healthy and safe workplace, and the maximum possible employment security.

The right to have a meaningful and protected voice in the design and execution of one's work and in the long-term planning by one's employer as well as the training necessary to take part in such planning.

The right to fair and equitable treatment on the job.

The right to share fairly in the gains of the employer.

The right to participate fully in the work of the union on the scope, content and structure of one's job.

Responsibilities

The responsibility to participate in the union's efforts to establish and uphold collective principles and values for effective workplace participation.

The responsibility to recognize and respect the interests of all union members when making decisions about union goals.

The responsibility to be informed about the industry in which one works and about the forces that will affect the condition of workers in the industry.

The responsibility to participate fully in the union's efforts to expand the voice of workers on the job.

The responsibility to give fully and fairly of one's talents and efforts on the job and to recognize the legitimate goals of one's employer.

APPENDIX C: SEIU CODE OF ETHICS AND CONFLICT OF INTEREST POLICY

Approved by the SEIU International Executive Board, June 13, 2009

Approved by the SEIU International Executive Board as revised, January 21, 2016

Preamble

PART A: PREAMBLE

The Service Employees International Union (SEIU) believes in the dignity and worth of all workers. We have dedicated ourselves to improving the lives of workers and their families and to creating a more just and humane society. We are committed to pursuing justice for all, and in particular to bringing economic and social justice to those most exploited in our community. To achieve our mission, we must develop highly trained and motivated leaders at every level of the Union who reflect the membership in all of its diversity.

Duty to members

Union members place tremendous trust in their leaders. SEIU elected officers and managers owe not just fiduciary obligations to union members; given the moral purpose of our mission, SEIU leaders owe members the highest level of ethical behavior in the exercise of all leadership decisions and financial dealings on members' behalf. Members have a right to proper stewardship over union funds and transparency in the expenditure of union dues. Misuse and inappropriate use of resources or leadership authority undermine the confidence members have in the Union and weaken it. Corruption in all forms will not be tolerated in SEIU. This Code of Ethics and Conflict of Interest Policy (the "Code" or "SEIU Code") strengthens the Union's ethics rules of conduct, organizational practices and enforcement standards and thus enhances the Union's ability to accomplish its important mission.

Accountability

We recognize that no code of ethics can prevent some individuals from violating ethical standards of behavior. We also know that

the SEIU Code is not sufficient in itself to sustain an ethical culture throughout the Union. To accomplish the goals for which this Code has been created, we must establish systems of accountability for all elected leaders and staff. These systems must include appropriate checks and balances and internal operating procedures that minimize the opportunity for misuse or abuse, as well as the perception of either, in spending Union funds and exercising decision-making authority. The systems also must include adequate provision for training on understanding and implementing this Code. More broadly, we emphasize the importance of the range of standards, practices, and values described in "A Strong Ethical Culture," Section A of the SEIU Policies on Ethics and Standards that were enacted with the Code in 2009.

Member protections, responsibilities

In particular, SEIU is committed to providing meaningful paths for member involvement and participation in our Union. The SEIU Member Bill of Rights and Responsibilities in the Union is a significant source of SEIU members' rights and obligations. Its exclusive enforcement through the procedures set forth in Article XVII of the SEIU Constitutionand Bylaws reflects a commitment to the democratic principles that have always governed SEIU. Article XVII's numerous protections against arbitrary or unlawful discipline of members also form an essential ingredient of the democratic life of the Union. Similarly, the requirement that Affiliates provide for regular meetings of the membership, set forth in Article XV, Section 5 of the Constitution, is another important element in the democratic functioning of SEIU. Finally, the provisions against discrimination and harassment on the basis of race, creed, color, religion, sex, gender expression, sexual orientation, national origin, citizenship status, marital status, ancestry, age and disability contained in Article III, Section 4 of the SEIU Constitution and in the Constitutions and Bylaws of Affiliates, the SEIU Anti-Discrimination and Anti-Harassment Policy and Procedure, and similar policies of Affiliates forbid conduct in violation of SEIU's historic belief that our strength comes from our unity and diversity and that we must not be divided by forces of discrimination.

Other sources of authority

Individuals subject to this Code are expected to comply with State and Federal laws, the Constitution and Bylaws of SEIU and Affiliates, and the anti-discrimination and anti-harassment policies of SEIU and Affiliates as part and parcel of our commitment to sustaining an ethical culture and the highest standards of conduct throughout the Union. Violations of these laws and policies are ethical breaches;

Ethical breaches outside Code

however, these violations should be addressed through avenues provided by the applicable laws and policies and not through the Code unless they also allege violations of this Code. In particular, the sole enforcement mechanism for matters covered by the SEIU or Affiliate Constitutions and Bylaws is that which is set forth in those documents, unless violations of this Code are also alleged. Finally, grievances that arise under collective bargaining agreements are excluded from enforcement under this Code unless they also allege violations of this Code.The scope and standards of this Code are set forth in the following Sections.

Applicability, International Union

Section 1. Applicability to International Union. The SEIU Code is henceforth applicable in its entirety to all officers, executive board members and employees of SEIU. These individuals are referred to herein as "covered individuals."

SEIU shall append or attach the Code in its entirety to its Constitution and Bylaws in its next and all future publications.

Applicability, Affiliates

Section 2. Applicability to SEIU Affiliates. By enactment of the SEIU International Executive Board, the SEIU Code is applicable in its entirety to all officers, executive board members and employees of all affiliated bodies and local unions chartered by SEIU ("Affiliates" herein). These individuals are referred to herein as "covered individuals."

Affiliate responsibilities

(a) Each Affiliate shall ensure that the Code extends to all employees as soon as practicable but in no event later than the end of 2020.

(b) Each Affiliate shall append or attach the Code in its entirety to its Constitution and Bylaws at its next and all future publications.

(c) Wherever reference herein is made to SEIU or an SEIU program, department or position, the corresponding reference is to the particular Affiliate or its equivalent program, department or position.

(d) Each Affiliate is responsible for enforcing the Code and educating its covered individuals on the Code in a manner consistent with the Code's terms, subject to assistance and oversight from SEIU.

(e) The Code is not intended to restrain any Affiliate from adopting higher standards and best practices, subject to the approval of the SEIU Ethics Ombudsperson.

PART B: GENERAL OBLIGATIONS

Section 3. Obligations of Covered Individuals.

Covered individuals, obligations

(a) Commitment to the Code. SEIU and each Affiliate shall provide a copy of the Code to each covered individual. It is the duty and obligation of covered individuals to acknowledge annually that they have received a copy of this Code, that they have reviewed and understand it, and that they agree to comply with it.

Annual acknowledgment

(b) Duty of disclosure. Covered individuals shall disclose to the SEIU Ethics Ombudsperson or the Affiliate Ethics Liaison, described in Part F of this Code, any conflict of interest or appearance of a conflict, which arises when their paramount duty to the interest of members is potentially compromised by a competing interest, including but not limited to an interest, relationship or transaction referenced in this Code. Actual, perceived and potential conflicts should be disclosed at the time that covered individuals become aware of them.

Duty of disclosure

Conflict of interest, definition

(c) Disqualification from service to SEIU or Affiliate. No person shall serve as an officer or managerial employee of SEIU or any Affiliate who has been convicted of any felony involving the infliction of grievous bodily injury, or the abuse or misuse of such person's position or employment in a labor organization to seek or obtain illegal gain at the expense of the members, except for the limited exceptions set forth in applicable federal law.

Disqualification from service

PART C: BUSINESS AND FINANCIAL ACTIVITIES

Section 4. General Duty to Protect Members' Funds; Members' Right to Examine Records.

Protection of member funds

(a) The assets and funds of a labor organization are held in trust for the benefit of the membership. Members are entitled to assurance that those assets and funds are expended for proper and appropriate purposes. The Union shall conduct its proprietary functions, including all contracts for purchase or sale or for the provision of significant services, in a manner consistent with this Code. All officers, executive board members and employees of SEIU and SEIU Affiliates, whether elected or appointed, have a trust and high fiduciary duty to honestly and faithfully serve the best interests of the membership.

Fiduciary duty

Examination of records

(b) Consistent with Section 201 of the Labor-Management Reporting and Disclosure Act, SEIU shall permit a member for just cause to examine any books, records and accounts necessary to verify SEIU's annual financial report under that section to the U.S. Department of Labor.

(c) Affiliates comprised solely of members employed by government bodies shall permit a member to examine its financial report submitted to a state agency and, consistent with state law and for just cause, to examine any books, records and accounts necessary to verify the Affiliate's financial report.

Financial Interests and Transactions

Section 5. Prohibited Financial Interests and Transactions. Covered individuals shall not, to the best of their knowledge, have a substantial ownership or financial interest that conflicts with their fiduciary duty.

Substantial ownership or financial interest, definition

(a) For purposes of these rules, a "substantial ownership or financial interest" is one which either contributes significantly to the individual's financial well-being or which enables the individual to significantly affect or influence the course of the business entity's decision-making.

(b) A "substantial ownership or financial interest" does not include stock in a purchase plan, profit-sharing plan, employee stock ownership plan (ESOP) or blind trust. Nor does it prohibit covered individuals from owning, through a mutual fund or other similar investment vehicle, the publicly traded shares of any employer with which SEIU or an Affiliate engages in collective bargaining or does business or which SEIU or an Affiliate seeks to organize, provided that all transactions affecting such interests are consistent with rates and terms established by the open market.

Prohibitions

(c) It is not permissible for any covered individual to:

Employers

(1) Knowingly have a substantial ownership or financial interest in any entity that engages in collective bargaining with SEIU or any of its Affiliates;

Vendors

(2) Make or attempt to influence or participate in any way in a decision concerning the relations of SEIU or an Affiliate with a vendor, firm or other entity or individual in which the covered individual or his or her relative, spouse or business partner has a substantial ownership or financial interest; or

Self-dealing

(3) Engage in any self-dealing transactions with SEIU or any of its Affiliates, such as buying property from or selling property to SEIU, without the informed approval of the International Secretary-Treasurer (or Affiliate Secretary-Treasurer, as applicable), obtained after full disclosure, including an independent appraisal of the fair market value of the property to be bought or sold.

Disclosure

(d) To ensure compliance with this Section, covered individuals are required to disclose any interests, transactions or interests covered by this Section in accordance with Section 3(b) of this Code.

Payments and gifts

Section 6. Payments and Gifts from Employers, Vendors and Members.

Prohibitions, exceptions

(a) Covered individuals shall not knowingly accept any payments, benefits or gifts of more than minimal financial value under the circumstances presented from any employer that engages or seeks to engage in collective bargaining with SEIU or an Affiliate, or from any business or professional firm that does business or seeks to do business with SEIU or an Affiliate.

Regular employment

(1) This Section does not extend to payments and benefits that are provided to covered individuals by prohibited employers as compensation for their primary and regular employment.

Payment for services

(2) This Section does not extend to work and services that covered individuals perform for prohibited employers or businesses on a part-time basis, through an arm's length transaction and for normal and customary pay for such work or services.

Public policy events

(3) This Section does not extend to participation in events hosted by public officials involving discussion of public policy matters.

Perishable items

(4) With respect to perishable items that are more than minimal but that are impracticable to return, such as food, it shall be considered compliance with this Section to discard such an item or place it in a common area for members and office staff to enjoy. If the gift is discarded or enjoyed communally, it is recommended that the giver should be advised of this disposition to dispel the appearance of any conflict of interest on the part of any covered individual and to discourage recurrence.

Recommendation to notify giver

Ethics, payments and gifts

(b) Covered individuals shall not knowingly accept personal payments or gifts from any member, absent a personal relationship independent of the relationship between the Union and the member, other than a gift of minimal financial value. This provision does not apply to contributions to campaigns for union office made in accordance with the SEIU Constitution and Bylaws.

Conversion prohibited

Section 7. Conversion of Union Funds and Property. Covered individuals shall not use, convert or divert any funds or other property belonging to SEIU to such individual's personal benefit or advantage.

Third parties

Section 8. Applicability to Third Parties. The principles of this Code apply to those investments and activities of third parties that amount to a subterfuge to conceal the financial interests of SEIU officers or employees or to circumvent the standards of this Code.

Loans prohibited

Section 9. Certain Loans Prohibited. SEIU shall not make loans to any officer or employee, or to any of their family members, that at any time exceed $2,000 in total indebtedness on the part of such officer, employee or family member.

PART D: BENEFIT FUNDS AND RELATED ORGANIZATIONS

Section 10. Obligations of Covered Individuals.

Benefit Funds

(a) Benefit Funds.

Definition

(1) For purposes of this Section:

a. A "benefit fund or plan" means a retirement, health or welfare benefit fund or plan sponsored by SEIU or an Affiliate, or in which SEIU or an Affiliate participates.

b. The definition of "substantial ownership or financial interest" provided in Section 5 applies.

Fund fiduciaries, prohibitions

(2) Covered individuals who serve in a fiduciary position with respect to or exercise responsibilities or influence in the administration of a benefit fund or plan shall not:

Interests and personal ties

a. Have any substantial financial interest in, or any compromising personal ties to, any investment manager, insurance carrier, broker, consultant or other firm or individual doing business or seeking to do business with the fund or plan;

b. Accept any personal payment from any business or professional firm that does business or seeks to do business with the fund or plan, other than contractual payment for work performed; or

Personal payment

c. Receive compensation of any kind for service as an employee representative or labor-designated trustee for a fund or plan, except for reimbursement of reasonable expenses properly and actually incurred and provided uniformly to such representatives or trustees, with the proviso that it is not a violation of this provision for an officer or managerial employee who is not a full-time employee of SEIU or an Affiliate to be a lawfully paid employee of a fund or plan if such employment is consistent with applicable legal restrictions and fully disclosed through appropriate reports.

Compensation, exclusions

(3) To ensure compliance with this Section, all covered individuals shall disclose any interests, transactions or relationships covered by this Section in accordance with Section 3(b) of this Code.

Disclosure

(4) No person shall serve in a fiduciary capacity or exercise responsibilities in the administration of a benefit fund or plan who has been convicted of any felony involving the infliction of grievous bodily injury or the abuse or misuse of such person's position or employment in an employee benefit plan to seek or obtain an illegal gain at the expense of the beneficiaries of the employee benefit fund or plan, except for the limited exceptions set forth in applicable federal law.

Disqualification

(b) Related Organizations.

(1) For purposes of this Section, an organization "related to" SEIU or an Affiliate means an organization

Related organizations definition

- in which 25 percent or more of the members of the governing board are officers or employees of SEIU or an Affiliate, or
- for which 50 percent or more of its funding is provided by SEIU or an Affiliate.

(2) Covered individuals who serve in a fiduciary position with respect to or exercise responsibilities or influence in the

Duties of covered individuals

administration of an organization related to SEIU shall comply with the provisions and shall hold themselves to the standards of the SEIU Code while they are acting for or on behalf of the related organization.

PART E: FAMILY AND PERSONAL RELATIONSHIPS

Family and Personal Relationships

Section 11. Purpose of Rules Governing Family and Personal Relationships. SEIU does not prohibit the employment of qualified relatives of current officers or employees, or of individuals with whom an officer or employee has a romantic or intimate personal relationship. SEIU also does not prohibit the retention of qualified vendors that employ relatives of current SEIU officers or employees or individuals with whom an officer or employee has a personal relationship.

However, SEIU recognizes that the existence of such relationships can lead to problems, including favoritism or the appearance of favoritism toward relatives or those who are involved in a personal relationship.

Purpose of rules

Giving these individuals special treatment – or creating the impression that they receive special treatment – is inconsistent with our principles of stewardship and accountability and with our duty to responsibly conduct the business of SEIU. The provisions of this part are designed to ensure that family or personal relationships do not influence professional interactions between the employees involved and other officers, employees and third parties.

Section 12. Definitions. For purposes of this part:

Ethics, Relationships, Family and Personal

(a) "Relative" means parent, spouse, spousal equivalent, daughter, son, grandparent, grandchild, brother, sister, aunt, uncle, niece, nephew, first or second cousin, corresponding in-law, "step" relation, foster parent, foster child, and any member of the employee's household. Domestic partner relatives are covered to the same extent as spousal relatives.

(b) "Personal relationship" means an ongoing romantic or intimate personal relationship that can include, but is not limited to, dating, living together or being a partner or significant other. This definition applies regardless of gender, gender identification, or sexual orientation of the individuals in the relationship. This restriction does not extend to friends, acquaintances or former colleagues who are not otherwise encompassed in the scope of "personal relationships."

Section 13. Prohibited Conduct. The following general principles will apply:

Prohibited conduct

(a) Applications for employment by relatives and those who have a personal relationship with a covered individual will be evaluated on the same qualification standards used to assess other applicants. Transmission to the appropriate hiring authority of applications on behalf of individuals who have a family or personal relationship shall not in itself constitute an attempt to influence hiring decisions. Further input into the application process, however, may be deemed improper.

Application process

(b) Covered individuals will not make hiring decisions about their relatives or persons with whom they have a personal relationship, or attempt to influence hiring decisions made by others.

Hiring decisions

(c) Supervisory employees shall not directly supervise a relative or a person with whom they have a personal relationship. In the absence of a direct reporting or supervisor-to-subordinate relationship, relatives or employees who have a family or personal relationship generally are permitted to work in the same department, provided that there are no particular operational difficulties.

Supervisory relationship prohibited

(d) Covered individuals shall not make work-related decisions, or participate in or provide input into work-related decisions made by others, involving relatives or employees with whom they have a personal relationship, even if they do not directly supervise that individual. Prohibited decisions include, but are not limited to, decisions about hiring, wages, hours, benefits, assignments, evaluations, training, discipline, promotions, and transfers.

Work-related decisions

(e) To ensure compliance with this Section, all covered individuals must disclose to the Ethics Ombudsperson or the Affiliate Ethics Liaison, as appropriate, any relationships covered by this Section in accordance with Section 3(b) of this Code.

Disclosure

PART F: ENFORCEMENT

Enforcement

Section 14. Ethics Officer. The office of the Ethics Officer is established to provide independent assistance to SEIU in the implementation and enforcement of the Code. The Ethics Officer shall be an individual of unimpeachable integrity and reputation, preferably

Ethics Officer

with experience in ethics, law enforcement and the workings of the labor movement. The Ethics Officer shall provide his or her services under contract and shall not be an employee of the International Union or any of its Affiliates. The Ethics Officer shall be appointed by the International President and confirmed by the International Executive Board. The International President, the International Secretary-Treasurer, and the SEIU International Executive Board may refer matters concerning the Code to the Ethics Officer for review and/or advice, consistent with Sections 22 and 23.

Review or advice

Ethics Ombudsperson

Section 15. Ethics Ombudsperson. The office of SEIU Ethics Ombudsperson is established to oversee implementation and enforcement of the Code and ongoing efforts to strengthen the ethical culture throughout the Union. The Ethics Ombudsperson is responsible for providing assistance to the International Union and Affiliates on questions and concerns relating to the Code and ethical culture; directing the training of SEIU and Affiliate officers and staff concerning the Code and ethical culture; responding to ethics concerns and complaints consistent with Sections 17-23; receiving and resolving disclosures of conflicts of interest; assisting the Ethics Officer; and providing other support as necessary to the overall SEIU ethics program. The Ethics Ombudsperson, in consultation with the Ethics Officer, shall issue a report to the SEIU International Executive Board annually, summarizing compliance, training, enforcement, culture building and related activities, and making recommendations for modifications to the ethics program that he or she believes would enhance the program's effectiveness. The Ethics Ombudsperson may also conduct periodic reviews for the purposes of monitoring compliance with this Code and determining whether partnerships, joint ventures, and arrangements with management organizations conform to this Code, are properly recorded, reflect reasonable investment or payment for goods and services, further SEIU's tax-exempt purposes, and do not result in inurement, impermissible private benefit, or excess benefit transactions. The Ethics Ombudsperson shall be employed in the SEIU Legal Department.

Annual report

Periodic reviews

Ethics Liaison

Section 16. Affiliate Ethics Liaison. Each Affiliate shall appoint an Ethics Liaison who will be available for ethics advice or guidance, will serve as an Affiliate's key contact with the International's Ethics Ombudsperson, will assist in enforcement of the Code, will oversee the delivery of ethics-related training, will assist the Affiliate in strengthening its ethical culture, and will serve as an ethical leader in the Affiliate.

Eligibility

(a) Presidents, chief executive officers, secretary-treasurers, chief financial officers, chiefs of staff, and the equivalent of any of the foregoing are not eligible to serve as Ethics Liaisons.

Rotation

(b) Affiliates are encouraged to consider rotating the Ethics Liaison position periodically, barring operational difficulties, to develop ethical leadership broadly in the Affiliate. Affiliates shall advise the SEIU Ethics Ombudsperson as soon as practicable of the appointment of Ethics Liaisons and of any vacancy that occurs in the position.

Training

(c) Ethics Liaisons will regularly receive training from the International Union specific to the role. Affiliates should make every effort to ensure the participation of their Ethics Liaisons.

Complaints

Section 17. Complaints.

Submission

(a) Any covered individual or member may file a written complaint concerning alleged violations of the Code. Oral concerns and complaints shall be reduced to writing for further processing as a complaint. Complaints should be signed or contain the name of the complainant(s), and shall be kept confidential pursuant to Section 24. Complaints alleging violation of the Code shall not be enforced under SEIU or Affiliate constitutions and bylaws unless they also allege violations of the constitutions and bylaws.

Enforcement under constitution

Contact information

(b) The International Union shall post contact information for submission of ethics complaints on the SEIU website and shall provide that information on request.

(c) Each Affiliate shall provide its staff and membership with contact information for its Ethics Liaison.

Complaint handling, International

Section 18. Complaints Handled by the International Union. Complaints alleging violation of the Code that are submitted to the International Union or the Ethics Officer shall be referred initially to the SEIU Ethics Ombudsperson. The Ethics Ombudsperson shall review ethics complaints submitted to the International Union and shall respond to them in his or her discretion, including but not limited to providing advice or guidance, resolving them informally, directing them to resources outside the ethics office, and referring them to the Ethics Officer or Affiliate for further processing. The individual submitting the complaint shall be notified of the status of the complaint as appropriate in the discretion of the Ethics Ombudsperson but in all events upon its conclusion.

Complaint handling, Affiliates

Section 19. Complaints Handled by Affiliate; Notice to Ethics Ombudsperson. Ethics complaints that are raised with or referred to an Affiliate shall be investigated by the affected Affiliate and, where appropriate, may form the basis of employee discipline or formal internal union charges to be processed before a trial body in accordance with the requirements set forth in the Affiliate's constitution and bylaws and/or the SEIU Constitution and Bylaws. The Ethics Ombudsperson may advise an Affiliate concerning matters related to the investigation and processing of complaints and charges alleging violation of the Code.

Notice to Ombudsperson

Where a complaint involves an Affiliate's president, chief executive officer, chief of staff, secretary-treasurer, chief financial officer, or the equivalent, the Affiliate shall notify the Ethics Ombudsperson as soon as practicable. The Ethics Ombudsperson may consult with the Ethics Officer concerning any question referred by an Affiliate.

Failure to cooperate

Section 20. Failure to Cooperate; Bad Faith Complaints. Unreasonable failure by a covered individual to fully cooperate with a proceeding or investigation involving an ethics complaint or alleged violation of this Code shall constitute an independent violation of this Code. SEIU reserves the right, subject to notice, investigation and due process, to discipline persons who make bad faith, knowingly false, harassing or malicious complaints, reports or inquiries.

Bad faith

Original Jurisdiction

Section 21. Original Jurisdiction.

Request by Affiliate

(a) Requests for Original Jurisdiction. If an Affiliate or an Affiliate executive board member, officer, or member believes that formal internal union charges against a covered individual that also allege violations of this Code involve a situation which may seriously jeopardize the interests of the Affiliate or the International Union, or that the hearing procedure of the Affiliate will not completely protect the interests of the Affiliate, an officer or member, that individual may request that the International President assume original jurisdiction under Article XVII, Section 2(f) of the SEIU Constitution and Bylaws.

Assumption of jurisdiction

(b) Assumption of Original Jurisdiction by International President. In accordance with Article XVII, Section 2(f) of the SEIU Constitution and Bylaws, the International President may in his or her discretion assume original jurisdiction of formal internal Union charges also alleging violation of this Code if as a result of an investigation he or she believes that the charges filed against a covered individual involve a situation which may seriously

jeopardize the interests of the Affiliate or the International Union. In his or her discretion, the International President may refer the matter to the Ethics Officer for a recommendation concerning the possible assumption of original jurisdiction.

Referral of hybrid charges

Section 22. Referral of Formal Charges to Ethics Officer. If formal internal Union charges filed with the International Union under Article XVII, Section 3 of the SEIU Constitution and Bylaws also allege violation of the Code by an officer or executive board member of the International Union or an Affiliate, such charges may be referred to the Ethics Officer for review and recommendations.

Ethics Officer, possible recommendations

Section 23. Review of Claims by Ethics Officer.

(a) If after review of the allegations of violations of the Code in a complaint or formal charge, the Ethics Officer finds that the allegations have merit and/or warrant further investigation, he shall recommend a response or course of action for the International Union to respond to the complaint or changes, including but not limited to the following:

(1) Further investigation by SEIU personnel and/or outside investigator(s);

(2) Filing of formal charges under Article XVII of the SEIU Constitution and Bylaws;

(3) Assumption of original jurisdiction by International President pursuant to Article XVII, Section 2(f) of the SEIU Constitution and Bylaws;

(4) Appointment of an outside hearing officer to conduct a trial under Article XVII, Section 3 of the SEIU Constitution and Bylaws;

(5) Discipline of covered employees;

(6) Sanction of covered officers or members accused in formal proceedings, and

(7) Other action deemed appropriate in the discretion of the Ethics Officer.

No merit

(b) If the Ethics Officer concludes, after review of allegations of violations of the Code, that the allegations are without merit or that further investigation is not necessary, he or she shall advise the International Union of his or her findings.

Whistleblowers

PART G: PROTECTION OF WHISTLEBLOWERS

Confidentiality

Section 24. Confidentiality. SEIU will make all reasonable efforts to keep confidential the identity of any person(s) raising an ethics concern, inquiry, report or complaint under the Code unless disclosure is authorized by the complainant or is required for SEIU to carry out its fiduciary or legal duties. SEIU will also treat communications concerning ethics complaints or concerns with as much confidentiality and discretion as possible, provided that it remains able to conduct a complete and fair investigation, carry out its fiduciary and legal duties, and review its operations as necessary.

Retaliation prohibited

Section 25. No Retaliation. SEIU encourages all officers and employees to bring ethics concerns and complaints that the Code has been violated to the attention of the Union, as set forth more fully in Part F above.

(a) SEIU expressly prohibits retaliation against covered individuals and members for:

(1) Making good faith complaints, reports or inquiries pursuant to this Code;

(2) Opposing any practice prohibited by the Code;

(3) Providing evidence, testimony or information relative to, or otherwise cooperating with, any investigation or enforcement process of the Code; and

(4) Otherwise participating in the enforcement process set forth in PART F above.

Against Ethics Liaisons

(b) In particular, SEIU will not tolerate any form of retaliation against Affiliate Ethics Liaisons for performing their responsibilities.

Reporting

(c) Any act of alleged retaliation should be reported to the SEIU Ethics Ombudsperson or the Affiliate Ethics Liaison immediately and will be responded to promptly.

APPENDIX D: MANUAL OF COMMON PROCEDURE

INITIATION RITUAL

PRESIDENT: "It is my duty to inform you that the Service Employees International Union requires perfect freedom of inclination in every candidate for membership. An obligation of fidelity is required; but let me assure you that in this obligation there is nothing contrary to your civil or religious duties. With this understanding are you willing to take an obligation?"

(Answer.)

PRESIDENT: "You will now, each of you, raise your right hand and recite the following obligation:

MEMBERSHIP OBLIGATION

"I, (name) _____, pledge upon my honor that I will faithfully observe the Constitution and Bylaws of this Union and of the Service Employees International Union.

"I agree to educate myself and other members in the history of the labor movement and to defend to the best of my ability the principles of trade unionism, and I will not knowingly wrong a member or see a member wronged if it is in my power to prevent it.

"As an SEIU member, I will take responsibility for helping to achieve the Union's vision for a just society where all workers are valued and people respected, where all families and communities thrive, and where we leave a better and more equal world for generations to come."

PRESIDENT: "You are now members of the Service Employees International Union."

OFFICERS' INSTALLATION OBLIGATION

"I, (name) _____, accept my responsibility as an elected officer of the Service Employees International Union and I pledge that I will faithfully observe SEIU's Constitution and Bylaws. I will work tirelessly to unite working people to achieve our members' vision for a just society. I have carefully read and signed the Officers' Installation Obligation, and I hereby commit to abide by it."

Officers' Installation Obligation:

I accept my responsibility as an elected officer of the Service Employees International Union and I pledge that I will faithfully observe the Constitution and Bylaws of the Service Employees International Union.

I pledge that I will provide ethical, responsible leadership, representing our members and organizing new workers to build power to win for all.

I pledge to make the growing gap between the rich and everyone else the problem of our time, to inspire and support workers everywhere who are ready to take collective action to lift wages and create family-sustaining jobs, to elect political leaders on the side of the 99%, and to hold them accountable when they support policies that benefit the 1%.

I agree to defend the principles of trade unionism.

I will not knowingly wrong a member or see a member wronged if it is in my power to prevent it.

I pledge to exercise leadership based on the SEIU standards of:

- Shared unity of purpose;
- Openness to questions and willingness to learn;
- Acting with the courage of our convictions;
- Working together with accountability; and
- Commitment to inclusion.

I believe in and will fight for the SEIU vision of a just society where all workers are valued and people respected, where all families and communities thrive, and where we leave a better and more equal world for generations to come.

I will work to dismantle structural anti-Black racism as part of my leadership commitments, which is necessary for building a fair and just economy for our members, their families and communities and for all working people. We can only achieve economic justice for working people when we achieve racial equality and justice for all.

I commit to the highest level of ethical behavior in exercising leadership decisions on our members' behalf.

I hereby certify that I have read and signed the Officers' Installation Obligation and I hereby commit to abide by it.

Signature of Officer:_____

DEBATE

The following rules shall be used to govern debate unless the Local Union has adopted its own rules or regulations:

Rule 1. The regular order of business may be suspended by a vote of the meeting at any time to dispose of urgent business.

Rule 2. All motions (if required by the chair) or resignations must be submitted in writing.

Rule 3. Any conversation, by whispering or otherwise, or any other activity which is calculated to disturb or may have the effect of disturbing a member while speaking or disturb the conduct of the meeting or hinder the transaction of business shall be deemed a violation of order.

Rule 4. Sectarian discussion shall not be permitted in the meetings.

Rule 5. A motion to be entertained by the presiding officer must be seconded, and the mover as well as seconder must rise and be recognized by the chair.

Rule 6. Any member having made a motion can withdraw it with consent of the seconder, but a motion once debated cannot be withdrawn except by a majority vote.

Rule 7. A motion to amend an amendment shall be in order, but no motion to amend an amendment to an amendment shall be permitted.

Rule 8. A motion shall not be subject to debate until it has been stated by the chair.

Rule 9. A member wishing to speak shall rise and respectfully address the chair, and if recognized by the chair, he or she shall be entitled to proceed.

Rule 10. If two or more members rise to speak, the chair shall decide which is entitled to the floor.

Rule 11. Any member speaking shall be confined to the question under debate and avoid all personal, indecorous or sarcastic

language.

Rule 12. Attending meetings under the influence of liquor or any controlled substance not lawfully prescribed is basis for removal.

Rule 13. No member shall interrupt another while speaking, except to a point of order, and the member shall definitely state the point, and the chair shall decide the same without debate.

Rule 14. Any member who is called to order while speaking shall be seated until the point of order is decided, after which, if decided in order, such member may proceed.

Rule 15. Any member who feels personally aggrieved by a decision of the chair may appeal such decision to the body.

Rule 16. When an appeal is made from the decision of the chair, the Vice President shall act as chairperson; the appeal shall be stated by the chair to the meeting in these words: "Shall the decision of the chair be sustained as the decision of this Union?" The member will then have the right to state the grounds of appeal and the chair will give reasons for its decision; thereupon the members will proceed to vote on the appeal without further debate, and it shall require a majority vote to overrule the chair.

Rule 17. No member shall speak more than once on the same subject until all who wish to speak have spoken, nor more than twice without unanimous consent, nor more than five minutes at any one time without consent of a two-thirds vote of all members present.

Rule 18. The presiding officer shall not speak on any subject unless such officer retires from the chair, except on a point of order or to make an official report or give such advice and counsel as the interests of the organization warrant. In case of a tie the presiding officer shall have the deciding vote.

Rule 19. When a question is before the meeting, no motion shall be in order except:

1. To adjourn;
2. To lay the question on the table;
3. For the previous question;
4. To postpone to a given time;
5. To refer or commit;
6. To amend.

These motions shall have precedence in the above order. The first three of these motions are not debatable.

Rule 20. If a question has been amended, the question on the amendment shall be put first; if more than one amendment has been offered, the question shall be put as follows:

1. Amendment to the amendment.
2. Amendment.
3. Original proposition.

Rule 21. When a question is postponed indefinitely, it shall not come up again except by a two-thirds vote.

Rule 22. A motion to adjourn shall always be in order, except:

1. When a member has the floor;
2. When members are voting.

Rule 23. Before putting a question to vote, the presiding officer shall ask, "Are you ready for the question?" Then it shall be open for debate. If no member rises to speak or the debate is concluded, the presiding officer shall then put the question in this form: "All in favor of this motion say `aye'"; and after the affirmative vote is expressed, "Those of the contrary opinion, say `no'." After the vote is taken, the presiding officer shall announce the result in this manner: "It is carried [or lost] and so ordered."

Rule 24. Before the presiding officer declares the vote on a question, any member may ask for a division of the house. The chair is required to comply with this request. A standing vote shall thereupon be taken.

Rule 25. When a question has been decided it can be reconsidered only by two-thirds vote of those present.

Rule 26. A motion to reconsider must be made and seconded by two members who voted with the majority.

Rule 27. A member ordered to be seated three times by the chair without complying shall be debarred from participating in any further business at that session.

Rule 28. All questions, unless otherwise provided, shall be decided by a majority vote.

Rule 29. The presiding officer of the meeting shall enforce these rules and regulations and may direct that members be removed from the meeting for violation of these rules.

ORDER OF BUSINESS

1. Opening.
2. Roll call of officers.
3. Reading of minutes of the previous meeting.
4. Applications for membership.
5. Initiation of new members.
6. Communications and bills.
7. Reports of officers, executive board and committees.
8. Unfinished business.
9. New business.
10. Good and welfare.
11. Adjournment.

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Article in The Guardian

The Guardian

Fight for $15 swells into largest protest by low-wage workers in US history

Workers in more than 200 cities walked out on jobs or joined protests bankrolled by organized labor on Wednesday in latest bid to raise minimum wage

Marchers with #FightFor15 banner on Amsterdam Avenue in New York City during rally on behalf of low-income workers nationwide. Photograph: Andy Katz/Demotix/Corbis

Steven Greenhouse *and* **Jana Kasperkevic** *in New York*

Wed 15 Apr 2015 17.40 EDT

Workers in Atlanta, Boston, New York, Los Angeles and more than 200 cities across the US walked out on their jobs or joined marches and protests on Wednesday during what organisers claimed was the largest protest by low-wage workers in US history.

Some 60,000 workers took part in the Fight for $15 demonstrations, according to the organisers. The protests are calling for a minimum wage of $15 an hour in the US, more than twice the current federal minimum of $7.25.

By late afternoon on the east coast no arrests had been reported, a marked contrast to last May's action when more than 100 people were arrested during a protest outside McDonald's Chicago headquarters.

The demonstrations were the latest in a series of strikes that began with fast-food workers in New York in November 2012. The movement has since attracted groups outside the restaurant industry: Wednesday's protesters included home-care assistants, Walmart workers, child-care aides, airport workers, adjunct professors and other low-wage workers. It also sparked international support, with people protesting against low wages in Brazil, New Zealand and the UK.

The Service Employees International Union (SEIU), one of the largest US unions and representing janitors, security guards, hospital aides and nursing home workers, has bankrolled the campaign, pumping in more than $25m according to documents filed with the US Department of Labor.

Mary Kay Henry, international president of the SEIU, told the Guardian: “There is not a price tag you can put on how this movement has changed the conversation in this country. It is raising wages at the bargaining table. It’s raised wages for 8 million workers. I believe we are forcing a real conversation about how to solve the grossest inequality in our generation. People are sick of wealth at the top and no accountability for corporations.”

Speaking at a protest in San Francisco, Karen Joubert, a nurse, Fight for $15 organizer and a vice-president of representation with the northern California chapter of SEIU, said: “When you pay someone a decent wage, it helps him to get better healthcare and take care of his family.

“Many of our members who work at fast-food restaurants are not college students. They’ve worked there for 12, 15 years. They are working three jobs so that they can raise a family. We want to see them get better wages.”

Gary Chaison, a professor of industrial relations at Clark University in Worcester, Massachusetts, said the protest marked a significant change in labor disputes. “What is really significant about the Fight for $15 movement is - most labor disputes, look inside, they’re about a group of workers covered by a collective bargaining agreement,” said Chaison. “In the Fight for $15, unions are helping to organize on a community basis, a group of workers who are on the fringe of the economy. It’s not about union members protecting themselves. It’s about moving other people up. This is the whole civil rights movement all over again.”

The Fight for $15 movement started with fast-food workers, with a one-day strike by 200 cooks and order-takers, but its strategists have maneuvered to transform it into a broad movement of low-wage workers.

The strikes are fuelling a national debate over low wages in the US. President Barack Obama has been pushing unsuccessfully for a national raise to $10.10. Some cities including Seattle and New York have moved to increase their local rates, and big corporations including McDonald’s and Walmart have announced hikes in their hourly rates.

But a national increase still faces stiff opposition. The International Franchise Association, the world’s largest organization representing franchise owners, called the Fight for $15 protests “a multimillion-dollar public relations campaign designed to mislead the public and policymakers”.

Janice Fine, a professor of labor relations at Rutgers University in New Brunswick, New Jersey, said the strikes were a way for the labor movement to revamp its role after decades of declines in membership, interest and influence.

“The SEIU reached the point where they realized that things were so bad that if we didn’t have a climate change for unions, the labor movement would melt away along with the polar ice caps; that if we didn’t have climate change in this country about inequality and raising wages, then things were not going to shift for the better,” she said. “The labor movement historically hasn’t organized workers this poor in a very long time. It hasn’t positioned itself as the champion of low-wage workers.”

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Daniel J. Ratner
Daniel Engelstein[a]
Gwynne A. Wilcox[a]
Pamela Jeffrey
Carl J. Levine[Δ]
David Slutsky[δ]
Allyson L. Belovin
Suzanne Hepner[•]
Richard Dorn
Robert H. Stroup
Dana E. Lossia[Δ]
Micah Wissinger[•]
Ryan J. Barbur
Alexander Rabb
Laureve D. Blackstone[Δ]

LEVY RATNER, P.C.
Attorneys at Law
80 Eighth Avenue, 8th Floor
New York, New York 10011-7175

Telephone (212) 627-8100
Telecopier (212) 627-8182

www.levyratner.com

Richard A. Levy
Special Counsel

Kimberly A. Lehmann[Δ]
Aleksandr L. Felstiner
Jessica I. Apter[Δ]
Rebekah Cook-Mack
Courtney L. Allen

January 28, 2019

BY E-SUBMISSION

Roxanne L. Rothschild
Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Re: 1199SEIU United Healthcare Workers East
Comment on Proposed Rulemaking FR 2018-19930
(Joint Employer Proposed Rule Making)

Dear Ms. Rothschild and Members of the National Labor Relations Board:

As General Counsel for 1199SEIU United Healthcare Workers East ("1199SEIU"), I write to strongly oppose the National Labor Relations Board's ("NLRB" or "Board") proposed rule redefining the joint employer standard ("proposed rule" or "rule"). The proposed rule is both substantively and procedurally defective. Implementation of the proposed rule would erode the fundamental right of employees to collectively bargain with the employer that effectively determines their critical terms and conditions while allowing employers to structure their businesses in a way that avoids responsibility for violations of the labor laws the NLRB is tasked with enforcing. The rule will fundamentally deprive working people of an effective voice in their workplaces. Further, the proposed rule does not provide clarity to the healthcare industry that we serve. For these reasons, 1199SEIU urges the NLRB to fulfill its duty to encourage collective bargaining and not move forward with the rule redefining joint employment as proposed.

1199SEIU's Interest in the Proposed Rule

1199SEIU is the largest healthcare workers' union in the United States with more than 430,000 members in five states along the Eastern seaboard—Massachusetts, New York, New Jersey, Washington, D.C., and Florida. Our members work in acute care hospitals, nursing homes, clinics, home care settings, community-based clinics, and pharmacies as nurses, nurses aides, techs, lab workers, clerks, housekeepers, dietary workers, transporters, pharmacists, social

[a]Admitted in NY, MA and DC [δ]Admitted in NY and NJ [•]Admitted in NY and CT [•]Admitted in NY and DC

workers, physician assistants and many other types of medical professionals. We are the largest and fastest-growing healthcare union in the nation.

Since our founding in 1932, our mission has been to stand up for quality healthcare, good jobs and social justice for all. By having an effective voice in the workplace, 1199SEIU has won the highest standards for healthcare workers in the country, including good wages and benefits, safe staffing, paid time off, secure retirement, model childcare, and education benefits and a real voice in the workplace. Our members are politically engaged and active. We are affiliated with the Service Employees International Union ("SEIU") which has over 2 million members and is one of the largest labor unions in North America.

1199SEIU submits these comments to share our perspective as healthcare workers and provide guidance to the Board so that any new rule concerning the joint employer standard reflects the purposes of the Act, the core interests of workers, and realities of the modern healthcare industry.

Joint Employment in the Healthcare Industry

1199SEIU's members work in New York City flagship hospitals, rural nursing homes, clinics, pharmacies, and provide in-home care for the elderly. Regardless of the job setting, the primary employers of our members (*e.g.*, hospitals, nursing homes, healthcare agencies), often outsource key aspects of their businesses to cut costs, avoid legal obligations and increase their flexibility. The outsourcing of healthcare jobs has historically impacted lower-wage, labor-intensive tasks of cleaning, serving food and doing laundry. And while the last few decades brought more outsourcing of billing departments, laboratories and certain professional services, we are now confronting complex employment arrangements involving ever increasing numbers of our highest skilled members working in direct-care clinical settings.

No longer do we just see the use of agency or temporary nurses supplementing the work of staff nurses, but entire practice areas or entire job classifications within acute care hospitals are being outsourced. As an example, 1199SEIU represents some of the most highly-trained and highest paid clinical professionals in New York City—physician assistants.[1] Given that these clinical professionals work under the direction of a physician, hospitals often seek to contract their services through large physician groups or by other arrangements. As with most outsourcing, it leads to finger pointing at the bargaining table over who controls economic decisions and generates unaccountability in day-to-day working relationships, which in this industry directly impacts patient care.

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[1] Physician assistants are state-licensed, credentialed health care professionals who practice medicine with physician supervision, performing an extensive range of medical services in nearly every medical and surgical specialty and health care setting. They take patient histories and perform physical exams, diagnose illnesses, develop treatment plans, order lab tests, prescribe medications, counsel and educate patients, suture wounds and assist in surgery. *See* https://medicine.yale.edu/pa/profession/index.aspx (last visited 1/24/19).

We are stymied at the bargaining table when hospitals and nursing homes are not present to discuss the working conditions of medical professionals providing care in their facilities. Contracting employers claim they cannot afford wages and benefits without an increase in funding from hospitals and nursing homes and/or that they are unable to resolve particular workplace disputes. Core terms and conditions of employment, such as direct supervision, working hours, patient census, the provision of supplies, and general health and safety concerns are dictated by the hospital or nursing home, but the structure of the service contracts between the supplying employer and the hospital/nursing homes makes it all but impossible to address working conditions without having a hospital or nursing home employer at the bargaining table.

The employment status of medical professionals working in clinics and hospital-affiliated physician practices are also becoming more complicated. Doctors affiliated with hospitals are supplied staff for their private offices/clinics by hospitals under the facade of management service organizations under their command. While the doctors and hospital exercise control over the workers' terms and conditions of employment, deals are structured so that neither the individual doctors nor hospital is the employer of record. These byzantine relationships leave workers without recourse to bargain with the entity controlling their day-to-day working conditions.

Joint Employment in a Highly Regulated Industry

The healthcare industry offers some of the most regulated workplaces in the country. Providers must maintain clinical and environmental standards set by public law or risk losing accreditation and funding. When a healthcare facility is reviewed for accreditation, every facet of the clinical care and clinical environmental is scrutinized, resulting in periodic unannounced top-to-bottom inspections.[2]

The failure of a contracted housekeeping employee to satisfactorily clean a patient room presents a patient care, legal and public relations risk for a hospital. It could lead to a citation, and if uncorrected or too egregious, the eventual loss of accreditation, funding, and public confidence. Similarly, a nurse or other professional who fails to provide satisfactory treatment or diagnostic care puts a nursing home's license at risk. In sum, every person working in a healthcare setting—whether a pot scrubber or pharmacist—must perform his or her job consistent with standards that govern that particular healthcare provider. A healthcare provider's managers and supervisors are required by statute and in some instances by the mandates of their

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[2] The most widely respected accreditation comes from the Joint Commission (sometimes referred to as "JACHO"), an independent, not-for-profit organization, that accredits and certifies nearly 21,000 health care organizations and programs in the United States. The Joint Commission does not publish its standards of review. The comprehensive standards of the Joint Commission are developed with input from health care professionals, providers, subject matter experts, consumers, and government agencies (including the Centers for Medicare & Medicaid Services). They are informed by scientific literature and expert consensus.
See https://www.jointcommission.org/facts_about_joint_commission_accreditation_standards/ (last visited 1/24/19).

own professional licenses, to exercise control over the working conditions of contracted employees.

Keeping accreditation and complying with myriad rules and regulations governing their operation requires a healthcare provider to control everything that transpires under their licensure and/or within their facility. The fractured control exemplified by the proposed rule, not only threatens workers' terms and conditions but quality patient care. The proposed rule simply fails to address the realities of joint employment in this highly regulated industry by only looking at the exercise of direct and immediate control over a truncated list of terms and conditions of employment.

The Proposed Rule Replaces Well-Reasoned Case Law with Confusion.

The proposed rule aims to provide employers and unions with predictability and consistency with regard to determining joint employer status. The rule will not accomplish that goal in the healthcare industry. The proposed rule fails to reflect the joint employment reality we encounter in the highly regulated workplaces in which our members work. Most frustratingly, the rule incorporates vague terms and gives a list of "examples" that are in no way exhaustive and seemingly contradict other instruction within the proposed rule. The courts have recognized that joint employer issues are "simply a factual determination," making it a poorly suited topic for rule making. *Holyoke Visiting Nurses Assn. v. NLRB*, 11 F.3d 302, 307 (1st Cir. 1993).

In replacing well-reasoned cases originating in the healthcare industry predicated on actual employment situations, the Board now asks healthcare employers and unions to operate in a vacuum using undefined terms and wholly unhelpful "examples." By upending decades of case law as most recently considered in the *Browning-Ferris* decision,[3] the proposed rule will create confusion for those attempting to untangle complex employment relationships without any true fact-based guidance from the Board.

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[3] On the basis of the recent D.C. Circuit case alone, the Board should abandon its proposed rule. *See Browning-Ferris Industries of California, Inc. v. NLRB*, No. 16-1063, 16-1064 (D.C. Cir. Dec. 28, 2018) reviewing *Browning-Ferris*, 362 NLRB No. 186 (2015). The D.C. Circuit held that the right-to-control element of the joint employer standard "has deep roots in the common law" which forces the Board in the instant proposed rule making to "color within the common-law lines identified by the judiciary." *Browning-Ferris*, slip op. at 21. The proposed rule fails to do so because it precludes consideration of reserved or indirect control. *See Browning-Ferris*, slip op. at 4 and 23 (the common law "permits consideration of those forms of indirect control that play a relevant part in determining the essential terms and conditions of employment" and "is not woodenly confined to indicia of direct and immediate control").

The Proposed Rule Fails to Define Essential Terms and Conditions in the Healthcare Workplace

The proposed rule states that an employer will only be considered a joint employer where it shares or codetermines an employee's essential terms and conditions of employment, "such as hiring, firing, discipline, supervision and direction." 83 Fed. Reg. 46686. This statement provides no guidance as to whether the Board will consider other terms and conditions not included in this list. The proposed rule does not affirm that this is the full universe of "essential terms and conditions" to be considered nor does it specify what treatment should be given to other terms and conditions that prior configurations of the Board have found to be essential. *See, e.g.*, *Browning Ferris Industries*, 362 NLRB, slip op. at 15 (citing prior cases where the number of workers to be supplied, scheduling, seniority, overtime, work assignments and method of work performance were considered essential terms and conditions). An appropriately inclusive list of essential terms and conditions of employment would include mandatory subjects of collective bargaining.

