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August 12, 2019

The Honorable Peter B. Robb  
General Counsel  
National Labor Relations Board  
1015 Half Street, SE  
Washington, D.C. 20570-0001

Dear Mr. Robb:

We write to request information concerning your handling of the National Labor Relations Board's (NLRB) cases both in the regional offices and at the agency's headquarters. We are particularly concerned about changes in your handling of cases that appear to deviate from the National Labor Relations Act's (NLRA) stated purpose of "encouraging the practice and procedure of collective bargaining."<sup>1</sup> Major shifts in the policies of the General Counsel have spurred reports that the Office of the General Counsel is significantly narrowing employers' liability under the NLRA and reviving charges against unions at an unprecedented level.<sup>2</sup> We therefore request that your office produce the following information and documents regarding the Office of the General Counsel, including any offices, divisions, or branches under the General Counsel's oversight in Headquarters or in the field:

1. A list of cases by name and case number in which the Office of the General Counsel has requested that the Board overrule or modify its own existing precedent since November 8, 2017. For each case, please state the nature of the change and whether the Board adopting the Office of the General Counsel's position would result in the employer prevailing, the union prevailing, or the employee or employees prevailing.

<sup>1</sup> 29 U.S.C. § 151.

<sup>2</sup> Robert Iafolla, *Top Trump Labor Lawyer Extends Campaign to Remake Workplace Law*, Bloomberg Law (June 5, 2019), <https://biglawbusiness.com/top-trump-labor-lawyer-extends-campaign-to-remake-workplace-law>; Robert Iafolla, *Trump's Top Labor Lawyer Seeking Pro-Union Findings to Overturn*, Bloomberg Law (May 2, 2019), <https://news.bloomberglaw.com/daily-labor-report/trumps-top-labor-lawyer-seeking-pro-labor-findings-to-overturn-1>.

2. A list of cases by name and case number in which the Office of the General Counsel modified its position since November 8, 2017, including but not limited to instances where the position changed while the Region is investigating whether a charge has merit, while the Region is deciding whether to issue a complaint, while a complaint is pending before an administrative law judge, while a complaint is pending review before the Board, and while a complaint is pending review before a court of appeals. For each case, please state the nature of the change of position, identify at which stage of the NLRB proceedings that the Office of the General Counsel modified its position, and state whether the Office of the General Counsel modified its position in favor of the employer, the union, or the employee or employees.
3. A description of any procedures followed by the Office of the General Counsel when it is considering, or has considered, modifying its position in a pending case to favor a different party. Please include any procedures that relate to consulting or notifying the parties to the case about the decision.
4. Any communications, or documents reflecting any communications, between the Office of the General Counsel and any person not employed by the NLRB (including government employees and employees of private sector entities) relating to modifying or overruling existing precedent since November 8, 2017. Please do not include any briefs or motions filed in pending cases.
5. Any communications, or documents reflecting any communications, between the Office of the General Counsel and any person not employed by the NLRB (including government employees and employees of private sector entities) relating to any contemplated or actual changes in the NLRB's rules for processing unfair labor practices since November 8, 2017.
6. A list of all cases by name and case number in which the Office of the General Counsel has sought or is seeking to overturn or modify current NLRB precedent, and in which the Office of the General Counsel has sought or is seeking interim injunctive relief under Section 10(j) or Section 10(l) of the NLRA since November 8, 2017. The standard for obtaining interim injunctive relief in the federal courts is the likelihood of success on the merits and whether relief is just and proper. Please supplement this list of cases with an explanation of how the Office of the General Counsel can meet this standard in a Section 10(j) or Section 10(l) proceeding if the Office of the General Counsel's underlying unfair labor practice complaint seeks to overturn existing NLRB precedent.
7. The number of requests from each Region for authorization to seek interim relief under Section 10(j), and the number of requests from the Office of the General Counsel for the Board's approval to seek Section 10(j) relief, since November 8, 2017, and for an equivalent period prior to November 8, 2017.
8. A list of all cases by name and case number in which the unfair labor practice charge alleged a joint employer relationship since November 8, 2017. For each case, please

specify whether the General Counsel filed a complaint alleging a joint employer relationship.

