

STATEMENT OF  
CHAIRMAN JOHN F. RING  
NATIONAL LABOR RELATIONS BOARD  
BEFORE THE SUBCOMMITTEE ON LABOR, HEALTH, AND HUMAN SERVICES  
COMMITTEE ON APPROPRIATIONS  
UNITED STATES HOUSE OF REPRESENTATIVES  
MARCH 11, 2020

Chairwoman DeLauro, Ranking Member Cole, and Members of the Subcommittee, I am pleased to appear before you today to provide you an update on our work at the National Labor Relations Board. I am happy to report that the Board has worked efficiently and effectively to carry out the mission of the National Labor Relations Act.

On July 5, the National Labor Relations Act will turn 85. This means that for 85 years, the NLRB has been enforcing the Act, which guarantees the right of most private sector employees to organize, to engage in group efforts to improve their wages and working conditions, to determine whether to have unions as their bargaining representative, to engage in collective bargaining, and to refrain from any of these activities. It acts to prevent and remedy unfair labor practices committed by private sector employers and unions and provides the American workforce with an essential vehicle for the resolution of workplace disputes. Like those who served on the Board over those years, the current Board members take our responsibility to fairly and impartially enforce the Act very seriously.

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General Counsel Robb will update you on the side of the Agency he oversees, which includes the regional offices and the vast majority of NLRB employees. I would like to focus on the successes on the Board-side of the Agency, which includes the Members, their staffs, and several offices that support the Board's work. On the Board side, we have 148 FTEs, and the Board's funding allocation represents approximately 11.5 percent of the overall Agency budget.

The Board's primary areas of focus over the past fiscal year has been our case processing effort. As long as there has been a Board, there has been criticism of long delays in Board case processing. As a former practitioner before the Board, I am particularly aware of the old adage that "justice delayed is justice denied," and I committed as Chairman to improve the Board's efficiency and timeliness in issuing decisions, consistent with the Agency's larger strategic plan goals. In this regard, the Board instituted a pilot program to focus on enhanced oversight of case management and case status transparency. We paid particular attention to issuing decisions in some of the oldest cases pending before us. After only a year of effort, I am pleased that our overall case processing statistics for FY 2019 reflect positive results.

The Board issued 303 decisions in contested cases during FY 2019. This is a strong number in and of itself, but is particularly robust considering the other initiatives, including important rulemaking, that the Board undertook last year. We also reduced

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the median age of all cases pending before the Board by almost 33 percent, from a median age of 233 days in FY 2018 to a median age of 157 days at the end of FY 2019. In addition, the Board significantly reduced the number of cases pending before the Board to its lowest level since 2012. The number of pending cases was reduced from 281 at the end of FY 2018 to 227 at the end of FY 2019, a reduction of almost 20 percent. I believe these statistics are further evidence that our efforts to reduce case backlog and ensure timely decisions for the parties are bearing fruit.

Seeking to build on these successes, the Board intends to eliminate our oldest cases by the end of FY 2020. These are unfair-labor-practice cases that will be a year-and-a-half old at the end of the fiscal year and election or representation cases that will be a year old by that time. Processing and issuing all of these cases will require focus and determination, but we believe it is very doable. We know that the purposes of the Act are not served making parties and America's workers wait years – in some cases up to 10 years – for cases to issue.

I also should mention that our recent investments in technology should assist with case processing as well. The Agency soon will roll out a new case management program, which will replace a very outdated system that is approximately 15 years old. The new system will improve our overall efficiency and provide a more-secure and improved tool for Board-side staff to manage our cases and rulemaking. We also will launch our

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updated public website, to more efficiently provide important access to our published and unpublished decisions and orders as well as other Agency documents and information.