Only recognizing control over hiring, firing, discipline, supervision and direction ignores other relevant conditions of employment. Eliminating consideration of workplace control that does not fall into one of these categories empowers employers to avoid accountability. Moreover, the twelve abridged "examples" provided with the proposed rule consider only an isolated condition of employment instead of the totality of conditions in a workplace. Such a simplified analysis does a serious disservice to a multifaceted legal question that demands thorough and precise analysis.

Workplace safety is a paramount concern for our members. Given that their own health and welfare is often at stake when providing care to others, our members prioritize workplace safety over many other terms and conditions of employment. Hospitals, nursing homes and home care agencies are responsible for setting policies directly impacting safety in the workplace. A contracted employee assigned to a hospital, nursing home or patient residence has little recourse through a contractor when presented with unsafe working conditions. In some instances, health and safety concerns can be categorized under the essential term and condition referred to in prior Board cases. But without a more definitive statement from the current Board majority, it is unclear under the proposed rule whether control over safety is considered an essential term and condition of employment.

To be clear, a hospital controls the movement of psychiatric patients within its walls and the ratio of contracted staff assigned to patients who might present a hazard to themselves or caregivers. A nursing home orders the supplies used by contracted staff tasked with disposal of bio-medical waste. And a homecare agency decides the acuity of patients to which it assigns contracted home-health aides. The proposed rule takes far too narrow a view of these essential terms and conditions of employment. It is ill-advised to exclude necessary parties from bargaining obligations over terms and conditions such as these, especially when worker health and welfare and patient care are at stake.

The Proposed Rule Leaves Parties to Speculate as to the Level and Type of Control Necessary to Find a Joint Employer Relationship

The proposed rule further requires a putative joint employer to "possess and actually exercise substantial direct and immediate control over the employees' essential terms and conditions of employment in a manner that is not limited and routine." 83 Fed. Reg. 46686. Even aside from the admonitions of the D.C. Circuit that the proposed rulemaking take adequate consideration of the common law which it does not do, (*Browning-Ferris*, slip op. at 4), this requirement only adds ambiguity to the proposed test for joint employment. The word "substantial" is an undefined term with no legal precedent upon which to judge what might be considered adequate control under the test. The rule fails to give any demarcation for what is "direct" and "immediate." And, the final phrase "in a manner that is not limited and routine," consists not only of individually undefined terms but is vague as to whether the standard requires consideration of a manner of control that is "limited" but not "routine," the inverse situation, or only a manner that is both "limited *and* routine."

Finally, the proposed rule suggests that "it will be insufficient to establish joint-employer status where the degree of a putative joint employer's control is too limited in scope (perhaps affecting a single essential working condition and/or exercised rarely during the putative joint employer's relationship with the undisputed employer)." 83 Fed. Reg. 46687. This final qualification, along with citations to Board cases in the proposed rule creates a labyrinth of conflicting terminology that leaves parties to speculate as to the level and type of control over working conditions necessary to find a joint employment relationship.

Examining the rule's treatment of a single undisputedly essential term and condition of employment such as hiring illustrates how the proposed rule eliminates predictability. There is no dispute under the proposed rule (or prior Board precedent) that the function of hiring is considered an essential term and condition of employment for purposes of joint employer analysis. The proposed rule provides twelve examples intended to illustrate application of the new rule. *See* 83 Fed. Reg. 46697. Example 8 addresses hiring. It states in full:

> Temporary Staffing Agency supplies 8 nurses to Hospital to cover for temporary shortfall in staffing. Hospital manager reviewed resumes submitted by 12 candidates identified by Agency, participated in interviews of those candidates and together with Agency manager selected for hire the best 8 candidates based on their experience and skills. Hospital has exercised direct and immediate control over temporary nurses' essential terms and conditions of employment.

83 Fed. Reg. 46697.

Example 8 suggests that a putative employer's participation in hiring a group of eight employees on a single occasion rises to the level of direct and immediate control that would result in a joint employer relationship with a nursing agency. However, the rule states elsewhere

that it will be insufficient to establish joint employer status where the exercise of control is too limited in scope and perhaps "affecting a single essential working condition and/or exercised rarely during the putative joint employer's relationship with the undisputed employer." 83 Fed. Reg. 46687. It is unclear how one reconciles these statements. Either Example 8 is too simplistic or the qualification too sweeping.

Further complicating the treatment of this undisputedly essential term and condition of employment is a citation to a prior Board case delineating what the current Board considers too limited for control in the hiring process. Citing *Flagstaff Medical Center*, 357 NLRB 659 (2011) the proposed rule states that it is "consistent with the Board's present inclination to find that a putative joint employer must exercise substantial direct and immediate control before it is appropriate to impose joint and several liability on the putative joint employer and to compel it to sit at the bargaining table and bargain in good faith with the bargaining representative of its business partner's employees." 83 Fed. Reg. 46687.

In *Flagstaff Medical Center* the Board found that a contractor's participation in interviewing and hiring candidates was too limited to result in a joint employer finding because the hospital "did not approve all of" the contractor's hiring recommendations. 357 NLRB at 667 (rejecting a single recommended candidate precluded finding joint employment). In dissent, Member Pearce observed that Flagstaff Medical Center hired 14 of the 15 applicants that were interviewed, evaluated and recommended by the contractor and that the hospital did not hire any applicant not recommended by the contractor. *Id.* at 671 (noting that the record indicates the contractor "was the driving force" behind hiring). The current Board cites to *Flagstaff Medical Center* as an exemplar of the kind of control that is too limited to warrant a joint employer finding yet provides an illustration in Example 8, seemingly based on *Flagstaff Medical Center* that triggers far more questions that it provides answers.

So what does Example 8 mean against the backdrop of *Flagstaff Medical Center*? Does the current Board majority intend to suggest that joint employment will only be found if two parties jointly interview every candidate and "together" select each of them for hire? And if so, what does it mean to select a candidate for hire "together"? What if a party selects some candidates to interview, participates in those interviews and makes recommendations about hiring those particular individuals? What if a party selects a pool of candidates for joint interview, participates in those interviews and make a recommendation to hire only some of them? Must a party adopt all of the other parties' hiring recommendations for it to constitute joint decision-making?

The answers to these questions are less important than the disorientation they illustrate. The proposed rule sows confusion and uncertainty as to what constitutes direct and immediate control in the context of what is perhaps the most undisputedly essential term and condition of employment in a joint employer analysis.

Eliminating Bargaining Obligations in the Healthcare Industry Serves No One

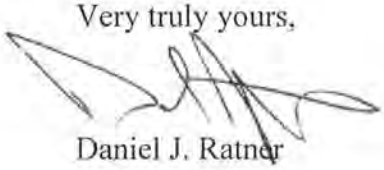
To say nothing of the Act's mandate to promote collective bargaining as a means to reduce labor unrest, public welfare must also be considered when eliminating necessary parties from bargaining in the healthcare industry. 1199SEIU's best contracts require management and labor to discuss the intersection of clinical care and working conditions in the context of patient care committees, health and safety committees and nurse practice committees. Committees such as these, *inter alia*, jointly set controls on the number and acuity of patients assigned to our members, set clinical practice standards, implement processes and approve of supplies used in clinical settings. If a contracted physician assistant treating a patient in the emergency room does not have the supplies or resources to do the best job possible, a practice committee is an unsurpassed option for ensuring that work is accomplished and excellent clinical care is provided. Having both a hospital and contractor at the bargaining table with the union allows for necessary adjustments to be made, not only improving the working conditions of our members but benefiting the patients we serve.

Proving a joint employment case each time an issue arises involving contracted work is beyond the means of any union or employer. We rely on the Board's precedents. There is no sound basis for the current Board majority to abandon clearly reasoned case law and replace it with a rule as imprudent and unclear as the one proposed. The proposed rule does not reflect realities in the healthcare industry and will create confusion and uncertainty in the industry.

Conclusion

For these reasons, the Board should abandon the proposed rule and remain true to the purpose of the Act.

Very truly yours,



Daniel J. Ratner

From:	Braden Campbell
To:	Blado, Kayla
Subject:	Right to Work recusal letter
Date:	Tuesday, October 5, 2021 12:35:44 PM
Attachments:	Wilcox and Prouty Recusal letter- SEIU v. NLRB - 10-5-21 MAM FINAL executed with attachments (1).pdf

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Hi Kayla,

I'm reporting on the attached letter National Right to Work sent today urging Dave Prouty and Gwynne WIlcox to sit out matters related to the joint employer rule and wanted to see if they or the board have a response. Thanks.

--
Braden Campbell
Editor at Large, Employment
Legal News & Data
111 West 19th Street
5th Floor
New York, NY 10011
646-350-1394
Twitter: @TweetsByBraden

NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.
8001 BRADDOCK ROAD • SPRINGFIELD, VIRGINIA 22160
TEL: (703) 321-8510 • FAX: (703) 321-9613 • http://www.nrtw.org

October 5, 2021

David P. Berry
Inspector General
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001
David.Berry@nlrb.gov

Lori Ketcham
Associate General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001
Lori.Ketcham@nlrb.gov

Re: Recusal of Members Wilcox and Prouty in *Service Employees International Union v. National Labor Relations Board et alia,* Civ. Action No. 21-cv-2443 (DDC)

Dear Inspector General Berry and Ms. Ketcham:

On behalf of the National Right to Work Legal Defense and Education Foundation, Inc., I write to express our opposition to Member David Prouty and Member Gwynne Wilcox exercising any involvement in, or decision making authority regarding, the above-referenced lawsuit (the "Litigation"), which was filed in the U. S. District Court for the District of Columbia on September 17, 2021. Given their recent roles as lawyers advising large locals affiliated with the Service Employees International Union ("SEIU"), both Member Prouty and Member Wilcox have significant conflicts of interest with respect to the Litigation and with regard to the Joint-Employer Rule that SEIU challenges in the Litigation.

Whether Members Prouty and Wilcox should be recused from the Litigation is of interest to the Foundation, because Foundation Staff Attorneys frequently provide free legal representation to employees involved in litigation before the National Labor Relations Board against SEIU or its affiliates. The same considerations should mandate the recusal of Member Wilcox and Member Prouty in those cases as well.

For the reasons set forth below, I urge you to take all appropriate action to remove Member Prouty and Member Wilcox from any decision making or advisory role connected with the Litigation, the Joint-Employer Rule that SEIU challenges in the Litigation, and any other matters involving SEIU and/or its affiliates. I urge you to apply the same level of vigor in examining their conflicts as was done in matters involving former Member William J. Emanuel.

***Member Prouty*:** From approximately 2017 until recently, Member Prouty served as General Counsel of SEIU Local 32BJ, one of SEIU's most powerful local unions. He was responsible for providing strategic legal advice to that union on a broad range of matters. SEIU Local 32BJ and Member Prouty played a key role in opposing the Board's final rule on joint employment, *Joint Employer Status Under the National Labor Relations*

Act, 85 Fed. Reg. 11184 (Feb. 26, 2020). Indeed, SEIU Local 32BJ and Member Prouty filed lengthy comments in opposition to that rule. See *id.* at 11192 n.45; 11196 n. 100; 11199 nn. 117 & 119; 11202 n. 149; 11203 n. 166; 11204 n. 178; 11205 nn. 192, 193 & 196; 11214 n. 280; 11222 nn. 343, 345, 347 & 353. (Comments signed by Member Prouty are attached).

Additionally, although Member Prouty was the key legal advisor to and representative of an SEIU *local union* and not the SEIU International, that distinction is meaningless in this context. The SEIU International and its local and affiliated unions are inextricably intertwined. The International, under its constitution, reserves the right to control the local unions and other affiliates and does, in fact, control them.[1] For example, the SEIU International constitution sets forth strict requirements that local unions—including 32BJ—must follow regarding membership, strikes and lockouts, and per capita tax among many other topics. Most importantly, Member Prouty worked for SEIU Local 32BJ within the past year and, as such, he has a covered relationship for purposes of the Standards of Ethical Conduct for Employees of the Executive Branch, *see* 5 C.F.R. § 2635.502(a). I note that there may be other ethics and conflict of interest rules governing Member Prouty, and this list is not exhaustive. The bottom line is that he must be recused from the Litigation, all matters concerning the Joint Employer standards, and all litigation involving SEIU and its affiliates. No reasonable person could think otherwise.

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[1] A copy of the 2020 SEIU Constitution is attached for your convenience. That constitution provides the SEIU International Union with virtually total control over its local and affiliated unions. See, e.g., Article III Jurisdiction and Membership Section 1, stating that "The International Union shall be composed of and have jurisdiction over its affiliated bodies and all Local Unions"; Section 2(a) "The International Union shall have jurisdiction over the Local Unions and their members and over all affiliated bodies"; Section 3 (c) "With the approval of the International Union, Local Unions may establish different categories of membership and rates of dues for persons represented and not represented by the Local Union for collective bargaining purposes including, but not limited to, life members, retired members, and associate members;" Section 3(d) "Any dispute respecting membership or eligibility for membership shall be decided by the International President;" Article VIII International President—Duties and Powers, Section 1(f) "the International President shall be empowered to negotiate and enter into national, regional, or areawide collective bargaining agreements, including company wide or multi employer agreements, and to coordinate activities toward this end in consultation with the Local Unions involved, and is authorized to require and direct coordinated bargaining among Local Unions;" Section 4 "The International President shall sign all charters and other official documents of this International Union; shall have the authority to direct an examination of the books and records of any Local Union or affiliated body;" Section 7(a) "Whenever the International President has reason to believe that, in order to protect the interests of the membership, it is necessary to appoint a Trustee for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of this International Union, he or she may appoint such Trustee to take charge and control of the affairs of a Local Union or of an affiliated body and such appointment shall have the effect of removing the officers of the Local Union or affiliated body." Many other provisions show the complete domination SEIU holds over its local and affiliated unions. Indeed, it is fair to say that SEIU and its locals would be considered joint or single entities under tests enunciated in Board cases like *Browning-Ferris Industries, Inc.*, 362 NLRB 1599 (2015), *affd. in part, reversed in part and remanded*, 911 F.3d 1195 (D.C. Cir. 2018).

***Member Wilcox*:** Member Wilcox until recently served as Associate General Counsel of 1199SEIU United Healthcare Workers East, playing a pivotal role in providing it with strategic legal advice. Member Wilcox was at the forefront and actively involved in the so-called "Fight for $15," which is *specifically named as interested in, and a core part of, the Litigation.*[2] Paragraph 8 of the Complaint in the Litigation states: "SEIU's affiliate National Fast Food Workers Union – commonly known as the Fight for $15 and a Union – seeks to raise the wages and working conditions of low-wage and vulnerable workers in market sectors, such as the fast-food industry, where certain large employers often attempt to use the franchise model to evade their responsibilities to workers." *See also Fight for $15 swells into largest protest by low-wage workers in US history,* The Guardian Dec. 11, 2018 (article attached). In private practice—shortly before she was nominated—Member Wilcox sued McDonald's for "Fight for $15."[3]

Moreover, 1199SEIU United Healthcare Workers East and Member Wilcox played a key role in opposing the Board's final rule on joint employment, *Joint Employer Status Under the National Labor Relations Act,* 85 Fed. Reg. 11184 (Feb. 26, 2020). 1199SEIU United Healthcare Workers East and its law firm, Levy Ratner, of which Member Wilcox was then a partner, filed lengthy comments opposing that rule. See *id.* at 11192 n.45; 11193 n. 54; 11202 nn. 143 & 149; 11205 n. 194; 11210 n. 232; 11214 nn. 275, 276 & 280; 11220 n. 329. (Those comments are attached).

Plainly, Member Wilcox's role in these matters presents a textbook conflict of interest regarding the Litigation and the Joint Employer Rule. At a minimum, Member Wilcox's participation in the Litigation and the Joint Employer rulemaking creates the appearance of a conflict that undermines all stakeholders' trust in an independent and neutral NLRB. Furthermore, the evidence regarding SEIU's absolute control over its local unions set forth above as to Member Prouty is equally applicable to 1199SEIU United Healthcare Workers East and Member Wilcox.

For all of these reasons, you must ensure that Member Prouty and Member Wilcox are removed from any decision making authority or advisory involvement with regard to the Litigation and the Joint-Employer Rule, because both have blatant conflicts of interest that no fair-minded person can ignore. Their participation in the Litigation and issues concerning the Joint-Employer Rule and, for that matter, any SEIU cases would not only be contrary to well established ethics guidelines, but also undermine the integrity and public trust of the NLRB.

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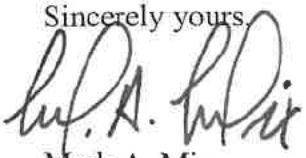
[2] *See* Gwynne A. Wilcox, *Fight for $15*, Levy Ratner, P.C., https://levyratner.com/author/gwynne/page/4/ (last accessed Sept. 21, 2021).

[3] *See* Ian Kullgren, *Biden To Nominate Gwynne Wilcox for NLRB Democratic Seat (2)*, Bloomberg Law (May 26, 2021, 3:26 PM), https://www.bloomberglaw.com/bloomberglawnews/daily-labor-report/XCD1G9T4000000?bna_news_filter=daily-labor-report#jcite; *see also* Robert Iafolla & Ian Kullgren, *Ethics Questions Await Biden's Federal Labor Board Nominee*, Bloomberg Law (May 27, 2021, 4:22 PM), https://www.bloomberglaw.com/bloomberglawnews/daily-labor-report/X2TDHILC000000?bna_news_filter=daily-labor-report#jcite.

Thank you for your attention to this matter. I look forward to a prompt reply.

Sincerely yours,



Mark A. Mix
President

cc: Chairwoman Lauren McFerran
Member John Ring
Member Marvin Kaplan
Member David Prouty
Member Gwynne Wilcox
Secretary of Labor Martin J. Walsh
Rep. Robert C. "Bobby" Scott
Rep. Virginia Foxx
Sen. Patty Murray
Sen. Richard Burr

Comments by SEIU Local 32BJ and Member Prouty

These comments are submitted by Service Employees International Union, Local 32BJ, a labor organization representing over 160,000 workers, primarily in the property services industry, in response to the Board's notice of proposed rulemaking issued on September 14, 2018.

Introduction

For the past forty years, Local 32BJ has bargained industry-wide collective bargaining agreements covering commercial office cleaners in New York City with the Realty Advisory Board on Labor Relations, Inc., a multiemployer association consisting of building owners and cleaning contractors. Local 32BJ also represents more than 25,000 workers at residential buildings in New York City. These workers are often jointly employed by the entity that owns the building and a managing agent. In addition, Local 32BJ has extensive experience bargaining with cleaning contractors and security contractors where the client shares or codetermines matters governing the employees' essential terms and conditions, but where the client does not formally participate in the bargaining process. These comments are informed by this real-world experience.

1. The Board Should Start Over in Light of the D.C. Circuit's Decision in *Browning-Ferris Industries of California v. NLRB*.

The D.C. Circuit's recent decision in *Browning-Ferris Industries of California v. NLRB,* 911 F.3d 1195 (2018) makes clear that the Board's proposed rule is not a viable starting point for determining when an entity qualifies as a joint employer. The proposed rule provides that an entity is not a joint employer where it possesses authority to control employees' terms and conditions of employment unless there is

evidence that the entity has actually exercised that authority. But, the D.C. Circuit has held that an employer's right to control is relevant to the existence of a joint employer relationship. Likewise, the proposed rule requires that a putative joint employer exercise "direct and immediate" control over employees' term and conditions, while the D.C. Circuit held that the "distinction between direct and indirect control has no anchor in the common law."

Thus, in order to survive judicial review, any final rule will necessarily depart so much from the proposed rule that it will not be the "logical outgrowth" of the proposed rule. *See Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 543 (D.C. Cir. 1983). Accordingly, the Board should start the process over with a new proposed rule. "Otherwise, interested parties [do] not know what to comment on, and notice will not lead to better-informed agency decisionmaking." *Id.* at 549.

2. <u>The Rule Will Not Foster Predictability and Consistency</u>

In issuing the proposed rule, the Board majority asserted that the rule will provide employers and unions with "predictability and consistency" regarding determinations of joint-employer status. In fact, the rule will not provide predictability and certainty for four reasons. First, as courts have long recognized, whether an employer is a joint employer has always been a fact-intensive inquiry, and thus small factual differences may lead to different outcomes. Second, the proposed rule eliminates an aspect of *Browning-Ferris Industries of California, Inc.,* 362 NLRB No. 186 (2015) that provided greater certainty to all parties. Third, if

the intent of the proposed rule is to wipe the slate clean and start fresh with only a few examples to work from, then there will be considerable confusion until there is a substantial body of case law under the new rule. Finally, the examples in the new rule do not lend any clarity as to where the lines will be drawn.

The circuit courts have repeatedly observed that "a slight difference between two cases might tilt a case toward a finding of a joint employment." *Holyoke Visiting Nurses Assn. v. NLRB,* 11 F.3d 302, 307 (1st Cir. 1993), *quoting Carrier Corp.,* 768 F.2d 778, 781, n.1 (6th Cir. 1985); *accord North American Soccer League v. NLRB,* 613 F.2d 1379, 1382-83 (5th Cir. 1980)("minor differences in the underlying facts might justify different findings on the joint employer issue"). The proposed rule does not solve this problem, and it likely exacerbates it. In particular, the requirement that a putative joint employer exercise "substantial" control means that in any given case, the joint employer determination will turn on a determination as to whether any exercise of control is sufficiently "substantial." Likewise, the undefined term "limited and routine" creates additional unanswered questions about when exercise of control is sufficient to establish a joint employer relationship.

In light of the D.C. Circuit's *Browning-Ferris* decision, the Board must abandon its proposal that control must be exercised, rather than merely possessed. There is an additional practical reason why it makes no sense to require proof that control has actually been exercised. Whether a putative joint employer possesses the authority to set or codetermine the employees' essential terms and conditions of

employment is a fact that can often be determined from a review of documents. For instance, in *Browning-Ferris,* the agreement between BFI and Leadpoint gave BFI the authority to "reject any Personnel and … discontinue the use of any personnel for any or no reason." Thus, the contract gave BFI authority over an essential term or condition of employment. By contrast, the proposed rule requires proof that the authority was actually exercised, and that it was exercised in more than a "limited" way. According to examples 11 and 12, a single instance where the user exercises its authority is insufficient to meet this test (apparently regardless of the size of the workforce). On the other hand, if the user reminds the contractor of its authority with "some frequency" while voicing complaints about particular workers, this would be sufficient to make the user into a joint employer. Inevitably, under this proposed rule, "slight differences" in facts will lead to different outcomes – perhaps exercising the authority twice in last year would be insufficient, but three times would be deemed enough to create a joint employer relationship. Who can say?

Currently, when parties are attempting to structure their relationships and/or litigate cases presenting the joint employer question, they can look to a large body of case law to provide some guidance. Even in *Browning-Ferris,* where the Board overturned several cases, the majority cited many Board decisions that were consistent with the revised test. For instance, the Board cited five different cases where a joint employer determination relied on a finding that the user had a right to reject any of the contractor's employees. *Browning-Ferris,* slip op. at 18. Over the years, the Board has decided hundreds of joint employer cases and these cases

added up to a substantial body of common law. Now, the proposed rule would replace all of those detailed fact patterns with twelve bare-bones examples. This hardly helps provide clarity for interested parties.

We will discuss the examples contained in the proposed rule further below, but one shortcoming in the examples is that they fail to consider the interplay of multiple factors. Under existing law, both before and after *Browning-Ferris,* the Board has considered multiple factors in deciding whether an entity is a joint employer. So, for example, the type of supervision provided by a putative joint employer might be sufficient to support a joint employer relationship when combined with the right to refuse services of a particular employee, but not when standing alone. *SEIU Local 32BJ v. NLRB,* 647 F.3d 435, 444, n. 4 (2d Cir. 2011). The examples treat each term and condition of employment in isolation, so fail to consider whether, for example, the restriction on operating hours in Example 5 might support a joint employer finding when combined with other actions by the franchisor that affect the terms and conditions of the franchisee's employees.

3. <u>The Proposed Rule is at Odds With the Findings and Policies Underlying the NLRA</u>.

When Congress enacted the NLRA, it relied upon findings that "the refusal by some employers to accept the procedure of collective bargaining" led to "industrial strife and unrest." Congress further declared that it is the policy of the United States to mitigate that unrest "by encouraging the practice and procedure of collective bargaining." In order for collective bargaining to play that constructive role, it must serve as an effective mechanism for workers to address their terms and

conditions of employment. Yet, the proposed rule seems to contemplate that in many cases, workers will not be able to meaningfully bargain over wages, benefits, and working hours because the entity that effectively controls those terms cannot be brought to the table. Similarly, where workers are employed by Company A to provide services at the premises of Company B, they may lack the ability to bargain over Company B's drug testing requirement or over exposure to toxic substances at Company B's premises. This is surely not a recipe for labor peace.

The proposed rule might be based on the misguided notion that eliminating a bargaining obligation for lead firms that contract out for services will somehow insulate those lead firms from labor disputes. But nothing could be further from the truth. While Section 8(b)(4) might limit some tactics available to unions, the First Amendment still allows unions to wage robust public campaigns against any entity, even if the Board will not deem the entity to be a joint employer. So, for example, unions will still be able to use tactics such as staging a "mock funeral" outside a hospital, *see Sheet Metal Workers' Intl. Assn., Local 15 v. NLRB,* 491 F.3d 429 (D.C. Cir. 2007), and they will be able to leaflet, urge boycotts, station banners outside the entity's premises, and use the airwaves and the internet to publicize their dispute. Moreover, consistent with the Supreme Court's expansion of First Amendment protections in recent years, including, for example, its pronouncement that "a State could not ban campaigning with slogans, picketing with signs, or marching during the daytime," *Sorrell v. IMS Health Inc.,* 564 U.S. 552, 577 (2011), the scope of activity prohibited under Section 8(b)(4) will likely shrink in the years

ahead. The Act is based on the premise that it is preferable to channel disputes about wages, benefits, and working conditions to the bargaining table rather than relegating workers to the streets, and the proposed rule ignores that Congressional directive.

4. Narrowing the Joint Employer Test Will Make it More Difficult to Resolve Labor Disputes.

The cleaning contractors and security firms whose employees we represent often have contracts with their clients that give the clients the ability to set or codetermine the employees' terms and conditions of employment. In some cases, we have a bargaining relationship with the client as well. We have found that where we do not have a bargaining relationship with the client, it can be much more difficult to resolve disputes. Here are some recurring issues:

Client complaints about individual workers: One issue that often arises with cleaning contractors and security firms is that the client has lodged a complaint about a particular individual but there is no just cause to discharge the worker. Sometimes, the contractor knows up front that it lacks just cause to fire the worker. Other times, the contractor does fire the worker but an arbitrator orders reinstatement. If a union has no bargaining relationship with the client, this can create an extremely messy dispute because the contractor has no way to compel its client to allow a particular individual to work at the client's offices. These disputes have at times created standoffs between the Union and the contractor. This is especially true where the contractor has no other comparable nearby site to offer the employee. We have had a number of disputes drag on for months as we have

tried to figure out how to reach a mutually agreeable resolution with a contractor when the contractor's client has veto power over which employees are allowed to work on the premises. The Union may have tactics available to address these types of disputes (e.g. striking, if not barred by the collective bargaining agreement), but trying to put pressure on a contractor where the contractor is boxed in by its client risks poisoning the Union's relationship with the contractor.

In several instances, workers have filed charges against the Union when they were frustrated with the Union's inability to resolve one of these disputes on favorable terms, or unhappy about the settlement the Union reluctantly accepted. For instance, in Case 01-CB-107860, a worker complained that he was removed from a building and given a worse position at another building as a result of a false allegation against him. But, in that case, building management had requested his removal, and the Union had no mechanism to force building management to take the worker back even if the allegation against the worker turned out not to be true. Similarly, in Case 22-CB-227879, a worker filed a charge against the Union after the employer, a cleaning contractor, was unable to comply with a settlement because its client would not allow the worker to be placed at its building.

These types of disputes would not arise in the first place if the Union had a right to bargain with any client that has a right to reject particular employees.

Background checks or drug tests: Similar issues have arisen where clients have demanded that the contractors' employees submit to background checks or drug tests. Under the proposed rule, it is not clear if these requirements would be

sufficient to establish a joint employer relationship, particularly when they are first announced, since there would not yet be a record of workers losing their jobs as a result of these requirements. Unions have extensive experience bargaining over issues related to drug testing, but any contractual protection against arbitrary drug testing, or any guarantees regarding drug testing protocols would be irrelevant where the requirement is imposed by an entity that has no bargaining obligation.

Sexual Harassment: A contractual grievance procedure can be a very effective way to deal with sexual harassment claims. Employers are increasingly attentive to these claims, and when a credible claim is brought against a supervisor, the employer will often quickly take action to limit its own potential liability. But, in the case of cleaners or security officers, if the harasser is a property manager who does not work for the contractor, then the contractor does not have the power to address the claim. This is another reason why unions need to be able to bargain with all the entities that have control over working conditions.

Access for Union representatives: Access for Union representatives is a fairly standard part of any collective bargaining agreement. But, if the Union only has a bargaining relationship with a contractor, then the contractor must separately negotiate with its client before it can agree to terms of access for Union representatives. The Board has held that it may be unlawful for a client to deny access to the union representative of its contractor's employees, *see CDK Contracting Co.,* 308 NLRB 1117 (1992), but our Union does not want to have to

bring a case to the Board in order to secure routine access to the facility where its members work.

While control of access to the premises might not be sufficient under *Browning-Ferris* to create a joint employer relationship, by narrowing the joint employer definition, the proposed rule would make it less likely that unions will be able to bargain with entities that control access to workplaces.

Disputes about working hours: Another area where it has been more difficult to resolve disputes without having a putative joint employer at the bargaining table involves the Union's attempt to obtain full-time employment for workers who had been working part-time schedules. In some markets, the prevailing standard had been for office cleaners to work four-hour shifts, typically from 6 pm to 10 pm. In bargaining with cleaning contractors, our Union proposed converting these part-time jobs into full-time jobs. The bargaining over hours was made far more complicated because the building owners (the cleaning contractor's clients) were not at the bargaining table, yet extending the hours for the workers would have required the building owners to keep lights on and HVAC systems running for additional hours. The result was that instead of bargaining directly over the issue, the bargaining became more complex, with the contractors sometimes acting as intermediaries between the Union and the building owners, and with the Union making direct appeals to the building owners away from the bargaining table.

The proposed rule would codify this inability to bargain with entities that control the working hours of employees.

Health and Safety Issues: Contractors are sometimes unable to resolve health and safety concerns without the involvement of their clients. For instance, if office cleaners raise a concern about exposure to asbestos, the cleaning contractor cannot directly address that concern. Likewise, sometimes security officers are stationed in outdoor guard booths. In cold weather, security officers sometimes lodge complaints about the temperature in these booths, and the security contractor must appeal to its client in order to address those complaints. Similarly, where security officers have requested chairs, security contractors have been unable to provide those chairs unless the client is willing to provide them.

Contractor transition: Commercial building owners routinely switch from one cleaning contractor to another. This often occurs because of communication issues between the client and the contractor's manager, or because of some complaint about on-site supervision, but it is rarely because of a desire to replace the workforce. The commercial cleaning industry is marked by intense competition because there are no serious barriers to entry – very little capital is required, and when a contractor obtains a job it can generally hire the incumbent workforce.

Where the Union does not have a bargaining relationship with the owner, these contractor transitions can lead to major disputes. Experienced contractors understand that because labor costs represent the overwhelming percentage of their expenses, they must know those costs down to the last dollar. This includes not only hourly wages, but the exact amount of vacation and sick leave due to each worker, and any other benefit costs. Sometimes a new contractor underbids the

existing contractor without a full understanding of the workers' wages and benefits. The contractor may not have intended to reduce wages and benefits, but it may find itself hamstrung by its uninformed bid. The client may not have realized that it was risking labor unrest – it may have thought that the prior contractor was making an excessive profit. We have had situations where the new contractor had actually agreed to assume the predecessor's collective bargaining agreement, and submitted a bid based on the CBA, but without realizing that some workers were paid above-scale, or without understanding how benefit entitlements were calculated. In those cases, the contractor may try to force the Union to renegotiate the contract, or else it may go to the client and beg for more money. These kinds of disputes could have been avoided if the Union had bargained directly with the client. The client could, in the collective bargaining agreement, reserve the right to contract out the work while agreeing that any contracting out would not be used to undermine the contractual wages and benefits.

5. **Joint Employer Bargaining Works Well and Often Makes it Easier to Resolve Disputes.**

For many years, the Union has bargained with a multiemployer association in New York (the Realty Advisory Board on Labor Relations, Inc. (the "RAB") that represent both building owners and contractors, and through this bargaining relationship, it has often been able to resolve disputes efficiently, and in ways that have been mutually beneficial to workers and employers. While the dissent in *Browning-Ferris* spun out a series of hypothetical problems that might result from a finding that a cleaning contractor and its clients were joint employers, in fact, Local

32BJ's experience demonstrates that these hypothetical concerns are unfounded. When cleaning contractors and their clients bargain together, they have not demonstrated any trouble formulating coherent bargaining proposals, or providing meaningful responses to Union demands. There are some issues that clients care more about than contractors, and vice versa, but those differences are in the nature of differences that might be present in any employer bargaining committee – for instance, a finance manager might have different concerns than an operations manager or a human resources manager.

Joint employer bargaining benefits both employers and workers. The contractors and the building owners both want the owners to take part in collective bargaining because ultimately the building owners will pay the costs of any collective bargaining agreement. The contractors don't want to agree to expenses that they can't pass on to their clients, and the owners don't want to be saddled with costs that they didn't agree to pay. The building owners want to make sure they are not overcharged, but they also often want to ensure that money paid to a cleaning contractor gets passed through to workers rather than pocketed as profit by the contractor. By taking a direct role in labor negotiations, building owners can protect both of these interests.

And, contrary to the unsupported speculation in the *Browning-Ferris* dissent, in the real world we have not noticed any problem when it comes to clients and contractors dividing up bargaining responsibilities. The owners tend to drive the discussion regarding economic issues and the contractors defer to them because the

contractors understand that ultimately any costs have to be passed along to the clients. By contrast, the contractors tend to take the lead on issues such as filling open positions or workload disputes. And, when issues arise mid-contract, the Union generally approaches the contractor first, and the contractor lets the Union know if there is a need to involve the client.

6. The Proposed Rule Fails to Acknowledge How Current Board Law and Existing Contracting Practices Address the Liability Concerns of Potential Joint Employers.

In the notice of proposed rulemaking, the Board majority expresses concern about exposing business partners to joint and several liability, 83 FR 46686, but nowhere in the proposed rule does the Board even acknowledge how *Capitol EMI Music,* 311 NLRB 997 (1993) already effectively addresses this concern. Further, the proposed rule does not consider that potential joint employers may easily contract around these liability concerns.

In *Capitol EMI,* the Board held that a joint employer is not automatically jointly and severally liable for the acts of its coemployer. Instead, where a worker is fired in violation of the Act, the nonacting joint employer can avoid liability by showing that it neither knew, nor should have known of the reason for the other employer's action, or that if it knew, it took all measures within its power to resist the unlawful action. Applying this standard, in *Tradesmen Intl.,* 351 NLRB 579 (2007), the Board found no joint and several liability where the nonacting joint employer had no reason to know that a worker was fired because of his union activity. Likewise, in *America's Best Quality Coatings Corp.,* 313 NLRB 470 (1993),

the Board found that a company that recruited and supplied candidates for employment was not jointly liable with its coemployer for its coemployer's decisions to lay-off and delay recalling certain employees.

Apart from the protections afforded to joint employers in the *Capitol EMI* decision, before changing the definition of joint employer to help potential joint employers avoid liability, the Board should consider the extent to which entities can address this problem simply by altering their contracts. If a client is concerned that by hiring a contractor, it might potentially incur liability as a joint employer, the client may simply require the contractor to indemnify it for any liability that flows from the contractor's actions. Businesses routinely include these types of provisions in contracts. Any discussion of this issue must take into account that in almost every case the direct employer will have less power than the putative joint employer that it does business with. Thus, the putative joint employer will almost certainly be able to insist upon an indemnification clause, thereby solving any "problem" that the Board majority has identified.

7. <u>The Proposed Rule Doesn't Take Into Account the Realities of Industries Like Commercial Cleaning</u>.

There are several ways in which the proposed rule fails to take account how industries like commercial cleaning actually work.

A. The proposed rule fails to take into account the power dynamic between clients and contractors in the cleaning and security industries:

The proposed rule provides that a putative joint employer's contractual authority to control terms and conditions of employment is insufficient unless there

is evidence that the authority had been exercised in a "substantial" way. The examples, which are intended to clarify, highlight the shortcomings with this approach. Example 11 explains that the right to discipline a contractor's employees will support a joint employer relationship where (1) the client has the right to cancel its contract on short notice without cause; (2) the client has referenced its right to cancel the contract while lodging complaints about individual workers; and (3) "the record indicates" that the contractor would not have disciplined or would have imposed lesser discipline on the worker in the absence of the client's input. One problem with this example is that in the real world there would be no need for a client to reference its right to cancel the contract because the contractor would be acutely aware of that right. Cleaning contractors and security contractors understand that their livelihood depends upon keeping their clients happy, and they know they their clients can cancel their contracts at any time. The power that large clients have over cleaning or security contractors is like the power that employers have over workers. *Cf. Intl. Assn. of Machinists v. NLRB,* 311 U.S. 72, 78 (1940)("Slight suggestions as to the employer's choice between unions may have telling effect among men who know the consequences of incurring the employer's strong displeasure"). So, if a client lodges a complaint about a particular worker, concern about keeping the client happy will color the contractor's entire investigation, and it doesn't necessarily matter whether the client specifically requests that the worker be fired. Also, if a client has lodged a complaint about a

worker, it's not clear what the proper comparator would be for determining what would have happened if not for the client's input.

Another problem with trying to sort through whether the client has actually exercised its contractual right to remove workers, is that the inquiry will likely take place months, if not years, after any particular incident. If a Union names a putative joint employer in an RC petition or in a ULP charge, any inquiry under the proposed standard would presumably look back at least two or three years to see how often the putative joint employer had exercised its contractual authority. Each incident would then require a separate mini-trial to try to figure out the counterfactual of what the contractor would have done in the absence of input from the client.

B. The proposed rule fails to take into account how contract rates are set in industries where the contractor is essentially only providing labor.

The proposed rule offers two examples of how a client might exercise some control over wages and benefits of its contractor's employees, but the examples are unrealistic. In Example 1, the contract sets a maximum reimbursable labor expense "while leaving Company A free to set the wages and benefits as it sees fit." In Example 2, "Company B establishes the wage rate that Company A must pay to its employees." In the cleaning and security industries, there is generally no practical difference between Example 1 and Example 2. In most cases, the contract price will be set based on the contractor's representations about labor costs, but the contract itself may not explicitly set forth the wage rate. It is not clear from Example 1 if the intent is to say that Company B is not a joint employer as long as

Company A has any discretion to alter the mix between wages and benefits even if Company A has no discretion to increase the combined total of wages and benefits. If that was the intent, it is absurd to say that in that circumstance Company B has not exercised control over the wages and benefits of Company A's employees. It is also at odds with the policy underlying the NLRA. Congress intended that workers would be able to raise their wages through collective bargaining, not merely that they could reallocate money they are already receiving. Furthermore, in Example 1, depending upon where the maximum reimbursable cost is set, it may preclude any bargaining over wages, and at a minimum, it will almost certainly meaningfully affect the employees' wages.

C. The Proposed Rule Fails to Acknowledge That in Many Occupations, Supervision Does Not Involve Telling Workers How to Perform Their Jobs.

While the proposed rule does not specifically address the type of supervision required to make a joint employer finding, it resurrects language used in earlier cases to narrow the circumstances where the Board would make a joint employer finding. Any joint employer standard should take into account that in many occupations, supervision does not involve telling workers how to perform their jobs. The Board recognized this for cleaners in *Syufy Enterprises,* 220 NLRB 738 (1975). There, the Board observed that "while janitorial tasks may be routine they often also are of such a nature that they require a meticulous attention to detail and vigilant if not constant supervision." *Id.* at 740. In fact, in the commercial cleaning

industry, supervision generally consists of checking work after-the-fact and asking workers to redo any tasks that were not performed properly.

There are many other occupations where supervision does not generally include telling someone how to perform their work. The First Circuit recognized in *Holyoke Visiting Nurses Assn. v. NLRB,* 11 F.3d 302 (1st Cir. 1993) that even though nurses hired through a referral agency were professionals who did not need instruction about how to perform their work, "that does not negate the power of supervision and direction that Holyoke exercised over them once they reported to work." *Id.* at 307.

8. **Routine Components of Contracting Often Implicate Terms and Conditions of Employment.**

In remanding the *Browning-Ferris* case, the D.C. Circuit directed the Board to clarify which types of indirect control would be relevant in a joint employer determination. In doing so, the court observed that "routine contractual terms, such as a very generalized cap on contract costs, or an advance description of the tasks to be performed under the contract, would seem far too close to the routine aspects of company-to-company contracting to carry weight in the joint-employer analysis." As the Board considers this guidance, it must bear in mind that in some cases a "routine contractual term" will directly implicate the terms and conditions of employment. This is particularly true in industries such as commercial cleaning or security where the cost of a contract is almost entirely the cost of labor.

If a client is purchasing a product or a combination of goods and services, then a "generalized cap on contract costs" might not directly implicate the terms

and conditions of employment for the employees of the contractor because the contractor would have a variety of options to stay within the cap on costs. But, on the other hand, where the client is purchasing cleaning or security services, a cap on contract costs effectively means a cap on wages and benefits, and thus, it does directly implicate the essential terms and conditions of employment.

At the same time, the Board can easily alleviate the concerns raised by Judge Randolph regarding an individual who hires a lawn service company. It's true that if he owned a vast estate and, as a result, hired a lawn service company to work on his premises full-time, and he set the hours of work, the wage rate, and required the use of certain equipment, he would be a joint employer. But, if he only paid the lawn service company for two hours a week, and the same employees who worked on his property also worked for many other clients, then he would not be their joint employer. The question is how much control a particular client has over the terms and conditions of the contractor's employees, and the more time the contractor's employees spend on the client's premises, the more likely the client will be their joint employer. Figuring out the precise place to draw the line is something better left to adjudication where the Board has a full record with all the relevant facts.

9. <u>Collective Bargaining Can Be Meaningful Even if it is Limited in Scope</u>.

Twenty-four years ago in *Management Training Corp.,* 317 NLRB 1355 (1995), the Board recognized that "judging in each case the employer's ability to bargain about certain specified topics invites lengthy litigation and controversy which the parties and the Board can ill afford." *Id.* at 1358. Since the Board

decided *Management Training,* unions have often bargained with government contractors even though the governmental entity controls some of the terms and conditions of employment. While this is less than ideal, the bargaining can still be "meaningful." In fact, in *Browning-Ferris,* the dissenting Board Members cited *Management Training* for the proposition that bargaining can still be meaningful even if an employer lacks control over a substantial number of essential terms and conditions of employment. *Browning-Ferris,* slip op. at 43 (Members Miscimarra and Johnson dissenting). The difference between *Management Training* and the Board's approach to the joint employer issue is that the bargaining in *Management Training* was circumscribed because the Board lacked jurisdiction over one of the employers. Thus, the choice was between limited bargaining and no bargaining, and clearly limited bargaining was preferable. By contrast, if there is no jurisdictional bar, the Board should not artificially narrow the scope of bargaining.

Moreover, experience under *Management Training* shows that bargaining over a limited range of terms and conditions can be "meaningful." In addition, there is no evidence that *Management Training* has led to a flood of Board cases where unions have tried to force employers to bargain over issues that were out of the employer's control. At the same time, trying to determine how many terms and conditions, or which terms and conditions a putative joint employer must control in order for bargaining to be "meaningful" is impractical, if not impossible. For this same reason, the Board should follow the advice of former Board Member Raudabaugh and consider a putative joint employer's involvement in determining

all terms and conditions, rather than limiting the inquiry to "essential" terms. *See Pitney Bowes, Inc.,* 312 NLRB 386, 386, n.1 (1993). At a minimum, if the Board continues to look to "essential" terms, the Board should follow the approach it took in *Browning-Ferris,* where it explained that essential terms include not only wages and benefits, and hiring, firing, and discipline, but also include scheduling, assigning work, setting staffing levels, controlling overtime, and more.

Even when unions and employers have had the opportunity to bargain over the full range of issues, strikes and lockouts have often occurred or been extended over a single issue. *See, e.g., TNS, Inc.* 309 NLRB 1348 (1992)(workers struck over health and safety); *Gazette Publishing Co.,* 101 NLRB 1694, 1698 (1952)(workers struck in support of proposal prohibiting employer from firing workers without just cause); *Eastern Massachusetts Street Railway Co.,* 110 NLRB 1963, 2004 (1954)(union spokesperson stated that reinstatement of 19 employees was sole remaining strike issue in a strike affecting 1,700 employees). Obviously, in any case where a single issue has led to a strike, bargaining over that issue was certainly viewed as "meaningful" by the parties.

If an entity has control over or co-determines any terms and conditions of employment, the Board should find that the entity is an employer, and it should allow the parties to decide whether bargaining will be fruitful. If an entity has no control over particular terms and conditions, it can just notify the union that its co-employer has exclusive control over those terms. Unions have nothing to gain by trying to bargain over an issue that an entity does not control.

10. **<u>The Challenge of Determining When an Entity is a Joint Employer Does Not Lend Itself to Rulemaking</u>.**

Many years ago, the Supreme Court observed that a

> problem may be so specialized and varying in nature as to be impossible of capture within the boundaries of a general rule. In those situations, the agency must retain power to deal with the problems on a case-by-case basis if the administrative process is to be effective. There is thus a very definite place for the case-by-case evolution of statutory standards.

SEC v. Chenery Corp., 332 U.S. 194, 203 (1947). The determination of when an entity is a joint employer is exactly this type of problem. As the Board has acknowledged in promulgating the proposed rule, "the Board's joint-employer standard … must be consistent with the common law agency doctrine." 83 FR 46683. In *Browning-Ferris,* the Board recognized that in light of the multi-factor common law test for determining the existence of an employment relationship, the Board "cannot attempt today to articulate every fact and circumstance that could define the contours of a joint employment relationship." *BFI,* slip op. at 16.

The examples included in the proposed rule only hint at the wide variety of settings where the joint employer issue arises. For instance, when a building owner contracts for security services, the contract typically provides a fixed number of workers and the precise hours of coverage. Thus, when the building owner agrees to a price for that contract, it is necessarily codetermining the wages paid to the security officers who provide the service. By contrast, there may be other services where the price of the contract leaves the contractor with a great deal of flexibility over how to provide the service.

Rulemaking might make sense if it were possible to replace a multi-factor test with a bright-line rule, but the proposed rule makes clear that this is not the case. Instead, the proposed rule would replace a multi-factor test with a different multi-factor test. And, even if the rule included twenty-four or thirty-six examples instead of twelve, it would inevitably leave many unanswered questions since it cannot possibly anticipate and account for the "specialized" and "varying" nature of circumstances where the joint employer issue arises.

Conclusion

The Board should abandon the proposed rule because it is at odds with the policies underlying the Act, it will not foster predictability and consistency, and it will make it more difficult to resolve labor disputes.

January 28, 2019

SERVICE EMPLOYEES INT'L
UNION, LOCAL 32BJ

By: /s/

Andrew Strom
David Prouty
Office of the General Counsel
SEIU Local 32BJ
25 West 18th Street
New York, NY 10011

SEIU Constitution
(2020)

UNIONS FOR ALL

SEIU 2020 Constitution and Bylaws

AS ADOPTED at the 2020 Convention

Service Employees International Union, CTW, CLC

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CONSTITUTION AND BYLAWS

PREAMBLE

As almost every improvement in the condition of working people has been accomplished by the efforts of organized labor and as the welfare of wage, salary, and professional workers can best be protected and advanced by their united action in one International Union, we have organized the Service Employees International Union and have adopted the following Constitution:

SEIU MISSION STATEMENT

We are the Service Employees International Union, an organization of more than 2.1 million members united by the belief in the dignity and worth of workers and the services they provide and dedicated to improving the lives of workers and their families and creating a more just and humane society.

We are public workers, health care workers, building service workers, office workers, professional workers, and industrial and allied workers.

We seek a stronger union to build power for ourselves and to protect the people we serve.

As a leading advocacy organization for working people, it is our responsibility to pursue justice for all. We believe in and will fight for a just society where all workers are valued and people respected, where all families and communities thrive, and where we leave a better and more equal world for generations to come.

Vision for a Just Society

People of every race, ethnicity, religion, age, physical ability, gender, gender expression, and sexual orientation, we are the standard-bearers in the struggle for social and economic justice begun nearly a century ago by janitors who dared to dream beyond their daily hardships and to organize for economic security, dignity, and respect.

Our vision is of a union and a society:

Where all workers and their families live and work in dignity.

Where work is fulfilling and fairly rewarded.

Where workers have a meaningful voice in decisions that affect them and have the opportunity to develop their talents and skills.