9. The number of charges filed in each Region for each month since November 2017, and for an equal number of months before November 2017. For each charge, please note whether there was a finding of merit and, separately, an issuance of a complaint. Please provide, for each Region, both the total number of charges, merit determinations, and complaints, and the number of each type of charge, merit determination, and complaint.
10. The number of charges filed against a union each month since November 2017, and for an equal number of months before November 2017, that resulted in a finding of merit and, separately, the issuance of a complaint.
11. The number of charges filed against an employer each month since November 2017, and for an equal number of months before November 2017, that resulted in a finding of merit and, separately, the issuance of a complaint.
12. Confirmation and clarification of the data reported in a Bloomberg Law article on the frequency of the Office of the General Counsel's reversal of dismissed charges against employers and unions in Fiscal Years 2017, 2018, and 2019.<sup>3</sup> The article reported that, in Fiscal Year 2017, the Office of the General Counsel reversed 19 dismissals of charges against employers (2.2 percent of all cases reviewed) and one dismissal of a charge against a union (0.2 percent); in Fiscal Year 2018, the Office of the General Counsel reversed 14 dismissals of charges against employers (2 percent) and 16 dismissals of charges against unions (3.6 percent); and in Fiscal Year 2019 up to the date of the article, the Office of the General Counsel reversed three dismissals of charges against employers (0.4 percent) and 21 dismissals of charges against unions (3.7 percent).
13. A list of all cases by name and case number that have been settled since November 8, 2017, which do not contain language stating that the parties consent to entry of a default judgment in the event a party violates the terms of the settlement with respect to all or portions of the settlement agreement. For each such case, please indicate whether any individual employed by the Office of the General Counsel's Headquarters staff, including any Headquarters branch or division overseen by the Office of the General Counsel, suggested, requested, or instructed that such language not be included with respect to the whole settlement agreement.
14. A list of all cases by name and case number that have been settled through formal or informal Board settlement since November 8, 2017, but prior to a Board determination, where the settlement agreement requires a party to take affirmative action or refrain from action in a manner consistent with changes in precedent and policy that the General Counsel has requested the Board to make.

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<sup>3</sup> Robert Iafolla, *Trump's Top Labor Lawyer Seeking Pro-Union Findings to Overturn*, Bloomberg Law (May 2, 2019), <https://news.bloomberglaw.com/daily-labor-report/trumps-top-labor-lawyer-seeking-pro-labor-findings-to-overturn-1>.

15. All data, evidence, or communications, solicited or unsolicited, that caused the Office of the General Counsel to issue Memorandum GC-19-06 (*Beck Cases Handling and Chargeability Issues in Light of United Nurses & Allied Professionals (Kent Hospital)*) on April 29, 2019.
16. All data, evidence, or communications, solicited or unsolicited, that relate to the Office of the General Counsel's decision to issue Memorandum GC 19-05 (General Counsel's Clarification Regarding Section 8(b)(1)(A) Duty of Fair Representation Charges) on March 26, 2019, and Memorandum GC 19-01 (General Counsel's Instructions Regarding Section 8(b)(1)(A) Duty of Fair Representation Charges) on October 24, 2018.
17. All data, evidence, or communications, solicited or unsolicited, that relate to the Office of the General Counsel's decision to issue Memorandum GC-19-04 (Unions' Duty to Properly Notify Employees of Their *General Motors/Beck* Rights and to Accept Dues Checkoff Revocations after Contract Expiration) on February 22, 2019.
18. All data, evidence, or communications, solicited or unsolicited, that relate to the Office of the General Counsel's decision to issue Memorandum OM 19-05 (Noting Respondents Failure to Cooperate with ULP Investigations in Subsequently-Issued Complaints) on March 13, 2019. Please also provide an explanation as to how the implementation of OM 19-05 will affect the success of the Office of the General Counsel's prosecutions in unfair labor practice cases.
19. Any communications, including documents reflecting any communications, between the Office of the General Counsel and the Regional Directors regarding the consolidation of charges or the refile of multiple charges as a single charge.

Thank you for your attention to this request. Please provide the requested information and documents as soon as possible, but no later than September 2, 2019. If you have any questions, please contact Kyle deCant at [Kyle.deCant@mail.house.gov](mailto:Kyle.deCant@mail.house.gov). Please direct all official correspondence to the Committee's Chief Clerk at [Tylease.Fitzgerald@mail.house.gov](mailto:Tylease.Fitzgerald@mail.house.gov). Thank you for your attention to this matter, and we look forward to your response.

Sincerely,



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**ROBERT C. "BOBBY" SCOTT**  
Chairman



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**FREDERICA S. WILSON**  
Chairwoman  
Subcommittee on Health,  
Employment, Labor, and Pensions