Another area of emphasis by the Board over the last year has been rulemaking. Although the NLRB historically has made most of its policy through case adjudication, the current Board believes that there are significant advantages to rulemaking. Rulemaking allows the Board to provide far more comprehensive and detailed guidance to our stakeholders than adjudication. Rather than issuing a decision potentially limited to the facts of a particular case, the Board can address a broad area of law through rulemaking with clarity and certainty, answering numerous questions of statutory interpretation in one proceeding. Rulemaking also offers the opportunity for substantial input from the public, not just from those who can afford a lawyer to write a legal brief. We have had significant public participation in our rulemaking efforts to date, and the Board has found this input valuable in developing and implementing our labor policies. Finally, rulemaking under the Administrative Procedure Act is strictly prospective. Thus, employers, employees, and unions know what is coming when the NLRB engages in rulemaking and can prepare accordingly.

I am pleased that we have issued a final rule covering the joint-employer standard under the Act. Although this rulemaking took over a year to complete, we received and

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considered nearly 29,000 comments that allowed us to craft a well-informed rule. The final rule restores the joint-employer standard the Board applied for several decades prior to the 2015 decision in *Browning-Ferris*, and does so with the greater precision, clarity, and detail that rulemaking allows.

In other rulemaking initiatives, the Board issued a notice of proposed rulemaking regarding the Board's current standards for blocking charges, voluntary recognition, and the formation of Section 9(a) bargaining relationships in the construction industry. This proposal focuses on protecting employees' statutory rights to a secret ballot election in resolving questions concerning union representation. We are currently reviewing the public comments received in this important rulemaking.

The Board also issued a notice of proposed rulemaking regarding the standard for determining whether students who perform services at private colleges or universities in connection with their studies are "employees" within the meaning of Section 2(3) of the Act. As you know, this is an issue in which the Board has reversed its position three times in the last 19 years. We received nearly 50,000 comments on this proposed rule, which the Agency is now reviewing closely. This rulemaking is intended to obtain maximum input from the public, and then to bring stability and broader guidance to this important area of the law.

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The Board also issued a final rule with a series of modifications to the Agency's representation case procedures. Retaining the essential elements of the Agency's existing representation rules, the rule modified only selected provisions to create a fairer and more-efficient election process.

Finally, I am pleased to report that the Board completed a comprehensive 18-month review of our Agency's ethics and recusal procedures. The report, which issued November 19, 2019, found that the Board's practices for identifying conflicts, establishing screening arrangements, and obtaining Designated Agency Ethics Official input on recusal matters are strong, fully compliant with all applicable government ethics requirements, and will protect against conflicts of interest.

Based on the review, the Board also identified certain areas for improvement. Most notably, the Board decided that public disclosure of Board member recusal lists would enhance transparency. I note that public disclosure of Board member recusal lists was something our Congressional oversight committees requested as well. All Board member recusal lists are now available on the NLRB's public website and steps are in place to update them as necessary.

Another area that the Board identified for improvement was to require the filing of organizational disclosure statements by all parties litigating before the Board, similar to

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requirements for parties in federal and many state courts. These disclosures will identify any recusal obligations arising from parent-subsidary relationships. Our Solicitor's Office is working on the details, but consistent with government ethics rules, we will generally require parties appearing before the Board to disclose relationships and interests in other entities necessary to conduct a thorough recusal analysis. To ensure these disclosures are current, we will require parties to update them while a case is pending, also akin to federal court rules.

Finally, as part of the ethics recusal review, the Board developed a protocol to ensure a clear understanding in the unlikely event that a Board member disagrees with the DAEO over a recusal. We expect that such disagreements will be rare, if they occur at all, and the Board's expectation is that the Board member will follow the recommendations of the DAEO. Through our review, however, we confirmed that the DAEO's determinations are not self-enforcing. This means that a Board member can disagree with a DAEO recommendation, although there may be consequences for doing so.

Accordingly, the Board developed a disqualification protocol to provide structure to resolving this conflict if a hopefully-rare disagreement does arise. The protocol sets forth multiple layers of mandatory consultations designed to try to resolve the difference, requires communications to be in writing to avoid misunderstandings, and gradually escalates pressure on the Board member by reporting non-compliance with the DAEO's

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determination to the White House and, potentially, to the Board's Inspector General, the Department of Justice, and our oversight committees in Congress. It also includes notice and referral to the Office of Government Ethics.

Thank you for the opportunity to appear before you today to provide this update about the work of the National Labor Relations Board. I look forward to your questions.