Where the collective voice and power of workers is realized in democratic, equitable and progressive unions.

Where union solidarity stands firm against the forces of discrimination and hate, against structural racism, and against the unfair employment practices of exploitative employers.

Where working people can live in safe and healthy communities.

Where government plays an active role in improving the lives of working people.

To achieve this vision:

We must organize unorganized service workers, extending to them the gains of unionism, while securing control over our industries and labor markets.

We must build political power to ensure that workers' voices are heard at every level of government to create economic opportunity and foster social justice.

We must provide meaningful paths for member involvement and participation in strong, democratic unions.

We must develop highly trained, motivated and inclusive leaders at every level of the union who reflect the diversity of the membership and the communities where we organize.

We must bargain contracts that improve wages and working conditions, expand the role of workers in workplace decision-making, build a stronger union, and build stronger and healthier communities.

We must build coalitions and act in solidarity with other organizations who share our concern for social, environmental, racial, and economic justice.

We must engage in direct action that demonstrates our power and our determination to win.

We must hold corporations and capital accountable for the common good.

We must commit to dismantling structural racism which holds us back from achieving the unity and strength we need.

We must pave the way for immigrant justice.

We must always be open to change that enables us to adapt and be more effective in an ever changing world.

To accomplish these goals we must be unified—inspired by a set of beliefs and principles that transcends our social and occupational diversity and guides our work.

We believe we can accomplish little as separate individuals, but that together we have the power to create a just society.

We believe unions are the means by which working people build power—by which ordinary people accomplish extraordinary things.

We believe our strength comes from our unity, and that we must not be divided by forces of discrimination based on gender, race, ethnicity, religion, age, physical ability, sexual orientation, or immigration status.

We believe our power and effectiveness depend upon the active participation and commitment of our members, the development of inclusive SEIU leaders, and solidarity with each other and our allies.

We believe we have a special mission to bring economic and social justice to those most exploited in our community—especially to women and workers of color—and to dismantle structural racism against Black Americans.

We believe our future cannot be separated from that of workers in other parts of the world who struggle for economic justice, a decent life for their families, peace, dignity and democracy.

We believe unions are necessary for a democratic society to prevail, and that unions must participate in the political life of our society.

We believe we have a moral responsibility to leave the world a more just, healthy and safe place for our children—and everyone's children.

Article I

NAME

Name and Organization

This organization shall be known as the Service Employees International Union, affiliated with Change to Win and the Canadian Labour Congress, and shall consist of an unlimited number of Local Unions chartered by it, and the membership thereof, and such

affiliated bodies as may be established from time to time. In order to add the strength of this great union to the efforts of its members at every level of the Union, the name of every Local Union and affiliated body shall begin with "SEIU."

Article II

OBJECTS AND PURPOSES

Goals of the Union

The objects and purposes of this International Union shall be to benefit its members and improve their conditions by every means, including but not limited to:

Securing economic advantages

A. By securing economic advantages, including better wages, hours and working conditions, through organization, collective bargaining, legislative and political action, and the utilization of other lawful means;

Organizing and uniting working people

B. By organizing and uniting in this International Union all working men and women eligible for membership herein;

Engaging in activities that advance union's standing in community and labor movement

C. By engaging in all such civic, social, political, legal, economic, cultural, educational, charitable, and other activities, whether on local, national, or international levels, as will advance this International Union's standing in the community and in the labor movement and further the interests of this organization and its membership, directly or indirectly;

Collective bargaining

D. By advancing and strengthening the rights of working men and women to bargain collectively, and introducing innovative ways to carry out this work;

Providing benefits and advantages

E. By providing benefits and advantages to individual union members, officers, and employees through education, training, access to new technology, member resource centers, a 21st century communications system, pensions, and death and welfare benefits;

Helping Local Unions coordinate

F. By helping Local Unions to share experiences, pool resources, learn from each other's best practices, and be accountable to each other;

Cooperating with labor and other organizations

G. By cooperating with and assisting, by moral, monetary or other means, other labor organizations, whether or not affiliated with this International Union, or any other groups or organizations, having objectives which are in any way related or similar to those of this International Union, or which are of a nature beneficial to this International Union or to its members, directly or indirectly;

Safeguarding the Union

H. By strengthening and safeguarding this International Union by every lawful means so that it may carry out its purposes, objects and obligations;

Utilizing Union's resources to achieve its goals

I. By utilizing, in every lawful way, including but not limited to every kind of use, expenditure and investment, the property and funds of this International Union, in order to achieve its purposes and objects and perform its obligations, and for such other purposes directly or indirectly furthering the interests of this International Union and its members;

Affiliating independent organizations

J. By affiliating workers in independent organizations through agreements which recognize the long history, unique needs and traditions, and successes of such organizations, and making every effort possible to provide such organizations the same types of services which have benefited our existing members;

Empowering Members

K. By empowering SEIU members to lead and participate in all aspects of the Union's program to secure a better future for all, including organizing, bargaining, political work, direct action, and community partnerships.

Creating new forms of worker organization

L. By creating new forms of worker organization to build collective economic and political power for working people; and

Building a wider movement

M. By building a wider movement for justice.

Article III

JURISDICTION AND MEMBERSHIP

Jurisdiction over Local Unions and affiliated bodies

Section 1. The International Union shall be composed of and have jurisdiction over its affiliated bodies and all Local Unions composed of working men and women who are employed or engaged in any phase of private, nonprofit or public employment, including without limitation employees of colleges, schools or universities, public employers (including cities, counties, states, provinces, territories, commonwealths, governmental districts, federal agencies, and multiple agencies or authorities and any subdivisions thereof), institutions or agencies, hospitals, nursing homes or other health facilities, and private and public utilities, department stores, industrial plants, law enforcement agencies, insurance companies and all employees thereof, including clericals, technicians, professionals, paraprofessionals and paramedicals, or those who are engaged in maintenance, sales, servicing, protection or operation

of all types of institutions, buildings or structures, commercial, mercantile or other establishments, edifices and grounds, and their environs, whether private, public or nonprofit, and all categories of employees therein and thereabout, including places of assembly, amusement, recreation, entertainment, and the presentation of sporting events.

The International President is empowered to construe the jurisdiction above defined to embrace all classifications of workers within any establishment anywhere in the world.

Section 2(a). The International Union shall have jurisdiction over the Local Unions and their members and over all affiliated bodies.

(b). The term "affiliated bodies" shall include State and Provincial Councils, Joint Councils, Service Councils, area, regional, or industry Conferences and Divisions, organizing committees, and provisional locals, and such other bodies on the local, national or international level as the International Union shall from time to time establish, but shall not include Local Unions. The term "Local Union" shall not include any other affiliated body.

Eligibility for membership

Section 3(a). Any person employed in any employment over which this International Union claims or exercises jurisdiction shall be eligible to be considered for membership in the International Union, a Local Union, organizing committee, provisional local or other authorized body of this organization. A Local Union may adopt additional membership requirements in the Local Union's Constitution and Bylaws. Jurisdiction may also be construed as including service within a Local Union or affiliated body of the International Union but each Local Union shall have the option to determine whether a person with such service may be eligible for membership in the Local Union. The International Executive Board may set eligibility requirements and other criteria (including rates of dues) for associate members, retired members (who do not have a Local Union retired member program), and other special categories of membership in the International or in affiliated bodies established in accordance with this Constitution.

Additional Local Union membership requirements

Special categories of membership

Eligibility of self-employed workers

(b). Self-employed individuals doing work within the jurisdiction of this International Union may be eligible for membership in Local Unions, subject to any additional requirements provided for in a Local Union's Constitution and Bylaws. The International President shall have the right to make all necessary rules and regulations respecting self-employed workers, under the jurisdiction of this International Union.

Special categories of Local Union membership authorized

(c). With the approval of the International Union, Local Unions may establish different categories of membership and rates of dues for persons represented and not represented by the Local Union for collective bargaining purposes including, but not limited to, life members, retired members and associate members.

Resolution of membership disputes

(d). Any dispute respecting membership or eligibility for membership shall be decided by the International President, with the Local Union or the applicant having a right to appeal his or her decision to the International Executive Board, in writing, within 10 days after notice of said decision is received.

Discrimination forbidden

Section 4. No member shall discriminate or advocate discrimination against any other member on the basis of race, creed, color, religion, sex, gender expression, sexual orientation, national origin, citizenship status, marital status, ancestry, age or disability.

Article IV

CONVENTION—REPRESENTATION THEREIN

International conventions

Section 1. The Convention of this International Union shall meet every four years and shall convene at such time and place as the International Executive Board may determine upon the recommendation of the International President. If circumstances outside of the International Union's control would make it impracticable, impossible or unsafe to convene the Convention, the International Executive Board may postpone the Convention and/or convene the Convention electronically or by other means consistent with applicable law. In the event of a postponement, all officers and members of the Board of Auditors shall remain in office until the Convention convenes and successors are elected pursuant to this Constitution and Bylaws.

Emergency provision

Special conventions

Section 2. Special Conventions may be called upon order of the International Executive Board to convene at such time and place as the Board may determine, and any and all business, including appeals from suspensions and decisions of the International Executive Board, may come before such Special Convention unless specifically limited by the call. Notice of such call shall be given to each Local Union at least 60 days prior to the date of the Special Convention along with the number of delegates to which said Local Union is entitled. All other provisions of this Article shall control all Special Conventions.

Eligibility and election of delegates

Section 3. The International Convention shall consist of duly elected delegates from their Local Unions, and none but delegates duly elected in accordance with all applicable statutes and the provisions of this Constitution and Bylaws shall be eligible to represent any Local Union at the International Convention or be entitled to vote except that all full-time International officers shall by virtue of their office be delegates with a voice but no vote to any Convention which is held during their term of office. All officers of a Local Union elected in conformity with all applicable statutes shall by virtue of such election be considered to be eligible delegates to any International Convention which may take place during their term of office. If at the time of the receipt of the Convention call it shall appear that such number of elected officers is less than the number of delegates to which the Local Union will be entitled at an International Convention, then arrangements may be made at the option of the Local Executive Board for nomination and secret ballot election, if required, of an additional number of eligible members as Convention delegates. Nominees for such position, if unopposed, shall be deemed elected without necessity for further procedures. The Local Union must designate in its Constitution and Bylaws the order in which the officers would be designated as delegates and alternates if less than all the officers are entitled to go to the Convention as delegates, provided that the chief executive officer of the Local Union shall, if otherwise eligible, be deemed entitled even in the event the Local Union fails to so designate. Any Local Union may by provision in its Local Constitution and Bylaws dispense with the foregoing provision that officers of the Local Union be ex officio delegates to the International Convention and may provide for nomination and, if required, secret ballot election of such delegates. Further, subject to applicable statutes, the International Executive Board may establish representation rules for delegates from groups of associate members or other special categories of membership or locals, which shall be set forth in the notice of Convention Call for the International or Special Convention. In no event shall the basis of representation for such groups be greater in numbers than the formula set forth in Section 4 below. Any voting rights extended to such delegates must comply with applicable law.

Ex-officio delegates

Additional delegates

Designation of ex-officio delegates and alternates

Representation of special categories of membership or locals

Convention delegate representation formula

Section 4. The basis of representation shall be one delegate for 500 members or less, and one additional delegate for every additional 500 members or major fraction thereof up to 5,000 members, and then one additional delegate for every additional 1,000 members or

major fraction thereof. A determination to be represented by less than a full complement of delegates shall not affect the Local Union's eligible votes. The Executive Board of a Local Union shall determine the number of delegates which shall represent it at the Convention. For the purpose of voting, the computation of membership for a Local Union shall not include life members, retired members paying less than the full dues required for working members of their Local Union, associate members or agency fee payers.

Exclusions

Retired member delegates

Section 5. In addition to the representation in Section 4, each Local Union with a retired members group of more than 500 members shall be entitled to one retired member delegate who shall serve with a voice and a vote at the Convention. Only retired members who have been members in good standing for 60 days prior to the Convention as either members, retired members, or life members of the Local Union shall serve as a retired member delegate. The retired member delegate shall be selected by the procedures provided for in the Local Union's Constitution and Bylaws for selecting such a retired member delegate or by the Local Union's Executive Board where no procedures are provided for in the Local Union's Constitution and Bylaws. The retired member delegate shall not be permitted to vote on dues or to nominate or vote for officers at the Convention.

Limitation on voting rights

No dual representation

Section 6. No delegate shall be permitted to represent more than one Local Union.

One month requirement

Section 7(a). No Local Union that has not been chartered, affiliated, and in good standing for at least one month prior to the opening of the Convention shall be entitled to representation in the Convention, and each Local Union to be entitled to said representation must have paid into the International treasury at least one month's per capita tax prior to the opening of the Convention.

Good standing requirement

(b). For a Local Union to be entitled to representation at the Convention, all moneys (i) due the International Union, whether by per capita tax or otherwise, (ii) due to any affiliated bodies, whether by per capita tax or otherwise, as determined or waived by the International Executive Board and (iii) all moneys due for any pension or welfare funds provided for in this Constitution, must be paid at least 15 days prior to the opening of the Convention.

Convention call

Section 8. The International Secretary-Treasurer shall issue a Call for the Convention and notify each Local Union at least 100 days prior to the date of the Convention of the number of delegates to which

said Local Union is entitled, and shall furnish to the Local Union a certification of delegation form containing the names of registered delegates to the Local Union and spaces for the signatures of the President and Secretary of the Local Union.

Certification of delegation forms (credentials)

Section 9. The certification of delegation form containing the names of delegates to the International Convention and bearing the signatures of the President and Secretary of the Local Union must be in the hands of the International Secretary-Treasurer at least 30 days prior to the opening of the Convention. A delegate who is eligible to attend the Convention shall not be disqualified because of the failure of a Local Union officer to forward the delegate's name on a certification of delegation form.

Deadline for receipt of credentials

Section 10. In addition to the delegates selected in the manner provided in Section 3 of this Article, a Local Union may provide for selection of such number of alternates as it may determine are reasonably required to serve if regularly elected delegates are unable to do so; such alternates shall be selected or elected in the manner provided in Section 3 of this Article. Each delegate or alternate must be a member of the Local Union employed in the jurisdiction of the Local Union. This requirement, however, shall not be construed to bar any member who is an officer or employee of the Local Union or of the International Union, or any affiliate thereof, or who is elected to public office or to a position with an organization with which this International Union is affiliated.

Alternate delegates

Membership requirement

Section 11. Any member who wishes to protest the election of any delegate or the right of any Local Union officer to serve as a delegate pursuant to Article IV, Section 3, must file a written protest with the International Secretary-Treasurer within 15 days after such election or after the decision by a Local Union that no election is required pursuant to Article IV, Section 3. Any such protest shall be referred to the Credentials Committee, in care of the International Secretary-Treasurer. The Credentials Committee may waive the time limit for filing protests upon a showing that the protesting member did not know of the basis for his or her protest within sufficient time to file a timely protest and he or she filed a protest immediately upon discovery of the basis for his or her protest. The Credentials Committee shall consider all timely protests and shall include its decision on all protests in its report to the Convention. It may, in its discretion, hold a hearing on any protest upon reasonable notice to all affected parties.

Protests of delegate elections

Computation of voting strengths

Section 12. The number of votes which each Local Union shall be entitled to vote in the Convention shall be determined by averaging the 12 most recent regular monthly per capita tax payments for members which are received by the International Union on or before December 31 of the year immediately preceding the calendar year in which the Convention is held. In the case of a newly chartered local without a twelve-month payment period before December 31, the number of votes shall be determined by averaging regular monthly per capita tax payments for members received by the International Union, up to a maximum of twelve months. The computation of voting strength shall not include associate members, life members or agency fee payers. Where there are two or more delegates in attendance from one Local Union, the vote shall be divided equally between them. In the case of a newly chartered local union created as a result of a reorganization of members under Article XIV, the International Executive Board shall determine the computation of voting strength for the affected local unions in order that the members are included in the voting strength of only one local union.

Exclusions from voting strength computation

Credentials Committee

Section 13. The International President shall, before each Convention, appoint from the delegates-elect a committee of at least seven to act as a committee on credentials. The International President and International Secretary-Treasurer shall be members of said committee. All credentials shall be referred to this committee. This committee shall submit its report in writing to the Convention.

Convention resolutions

Section 14. All Resolutions to be acted upon by the Convention proposed by a Local Union must be submitted in writing to the International Secretary-Treasurer at least 30 days prior to the Convention and unless so submitted may not be considered by the Convention except on unanimous consent of the delegates present. Resolutions may be presented to the Convention by the International Executive Board at any time during the Convention without requiring unanimous consent.

Convention quroum

Section 15. Delegates representing one-fourth of the votes entitled to be cast at the Convention shall constitute a quorum for the transaction of business.

Interim rules

Section 16. The rules and order of business governing the preceding Convention shall be enforced from the opening of any Convention of this International Union until new rules have been adopted by action of the Convention.

Article V

ELECTION OF OFFICERS

Nomination and election of International Union officers

Section 1. All nominations for International officers shall be made in open Convention and elections shall be by roll call where there is more than one candidate for any office. The roll call shall be conducted by voice and/or open written ballot, as set forth in the Rules of the Convention. Officers shall be elected by plurality vote.

No nonmember support

Section 2. No candidate (including a prospective candidate) for any International office or office in a Local Union or affiliated body or supporter of a candidate may solicit or accept financial support or any other direct or indirect support of any kind from any nonmember of the International Union.

Protests of candidate eligibility or manner of conducting election

Section 3. Any member wishing to protest the election of any International Officer pertaining to candidate eligibility or the manner in which the election was conducted must lodge a protest in conformity with the requirements of the Rules of the Convention.

Other election protests

Section 4. Any member wishing to submit an election protest pertaining to any issue other than those governed by Section 11 of Article IV or Section 3 of this Article must file such protest within 15 days after the Convention. All such protests shall be filed with the International President. The International President shall endeavor to have a hearing held within 30 days of the filing of the protest, if the International President deems a hearing to be necessary, and shall attempt to render his or her decision within 30 days thereafter. Within 15 days after the final action of the International President, a petition for review may be filed with the International Executive Board. In the alternative, the International President may forward an election protest directly to the International Executive Board for decision.

Article VI

OFFICERS

International Union officers

Section 1. The officers of this International Union shall consist of an International President, an International Secretary-Treasurer, five full-time Executive Vice Presidents, 25 Vice Presidents (at least two of whom shall be members of Canadian Local Unions), and 40 Executive Board Members (at least two of whom shall be members of Canadian Local Unions and one of whom shall be a Retired Member).

The International President, the International Secretary-Treasurer, and the five Executive Vice Presidents shall be elected at large by all delegates assembled at the International Convention. Two Canadian Vice Presidents and two Canadian Executive Board Members shall be elected on the following basis: A Vice President and Board Member shall be nominated and elected from all of the provinces other than the Province of Quebec. A Vice President and Board Member shall be nominated and elected from the Province of Quebec only, provided, however, that the Vice President from Quebec and the Executive Board Member from Quebec may not be members of the same Local Union. These Canadian Vice Presidents and Executive Board Members shall be elected by the Canadian Council at its Convention composed of delegates elected in accordance with this Constitution and applicable law and which shall be held within 90 days prior to the International Convention at which the International Union officers are elected. All other Vice Presidents and Executive Board Members (including the Retired Member) shall be nominated and elected at large.

Canadian officers

IEB term of office

Section 2. These officers shall constitute the International Executive Board, and their term of office shall begin immediately following their election and they shall hold office for four years or until their successors are duly elected and qualify.

Duties

(a). Each Vice President and Executive Board Member shall be responsible for such duties as assigned by the International President.

Executive Committee

(b). The International President may appoint an Executive Committee from among the members of the International Executive Board. The Executive Committee shall meet at the call of the International President. The Executive Committee shall be charged with advising the International President on how best to carry out the administrative duties of his or her office, and with making recommendations to the International Executive Board on policies and programs for the International Union. The Executive Committee also may be delegated specific functions and powers of the International Executive Board under the Board's authority in Article XI, Section 6 (b). Minutes of all meetings of the Executive Committee shall be kept by the International Secretary-Treasurer, who shall render reports to the International Executive Board.

Advises President, makes recommendations to IEB

Board of Auditors

Section 3. Each regular Convention of this International Union shall also elect a Board of Auditors consisting of eight members. The

Board of Auditors shall examine and review the books and accounts of the International Secretary-Treasurer at least once during each twelve-month period, utilizing the assistance of Certified Public Accountants designated by the International President. Such review of the books and accounts of the International Secretary-Treasurer shall include the books respecting all properties and facilities under the custodianship of the International Secretary-Treasurer. A copy of such annual reports of the Board of Auditors shall be submitted to the International Executive Board. The Board of Auditors shall also give a written report to the International Convention. In the event of the unavailability or temporary disability of an Auditor, the remaining Auditors shall perform the duties set forth herein. The Auditors shall receive such per diem compensation and expense allowance as may be fixed by the International Executive Board.

Review books and accounts, reports to IEB and Convention

Section 4. No person shall be eligible for office in this International Union who has not been a member in continuous good standing for at least two years immediately preceding his or her election in the International Union or Local Unions chartered by this International Union or in any labor organization which becomes affiliated with this International Union. This requirement may be reduced by the International Executive Board to no less than 60 days if necessary to expand eligibility for office to members of organizations newly associated with the International Union pursuant to Article XI, Section 6. In the case of the Retired Member position on the International Executive Board, only retired members who have been members in good standing for two years prior to the Convention as either members, retired members or life members of the Local Union shall be eligible to serve. No person who has been convicted of a felony as defined in Section 504 of the Landrum-Griffin Act (or an indictable offense in Canada) shall, in accordance with the provisions of applicable law, be eligible to hold office in this International Union.

Qualifications for International Union offices

Section 5. Associate members, life members or those retired members paying less than the full dues required for working members of their Local Union shall not be eligible for nomination as an International officer, except that such retired members may be eligible for the Retired Member position on the International Executive Board.

Exclusions

Section 6. No full-time officer of the International Union may receive compensation of any kind, except for benefits paid by a pension plan, from any Local Union or from any entity owned or controlled by a Local Union. Notwithstanding the foregoing,

Multiple compensation barred

the International President is authorized to approve a temporary transition plan (not to exceed six months) for other new full-time officers transitioning from a Local Union to the International Union, provided that any such individual does not receive compensation from the International Union and a Local Union for the same time period.

Retired members advisory committee

Section 7. The International President shall appoint a Retired Members Advisory Committee which shall consist of leaders of local union retired members groups and retired International Executive Board Members. It shall be chaired by a retired member appointed by the International President.

Emeritus status

Section 8. The future grant of emeritus status to an International officer shall be limited to an individual who has been elected as International President at no fewer than three international conventions. Such status shall entitle the individual to be an honorary guest at the SEIU International Convention and he/she may be appointed by the International President as a delegate or alternate delegate on the SEIU delegation to a national or international federation convention. Additional assignments may be made by the International President, upon mutual agreement.

Article VII

FILLING VACANCIES

Filling officer vacancies

In the event of a vacancy in the office of International President by reason of death, resignation or otherwise, it shall be the duty of the International Secretary-Treasurer, in addition to his or her other duties, to assume the duties of International President. The International Secretary-Treasurer shall serve in this capacity for a period of not longer than 30 days during which time the International Executive Board shall be convened for the purpose of filling the vacancy for the unexpired term by majority vote. In the event of a vacancy in the office of International Secretary-Treasurer by reason of death, resignation or otherwise, it shall be the duty of the International President, in addition to his or her other duties, to assume the duties of International Secretary-Treasurer. The International President shall serve in this capacity for a period of not longer than 60 days during which time the International Executive Board shall be convened for the purpose of filling the vacancy for the unexpired term by majority vote. In the event of a vacancy among the Vice Presidents, or on the Board of Auditors, by reason of death,

President

Secretary-Treasurer

Vice Presidents, Board of Auditors

resignation or otherwise, the International Executive Board shall, within 90 days after such vacancy has occurred, fill the vacancy for the unexpired term by majority vote. In the event of a vacancy among the Executive Vice Presidents or International Executive Board Members, by reason of death, resignation or otherwise, the International Executive Board may in its discretion fill such vacancy for the unexpired term by a majority vote. In the event of a concurrent vacancy in both the office of the International President and the office of the International Secretary-Treasurer by reason of death, resignation or otherwise, the International Executive Board shall be convened in Washington, D.C., within 10 days upon the joint call of at least four International Vice Presidents for the purpose of filling the unexpired terms by majority vote. In the case of a vacancy in the office of International President, International Secretary-Treasurer or Executive Vice President, the vote of an officer on the International Executive Board (except for the full-time officers and the Retired Member) shall be proportionate to the numerical strength of his/her local, as determined by the Local's payment of per capita tax to the International Union, excluding associate members, life members, retired members paying less than the full dues required for working members of their Local Union, and agency fee payers. If more than one officer is from the same Local Union, the voting strength shall be divided equally among those officers for this purpose.

Executive Vice Presidents, Executive Board Members

Concurrent vacancies

Voting strength to fill certain vacancies

Article VIII

INTERNATIONAL PRESIDENT—DUTIES AND POWERS

Presides at Conventions, IEB meetings

Appoints committees, boards

Section 1(a). It shall be the duty of the International President to preside at the Convention of the International Union and at meetings of the International Executive Board, and conduct them in accordance with parliamentary rules and in conformity with this Constitution. The International President shall appoint all committees and boards and be a member ex officio of all committees and boards.

Casts deciding vote in case of tie

(b). The International President shall have the deciding vote in case of a tie on any question.

(c). The International President shall act to the best of his or her ability in furthering the purposes and objects of the organization and the interests of its members.

Supervises and directs Union affairs

(d). The International President shall have general supervision and direction over the affairs of the International Union. The International President shall be authorized to call and make arrangements for such meetings, seminars and conferences as he or she may deem necessary; and shall direct all departments, functions and programs of the International Union.

Supervises and directs organizing efforts

(e). The International President shall have general supervision and direction of the organizing efforts of this International Union. The International President shall have power to appoint organizers, representatives, coordinators and organizing committees and to make such loans or grant such subsidies to Local Unions and affiliated bodies as he or she deems necessary.

Authority for collective bargainig

(f). Consistent with the programs and policies adopted by the SEIU Convention delegates, the International President shall be empowered to negotiate and enter into national, regional, or areawide collective bargaining agreements, including company-wide or multi-employer agreements, and to coordinate activities toward this end in consultation with the Local Unions involved, and is authorized to require and direct coordinated bargaining among Local Unions. An industry division of the International Union also may recommend to the International President situations in which coordinated bargaining is warranted or where a comprehensive unionwide strategy of employer relations is needed for key strategic global, national or regional employers. Accordingly, the industry divisions shall develop a process to identify such circumstances and in each case, the proposed structure for carrying out the decisionmaking (including membership authorization for strike action and membership voting on contract ratification), and the financing of the bargaining process itself. The division's recommendation shall address whether there is a need for the delegation of bargaining authority to the International Union or to a national or regional bargaining committee, appointed by the International President. The affected locals shall pay for the expenses of their participation after their input into the elements of such financing.

Coordinated bargaining process

Bargaining committees

Authority to employ staff

(g). The International President shall be empowered to employ necessary staff and retain counsel, accountants and other professional personnel as he or she may require to assist in the duties of the office and to fix their compensation. He or she shall be empowered to fix the compensation of the International Executive Vice Presidents. With respect to the office of International Vice President and International Executive Board member, the

International officer salaries

International Executive Board has phased out salary entitlements and is authorized to adopt an alternative compensation policy that recognizes any financial hardship on locals by this change in policy, as well as additional responsibilities that may be assigned to particular individuals.

Authority to interpret the Constitution

(h). The International President shall have authority to interpret this Constitution and Bylaws and decide on all points of law submitted to him or her by Local Unions or the membership thereof, or by affiliated bodies, subject to appeal to the International Executive Board, and the next Convention.

Right to petition the President to appeal actions of a Local Union or affiliate body

Section 2. Any member or officer of a Local Union aggrieved by any action of his or her Local Union or affiliated body not covered by the provisions of Article XVII of this Constitution (including determinations of election protests) may petition the International President within 15 days after the act complained of, or may petition the International Executive Board, within 15 days after the action of the International President thereon, to review the action of the Local Union or affiliated body. The President will endeavor to have a hearing held within 30 days of the petition or protest, if the President deems a hearing to be necessary, and shall attempt to render his or her decision within 30 days thereafter.

Hearing to review actions of Local Union or affiliate body

Representing International Union at conventions

Section 3. The International President shall, by virtue of his or her office, represent the International Union at the conventions of labor organizations with which this International Union is affiliated and shall appoint all other delegates to such conventions.

Charters, audits, and vouchers

Section 4. The International President shall sign all charters and other official documents of this International Union; shall have the authority to direct an examination of the books and records of any Local Union or affiliated body; and shall draw vouchers on the International Secretary-Treasurer for such sums of money as his or her activities require, and the same shall be paid by the International Secretary-Treasurer.

Appointment of assistants

Section 5. The International President shall have power to appoint upon recommendation of the International Secretary-Treasurer such office assistants as may from time to time be required.

Monitoring finances

Section 6. All vouchers of the International Union shall be submitted to the International President for approval. The International President may at any time appoint a member of the Board of Auditors or such other representative or accountant as he or

she may designate to examine any matter affecting the finances of the International Union.

Authority to impose trusteeships

Section 7(a). Whenever the International President has reason to believe that, in order to protect the interests of the membership, it is necessary to appoint a Trustee for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of this International Union, he or she may appoint such Trustee to take charge and control of the affairs of a Local Union or of an affiliated body and such appointment shall have the effect of removing the officers of the Local Union or affiliated body.

Powers and duties of trustee

(b). The Trustee shall be authorized and empowered to take full charge of the affairs of the Local Union or affiliated body and its related benefit funds, to remove any of its employees, agents and/or trustees of any funds selected by the Local Union or affiliated body and appoint such agents, employees or fund trustees during his or her trusteeship, and to take such other action as in his or her judgment is necessary for the preservation of the Local Union or affiliated body and for the protection of the interests of the membership. The Trustee shall report on the affairs/transactions of the Local Union or affiliated body to the International President. The Trustee and all of the acts of the Trustee shall be subject to the supervision and direction of the International President.

Moneys, books, property

(c). Upon the institution of the trusteeship, all moneys, books and property of the Local Union or affiliated body shall be turned over to the Trustee.

Bonding required of trustee

(d). The Trustee shall be bonded for the faithful discharge of his or her duties relating to the handling of funds or other property of the Local Union or affiliated body.

Financial responsibilities of trustee

(e). The Trustee shall take possession of all the funds, books, papers and other property of the Local Union or affiliated body. The Trustee shall pay all outstanding claims, properly proved, if funds are sufficient. When self-government is restored, the Trustee shall return all funds, books, papers and other property to the Local Union or affiliated body. If, however, the Local Union or affiliated body is dissolved by the revocation of its charter, then any balance remaining to the credit of the Local Union or affiliated body shall be forwarded

to the International Secretary-Treasurer and shall become the property of the International Union.

Procedure for imposing trusteeship

Appointment of hearing officer

(f). In order to ensure that no trusteeship is imposed without an adequate right to be heard or without other appropriate safeguards, prior to the imposition of a trusteeship the International President shall appoint a hearing officer or officers (who need not be a member or members of this organization), and shall issue a notice, which shall be distributed in a timely fashion, setting a time and place for a hearing, for the purpose of determining whether a Trustee should be appointed. Said hearing officer or officers shall issue a report and recommendations, orally, or in writing, to the International President, who shall thereupon make his or her determination; provided that where in the judgment of the International President an emergency situation exists within the Local Union or affiliated body, a Trustee may be appointed prior to a hearing; provided further that in an emergency situation, the International Executive Board shall appoint a hearing officer or officers (who need not be a member or members of the organization) who shall conduct such a hearing within 30 days after imposition of the trusteeship, and a decision by the International Executive Board shall be made within 60 days after the appointment of such Trustee. These time limits may be extended by the International President for good cause which decision shall be final and binding. Pending the International Executive Board's decision, the trusteeship shall remain in full force and effect.

Emergency trusteeship

Personal representative

Internal needs hearing

Monitor

(g). The International President may appoint a representative to meet with the officials of Local Unions or affiliated bodies and to attend any meetings of Local Unions or affiliated bodies where, in the judgment of the International President, there is a need to assist the Local Unions or affiliated bodies with respect to their internal needs. The International President may appoint a hearing officer to examine the internal needs of the Local Union or affiliated body, and to assist him/her in determining what remedial action(s), if any, should be implemented by the Local Union or affiliated body. At any time, the International President also may designate his/her representative as a Monitor with additional oversight responsibility to review compliance with the International President's recommendations and/or otherwise assist in addressing the internal needs of the Local Union or affiliated body. Among the internal needs to be considered is whether a Local Union or affiliated body has met applicable standards endorsed by the International Convention or satisfied such procedures, rules and/or regulations duly adopted by

the International Executive Board to carry out the goals set by the International Convention.

Officer assistance

Section 8. The International President shall have power to call upon any and all officers for assistance and advice when the occasion demands or requires it.

Duty to report

Section 9. The International President shall make a full report to each International Convention and at Executive Board meetings.

Article IX

DUTIES OF INTERNATIONAL SECRETARY-TREASURER

Record of proceedings

Section 1. The International Secretary-Treasurer shall keep a correct record of all the proceedings of the International Convention and of the International Executive Board.

Safeguarding money

Section 2. The International Secretary-Treasurer shall receive and collect all moneys due to the International Union, which shall be deposited in such banks as may be designated by the International Executive Board.

Charter applications

Section 3. The International Secretary-Treasurer shall conduct all official correspondence, receive all applications for charters, countersign and issue charters as may be granted, and have charge of the official seal.

Expenditures

Section 4. The International Secretary-Treasurer shall draw and sign or authorize the signing of all checks covering expenditures of the International Union, upon the co-signature or approval of the International President.

Membership records

Section 5. The International Secretary-Treasurer shall maintain records of the membership of the International Union and shall report to the International President and the International Executive Board as required.

Convention reports

Section 6. The International Secretary-Treasurer shall make a full report of all matters relating to his or her office to each International Convention.

Obligation to successor

Section 7. The International Secretary-Treasurer shall, at the end of his or her term of office, turn over to his or her successor in office all books, moneys, property and other belongings of the International Union.

Officer inspection of books

Section 8. The books and records of the International Secretary-Treasurer shall be open for inspection by the officers of the International Union.

Maintenance of Union records

Section 9. The International Secretary-Treasurer shall keep all records pertaining to income, disbursements, and financial transactions of any kind for a period of at least six years, or longer if required by applicable law.

Article X

DUTIES OF THE EXECUTIVE VICE PRESIDENTS

Supervision by President

Section 1. The International Executive Vice Presidents shall work under the supervision of the International President.

Duties assigned by President

Section 2. The International Executive Vice Presidents shall perform such duties as are assigned to him or her by the International President.

Article XI

DUTIES OF THE INTERNATIONAL EXECUTIVE BOARD

Meeting requirement

Section 1. The International Executive Board shall hold sessions at least two times within each year. The meetings of the International Executive Board shall be upon the call of the International President at times and places which, in his or her judgment, best serve the needs of the International Union. Whenever a majority of the International Executive Board requests the International President to call a meeting thereof, it shall be mandatory upon him or her to do so. A meeting of the International Executive Board may be held by telephone or video conference at the discretion of the International President. All necessary expenses for such meetings shall be paid by the International Union. The International Executive Board shall have power to transact all business of the International Union between Conventions. A majority of the members of the International Executive Board shall constitute a quorum for the transaction of its business.

Majority may initiate meeting

Quorum

Notification to Local Unions

Section 2. The International Secretary-Treasurer shall notify all Local Unions and affiliated bodies of the time and place of

Right to present grievances

International Executive Board meetings. Any Local Union or affiliated body may present any grievance or matter which it deems to be for the welfare of the International Union or any of its Local Unions or affiliated bodies at any meeting of the International Executive Board.

Decide appeals

Section 3. The International Executive Board shall act upon and decide all appeals presented to it by Local Unions or individual members or by affiliated bodies.

Bonding

Section 4. The International Executive Board shall provide for the bonding of officers and employees of the International Union in accordance with the requirements of applicable statutes or as the International Executive Board shall deem necessary.

Polling

Section 5. When the International Executive Board is not in meeting and the International President deems it necessary for the International Executive Board to act promptly, the International Secretary-Treasurer shall poll the International Executive Board and such action and vote may be taken by letter, telegram, teletype, facsimile, telephone or any other appropriate means of communication. Such action so taken on vote of the majority of the International Executive Board shall constitute official action of the International Executive Board.

Executive Board is governing body

Section 6. The International Executive Board shall, subject to action of an International Convention, be the final authority and the highest governing body of this International Union.

General authority of Board

The Board is hereby authorized and empowered to take any and all lawful action not inconsistent with this Constitution to safeguard and protect this International Union, the rights, duties and privileges of the officers and members of this International Union and its Local Unions or any of its affiliated bodies; to guide, manage, conduct, and direct the activities, affairs, and functions of this International Union and to, in every way, including but not limited to expenditure, investment, and management, utilize the property and funds of this International Union towards the fulfillment of the purposes and objects of this organization. In addition to the general and specific powers conferred upon the Board elsewhere in this Constitution, and in addition to any lawful powers appertaining thereto, the Board is specifically authorized to:

Establishment of rules and regulations

A. Establish, adopt, prescribe and order such procedures, rules and regulations, consistent with this Constitution, as are required for the direction and management of the affairs of this International

Union and its constituent subordinate bodies and to repeal or amend the same;

Delegation of powers

B. Delegate, consistent with this Constitution, to any of its officers or agents any of the functions and powers herein set forth, except the power to fill vacancies in office;

Authority regarding salaries for employees and agents.

Establishment of trust funds

C. Establish and/or approve the payment of salaries, wages, expenses, allowances, and disbursements for its officers, agents and employees; and adopt, maintain or amend any pension or health and welfare trust agreement or plan which it deems to be in the interest of the officers and employees of the International Union or its Local Unions or other affiliated bodies or employees represented by the International Union or any of its Local Unions or other affiliated bodies and the families of said officers and employees, provided that no accrued rights of a participant shall be impaired;

Authority to take legal action

D. Take such legal action as it deems necessary to protect the interests of this International Union, its officers, representatives, agents, employees, members, or constituent Local Unions or its affiliated bodies, including the initiation, prosecution, and defense of lawsuits and arbitrations, the settlement or compromising of any claim whether defended or prosecuted, and the payment of expenses and costs of all such proceedings and actions; or abstain from enforcing any claim;

Investment of funds

E. Invest or reinvest the funds of this International Union in such property, real or personal, tangible or intangible, as it shall consider desirable for the effectuation of the purposes and objects of this International Union and the interest of its members, or permit such funds to remain uninvested;

Acquisition of property

F. Lease, buy, and in every lawful manner acquire, on behalf of this International Union, all property, rights, and privileges, as it shall think desirable for the effectuation of the purposes and objects of this International Union and the interests of its members, at such prices, terms and conditions as this Board shall, in its discretion, determine;

Disposal of property

G. Sell, lease, rent, mortgage, pledge, exchange, or otherwise dispose of any property, real or personal, tangible or intangible, and any rights or privileges appertaining or belonging to or in the possession of this International Union or its membership, whenever in its discretion the Board considers that the purposes and objects of this International Union and the interests of its members will

be thereby effectuated for such prices and upon such terms and conditions or for such consideration as the Board in its discretion determines;

Authority to borrow

H. Obtain loans from any banks, firms, corporations or institutions, upon such terms and conditions as the Board shall determine, and for the sums so borrowed, issue its promissory notes or other evidence of indebtedness;

Mortgages and trusts

I. Enter into, issue and create, effectuate and terminate such mortgages, deeds, trust agreements, and negotiable instruments, however secured, as the Board in its discretion believes will effectuate the objects and purposes of this International Union and the interests of its members;

Affiliating with other organizations

J. Affiliate this International Union or otherwise enter into or discontinue a relationship with such organizations and bodies, local, national and international, as the Board believes will effectuate the objects and purposes of this International Union and the interests of its members;

Bringing other labor organizations into SEIU

Waiving constitutional provisions

K. Affiliate to this International Union by merger, partnership, alliance, consolidation, charter or otherwise any existing labor organization or other organization as the Board may approve and in connection therewith may grant to such labor organization until the next International Convention such executive positions and/or representation on the International Executive Board in the form of additional Vice Presidents and Executive Board Members in excess of the total number provided in Article VI, Section 1. The terms and conditions of such relationships, including affiliations, partnerships, alliances, mergers, or consolidations may include waiver of other provisions of this Constitution for such periods of time as shall be set forth in the agreement;

Local Union jurisdiction

L. Decide questions of jurisdiction relating to Local Unions and other bodies affiliated to the International Union, and conclude organizational and jurisdictional agreements with other labor organizations;

Authority to lend

M. Make such loans, either direct or indirect, whether to individuals or organizations, as are lawful and not inconsistent with this Constitution, with such security and with such arrangement for repayment as the Board may deem appropriate, and as the Board considers will effectuate the purposes and objects of this International Union and the interests of its members;

Agency and other fee procedures

N. Establish, adopt and order such procedures as it deems necessary for the International Union, Local Unions, and affiliated bodies pertaining to agency shop fees, fair share fees and similar fees, and repeal or amend the same; and

New arrangements to expand outreach

O. In order to build strength for working women and men in the 21st century, the International Executive Board is authorized to enter into new types of arrangements including, but not limited to, partnerships, affiliations and/or alliances on a national or global scale, for expanding the Union's outreach to, and involvement with, organizations and people with common goals. Accordingly, the authority set forth in this Article should be broadly interpreted to carry out the intent and purpose of this mission as well as to take advantage of new opportunities available through advances in technology and the internet. In entering such arrangements, the International Executive Board may grant such waivers from the provisions of the Constitution until the next Convention as will advance this objective.

Constitutional authority

The International Executive Board shall be the final authority in fulfilling, interpreting and enforcing this Constitution, subject to review by an International Convention.

Protection from liability

The opinion of any attorney, accountant, or other professional consultant or expert hired pursuant to this Constitution shall be full and complete authority and protection with respect to any action taken, suffered or omitted by this Board or any member thereof in good faith and in accordance with such opinion. The International Executive Board, or any member of it, shall not be liable to any person or organization, for any act, which is not willful misconduct or in bad faith, done by this Board or said member in effectuation of the purposes and objects of this Constitution and the interests of the members of this organization.

Article XII

STRIKES AND LOCKOUTS

Strike notification requirement

No Local Union or affiliated body shall strike without previous notification to the International President, or, where prior notice is not practicable, without notification as soon as possible after commencement of the strike, in which notice the Local Union or affiliated body has stated that it has complied with all applicable notice requirements. If the Local Union or the affiliated body fails to

give such notice, the International President may withhold sanction for the strike called by the Local Union or affiliated body. Based on the recommendation of the industry divisions of the International Union, the International Executive Board may limit this strike notification to fewer situations.

Article XIII

REVENUE

Per capita taxes

Section 1(a). The revenue of this International Union shall be derived from per capita tax, initiation fees, charter fees, assessments or from any other source that the International Executive Board may determine.

The per capita tax from Local Unions shall continue to be $7.65 per member per month on all dues received by the Local Union.

Retired, associate and organizing committee members

For a retired member, associate member or organizing committee member paying less than the full dues required for working members of his or her Local Union, the per capita shall be $1.00 per month.

The International Union shall not set aside any segregated funds from per capita tax payments received from Local Unions on behalf of retired, associate or organizing committee members.

Per capita tax for retired and associate members

Upon the recommendation of the International President, the International Executive Board shall have the authority to adjust the per capita tax required from Local Unions (i) for nonworking members, including retired members and associate members; provided, however, that notwithstanding the provisions of Article XV, Life Members granted such status pursuant to this Constitution on or before May 1, 2000, shall have no continuing dues obligations, but they shall nonetheless be eligible to enjoy all the benefits and privileges of retired members in the International Union, including continued participation in the International Union's Death Gratuity Program if otherwise eligible; and (ii) that are affiliated with another international union.

Political fund

(b). An amount of money which shall be determined annually by the International Executive Board shall be set aside from the per capita tax and shall be expended by the International Union directly or indirectly for political education and political action purposes, but solely in accordance with the provisions of applicable law.

Strike and Defense Fund

(c). For 2012, the International Union shall continue to set aside out of the per capita tax, the sum of 40 cents per member per month on all monthly dues received by the Local Union as a Strike and Defense Fund to aid Local Unions engaged in authorized strikes, in defending against lockouts, and in defending the integrity and welfare of the Local Union, as defined under criteria established by the International Secretary-Treasurer, and shall credit each Local Union with the amount which such Local Union has paid into the Strike and Defense Fund. 25 cents of the 40 cents shall be used by the International Union to maintain current programs and support the implementation of the 2012 Convention program.

Use of Strike and Defense Fund to support International program

Beginning January 1, 2013, the International Union shall use from the per capita tax the sum of 40 cents per member per month on all monthly dues received by the Local Union in the Strike and Defense Fund for the purpose of maintaining a fund to support the International Union's program to elect and hold accountable national public officials for a pro-working family agenda.

Such moneys shall not be used from or set aside out of per capita tax payments received from Local Unions on behalf of retired, associate, or organizing committee members.

Prior to January 1, 2013, a Local Union may request approval from the International Secretary-Treasurer to substitute an alternative payment plan for the 25 cents. This plan may include the option for the International Union to retain funds that would otherwise be paid back to the local union under Article XV, Section 18.

Withdrawals from Strike and Defense Fund

For any amounts accumulated in the Fund prior to January 1, 2013, subject to the criteria established by the International Secretary-Treasurer, a Local Union may after no less than one year of contributions draw on the Strike and Defense Fund, or from such other funds of the International Union as shall be determined by the International Executive Board, to the extent of the total unexpended funds remaining to its credit, plus an additional sum equal to the amount set aside out of its required payments in the preceding 12 months. Once such an additional payment has been drawn by the Local Union, no further payment shall be made to the Local Union pursuant to this Section. The International Executive Board is authorized to direct that a Local Union's 2012 contributions to the Strike and Defense Fund be used to satisfy the Local Union's outstanding financial liability to the International Union or, pursuant to a decision of the International Executive Board after appropriate

proceedings, to another affiliated body or Local Union if such liability is at least 90 days past due. In such circumstances, the Local Union will receive 15 days' notice before such action is initiated.

Secretary Treasurer interprets strike fund policy

Questions concerning the application or interpretation of this subsection shall be resolved by decision of the International Secretary-Treasurer, subject to appeal to the International Executive Board.

Unity Fund (except Canada)

(d). In addition to the per capita tax set forth in Section 1(a), each Local Union, except those based in Canada, shall pay to the International Union a per capita tax to finance the Unity Fund. Through the Unity Fund, all local unions will pool resources in order to have the new strength to win improved pay, benefits and security for members in the 21st century. This additional per capita tax per member per month shall be $5.00.

Low-wage worker exemption

Notwithstanding the above, this additional per capita tax for the Unity Fund shall not be paid on dues from any member who is paid gross wages of less than $433 per month. The additional per capita tax for the Unity Fund shall also not be payable on dues from members who have not achieved a first collective bargaining agreement.

Canadian Unity Fund

(e). Based on the recommendation of the Canadian Council, the International Executive Board may require each Local Union based in Canada to pay to the International Union a per capita tax in addition to the per capita tax set forth in Section 1(a) to finance a Canadian Unity Fund. Through this Unity Fund, all Canadian local unions will pool resources in order to have the new strength to win improved pay, benefits and security for members in the 21st century. The amount of the additional per capita tax shall be determined by the International Executive Board, based on the recommendation of the Canadian Council.

"Member" and "dues" defined

(f). For the purposes of this section, the term "member" shall include agency fee payer and Rand Formula payer and comparable fee payers, and the term "dues" shall include agency service fees, Rand Formula fees and comparable fees.

Payment of dues

Section 2. Dues of members are due and payable on or before the last day of the current month and in order for a member to be in good standing his or her dues must be paid on or before the last day of each month. All other financial obligations of the Local Union must likewise be paid on or before the last day of the month in which they fall due.

Maintenance of good standing by Local Unions

Section 3. For a Local Union to be considered in good standing, per capita tax and all other fees and payments must be paid by each Local Union to the International Union before the end of the month following the month in which the Local Union received dues or other payments on account of which per capita tax or fees are payable to the International Union. If the monthly per capita tax, or any part thereof, is not submitted by the end of the month following that in which it is due, the Local Union shall be deemed delinquent in its payment and shall be charged a late payment fee, at an interest rate to be determined periodically by the International Executive Board, on that portion of the per capita tax which has not been paid by the due date, except that the International President may waive this penalty charge for good cause shown. If a Local Union fails to make the payments herein required within 30 days of the date due, the International Secretary-Treasurer shall notify the Local Union that it is no longer in good standing and shall within 30 days thereafter refer the matter to the International President for such action as the International President shall deem appropriate, including without limitation, suspension of the Local Union, revocation of its charter, or the appointment of a Trustee as provided in Article VIII, Section 7 of this Constitution and Bylaws. The International President, and in the event of an appeal from his or her decision, the International Executive Board, may lift any suspension or stay revocation of the charter upon such terms and conditions as may be prescribed.

