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August 17, 2020

The Honorable John Ring
Chairman
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570-0001

Dear Chairman Ring:

We write to request information regarding the National Labor Relations Board's (NLRB) adjudication on whether to maintain, rescind, or modify its contract bar rule.¹ Under this longstanding rule, the NLRB does not process election petitions during the term of a valid collective bargaining agreement, up to three years, except during a limited window before the expiration of the agreement.² On July 7, 2020, the NLRB issued an invitation to file briefs on whether it should rescind, retain, or modify the rule, without providing any justification.³

The contract bar rule has remained settled law for over 80 years, and is almost as old as the National Labor Relations Act (NLRA) itself.⁴ The Supreme Court has consistently found that the contract bar rule "achieve[s] 'stability in collective-bargaining relationships' . . . by 'enabling a union to concentrate on obtaining and fairly administering a collective-bargaining agreement' and by 'removing any temptation on the part of the employer to avoid good-faith bargaining' in an effort to undermine union support."⁵ Despite this history, the NLRB has decided to use a case that is narrowly focused on the rule's application to a technicality in a particular labor contract as an opportunity to force the reconsideration of the entire contract bar rule.⁶

¹ *Mountaire Farms, Inc.*, Case No. 05-RD-256888.

² *Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 781, 786 (1996) (citing *NLRB v. Burns Int'l Security Services, Inc.*, 406 U.S. 272, 290 n.12 (1972)).

³ *Mountaire Farms, Inc.*, Case No. 05-RD-256888 (July 7, 2020) (Notice and Invitation to File Briefs).

⁴ *National Sugar Refining Co.*, 10 NLRB 1410 (1939).

⁵ *Auciello*, 517 U.S. at 786 (quoting *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 38 (1987)); see also *NLRB v. Financial Institution Employees of Am, Local 1182*, 475 U.S. 192, 196 n.3 (1986) (noting the contract bar rule is an example of an NLRB rule "designed to maintain stable bargaining relationships").

⁶ Jane Mayer, "How Trump is Helping Tycoons Exploit the Pandemic," *The New Yorker* (July 13, 2020) <https://www.newyorker.com/magazine/2020/07/20/how-trump-is-helping-tycoons-exploit-the-pandemic>.

We are concerned that the NLRB is considering overturning this longstanding precedent without providing any data or analysis sufficient to justify considering such a dramatic departure. Accordingly, we request that the NLRB provide us with the information detailed in this letter, and that the NLRB also make this information publicly available, no later than September 7, 2020.

1. The names and case numbers of all representation cases filed on or after January 1, 2010, in which the contract bar rule was asserted. For each case, please include any decisions and orders addressing the claim that the petition was barred by a contract, the effective date of the contract, the expiration date of the contract, and the date the petition was filed. In addition, please indicate whether it was a case in which:
 - a. a party argued that the contract did not bar the petition because of changed circumstances during the term of a contract. If so, please include any documents supporting or opposing that argument.
 - b. a party argued that the contract did not bar the petition because of an unlawful provision contained in the contract. If so, please include any documents supporting or opposing the argument.
 - c. a party argued that the contract did not bar the petition for any reason other than those listed in (a) or (b). If so, please include any documents supporting or opposing that argument.
 - d. a party argued that the Board should overturn or alter any aspect of the existing contract bar precedent. If so, please include any documents supporting or opposing the argument and any decisions or orders that altered, overturned, or declined to alter or overturn the existing contract bar precedent.
2. The names and case numbers of all unfair labor practice cases filed on or after January 1, 2010, in which a party argued that the contract bar rule prevented an employer from repudiating a contract, withdrawing recognition from a union, or refusing to bargain with a union. For each case, please include any documents supporting or opposing the argument and any decisions or orders resolving whether the employer's repudiation, withdrawal, or refusal was barred by the contract.
3. The names and case numbers of any representation cases filed on or after January 1, 2010, in which the Board modified, overturned, or invited briefs on whether to modify or overturn an existing precedent in each of the following instances:
 - a. when no party to the case requested such modification or overturning when the case was before the Regional Director.
 - b. when no party to the case filed a motion for reconsideration requesting that the Board modify or overturn existing precedent.
4. The names and case numbers of any unfair labor practice cases filed on or after January 1, 2010, in which the Board modified, overturned, or invited briefs on whether to modify or overturn existing precedent in each of the following instances:

- a. when no party to the case requested such modification or overturning when the case was before the administrative law judge.
 - b. when no party to the case filed exceptions requesting that the Board modify or overturn existing precedent.
5. All memoranda from the NLRB's Division of Advice applying the contract bar rule to any case.
 6. Any communications between the Chairman, any Member, or the General Counsel and any person not employed by the NLRB regarding the contract bar rule, other than filings in a case that were served on other parties to the case, between the beginning of their respective terms and the present.
 7. Public statements by the Chairman, any Member, or the General Counsel to any person not employed by the NLRB regarding the contract bar rule, other than filings in a case that were served on other parties to the case, between the beginning of their respective terms and the present.
 8. Any communications or documents proposing modification to or overturning of the contract bar rule that were reviewed by any current Board Member, other than filings in a pending case that were served on other parties to the case, between the beginning of their respective terms and the present.

If you have any questions or would like to discuss compliance with this request, please contact Kyle deCant with the House Committee on Education and Labor at Kyle.deCant@mail.house.gov. Please direct all official correspondence to Tylease Alli, Chief Clerk for the House Committee on Education and Labor, at Tylease.Alli@mail.house.gov.

Thank you for your attention to this matter, and we look forward to your response.

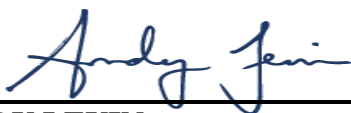
Sincerely,



ROBERT C. "BOBBY" SCOTT
Chairman



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



ANDY LEVIN
Vice Chairman