Sanctions for nonpayment

Priority of per capita payment

Section 4. No Local Union shall have any right to pay any bills before it pays its full obligation to the International Union each month.

Reporting requirements of Locals (membership lists)

Section 5(a). The Local Union by its Secretary-Treasurer shall forward to the International Secretary-Treasurer the correct names and addresses (including email address, home and cell phone numbers, if available) of all its members, and other membership information as specified by the International Executive Board. Each month it shall submit all changes of addresses; the names and addresses of all members initiated or readmitted, of all other persons from whom revenue is derived, and of those suspended for nonpayment of dues or for any other cause; and a correct list of those who take transfer or withdrawal cards. In addition, the International Union must be notified of the names and addresses of all officers elected to office within 15 days of such action. The proper ZIP code shall be included for each address. Each Local Union must provide the same membership list to the State Council with which

it is affiliated. Based on the recommendation of the International Secretary–Treasurer, the International Executive Board may approve a modification to this section which limits the frequency and/or content of this requirement. The International Union's use of the member information provided by Local Unions pursuant to this Section 5(a) shall be fully consistent with the use granted by the member and with applicable law.

Average gross wage rate of membership

(b). Upon request, each Local Union shall forward to the International Secretary-Treasurer, by April 1 of each year, information and supporting documentation showing the average gross wage rate of its membership for the previous calendar year. The Secretary-Treasurer may issue specific guidance on the nature of the supporting documentation required.

Examination of Local Union books and records

Section 6(a). Local Union officers or the officers of any other affiliated body shall furnish to any person designated by the International President to examine its books and records, all of its books, records, accounts, receipts, vouchers and financial data whenever requested. All Local Unions and other affiliated bodies shall promptly forward to the International Secretary-Treasurer copies of all annual audit reports and copies of all financial reports setting forth a statement of assets and liabilities and a statement of receipts and disbursements which are required by law.

Submission of annual audit reports

Records must be maintained for at least six years

(b). All records of a Local Union or other affiliated body pertaining to income, disbursements and financial transactions of any kind whatsoever must be kept for a period of at least six years or longer if required by applicable law.

Revocation of charter

Section 7. When the charter of a Local Union or other affiliated body is revoked, the Local Union or other affiliated body and its officers shall return all books, documents, property and funds to the International Union.

Canadian Local Union per capita taxes

Section 8. The revenue from per capita taxes paid by Canadian Local Unions shall be spent by International Union for activities that support Canadian Local Unions.

Article XIV

ISSUANCE OF CHARTERS

Application for charter

Section 1. Twenty-five or more persons within the jurisdiction of this International Union may apply to the International Secretary-

Treasurer for the issuance of a charter. In any event, the International President or the International Executive Board may issue a charter whenever it is deemed advisable. The application for a charter shall be accompanied by the required initiation fees and charter fee.

Local Union jurisdiction

Section 2. The International Executive Board shall establish the policy and procedures governing the issuance of charters and shall determine all questions of jurisdiction between Local Unions. Local Unions in existence at the time of the formation of the International Union shall retain the jurisdiction which they held at that time. If there be any contested question in connection with the matters referred to in this Section, action of the International Executive Board shall be after a hearing upon reasonable notice before it or a hearing officer or officers (who need not be a member or members of this organization) designated by the International Executive Board.

Consolidation and merger

Section 3. The International Executive Board may consolidate or merge existing Local Unions under such terms and conditions as the International Executive Board may determine when, in the opinion of the International Executive Board, the interests and welfare of the International Union and the membership thereof will be better served by such action.

Merger hearings

Section 4. Such merger or consolidation of existing Local Unions shall be conditioned upon the consent of the Local Unions or shall be effectuated after a hearing upon reasonable notice before the International Executive Board or a hearing officer or officers (who need not be a member or members of this organization) designated by the International Executive Board.

Provisional locals

Section 5. The International President may designate such coordinators and establish such organizing committees or provisional Local Unions for the purpose of organizing workers, and may establish other bodies for other purposes he or she deems appropriate, with or without requiring the payment of dues, initiation fees or per capita tax, as he or she may deem advisable, and the International President shall be authorized and empowered to name provisional officers for and to expend and control the finances of such organizing committees or provisional Local Unions or other bodies. The International President shall thereafter report such matters to the International Executive Board.

Article XV

DUTIES OF LOCAL UNIONS

Bonding of Locals

Section 1. All Local Unions and affiliated bodies shall secure and maintain surety bonds in the amounts and the form required by applicable statutes. The International Secretary-Treasurer may direct an increase in the amount of any bond whenever he or she deems it necessary and advisable and may direct bonding by any Local Union not required by statute to secure a bond.

Eligibility requirements for Local officers

Section 2. No person shall be eligible for nomination as an officer, member of the Executive Board, delegate, or any other office in a Local Union who has not been a member in continuous good standing in the Local Union for at least two years immediately preceding the nomination and has, during all of that time, paid the full dues required for working members of the Local Union within each month when due. Notwithstanding the above, a Local Union may adopt a Local Union bylaw that reduces this continuous good standing requirement from two years to no less than six months. No person who has been convicted of a felony as defined in Section 504 of the Landrum-Griffin Act (or indictable offense in Canada) shall in accordance with the provisions of applicable law be eligible for nomination under the terms of this Section. If the Local Union has been chartered less than two years, the required period of continuous good standing shall be the entire time that the Local Union has been chartered. The International President may waive the foregoing requirements for good cause shown. Any Local Union may provide in its Constitution and Bylaws for further limitations upon eligibility for nomination, provided such provisions are approved by the International Union. Upon the request of a Local Union Executive Board, the International President may waive Local Union eligibility requirements for good cause shown. Associate members, life members, and those retired members paying less than the full dues required for working members of the Local Union shall not be eligible for nomination as an officer, member of the Executive Board, delegate, or any other office in the Local Union. Proxy voting shall not be permitted in any election for an officer, member of the Executive Board, delegate or any other office in the Local Union. Write-in candidates shall not be permitted in any election for an officer, member of the Executive Board, delegate or any other office in the Local Union, except if expressly approved by the International President upon request of the Local Union Executive Board.

Waiver of eligibility requirements

Proxies, write-ins prohibited

Approval of Local Constitutions

Section 3. The Constitution and Bylaws of all Local Unions and affiliated bodies and amendments thereto must be submitted to the International Union and be approved before they become valid; provided, however, that notwithstanding such approval, the Constitution and Bylaws of all Local Unions and affiliated bodies shall at all times be subordinate to the Constitution and Bylaws of the International Union as it may be amended from time to time. If a Local Union or an affiliated body shall not have secured the approval of a valid Constitution and Bylaws, the provisions contained in the Constitution and Bylaws of the International Union as it may be amended from time to time shall govern said Local Union and affiliated body insofar as applicable. Regardless of approval, if any conflict should arise between the Constitution and Bylaws of a Local Union and affiliated bodies or any amendments thereto, and the Constitution and Bylaws of the International Union as it may be amended from time to time, the provisions of the Constitution and Bylaws of the International Union shall govern.

Priority of International Constitution

Distribution of Constitution

Section 4. Each Local Union shall provide its members upon request with a copy of the Constitution and Bylaws of the International Union and the Local Union. Copies of the International Constitution and Bylaws will be provided by the International Union to the Local Unions at cost.

Local meeting requirements

Section 5. All Local Unions must provide for meetings of the membership on a general, division, chapter or worksite basis at least once every two months, except during the months of July and August. The Executive Board of each Local Union shall in any case meet at least once a month. However, if approved by the Local Union membership, the requirements of this section may be modified in the Local Union's Constitution and Bylaws.

Minimum dues

Section 6(a). Effective January 1, 2016, for all members with annual earnings of $16,000 or more, the minimum dues shall be equal to $36.00 per month. Effective January 1, 2016, for all members with annual earnings between $5,500 and $16,000, the minimum dues shall be equal to $31.00 per month.

Dues increases

Effective January 1, 2017, through January 1, 2020, the minimum monthly dues for all members with annual earnings of $5,500 or above shall be increased by $1.00 annually, effective January 1 of each year.

Dues for certain membership categories

Notwithstanding the above, by action of the Local Union the minimum dues may be reduced for retired members, organizing

committee members, and associate members. The Local Union may establish minimum dues for members with annual earnings which are less than $5,500.

Upon request, these requirements may be waived by the International President, as provided in subsection 6(d)below.

Dues caps prohibited

(b). A Local Union's dues system shall not contain a maximum limitation on the dues amount per member otherwise applicable under the Local Union's dues formula. Upon request, this requirement may be waived by the International President, as provided in subsection 6(d) below provided that any maximum limitation permitted by the International President is indexed for inflation.

Percentage dues systems

(c). Local Unions in which the Constitution and Bylaws provide for a dues system other than a flat rate system (e.g., a scale, hourly or percentage formula system) shall maintain the formula necessary to generate a dues minimum equal to the flat rates specified in this section.

The percentage rate minimum required in converting to a percentage dues system shall be the rate that provides the Local Union with revenue equal to what it otherwise would have received under its prior dues system as of that date. The calculation of revenue otherwise receivable under the prior dues system shall be based on the Local Union's average monthly membership for the six-month period ending one month prior to the date of conversion.

Questions concerning the application or interpretation of this subsection shall be resolved by decision of the International Secretary-Treasurer, subject to appeal to the Executive Board.

Dues waivers

(d). The International President, with ratification by the International Executive Board, may waive the requirements of this section for such period as he or she deems advisable upon a showing of good cause as set forth below so long as such waiver does not impair the ability of the Local Union to properly represent its members.

Alternative dues structure

A full waiver will be granted to any Local Union which has established, in accordance with its Constitution and Bylaws, an alternative dues structure and/or dues increases which satisfy the goals of this Section.

Waiver considerations

Full or partial waivers of any of the requirements of this section may be granted taking into consideration the resources of the Local Union, the Local Union's dues rate, whether the Local Union has

recently implemented a dues increase, the percentage of workers represented by the Local Union covered by a union security clause and the wage rate of the Local Union's members. A waiver also may be granted to Local Unions in right to work states that are engaged in active and strategic organizing efforts in accordance with approved industry division plans.

(e). Nothing in this Section shall apply to Local Unions based in Canada.

Canadian Local Union dues

Section 7(a). The minimum dues of all members of any Canadian Local Union shall be $10.00 per month except that by action of a Local Union they may be reduced to not less than $2.50 per month for retired members and organizing committee members and $2.00 per month for associate members.

Canadian percentage dues

For Canadian Local Unions employing a percentage dues system, the minimum dues of all members of any Local Union shall be 1 percent of gross monthly salary per month or $10.00 per month, whichever is greater, except that by action of a Local Union they may be reduced for retired members, organizing committee members and associate members.

Waiver

The International President, with the approval of the International Executive Board, may waive these requirements for such period as he or she deems advisable as long as such waiver does not, in his or her judgment, impair the ability of the Local Union to properly represent its members.

Canadian dues increases

(b). All dues in Canadian Local Unions may be increased by an amount to be set by the International Executive Board based on the recommendation of the Canadian Council.

Dues payments, good standing

Section 8. In order to be considered in good standing and to be eligible to participate in all of the gratuities and benefits of the Local Union and the International Union, members must pay on time the full dues and other payments prescribed by the Constitution of the Local Union.

Dues credits

Section 9. When a member is laid-off from employment or is absent from work due to employer lockout or union-authorized strike for more than 20 days in any calendar month, such member may be entitled, if so provided in the Local Union's Constitution and Bylaws, to credit for membership dues for the period of unemployment but not to exceed six months in any calendar year.

Dues receipt

Section 10. Each member shall be entitled to receive a proper receipt or acknowledgement for any payment of dues.

Withdrawal cards

Section 11. Any Local Union may order that withdrawal cards be taken out by members working outside the trade or jurisdiction of the Local Union.

Notification of collective bargaining agreements

Section 12. The International Union shall be notified in writing when any collective bargaining negotiations or memoranda of understanding have been concluded and be advised of the number of employees covered and the expiration date of the contract. For the purpose of maintaining a file, and for informational uses, copies of collective bargaining agreements and contracts entered into by a Local Union shall, after signing, be sent to the Research Department of the International Union. Such notification to or filing with the International Union shall not operate to impose any liability on the International Union or its officers or to make them parties to any such collective agreement or memorandum of understanding.

Permission to conduct fundraising

Section 13. No Local Union or affiliated body or any subdivision thereof, or member or group of members, including Councils, Conferences, leagues, clubs or any association composed of members of this International Union, or subdivision thereof, shall in any manner, directly or indirectly, use, exploit, or trade upon the name of this International Union, or Local Union or affiliated body or any similar name or designation, nor in the name of this International Union or Local Union, or affiliated body, levy or collect any tax, dues, or other moneys, nor in the name of this International Union or Local Union, or affiliated body, conduct any affair or other activity for the purpose of raising funds, including programs or soliciting advertisements in any publication, either directly or indirectly, without first obtaining written permission from the International President.

Authority to audit

All of the aforesaid matters covered by this Section, including without limitation funds, solicitations, gifts, and donations collected in the name of this International Union, or Local Union, or affiliated body, shall at all times be subject to audit by this International Union, and all books, records and documents pertaining to matters covered by this Section shall be available for inspection, copying and audit by this International Union.

The International President shall have authority to formulate such rules and regulations as he or she deems necessary and proper to carry out the purpose of this Section.

Local Union committees

Section 14. The Executive Board of each Local Union shall appoint such committees as it deems necessary to carry out the organizing, political action, social and economic justice and retiree programs and policies of this International Union. Where a committee(s) is not appointed for a specific purpose, the Local Union Executive Board shall serve in that capacity.

Local Unions shall not establish federal PACs

Section 15. No Local Union shall establish its own registered federal political committee or any political candidates fund for contributions in connection with federal elections, provided, however, that the International President may in his or her discretion waive this provision or establish such conditions as the International President may deem necessary.

Local Union 20% organizing budget

Section 16. (a). Every Local Union shall continue to implement an annual local union organizing budget equivalent to 20 percent of the local's budget (after payment of all per capita tax obligations), to be spent consistent with the principles and plan of the applicable industry division of the International Union. Each industry division shall submit its principles and plan for approval by the International Executive Board on an annual basis.

Separate organizing account

(b). Every Local Union shall establish a separate account or accounting for the money that comprises its annual organizing budget.

International review of use of organizing budget

(c). In the event that the applicable industry division of the International Union believes that a Local Union has failed, without good cause, to implement this 20 percent organizing budget commitment or to spend the Local Union's organizing budget consistent with the unionwide strategic unity plan and/or division plan, it may refer the matter to the International Secretary-Treasurer for a review of the Local Union's organizing account and expenditures. If the review reveals that the Local Union is not implementing its organizing budget as obligated under this provision, the Secretary-Treasurer may direct that only certain planned expenditures may continue to be made by the Local Union from its organizing account until the division and Local Union mutually agree upon a broader resolution of the matter pursuant to an expedited procedure established by the International Secretary-Treasurer.

Hearing on organizing budget

(d). If no agreement is reached, the applicable division may refer the matter to the International President who may designate the matter for hearing before a hearing officer appointed by the International Executive Board. Based on the hearing officer's report,

the International Executive Board may order the Local Union to pay all or a portion of the organizing account and the local union's next annual organizing budget to an organizing campaign(s) identified in the national plan for that particular division.

Performance standards

Section 17. Industry Divisions of the International Union may establish additional Local Union performance and accountability standards to ensure that Local Unions implement the democratically and lawfully established policies of the Industry Divisions, subject to their approval by the International Executive Board.

C.O.P.E. contributions

Section 18 (a). Every U.S. Local Union shall contribute an annual amount equivalent to at least $6.00 per member per year, or as determined annually by the International Executive Board, to support the overall SEIU political education and action program. This annual SEIU C.O.P.E. fund-raising obligation may be satisfied by voluntary member contributions to SEIU C.O.P.E. or a designated organization approved by the International President or a combination thereof. All contributions to SEIU C.O.P.E. collected by local unions shall be sent to SEIU C.O.P.E. Any contributions in excess of $6.00 per member per year or such other amount as determined by the International Executive Board shall be returned to the Local Union for its political program. If a Local Union fails to meet its annual SEIU C.O.P.E. fund-raising obligation, it shall contribute an amount in Local Union funds equal to the deficiency plus 50 percent, or such other amount determined by the International Executive Board, to support the overall SEIU political education and action program.

C.O.P.E. 20% goal

(b). A goal of every Local Union shall be to enroll and maintain at least 20 percent of its members as voluntary participants in an employer check-off or regular deduction program assigned to SEIU C.O.P.E. or to an organization approved by the International President.

Article XVI

MEMBERS' INTERESTS AND TRANSFERS

Members' interests safeguarded

Section 1. No member of this International Union shall injure the interests of another member by undermining such member in connection with wages or financial status or by any other act, direct or indirect, which would wrongfully jeopardize a member's office or standing.

Transfers from Local Union to Local Union

Section 2. Any member may transfer from one Local Union to another within this International Union, subject to the approval of the

Local Union into which such member seeks admission, provided there shall be no interruption of continuous payment of monthly dues if continuous good standing is to be maintained or upon presentation of a current withdrawal card.

Article XVII

TRIALS AND APPEALS

PREAMBLE. In order to ensure members' protection from the filing of frivolous charges, the following procedures shall apply:

Bases for charges against Locals, officers, and members

Section 1. Local Unions, their officers or members, and officers of any affiliated body, and officers of the International Union, as the case may be, may be charged with:

(Whenever used in this Article, the term "Local Union" shall include any affiliated body or Local Union chartered by this International Union.)

(1) Violation of any specific provision of this Constitution or of the Constitution and Bylaws of the Local Union;

(2) Violation of an oath of office;

(3) Gross disloyalty or conduct unbecoming a member;

(4) If an officer, gross inefficiency which might hinder and impair the interests of the International Union or the Local Union;

(5) Financial malpractice;

(6) Engaging in corrupt or unethical practices or racketeering;

(7) Advocating or engaging in dual unionism, including but not limited to aiding a rival labor organization, or secession in violation of Article XXV;

(8) Violation of democratically and lawfully established rules, regulations, policies or practices of the International Union or of the Local Union, including democratically and lawfully established rules, regulations, policies and practices of the International Union's Industry Divisions, subject to their approval by the International Executive Board.

(9) The wrongful taking or retaining of any money, books, papers or any other property belonging to the International Union or Local Union; or the wrongful destruction, mutilation or erasure of any

books, records, bills, receipts, vouchers, or other property of the International Union or the Local Union;

(10) Working as a strikebreaker or violating wage or work standards established by the International Union or a Local Union; and

(11) The bringing of false charges against a member or officer without good faith or with malicious intent.

Charges must be specific and in writing.

Filing charges

Section 2(a). Charges against any member or officer of a Local Union shall be filed in duplicate with the Secretary of the Local Union, who shall serve a copy thereof on the accused either personally or by registered or certified mail, directed to the last known address of the accused, at least 10 days before the hearing upon the charges. The charges must specify the events or acts which the charging party believes constitute a basis for charges and must state which subsection(s) of Section 1 of this Article the charging party believes has been violated. If the charges are not specific, the trial body may dismiss the charges either before or at the hearing, but the charging party shall have the right to refile more detailed charges which comply with this Section. No charges may be filed more than six months after the charging party learned, or could have reasonably learned, of the act or acts which are the bases of the charges.

Specificity requirement

Six-month deadline

Trial procedure

(b). The Executive Board of the Local Union shall act as or appoint the trial body, unless the Constitution and Bylaws of the Local Union provide for another trial procedure. The accused may appear in person and with witnesses to answer the charges against him or her and shall be afforded a full and fair hearing. The accused may select a member of his or her Local Union, or an attorney if the Constitution and Bylaws of the Local Union so permit,to represent the accused in the presentation of a defense.

Judgment and discipline

(c). If the charges, or any portion thereof, are sustained, then the trial body shall render judgment and impose disciplinary action as provided for in this Constitution. If the charges are not sustained, the same shall be dismissed and the accused restored to full rights of membership or office in the Local Union.

Reporting trial results

(d). If the Constitution and Bylaws of the Local Union so provides, the decision of the trial body shall be reported to the next regular membership meeting of the Local Union for such action as is provided for in the Constitution and Bylaws of the Local Union.

Suspension

(e). If the International President believes that charges filed against an officer of a Local Union involve a situation which may seriously jeopardize the interests of the Local Union or the International Union, the International President may suspend such officer from office in the Local Union until a decision has been reached.

Bases for original jurisdiction of International President

(f). The International President may assume original jurisdiction:

i. If the Local Union, the Local Union Executive Board, a Local Union officer or a Local Union member, or members, believe that the charges filed against a member or officer of a Local Union involve a situation which may seriously jeopardize the interests of the Local Union or the International Union or that the hearing procedure of the Local Union will not completely protect the interests of a member, officer or Local Union and such party requests that the International President assume original jurisdiction.

ii. If the International President as a result of an investigation believes that the charges filed against a member or officer involve a situation which may seriously jeopardize the interests of the Local Union or the International Union.

Original jurisdiction procedure

Upon the International President assuming original jurisdiction, the International President may remove the proceedings from the trial body of the Local Union and, upon at least 10 days' notice, hold a hearing on the charges either personally or before a hearing officer or officers (who need not be a member or members of this organization) designated by the International President. The International President shall make the decision upon the record taken at the hearing and the report of the hearing officer or officers.

Filing charges against Local or International officer

Section 3. Charges against a Local Union or an officer of the International Union shall be filed in duplicate with the International Secretary-Treasurer, who shall serve a copy thereof upon the accused either personally or by registered or certified mail, directed to the last known address of the accused, at least 10 days before the hearing upon the charges. The International Executive Board may hold a hearing on the charges either itself or before a hearing officer or officers designated by it or it may determine to dismiss the charges without the need for a hearing to be conducted. If the hearing is conducted by a hearing officer or officers, the International Executive Board shall make its decision upon the record taken at the hearing and the report of the hearing officer or officers.

Hearing procedure

Recusal or absence

Section 4. In all hearings or trials provided for herein, if the member filing charges is a member of the trial body, he or she may appear and be heard in support of the charges, but shall be ineligible to participate in the consideration of or the decision on such charges. If the accused is unable or unwilling to be present at any hearing provided for herein, a defense may be presented in writing. In default of appearance or defense, the trial body shall proceed with the hearing regardless of the absence of the accused.

Possibility of penalty

Section 5. The trial body, after requisite due process has been afforded, may impose such penalty as it deems appropriate and as the case requires.

Appeals to International Executive Board

Section 6. An appeal to the International Executive Board may be taken by either the accused or the member filing the charges from any decision of a Local Union with respect to such charges, provided such decision is a final decision under the terms of the Constitution and Bylaws of the Local Union; or from a decision of the International President. Any such appeal shall be filed in writing with the International Secretary-Treasurer, by registered or certified mail, within 15 days after the decision. No specific form or formality shall be required, except that such appeal shall clearly set forth the decision being appealed and the grounds for the appeal. During the pendency of any appeal, the decision appealed from shall remain in full force, unless it is stayed by the International Executive Board. The International Executive Board may decide the appeal on the record made by the trial body or may in its discretion, upon at least 10 days notice, hear argument or hold a rehearing either itself or before a hearing officer or officers designated by it. The International Executive Board may affirm, reverse or modify the decision appealed from.

Filing appeals

Appeals procedure

Appeals to Convention

Section 7. Appeals from any decision of the International Executive Board with respect to charges may be taken to the next Convention. Any such appeal shall be filed in the same manner and within the same time as appeals to the International Executive Board. During the pendency of such appeal, the decision appealed from shall remain in full force. The appellant shall have the right to appear before an appeals committee of the Convention and, if the appellant is a Local Union or a member appealing an expulsion from membership, shall have the right to appear before the Convention itself under such conditions and for the period of time fixed by the Convention. An individual appellant, other than one appealing an expulsion from membership, shall have the right to appear before the

Appellant rights

Convention itself only with the consent of the Convention. The action of the Convention on all appeals shall be final and binding.

Obligation to exhaust remedies

Section 8. Subject to the provisions of applicable statutes, every Local Union or member or officer thereof or officer of the International Union against whom charges have been preferred and disciplinary action taken as a result thereof or who claims to be aggrieved as a result of adverse rulings or decisions rendered, agrees, as a condition of membership or affiliation and the continuation of membership or affiliation, to exhaust all remedies provided for in the Constitution and Bylaws of the International Union and the Local Union and further agrees not to file or prosecute any action in any court, tribunal or other agency until those remedies have been exhausted.

Exclusive enforcement of Member Bill of Rights and Responsibilities

Section 9. The SEIU Member Bill of Rights and Responsibilities in the Union shall be enforced exclusively through the procedures provided in this Article and any decision rendered pursuant to the procedures provided for herein, including any appeals, shall be final and binding on all parties and not subject to judicial review.

Article XVIII

AFFILIATIONS WITH INTERMEDIATE BODIES

Local Union obligation to affiliate

Section 1. Local Unions shall affiliate with local, regional, national or international bodies, where such exist, under rules to be established by the International Executive Board. The International President may in his or her discretion waive this requirement for individual Locals for good cause.

Establishment of intermediate bodies

Section 2. The International Executive Board shall from time to time establish intermediate bodies including, but not limited to, State and Provincial Councils, and Canadian Regional Conferences as well as other bodies, when in its judgment such bodies are necessary to further the aims of the International Union and the interests of Local Unions. The International Executive Board shall establish the jurisdiction of such bodies, and shall issue rules prescribing the activities and financing of such bodies. For administrative purposes of collection and distribution, the International Executive Board may require Local Unions to forward to the International Union per capita tax payments or other financial obligations owed by the Local Union to affiliated bodies or entities. Upon receipt, the International Union shall forward such payments to the applicable affiliated body or entity.

Local affiliation and per capita requirements

Section 3. All Local Unions determined by the International Union to be within the jurisdiction of any intermediate body shall affiliate with such bodies and comply with their bylaws, including provisions in such bylaws requiring the payment of per capita taxes to the intermediate body, together with interest on late payment if so authorized by the intermediate body. The International Executive Board may in its discretion modify these requirements. Any proposal to set or change an intermediate body's per capita tax obligation or assessment shall be submitted to the International President for his/her approval prior to its submission for approval by the intermediate body. In the case of State Councils, a Local Union shall affiliate with each State Council having jurisdiction over the primary worksite(s) of its members, and shall pay each such State Council per capita tax on those members whose primary worksite is within that State Council's jurisdiction.

Conformance to International Constitution

Local voting strength

Section 4. The bylaws of such intermediate bodies shall not conflict with the Constitution and Bylaws of the International Union. Such bylaws shall provide that the number of votes a Local has in such bodies shall be proportionate to its numerical strength as determined by the payment of per capita tax, excluding associate members, life members and agency fee payers, to the intermediate body. This requirement may be waived by the International President, subject to his/her approval of an alternative voting procedure. Such bylaws and any amendments must be submitted to and approved by the International President before becoming valid. Notwithstanding such approval, each intermediate body shall resubmit its bylaws to the International President for consideration and approval within 120 days following the conclusion of each regular International Convention.

Eligibility of local officers as delegates

Additional delegates

Section 5. The bylaws of the Regional Conferences and Joint and State Councils shall provide that all officers of a Local Union elected in conformity with all applicable statutes shall by virtue of such election be considered to be eligible delegates to any Convention of such body which may take place during their term of office. If under the rules of the particular intermediate body a Local Union is entitled to additional delegates at said Convention, then arrangements may be made at the option of the Local Union Executive Board for nomination and secret ballot election, if required, of an additional number of Convention delegates. The Local Union must designate in its own bylaws the order in which the officers would be designated as delegates if fewer than all the officers are entitled to go to the

Convention as delegates, provided that the chief executive officer of the Local Union shall, if otherwise eligible, be deemed entitled even in the event the Local Union fails to so designate. Any Local Union may by provision in its Local Constitution and Bylaws dispense with the foregoing provision that officers of the Local Union be ex officio delegates to the Convention of such intermediate bodies and may provide for nomination and, if required, secret ballot election of such delegates.

Restrictions on compensation

Section 6. No officer of an intermediate body may receive compensation of any kind from the intermediate body, except for a minimal stipend or expenses as appropriate. This limitation shall not apply to intermediate bodies in Canada.

Article XIX

PAYMENTS IN CONNECTION WITH DEATHS OF MEMBERS

Death gratuities

For members of any Local Union who were in good standing in connection with this Article XIX on September 1, 1984, the Service Employees International Union Death Gratuity Program, as amended effective September 1, 1984, shall be maintained in effect for those members who meet the eligibility and participation requirements set forth in such amended Program. When the International Executive Board in its discretion determines that it is necessary or advisable to abolish, curtail or limit any payments provided for in the Program or to amend or modify any provisions governing such payments, it shall have authority to do so. The International Union shall notify each Local Union 60 days before the effective date of any changes in the provisions of the Program.

Article XX

PENSION FUND FOR OFFICERS AND EMPLOYEES OF LOCAL UNIONS AND AFFILIATED BODIES

Maintenance of pension fund

Section 1. The Pension Fund known as the "SEIU Affiliates' Officers and Employees Pension Fund," heretofore established pursuant to mandate of this Constitution and existing by virtue of a Trust Agreement entered into between the International Executive Board and the Trustees shall continue to be maintained in accordance

with the terms of said Trust Agreement. The SEIU Affiliates' Officers and Employees Pension Fund shall be divided into two distinct sections, the United States Section and the Canadian Section.

Pension sponsor

Section 2. The International Union shall be the "Plan Sponsor" as that term is defined in the Employee Retirement Income Security Act of 1974.

Executive Board authority

Section 3. The International Executive Board shall have the power to:

Designate pension trustees

(a). Designate the number and appoint all of the individual Trustees of the Pension Fund; and to remove any such Trustee and to fill any vacancy as may exist from time to time; provided, however, that at least two Trustees shall be officers or employees of Local Unions and at least two Trustees shall be members of the International Executive Board; and provided further that there shall be no less than the number of Canadian Trustees required by Canadian law.

Agreements to amend

(b). On behalf of the International Union, enter into agreements with the Trustees to amend the Trust Agreement in such manner as it may deem necessary or desirable.

Local waivers

(c). Upon recommendation of the Trustees of the Pension Fund, waive participation in, or payments in whole or in part to, the Pension Fund by any Local Union, or affiliated body, upon a finding that contributions are not advisable or are not necessary or required, and upon such terms as the International Executive Board may require, including directing that participating Local Unions remit the amount waived directly to the International for such purposes as the Board deems appropriate and

Waivers upon merger or affiliation

(d). Waive, in whole or in part, or increase the payments required by Section 8 of this Article XX, upon the merger or affiliation of any labor organization or Local Union with the International Union or any of its Local Unions, upon a finding that such action is necessary or required.

Pension fiduciaries

Section 4. The Trustees of the Pension Fund shall be the "Named Fiduciaries" as that term is defined in the Employee Retirement Income Security Act of 1974.

Pension plan regulations

Section 5. The Trustees shall be and the same are hereby empowered to adopt a Pension Plan or Plans and Rules and Regulations for the administration thereof which they deem appropriate, provided, however, that such Plan or Plans and Rules and

Regulations shall, to the extent permitted by applicable law, provide that:

Coverage

(a). Only officers, full-time permanent employees who have gross compensation at an annual rate of $4,000 and part-time and temporary employees who work more than six months in any 12-month period and who have gross annual compensation of $4,000 or more in that period shall be eligible for coverage. Gross compensation shall include only the regular salary paid by a Local Union, or affiliated body, or if accepted for participation by the Trustees, any organization related to a Local Union or affiliated body which furthers the purposes of or benefits the membership of such Local Union or affiliated body. Gross compensation shall be defined so as to preclude the award of credits for what the Trustees may consider special or unusual compensation (as, for example, payment for attending meetings or participating in picket duty), including but not limited to part or all of any compensation as may be received from a second or additional employer. In the event that applicable law requires employee participation and/or the granting of pension credits for employment which would otherwise be precluded by the foregoing, then, in such event, the Trustees shall endeavor to limit such participation and granting of service credit in accordance with the foregoing to the extent permitted by law.

Adjusting contribution requirements

The Trustees shall be empowered to adjust the $4,000 and/or the six-month contribution requirements, should the Trustees determine that said change(s) would be actuarially sound.

Employees of related organizations

(b). Employees of related organizations may be eligible for participation in the Pension Fund subject to such Rules and Regulations as the Board of Trustees may adopt.

Board of Trustees authority

Section 6. The Board of Trustees shall have the following powers, in addition to those which may be granted to them by the Trust Agreement:

Hiring advisers

(a). To employ the services of any actuary, legal counsel and other professional advisers as they deem necessary to assist them with the formulation of the Pension Plan or Plans, the determination and monitoring of the contribution rate to support the Plan on a sound actuarial basis and maintenance of the Pension Fund, and to pay for such services from the Pension Fund.

Access to records

(b). To require the Secretary-Treasurer of any Local Union or affiliated body to furnish to them such records as they may deem necessary for the proper administration of the Pension Fund.

Pension Plan amendments

(c). To make all necessary amendments to the Pension Plan or Plans as may be required to render the Pension Trust Fund qualified and tax exempt under applicable provisions of the Internal Revenue Code and the Income Tax Act (Canada) or which may be deemed by them to be necessary to conform the Pension Plan or Plans and Trust Fund to all other applicable laws.

Exceptions from coverage

(d). To provide exceptions from coverage in the case of officers or employees who are entitled to be covered under an employee pension benefit plan maintained by a public employer or public utility, under such uniform and nondiscriminatory rules as the Board of Trustees may establish, for the purpose of preventing duplication of pension coverage or benefits for such persons, if such exceptions do not conflict with applicable law or adversely affect the tax exempt status of the Pension Plan or Trust.

Changing payments

(e). To increase or decrease the payments required by Section 8 of Article XX as permitted by law.

General authority

(f). To take all such steps as they deem necessary to effectuate the purposes of this Article XX and to protect the rights and interests of the participants of the Pension Fund.

Safeguarding of assets

Section 7. The Trustees shall keep all assets of the Pension Fund separate and distinct from all other revenue and income received by the International Union; shall transfer said Pension Fund assets to Corporate Trustee(s) or Corporate Custodian(s) which they may appoint; may remove any such Corporate Trustee(s) or Corporate Custodian(s) and appoint a successor; and may pay the fees of such Corporate Trustee(s) or Corporate Custodian(s) from the Pension Fund.

Pension contributions

Section 8(a). Subject to any changes and amendments made by the International Executive Board or the Trustees pursuant to their authority set forth herein, each Local Union and affiliated body within the United States shall pay to the Pension Fund an amount equal to 14 percent of the gross monthly compensation of each eligible officer and employee, and each Local Union and affiliated body within Canada shall pay to the Pension Fund an amount equal to 14 percent of the gross monthly compensation of each eligible officer and employee.

Time of contribution to Pension Fund

(b). The contribution provided for above shall be paid to the Pension Fund before the end of the month following the month in which the eligible officer or employee receives any compensation on which a pension contribution is payable. Contributions shall

commence from the first date of employment of the eligible officer or employee.

Sanctions for nonpayment

(c). If a Local Union or affiliated body required to contribute to the Pension Fund fails to make payments required herein, the provision of Article XIII, Section 3 of this Constitution and Bylaws shall be applicable.

Limitation of Trustees' liability

Section 9. The International Union shall indemnify all Trustees, the Fund Coordinator and Fund office employees from and against any liability which they may incur while acting in their official capacities, except for liability resulting from their gross negligence, willful misconduct, fraud or criminal act, including the cost of all legal expenses incurred in connection with the defense against any such charge.

Article XXI

LOCAL ENFORCEMENT OF INTERNATIONAL CONSTITUTION

Obligation to enforce Constitution

Any Local Union or affiliated body willfully neglecting to enforce the provisions of this Constitution and Bylaws shall be subject to suspension or revocation of its charter or such other sanctions as may be determined by the International President.

Article XXII

NONLIABILITY OF INTERNATIONAL UNION

Lack of authorization to obligate International

Except as is otherwise specifically provided in this Constitution, no Local Union, or affiliated body, nor any officer, employee, organizer or representative of a Local Union or affiliated body or of this International Union shall be authorized to make contracts or incur liabilities for or in the name of the International Union unless authorized in writing by the International President and the International Secretary-Treasurer, or the International Executive Board.

Article XXIII

LITIGATION

Obligation to exhaust procedural remedies

A. Subject to applicable law, no member, Local Union or affiliated body shall bring any action against the International Union or any other Local Union or affiliated body or any officers thereof, with respect to any matter arising out of the affairs of the International Union or its Local Unions or affiliated bodies unless he or she has exhausted all procedures available under this Constitution and the laws promulgated thereunder. Any member, or Local Union or affiliated body, filing suit in violation of this provision may, in addition to other penalties, be ordered to reimburse the organization or officers sued for the costs and attorneys' fees expended, or a portion thereof.

Authority to defend

B. The International Union is authorized upon affirmative vote of the International Executive Board to pay all expenses for investigation services, employment of counsel and other necessary expenditures in any cause, matter, case or cases where an International Union officer, representative, employee, agent or one alleged to have acted on behalf of the International Union is charged with any violation or violations of any law or is sued in any civil actions with respect to any matter arising out of his or her official duties on behalf of the International Union, except if such officer, representative, employee or agent is charged with a breach of trust to the International Union, or any affiliate or member thereof, in which event he or she may be indemnified only if the action is terminated favorably to him or her.

Limitation of International liability

C. Neither the International Union nor any of its officers shall be responsible or liable for the wrongful or unlawful acts of any Local Union or affiliated body or officers, members, or agents thereof, except where the International Union or its officers have actually participated in or actually authorized such acts, or have ratified such acts after actual knowledge thereof.

Service of process

D. Only the elected officers of the International Union are authorized to be its agents for service of process. General organizers, staff members and employees of the International Union and the officers and employees of subordinate bodies are not authorized to be agents of the International Union for service of process under any circumstances.

Article XXIV

AMENDMENTS

Amendment procedure

This Constitution and Bylaws may be amended by action of any regular Convention of the International Union or Special Convention called for that purpose. Amendments may be proposed at such Convention in the same manner as is provided herein for the submission of Convention resolutions. A majority of the Convention votes cast on such amendment shall be necessary for adoption. Except as otherwise provided, all amendments shall be effective immediately upon adoption by the Convention.

Article XXV

DISSOLUTION

Dissolution procedure

Section 1. This International Union cannot dissolve while there are seven dissenting Locals. No Local Union, provisional local or organizing committee can dissolve, secede or disaffiliate while there are seven dissenting members; no other affiliated bodies can dissolve, secede or disaffiliate while there are two dissenting Local Unions. The International Union shall be notified by registered or certified mail of any meeting, scheduled by a Local Union or affiliated body for the purpose of taking a vote on disaffiliation from the International Union at least 60 days prior to the date of such scheduled meeting, and a representative of the International Union shall be afforded an opportunity to speak at such meeting. The International President shall direct whether the membership vote shall be conducted by secret ballot at a membership meeting and/or by mail referendum, and, if appropriate, a separate method by which dissenting Local Unions or members may assert their dissent. The vote shall be counted by an independent neutral party. In the event of secession, dissolution or disaffiliation, all properties, funds and assets, both real and personal, of such Local Union or affiliated body shall become the property of the International Union. Under no circumstances shall any Local Union or affiliated body distribute its funds, assets or properties individually among its membership.

Disaffiliation vote

Reversion of property, funds

No officer support

Section 2. Except as may be expressly permitted under an affiliation agreement or approved by the International Union, no officer of a local union or affiliated body shall support or assist any efforts to dissolve, secede or disaffiliate from the International Union. Except for these two limited circumstances, the International

President or International Executive Board may take any and all action provided under this Constitution to safeguard the members' and union's interests in the event of an attempt at a local union or affiliated body to dissolve, secede or disaffiliate, including but not limited to action under Article VIII, Section 7.

Article XXVI

SAVINGS PROVISION

Executive Board authority

If any provision of this Constitution shall be modified or declared invalid or inoperative by any competent authority of the executive, judicial or administrative branch of a state, provincial or federal government, including, but not limited to, any provision concerning dues or per capita tax, the Executive Board shall have the authority to suspend the operation of such provision during the period of its invalidity or modification and to substitute in its place and stead a provision which will meet the objections to its validity and which will be in accord with the intent and purposes of the invalid or modified provision. In the case of a challenge to a dues or per capita tax provision, this authority shall also apply in the event the Executive Board determines that such actions are necessary at an earlier stage of judicial or administrative proceedings in order to ensure the effective implementation of the intent of the Constitutional provision at issue. If any Article or Section of this Constitution should be modified or held invalid by operation of law or by any tribunal of competent jurisdiction, the remainder of this Constitution or the application of such Article or Section to persons or circumstances, other than those as to which it has been held invalid or modified, shall not be affected thereby.

APPENDIX A: SEIU MEMBER BILL OF RIGHTS AND RESPONSIBILITIES IN THE UNION

Rights

The right to have opinions heard and respected, to be informed of union activity, to be educated in union values and union skills.

The right to choose the leaders of the union in a fair and democratic manner.

The right to a full accounting of union dues and the proper stewardship over union resources.

The right to participate in the union's bargaining efforts and to approve union contracts.

The right to have members' concerns resolved in a fair and expeditious manner.

Responsibilities

The responsibility to help build a strong and more effective labor movement, to support the organizing of unorganized workers, to help build a political voice for working people, and to stand up for one's co-workers and all workers.

The responsibility to be informed about the internal governance of the union and to participate in the conduct of the union's affairs.

The responsibility to contribute to the support of the union.

The responsibility to treat all workers and members fairly.

The responsibility to offer constructive criticism of the union.

APPENDIX B: SEIU MEMBER BILL OF RIGHTS AND RESPONSIBILITIES ON THE JOB

Rights

The right to have work that is worthwhile to society, personally satisfying to the worker, and which provides a decent standard of living, a healthy and safe workplace, and the maximum possible employment security.

The right to have a meaningful and protected voice in the design and execution of one's work and in the long-term planning by one's employer as well as the training necessary to take part in such planning.

The right to fair and equitable treatment on the job.

The right to share fairly in the gains of the employer.

The right to participate fully in the work of the union on the scope, content and structure of one's job.

Responsibilities

The responsibility to participate in the union's efforts to establish and uphold collective principles and values for effective workplace participation.

The responsibility to recognize and respect the interests of all union members when making decisions about union goals.

The responsibility to be informed about the industry in which one works and about the forces that will affect the condition of workers in the industry.

The responsibility to participate fully in the union's efforts to expand the voice of workers on the job.

The responsibility to give fully and fairly of one's talents and efforts on the job and to recognize the legitimate goals of one's employer.

APPENDIX C: SEIU CODE OF ETHICS AND CONFLICT OF INTEREST POLICY

Approved by the SEIU International Executive Board, June 13, 2009

Approved by the SEIU International Executive Board as revised, January 21, 2016

Preamble

PART A: PREAMBLE

The Service Employees International Union (SEIU) believes in the dignity and worth of all workers. We have dedicated ourselves to improving the lives of workers and their families and to creating a more just and humane society. We are committed to pursuing justice for all, and in particular to bringing economic and social justice to those most exploited in our community. To achieve our mission, we must develop highly trained and motivated leaders at every level of the Union who reflect the membership in all of its diversity.

Duty to members

Union members place tremendous trust in their leaders. SEIU elected officers and managers owe not just fiduciary obligations to union members; given the moral purpose of our mission, SEIU leaders owe members the highest level of ethical behavior in the exercise of all leadership decisions and financial dealings on members' behalf. Members have a right to proper stewardship over union funds and transparency in the expenditure of union dues. Misuse and inappropriate use of resources or leadership authority undermine the confidence members have in the Union and weaken it. Corruption in all forms will not be tolerated in SEIU. This Code of Ethics and Conflict of Interest Policy (the "Code" or "SEIU Code") strengthens the Union's ethics rules of conduct, organizational practices and enforcement standards and thus enhances the Union's ability to accomplish its important mission.

Accountability

We recognize that no code of ethics can prevent some individuals from violating ethical standards of behavior. We also know that

the SEIU Code is not sufficient in itself to sustain an ethical culture throughout the Union. To accomplish the goals for which this Code has been created, we must establish systems of accountability for all elected leaders and staff. These systems must include appropriate checks and balances and internal operating procedures that minimize the opportunity for misuse or abuse, as well as the perception of either, in spending Union funds and exercising decision-making authority. The systems also must include adequate provision for training on understanding and implementing this Code. More broadly, we emphasize the importance of the range of standards, practices, and values described in "A Strong Ethical Culture," Section A of the SEIU Policies on Ethics and Standards that were enacted with the Code in 2009.

Member protections, responsibilities

In particular, SEIU is committed to providing meaningful paths for member involvement and participation in our Union. The SEIU Member Bill of Rights and Responsibilities in the Union is a significant source of SEIU members' rights and obligations. Its exclusive enforcement through the procedures set forth in Article XVII of the SEIU Constitutionand Bylaws reflects a commitment to the democratic principles that have always governed SEIU. Article XVII's numerous protections against arbitrary or unlawful discipline of members also form an essential ingredient of the democratic life of the Union. Similarly, the requirement that Affiliates provide for regular meetings of the membership, set forth in Article XV, Section 5 of the Constitution, is another important element in the democratic functioning of SEIU. Finally, the provisions against discrimination and harassment on the basis of race, creed, color, religion, sex, gender expression, sexual orientation, national origin, citizenship status, marital status, ancestry, age and disability contained in Article III, Section 4 of the SEIU Constitution and in the Constitutions and Bylaws of Affiliates, the SEIU Anti-Discrimination and Anti-Harassment Policy and Procedure, and similar policies of Affiliates forbid conduct in violation of SEIU's historic belief that our strength comes from our unity and diversity and that we must not be divided by forces of discrimination.

Other sources of authority

Individuals subject to this Code are expected to comply with State and Federal laws, the Constitution and Bylaws of SEIU and Affiliates, and the anti-discrimination and anti-harassment policies of SEIU and Affiliates as part and parcel of our commitment to sustaining an ethical culture and the highest standards of conduct throughout the Union. Violations of these laws and policies are ethical breaches;

Ethical breaches outside Code

however, these violations should be addressed through avenues provided by the applicable laws and policies and not through the Code unless they also allege violations of this Code. In particular, the sole enforcement mechanism for matters covered by the SEIU or Affiliate Constitutions and Bylaws is that which is set forth in those documents, unless violations of this Code are also alleged. Finally, grievances that arise under collective bargaining agreements are excluded from enforcement under this Code unless they also allege violations of this Code.The scope and standards of this Code are set forth in the following Sections.

Applicability, International Union

Section 1. Applicability to International Union. The SEIU Code is henceforth applicable in its entirety to all officers, executive board members and employees of SEIU. These individuals are referred to herein as "covered individuals."

SEIU shall append or attach the Code in its entirety to its Constitution and Bylaws in its next and all future publications.

Applicability, Affiliates

Section 2. Applicability to SEIU Affiliates. By enactment of the SEIU International Executive Board, the SEIU Code is applicable in its entirety to all officers, executive board members and employees of all affiliated bodies and local unions chartered by SEIU ("Affiliates" herein). These individuals are referred to herein as "covered individuals."

Affiliate responsibilities

(a) Each Affiliate shall ensure that the Code extends to all employees as soon as practicable but in no event later than the end of 2020.

(b) Each Affiliate shall append or attach the Code in its entirety to its Constitution and Bylaws at its next and all future publications.

(c) Wherever reference herein is made to SEIU or an SEIU program, department or position, the corresponding reference is to the particular Affiliate or its equivalent program, department or position.

(d) Each Affiliate is responsible for enforcing the Code and educating its covered individuals on the Code in a manner consistent with the Code's terms, subject to assistance and oversight from SEIU.

(e) The Code is not intended to restrain any Affiliate from adopting higher standards and best practices, subject to the approval of the SEIU Ethics Ombudsperson.

PART B: GENERAL OBLIGATIONS

Section 3. Obligations of Covered Individuals.

Covered individuals, obligations

(a) Commitment to the Code. SEIU and each Affiliate shall provide a copy of the Code to each covered individual. It is the duty and obligation of covered individuals to acknowledge annually that they have received a copy of this Code, that they have reviewed and understand it, and that they agree to comply with it.

Annual acknowledgment

(b) Duty of disclosure. Covered individuals shall disclose to the SEIU Ethics Ombudsperson or the Affiliate Ethics Liaison, described in Part F of this Code, any conflict of interest or appearance of a conflict, which arises when their paramount duty to the interest of members is potentially compromised by a competing interest, including but not limited to an interest, relationship or transaction referenced in this Code. Actual, perceived and potential conflicts should be disclosed at the time that covered individuals become aware of them.

Duty of disclosure

Conflict of interest, definition

(c) Disqualification from service to SEIU or Affiliate. No person shall serve as an officer or managerial employee of SEIU or any Affiliate who has been convicted of any felony involving the infliction of grievous bodily injury, or the abuse or misuse of such person's position or employment in a labor organization to seek or obtain illegal gain at the expense of the members, except for the limited exceptions set forth in applicable federal law.

Disqualification from service

PART C: BUSINESS AND FINANCIAL ACTIVITIES

Section 4. General Duty to Protect Members' Funds; Members' Right to Examine Records.

Protection of member funds

(a) The assets and funds of a labor organization are held in trust for the benefit of the membership. Members are entitled to assurance that those assets and funds are expended for proper and appropriate purposes. The Union shall conduct its proprietary functions, including all contracts for purchase or sale or for the provision of significant services, in a manner consistent with this Code. All officers, executive board members and employees of SEIU and SEIU Affiliates, whether elected or appointed, have a trust and high fiduciary duty to honestly and faithfully serve the best interests of the membership.

Fiduciary duty

Examination of records

(b) Consistent with Section 201 of the Labor-Management Reporting and Disclosure Act, SEIU shall permit a member for just cause to examine any books, records and accounts necessary to verify SEIU's annual financial report under that section to the U.S. Department of Labor.

(c) Affiliates comprised solely of members employed by government bodies shall permit a member to examine its financial report submitted to a state agency and, consistent with state law and for just cause, to examine any books, records and accounts necessary to verify the Affiliate's financial report.

Financial Interests and Transactions

Section 5. Prohibited Financial Interests and Transactions. Covered individuals shall not, to the best of their knowledge, have a substantial ownership or financial interest that conflicts with their fiduciary duty.

Substantial ownership or financial interest, definition

(a) For purposes of these rules, a "substantial ownership or financial interest" is one which either contributes significantly to the individual's financial well-being or which enables the individual to significantly affect or influence the course of the business entity's decision-making.

(b) A "substantial ownership or financial interest" does not include stock in a purchase plan, profit-sharing plan, employee stock ownership plan (ESOP) or blind trust. Nor does it prohibit covered individuals from owning, through a mutual fund or other similar investment vehicle, the publicly traded shares of any employer with which SEIU or an Affiliate engages in collective bargaining or does business or which SEIU or an Affiliate seeks to organize, provided that all transactions affecting such interests are consistent with rates and terms established by the open market.

Prohibitions

(c) It is not permissible for any covered individual to:

Employers

(1) Knowingly have a substantial ownership or financial interest in any entity that engages in collective bargaining with SEIU or any of its Affiliates;

Vendors

(2) Make or attempt to influence or participate in any way in a decision concerning the relations of SEIU or an Affiliate with a vendor, firm or other entity or individual in which the covered individual or his or her relative, spouse or business partner has a substantial ownership or financial interest; or

Self-dealing

(3) Engage in any self-dealing transactions with SEIU or any of its Affiliates, such as buying property from or selling property to SEIU, without the informed approval of the International Secretary-Treasurer (or Affiliate Secretary-Treasurer, as applicable), obtained after full disclosure, including an independent appraisal of the fair market value of the property to be bought or sold.

Disclosure

(d) To ensure compliance with this Section, covered individuals are required to disclose any interests, transactions or interests covered by this Section in accordance with Section 3(b) of this Code.

Payments and gifts

Section 6. Payments and Gifts from Employers, Vendors and Members.

Prohibitions, exceptions

(a) Covered individuals shall not knowingly accept any payments, benefits or gifts of more than minimal financial value under the circumstances presented from any employer that engages or seeks to engage in collective bargaining with SEIU or an Affiliate, or from any business or professional firm that does business or seeks to do business with SEIU or an Affiliate.

Regular employment

(1) This Section does not extend to payments and benefits that are provided to covered individuals by prohibited employers as compensation for their primary and regular employment.

Payment for services

(2) This Section does not extend to work and services that covered individuals perform for prohibited employers or businesses on a part-time basis, through an arm's length transaction and for normal and customary pay for such work or services.

Public policy events

(3) This Section does not extend to participation in events hosted by public officials involving discussion of public policy matters.

Perishable items

(4) With respect to perishable items that are more than minimal but that are impracticable to return, such as food, it shall be considered compliance with this Section to discard such an item or place it in a common area for members and office staff to enjoy. If the gift is discarded or enjoyed communally, it is recommended that the giver should be advised of this disposition to dispel the appearance of any conflict of interest on the part of any covered individual and to discourage recurrence.

Recommendation to notify giver

Ethics, payments and gifts

(b) Covered individuals shall not knowingly accept personal payments or gifts from any member, absent a personal relationship independent of the relationship between the Union and the member, other than a gift of minimal financial value. This provision does not apply to contributions to campaigns for union office made in accordance with the SEIU Constitution and Bylaws.

Conversion prohibited

Section 7. Conversion of Union Funds and Property. Covered individuals shall not use, convert or divert any funds or other property belonging to SEIU to such individual's personal benefit or advantage.

Third parties

Section 8. Applicability to Third Parties. The principles of this Code apply to those investments and activities of third parties that amount to a subterfuge to conceal the financial interests of SEIU officers or employees or to circumvent the standards of this Code.

Loans prohibited

Section 9. Certain Loans Prohibited. SEIU shall not make loans to any officer or employee, or to any of their family members, that at any time exceed $2,000 in total indebtedness on the part of such officer, employee or family member.

PART D: BENEFIT FUNDS AND RELATED ORGANIZATIONS

Section 10. Obligations of Covered Individuals.

Benefit Funds

(a) Benefit Funds.

Definition

(1) For purposes of this Section:

a. A "benefit fund or plan" means a retirement, health or welfare benefit fund or plan sponsored by SEIU or an Affiliate, or in which SEIU or an Affiliate participates.

b. The definition of "substantial ownership or financial interest" provided in Section 5 applies.

Fund fiduciaries, prohibitions

(2) Covered individuals who serve in a fiduciary position with respect to or exercise responsibilities or influence in the administration of a benefit fund or plan shall not:

Interests and personal ties

a. Have any substantial financial interest in, or any compromising personal ties to, any investment manager, insurance carrier, broker, consultant or other firm or individual doing business or seeking to do business with the fund or plan;

b. Accept any personal payment from any business or professional firm that does business or seeks to do business with the fund or plan, other than contractual payment for work performed; or

Personal payment

c. Receive compensation of any kind for service as an employee representative or labor-designated trustee for a fund or plan, except for reimbursement of reasonable expenses properly and actually incurred and provided uniformly to such representatives or trustees, with the proviso that it is not a violation of this provision for an officer or managerial employee who is not a full-time employee of SEIU or an Affiliate to be a lawfully paid employee of a fund or plan if such employment is consistent with applicable legal restrictions and fully disclosed through appropriate reports.

Compensation, exclusions

(3) To ensure compliance with this Section, all covered individuals shall disclose any interests, transactions or relationships covered by this Section in accordance with Section 3(b) of this Code.

Disclosure

(4) No person shall serve in a fiduciary capacity or exercise responsibilities in the administration of a benefit fund or plan who has been convicted of any felony involving the infliction of grievous bodily injury or the abuse or misuse of such person's position or employment in an employee benefit plan to seek or obtain an illegal gain at the expense of the beneficiaries of the employee benefit fund or plan, except for the limited exceptions set forth in applicable federal law.

Disqualification

(b) Related Organizations.

(1) For purposes of this Section, an organization "related to" SEIU or an Affiliate means an organization

Related organizations definition

- in which 25 percent or more of the members of the governing board are officers or employees of SEIU or an Affiliate, or
- for which 50 percent or more of its funding is provided by SEIU or an Affiliate.

(2) Covered individuals who serve in a fiduciary position with respect to or exercise responsibilities or influence in the

Duties of covered individuals

administration of an organization related to SEIU shall comply with the provisions and shall hold themselves to the standards of the SEIU Code while they are acting for or on behalf of the related organization.

PART E: FAMILY AND PERSONAL RELATIONSHIPS

Family and Personal Relationships

Section 11. Purpose of Rules Governing Family and Personal Relationships. SEIU does not prohibit the employment of qualified relatives of current officers or employees, or of individuals with whom an officer or employee has a romantic or intimate personal relationship. SEIU also does not prohibit the retention of qualified vendors that employ relatives of current SEIU officers or employees or individuals with whom an officer or employee has a personal relationship.

However, SEIU recognizes that the existence of such relationships can lead to problems, including favoritism or the appearance of favoritism toward relatives or those who are involved in a personal relationship.

Purpose of rules

Giving these individuals special treatment – or creating the impression that they receive special treatment – is inconsistent with our principles of stewardship and accountability and with our duty to responsibly conduct the business of SEIU. The provisions of this part are designed to ensure that family or personal relationships do not influence professional interactions between the employees involved and other officers, employees and third parties.

Section 12. Definitions. For purposes of this part:

Ethics, Relationships, Family and Personal

(a) "Relative" means parent, spouse, spousal equivalent, daughter, son, grandparent, grandchild, brother, sister, aunt, uncle, niece, nephew, first or second cousin, corresponding in-law, "step" relation, foster parent, foster child, and any member of the employee's household. Domestic partner relatives are covered to the same extent as spousal relatives.

(b) "Personal relationship" means an ongoing romantic or intimate personal relationship that can include, but is not limited to, dating, living together or being a partner or significant other. This definition applies regardless of gender, gender identification, or sexual orientation of the individuals in the relationship. This restriction does not extend to friends, acquaintances or former colleagues who are not otherwise encompassed in the scope of "personal relationships."

Section 13. Prohibited Conduct. The following general principles will apply:

Prohibited conduct

(a) Applications for employment by relatives and those who have a personal relationship with a covered individual will be evaluated on the same qualification standards used to assess other applicants. Transmission to the appropriate hiring authority of applications on behalf of individuals who have a family or personal relationship shall not in itself constitute an attempt to influence hiring decisions. Further input into the application process, however, may be deemed improper.

Application process

(b) Covered individuals will not make hiring decisions about their relatives or persons with whom they have a personal relationship, or attempt to influence hiring decisions made by others.

Hiring decisions

(c) Supervisory employees shall not directly supervise a relative or a person with whom they have a personal relationship. In the absence of a direct reporting or supervisor-to-subordinate relationship, relatives or employees who have a family or personal relationship generally are permitted to work in the same department, provided that there are no particular operational difficulties.

Supervisory relationship prohibited

(d) Covered individuals shall not make work-related decisions, or participate in or provide input into work-related decisions made by others, involving relatives or employees with whom they have a personal relationship, even if they do not directly supervise that individual. Prohibited decisions include, but are not limited to, decisions about hiring, wages, hours, benefits, assignments, evaluations, training, discipline, promotions, and transfers.

Work-related decisions

(e) To ensure compliance with this Section, all covered individuals must disclose to the Ethics Ombudsperson or the Affiliate Ethics Liaison, as appropriate, any relationships covered by this Section in accordance with Section 3(b) of this Code.

Disclosure

PART F: ENFORCEMENT

Enforcement

Section 14. Ethics Officer. The office of the Ethics Officer is established to provide independent assistance to SEIU in the implementation and enforcement of the Code. The Ethics Officer shall be an individual of unimpeachable integrity and reputation, preferably

Ethics Officer

with experience in ethics, law enforcement and the workings of the labor movement. The Ethics Officer shall provide his or her services under contract and shall not be an employee of the International Union or any of its Affiliates. The Ethics Officer shall be appointed by the International President and confirmed by the International Executive Board. The International President, the International Secretary-Treasurer, and the SEIU International Executive Board may refer matters concerning the Code to the Ethics Officer for review and/or advice, consistent with Sections 22 and 23.

Review or advice

Ethics Ombudsperson

Section 15. Ethics Ombudsperson. The office of SEIU Ethics Ombudsperson is established to oversee implementation and enforcement of the Code and ongoing efforts to strengthen the ethical culture throughout the Union. The Ethics Ombudsperson is responsible for providing assistance to the International Union and Affiliates on questions and concerns relating to the Code and ethical culture; directing the training of SEIU and Affiliate officers and staff concerning the Code and ethical culture; responding to ethics concerns and complaints consistent with Sections 17-23; receiving and resolving disclosures of conflicts of interest; assisting the Ethics Officer; and providing other support as necessary to the overall SEIU ethics program. The Ethics Ombudsperson, in consultation with the Ethics Officer, shall issue a report to the SEIU International Executive Board annually, summarizing compliance, training, enforcement, culture building and related activities, and making recommendations for modifications to the ethics program that he or she believes would enhance the program's effectiveness. The Ethics Ombudsperson may also conduct periodic reviews for the purposes of monitoring compliance with this Code and determining whether partnerships, joint ventures, and arrangements with management organizations conform to this Code, are properly recorded, reflect reasonable investment or payment for goods and services, further SEIU's tax-exempt purposes, and do not result in inurement, impermissible private benefit, or excess benefit transactions. The Ethics Ombudsperson shall be employed in the SEIU Legal Department.

Annual report

Periodic reviews

Ethics Liaison

Section 16. Affiliate Ethics Liaison. Each Affiliate shall appoint an Ethics Liaison who will be available for ethics advice or guidance, will serve as an Affiliate's key contact with the International's Ethics Ombudsperson, will assist in enforcement of the Code, will oversee the delivery of ethics-related training, will assist the Affiliate in strengthening its ethical culture, and will serve as an ethical leader in the Affiliate.

Eligibility

(a) Presidents, chief executive officers, secretary-treasurers, chief financial officers, chiefs of staff, and the equivalent of any of the foregoing are not eligible to serve as Ethics Liaisons.

Rotation

(b) Affiliates are encouraged to consider rotating the Ethics Liaison position periodically, barring operational difficulties, to develop ethical leadership broadly in the Affiliate. Affiliates shall advise the SEIU Ethics Ombudsperson as soon as practicable of the appointment of Ethics Liaisons and of any vacancy that occurs in the position.

Training

(c) Ethics Liaisons will regularly receive training from the International Union specific to the role. Affiliates should make every effort to ensure the participation of their Ethics Liaisons.

Complaints

Section 17. Complaints.

Submission

(a) Any covered individual or member may file a written complaint concerning alleged violations of the Code. Oral concerns and complaints shall be reduced to writing for further processing as a complaint. Complaints should be signed or contain the name of the complainant(s), and shall be kept confidential pursuant to Section 24. Complaints alleging violation of the Code shall not be enforced under SEIU or Affiliate constitutions and bylaws unless they also allege violations of the constitutions and bylaws.

Enforcement under constitution

Contact information

(b) The International Union shall post contact information for submission of ethics complaints on the SEIU website and shall provide that information on request.

(c) Each Affiliate shall provide its staff and membership with contact information for its Ethics Liaison.

Complaint handling, International

Section 18. Complaints Handled by the International Union. Complaints alleging violation of the Code that are submitted to the International Union or the Ethics Officer shall be referred initially to the SEIU Ethics Ombudsperson. The Ethics Ombudsperson shall review ethics complaints submitted to the International Union and shall respond to them in his or her discretion, including but not limited to providing advice or guidance, resolving them informally, directing them to resources outside the ethics office, and referring them to the Ethics Officer or Affiliate for further processing. The individual submitting the complaint shall be notified of the status of the complaint as appropriate in the discretion of the Ethics Ombudsperson but in all events upon its conclusion.

Complaint handling, Affiliates

Section 19. Complaints Handled by Affiliate; Notice to Ethics Ombudsperson. Ethics complaints that are raised with or referred to an Affiliate shall be investigated by the affected Affiliate and, where appropriate, may form the basis of employee discipline or formal internal union charges to be processed before a trial body in accordance with the requirements set forth in the Affiliate's constitution and bylaws and/or the SEIU Constitution and Bylaws. The Ethics Ombudsperson may advise an Affiliate concerning matters related to the investigation and processing of complaints and charges alleging violation of the Code.

Notice to Ombudsperson

Where a complaint involves an Affiliate's president, chief executive officer, chief of staff, secretary-treasurer, chief financial officer, or the equivalent, the Affiliate shall notify the Ethics Ombudsperson as soon as practicable. The Ethics Ombudsperson may consult with the Ethics Officer concerning any question referred by an Affiliate.

Failure to cooperate

Section 20. Failure to Cooperate; Bad Faith Complaints. Unreasonable failure by a covered individual to fully cooperate with a proceeding or investigation involving an ethics complaint or alleged violation of this Code shall constitute an independent violation of this Code. SEIU reserves the right, subject to notice, investigation and due process, to discipline persons who make bad faith, knowingly false, harassing or malicious complaints, reports or inquiries.

Bad faith

Original Jurisdiction

Section 21. Original Jurisdiction.

Request by Affiliate

(a) Requests for Original Jurisdiction. If an Affiliate or an Affiliate executive board member, officer, or member believes that formal internal union charges against a covered individual that also allege violations of this Code involve a situation which may seriously jeopardize the interests of the Affiliate or the International Union, or that the hearing procedure of the Affiliate will not completely protect the interests of the Affiliate, an officer or member, that individual may request that the International President assume original jurisdiction under Article XVII, Section 2(f) of the SEIU Constitution and Bylaws.

Assumption of jurisdiction

(b) Assumption of Original Jurisdiction by International President. In accordance with Article XVII, Section 2(f) of the SEIU Constitution and Bylaws, the International President may in his or her discretion assume original jurisdiction of formal internal Union charges also alleging violation of this Code if as a result of an investigation he or she believes that the charges filed against a covered individual involve a situation which may seriously

jeopardize the interests of the Affiliate or the International Union. In his or her discretion, the International President may refer the matter to the Ethics Officer for a recommendation concerning the possible assumption of original jurisdiction.

Referral of hybrid charges

Section 22. Referral of Formal Charges to Ethics Officer. If formal internal Union charges filed with the International Union under Article XVII, Section 3 of the SEIU Constitution and Bylaws also allege violation of the Code by an officer or executive board member of the International Union or an Affiliate, such charges may be referred to the Ethics Officer for review and recommendations.

Ethics Officer, possible recommendations

Section 23. Review of Claims by Ethics Officer.

(a) If after review of the allegations of violations of the Code in a complaint or formal charge, the Ethics Officer finds that the allegations have merit and/or warrant further investigation, he shall recommend a response or course of action for the International Union to respond to the complaint or changes, including but not limited to the following:

(1) Further investigation by SEIU personnel and/or outside investigator(s);

(2) Filing of formal charges under Article XVII of the SEIU Constitution and Bylaws;

(3) Assumption of original jurisdiction by International President pursuant to Article XVII, Section 2(f) of the SEIU Constitution and Bylaws;

(4) Appointment of an outside hearing officer to conduct a trial under Article XVII, Section 3 of the SEIU Constitution and Bylaws;

(5) Discipline of covered employees;

(6) Sanction of covered officers or members accused in formal proceedings, and

(7) Other action deemed appropriate in the discretion of the Ethics Officer.

No merit

(b) If the Ethics Officer concludes, after review of allegations of violations of the Code, that the allegations are without merit or that further investigation is not necessary, he or she shall advise the International Union of his or her findings.

Whistleblowers

PART G: PROTECTION OF WHISTLEBLOWERS

Confidentiality

Section 24. Confidentiality. SEIU will make all reasonable efforts to keep confidential the identity of any person(s) raising an ethics concern, inquiry, report or complaint under the Code unless disclosure is authorized by the complainant or is required for SEIU to carry out its fiduciary or legal duties. SEIU will also treat communications concerning ethics complaints or concerns with as much confidentiality and discretion as possible, provided that it remains able to conduct a complete and fair investigation, carry out its fiduciary and legal duties, and review its operations as necessary.

Retaliation prohibited

Section 25. No Retaliation. SEIU encourages all officers and employees to bring ethics concerns and complaints that the Code has been violated to the attention of the Union, as set forth more fully in Part F above.

(a) SEIU expressly prohibits retaliation against covered individuals and members for:

(1) Making good faith complaints, reports or inquiries pursuant to this Code;

(2) Opposing any practice prohibited by the Code;

(3) Providing evidence, testimony or information relative to, or otherwise cooperating with, any investigation or enforcement process of the Code; and

(4) Otherwise participating in the enforcement process set forth in PART F above.

Against Ethics Liaisons

(b) In particular, SEIU will not tolerate any form of retaliation against Affiliate Ethics Liaisons for performing their responsibilities.

Reporting

(c) Any act of alleged retaliation should be reported to the SEIU Ethics Ombudsperson or the Affiliate Ethics Liaison immediately and will be responded to promptly.

APPENDIX D: MANUAL OF COMMON PROCEDURE

INITIATION RITUAL

PRESIDENT: "It is my duty to inform you that the Service Employees International Union requires perfect freedom of inclination in every candidate for membership. An obligation of fidelity is required; but let me assure you that in this obligation there is nothing contrary to your civil or religious duties. With this understanding are you willing to take an obligation?"

(Answer.)

PRESIDENT: "You will now, each of you, raise your right hand and recite the following obligation:

MEMBERSHIP OBLIGATION

"I, (name) _____, pledge upon my honor that I will faithfully observe the Constitution and Bylaws of this Union and of the Service Employees International Union.

"I agree to educate myself and other members in the history of the labor movement and to defend to the best of my ability the principles of trade unionism, and I will not knowingly wrong a member or see a member wronged if it is in my power to prevent it.

"As an SEIU member, I will take responsibility for helping to achieve the Union's vision for a just society where all workers are valued and people respected, where all families and communities thrive, and where we leave a better and more equal world for generations to come."

PRESIDENT: "You are now members of the Service Employees International Union."

OFFICERS' INSTALLATION OBLIGATION

"I, (name) _____, accept my responsibility as an elected officer of the Service Employees International Union and I pledge that I will faithfully observe SEIU's Constitution and Bylaws. I will work tirelessly to unite working people to achieve our members' vision for a just society. I have carefully read and signed the Officers' Installation Obligation, and I hereby commit to abide by it."

Officers' Installation Obligation:

I accept my responsibility as an elected officer of the Service Employees International Union and I pledge that I will faithfully observe the Constitution and Bylaws of the Service Employees International Union.

I pledge that I will provide ethical, responsible leadership, representing our members and organizing new workers to build power to win for all.

I pledge to make the growing gap between the rich and everyone else the problem of our time, to inspire and support workers everywhere who are ready to take collective action to lift wages and create family-sustaining jobs, to elect political leaders on the side of the 99%, and to hold them accountable when they support policies that benefit the 1%.

I agree to defend the principles of trade unionism.

I will not knowingly wrong a member or see a member wronged if it is in my power to prevent it.

I pledge to exercise leadership based on the SEIU standards of:

- Shared unity of purpose;
- Openness to questions and willingness to learn;
- Acting with the courage of our convictions;
- Working together with accountability; and
- Commitment to inclusion.

I believe in and will fight for the SEIU vision of a just society where all workers are valued and people respected, where all families and communities thrive, and where we leave a better and more equal world for generations to come.

I will work to dismantle structural anti-Black racism as part of my leadership commitments, which is necessary for building a fair and just economy for our members, their families and communities and for all working people. We can only achieve economic justice for working people when we achieve racial equality and justice for all.

I commit to the highest level of ethical behavior in exercising leadership decisions on our members' behalf.

I hereby certify that I have read and signed the Officers' Installation Obligation and I hereby commit to abide by it.

Signature of Officer:_____

DEBATE

The following rules shall be used to govern debate unless the Local Union has adopted its own rules or regulations:

Rule 1. The regular order of business may be suspended by a vote of the meeting at any time to dispose of urgent business.

Rule 2. All motions (if required by the chair) or resignations must be submitted in writing.

Rule 3. Any conversation, by whispering or otherwise, or any other activity which is calculated to disturb or may have the effect of disturbing a member while speaking or disturb the conduct of the meeting or hinder the transaction of business shall be deemed a violation of order.

Rule 4. Sectarian discussion shall not be permitted in the meetings.

Rule 5. A motion to be entertained by the presiding officer must be seconded, and the mover as well as seconder must rise and be recognized by the chair.

Rule 6. Any member having made a motion can withdraw it with consent of the seconder, but a motion once debated cannot be withdrawn except by a majority vote.

Rule 7. A motion to amend an amendment shall be in order, but no motion to amend an amendment to an amendment shall be permitted.

Rule 8. A motion shall not be subject to debate until it has been stated by the chair.

Rule 9. A member wishing to speak shall rise and respectfully address the chair, and if recognized by the chair, he or she shall be entitled to proceed.

Rule 10. If two or more members rise to speak, the chair shall decide which is entitled to the floor.

Rule 11. Any member speaking shall be confined to the question under debate and avoid all personal, indecorous or sarcastic

language.

Rule 12. Attending meetings under the influence of liquor or any controlled substance not lawfully prescribed is basis for removal.

Rule 13. No member shall interrupt another while speaking, except to a point of order, and the member shall definitely state the point, and the chair shall decide the same without debate.

Rule 14. Any member who is called to order while speaking shall be seated until the point of order is decided, after which, if decided in order, such member may proceed.

Rule 15. Any member who feels personally aggrieved by a decision of the chair may appeal such decision to the body.

Rule 16. When an appeal is made from the decision of the chair, the Vice President shall act as chairperson; the appeal shall be stated by the chair to the meeting in these words: "Shall the decision of the chair be sustained as the decision of this Union?" The member will then have the right to state the grounds of appeal and the chair will give reasons for its decision; thereupon the members will proceed to vote on the appeal without further debate, and it shall require a majority vote to overrule the chair.

Rule 17. No member shall speak more than once on the same subject until all who wish to speak have spoken, nor more than twice without unanimous consent, nor more than five minutes at any one time without consent of a two-thirds vote of all members present.

Rule 18. The presiding officer shall not speak on any subject unless such officer retires from the chair, except on a point of order or to make an official report or give such advice and counsel as the interests of the organization warrant. In case of a tie the presiding officer shall have the deciding vote.

Rule 19. When a question is before the meeting, no motion shall be in order except:

1. To adjourn;
2. To lay the question on the table;
3. For the previous question;
4. To postpone to a given time;
5. To refer or commit;
6. To amend.

These motions shall have precedence in the above order. The first three of these motions are not debatable.

Rule 20. If a question has been amended, the question on the amendment shall be put first; if more than one amendment has been offered, the question shall be put as follows:

1. Amendment to the amendment.
2. Amendment.
3. Original proposition.

Rule 21. When a question is postponed indefinitely, it shall not come up again except by a two-thirds vote.

Rule 22. A motion to adjourn shall always be in order, except:

1. When a member has the floor;
2. When members are voting.

Rule 23. Before putting a question to vote, the presiding officer shall ask, "Are you ready for the question?" Then it shall be open for debate. If no member rises to speak or the debate is concluded, the presiding officer shall then put the question in this form: "All in favor of this motion say `aye'"; and after the affirmative vote is expressed, "Those of the contrary opinion, say `no'." After the vote is taken, the presiding officer shall announce the result in this manner: "It is carried [or lost] and so ordered."

Rule 24. Before the presiding officer declares the vote on a question, any member may ask for a division of the house. The chair is required to comply with this request. A standing vote shall thereupon be taken.

Rule 25. When a question has been decided it can be reconsidered only by two-thirds vote of those present.

Rule 26. A motion to reconsider must be made and seconded by two members who voted with the majority.

Rule 27. A member ordered to be seated three times by the chair without complying shall be debarred from participating in any further business at that session.

Rule 28. All questions, unless otherwise provided, shall be decided by a majority vote.

Rule 29. The presiding officer of the meeting shall enforce these rules and regulations and may direct that members be removed from the meeting for violation of these rules.

ORDER OF BUSINESS

1. Opening.
2. Roll call of officers.
3. Reading of minutes of the previous meeting.
4. Applications for membership.
5. Initiation of new members.
6. Communications and bills.
7. Reports of officers, executive board and committees.
8. Unfinished business.
9. New business.
10. Good and welfare.
11. Adjournment.

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Article in The Guardian

The Guardian

Fight for $15 swells into largest protest by low-wage workers in US history

Workers in more than 200 cities walked out on jobs or joined protests bankrolled by organized labor on Wednesday in latest bid to raise minimum wage

Marchers with #FightFor15 banner on Amsterdam Avenue in New York City during rally on behalf of low-income workers nationwide. Photograph: Andy Katz/Demotix/Corbis

Steven Greenhouse *and* **Jana Kasperkevic** *in New York*

Wed 15 Apr 2015 17.40 EDT

Workers in Atlanta, Boston, New York, Los Angeles and more than 200 cities across the US walked out on their jobs or joined marches and protests on Wednesday during what organisers claimed was the largest protest by low-wage workers in US history.

Some 60,000 workers took part in the Fight for $15 demonstrations, according to the organisers. The protests are calling for a minimum wage of $15 an hour in the US, more than twice the current federal minimum of $7.25.

By late afternoon on the east coast no arrests had been reported, a marked contrast to last May's action when more than 100 people were arrested during a protest outside McDonald's Chicago headquarters.

The demonstrations were the latest in a series of strikes that began with fast-food workers in New York in November 2012. The movement has since attracted groups outside the restaurant industry: Wednesday's protesters included home-care assistants, Walmart workers, child-care aides, airport workers, adjunct professors and other low-wage workers. It also sparked international support, with people protesting against low wages in Brazil, New Zealand and the UK.

The Service Employees International Union (SEIU), one of the largest US unions and representing janitors, security guards, hospital aides and nursing home workers, has bankrolled the campaign, pumping in more than $25m according to documents filed with the US Department of Labor.

Mary Kay Henry, international president of the SEIU, told the Guardian: “There is not a price tag you can put on how this movement has changed the conversation in this country. It is raising wages at the bargaining table. It’s raised wages for 8 million workers. I believe we are forcing a real conversation about how to solve the grossest inequality in our generation. People are sick of wealth at the top and no accountability for corporations.”

Speaking at a protest in San Francisco, Karen Joubert, a nurse, Fight for $15 organizer and a vice-president of representation with the northern California chapter of SEIU, said: “When you pay someone a decent wage, it helps him to get better healthcare and take care of his family.

“Many of our members who work at fast-food restaurants are not college students. They’ve worked there for 12, 15 years. They are working three jobs so that they can raise a family. We want to see them get better wages.”

Gary Chaison, a professor of industrial relations at Clark University in Worcester, Massachusetts, said the protest marked a significant change in labor disputes. “What is really significant about the Fight for $15 movement is - most labor disputes, look inside, they’re about a group of workers covered by a collective bargaining agreement,” said Chaison. “In the Fight for $15, unions are helping to organize on a community basis, a group of workers who are on the fringe of the economy. It’s not about union members protecting themselves. It’s about moving other people up. This is the whole civil rights movement all over again.”

The Fight for $15 movement started with fast-food workers, with a one-day strike by 200 cooks and order-takers, but its strategists have maneuvered to transform it into a broad movement of low-wage workers.

The strikes are fuelling a national debate over low wages in the US. President Barack Obama has been pushing unsuccessfully for a national raise to $10.10. Some cities including Seattle and New York have moved to increase their local rates, and big corporations including McDonald’s and Walmart have announced hikes in their hourly rates.

But a national increase still faces stiff opposition. The International Franchise Association, the world’s largest organization representing franchise owners, called the Fight for $15 protests “a multimillion-dollar public relations campaign designed to mislead the public and policymakers”.

Janice Fine, a professor of labor relations at Rutgers University in New Brunswick, New Jersey, said the strikes were a way for the labor movement to revamp its role after decades of declines in membership, interest and influence.

“The SEIU reached the point where they realized that things were so bad that if we didn’t have a climate change for unions, the labor movement would melt away along with the polar ice caps; that if we didn’t have climate change in this country about inequality and raising wages, then things were not going to shift for the better,” she said. “The labor movement historically hasn’t organized workers this poor in a very long time. It hasn’t positioned itself as the champion of low-wage workers.”

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Daniel J. Ratner
Daniel Engelstein[a]
Gwynne A. Wilcox[a]
Pamela Jeffrey
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Allyson L. Belovin
Suzanne Hepner[•]
Richard Dorn
Robert H. Stroup
Dana E. Lossia[Δ]
Micah Wissinger[•]
Ryan J. Barbur
Alexander Rabb
Laureve D. Blackstone[Δ]

LEVY RATNER, P.C.
Attorneys at Law
80 Eighth Avenue, 8th Floor
New York, New York 10011-7175

Telephone (212) 627-8100
Telecopier (212) 627-8182

www.levyratner.com

Richard A. Levy
Special Counsel

Kimberly A. Lehmann[Δ]
Aleksandr L. Felstiner
Jessica I. Apter[Δ]
Rebekah Cook-Mack
Courtney L. Allen

January 28, 2019

BY E-SUBMISSION

Roxanne L. Rothschild
Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Re: 1199SEIU United Healthcare Workers East
Comment on Proposed Rulemaking FR 2018-19930
(Joint Employer Proposed Rule Making)

Dear Ms. Rothschild and Members of the National Labor Relations Board:

As General Counsel for 1199SEIU United Healthcare Workers East ("1199SEIU"), I write to strongly oppose the National Labor Relations Board's ("NLRB" or "Board") proposed rule redefining the joint employer standard ("proposed rule" or "rule"). The proposed rule is both substantively and procedurally defective. Implementation of the proposed rule would erode the fundamental right of employees to collectively bargain with the employer that effectively determines their critical terms and conditions while allowing employers to structure their businesses in a way that avoids responsibility for violations of the labor laws the NLRB is tasked with enforcing. The rule will fundamentally deprive working people of an effective voice in their workplaces. Further, the proposed rule does not provide clarity to the healthcare industry that we serve. For these reasons, 1199SEIU urges the NLRB to fulfill its duty to encourage collective bargaining and not move forward with the rule redefining joint employment as proposed.

1199SEIU's Interest in the Proposed Rule

1199SEIU is the largest healthcare workers' union in the United States with more than 430,000 members in five states along the Eastern seaboard—Massachusetts, New York, New Jersey, Washington, D.C., and Florida. Our members work in acute care hospitals, nursing homes, clinics, home care settings, community-based clinics, and pharmacies as nurses, nurses aides, techs, lab workers, clerks, housekeepers, dietary workers, transporters, pharmacists, social

[a]Admitted in NY, MA and DC [δ]Admitted in NY and NJ [•]Admitted in NY and CT [•]Admitted in NY and DC

workers, physician assistants and many other types of medical professionals. We are the largest and fastest-growing healthcare union in the nation.

Since our founding in 1932, our mission has been to stand up for quality healthcare, good jobs and social justice for all. By having an effective voice in the workplace, 1199SEIU has won the highest standards for healthcare workers in the country, including good wages and benefits, safe staffing, paid time off, secure retirement, model childcare, and education benefits and a real voice in the workplace. Our members are politically engaged and active. We are affiliated with the Service Employees International Union ("SEIU") which has over 2 million members and is one of the largest labor unions in North America.

1199SEIU submits these comments to share our perspective as healthcare workers and provide guidance to the Board so that any new rule concerning the joint employer standard reflects the purposes of the Act, the core interests of workers, and realities of the modern healthcare industry.

Joint Employment in the Healthcare Industry

1199SEIU's members work in New York City flagship hospitals, rural nursing homes, clinics, pharmacies, and provide in-home care for the elderly. Regardless of the job setting, the primary employers of our members (*e.g.*, hospitals, nursing homes, healthcare agencies), often outsource key aspects of their businesses to cut costs, avoid legal obligations and increase their flexibility. The outsourcing of healthcare jobs has historically impacted lower-wage, labor-intensive tasks of cleaning, serving food and doing laundry. And while the last few decades brought more outsourcing of billing departments, laboratories and certain professional services, we are now confronting complex employment arrangements involving ever increasing numbers of our highest skilled members working in direct-care clinical settings.

No longer do we just see the use of agency or temporary nurses supplementing the work of staff nurses, but entire practice areas or entire job classifications within acute care hospitals are being outsourced. As an example, 1199SEIU represents some of the most highly-trained and highest paid clinical professionals in New York City—physician assistants.[1] Given that these clinical professionals work under the direction of a physician, hospitals often seek to contract their services through large physician groups or by other arrangements. As with most outsourcing, it leads to finger pointing at the bargaining table over who controls economic decisions and generates unaccountability in day-to-day working relationships, which in this industry directly impacts patient care.

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[1] Physician assistants are state-licensed, credentialed health care professionals who practice medicine with physician supervision, performing an extensive range of medical services in nearly every medical and surgical specialty and health care setting. They take patient histories and perform physical exams, diagnose illnesses, develop treatment plans, order lab tests, prescribe medications, counsel and educate patients, suture wounds and assist in surgery. *See* https://medicine.yale.edu/pa/profession/index.aspx (last visited 1/24/19).

We are stymied at the bargaining table when hospitals and nursing homes are not present to discuss the working conditions of medical professionals providing care in their facilities. Contracting employers claim they cannot afford wages and benefits without an increase in funding from hospitals and nursing homes and/or that they are unable to resolve particular workplace disputes. Core terms and conditions of employment, such as direct supervision, working hours, patient census, the provision of supplies, and general health and safety concerns are dictated by the hospital or nursing home, but the structure of the service contracts between the supplying employer and the hospital/nursing homes makes it all but impossible to address working conditions without having a hospital or nursing home employer at the bargaining table.

The employment status of medical professionals working in clinics and hospital-affiliated physician practices are also becoming more complicated. Doctors affiliated with hospitals are supplied staff for their private offices/clinics by hospitals under the facade of management service organizations under their command. While the doctors and hospital exercise control over the workers' terms and conditions of employment, deals are structured so that neither the individual doctors nor hospital is the employer of record. These byzantine relationships leave workers without recourse to bargain with the entity controlling their day-to-day working conditions.

Joint Employment in a Highly Regulated Industry

The healthcare industry offers some of the most regulated workplaces in the country. Providers must maintain clinical and environmental standards set by public law or risk losing accreditation and funding. When a healthcare facility is reviewed for accreditation, every facet of the clinical care and clinical environmental is scrutinized, resulting in periodic unannounced top-to-bottom inspections.[2]

The failure of a contracted housekeeping employee to satisfactorily clean a patient room presents a patient care, legal and public relations risk for a hospital. It could lead to a citation, and if uncorrected or too egregious, the eventual loss of accreditation, funding, and public confidence. Similarly, a nurse or other professional who fails to provide satisfactory treatment or diagnostic care puts a nursing home's license at risk. In sum, every person working in a healthcare setting—whether a pot scrubber or pharmacist—must perform his or her job consistent with standards that govern that particular healthcare provider. A healthcare provider's managers and supervisors are required by statute and in some instances by the mandates of their

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[2] The most widely respected accreditation comes from the Joint Commission (sometimes referred to as "JACHO"), an independent, not-for-profit organization, that accredits and certifies nearly 21,000 health care organizations and programs in the United States. The Joint Commission does not publish its standards of review. The comprehensive standards of the Joint Commission are developed with input from health care professionals, providers, subject matter experts, consumers, and government agencies (including the Centers for Medicare & Medicaid Services). They are informed by scientific literature and expert consensus.
See https://www.jointcommission.org/facts_about_joint_commission_accreditation_standards/ (last visited 1/24/19).

own professional licenses, to exercise control over the working conditions of contracted employees.

Keeping accreditation and complying with myriad rules and regulations governing their operation requires a healthcare provider to control everything that transpires under their licensure and/or within their facility. The fractured control exemplified by the proposed rule, not only threatens workers' terms and conditions but quality patient care. The proposed rule simply fails to address the realities of joint employment in this highly regulated industry by only looking at the exercise of direct and immediate control over a truncated list of terms and conditions of employment.

The Proposed Rule Replaces Well-Reasoned Case Law with Confusion.

The proposed rule aims to provide employers and unions with predictability and consistency with regard to determining joint employer status. The rule will not accomplish that goal in the healthcare industry. The proposed rule fails to reflect the joint employment reality we encounter in the highly regulated workplaces in which our members work. Most frustratingly, the rule incorporates vague terms and gives a list of "examples" that are in no way exhaustive and seemingly contradict other instruction within the proposed rule. The courts have recognized that joint employer issues are "simply a factual determination," making it a poorly suited topic for rule making. *Holyoke Visiting Nurses Assn. v. NLRB*, 11 F.3d 302, 307 (1st Cir. 1993).

In replacing well-reasoned cases originating in the healthcare industry predicated on actual employment situations, the Board now asks healthcare employers and unions to operate in a vacuum using undefined terms and wholly unhelpful "examples." By upending decades of case law as most recently considered in the *Browning-Ferris* decision,[3] the proposed rule will create confusion for those attempting to untangle complex employment relationships without any true fact-based guidance from the Board.

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[3] On the basis of the recent D.C. Circuit case alone, the Board should abandon its proposed rule. *See Browning-Ferris Industries of California, Inc. v. NLRB*, No. 16-1063, 16-1064 (D.C. Cir. Dec. 28, 2018) reviewing *Browning-Ferris*, 362 NLRB No. 186 (2015). The D.C. Circuit held that the right-to-control element of the joint employer standard "has deep roots in the common law" which forces the Board in the instant proposed rule making to "color within the common-law lines identified by the judiciary." *Browning-Ferris*, slip op. at 21. The proposed rule fails to do so because it precludes consideration of reserved or indirect control. *See Browning-Ferris*, slip op. at 4 and 23 (the common law "permits consideration of those forms of indirect control that play a relevant part in determining the essential terms and conditions of employment" and "is not woodenly confined to indicia of direct and immediate control").

The Proposed Rule Fails to Define Essential Terms and Conditions in the Healthcare Workplace

The proposed rule states that an employer will only be considered a joint employer where it shares or codetermines an employee's essential terms and conditions of employment, "such as hiring, firing, discipline, supervision and direction." 83 Fed. Reg. 46686. This statement provides no guidance as to whether the Board will consider other terms and conditions not included in this list. The proposed rule does not affirm that this is the full universe of "essential terms and conditions" to be considered nor does it specify what treatment should be given to other terms and conditions that prior configurations of the Board have found to be essential. *See, e.g.*, *Browning Ferris Industries*, 362 NLRB, slip op. at 15 (citing prior cases where the number of workers to be supplied, scheduling, seniority, overtime, work assignments and method of work performance were considered essential terms and conditions). An appropriately inclusive list of essential terms and conditions of employment would include mandatory subjects of collective bargaining.

Only recognizing control over hiring, firing, discipline, supervision and direction ignores other relevant conditions of employment. Eliminating consideration of workplace control that does not fall into one of these categories empowers employers to avoid accountability. Moreover, the twelve abridged "examples" provided with the proposed rule consider only an isolated condition of employment instead of the totality of conditions in a workplace. Such a simplified analysis does a serious disservice to a multifaceted legal question that demands thorough and precise analysis.

Workplace safety is a paramount concern for our members. Given that their own health and welfare is often at stake when providing care to others, our members prioritize workplace safety over many other terms and conditions of employment. Hospitals, nursing homes and home care agencies are responsible for setting policies directly impacting safety in the workplace. A contracted employee assigned to a hospital, nursing home or patient residence has little recourse through a contractor when presented with unsafe working conditions. In some instances, health and safety concerns can be categorized under the essential term and condition referred to in prior Board cases. But without a more definitive statement from the current Board majority, it is unclear under the proposed rule whether control over safety is considered an essential term and condition of employment.

To be clear, a hospital controls the movement of psychiatric patients within its walls and the ratio of contracted staff assigned to patients who might present a hazard to themselves or caregivers. A nursing home orders the supplies used by contracted staff tasked with disposal of bio-medical waste. And a homecare agency decides the acuity of patients to which it assigns contracted home-health aides. The proposed rule takes far too narrow a view of these essential terms and conditions of employment. It is ill-advised to exclude necessary parties from bargaining obligations over terms and conditions such as these, especially when worker health and welfare and patient care are at stake.

The Proposed Rule Leaves Parties to Speculate as to the Level and Type of Control Necessary to Find a Joint Employer Relationship

The proposed rule further requires a putative joint employer to "possess and actually exercise substantial direct and immediate control over the employees' essential terms and conditions of employment in a manner that is not limited and routine." 83 Fed. Reg. 46686. Even aside from the admonitions of the D.C. Circuit that the proposed rulemaking take adequate consideration of the common law which it does not do, (*Browning-Ferris*, slip op. at 4), this requirement only adds ambiguity to the proposed test for joint employment. The word "substantial" is an undefined term with no legal precedent upon which to judge what might be considered adequate control under the test. The rule fails to give any demarcation for what is "direct" and "immediate." And, the final phrase "in a manner that is not limited and routine," consists not only of individually undefined terms but is vague as to whether the standard requires consideration of a manner of control that is "limited" but not "routine," the inverse situation, or only a manner that is both "limited *and* routine."

Finally, the proposed rule suggests that "it will be insufficient to establish joint-employer status where the degree of a putative joint employer's control is too limited in scope (perhaps affecting a single essential working condition and/or exercised rarely during the putative joint employer's relationship with the undisputed employer)." 83 Fed. Reg. 46687. This final qualification, along with citations to Board cases in the proposed rule creates a labyrinth of conflicting terminology that leaves parties to speculate as to the level and type of control over working conditions necessary to find a joint employment relationship.

Examining the rule's treatment of a single undisputedly essential term and condition of employment such as hiring illustrates how the proposed rule eliminates predictability. There is no dispute under the proposed rule (or prior Board precedent) that the function of hiring is considered an essential term and condition of employment for purposes of joint employer analysis. The proposed rule provides twelve examples intended to illustrate application of the new rule. *See* 83 Fed. Reg. 46697. Example 8 addresses hiring. It states in full:

> Temporary Staffing Agency supplies 8 nurses to Hospital to cover for temporary shortfall in staffing. Hospital manager reviewed resumes submitted by 12 candidates identified by Agency, participated in interviews of those candidates and together with Agency manager selected for hire the best 8 candidates based on their experience and skills. Hospital has exercised direct and immediate control over temporary nurses' essential terms and conditions of employment.

83 Fed. Reg. 46697.

Example 8 suggests that a putative employer's participation in hiring a group of eight employees on a single occasion rises to the level of direct and immediate control that would result in a joint employer relationship with a nursing agency. However, the rule states elsewhere

that it will be insufficient to establish joint employer status where the exercise of control is too limited in scope and perhaps "affecting a single essential working condition and/or exercised rarely during the putative joint employer's relationship with the undisputed employer." 83 Fed. Reg. 46687. It is unclear how one reconciles these statements. Either Example 8 is too simplistic or the qualification too sweeping.

Further complicating the treatment of this undisputedly essential term and condition of employment is a citation to a prior Board case delineating what the current Board considers too limited for control in the hiring process. Citing *Flagstaff Medical Center*, 357 NLRB 659 (2011) the proposed rule states that it is "consistent with the Board's present inclination to find that a putative joint employer must exercise substantial direct and immediate control before it is appropriate to impose joint and several liability on the putative joint employer and to compel it to sit at the bargaining table and bargain in good faith with the bargaining representative of its business partner's employees." 83 Fed. Reg. 46687.

In *Flagstaff Medical Center* the Board found that a contractor's participation in interviewing and hiring candidates was too limited to result in a joint employer finding because the hospital "did not approve all of" the contractor's hiring recommendations. 357 NLRB at 667 (rejecting a single recommended candidate precluded finding joint employment). In dissent, Member Pearce observed that Flagstaff Medical Center hired 14 of the 15 applicants that were interviewed, evaluated and recommended by the contractor and that the hospital did not hire any applicant not recommended by the contractor. *Id.* at 671 (noting that the record indicates the contractor "was the driving force" behind hiring). The current Board cites to *Flagstaff Medical Center* as an exemplar of the kind of control that is too limited to warrant a joint employer finding yet provides an illustration in Example 8, seemingly based on *Flagstaff Medical Center* that triggers far more questions that it provides answers.

So what does Example 8 mean against the backdrop of *Flagstaff Medical Center*? Does the current Board majority intend to suggest that joint employment will only be found if two parties jointly interview every candidate and "together" select each of them for hire? And if so, what does it mean to select a candidate for hire "together"? What if a party selects some candidates to interview, participates in those interviews and makes recommendations about hiring those particular individuals? What if a party selects a pool of candidates for joint interview, participates in those interviews and make a recommendation to hire only some of them? Must a party adopt all of the other parties' hiring recommendations for it to constitute joint decision-making?

The answers to these questions are less important than the disorientation they illustrate. The proposed rule sows confusion and uncertainty as to what constitutes direct and immediate control in the context of what is perhaps the most undisputedly essential term and condition of employment in a joint employer analysis.

Eliminating Bargaining Obligations in the Healthcare Industry Serves No One

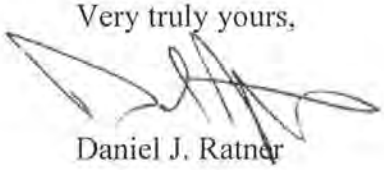
To say nothing of the Act's mandate to promote collective bargaining as a means to reduce labor unrest, public welfare must also be considered when eliminating necessary parties from bargaining in the healthcare industry. 1199SEIU's best contracts require management and labor to discuss the intersection of clinical care and working conditions in the context of patient care committees, health and safety committees and nurse practice committees. Committees such as these, *inter alia*, jointly set controls on the number and acuity of patients assigned to our members, set clinical practice standards, implement processes and approve of supplies used in clinical settings. If a contracted physician assistant treating a patient in the emergency room does not have the supplies or resources to do the best job possible, a practice committee is an unsurpassed option for ensuring that work is accomplished and excellent clinical care is provided. Having both a hospital and contractor at the bargaining table with the union allows for necessary adjustments to be made, not only improving the working conditions of our members but benefiting the patients we serve.

Proving a joint employment case each time an issue arises involving contracted work is beyond the means of any union or employer. We rely on the Board's precedents. There is no sound basis for the current Board majority to abandon clearly reasoned case law and replace it with a rule as imprudent and unclear as the one proposed. The proposed rule does not reflect realities in the healthcare industry and will create confusion and uncertainty in the industry.

Conclusion

For these reasons, the Board should abandon the proposed rule and remain true to the purpose of the Act.

Very truly yours,



Daniel J. Ratner

From:	POLITICO Pro Employment and Immigration
To:	Blado, Kayla
Subject:	PRO EMPLOYMENT & IMMIGRATION REPORT: Tuesday, Oct. 5, 2021
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TOP NEWS

Democrats face ethics déjà vu at NLRB

By Rebecca Rainey

Opponents of the NLRB's labor-friendly agenda are digging into the past work of its newest members to see if their participation in several pending labor disputes would violate Biden's ethics pledge.

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Democrats face ethics déjà vu at NLRB (back)

By Rebecca Rainey

Republicans and business groups are eyeing conflict-of-interest complaints against former union lawyers on the newly Democratic-controlled labor board, borrowing a strategy Democrats themselves used to undercut the board when it was dominated by Republican appointees.

Such an effort could sideline the pro-labor agenda of President Joe Biden's appointees before it even gets going, dealing a blow to their plans to reverse the pro-management tilt the National Labor Relations Board has taken in recent years.

During the Trump administration, Democrats battered the Republican-controlled board with subpoenas and investigations over Trump-appointed members' participation in cases involving their former law firms, resulting in at least one major ruling being overturned and an internal audit .

Now, opponents of the NLRB's labor-friendly agenda are digging into the past work of its newest members, Biden appointees Gwynne Wilcox and David Prouty, to see if their participation in several pending high-profile labor disputes would violate Biden's ethics pledge.

"I have serious concerns about possible conflicts of interest involving new members of the NLRB which could put workers' and employers' rights at risk," Rep. Virginia Foxx of North

Carolina, the top Republican on the Education and Labor Committee, said in a statement. “Republicans plan to review carefully the actions of these political appointees and will hold them accountable.”

With a slim 3-to-2 Democratic majority, if either of those members had to step aside from an issue before the board, the NLRB would be grid-locked.

Wilcox and Prouty both formerly represented the Service Employees International Union in some capacity, ties that could spur ethics complaints from businesses and the GOP throughout the course of the board’s work, and especially as it attempts to rewrite how the agency polices “joint employer” relationships.

Biden’s ethics pledge requires that federal appointees recuse themselves from any “particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts,” for a period of two years from their appointment.

The SEIU, which also funds the Fight for $15 minimum wage and union organizing effort, is involved in two pending legal disputes over whether the labor board should hold large companies liable as joint employers for labor abuses committed by their contractors or franchisees.

Wilcox’s former law firm Levy Ratner P.C. brought one of those cases, and continues to represent Fight for $15 and the SEIU as it appeals a Trump-era NLRB settlement that relieved McDonald’s Corp. of liability as a joint employer for its franchisees' firing of workers who joined Fight for $15 protests. Wilcox was working on the McDonald’s case until at least 2016, according to NLRB case documents.

She has agreed to sit out of any cases involving the law firm for two years, according to her recusal list, which ethics experts say will likely include that McDonald’s settlement if it is eventually sent back to the board in the appeals process.

Prouty has agreed to recuse himself from any cases involving the SEIU Local 32BJ, where he served as general counsel. But when it comes to the larger cases involving the SEIU, Prouty may be able to participate.

In 2010, the NLRB’s inspector general and ethics officials determined that Craig Becker, a Democratic member of the board at the time, could participate in a case involving an SEIU local despite his past work for the union’s international chapter, on the grounds that international unions are separate entities from their local chapters.

But at least one management-side attorney says that precedent doesn’t apply to all situations.

Becker’s particular case is “not by any means the final word on position,” said attorney Michael Lotito, who represents employers for the law firm Littler. He expects there to be more legal discussion over time “on the issue of control by the international union over the locals,” especially given the direct financial interests between unions and their affiliates.

“If Wilcox and Prouty proceed in some manner on these issues” that involve SEIU, “what's going to happen is that it will set a cloud over whatever the board does,” Lotito added. “And as a result, their involvement will give rise to subsequent appeals.”

One way the Biden-appointed members could possibly avoid running afoul of the same recusal issues that plagued the GOP-led board would be to enact policy change via the formal rulemaking process, rather than through individual case decisions, according to federal ethics experts.

“Generally, [appointees] are allowed to draft regulations that have an impact on their former employer as part of an industry, not a regulation that's just tailored to that employer,” said Richard Painter, who was President George W. Bush’s chief ethics lawyer.

But Democrats had denounced that tactic too during the Trump administration, accusing the administration of using it to “avoid compliance with NLRB Members’ individual ethics obligations,” as Sen. Patty Murray (D-Wash.) put it in a 2019 letter to then-board Chair John Ring.

Painter said the regulatory route “is in a way” an end run around the ethics rules. But the rules generally permit a board member to participate in formulating a broad regulation that happens to benefit their former employer “as long as you sever all economic ties.”

If it’s a matter directly involving a particular party, though, like in the instance where Wilcox’s former law firm is representing the Fight for $15 in the McDonald’s settlement fight, “you’ve got to recuse,” Painter said.

Wilcox and Prouty could soon face a test over the issue.

The SEIU filed a lawsuit in September challenging a business-friendly joint employer standard issued under the Trump administration, which makes it harder for corporations to be put on the hook for their subsidiaries’ labor violations. Wilcox’s firm is not representing the SEIU in that case.

The union has argued that both the standard and the McDonald’s settlement were tainted by Trump-appointed member William Emanuel’s participation, after the agency's inspector general criticized him for not recusing himself from a high-profile joint-employer case because of a conflict of interest with his former law firm.

The board vacated that decision and instead issued a rule — on which Emanuel signed off — to establish the business-friendly joint employer standard it sought.

Now the shoe is on the other foot.

Government ethics experts say that Wilcox and Prouty would likely be in the clear to participate in a rulemaking to rewrite the joint-employer standard, because it affects the economy broadly and doesn’t involve any specific parties, even though a standard more friendly to workers would benefit the SEIU’s and Wilcox’s former law firm in court.

And Democrats say it was Republicans on the labor board who cemented that ethics standard.

“If we're in a situation where Emanuel is anywhere near close to having been able to participate in that rulemaking, Wilcox will definitely be able to,” a Democratic House committee aide told POLITICO.”

But that isn’t likely to stop business groups and Republicans from deploying the same fine-tooth ethics scrutiny Democrats and unions did over the Trump-era NLRB.

“It certainly seems to me that there's absolutely no way Gwynne Wilcox can justify her participation in the joint employer issue, and specifically with SEIU and McDonald's question,” said Sean Redmond, vice president of labor policy at the U.S. Chamber of Commerce.

“There's certainly going to be a question that the business community's going to be raising just as much as the unions were raising it with Bill Emanuel. You know, it's just, it's too glaring an issue not to weigh in on it.”

To view online click here.

Biden plots debt ceiling blitz to focus the blame on McConnell (back)

By Christopher Cadelago

After months of playing it cool on the debt ceiling, the White House has quickly begun to turn the screws on Republicans in an attempt to shift blame for the financial brinkmanship squarely onto Senate Minority Leader Mitch McConnell.

President Joe Biden entered the escalating standoff on Monday to declare that Senate Republicans were being “hypocritical, dangerous, and disgraceful.” White House press secretary Jen Psaki charged that Republicans under President Donald Trump spent like “drunken sailors” and unveiled a chart comparing the debt they incurred. The White House is also planning to dispatch more surrogates to deliver their debt ceiling message on TV this week, with hopes of framing the debate as one between a Senate minority leader blocking avenues to avoid default while the administration offers swift resolutions.

The latest gambit comes after GOP lawmakers led by McConnell twice thwarted efforts to raise the debt ceiling to avoid an historic default, and continue to insist they’ll do nothing to make it easier for Democrats. And while Biden warned that fiscal cataclysm was a real possibility — entertaining the idea that the debt ceiling would be breached — his allies on Wall Street seemed fine, at least in the interim, with Democrats not backing down.

“To me this is insanity that Republicans who talk like they are so pro-business are screwing around with the full faith and credit of the U.S. government,” Robert Wolf, the former chief executive of UBS Americas and Obama economic adviser, said in an interview. “This shouldn’t be *the* polarizing issue that everyone is talking about and working on. You want to have a fight over policy — infrastructure and climate action and healthcare benefits — then have that fight. But I don’t think you want to have a fight over the debt ceiling.”

The White House’s new, more combative posture in the debt ceiling standoff is a concession of sorts that their earlier approach has not yielded the desired results. The administration had resisted dealing with the issue through earlier legislative vehicles out of hope that at least 10 Senate Republicans could be pressured by the business community and Wall Street to vote to lift or suspend the debt ceiling to avert a fiscal catastrophe. When that began to look improbable, Democrats tried to do it by majority vote , only to encounter GOP resistance. Now, with the deadline for default less than two weeks away, there is little private or public optimism inside the administration that the resolution will be anything but a nail-biter.

While acknowledging they would far prefer using other avenues, White House officials said Monday that they aren't ruling out the possibility of raising the debt ceiling though the budget process known as reconciliation, which McConnell has been urging them to do for months. But they're worried that Republicans, who themselves voted to raise the debt limit by trillions under Trump, will use that opportunity to burn precious floor time in the Senate, and Biden himself described that path as risky, complicated, and cumbersome.

"If you don't want to help save the country, get out of the way so you don't destroy it," he said Monday, wading into the debate after administration officials had strategically deployed several other key officials to drive home the urgency — all to no measurable avail.

The White House and Republican leaders have both said there's no negotiation to be had over the limit, leaving only a few potential resolutions. Republicans could cave. Democrats could reverse course and change the rules of the Senate to pass a debt ceiling hike with just 50 votes. Or, if Democrats conclude that they'll have to pass it via reconciliation, as many suspect will happen, Republicans could agree to throw up fewer time-sucking barriers to gum up the process.

Though he has said the debt ceiling will be — and should be — raised, McConnell has made it clear he wants no part in helping Biden, and insists Democrats must go it alone after he gave them "nearly three months' notice to do their job."

Wolf isn't surprised that Wall Street and industry pressure has yet to move with Republicans, he said, in part because business titans themselves believe there will be a resolution. But what's troubled him beyond white-hot rhetoric and lack of bipartisanship, even on handling past debt, is the lack of deference shown to Treasury Secretary Janet Yellen, who has repeatedly warned that the country could suffer from an accidental default if the limit isn't addressed, and soon.

"The idea that they are ignoring her calls seems just totally off base," Wolf said, calling Yellen experienced and level-headed and not someone who would "cry wolf."

On Monday, Biden joined Yellen in talking up the kitchen table repercussions of a default: Sending the economy over a cliff, he said, risks jobs and retirement savings, Social Security benefits, salaries for service members and benefits for veterans, among other items.

Despite going nowhere with Republicans, administration officials and their close allies believe they're making a mark with the public. As evidence, Democratic Party officials pointed to a long list of editorials and opinion pieces from key swing states that blame Republicans for the standoff. Their belief is that a fight long viewed as a Beltway obsession with disastrous consequences for the economy is now resonating with ordinary Americans.

Republicans, meanwhile, are making two bets of their own. The first is that the public won't be able to differentiate between traditional debt and the arcane rules around the little-understood debt ceiling. The second is that if the economy were to suffer, voters will blame the party in power.

Faced with these prospects, some progressives are wishing the White House would go much further — and think more creatively — than it is currently doing. Josh Bivens, director of research at the Economic Policy Institute, a left-leaning think tank, said he's come to prefer a route specified by some Democrats that would punt the debt limit years and years into the

future.

“Just raise it to an absurd number,” he said, “and tell people ‘Yeah, we effectively abolished it, and now we’re like every other rich nation on earth in that we’re not afflicted by this dumb law anymore.’”

Bivens said he understands that Biden and the White House are taking as tough a stance as possible to make Republicans take some of the political hit for raising the debt limit. But he warned that the administration had better be ready to unilaterally neutralize the threat, either by minting platinum coins or just ignoring the limit and continuing to issue debt and daring somebody to stop them. Both are options White House officials have said they won’t, or can’t, do.

“In the end, I think everybody is frantic about avoiding a political ‘hit’ from this that is not even a love tap,” Bivens concluded. “I just don’t think that people care about the debt limit. They care about the economy and how their lives are going.”

To view online click here.

U.S. extends an ‘olive branch’ to China on trade (back)

By Phelim Kine

The Biden administration’s confirmation Monday of a continuation of key aspects of Trump-era trade policy with China is designed to temper domestic criticism of its China approach while allowing room for substantive bilateral trade reengagement with the Chinese government.

U.S. Trade Representative Katherine Tai’s measured criticism of Chinese trade policies threaded with her explicit commitment to not "inflame trade tensions with China" underscores the administration’s determination to restart trade talks with China without alienating domestic and international allies or providing political ammunition to a highly partisan Congress.

Tai’s speech, though short on key details, clearly signaled to Chinese President Xi Jinping that the Biden administration wants to end the holding pattern in bilateral trade relations in favor of constructive engagement on issues that have festered over the past year. Trade talks have fallen fallow since Tai’s courtesy call in May with her counterpart, Vice Premier Liu He.

“The most important element [of Tai’s speech] is its reengagement with the Chinese and that's long overdue because we have a trade agreement that is reaching an important juncture at the end of this year with the expiration of the [Phase One agreement],” Wendy Cutler, former assistant U.S. trade representative for Japan, Korea and APEC Affairs in the George W. Bush administration, told POLITICO. “Ambassador Tai struck a realistic chord that she's not expecting a lot [from the Chinese] and is clearly leaving her options open on how to respond, and not necessarily unilaterally, but in concert with allies and partners.”

The long-anticipated speech is the capstone of an eight-month review of former President Donald Trump's trade policies toward China and sets the tone for President Joe Biden's plans to press Beijing on tariffs, trade commitments and other bilateral economic issues. Tai confirmed that the U.S. will restart talks with China on its failure to comply with conditions of

the Phase One U.S.-China trade deal implemented in January.

The Biden administration will also maintain tariffs Trump imposed on more than $350 billion worth of Chinese goods and warned additional duties or other trade restrictions may follow if China does not address U.S. concerns. In a recognition of the domestic economic pain inflicted by some of the tariffs, Tai also announced that the U.S. will reopen an exemption process for certain companies to win relief from tariffs on China. That was a key ask of American firms who say the duties are driving up costs for manufacturers and consumers, particularly if no duties are lifted in the near future.

Cutler predicted quick follow-up on Tai's speech by USTR in order to demonstrate tangible progress that justifies the Biden administration's reengagement policy. That progress could include a notice within days in the Federal Register of a new tariff exemptions process. "Hopefully, we'll wake up one morning and hear that [Tai] had had a productive discussion with Liu He," said Cutler, who is also vice president of the Asia Society Policy Institute.

Tai's tough talk, including a reference to "harmful impacts" from Chinese trade practices and USTR's intention to continue the Trump tariffs, was essential domestic political messaging to mitigate potential criticism from China hawks in both the GOP and the Democratic Party that USTR was implementing an unconditional reengagement with China. "Keeping the Phase One agreement in place and enforcing it is something that is going to be broadly acceptable to both sides of the aisle," said Kelly Ann Shaw, a former Trump senior trade adviser and partner at the global law firm Hogan Lovells. "You won't be able to satisfy everyone, but I think that [Tai] did break a reasonable balance in the middle."

Shaw's assessment isn't unanimous and at least one GOP lawmaker took issue with both the duration of USTR's review and a perceived lack of detail in its results.

"It unfortunately took eight months for the administration to announce their approach to trade policy with China, only for the USTR to give no specific indication on what they plan to do," said Rep. Michael McCaul (R-Texas), ranking member of the House Committee on Foreign Affairs. "They've acknowledged that China doesn't want to reform and has no plans to reform, and its industrial policies are zero sum and negotiations have been unsuccessful …. [but] Tai didn't lay out how she plans to enforce China's existing commitments on trade, other than explaining it's been nearly impossible to enforce commitments, both at the WTO or bilaterally."

Tai emphasized that despite the deep disagreements between the U.S. and China on trade, the Biden administration's ultimate goal was to establish a bilateral "durable co-existence" defined by dialogue. Tai said the Biden administration will seek meaningful change from China through "frank conversations" with her Chinese counterparts and to "directly engage with China" on its industrial policies. That messaging appears to be designed to differentiate the Biden administration's approach from that of the Trump administration.

"[Tai] wasn't out to pick a fight with them," said Simon Lester, president of China Trade Monitor, a firm that provides analysis of China's international economic relations. "There were a couple of critical comments but certainly not like what we saw from the previous administration."

Tai's speech reached beyond China to reference the need for the U.S. to work closely with allies in coordinating China trade policies. The European Union is steaming over Biden's

maintenance of Trump-era steel and aluminum tariffs imposed in 2018 on the highly questionable grounds that they were required to protect "national security." But Tai's reference to collaboration with the EU to address "market distortions and other unfair trade practices" suggested a rhetorical placeholder for future U.S.-EU trade discussions on such disagreements.

The Chinese government has yet to respond to Tai's speech. But trade experts expect minimal grumbling about Tai's criticism given the opportunity to remove one important thorn from a bilateral relationship otherwise bracketed with rancor.

"Trade used to be the thesis [of the U.S.-China relationship], but now it's a subpoint in that you've got things happening with military exercises over Taiwan, forced labor and the treatment of the Uyghurs," Shaw said. "There are a lot of other variables that I think China is more reactive to than [trade] right now."

To view online click here.

DNC says unvaccinated workers could be fired (back)

By Alex Thompson

The Democratic National Committee told workers Monday evening that unvaccinated workers could "face termination" if they did not have a legally recognized exemption, according to an internal email obtained by POLITICO.

"This is part of the President's national strategy and is a critical tool to combat COVID-19 and save lives in the months ahead," read the internal email from the DNC's chief operations officer, Monica Guardiola.

The policy applies when in-person work begins at DNC headquarters. For some workers, that will begin this month and continue into November.

"There may be some mandatory, project-based, in-person work at DNC HQ, depending on your projects and department," Guardiola wrote to employees. She emphasized that workers would be given "adequate" notice beforehand.

While some offices across the country have opted to return to the office in a hybrid model of in-person and remote, the DNC said that all employees would be required to return to in-person work on Jan. 3, 2022.

The DNC did not immediately respond to requests for comment. The policy is the latest example of workplaces trying to come into compliance with the Biden administration's vaccine objectives — even places closely associated with the White House.

Last month, the administration announced a series of vaccine mandates across the federal government, associated contractors and workplaces with more than 100 workers. Much of those rules have yet to be implemented, but the administration has been boosting companies that have implemented their own internal mandates, such as United Airlines.

To view online click here.

Democrats start bargaining in bid to save party-line megabill (back)

By Marianne LeVine, Burgess Everett and Sarah Ferris

Congressional Democrats don't want to talk about the discord around the total cost of President Joe Biden's social spending plan, even as that elusive figure remains the biggest impediment to the party's agenda.

The disagreement is holding up not only the larger social spending package, but also the bipartisan physical infrastructure bill, which progressives have threatened to tank absent a broader deal on the administration's twin priorities. Without an agreement between progressives, the White House and Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.), Biden's entire domestic policy agenda is in limbo.

And rank-and-file Democrats have found their hands essentially tied as they labor to cut a deal on reconciliation that will finally allow the House to pass the infrastructure bill that cleared the Senate two months ago.

"It's time for [Senate Majority Leader Chuck] Schumer to bring them in and try to get to a number," said Sen. Jon Tester (D-Mont.), referring to Sinema and Manchin. "Chuck has to do that. He has to bring them in … Nobody can do it except him because anything that we agree on doesn't matter."

While an agreement remains up in the air, Democratic leaders now publicly acknowledge that the topline for the social spending plan will fall below $3.5 trillion, and instead end up closer to between $1.9 and $2.3 trillion, less than half of the $6 trillion that progressives initially sought. It's a sign that reality is dawning on Democrats' majorities as they feel increased urgency to pass the major pillars of Biden's agenda before 2022, when Washington traditionally begins focusing on the midterms. The decision will also determine how much Democrats will need to raise taxes.

Senate progressives are split over whether they are willing to accept a smaller package. Despite Biden telling Democrats his proposed range last week, Sen. Bernie Sanders (I-Vt.) reiterated that $3.5 trillion was already a compromise, while Sen. Elizabeth Warren (D-Mass.) noted that the Senate already agreed to a $3.5 trillion budget blueprint back in August.

"Right now I'm still operating on the assumption that what we voted on, $3.5 trillion, is what we should be negotiating for," Warren said.

Others, however, acknowledged that they will need to reset their expectations. While some said they were willing to accept a total cost below $3.5 trillion, they emphasized that they were more concerned with the policy — even though the number of new policies are directly affected by the topline spending number.

"Everyone is going to have to give and that includes progressives," said Sen. Brian Schatz (D-Hawaii). "The premise that we're going to have to compromise is self evident, but maybe it was worth saying in the Oval Office."

Schumer and Speaker Nancy Pelosi are set to meet with White House officials on Monday

night. Hours earlier, Biden broached the price tag issue with a group of roughly a dozen House progressives, reiterating in a virtual meeting that the overall bill would likely have to be between $1.9 and $2.3 trillion to win support from Senate centrists. Manchin has proposed $1.5 trillion, and told reporters on Monday that Democrats "understand where I am and I've been very clear about it."

Biden's mantra in the call was Democrats needed to fund what programs they could, given the constraints of their threadbare majorities in both chambers, according to multiple people familiar with the discussions. He floated several ways to scale back the cost of policies, such as reducing the years over which certain programs run or using "means-testing" on programs such as free community college.

While no progressives pushed back on the need to reduce the cost of the bill in the meeting, liberals privately say means-testing, or income-based limits, would be difficult to embrace. But in the end they may need to come to terms with Manchin and Sinema's demands as the deciding votes in a tied Senate controlled by Democrats.

Sinema released a statement Saturday eviscerating Democratic leadership for delaying the vote on the physical infrastructure package and making different promises to competing factions of the Democratic Party. She also disclosed that she's privately provided more details on her demands for the larger spending bill to Schumer and Biden, though most of her colleagues don't know exactly where she stands.

While Schumer has engaged with moderates constantly over the past few months, it's not clear when he will meet with Sinema and Manchin next — or how much Biden will be involved.

Schumer and Pelosi are aiming to wrap up both the bipartisan infrastructure bill and the social spending package by the end of the month, an ambitious timeline. Whether they can meet it is highly dependent on how quickly a deal between the party's factions can be reached.

The House will be out of session for up to two weeks, with plans to return whenever party leaders reach a deal to either pass the sweeping spending plan or address the looming debt crisis. But Pelosi and other senior Democrats have continued private discussions behind the scenes, soliciting members' must-have priorities as they narrow the scope of the bill.

The White House has also scheduled calls with several groups of House members, including one on Tuesday morning with swing-district Democrats, the caucus's most vulnerable members, according to multiple people familiar with the plans.

Sinema and Manchin met with Biden last week, along with White House staff, as the administration tried to reach an agreement on a framework for the broader spending bill ahead of a scheduled vote on the bipartisan physical infrastructure package. But it soon became obvious a deal would not be forthcoming, and Pelosi delayed the vote she had originally promised to hold by Sept. 27.

Democratic senators, however, emphasized that many of the deadlines are artificial and self-imposed. Sen. Ben Cardin (D-Md.) predicted that wrapping the entire package up by Oct. 31 would "be very difficult." And Sen. Mazie Hirono (D-Hawaii) put it this way: "it's so huge, it's so transformational, that it gets done when it gets done." It took the Senate weeks to write and clinch a bipartisan infrastructure package that's far smaller than the reconciliation bill.

But before they can write anything on that larger package, Democrats need at least a framework everyone can agree to. And that's the party's primary focus at the moment.

"I've talked to a number of the progressive folks in our caucus, and depending on how the money is spent they would be OK with it. They wouldn't love it, but they'd be OK with a $2 trillion figure, $2.5 trillion. Something in there," Tester said. "There's a gettable number."

Nicholas Wu contributed to this report

To view online click here.

Journalists sue U.S. broadcasting arm for wrongful dismissal under Trump (back)

By Daniel Lippman

Seven foreign journalists working for the U.S. Agency for Global Media who were fired by the Trump administration have sued the agency for breach of contract and wrongful termination.

The journalists argue in their complaints that their careers and livelihoods have been significantly hurt by being fired and are seeking back pay. Most also claim that USAGM deceitfully backdated termination documents to make it appear that the agency was following the proper procedures for how to hasten their departure. Three of the seven who have filed suit, Valdya Baraputri of Indonesia and Paula Alves Silva and Julia Riera of Spain, were forced to leave the country.

The complaints note that Michael Pack, a conservative filmmaker who was installed as CEO of government-run media group USAGM in June 2020, expressed his distrust of foreign journalists working for the various broadcast entities under the USAGM umbrella and refused to renew more than 30 of their visas, causing them to lose their jobs. In an August 2020 interview with The Federalist, cited in the complaint, Pack said that being "a journalist is a great cover for a spy" and said that J-1 visa holders might try to "penetrate" USAGM.

Another of the journalists filing suit is Carolina Valladares Perez, a former war correspondent in the Middle East who previously had worked for the BBC, earning high performance reviews and a $4,000 bonus in her work as a broadcast journalist for Voice of America's Spanish service. After USAGM did not sponsor a renewal of her visa in August 2020, she was soon fired, according to her lawsuit.

"Plaintiff has since disappeared from the news radar, which has had devastating consequences," her complaint says, noting that she's only made a few thousand dollars in freelance work since. "With no show or time on-air, it has been extremely difficult to find a position as a news anchor. Over time, the audience forgets about prior on-air presence. Plaintiff has found it nearly impossible to get her career back on track."

Valladares Perez's lawsuit, which asks for more than $100,000 in monetary damages, says that the termination "devastated" her career and led to "significant financial, personal and professional harm."

The U.S. government has not filed a formal response to the complaints, and recently asked the

court for an extension.

In a statement, USAGM spokesperson Laurie Moy said: “USAGM leadership has been working since January to build back the agency following actions taken by the previous CEO. Acting CEO [Kelu] Chao and her team are fully committed to seeing this work through. We have achieved a great deal, and continue to work to right any outstanding wrongs.” Moy declined to comment on the specific claims in the lawsuits but said they took the matter “quite seriously.” Pack did not respond to a request for comment.

The seven journalists passed full security and background checks, according to the complaints. Pack gave no evidence that they posed security risks to the country, the lawsuit says.

Some of the journalists who sued USAGM have been offered their jobs back, but others have not due to background investigation protocols and other requirements that haven’t been rolled back during the new administration. All are seeking to recover back pay and related damages, according to one of their attorneys.

The lawsuits, which haven’t been publicly reported, also say that the fired journalists weren’t given an opportunity to defend themselves against vague accusations that they were disloyal to the United States.

“All of this occurred without USAGM ever providing Plaintiff with formal notification of, or facts supporting, any claim or allegation that Plaintiff’s performance had been inadequate, that Plaintiff was untrustworthy or disloyal, or that Plaintiff was a potential spy, and without ever providing Plaintiff with a hearing in which [she] could rebut any such allegation,” Valladares Perez’s complaint alleges.

The complaints, filed in the U.S. Court of Federal Claims, also allege that the journalists didn’t receive the required 15 days written notice of termination specified for in their contracts, and that their contracting officer backdated their termination notice in a “deceitful” way.

The journalists have also filed complaints with the Equal Employment Opportunity Commission, alleging that the government’s actions constituted unlawful employment discrimination.

“VOA journalists routinely put themselves at great risk doing their job to report the news from around the world — often from hostile and dangerous places,” said attorney Burt Braverman, who’s representing the journalists. “USAGM’s refusal to make them whole for the losses they suffered, is a real disservice to a group of loyal, committed professional journalists. USAGM needs to do right.”

One of the lawsuits also accuses the agency under Trump of seeking to muzzle them, in violation of the news agency’s independence.

Bricio Segovia, a former VOA journalist, alleges he was retaliated against for asking questions about the visa situation to Mauricio Claver-Carone, who was the National Security Council’s senior director for Western Hemisphere affairs in the Trump administration.

In the interview, Claver-Carone told Segovia that the White House valued the journalism being done by VOA journalists and that they would have a “conversation” on the visa issues

and hoped it would get “resolved as soon as possible.”

The lawsuit alleges that Segovia’s story concerning that interview was sanitized by USAGM, his VOA tweets were taken down and his VOA online account was quickly de-authorized. He was then suspended.

Pack, who had previously made documentaries for PBS, came into the job with the expectation he would shake up the agency. But the journalists allege that his role in reviewing J-1 visa applications on a case-by-case basis played a “decisive” role in personally selecting the journalists that the networks employed and thus breached the journalistic firewall between the networks and their funding parent organization.

While USAGM told most of them at the time that the firings were in “the best interests of the government,” the lawsuits say that they “constituted direct, improper interference by USAGM officials in VOA editorial and journalistic personnel decision-making that was not reasonably necessary, breached Plaintiff’s contract, and violated applicable laws and regulations, including the statutory firewall.”

USAGM, meanwhile, remains in limbo after a turbulent last year under Trump.

Even though advocates for the agency had hoped Biden would make government broadcasting a priority, the White House still has not selected someone to lead it, a Senate-confirmed position. Amanda Bennett, the former director of VOA who resigned shortly after Pack arrived, is being considered to lead the organization, according to four people familiar with the matter. One of them said her nomination could come in the next few weeks. Bennett didn’t respond to a request for comment.

USAGM also hasn’t picked someone to be the director of VOA, the top journalistic job in government broadcasting. Three people familiar with the matter said that at the end of March the White House’s Presidential Personnel Office blocked Steve Capus, the former president of NBC News, from being named director of VOA. Two of the people said that the White House didn’t block him on his merits but instead wants whoever ends up becoming CEO of USAGM to get to pick their own head of VOA. A White House spokesperson declined to comment and Capus didn’t respond to a request for comment.

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This email was sent to kayla.blado@nlrb.gov by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

From:	Iafolla, Robert
To:	Blado, Kayla
Subject:	RE: press inquiry- joint employment/letter
Date:	Thursday, October 7, 2021 11:20:06 AM

Thanks!

From: Blado, Kayla <Kayla.Blado@nlrb.gov>
Sent: Thursday, October 7, 2021 11:18 AM
To: Iafolla, Robert <rIafolla@bloombergindustry.com>
Subject: RE: press inquiry- joint employment/letter

Hi Robert, you can use this quote from me: "Members Wilcox and Prouty stand by their commitment to follow President Biden's Ethics Pledge and other relevant ethics obligations and to work with the NLRB's Dedicated Agency Ethics Official to determine their recusal obligations in any matter, including the joint-employer rulemaking and any related litigation."

Thanks!

Kayla Blado (she/her)
Press Secretary
National Labor Relations Board
202-412-9602
Follow us on Twitter: @NLRB/@NLRBGC
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From: Iafolla, Robert <rIafolla@bloombergindustry.com>
Sent: Thursday, October 7, 2021 11:15 AM
To: Blado, Kayla <Kayla.Blado@nlrb.gov>
Subject: press inquiry- joint employment/letter

Hello Kayla,

I hope all is well. I'm reaching out regarding the letter the National Right to Work Legal Defense Foundation sent to Berry & Ketchum re: recusal of Wilcox & Prouty on the joint employer rule. Any comment from the agency or any of the folks involved?

Cheers,

Robert

: : : : : : : : : : : : : : : : :

Robert Iafolla

Legal Reporter

Bloomberg Law

Phone: 703-341-3971
Email: riafolla@bloomberglaw.com
Twitter: @robertiafolla

From: bloomberglaw@bna.com
To: Ring, John
Subject: Labor Relations
Date: Friday, October 8, 2021 5:04:51 PM

LABOR RELATIONS

IN THE NEWS

Case: Labor Arbitration/Discharge (Arb.)

Arbitrator Tommy C. Kessinger found that Herzog Transit Services, a contractor responsible for operating a commuter railroad, had just cause to discharge a locomotive engineer for failing to observe a crossing warning and speeding through it at 51 mph. The grievant admitted the violation, he was properly trained and was aware of the employer's safety rules, and over four and one-half years with the employer he had three serious safety-related violations, including one identical violation. The employer did not discriminate against the grievant, as the one employee who--like the grievant--had two serious safety violations within two years was discharged, another employee whose two serious violations were separated by six years was suspended and demoted, and a third employee was suspended for one excessive speed violation.

Herzog Transit Servs., Inc., 2020 BL 544840, Arb., 201030-008! 80, T. Kessinger, 9/8/20

How to Advance Corporate Diversity and Comply With the Law

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Motion to Dismiss

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By Robert Iafolla

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Wilcox recusal list

Frequency: Daily

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Reference Id: 380326267

From: bloomberglaw@bna.com
To: Rothschild, Roxanne L.
Subject: Labor Relations
Date: Friday, October 8, 2021 5:04:53 PM

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From: bloomberglaw@bna.com
To: Bock, Richard
Subject: Labor Relations
Date: Friday, October 8, 2021 5:04:58 PM

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From: bloomberglaw@bna.com
To: McFerran, Lauren
Subject: Labor Relations
Date: Friday, October 8, 2021 5:06:59 PM

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From: bloomberglaw@bna.com
To: Kaplan, Marvin E.
Subject: Labor Relations
Date: Friday, October 8, 2021 5:07:55 PM

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Reference Id: 380326413

From: Naill, Adam
To: Sommer, Matt (HELP Committee); Blado, Kayla
Subject: RE: Letter Regarding the Recusal of NLRB Members Prouty and Wilcox
Date: Wednesday, October 13, 2021 7:22:16 PM

Thank you Matt,

We are in receipt of the letter. We will share it with Chairman McFerran and will get back to you.

Thanks,
Adam

Adam Naill
Office of Congressional and Public Affairs
National Labor Relations Board
(202)273-1704

From: Sommer, Matt (HELP Committee) <Matt_Sommer@help.senate.gov>
Sent: Wednesday, October 13, 2021 7:01 PM
To: Naill, Adam <Adam.Naill@nlrb.gov>; Blado, Kayla <Kayla.Blado@nlrb.gov>
Subject: Fwd: Letter Regarding the Recusal of NLRB Members Prouty and Wilcox

Received your names in an automatic reply from Jeff. See below.

Sent from my iPhone

Begin forwarded message:

> **From:** "Sommer, Matt (HELP Committee)" <Matt_Sommer@help.senate.gov>
> **Date:** October 13, 2021 at 6:54:00 PM EDT
> **To:** Jeffrey.Cruz@nlrb.gov
> **Cc:** "Bailey, Katie (Braun)" <Katie_Bailey@braun.senate.gov>
> **Subject: Letter Regarding the Recusal of NLRB Members Prouty and Wilcox**
>
> Jeff,
>
> Please see the attached letter to Chair McFerran from Members of the Senate Health, Education, Labor and Pensions Committee, and the House Education and Labor Subcommittee on Health, Employment, Labor and Pensions.
>
> Thanks,
> Matt
>
> Matt Sommer

Legislative Assistant
U.S. Senator Mike Braun, Indiana
(202) 224-4814

Congress of the United States
Washington, DC 20510

October 13, 2021

The Honorable Lauren M. McFerran
Chair
National Labor Relations Board
1015 Half Street S.E.
Washington, D.C. 20570-0001

Dear Chair McFerran:

We write to request your prompt action to resolve conflicts of interest at the National Labor Relations Board (the "Board") regarding Member Gwynne Wilcox and Member David Prouty, and select issues they are likely to consider. As an independent federal agency, the Board is entrusted to impartially carry out provisions of the National Labor Relations Act (NLRA) of 1935 in a manner that safeguards the rights of both employers and employees. When Board members with conflicts of interest fail to recuse themselves from consideration of matters active before the Board, the American public's trust in the Board's impartiality is deeply eroded.

Our letter follows a recent lawsuit filed in the U.S. District Court for the District of Columbia. Specifically, on September 17, 2021, the Service Employees International Union (SEIU) filed a complaint[1] challenging a final rule which altered how "joint employer" status is defined under the NLRA (the "Final Rule").[2] The Final Rule has significant consequences for both employers and employees throughout the nation.

SEIU takes aim at the Final Rule that was carefully considered by the Board and considered with robust public input. On September 13, 2018, the Board issued a Notice of Proposed Rulemaking (NPRM) concerning joint-employer status under the NLRA, which led to nearly 29,000 comments being filed.[3] On February 26, 2020, the Final Rule was issued and subsequently; it became effective April 27, 2020.[4] Following promulgation of the Final Rule,

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[1] *Service Employees International Union v. National Labor Relations Board; Lauren McFerran, John Ring, Marvin Kaplan, Gwynne Wilcox, David Prouty*, Civil Action No. 21-2443; Case 1:21-cv-02443 (filed Sept. 17, 2021), https://fingfx.thomsonreuters.com/gfx/legaldocs/movankqjbpa/EMPLOYMENT_JOINTEMPLOYER_SEIU_complaint.pdf (hereinafter the "SEIU Litigation").
[2] 85 Fed. Reg. 11184 (Feb. 26, 2020) (to be codified at 29 C.F.R. Part 103 Subpart D).
[3] Press Release, National Labor Relations Board, NLRB Issues Joint-Employer Final Rule (Feb. 25, 2020), https://www.nlrb.gov/news-outreach/news-story/nlrb-issues-joint-employer-final-rule.
[4] Joint Employer Status Under the National Labor Relations Act, 85 Fed. Reg. 11184 (Feb. 26, 2020) (to be codified at 29 C.F.R. Part 103 Subpart D) https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-03373.pdf.

many commenters asserted the rule provided clarity and predictability to the regulated community.[5]

Nearly 18 months after the Final Rule took effect, the SEIU filed a lawsuit to realign the law in favor of union interests. While litigation plays out in the judicial system, we are concerned that Members Wilcox and Prouty, both former employees of the SEIU, have significant conflicts of interest. As such, Members Wilcox and Prouty should not take part in activity before the Board concerning the joint employer rule, including the Final Rule.

As you know, Member Prouty was confirmed by the U.S. Senate on July 28, 2021, and sworn in on both August 28, 2021, and September 22, 2021.[6] From April 2018 until his recent confirmation, Mr. Prouty served as the General Counsel of SEIU Local 32BJ, the largest labor union for property service workers in the country.[7] Under Mr. Prouty's legal counsel, SEIU has attempted to utilize the powers of the federal government, including the NLRB, to attack companies to force unionization of workers and demand union dues. For example, Mr. Prouty was the individual who signed and filed Local 32BJ's comments in opposition to the Joint Employer Rule.[8]

The working relationship between Member Prouty and the SEIU is documented as positive in nature, and the closeness of the relationship is demonstrated in SEIU's support of Prouty during the Senate confirmation process. For example, upon his nomination by President Biden, SEIU 32BJ President Kyle Bragg stated:

> We consider David Prouty's nomination to the National Labor Relations Board a home run for strengthening labor rights and worker-centered standards in our country, and restoring the NLRB's core function to protect the interests of workers. [sic] ...we're thrilled at the possibility that he'll put his ardent commitment to workers in the service of millions of families in our nation.[9]

Following Prouty's confirmation, the SEIU celebrated, stating:

> Our union couldn't be prouder to see David Prouty confirmed to serve on the National Labor Relations Board, along with Gwynne Wilcox. As much as it

---

[5] Allen Smith, *DOL Rescinds Prior Administration's Joint Employer Rule*, SHRM (July 29, 2021), https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/dol-rescinds-joint-employer-rule.aspx.

[6] Press Release, National Labor Relations Board, Statement on Administrative Error During Member Prouty's Swearing-in (Oct. 08, 2021), https://www nlrb.gov/news-outreach/news-story/statement-on-administrative-error-during-member-proutys-swearing-in.

[7] *Id.*

[8] Comments submitted by the Service Employees International Union Local 32BJ, in response to the Board's Notice of Proposed Rulemaking on the joint employer rule, signed by David Prouty, Jan. 28, 2019 (Exhibit on file with office and available upon request).

[9] Press Release, Service Employee International Union, 32BJ Statement on David Prouty Nomination to the National Labor Relations Board (June 22, 2021), https://www.seiu32bj.org/press-release/32bj-statement-on-david-prouty-nomination-to-national-labor-relations-board/.

> saddens us that he will no longer work with us day to day as 32BJ's General Counsel, we are excited to see how his righteous advocacy for workers will help build back up the NLRB as a robust defender of the rights of workers in our country.[10]

Therefore, it is apparent that the SEIU counts on now-Member Prouty to be a continued ally in his new capacity as a Board member.

Moreover, while Member Prouty's ethics agreement requires him to recuse himself from cases involving his former employer, SEIU Local 32BJ, Mr. Prouty is closely connected to both the SEIU as a whole and also to lawyers trying its case challenging the Final Rule. This unquestionably raises concerns about Member Prouty's ability to be fair and impartial, necessitating further recusals. In the case recently filed by the SEIU, the union is represented by in-house counsel and lawyers from Bredhoff & Kaiser,[11] and a lead attorney in the case for the firm is Mr. Leon Dayan.[12]

Importantly, Member Prouty and Mr. Dayan are both active members of the Peggy Browning Fund, a "union activist organization funded solely with donations from organized labor."[13] Member Prouty has served as an advisory board member[14] and Mr. Dayan an active, prominent donor.[15] Additionally, both participate regularly in annual panels and award receptions for the Fund.[16] Member Prouty and Mr. Dayan are also prominent donors to another organization, the North Star Fund, a leftist organization.[17]

Similarly, Member Wilcox also has notable conflicts that warrant her recusal from matters involving the joint employer rule and the Final Rule. By way of background, Member Wilcox was confirmed by the U.S. Senate on July 28, 2021, and sworn in as a Board member on August 4, 2021.[18] Prior to her confirmation, Member Wilcox served as associate general counsel

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[10] Press Release, Service Employee International Union, SEIU 32BJ Statement on Senate Confirmation of David Prouty to NLRB Board (July 29, 2021), https://www.seiu32bj.org/press-release/senateconfirmation/.

[11] Daniel Wiessner, *SEIU Mounts Challenge to NLRB's Trump-Era Joint Employer Rule*, Reuters (Sept. 17, 2021), https://www reuters.com/legal/transactional/seiu-mounts-challenge-nlrbs-trump-era-joint-employer-rule-2021-09-17/.

[12] SEIU Litigation, *supra* note 1.

[13] Bill McMorris, *NLRB Official Suspended for Pro-Union Conflict of Interest*, The Washington Free Beacon (Apr. 11, 2016), https://freebeacon.com/issues/nlrb-official-suspended-conflict-of-interest/.

[14] Peggy Browning Fund, Board of Directors, https://www.peggybrowningfund.org/about-us/board-of-directors (last visited Sept. 28, 2021).

[15] Peggy Browning Fund, *2020 Friends of Peggy Browning Fund*, https://www.peggybrowningfund.org/friends-of-pbf (last visited Sept. 28, 2021).

[16] For example, for the 2016 Peggy Brown Fund San Francisco Awards Reception, Mr. Dayan was a sponsor of the reception of the Peggy Brown Fund, for which Mr. Prouty was a member of the host committee planning the event, https://www.peggybrowningfund.org/events/event/50/San-Francisco-Awards-Reception. As another example, Mr. Dayan is a donor to the Peggy Browning Fund in 2020, the same timeframe during which Mr. Prouty served as an Advisory Board member, https://www.peggybrowningfund.org/friends-of-pbf.

[17] North Star Fund, 2015 Annual Report, https://northstarfund.org/wp-content/uploads/2018/03/North_Star_Fund_2015_Annual_Report.pdf.

[18] Press Release, National Labor Relations Board, The National Labor Relations Board Welcomes New Board Member Gwynne Wilcox (Aug. 4, 2021), https://www.nlrb.gov/news-outreach/news-story/the-national-labor-

of 1199SEIU United Healthcare Workers East and was a partner at union-side law firm Levy Ratner, P.C.[19] Upon her confirmation, the SEIU publicly announced its excitement over her nomination. Specifically, the SEIU tweeted: "Congratulations to Gwynne Wilcox, on her new role on the National Labor Relations Board and as the first Black woman to serve on the Board. We're excited to see you continue your career standing up for working people."[20]

At Levy Ratner, Ms. Wilcox was an attorney representing "Fight for $15," an activist group affiliated with SEIU, which undertook a years-long legal campaign to hold McDonalds jointly liable. Ms. Wilcox "represented the union-backed Fight for $15 group that accused the fast-food giant of labor law violations in the biggest joint employer liability case in the agency's history" and "has said the McDonald's case was one of her proudest equal rights achievements."[21]

As is the case with Mr. Prouty, Ms. Wilcox has interactions with a principal counsel at Bredhoff & Kaiser, Mr. Dayan, who is representing the interests of the SEIU in the case against the joint employer Final Rule.[22] Ms. Wilcox and Mr. Dayan are both active supporters of the Pegging Browning Fund. Ms. Wilcox has served on the Board at a time when Mr. Dayan has actively participated in panels,[23] and they have served on the same host committee for the Peggy Browning Fund Reception.[24]

The working relationships between Members Prouty and Wilcox and the SIEU, as well as the relationships between Member Prouty to counsel trying the case, is evident. The Office of Government Ethics (OGE) establishes the floor by which federal employees and officers must comply to avoid conflicts of interests. OGE guidance, enshrined in a memorandum issued in 1999 and reiterated in 2004,[25] makes clear that employees and officers are expected to avoid any official involvement in a covered matter, and OGE further advises ethics counselors:

> For those of you who counsel employees who may not fully appreciate the meaning of the term 'recuse,' here is something you could share with them. An employee should refrain, abstain, refuse, relinquish, forbear, forgo, hold off, keep

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relations-board-welcomes-new-board-member-gwynne-wilcox#:~:text=Wilcox%20was%20nominated%20by%20President,will%20last%20until%20August%202023

[19] *Id.*

[20] SEIU (@SIEU), Twitter (July 28, 2021, 4:44PM), https://twitter.com/SEIU/status/1420485350372233219?s=20.

[21] Robert Iafolla & Ian Kullgren *Bloomberg* (May 27, 2021, 4:22 PM), https://news.bloomberglaw.com/daily-labor-report/ethics-questions-await-bidens-federal-labor-board-nominee.

[22] SEIU Litigation, *supra* note 1.

[23] Peggy Browning Fund Newsletter, Fall/Winter 2013 edition, https://docplayer.net/196079704-This-summer-a-number-of-peggy.html (last visited Sept. 28, 2021).

[24] Peggy Browning Fund, Regional Workshops – Upcoming Events, https://www.peggybrowningfund.org/workshops/category/1 (last visited Sept. 28, 2021).

[25] Office of Government Ethics 99 X 8 Memorandum dated April 26, 1999, from Stephen D. Potts, Director, to Designated Agency Ethics Officials Regarding Recusal Obligation and Screening Arrangements, https://www.oge.gov/Web/OGE.nsf/0/52E2FAA1B3F454D2852585BA005BEDC0/$FILE/99x8.pdf. *See also,* OFFICE OF GOVERNMENT ETHICS 04 x 5 Memorandum to Designated Agency Ethics Officials, General Counsels and Inspectors General dated June 1, 2004, https://www.oge.gov/web/OGE.nsf/0/F8A7059769DBCC6F852585BA005BED3C/$FILE/04x5.pdf.

> away, give up, decline, desist, discontinue, end, cancel, close, quit, terminate, stop, halt, cease, drop, stay away, shun, avoid participation in the matter before him or her. In other words, just don't do it.[26]

OGE further states that,

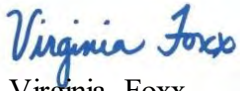
> [u]nder 5 C.F.R. § 2635.502, an employee is required to consider whether the employee's impartiality would reasonably be questioned if the employee were to participate in a particular matter involving specific parties where persons, with certain personal or business relationships with the employee are involved. If the employee determines that a reasonable person would question the employee's impartiality, or if the agency determines that there is an appearance concern, then the employee should not participate in the matter unless he or she has informed the agency designee of the appearance question and received authorization from the agency.[27]

Taking the above into consideration, one thing is clear: Members Wilcox and Prouty cannot be neutral arbiters on cases involving issues or policies concerning the Final Rule. This conflict raises concerns that each will predetermine policy outcomes, and at a minimum, their involvement in such matters would create the appearance of a conflict of interest. While the obligation to recuse is the personal responsibility of the individual employee,[28] we encourage you as Chair to take steps to secure, in writing, the intent of both Member Prouty and Member Wilcox to recuse themselves from all Board activity regarding joint employer policy. Recusal of both Members Prouty and Wilcox will ensure the Board continues to remain an independent and neutral body.

Thank you for your prompt attention to this matter.

Sincerely,

Mike Braun
U.S. Senator



Virginia Foxx
Member of Congress

Richard Burr
U.S. Senator

Rick W. Allen
Member of Congress

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[26] Office of Government Ethics 99 X 8 Memorandum dated April 26, 1999, from Stephen D. Potts, Director, to Designated Agency Ethics Officials Regarding Recusal Obligation and Screening Arrangements, https://www.oge.gov/Web/OGE.nsf/0/52E2FAA1B3F454D2852585BA005BEDC0/$FILE/99x8.pdf.
[27] *Id.*
[28] *Id.*

Bill Cassidy, M.D.
U.S. Senator

Joe Wilson
Member of Congress

Roger Marshall, M.D.
U.S. Senator

Tim Walberg
Member of Congress

Tommy Tuberville
U.S. Senator

Jim Banks
Member of Congress

Jerry Moran
U.S. Senator

Diana Harshbarger
Member of Congress

Mary Miller
Member of Congress

Scott Fitzgerald
Member of Congress

Cc: Board Member Gwynne Wilcox; Board Member David Prouty

From: National Labor Relations Board
To: (b) (6) [redacted]; Rothschild, Roxanne L.; Hampton, Andrew; (b) (6) [redacted] (b) (6) [redacted] Qureshi, Farah Z.; Reardon, Leigh A.; Leon, Carmen; (b) (6) [redacted] Mullett, Megan; (b) (6) [redacted] Mahesh.Bhelke@nlrb.gov; (b) (6) [redacted]; Blado, Kayla; Meyers, Mary; (b) (6) [redacted] pagewatcher@govdelivery.com
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NLRB Chairman Sends Letter to Congress on Members' Commitment to Ethical Obligations

11/05/2021 09:38 AM EDT

November 05, 2021

Today, in a letter to Republican Members on the House Education and Labor and Senate Health, Education, Labor and Pensions Committees, National Labor Relations Board Chairman Lauren McFerran confirmed that the Agency's Designated Agency Ethics Official (DAEO) has advised Members Gwynne Wilcox and David Prouty that they may participate in the Board's response to a lawsuit filed by the Service Employees International Union (SEIU).

The letter, which responds to a previous inquiry from the Members of Congress, explains that Members Wilcox and Prouty sought and received appropriate guidance from the NLRB's DAEO, in accordance with the Agency's ethics protocols. The DAEO found that no applicable ethics statute, regulation, or other provision required Member Wilcox or Member Prouty to recuse themselves from the Board's consideration of and response to the lawsuit, and recommended that, based on an assessment of the relevant facts, their participation would not raise appearance concerns about lack of impartiality. In agreement with the DAEO's conclusions and recommendations, which were shared with all Board members, Members Wilcox and Prouty both determined to participate in the Board's decisionmaking regarding this matter.

"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. One aspect of that obligation is to seek guidance from the agency's career ethics experts to ensure that we are acting in compliance with applicable government and legal ethics rules. Another is to faithfully fulfill our role as Board members when, as here, participation in the Board's deliberations is appropriate," said Chairman McFerran.

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Date:	Friday, November 5, 2021 11:52:00 AM

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https://www.nlrb.gov/news-outreach/news-story/nlrb-chairman-sends-letter-to-congress-on-members-commitment-to-ethical

Please let me know if you have any questions.

NLRB Chairman Sends Letter to Congress on Members' Commitment to Ethical Obligations

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Established in 1935, the National Labor Relations Board is an independent federal agency that protects employees, employers, and unions from unfair labor practices and protects the right of private sector employees to join together, with or without a union, to improve wages, benefits and working conditions. The NLRB conducts hundreds of workplace elections and investigates thousands of unfair labor practice charges each year.

Kayla Blado (she/her)
Press Secretary

National Labor Relations Board
202-412-9602
kayla.blado@nlrb.gov
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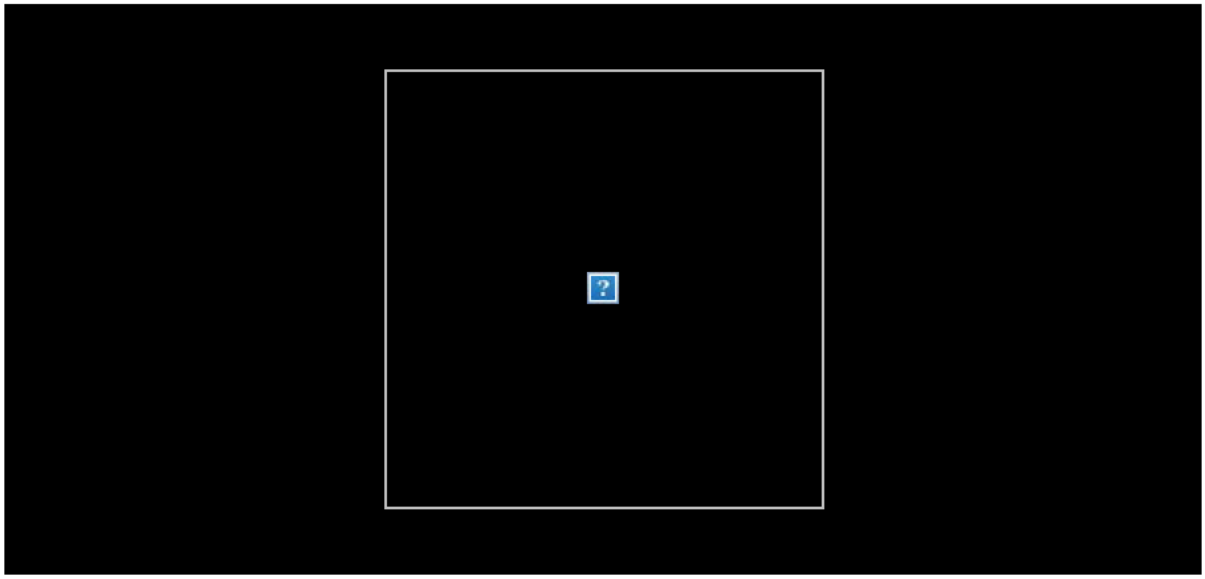
Date: Friday, November 5, 2021 12:39:31 PM



Wilcox, Prouty cleared to take part in SEIU joint employer suit

BY **REBECCA RAINEY** | 11/05/2021 12:38 PM EDT

NLRB members Gwynne Wilcox and David Prouty have been cleared to participate in the board's response to a lawsuit filed by the Service Employees International Union over its joint employer standard, after GOP lawmakers raised concerns about their previous ties to the SEIU, the board's chair announced Friday.

Both Wilcox and Prouty have been cleared by the Designated Agency Ethics Official to "ethically participate in the Board's consideration of its response" to the lawsuit filed by the SEIU in September, NLRB Chair Lauren McFerran said in a letter to Republican members of the House and Senate labor committees.

"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," McFerran wrote. "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."

GOP inquiry: Republicans have raised concern over Wilcox and Prouty's former work for the Service Employees International Union in some capacity, and urged the labor board to have both members sit out of the agency's work on joint employer relationships.

"One thing is clear: Members Wilcox and Prouty cannot be neutral arbiters on cases involving issues or policies concerning" the joint employer rule, a group of Republican lawmakers wrote to the NLRB in October.

Background: The SEIU, which also funds the Fight for $15 minimum wage and union organizing effort, filed a lawsuit in September seeking to invalidate the board's joint employer rule that was issued under the Trump administration and when the NLRB was still in Republican control.

The rule made it harder for large companies to be held liable as joint employers for labor violations committed by their contractors or franchisees.

Wilcox has agreed to sit out of any matter involving her former law firm Levy Ratner, P.C. for two years, which continues to represent Fight for $15 and the SEIU as it appeals a separate case involving a Trump-era NLRB settlement that relieved McDonald's Corp. of liability as a joint employer for its franchisees' firing of workers who joined Fight for $15 protests. Wilcox was working on the McDonald's case until at least 2016, according to NLRB case documents.

Prouty has agreed to recuse himself from any cases involving the SEIU Local 32BJ, where he served as general counsel.

DAEO review: The NLRB's ethics official reviewed whether there were any "ethics rules, regulations, or considerations" that would "require or suggest" Prouty and Wilcox's recusal from the board's decision-making surrounding the joint employer lawsuit, including financial conflict of interest rules as well as the Biden administration's ethics pledge.

According to McFarren's letter, the official "concluded that there are none."

“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,” McFerran wrote.

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TOP NEWS

Pelosi tries to rev House Democrats after season in the ditch

By Heather Caygle and Sarah Ferris

"There's a point where you've got to stop talking," Rep. Peter Welch (D-Vt.) said of the party's long-negotiated social spending bill.

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Pelosi tries to rev House Democrats after season in the ditch (back)

By Heather Caygle and Sarah Ferris

Democrats got a taste this week of how brutal their midterms could be. Now Speaker Nancy Pelosi and her team are trying to turn things around before it's too late.

House leaders entered the Capitol Friday optimistic that they had the support to vote on Democrats' two key domestic priorities — $1.75 trillion social spending package and a long-stalled $550 billion infrastructure bill — after weeks of embarrassing stops and starts. But Pelosi and her lieutenants were still struggling to corral the necessary votes Friday afternoon amid moderate opposition over the lack of a cost analysis from Congress' nonpartisan scorekeepers.

Pelosi held a lengthy meeting with senior members of the Congressional Black Caucus Friday as they discussed how to corral enough votes to salvage the planned vote Friday. The CBC planned to meet separately Friday afternoon as Democrats across the caucus grew frustrated over being held in the Capitol without a path forward on Democrats' domestic agenda for the third time since September.

Democrats in the House, Senate and White House have remained in lockstep for months on a strategy to pass the two pillars of President Joe Biden's ambitious agenda, even if it's meant bending to every whim of the evenly divided upper chamber. But the party's House leaders

have now made the calculation that the only way they can get the social spending bill to Biden's desk is to go on their own.

“We're at that point where we wait another week, it gets worse, not better,” said Rep. Peter Welch (D-Vt.). “It's baked and it’s going to get overdone. There’s a point where you've got to stop talking and just come to terms with the shape it’s in.”

Exasperated by a confluence of obstacles, from Senate centrists with shifting goalposts to a White House that hasn’t delivered as expected to this week’s election-night thrashing, Democratic leaders have decided to cut off talks that could easily persist into 2022.

The move carries risks: A handful of House Democrats are still vowing to vote against the massive social safety net bill without further guarantees on offsetting its cost, including several moderates who met in Pelosi's office on the matter Friday morning.

“Joe Manchin is a good person. He’s a decent human being,” said Rep. Emanuel Cleaver (D-Mo.). “But I think everybody realizes at some point the train has to stop."

The planned vote on Friday follows a furious whipping operation by Pelosi and her leadership team, including Majority Leader Steny Hoyer and Majority Whip Jim Clyburn, aimed at peeling off a dozen or so moderate holdouts that went late into Thursday night. But the House’s sudden strategy shift isn’t surprising for those who know Pelosi.

The longtime Democratic leader has kept a firm grip on her caucus for nearly 20 years, rarely facing a defeat or surprise on the House floor. But for Pelosi, whose governing mantra is never to bring a bill to the floor until it has the votes, a whip count so dependent on factors outside her chamber — and thus her control — has been clearly frustrating.

In order to even get to this point, Democratic leaders were forced to make promises to both the progressive and moderate factions in their caucus, only to abandon those commitments after they became untenable. That meant progressives had to relent on a $3.5 trillion topline and their demands for a full Senate vote, as well as several dearly sought policy goals, including a full Medicare expansion.

And moderates were denied the late-September infrastructure vote they had been guaranteed, while their demands that the House only pass something in full agreement with the Senate have gone unheard.

Pelosi pulled back with her members mostly after disappointments of her own, as well as after two separate presidential visits to the House that ended without movement toward votes. Several of the House's biggest must-haves were clawed back from the social spending bill amid opposition from senators, namely Manchin and Sen. Kyrsten Sinema (D-Ariz.).

By midweek, Democrats were reeling from an humbling failure at the ballot box, with suburban white female voters swinging wildly to Republicans. Pelosi had seen enough.

The speaker shocked many in her caucus Wednesday by announcing she was adding four weeks of paid family leave back into the social spending bill, despite Manchin’s declared opposition. And she vowed the House would move ahead with a vote on the package this week, with or without the buy-in of the full Democratic Senate.

“Rightfully so, a lot of people think, maybe we’re spinning wheels, we're covering ground

we've already been covered, so you gotta lock it in," said Rep. Anthony Brown (D-Md.). "Bill language, vote. Send it over."

The abrupt departure from the party's stick-together strategy, however, was not entirely welcome in the caucus.
Several moderate Democrats chafed at the idea of voting on a bill with several provisions that are dead on arrival in the Senate — one of the clearest requests they'd had from the start, alongside a warning that such a vote would invite GOP attack ads.

As far back as this summer, moderate Reps. Stephanie Murphy (D-Fla.) and Josh Gottheimer (D-N.J.) warned party leaders they wouldn't back legislation that hadn't cleared the Senate's political tripwires — namely, Manchin and Sinema — as well as the budgetary ones that would determine whether the bill could pass the upper chamber without a filibuster.

Those anxieties intensified after the party's battering in Virginia and other down-ballot races on Tuesday, when the most vulnerable Democrats watched culture-war issues consume even suburbs that have trended blue.

"It seems like we're making the [social spending bill] more complicated and something that's harder to pass," said Rep. Scott Peters (D-Calif.). He's one of the dozen-plus beleaguered moderates who have urged leadership to pivot their attention to the Senate-passed infrastructure deal, rather than ramming through a rushed bill.

"Look, I think it's ridiculous to add paid leave. I've always said paid leave would be great. ... But, you know, you have to understand that we need 50 votes in the Senate. It's not hard math; it's not even algebra," Peters said.

The sudden decision to reinstall paid leave into the bill — after Pelosi and many of her long-time House allies have pushed it for decades — may have helped inject much-needed momentum to a bill that had languished on their side of the Capitol for months. Paid leave is one of the most popular provisions out of any in the bill.

Manchin has said he got no heads-up about the House move and continued to indicate he wants to address paid leave on a bipartisan basis. Still, some House Democrats argued that Pelosi's move wasn't a total gamble: The West Virginia Democrat voted to approve 12 weeks of paid leave for federal workers as part of a sprawling Pentagon policy bill in 2019.

The speaker took that big swing after several dispiriting months for House Democratic leaders. They watched the Senate pass an infrastructure bill void of House priorities, then faced demands that their chamber write a social spending package with the behemoth price tag of $3.5 trillion despite a secret agreement among senators that the final bill wouldn't go above $1.5 trillion.

Even if House Democrats' swing doesn't whiff, some saw the push for Friday's vote as already insufficient.

"If there was supposed to be a rush, the rush should've been before Tuesday's election," said Rep. Filemón Vela (D-Texas), one of nine moderates who demanded an infrastructure vote in September.

"There's really no reason to rush the process at this point," Vela added. "We totally blew the

opportunity to win the governor's election in Virginia."

Nicholas Wu contributed to this report.

To view online click here.

Trucking industry argues OSHA update exempts drivers from vaccine mandates (back)

By Tanya Snyder

The trucking industry said Friday that it believes truck drivers are exempt from the federal vaccine mandate, citing a recent provision exempting "employees who work exclusively outside" because of the lower risk of exposure to coronavirus.

Exclusively outside: The Occupational Safety and Health Administration emergency temporary standard on the vaccine mandate, published in Friday's Federal Register, notes that outdoor workplaces, like farms, "typically do not include any of the characteristics that normally enable transmission to occur."

American Trucking Associations President and CEO Chris Spear responded that "drivers spend the vast majority of their workday alone in the cab and outside" and "have minimal contact with others indoors."

"All indications thus far from the Department of Labor suggest this exemption does apply to the commercial truck driver population," he wrote.

U.S. Labor Secretary Marty Walsh on Thursday gave support to the trucking industry's argument.

"If you're a truck driver and you're outside, you're in a cab driving by yourself, this doesn't impact you," Walsh said.

Spear called Walsh's comments "an enormous victory" and said that "given the nationwide shortage of truck drivers," the industry needed "relief" from the mandate.

Even as he declared victory, Spear continued to fault OSHA for "using extraordinary authority unwisely" to force so many industries to enforce the vaccine mandate.

What's next: The vaccine mandate comes into effect Jan. 4, 2022, by which time covered employees will need to show that they are fully vaccinated against Covid.

To view online click here.

'Back into gear': Solid jobs report boosts Biden's case for recovery (back)

By Megan Cassella

President Joe Biden has spent months watching his poll numbers sink as the economy

appeared to be losing altitude throughout the fall. That narrative may have changed Friday.

Government data showed that the U.S. added 531,000 jobs in October — and hundreds of thousands more than initially reported in the two previous months — lending fresh ammunition to Biden's argument that the economy is strengthening even as rising inflation, supply chain backlogs and labor shortages have forced the administration back on its heels.

The data could help stem the loss of faith among Americans in his handling of the economy, especially as the coronavirus pandemic eases: Nearly three in five people disapprove of his economic stewardship, a 14-percentage-point rise since April, an NBC News poll earlier this week showed.

"Yes, there's a lot more to be done. We still have to tackle the costs that American families are facing," Biden said at the White House on Friday. "But this recovery is faster, stronger, fairer and wider than almost anyone could have predicted."

The jobs report shows the labor market improving across the board, with gains in nearly every sector and average hourly earnings rising another 11 cents, contributing to a 4.9 percent increase over the past 12 months. The unemployment rate dropped to 4.6 percent.

It also illustrates how the economic impact of the surge in coronavirus cases caused by the Delta variant has ebbed. The leisure and hospitality sector, which has been most vulnerable to Covid surges, added 164,000 jobs in October, and industry wages have risen more than 11 percent over the year. The number of people unable to work because their employer closed or lost business due to the pandemic dropped by nearly a quarter from September to October — from 5 million to 3.8 million.

"Americans have good reason to be anxious about the economy as the Delta wave hurt growth and ignited higher inflation," said Mark Zandi, the chief economist at Moody's Analytics who is frequently cited by the Biden administration. "But today's report shows that as Delta winds down, the recovery is getting back into gear."

Still, some weaknesses remain. The economy lost 65,000 jobs in state and local public education in October. Wages overall have yet to catch up to inflation, which has been accelerating faster. And the challenge for the administration remains how to get the message out about a strong recovery amid the surge in prices of gasoline and many household items that have increasingly dominated the conversation.

Alongside other short-term economic issues that Americans can see in their communities — empty store shelves due to supply chain backlogs or business closures due to labor shortages — there has been a pervasive sense that the worst is yet to come: Nearly half the country believes economic conditions will sour further in the next year, an AP-NORC survey this week found.

Even supporters of Biden's economic agenda acknowledge that despite clear gains over the past 10 months, most Americans are still focused on the economic pain.

"Joe Biden was supposed to be the jobs president — that's what he promised, and that's what he is," said Claudia Sahm, a former Federal Reserve economist now with the Jain Family Institute. "But somehow, they're playing defense on, 'Oh, inflation,' instead of offense on, 'Oh, look at the millions of jobs that came back.'"

The White House maintains that while the hurt Americans are feeling from higher gas prices and grocery bills is real, the underlying economy is continuing to improve. Senior administration officials highlight rising wages, a drop-off in weekly unemployment claims and a return to pre-pandemic levels of consumer spending as evidence their plan is working.

“You can’t get away from the fact that this is an underlying very strong economy that’s delivering the goods to the American worker,” White House economist Jared Bernstein said in an interview before the jobs report.

At the White House, the focus from Biden on down has been on a two-pronged approach: acknowledging the downside while emphasizing how much better things are than they were — and than they would have been without the relief spending.

“The president has incorporated the challenge of elevated prices. He's talked about what that means to family budgets,” Bernstein said. “But we've also stressed the reality of this economic moment, and what that reality would likely have looked like absent our interventions.”

But that has not lessened the intense focus on rising inflation. Biden has been asked about spiking prices or supply chain issues at each of his last three major media events, press conferences in Glasgow and Rome and a CNN town hall in Baltimore. And the issues have come up in at least a dozen press briefings since early October, a review shows. Republicans and even some prominent Democrats say Biden shares the blame for pushing multitrillion-dollar spending plans since taking office.

“It seems pretty clear that the principal concern is the kind of overheating that I was concerned about,” said former Treasury Secretary Larry Summers, who has been warning for months that Biden’s big-spending agenda — especially the nearly $2 trillion relief package enacted in March — risked creating a spike in inflation.

Much of the criticism the administration has received has centered on that package, which Biden signed into law with the goal of quickly getting back to what economists call full employment. Republicans have hammered it since the beginning as unnecessary and overly generous, with Rep. Kevin Brady (R-Texas) this week calling it “a failure, certainly, in rebuilding this economy and healing it.”

GOP lawmakers warn too that other Biden policies, particularly the vaccine mandate for federal workers and those at large companies, will only further slow the jobs recovery. Sen. Mike Lee (R-Utah), the top Republican on the Joint Economic Committee, called the jobs report a "welcome improvement" but said the labor market "is still operating well below its potential."

"New mandates, higher taxes and more spending are not the answer," Lee said.

But the relief package has borne the brunt of criticism so far, including from some Democrats like Summers. Critics say it has contributed to the inflation surge in part by doling out more money than the recovering U.S. economy needed or could handle, in turn fueling a spurt in consumer demand that has outpaced supply and driven prices up.

But while administration officials recognize that their relief spending pushed up demand, they emphasize that other factors out of their control, including clogged supply chains, have played a major part as well. Without that spending, they say, inflation might be lower, but the rest of

the economy would look worse.

“Demand would be weaker, that’s true,” Bernstein said. “But child poverty would be higher. There’d be more hunger. There’d be fewer vaccinations. There’d be more evictions. … So when you’re critiquing the world as it is, it’s very important to think about the world as it could have been without the policy.”

To view online click here.

Wilcox, Prouty cleared to take part in SEIU joint employer suit (back)

By Rebecca Rainey

NLRB members Gwynne Wilcox and David Prouty have been cleared to participate in the board’s response to a lawsuit filed by the Service Employees International Union over its joint employer standard, after GOP lawmakers raised concerns about their previous ties to the SEIU, the board's chair announced Friday.

Both Wilcox and Prouty have been cleared by the Designated Agency Ethics Official to “ethically participate in the Board’s consideration of its response” to the lawsuit filed by the SEIU in September, NLRB Chair Lauren McFerran said in a letter to Republican members of the House and Senate labor committees.

“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,” McFerran wrote. “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.”

GOP inquiry: Republicans have raised concern over Wilcox and Prouty’s former work for the Service Employees International Union in some capacity, and urged the labor board to have both members sit out of the agency’s work on joint employer relationships.

“One thing is clear: Members Wilcox and Prouty cannot be neutral arbiters on cases involving issues or policies concerning” the joint employer rule, a group of Republican lawmakers wrote to the NLRB in October.

Background: The SEIU, which also funds the Fight for $15 minimum wage and union organizing effort, filed a lawsuit in September seeking to invalidate the board’s joint employer rule that was issued under the Trump administration and when the NLRB was still in Republican control.

The rule made it harder for large companies to be held liable as joint employers for labor violations committed by their contractors or franchisees.

Wilcox has agreed to sit out of any matter involving her former law firm Levy Ratner, P.C. for two years, which continues to represent Fight for $15 and the SEIU as it appeals a separate case involving a Trump-era NLRB settlement that relieved McDonald’s Corp. of liability as a joint employer for its franchisees' firing of workers who joined Fight for $15 protests. Wilcox was working on the McDonald’s case until at least 2016, according to NLRB case documents.

Prouty has agreed to recuse himself from any cases involving the SEIU Local 32BJ, where he served as general counsel.

DAEO review: The NLRB's ethics official reviewed whether there were any "ethics rules, regulations, or considerations" that would "require or suggest" Prouty and Wilcox's recusal from the board's decision-making surrounding the joint employer lawsuit, including financial conflict of interest rules as well as the Biden administration's ethics pledge.

According to McFarren's letter, the official "concluded that there are none."

"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," McFerran wrote.

To view online click here.

Biden calls for infrastructure, reconciliation vote 'right now' (back)

By Tanya Snyder and Oriana Pawlyk

President Joe Biden urged lawmakers Friday to vote immediately on both the pending infrastructure and reconciliation bills, after months of negotiations that thus far have failed to dislodge the president's social spending agenda and more than $550 billion in new funding for transportation programs.

"I'm asking every House member to vote yes on both these bills right now," Biden said Friday morning, after delivering remarks on economic progress made in October.

Meanwhile, in the House: Within 15 minutes of the House convening at 8 a.m. Friday, with votes for both the infrastructure, H.R. 3684 (117), and reconciliation, H.R. 5376 (117), bills on the agenda, Rep. Andy Biggs (R-Ariz.) forced a vote on a motion to adjourn. For the minority party these adjournment votes are usually a messaging ploy, but Democrats have grabbed onto it as a life preserver, holding the vote open for more than three hours so far as House Speaker Nancy Pelosi huddles in her office with moderate holdouts.

Five moderate Democrats told Pelosi earlier this week that they would not vote for the reconciliation bill until it was scored, and they were not satisfied by the partial score the Joint Committee on Taxation released Thursday.

A full CBO score would take two weeks or more, lawmakers said, with House Majority Leader Steny Hoyer saying his understanding is it would not be ready until Nov. 15 at the earliest.

Biden calls time: But Biden — and most of the Democratic establishment — is getting tired of waiting.

"Send the infrastructure bill to my desk, send the Build Back Better bill to the Senate [and] let's build on incredible economic progress," Biden said. He ended by saying it was time to "show the world that America's democracy can deliver and propel our economy forward."

What's next: The president will spend the day making calls to House members urging them to support the legislation. The House's agenda still contains plans for potential votes on the bills, though nothing has yet been scheduled.

To view online click here.

Senate Commerce plans hearing examining airline delays and staffing issues (back)

By Oriana Pawlyk

The Senate Commerce Committee will hold a hearing to examine airline industry workforce shortages, flight cancellations and delays that have disrupted travel in recent months.

Background: Commerce Chair Sen. Maria Cantwell (D-Wash.) in July sent letters to CEOs at American Airlines, Delta Air Lines, Southwest Airlines and others noting airlines and aviation companies were required to refrain "from conducting involuntary layoffs, furloughs, or instituting pay or benefit reductions" in exchange for receiving more than $50 billion in bailout funding. However, Cantwell at the time said she wasn't convinced airlines used federal funds to retain their workforce and better position themselves to respond to increased travel that began earlier this year, especially in light of continuous delays affecting thousands of passengers.

"Congress issued this funding with the express purpose of keeping the workforce on payroll to ensure an easier ramp up when air travel returned," Cantwell said. "I am concerned that, at best, [your airline] poorly managed its marketing of flights and workforce as more people are traveling, and, at worst, it failed to meet the intent of taxpayer funding and prepare for the surge in travel that we are now witnessing," she said in letters to six separate airlines.

Delays, and more delays: Most recently, Southwest Airlines canceled more than 2,000 flights last month after what the airline said was an "unexpected air traffic control issue" compounded by weather in Florida that disturbed flight operations. American Airlines additionally had a similar meltdown with thousands of flights canceled over the weekend, also citing bad weather. Experts have noted a slight hiccup like weather compounded by tight staffing at some airlines has been a substantial factor in these latest travel blunders, which are increasingly likely to shut down air travel.

During a hearing on aviation safety before the committee Wednesday, FAA administrator Steve Dickson batted away at the idea that vaccine mandates are the sole reason behind recent mass flight cancellations at some airlines as some senators sought to tie vaccine mandates to the travel disruptions. Echoing experts, Dickson said that "the demand signal is different from what airlines have seen before," referring to airlines running more flights without adequate staff to execute them.

What's next: It's unlikely travel woes will subside anytime soon given the post-pandemic disruptions for the travel system that are still unfolding, and in fact they may worsen as the nation careens toward the winter holidays.

A spokesperson for the committee said the hearing is tentatively scheduled for Dec. 8.

To view online click here.

'We have had enough': DeSantis will sue Biden over workplace vaccine mandates (back)

By Gary Fineout

TALLAHASSEE — Gov. Ron DeSantis on Thursday vowed to deliver a legal attack against new workplace vaccine mandates from the Biden administration that are scheduled to kick in right after the end of the holiday season.

The GOP governor said Florida will join Alabama, Georgia and private employers on Friday in a preemptive legal challenge against a new vaccination-or-test requirement for businesses with more than 100 workers. The state will also quickly file a separate legal challenge against a vaccine mandate for health care workers at facilities participating in Medicare and Medicaid.

“I just think people are so sick of constantly being bossed around, restricted, mandated, all these different things,” said DeSantis at an afternoon press conference held at the Capitol. “We have had enough of it and we want people to be able to make their own decisions.”

These actions are the latest in an ever-escalating and increasingly caustic feud between Biden and DeSantis, a rising GOP star who is seen as a leading contender for president in 2024. But the legal fight over workplace vaccine mandates threatens to put Florida businesses in the middle of the fight as they try to contend with dueling directives from state and federal governments.

The looming legal clash comes less than two weeks before state legislators are scheduled to return to Tallahassee for a special session in order to adopt new laws pushed by DeSantis designed to discourage private businesses from adopting their own vaccine mandates.

DeSantis called the mandates announced earlier in the day by the Biden administration “unconstitutional” and “illegal” and even promised to use state taxpayer money to offset any fines assessed by federal authorities against businesses in the state.

The governor also predicted that the new mandates, which won’t be enacted until after the holiday season, would be just the beginning. He added that the Biden administration would eventually mandate that those previously inoculated to get booster shots.

Florida’s lawsuit will be filed by Attorney General Ashley Moody, who also blasted the vaccine mandates and called the Biden administration actions “authoritarian.”

“When this president grew angry and lost his patience and said that unvaccinated Americans were killing others he decided to violate the restriction of his powers through our constitution and impose his will,” Moody said.

Despite his insistence that no one should be fired for refusing to get a shot, DeSantis has stopped short of advocating for a complete ban on employer requirements. Instead he suggested that businesses will be confronted with sanctions that would convince them to drop considerations of mandates. The governor also contended that lawmakers could strip from employers recently-enacted protections from Covid-19 related lawsuits even though he did not include this proposal in the special session proclamation he issued last week.

Agriculture Commissioner Nikki Fried, a Democrat who is challenging DeSantis in next year's governor's race, said she did not agree with the Biden administration mandates, but suggested that the governor was being hypocritical because he has gone after school boards and local governments because they did not want to follow his policies on Covid-19.

"We are in this position due to a failure of leadership from Governor DeSantis who has been providing a platform for conspiracy theorists and extremism by denying the efficacy of vaccines and science-based public health policies," Fried said in a statement. "The governor himself is now trying to enact his own mandates to block businesses, local governments, and school boards from protecting their own constituents."

The Biden administration released two new rules on Thursday that will be enforced starting Jan. 4. Together the rules are expected to affect over one million workers and follow guidelines for federal contractors already put in place that are also now set to take effect Jan. 4. Yet those guidelines for contractors are also the target of several lawsuits, including one filed by Florida last week.

In a statement Biden defended the need for the mandates.

"The virus will not go away by itself, or because we wish it away: we have to act," Biden said. "Vaccination is the single best pathway out of this pandemic. And while I would have much preferred that requirements not become necessary, too many people remain unvaccinated for us to get out of this pandemic for good."

DeSantis argued that the rules for employers — which is being enacted by the Occupational Safety and Health Administration — were never authorized by Congress and that OSHA cannot legally justify that an emergency exists to impose it now. He said that once the state files its challenge in the 11th Circuit Court of Appeals in Atlanta, Florida will ask for it to be immediately suspended.

"I think this rule is absolutely going down," he said during a morning press conference in Jacksonville.

Florida's legislative leaders — who were blindsided by DeSantis' push to hold a special session this month — are still backing much of what the governor wants. Florida House Speaker Chris Sprowls and Senate President Wilton Simpson repeated on Thursday that they want to consider legislation that would replace OSHA with state oversight.

"Today, though, it has become even clearer that OSHA is being weaponized by the Biden Administration not to protect workers, but to institute an illegal and unconstitutional nationwide vaccine mandate that robs Americans of the dignity of work," Sprowls and Simpson said in a joint statement. "As we have said before, the Florida Legislature looks forward to pursuing separation from OSHA and creating Florida's own safety and health standards that reflect the views and values of our state."

To view online click here.

Sinema's raking in cash from MLMs. They want to kill her party's labor bill. (back)

By Hailey Fuchs

They've been derided as spruced up pyramid schemes: Companies that incentivize their own customers to become salespeople for products. Now, these so-called multilevel marketing businesses are flexing their political muscle. And they're turning to one lawmaker in particular to protect their agenda: Sen. Kyrsten Sinema.

The political action committee associated with Alticor, the parent entity of the health, home and beauty company Amway, gave $2,500 to the Arizona Democrat in late June, as did the PAC for Isagenix, an Arizona-based business that sells nutrition, wellness and personal care products. Nu Skin Enterprises, another personal care and beauty company, gave $2,500 that month, as did USANA Health Sciences, which sells similar products. In April, Richard Raymond Rogers, the executive chair of Mary Kay, a Texas-based cosmetics company, gave $2,500 to Sinema. Herbalife, which also sells nutritional supplements, gave $2,500 in July. All are affiliated with the Direct Selling Association, a trade group that promotes multilevel marketing.

The donations don't track usual political alliances. Alticor is owned by the DeVos family, one of the biggest funders of Republicans and conservative causes. And, on some occasions, they appear to be rare forays into national politics for the donor entities. Sinema is the only federal lawmaker that the Isagenix and Nu Skin PACs have given to this year. Utah-based USANA Health Sciences has only given to home state Sen. Mike Lee (R-Utah), home state Rep. Burgess Owens (R-Utah), a Republican PAC and Sinema.

When asked about the industry's support nearly exclusively for Sinema, a spokesperson for the Direct Selling Association offered little explanation: "Contributions to candidates from DSA's political action committee are based on a variety of factors."

Sinema does have a personal connection to the industry: Her own mother was a direct seller. But the bigger incentive for multi-level marketers to give to Sinema appears to be her position on labor organizing. The companies face an existential threat from the pro-union Protecting the Right to Organize Act, which would make it more difficult to classify workers as independent contractors. According to one industry source, the bill has become the driving issue since Democrats took control of the White House and both chambers of Congress. And Sinema is one of — if not the only — Democratic allies in the Senate.

Unions have pushed for some of the Democrats' priorities in the PRO Act to be inserted into the reconciliation bill, but for the most part, the marquee labor bill has languished before Congress since passing the House in March. Sinema's fellow Senate moderate, Joe Manchin (D-W.V.), has already signed onto the legislation, leaving just three Senate Democrats who have yet to co-sponsor the bill — Sinema, Mark Warner of Virginia and Mark Kelly of Arizona. Warner signaled his support for the PRO Act at a rally in Virginia on Monday. And Kelly has said he supports the bill broadly speaking, though he wants to see some changes, including the provision related to independent contractors, according to a Democratic Hill aide.

That leaves Sinema as the chamber's chief Democratic opponent to the bill (Sinema's office did not respond to a request for comment for this story). And as with other issues, including drug pricing and tax policy, her willingness to buck her party's mainstream has earned her support from a variety of private industries. Sinema raised more than $1.1 million in the third quarter, with significant giving from the finance and pharmaceutical industries.

Multilevel marketing is hardly a Washington, D.C., player on the scale of the pharmaceutical industry. Known for their "Hey girl" direct messages and often sold as get rich quick schemes, its companies lean on participants to sell their products through person-to-person sales. Those participants often receive commissions based on recruiting new distributors. But according to the Federal Trade Commission, most who join make little or no profits; some even lose money.

Multilevel marketers aren't the only ones adamantly opposed to the PRO Act. Nor are they the only ones looking to curry favor with lawmakers in D.C. Uber, Lyft and a host of other so-called "gig worker" companies are also threatened by the bill's independent contractor provisions. Rover, known as one of the Ubers of dog-walking, just recently enlisted its first K Street firm, Mercury Public Affairs, to lobby on labor classification and taxes. The group of MLMs that have donated to Sinema collectively spent more than half a million dollars on lobbying last quarter, including on the PRO Act.

According to a recent six-month report on its government affairs, the Direct Selling Association has held 55 meetings with congressional offices, and it is working with allies to develop a language to protect direct sellers in the PRO Act.

In May 2020, not long after the onset of the coronavirus, the Direct Selling Association and one its member companies, Isagenix, hosted Sinema for a virtual town hall. According to the association, she assured the industry that she would help them "succeed through these difficult circumstances." On its website, the association lists Sinema among its contribution recipients during the 2020-2021 period, saying she is "One of the few Democratic Senators who supports direct selling."

Direct-selling companies have had a presence in Washington that dates back decades. A co-founder of Amway, Richard DeVos, was a major force in the Republican party ; his daughter-in-law, Betsy DeVos, herself a big GOP donor, served as the Education secretary under former President Donald Trump. In fact, the small industry's outsized influence on D.C. politics is notable, said William Keep, a professor at the College of New Jersey who has written about multi-level marketing and pyramid schemes. The industry has its own caucus of House lawmakers, known as the Direct Selling Caucus, that lists 40 members as of February and boasts its own super PAC.

The Direct Selling Association, Keep said, has already secured protections in state legislatures across the country. In fact, lawmakers recently passed legislation in Arkansas and West Virginia that defined direct sellers as independent contractors. Kentucky also passed a similar law in 2020 that excluded direct sellers from the definition of employee.

The threat of a crackdown from the federal government, however, has become more acute in recent years. There's been renewed criticism of the industry in pop culture, like a recent and heavily critical docu-series on the fashion company LuLaRoe. In 2016, Herbalife — one of the Sinema donors — agreed to a $200 million settlement with the Federal Trade Commission for deceiving customers about their ability to make a profit from their business. Biden's Consumer Financial Protection Bureau Director Rohit Chopra advocated for "restitution and penalties against multilevel marketers" when he previously served as an FTC commissioner.

The industry knows that it can only survive through its relationships in Washington, D.C., Keep noted.

“An industry that is literally built on contract employees — which is what the MLM is — would never want to be considered to be, to entertain the notion of having those independent representatives as employees,” he said. Of the industry's support for Sinema, he added: “I think that she's demonstrated a flexibility that they think they can capitalize on."

To view online click here.

Kaiser health workers issue notice for a Nov. 15 strike (back)

By Victoria Colliver

Kaiser Permanente health care workers in Southern California issued a 10-day strike notice Thursday against their employer, a move that could lead to some 21,000 workers walking off their jobs starting Nov. 15.

The significance: The planned strike by members of United Nurses Associations of California/Union of Health Care Professionals — registered nurses, pharmacists, midwives, physical therapists, nurse practitioners and physician assistants — would mark the first large-scale walkout by California health care workers since the pandemic began.

Labor tensions by health care workers have increased across the nation, with frustrations over working conditions, staffing levels, wages and benefits spurring pickets and walkouts. These actions are expected to exacerbate existing hospital staffing shortages made worse by the waves of resignations and retirements by workers fatigued by the Covid crisis.

In California, about 750 Kaiser Permanente engineers represented by the International Union of Operating Engineers Local 39 from 24 hospitals have been on strike since Sept. 17. More than 350 health care workers at Sutter Delta Medical Center in Antioch walked off their jobs for five days starting Oct. 4. But none of the actions have been on the scale of the potential UNAC/UHCP strike.

The issues: Union officials say the key sticking point is what they describe as a two-tier wage structure by Kaiser management that offers current employees significantly more than new employees. They rejected Kaiser’s most recent proposal on Nov. 2.

Kaiser officials defended their offer. “The proposed wage increases are on top of the already market-leading pay and benefits our employees receive,” Arlene Peasnall, Kaiser’s senior vice president of human resources, said in a statement.

The strike details: The strike is slated to begin at 7:30 a.m. Nov. 15 at Kaiser hospitals and medical centers in Anaheim, Antelope Valley, Baldwin Park, Downey, Fontana, Harbor City, Irvine, Los Angeles, Ontario-Vineyard, Panorama City, Riverside, San Diego, West Los Angeles and Woodland Hills.

The 7,400 members of United Steelworkers Local 7600 in Southern California and 3,400 members of Oregon Federation of Nurses and Health Professionals will also strike against Kaiser beginning the same day.

What’s next: The union and Kaiser management continue to negotiate and could reach a deal that averts a strike. Unions are required by law to submit a 10-day notice to the employer

before going out on strike.

Additionally, about 1,500 Kaiser workers represented by UNAC/UHCP in Northern California and Hawaii voted on Oct. 28 to authorize a strike, but have not yet issued a strike notification.

To view online click here.

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This email was sent to kayla.blado@nlrb.gov by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

From:	Blado, Kayla
To:	Patrick Hauf
Subject:	RE: Media Inquiry -- 3 pm EST deadline
Date:	Monday, November 8, 2021 11:59:00 AM

Hi Patrick, no additional comment on this. Feel free to reference our press release: https://www.nlrb.gov/news-outreach/news-story/nlrb-chairman-sends-letter-to-congress-on-members-commitment-to-ethical

Best,

Kayla Blado (she/her)
Press Secretary
National Labor Relations Board
202-412-9602
kayla.blado@nlrb.gov
Follow us on Twitter: @NLRB/@NLRBGC
Sign up for press releases

From: Patrick Hauf <hauf@freebeacon.com>
Sent: Monday, November 8, 2021 11:42 AM
To: Blado, Kayla <Kayla.Blado@nlrb.gov>
Subject: Media Inquiry -- 3 pm EST deadline

Kayla,

Hello! My name is Patrick Hauf and I'm a labor reporter to the *Washington Free Beacon*. I'm writing a story on the NLRB decision not to recuse two of its members from the SEIU case on joint employment and wanted to provide you a chance to comment.

I am hoping you can address how the decision not to recuse David Prouty and Gwynne Wilcox differentiates from the decision to recuse William Emanuel.

My deadline is 3 pm EST. Thank you!

Best,

Patrick

From:	Blado, Kayla
To:	Eleanor Mueller
Subject:	RE: EXCLUSIVE FOR MORNING SHIFT - CDW Letter to NLRB on conflicts
Date:	Thursday, January 13, 2022 5:03:00 PM

Thanks, Eleanor. Let me get back to you quickly on this.

Kayla Blado (she/her)
Acting Director & Press Secretary
Office of Congressional and Public Affairs
National Labor Relations Board
202-412-9602 | kayla.blado@nlrb.gov
@NLRB | @NLRBGC | Sign up for press releases

From: Eleanor Mueller <emueller@politico.com>
Sent: Thursday, January 13, 2022 4:42 PM
To: Blado, Kayla <Kayla.Blado@nlrb.gov>
Subject: Fw: EXCLUSIVE FOR MORNING SHIFT - CDW Letter to NLRB on conflicts

Hey Kayla,

Any comment on this? Let me know! Thanks.

Eleanor Mueller
Labor Reporter | Morning Shift Author
POLITICO | **POLITICO**PRO
1000 Wilson Boulevard, Floor 8 | Arlington, VA 22209
Mobile: 425.443.4718 | Twitter: @eleanor_mueller

From: Eric Sutton <esutton@pluspr.com>
Sent: Thursday, January 13, 2022 12:55 PM
To: Eleanor Mueller <emueller@politico.com>; Rebecca Rainey <rrainey@politico.com>
Subject: EXCLUSIVE FOR MORNING SHIFT - CDW Letter to NLRB on conflicts

EXTERNAL SENDER: Use caution with links and attachments.

Hello Eleanor/Rebecca – offering exclusive on attached letter being sent tomorrow to NLRB asking that NLRB Members, David Prouty and Gwynne Wilcox, be recused for any cases involving their former employer. Below is a statement from CDW on the letter. Could you include in tomorrow's newsletter? Please let me know if you have any questions. Thanks, Eric

COALITION FOR A
DEMOCRATIC WORKPLACE

FOR IMMEDIATE RELEASE:
Friday, January 14, 2022

Business Leaders Call For Recusal Of NLRB Members David Prouty and Gwynne Wilcox In Cases Involving Their Former Employer

Group says that the former Service Employees International Union (SEIU) employees have clear conflict of interest and bias when adjudicating cases involving SEIU

Washington, D.C. – Today, the Coalition for a Democratic Workplace (CDW), composed of nearly 500 major business organizations, released the following statement after submitting a letter to the National Labor Relations Board (NLRB) calling for the immediate recusal of NLRB Members David Prouty and Gwynne Wilcox from cases involving their former employer, the Service Employees International Union (SEIU), due to what the group says represents a blatant conflict of interest that jeopardizes the ability of the NLRB to adjudicate cases fairly and objectively.

The following can be attributed to Kristen Swearingen, Chair of the Coalition for a Democratic Workplace:

"It is imperative that NLRB Members David Prouty and Gwynne Wilcox recuse themselves from any current and future NLRB cases involving their former employer, the Service Employees International Union (SEIU), and issues their former employer advocated for to prevent this blatant conflict of interest and to preserve the integrity of the institution.

"These conflicts of interest undermine confidence in the ability of the NLRB to fairly and objectively make decisions that will significantly affect the U.S. economy – and thereby the global economy. Federal law and ethics standards outline the conditions that would necessitate recusal, and NLRB Members Prouty and Wilcox clearly meet that threshold.

"Even if Prouty and Wilcox are not in direct violation of the law, federal ethics standards establishes that the mere appearance of a conflict of interest demands that they recuse themselves from these matters.

"Given the direct or incidental conflicts of interest and the damage it would cause to the NLRB's reputation as well President Biden's pledge to uphold high standards of ethics within his administration, NLRB Members David Prouty and Gwynne Wilcox must recuse themselves from all current and future cases involving SEIU or the labor issues SEIU is involved with."

Click here to read the full letter.

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About The Coalition for a Democratic Workplace

The Coalition for a Democratic Workplace (CDW) represents more than 500 major business organizations including the U.S. Chamber of Commerce, National Small Business Association, National Restaurant Association, National Association of Home Builders, National Retail Federation, National Grocers Association, International Franchise Association, National Association of Manufacturers, International Council of Shopping Centers and American Trucking Association.

CDW is a broad-based coalition of hundreds of organizations representing hundreds of thousands of employers and millions of employees in various industries across the country concerned with a long-standing effort by some in the labor movement to make radical changes to the National Labor Relations Act without regard to the severely negative impact they would have on employees, employers, and the economy. CDW was originally formed in 2005 in opposition to the so-called Employee Free Choice Act (EFCA) – a bill similar to the PRO Act – that would have stripped employees of the right to secret ballots in union representation elections and allowed arbitrators to set contract terms regardless of the consequence to workers or businesses.

###

COALITION FOR A
DEMOCRATIC WORKPLACE

January 14, 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:

This letter is submitted on behalf of the Coalition for a Democratic Workplace ("CDW"). For the reasons outlined below, CDW objects to the involvement of National Labor Relations Board ("Board") Members David M. Prouty and Gwynne A. Wilcox in certain matters before the Board. Specifically, under governing law discussed herein, these Members should be disqualified 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.

CDW consists of nearly 500 organizations nationwide.[1] 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.

I. Background.

Until his appointment, Member Prouty served as general counsel to SEIU Local 32BJ, advising and representing the union on legal and strategic matters that included the Board's adjudicatory and rulemaking proceedings relating to the joint-employer standard. Indeed, when the Board

[1] A full list of CDW's members is available at https://myprivateballot.com/about/.

instituted rulemaking proceedings in 2018 (*see* 83 Fed. Reg. 46681), Member Prouty, on behalf of SEIU Local 32BJ, authored lengthy comments opposing that proposed rule.[2]

Until her appointment, Member Wilcox, a partner at Levy Ratner, P.C., served as Associate General Counsel to 1199SEIU United Healthcare Workers East ("1199SEIU"). She also represented the Fast Food Workers Committee in the "Fight for $15" litigation against McDonald's USA, LLC, seeking to hold McDonald's responsible as a joint employer.[3] Member Wilcox's partner, Daniel J. Ratner, filed lengthy and pointed comments against the Board's joint-employer rule on behalf of Wilcox's client, 1199SEIU.[4]

II. Members Prouty and Wilcox Must Be Disqualified from Matters Involving the SEIU (or its National Fast Food Workers Union) and Lawsuits and Rulemaking on the Joint-Employer Rule.

Members Prouty and Wilcox should recuse or be disqualified from participating in (1) the SEIU Suit, (2) any other legal proceeding involving the SEIU (or its National Fast Food Workers Union) and/or the joint-employer rule, and (3) any rulemaking on the joint-employer rule. No reasonable person with knowledge of the Members' past activities, writings, and affiliations would believe that these Members are capable of acting impartially in these matters.

As the Board has acknowledged, Members' obligations to recuse or be disqualified are governed in part by the provisions of the Code of Federal Regulations on Standards of Ethical Conduct for Employees of the Executive Branch and by the Ethics Pledge that the Members make upon their appointment. NLRB, Ethics Recusal Report (Nov. 19, 2019, as revised) ("NLRB Recusal Report") at 16.[5] The C.F.R. and the Ethics Pledge provide clear guidance on the concerns that drive the recusal decision.

Both the C.F.R. and the Ethics Pledge recognize the impediments to fair decision making that result when Members' judgments are clouded by past activities or affiliations. For example, the Ethics Pledge that Members Prouty and Wilcox affirmed contains a "Revolving Door Ban." Executive Order 13989, 86 Fed. Reg. 7029, 7029 (2021). They agreed that, for two years after the date of appointment, neither would participate in any particular matter involving specific parties directly and substantially related to the Members' former employer or former clients. *Id*.

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[2] SEIU Local 32BJ Comments, Comment ID NLRB-2018-0001-27524 (Jan. 28, 2019), available at https://www.regulations.gov/comment/NLRB-2018-0001-27524.

[3] *See* Docket for McDonald's USA, LLC, a joint employer, et al., NLRB Case No. 02-CA-093893, available at https://www.nlrb.gov/case/02-CA-093893.

[4] 1199SEIU United Healthcare Workers East Comments, Comment ID NLRB-2018-0001-26864, available at https://www.regulations.gov/comment/NLRB-2018-0001-26864.

[5] The Board issued the Recusal Report as a "comprehensive review of [the Board's] policies and procedures regarding ethics and recusal requirements for Board members." NLRB Recusal Report at 1. It did so after "significant recusal and ethics issues" were raised in 2017 after the decision in *Hy-Brand Industrial Contractors, Ltd. and Brandt Construction Co*., 365 NLRB No. 156 (December 14, 2017). *Id*.

This is similar to, and even more stringent than, the one-year restriction in the Standards of Ethical Conduct. 5 C.F.R. § 2635.502(a). Importantly, the Ethics Pledge's limitation on taking official action includes "regulations and contracts." 86 Fed. Reg. at 7029. This ban with respect to matters involving former employers and former clients very clearly embodies the danger that a Member's decision will be guided not by the concerns of the office and the national interest but by the concerns of those whom the Member so recently served. Here, Members Prouty and Wilcox were, until just months ago, advocating vociferously on behalf of their employer and client—the SEIU—and *against* the joint-employer rule that the Board had promulgated.

Nor can these two Members take refuge in a hyper-technical construction of the Ethics Pledge or Standards of Ethical Conduct to argue that their employment by and/or representation of subsidiaries of the SEIU exonerates them from their ethical quandary. *First*, the SEIU is no distant parent organization, but one with extensive and apparently total control over its local and affiliated unions. Under SEIU International's 2020 Constitution:

- SEIU International "shall be composed of and have jurisdiction over its affiliated bodies and all Local Unions";[6]
- SEIU International's President "is authorized to require and direct coordinated bargaining among Local Unions";[7]
- SEIU International's President has the authority to appoint a Trustee "to take charge and control of the affairs of a Local Union or of an affiliated body and such appointment shall have the effect of removing the officers of the Local Union or affiliated body";[8] and
- "the Constitution and Bylaws of all Local Unions and affiliated bodies shall at all times be subordinate to the Constitution and Bylaws of the International Union as it may be amended from time to time."[9]

In 2020 alone, SEIU Local 32BJ engaged in more than $10 million in transactions with SEIU International, most of which are cryptically called "subsidy" and "reimbursement."[10] The Fast Food Workers Committee merged with the SEIU National Fast Food Workers Union in 2017.[11]

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[6] SEIU 2020 Constitution, Article III, Section 1, available at https://www.seiu.org/cards/what-you-should-know-about-our-constitution-and-leaders/you-can-read-it-yourself/p3.

[7] *Id*., Article VIII, Section 1(f).

[8] *Id*., Article VIII, Section 7(a).

[9] *Id*., Article XV, Section 3.

[10] *See* Form LM-2 of SEIU 32BJ at Schedule 14, available at https://olmsapps.dol.gov/query/orgReport.do?rptId=751005&rptForm=LM2Form.

[11] *See* Form LM-2 of Fast Food Workers Committee, Item 69, available at https://olmsapps.dol.gov/query/orgReport.do?rptId=659960&rptForm=LM2Form.

The SEIU has invested millions of dollars in the SEIU National Fast Food Workers Union.[12] The SEIU paid more than $100,000 to Member Wilcox's firm, Levy Ratner, for "support for organizing" in 2020 alone.[13] Thus, Members Prouty and Wilcox's representation of and (in the case of Member Prouty) employment by subsidiaries of the SEIU is, for the purposes of the recusals requested herein, a meaningless distinction.

Second, the law guards against not just actual conflicts of interest but the *appearance* of conflicts and demands recusal in *both* instances. The C.F.R.'s Standards of Ethical Conduct require Members "to avoid any actions *creating the appearance* that they are violating the law or the ethical standards set forth in this part." 5 C.F.R. § 2635.101(b)(14) (emphasis added). "Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts." *Id*. The Ethics Pledge that binds both Members similarly requires them to conduct themselves so as not to not raise the appearance of a conflict of interest. *See* 86 Fed. Reg. at 7029.

These standards are not new. Indeed, more than 80 years ago the Third Circuit underscored the importance that decisions of the NLRB be made by an "impartial and disinterested tribunal." *Berkshire Emps. Ass'n of Berkshire Knitting Mills v. N.L.R.B*., 121 F.2d 235, 238 (3d Cir. 1941). The appearance of impropriety is inconsistent with the requirement that Members "with the responsibility for decisions affecting other people's lives and property [] be as objective as humanly possible." *Id*. Where a Member acts already having "thrown his [or her] weight on" one side, he or she has gone "beyond the line of fair dealing." *Id*. at 239 (remanding because member's correspondence went beyond a general predilection either for or against labor organizations in general or one organization in particular).

This Board has recognized the facileness of relying on pedantic distinctions between subsidiaries and their closely controlling parents. In the NLRB Recusal Report, the Board referred to what it calls a "catch-all provision" in the Standards of Ethical Conduct, 5 C.F.R. § 2635.502(a)(2). "This is called the catch-all provision because it captures conflicts not involving a covered relationship but based on *some nexus* to a party or representative in a matter." NLRB Recusal Report at 6 n.3 (emphasis added).

There are ample grounds for a reasonable person, with knowledge of the intimate ties of Members Prouty and Wilcox to the SEIU and its and their vociferous attacks on the joint-employer rule, to question whether they are capable of acting impartially and disinterestedly in any matter involving the SEIU (or its National Fast Food Workers Union) or the joint-employer rule. Additionally, it is difficult to understand how either Member can impartially direct the Board's position in the SEIU Suit when they were both apparently integral to the legal strategy

[12] *See* Form LM-2 of SEIU at Schedule 15, available at https://olmsapps.dol.gov/query/orgReport.do?rptId=750976&rptForm=LM2Form.

[13] *Id*.

that resulted in that suit's genesis. "It is comparable to the situation of a lawyer who has represented a client in an endeavor to get a settlement of a claim and, before the claim is settled, is appointed to the bench and sits in the very case as judge." *Berkshire Emps. Ass'n*, *supra*. So, too, as to any suit involving the SEIU (or its National Fast Food Workers Union) or the joint-employer rule for the same reasons. And their recusal should also extend to any rulemaking on the joint-employer rule. After all, the Administrative Procedure Act's requirement that proceedings be "conducted in an impartial manner" applies equally to both adjudication and rulemaking. 5 U.S.C. § 556(b). Moreover, the Ethics Pledge each Member took applies its "Revolving Door Ban" broadly, to regulations as well as adjudication. 86 Fed. Reg. at 7029.

Given the above, Members Prouty and Wilcox should be disqualified from any involvement in the SEIU Suit, and any other judicial or administrative case or matter, involving the SEIU (or its National Fast Food Workers Union) or the joint-employer rule, and any rulemaking on the joint-employer standard. At a minimum, these Members must satisfy the procedures that this Board set forth in the NLRB Recusal Report. To that end, we ask:

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

- 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.

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,

Kristin Swearingen
Chair
Coalition for a Democratic Workplace

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

From:	Blado, Kayla
To:	Eleanor Mueller
Subject:	RE: EXCLUSIVE FOR MORNING SHIFT - CDW Letter to NLRB on conflicts
Date:	Thursday, January 13, 2022 6:22:00 PM

Sorry this is late, can you add this quote from me?

"The Board has well-established processes for members of the public to share their views on adjudicative and rulemaking matters and we invite any member of the public to take advantage of those processes."

Thank you!

Kayla Blado (she/her)
Acting Director & Press Secretary
Office of Congressional and Public Affairs
National Labor Relations Board
202-412-9602 | kayla.blado@nlrb.gov
@NLRB | @NLRBGC | Sign up for press releases

From: Eleanor Mueller <emueller@politico.com>
Sent: Thursday, January 13, 2022 4:42 PM
To: Blado, Kayla <Kayla.Blado@nlrb.gov>
Subject: Fw: EXCLUSIVE FOR MORNING SHIFT - CDW Letter to NLRB on conflicts

Hey Kayla,

Any comment on this? Let me know! Thanks.

Eleanor Mueller
Labor Reporter | Morning Shift Author
POLITICO | **POLITICO**PRO
1000 Wilson Boulevard, Floor 8 | Arlington, VA 22209
Mobile: 425.443.4718 | Twitter: @eleanor_mueller

From: Eric Sutton <esutton@pluspr.com>
Sent: Thursday, January 13, 2022 12:55 PM
To: Eleanor Mueller <emueller@politico.com>; Rebecca Rainey <rrainey@politico.com>
Subject: EXCLUSIVE FOR MORNING SHIFT - CDW Letter to NLRB on conflicts

EXTERNAL SENDER: Use caution with links and attachments.

Hello Eleanor/Rebecca – offering exclusive on attached letter being sent tomorrow to NLRB asking that NLRB Members, David Prouty and Gwynne Wilcox, be recused for any cases involving their former employer. Below is a statement from CDW on the letter. Could you include in tomorrow's newsletter? Please let me know if you

have any questions. Thanks, Eric

FOR IMMEDIATE RELEASE:
Friday, January 14, 2022

Business Leaders Call For Recusal Of NLRB Members David Prouty and Gwynne Wilcox In Cases Involving Their Former Employer

Group says that the former Service Employees International Union (SEIU) employees have clear conflict of interest and bias when adjudicating cases involving SEIU

Washington, D.C. – Today, the Coalition for a Democratic Workplace (CDW), composed of nearly 500 major business organizations, released the following statement after submitting a letter to the National Labor Relations Board (NLRB) calling for the immediate recusal of NLRB Members David Prouty and Gwynne Wilcox from cases involving their former employer, the Service Employees International Union (SEIU), due to what the group says represents a blatant conflict of interest that jeopardizes the ability of the NLRB to adjudicate cases fairly and objectively.

The following can be attributed to Kristen Swearingen, Chair of the Coalition for a Democratic Workplace:

"It is imperative that NLRB Members David Prouty and Gwynne Wilcox recuse themselves from any current and future NLRB cases involving their former employer, the Service Employees International Union (SEIU), and issues their former employer advocated for to prevent this blatant conflict of interest and to preserve the integrity of the institution.

"These conflicts of interest undermine confidence in the ability of the NLRB to fairly and objectively make decisions that will significantly affect the U.S. economy – and thereby the global economy. Federal law and ethics standards outline the conditions that would necessitate recusal, and NLRB Members Prouty and Wilcox clearly meet that threshold.

"Even if Prouty and Wilcox are not in direct violation of the law, federal ethics standards establishes that the mere appearance of a conflict of interest demands that they recuse themselves from these matters.

"Given the direct or incidental conflicts of interest and the damage it would cause to the NLRB's reputation as well President Biden's pledge to uphold high standards of ethics within his administration, NLRB Members David Prouty and Gwynne Wilcox must recuse themselves from all current and future cases involving SEIU or the labor issues SEIU is involved with."

Click here to read the full letter.

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About The Coalition for a Democratic Workplace

The Coalition for a Democratic Workplace (CDW) represents more than 500 major business organizations including the U.S. Chamber of Commerce, National Small Business Association, National Restaurant Association, National Association of Home Builders, National Retail Federation, National Grocers Association, International Franchise Association, National Association of Manufacturers, International Council of Shopping Centers and American Trucking Association.

CDW is a broad-based coalition of hundreds of organizations representing hundreds of thousands of employers and millions of employees in various industries across the country concerned with a long-standing effort by some in the labor movement to make radical changes to the National Labor Relations Act without regard to the severely negative impact they would have on employees, employers, and the economy. CDW was originally formed in 2005 in opposition to the so-called Employee Free Choice Act (EFCA) – a bill similar to the PRO Act – that would have stripped employees of the right to secret ballots in union representation elections and allowed arbitrators to set contract terms regardless of the consequence to workers or businesses.

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From: POLITICO Pro"s Morning Shift
To: Blado, Kayla
Subject: SCOTUS has entered the chat
Date: Friday, January 14, 2022 5:47:53 AM

Jan 14, 2022 View in browser

POLITICO Pro's Morning Shift newsletter logo

BY **ELEANOR MUELLER**

Programming Note: *We'll be off this Monday for Martin Luther King Jr. Day and will be back in your inboxes on Wednesday.*

QUICK FIX

— The Supreme Court has finally weighed in on President Joe Biden's vaccine-related regulations, and it's not what the administration was hoping to hear.

— Businesses are resurfacing their fight to force NLRB's union alumni to recuse themselves from related litigation, while the agency makes the case that the members have been cleared.

— Advocacy groups continue lobbying Senate leadership to bring a business-backed bill expanding protections for pregnant workers up for a vote in the upper chamber.

GOOD MORNING. It's Friday, Jan. 14. Welcome back to Morning Shift, your triweekly tipsheet on employment and immigration news. Send feedback, tips and exclusives to emueller@politico.com. Follow me on Twitter at @eleanor_mueller.

DRIVING THE DAY

SCOTUS IN THE HOUSE: The Supreme Court has finally weighed in on the White House's twin regulations requiring workers at big businesses and in certain health care facilities to get vaccinated against Covid-19 (the first of which took effect Monday, technically).

Conservative justices overruled their liberal colleagues 6-3 to block enforcement of the broader rule, which required that workers at companies with 100 or more employees get vaccinated against Covid-19 or submit to weekly testing. The Labor Department overstepped its authority in issuing the regulation, they said, and it was not their "role" to determine whether a stay should be lifted.

However, they decided 5-2 that a separate federal policy insisting that many health care workers be vaccinated could move forward.

Big picture: The court's action on the business mandate punts that issue back to the 6th U.S. Circuit Court of Appeals; the justices were only ruling on whether to press pause on the rule, not the underlying legality. But it signals that if the case returns to the high court, a majority of the justices will likely side with businesses and Republican-led states that sued to squelch the requirement, which would affect an estimated 84 million workers, even as the Omicron variant is driving up cases and straining health care systems.

Hands tied: Because the administration issued the large-business mandate on an emergency basis, it expires after six months — at which point, DOL must either replace it with a permanent standard or let it lapse. With less than four months left on the clock, that doesn't give the White House much time to pursue a legal victory.

States and employers must now take it upon themselves to implement their own vaccination policies, Biden said. In the meantime, he plans to continue to "advocate for employers to do the right thing to protect Americans' health and economy."

"OSHA will be evaluating all options to ensure workers are protected from this deadly virus,"

Labor Secretary Marty Walsh said. "Regardless of the ultimate outcome of these proceedings, OSHA will do everything in its existing authority to hold businesses accountable for protecting workers."

Happy campers: Groups like the National Retail Federation — one of more than two dozen trade associations contesting the regulation — were quick to praise the court's move blocking the OSHA emergency temporary standard.

"The Supreme Court's decision to stay OSHA's onerous and unprecedented ETS is a significant victory for employers," the National Retail Federation's David French said in a statement. "As NRF and other plaintiffs articulated in our briefs before the court, OSHA clearly exceeded its authority promulgating its original mandate under emergency powers without giving stakeholders the benefit of a rulemaking process."

Not-so-happy campers: Democrats condemned the conservative justices' decision in the OSHA case as partisan.

"The Supreme Court's decision to block OSHA's emergency workplace standard undermines a 50-year-old workplace safety law and threatens OSHA's authority to protect workers during a public health emergency," House Education and Labor Chair Bobby Scott (D-Va.) said in a statement. "This is exactly the type of so-called judicial activism that Republicans once decried."

More from your host and Josh Gerstein.

ON THE HILL

McCONNELL USES GOP LABOR BILLS AS BARGAINING CHIP: Senate Majority Leader Mitch McConnell has lined up an array of Republican-backed labor legislation as retaliation for Democratic efforts to remake the filibuster, Bloomberg's Paige Smith reports.

Dual purpose: "Senate Majority Leader Chuck Schumer (D-N.Y.) called them 'gotcha bills,' because they showcase partisan divides and can pressure Democrats who differ with their party's views on certain issues. The list of bills also could be viewed as a preview of the types of measures Republicans could put on the Senate floor if they gain control of the chamber and there isn't a filibuster."

Among them: A federal "right to work" proposal, S. 3464 (117), and a bill that would narrow the definition of joint employers to limit the liability of franchisees and contractors, S. 3465 (117) — as well as a measure, S. 3461 (117), to invalidate Biden's vaccine-or-test mandate.

GROUPS URGE VOTE ON PREGNANT WORKERS BILL: More than 150 unions, advocacy groups and health organizations led by A Better Balance are calling on Schumer to bring up a bill to expand protections for pregnant workers.

"The need for [the measure] is critical and the time to act is now," they wrote in a letter to the Democratic leader this week. "Pregnant workers — especially low-income frontline workers and mothers of color — are struggling due to the pandemic and economic crises."

In their corner: New York Attorney General Letitia James and a coalition of 15 state attorneys general sent their own letter to Schumer in December urging the same.

ICYMI: The House passed the bill in May, and the Senate HELP Committee approved its own version in August. But the legislation has since stalled in the upper chamber despite fierce lobbying by advocates.

MORE HILL NEWS: " Congress launches funding talks ahead of February shutdown cliff," from POLITICO

AROUND THE AGENCIES

FIRST IN SHIFT: Business groups including the U.S. Chamber of Commerce, who have organized as the Coalition for a Democratic Workplace, are calling on NLRB members David Prouty and Gwynne Wilcox to recuse themselves from cases involving their former employer, the Service Employees International Union, as well as the agency's joint employer rule.

"No reasonable person with knowledge of the Members' past activities, writings, and affiliations would believe that these Members are capable of acting impartially in these matters," the business coalition wrote in a letter to the NLRB today.

ICYMI: The agency's ethics official ruled last year that both Prouty and Wilcox were able to participate in SEIU-related litigation. As a result, the pair are obligated to "faithfully fulfill our role as Board members when, as here, participation in the Board's deliberations is appropriate," NLRB Chair Lauren McFerran wrote at the time.

"The Board has well-established processes for members of the public to share their views on adjudicative and rulemaking matters and we invite any member of the public to take advantage of those processes," NLRB spokesperson Kayla Blado said in a statement to Morning Shift.

ENERGY LAUNCHES CLEAN ENERGY CORPS: The Energy Department is creating a Clean Energy Corps, and a hiring portal along with it, to enlist 1,000 new workers focused on clean energy development.

What they'll do: The corps will work on projects to cut global emissions, including an initiative to build thousands of miles of electric transmission lines carrying wind and solar power to communities across the country.

The 1,000 additional employees will join current career staff and be able to use the portal to explore areas of interest, such as public policy, energy finance

and legislative affairs, The Washington Post's Maxine Joselow reports.

Hiring could be a challenge, however: Ernest Moniz, the secretary of energy under former President Barack Obama, said the corps could help meet President Joe Biden's goal of cutting carbon emissions in half (compared to 2005 levels) by 2030, but that recruiting and hiring 1,000 people won't be easy.

Dan Reicher, former assistant energy secretary under former President Bill Clinton, agreed that hiring will be no small task. Energy Department staffing levels were depleted during the Trump administration when fossil fuel production was prioritized, he noted.

"It's not easy to hire that number of people, and particularly folks who have some background in what this money is going to be spent on," Reicher told the Post. "So to the extent there's a challenging side of this, it's the hiring."

LEVELING THE PLAYING FIELD: DOL's Office of Federal Contract Compliance Programs and the Equal Employment Opportunity Commission announced a new initiative this week to improve hiring practices in order to advance equal employment opportunities.

What the initiative will do: The multi-year effort, known as The Hiring Initiative to Reimagine Equity, aims to increase access to good jobs for underrepresented communities and address major hiring and recruiting challenges. Its goals include cultivating a diverse pool of qualified workers and promoting equity in tech-based hiring systems.

Background: Marginalized communities and women have faced disproportionate barriers to employment opportunities. The pandemic exacerbated those barriers, leading to especially high unemployment rates for communities of color and a slow job recovery for women, according to the HIRE fact sheet.

What's next: OFCCP and EEOC will hold a virtual public roundtable Monday at 2 p.m. to commemorate Martin Luther King, Jr. Day and launch the initiative.

IN THE WORKPLACE

WEEKLY JOBLESS CLAIMS HIGHER THAN ANTICIPATED: DOL said Thursday that jobless claims rose to a seasonally adjusted 230,000 last week — an increase of 23,000, The Wall Street Journal's Bryan Mena reports.

"The increase in the Jan. 8 week came as employers dealt with workers calling in sick because of the Omicron variant of Covid-19," Mena explains. But overall, "economists expect the surge in cases from the Omicron variant to have a limited impact on businesses, keeping the tight labor market in place."

"A tight U.S. labor market has kept applications near pre-pandemic lows for the past two months," the Journal's Karen Langley and Anna Hirtenstein report. As investors reviewed the new numbers, "a decline in technology stocks dragged down major U.S. stock indexes Thursday, leaving the Nasdaq Composite at its lowest close since October."

HOW LONG COVID LEADS TO WORKER SHORTAGES: Long Covid, or coronavirus symptoms that persist for months, could account for more than 15 percent of unfilled jobs, a new study from The Brookings Institution found.

The math: More than 100 million Americans between the ages of 18 and 64 have contracted Covid-19, and studies suggest that between 27 percent and 33 percent of Covid-19 patients still experience symptoms months after infection, the study notes. That means an estimated 31 million working-age Americans — more than one in seven — may have experienced lingering Covid-19 symptoms.

The analysis assumes that, conservatively, the 31 million long Covid patients stayed sick for an average of three months. That means that about 4.5 million could have been sick at any given time over the past 20 months.

Summing it up: Of course, not all of these 4.5 million people would have stopped working. Two studies of long Covid patients found that 23 percent and 28 percent, respectively, were out of work due to long Covid at the time of the study. That suggests there may have been about 1.1 million Americans not working due to long Covid at any given time.

MORE WORKPLACE NEWS: " There's a simple step the government can take to raise pay and solve labor shortages — it's called prevailing wage law," from Business Insider

UNIONS

NYT TECH WORKERS TO VOTE ON UNIONIZING: An NLRB regional director ordered that a union election be held for more than 560 tech employees at The New York Times.

The details: The Times claimed that the union's proposed bargaining unit improperly included certain groups of employees that have different working conditions. That claim was rejected, which means ballots will be mailed to workers on Jan. 24 and are due back by Feb. 14. Times employees can now vote to join the NewsGuild of New York, an affiliate of CWA.

The decision comes after the NLRB general counsel issued a complaint accusing the Times of unfair labor practices in connection with the union campaign, Bloomberg's Josh Eidelson reports . According to the complaint, management told some employees they weren't allowed to show union support while acting as supervisors of interns — and has continued to maintain that rule.

Looking ahead: The Times disagreed with the allegations and the decision but says it's now focused on ensuring a fair election.

"We continue to believe that the company and our digital product development and tech colleagues will accomplish our shared goals faster and more effectively by working together directly, without a union," Times spokesperson Danielle Rhoades Ha said.

A hearing will be held before an administrative judge in March.

MORE UNION NEWS: " Labor talks begin Thursday on national U.S. refinery workers contract," from Reuters

HAPPENING TODAY

At 11 a.m. The Atlantic Council holds a virtual discussion on supply chains with China.

At 1 p.m. The Federalist Society for Law and Public Policy Studies holds a

virtual discussion on state and federal vaccine policies.

WHAT WE'RE READING

— "Rapid coronavirus tests are hard to find — unless you work for Google or play in the NBA," from The Washington Post.

— "Ailing Amazon workers struggle to find Covid tests themselves," from NBC News.

— " Teachers across France stage a one-day walkout over Covid rules," from The New York Times.

— "The grocery cashier ringing you up is not OK," from CNN.

— "Supermarkets Cut Hours, Services as Omicron Infects Workers," from The Wall Street Journal.

— "Egypt leader criticizes Europe's handling of migrant crisis," from The Washington Post.

— "A Groundbreaking Hiring Caused Little Fuss: 'Everybody Was on Board'" from The New York Times.

— "The Real Reason Americans Aren't Isolating ," from The Atlantic.

— "Economy's Fate Might Hinge on Question of 'Full Employment'" from The Wall Street Journal.

— "What Disney's 'Encanto' taught me about defining myself by an endless capacity for hard work," from The Washington Post.

— " As Omicron surges, a French hospital creaks under staff shortages," from Reuters.

— "From Covid-19 to #MeToo, The Labor Beat Is Resurgent," from Nieman Reports.

— "Some D.C. Trader Joe's Workers Call The Company's COVID Practices Into Question," from DCist.

— "Opinion: Why manufacturing workers are voluntarily leaving jobs at rates never seen before," from The Washington Post.

— "Grocery store employee Leilani Jordan died of Covid-19 at the start of the pandemic. Her mom wants justice," from The Washington Post.

— "' Work From Anywhere' Helped Twitter Boost Black, Latinx Hires," from Bloomberg.

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This email was sent to kayla.blado@nlrb.gov by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

From:	Vance Walter
To:	Abruzzo, Jennifer
Cc:	Kristen Swearingen
Subject:	CDW Letter to NLRB Urging Recusals
Date:	Friday, January 14, 2022 9:39:58 AM
Attachments:	CDW Letter to NLRB Urging Recusals_Jan 2022.pdf

Jennifer:

On behalf of Kristen Swearingen, Chair of the Coalition for a Democratic Workplace, please find the attached letter objecting to the involvement of National Labor Relations Board Members David M. Prouty and Gwynne A. Wilcox in certain matters before the Board. 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.

An original copy of the CDW letter has been delivered to you and each member of the Board as of Friday, January 14 at 1015 Half Street SE Washington D.C. 20570. We have sent a copy of the electronic version of the letter attached to Roxanne Rothschild, the Executive Secretary of the Board and have requested that it is sent to all Board Members.

Sincerely,

Vance Walter
Manager of Legislative and Political Affairs
440 First St., N.W., Suite 200
Washington, DC 20001
Walter@abc.org

COALITION FOR A
DEMOCRATIC WORKPLACE

January 14, 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:

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Nor can these two Members take refuge in a hyper-technical construction of the Ethics Pledge or Standards of Ethical Conduct to argue that their employment by and/or representation of subsidiaries of the SEIU exonerates them from their ethical quandary. *First*, the SEIU is no distant parent organization, but one with extensive and apparently total control over its local and affiliated unions. Under SEIU International's 2020 Constitution:

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[9] *Id*., Article XV, Section 3.

[10] *See* Form LM-2 of SEIU 32BJ at Schedule 14, available at https://olmsapps.dol.gov/query/orgReport.do?rptId=751005&rptForm=LM2Form.

[11] *See* Form LM-2 of Fast Food Workers Committee, Item 69, available at https://olmsapps.dol.gov/query/orgReport.do?rptId=659960&rptForm=LM2Form.

The SEIU has invested millions of dollars in the SEIU National Fast Food Workers Union.[12] The SEIU paid more than $100,000 to Member Wilcox's firm, Levy Ratner, for "support for organizing" in 2020 alone.[13] Thus, Members Prouty and Wilcox's representation of and (in the case of Member Prouty) employment by subsidiaries of the SEIU is, for the purposes of the recusals requested herein, a meaningless distinction.

Second, the law guards against not just actual conflicts of interest but the *appearance* of conflicts and demands recusal in *both* instances. The C.F.R.'s Standards of Ethical Conduct require Members "to avoid any actions *creating the appearance* that they are violating the law or the ethical standards set forth in this part." 5 C.F.R. § 2635.101(b)(14) (emphasis added). "Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts." *Id*. The Ethics Pledge that binds both Members similarly requires them to conduct themselves so as not to not raise the appearance of a conflict of interest. *See* 86 Fed. Reg. at 7029.

These standards are not new. Indeed, more than 80 years ago the Third Circuit underscored the importance that decisions of the NLRB be made by an "impartial and disinterested tribunal." *Berkshire Emps. Ass'n of Berkshire Knitting Mills v. N.L.R.B*., 121 F.2d 235, 238 (3d Cir. 1941). The appearance of impropriety is inconsistent with the requirement that Members "with the responsibility for decisions affecting other people's lives and property [] be as objective as humanly possible." *Id*. Where a Member acts already having "thrown his [or her] weight on" one side, he or she has gone "beyond the line of fair dealing." *Id*. at 239 (remanding because member's correspondence went beyond a general predilection either for or against labor organizations in general or one organization in particular).

This Board has recognized the facileness of relying on pedantic distinctions between subsidiaries and their closely controlling parents. In the NLRB Recusal Report, the Board referred to what it calls a "catch-all provision" in the Standards of Ethical Conduct, 5 C.F.R. § 2635.502(a)(2). "This is called the catch-all provision because it captures conflicts not involving a covered relationship but based on *some nexus* to a party or representative in a matter." NLRB Recusal Report at 6 n.3 (emphasis added).

There are ample grounds for a reasonable person, with knowledge of the intimate ties of Members Prouty and Wilcox to the SEIU and its and their vociferous attacks on the joint-employer rule, to question whether they are capable of acting impartially and disinterestedly in any matter involving the SEIU (or its National Fast Food Workers Union) or the joint-employer rule. Additionally, it is difficult to understand how either Member can impartially direct the Board's position in the SEIU Suit when they were both apparently integral to the legal strategy

[12] *See* Form LM-2 of SEIU at Schedule 15, available at https://olmsapps.dol.gov/query/orgReport.do?rptId=750976&rptForm=LM2Form.

[13] *Id*.

that resulted in that suit's genesis. "It is comparable to the situation of a lawyer who has represented a client in an endeavor to get a settlement of a claim and, before the claim is settled, is appointed to the bench and sits in the very case as judge." *Berkshire Emps. Ass'n*, *supra*. So, too, as to any suit involving the SEIU (or its National Fast Food Workers Union) or the joint-employer rule for the same reasons. And their recusal should also extend to any rulemaking on the joint-employer rule. After all, the Administrative Procedure Act's requirement that proceedings be "conducted in an impartial manner" applies equally to both adjudication and rulemaking. 5 U.S.C. § 556(b). Moreover, the Ethics Pledge each Member took applies its "Revolving Door Ban" broadly, to regulations as well as adjudication. 86 Fed. Reg. at 7029.

Given the above, Members Prouty and Wilcox should be disqualified from any involvement in the SEIU Suit, and any other judicial or administrative case or matter, involving the SEIU (or its National Fast Food Workers Union) or the joint-employer rule, and any rulemaking on the joint-employer standard. At a minimum, these Members must satisfy the procedures that this Board set forth in the NLRB Recusal Report. To that end, we ask:

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

- 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.

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,

Kristin Swearingen
Chair
Coalition for a Democratic Workplace

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

From:	Rothschild, Roxanne L.
To:	Vance Walter
Cc:	Kristen Swearingen
Subject:	RE: CDW Letter to NLRB Urging Recusals
Date:	Friday, January 14, 2022 9:46:00 AM

Mr. Walter:

I am in receipt of your letter, and I will distribute it to the Board and GC Abruzzo.

Thank you,

Roxanne Rothschild
Executive Secretary
National Labor Relations Board
1015 Half Street SE, Office 5011, Washington, DC 20570
roxanne.rothschild@nlrb.gov | 202-273-2917

From: Vance Walter <walter@abc.org>
Sent: Friday, January 14, 2022 9:37 AM
To: Rothschild, Roxanne L. <Roxanne.Rothschild@nlrb.gov>
Cc: Kristen Swearingen <Swearingen@abc.org>
Subject: CDW Letter to NLRB Urging Recusals

Roxanne:

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Sincerely,

Vance Walter
Manager of Legislative and Political Affairs
440 First St., N.W., Suite 200

Washington, DC 20001
Walter@abc.org

COALITION FOR A
DEMOCRATIC WORKPLACE

January 14, 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

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- 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.

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,

Kristin Swearingen
Chair
Coalition for a Democratic Workplace

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

From:	Kullgren, Ian
To:	Blado, Kayla
Subject:	RE: Business Leaders Call for Recusal of NLRB Members Prouty & Wilcox In Cases Involving Former Employer
Date:	Friday, January 14, 2022 3:30:14 PM

Thanks, appreciate it.

--

Ian Kullgren

Labor Reporter
Bloomberg/Bloomberg Law

703-341-3220
ikullgren@bloombergindustry.com
@IanKullgren

From: Blado, Kayla <Kayla.Blado@nlrb.gov>
Sent: Friday, January 14, 2022 3:28 PM
To: Kullgren, Ian <ikullgren@bloombergindustry.com>
Subject: RE: Business Leaders Call for Recusal of NLRB Members Prouty & Wilcox In Cases Involving Former Employer

In case you wanted to include this in your piece, Chairman McFerran responded to previous concerns about this in November. We issued a press release and a letter to the Hill:

https://www.nlrb.gov/news-outreach/news-story/nlrb-chairman-sends-letter-to-congress-on-members-commitment-to-ethical

Kayla Blado (she/her)
Acting Director & Press Secretary
Office of Congressional and Public Affairs
National Labor Relations Board
202-412-9602 | kayla.blado@nlrb.gov
@NLRB | @NLRBGC | Sign up for press releases

From: Kullgren, Ian <ikullgren@bloombergindustry.com>
Sent: Friday, January 14, 2022 1:50 PM
To: Blado, Kayla <Kayla.Blado@nlrb.gov>
Subject: RE: Business Leaders Call for Recusal of NLRB Members Prouty & Wilcox In Cases Involving Former Employer

Got this, thank you.

--

Ian Kullgren

Labor Reporter
Bloomberg/Bloomberg Law

703-341-3220
ikullgren@bloombergindustry.com
@IanKullgren

From: Blado, Kayla <Kayla.Blado@nlrb.gov>
Sent: Friday, January 14, 2022 1:49 PM
To: Kullgren, Ian <ikullgren@bloombergindustry.com>
Subject: Re: Business Leaders Call for Recusal of NLRB Members Prouty & Wilcox In Cases Involving Former Employer

Hi Ian, you can use this quote from me.

"The Board has well-established processes for members of the public to share their views on adjudicative and rulemaking matters and we invite any member of the public to take advantage of those processes."

Thanks!

Kayla Blado (she/her)
Press Secretary
National Labor Relations Board
202-412-9602
Follow us on Twitter: @NLRB/@NLRBGC
Sign up for press releases

From: Kullgren, Ian <ikullgren@bloombergindustry.com>
Sent: Friday, January 14, 2022 12:39:23 PM
To: Blado, Kayla <Kayla.Blado@nlrb.gov>
Subject: FW: Business Leaders Call for Recusal of NLRB Members Prouty & Wilcox In Cases Involving Former Employer

Hi Kayla,

I'm working on a quick story about this letter and wanted to reach out for comment. Let me know if you'd like to say anything on the record.

--

Ian Kullgren

Labor Reporter
Bloomberg/Bloomberg Law

703-341-3220

ikullgren@bloombergindustry.com
@IanKullgren

From: Eric Sutton <esutton@pluspr.com>
Sent: Friday, January 14, 2022 10:40 AM
To: Kullgren, Ian <ikullgren@bloombergindustry.com>
Subject: Business Leaders Call for Recusal of NLRB Members Prouty & Wilcox In Cases Involving Former Employer

Hello Ian – Below is a statement and here is a link to a letter sent to NLRB this morning from the Coalition for a Democratic Workplace asking that NLRB members, Prouty and Wilcox, be recused from cases involving their former employer, SEIU. The Coalition for a Democratic Workplace (CDW) represents more than 500 major business organizations including the U.S. Chamber of Commerce, National Small Business Association, National Restaurant Association, National Retail Federation, National Association of Manufacturers and American Trucking Association.
Please let me know if you have any questions. Thanks, Eric (301) 943-9923

FOR IMMEDIATE RELEASE:
JANUARY 14, 2022

Business Leaders Call For Recusal Of NLRB Members David Prouty and Gwynne Wilcox In Cases Involving Their Former Employer

Group says that the former Service Employees International Union (SEIU) employees have clear conflict of interest and bias when adjudicating cases involving SEIU

Washington, D.C. – Today, the Coalition for a Democratic Workplace (CDW), composed of nearly 500 major business organizations, released the following statement after submitting a letter to the National Labor Relations Board (NLRB) calling for the immediate recusal of NLRB Members David Prouty and Gwynne Wilcox from cases involving their former employer, the Service Employees International Union (SEIU), due to what the group says represents a blatant conflict of interest that jeopardizes the ability of the NLRB to adjudicate cases fairly and objectively.

The following can be attributed to Kristen Swearingen, Chair of the Coalition for a Democratic Workplace:

"It is imperative that NLRB Members David Prouty and Gwynne Wilcox recuse themselves from any current and future NLRB cases involving their former employer, the Service Employees International Union (SEIU), and issues their former employer advocated for to prevent this blatant conflict of interest and to preserve the integrity of the institution.

“These conflicts of interest undermine confidence in the ability of the NLRB to fairly and objectively make decisions that will significantly affect the U.S. economy – and thereby the global economy. Federal law and ethics standards outline the conditions that would necessitate recusal, and NLRB Members Prouty and Wilcox clearly meet that threshold.

“Even if Prouty and Wilcox are not in direct violation of the law, federal ethics standards establishes that the mere appearance of a conflict of interest demands that they recuse themselves from these matters.

“Given the direct or incidental conflicts of interest and the damage it would cause to the NLRB’s reputation as well President Biden’s pledge to uphold high standards of ethics within his administration, NLRB Members David Prouty and Gwynne Wilcox must recuse themselves from all current and future cases involving SEIU or the labor issues SEIU is involved with.”

Click here to read the full letter.

###

About The Coalition for a Democratic Workplace

The Coalition for a Democratic Workplace (CDW) represents more than 500 major business organizations including the U.S. Chamber of Commerce, National Small Business Association, National Restaurant Association, National Association of Home Builders, National Retail Federation, National Grocers Association, International Franchise Association, National Association of Manufacturers, International Council of Shopping Centers and American Trucking Association.

CDW is a broad-based coalition of hundreds of organizations representing hundreds of thousands of employers and millions of employees in various industries across the country concerned with a long-standing effort by some in the labor movement to make radical changes to the National Labor Relations Act without regard to the severely negative impact they would have on employees, employers, and the economy. CDW was originally formed in 2005 in opposition to the so-called Employee Free Choice Act (EFCA) – a bill similar to the PRO Act – that would have stripped employees of the right to secret ballots in union representation elections and allowed arbitrators to set contract terms regardless of the consequence to workers or businesses.

###

From:	Blado, Kayla
To:	Wiessner, Daniel (Reuters)
Subject:	RE: Reuters inquiry- Trade groups" letter re: Members Prouty and Wilcox
Date:	Friday, January 14, 2022 3:51:10 PM

Hi Dan, thanks for reaching out. You can use this quote from me in response to the group sending the letter: "The Board has well-established processes for members of the public to share their views on adjudicative and rulemaking matters and we invite any member of the public to take advantage of those processes."

Additionally, I would point you to a press release and a letter to Congress that Chairman McFerran sent about a similar issue in November: https://www.nlrb.gov/news-outreach/news-story/nlrb-chairman-sends-letter-to-congress-on-members-commitment-to-ethical

Best,

Kayla Blado (she/her)
Acting Director & Press Secretary
Office of Congressional and Public Affairs
National Labor Relations Board
202-412-9602 | kayla.blado@nlrb.gov
@NLRB | @NLRBGC | Sign up for press releases

From: Wiessner, Daniel (Reuters) <Daniel.Wiessner@thomsonreuters.com>
Sent: Friday, January 14, 2022 3:46 PM
To: Blado, Kayla <Kayla.Blado@nlrb.gov>
Subject: Reuters inquiry- Trade groups' letter re: Members Prouty and Wilcox

Hi Kayla, I hope you're well. I was wondering if Members Prouty and Wilcox or Chair McFerran have comment on the letter referenced in this press release. Thanks for your time.

Dan Wiessner
Reuters
518.414.0693

COALITION FOR A
DEMOCRATIC WORKPLACE

FOR IMMEDIATE RELEASE:
JANUARY 14, 2022

Business Leaders Call For Recusal Of NLRB Members David Prouty and Gwynne

Wilcox In Cases Involving Their Former Employer

Group says that the former Service Employees International Union (SEIU) employees have clear conflict of interest and bias when adjudicating cases involving SEIU

Washington, D.C. – Today, the Coalition for a Democratic Workplace (CDW), composed of nearly 500 major business organizations, released the following statement after submitting a letter to the National Labor Relations Board (NLRB) calling for the immediate recusal of NLRB Members David Prouty and Gwynne Wilcox from cases involving their former employer, the Service Employees International Union (SEIU), due to what the group says represents a blatant conflict of interest that jeopardizes the ability of the NLRB to adjudicate cases fairly and objectively.

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"These conflicts of interest undermine confidence in the ability of the NLRB to fairly and objectively make decisions that will significantly affect the U.S. economy – and thereby the global economy. Federal law and ethics standards outline the conditions that would necessitate recusal, and NLRB Members Prouty and Wilcox clearly meet that threshold.

"Even if Prouty and Wilcox are not in direct violation of the law, federal ethics standards establishes that the mere appearance of a conflict of interest demands that they recuse themselves from these matters.

"Given the direct or incidental conflicts of interest and the damage it would cause to the NLRB's reputation as well President Biden's pledge to uphold high standards of ethics within his administration, NLRB Members David Prouty and Gwynne Wilcox must recuse themselves from all current and future cases involving SEIU or the labor issues SEIU is involved with."

Click here to read the full letter.

###

About The Coalition for a Democratic Workplace

The Coalition for a Democratic Workplace (CDW) represents more than 500 major business organizations including the U.S. Chamber of Commerce, National Small Business Association, National Restaurant Association, National Association of Home Builders, National Retail Federation, National Grocers Association, International Franchise Association, National Association of Manufacturers, International Council of Shopping Centers and American Trucking Association.

CDW is a broad-based coalition of hundreds of organizations representing hundreds of thousands of employers and millions of employees in various industries across the country concerned with a long-standing effort by some in the labor movement to make radical changes to the National Labor Relations

Act without regard to the severely negative impact they would have on employees, employers, and the economy. CDW was originally formed in 2005 in opposition to the so-called Employee Free Choice Act (EFCA) – a bill similar to the PRO Act – that would have stripped employees of the right to secret ballots in union representation elections and allowed arbitrators to set contract terms regardless of the consequence to workers or businesses.

###

From:	Rothschild, Roxanne L.
To:	Vance Walter
Cc:	Kristen Swearingen
Subject:	RE: CDW Letter to NLRB Urging Recusals
Date:	Tuesday, February 15, 2022 1:07:00 PM

Mr. Walter:

I am in receipt of your letter, and I will distribute it to the Board and GC Abruzzo.

Thank you,

Roxanne Rothschild
Executive Secretary
National Labor Relations Board
1015 Half Street SE, Office 5011, Washington, DC 20570
roxanne.rothschild@nlrb.gov | 202-273-2917

From: Vance Walter <walter@abc.org>
Sent: Tuesday, February 15, 2022 12:37 PM
To: Rothschild, Roxanne L. <Roxanne.Rothschild@nlrb.gov>
Cc: Kristen Swearingen <Swearingen@abc.org>
Subject: RE: CDW Letter to NLRB Urging Recusals

Roxanne:

On behalf of Kristen Swearingen, Chair of the Coalition for a Democratic Workplace, please find the new letter attached following up on CDW's January 14 letter objecting to the involvement of National Labor Relations Board Members David M. Prouty and Gwynne A. Wilcox in certain matters before the Board.

Again, we respectfully request your prompt response on these important issues. Additionally, we request that this follow up letter attached to this email is sent to all Board Members as well as Jennifer Abruzzo, General Counsel of the Board.

Sincerely,

Vance Walter
Director of Legislative and Political Affairs
440 First St., N.W., Suite 200
Washington, DC 20001
Walter@abc.org

From: Rothschild, Roxanne L. <Roxanne.Rothschild@nlrb.gov>

Sent: Friday, January 14, 2022 9:47 AM
To: Vance Walter <walter@abc.org>
Cc: Kristen Swearingen <Swearingen@abc.org>
Subject: RE: CDW Letter to NLRB Urging Recusals
Mr. Walter:

I am in receipt of your letter, and I will distribute it to the Board and GC Abruzzo.

Thank you,

Roxanne Rothschild
Executive Secretary
National Labor Relations Board
1015 Half Street SE, Office 5011, Washington, DC 20570
roxanne.rothschild@nlrb.gov | 202-273-2917

From: Vance Walter <walter@abc.org>
Sent: Friday, January 14, 2022 9:37 AM
To: Rothschild, Roxanne L. <Roxanne.Rothschild@nlrb.gov>
Cc: Kristen Swearingen <Swearingen@abc.org>
Subject: CDW Letter to NLRB Urging Recusals

Roxanne:

On behalf of Kristen Swearingen, Chair of the Coalition for a Democratic Workplace, please find the attached letter objecting to the involvement of National Labor Relations Board Members David M. Prouty and Gwynne A. Wilcox in certain matters before the Board. 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.

An original copy of the CDW letter has been delivered to you and each member of the Board as of Friday, January 14 at 1015 Half Street SE Washington D.C. 20570. Additionally, we request that this electronic version of the letter attached to this email is sent to all Board Members as well as Jennifer Abruzzo, General Counsel of the Board.

Sincerely,

Vance Walter
Director of Legislative and Political Affairs
440 First St., N.W., Suite 200
Washington, DC 20001

Walter@abc.org

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[1] 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.[2] 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).

[1] 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.
[2] A full list of CDW's members is available at https://myprivateballot.com/about/.

- 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.

COALITION FOR A
DEMOCRATIC WORKPLACE

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

From:	Rothschild, Roxanne L.
To:	swearingen@abc.org
Cc:	Walter@abc.org
Subject:	Response letter to Coalition for a Democratic Workplace
Date:	Wednesday, March 2, 2022 8:50:00 PM
Attachments:	Response Letter to CDW 3-2-2022.pdf

Ms. Swearingen:

Please see the attached letter in response to the letters sent to the NLRB from the Coalition for a Democratic Workplace.

Thank you,

Roxanne Rothschild
Executive Secretary
National Labor Relations Board
1015 Half Street SE, Office 5011, Washington, DC 20570
roxanne.rothschild@nlrb.gov | 202-273-2917

United States Government
NATIONAL LABOR RELATIONS BOARD
Office of the Executive Secretary
1015 Half Street, SE
Washington, DC 20570

Telephone: 202-273-2917
Fax: 202-273-4270

roxanne.rothschild@nlrb.gov
www.nlrb.gov

March 2, 2022

Kristin Swearingen, Chair
Coalition for a Democratic Workplace
MyPrivateBallot.com
swearingen@abc.org

Re: Letter to Chairman McFerran and Members of the National Labor Relations Board

Dear Ms. Swearingen:

We received the letters you submitted on behalf of the Coalition for a Democratic Workplace on January 14, 2022 and February 15, 2022, addressed to Chairman Lauren McFerran and Members Marvin E. Kaplan, John F. Ring, Gwynne A. Wilcox, and David M. Prouty of the National Labor Relations Board. In the letters, you assert that Members Wilcox and Prouty should be disqualified 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.

The letters also ask a series of questions seeking information about Members Wilcox and Prouty and their work at the Board, including, *inter alia*, recusal determinations, the basis for these determinations, entities for which they have previously provided legal services, etc.

If the letters are intended to seek recusal or disqualification of Members Wilcox and/or Prouty as to unspecified cases pending before the Board, the Board does not accept such filings. Nothing in the Board's Rules and Regulations provides for the filing of a motion unconnected to a particular case or proceeding. See *The Committee to Preserve the Religious Right to Organize*, order rejecting motions, September 11, 2019 (attached).

If the letters are intended to be a comment pertaining to Agency rulemaking, the comment will need to be filed properly during an open comment period for such rulemaking. The Board currently has no open rulemaking matters for which public comment is being sought. Nevertheless, your letters and this response will be included in the administrative record in the Board's rulemaking on Joint Employer Status, RIN 3142-AA21.

With regard to the list of questions posed in the letters that seek information pertaining to Members Wilcox and Prouty, requests for agency records should be submitted to our Freedom of Information Act office. The Freedom of Information Act (FOIA), 5 U.S.C. Sec. 552 is the law

that gives members of the public access to certain non-exempt records and other information that relates to the functions, decisions, and operations of federal agencies such as the NLRB. The NLRB's Freedom of Information Act regulations, found at 29 C.F.R. § 102.117, provide the guidelines for the public to seek information from the Agency. Information about filing a FOIA request with the NLRB's FOIA office can be found on our public website at https://www.nlrb.gov/guidance/freedom-of-information-act-foia/how-to-file-a-foia-request.

Sincerely,

Roxanne L. Rothschild

Roxanne L. Rothschild
Executive Secretary

cc: Vance Walter, Walter@abc.org