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February 23, 2018

The Honorable Virginia Foxx
 Chairwoman
 Committee on Education and the Workforce
 2176 Rayburn House Office Building
 Washington, D.C. 20515

Dear Chairwoman Foxx:

I write to request a hearing before the House Education and the Workforce Committee regarding the National Labor Relations Board's (NLRB) Inspector General's seven-day letter sent to the Committee leadership notifying us of "a serious and flagrant problem and/or deficiency in the Board's administration of its deliberative process and the National Labor Relations Act with respect to the deliberation of a particular matter."¹ The Inspector General's seven-day letter concerns whether Board Member William Emanuel should have recused himself from participating in *Hy-Brand Industrial Contractors* ("*Hy-Brand*"),² which overruled the Board's previous decision in *Browning Ferris Industries* ("*BFI*").³ The *BFI* decision concerned the question of whether Browning Ferris Industries, which operated a municipal recycling facility, was a joint employer of the employees it hired through the subcontractor Leadpoint Business Services. Member Emanuel's former law firm, Littler Mendelson P.C., represents Leadpoint Business Services, one of the parties in the *BFI* case.

As you know, per House Rule X, our Committee has jurisdiction over "labor generally"⁴ and Rule 2 of the Committee on Education and the Workforce specifically outlines our jurisdiction over "[a]ll matters dealing with relationships between employers and employees, including but not limited to the National Labor Relations Act."⁵ Furthermore, the Committee's adopted

¹ Section 5(d) of the Inspector General Act provides: "Each Inspector General shall report immediately to the head of the establishment involved whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment. The head of the establishment shall transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report by the head of the establishment containing any comments such head deems appropriate."

² 365 NLRB No. 156 (2017).

³ 362 NLRB No. 186 (2015).

⁴ Rules of the House of Representatives for the 115th Congress,
<https://rules.house.gov/sites/republicans.rules.house.gov/files/115/PDF/House-Rules-115.pdf>

⁵ Rules of the Committee on Education and the Workforce for the 115th Congress,
<https://www.gpo.gov/fdsys/pkg/CPRT-115HPRT24581/pdf/CPRT-115HPRT24581.pdf>

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oversight and investigative plan for the 115th Congress explicitly states that we will “conduct oversight and investigations, as appropriate, to ensure employee and employer rights under the National Labor Relations Act (NLRA) are protected and applied consistently and without bias.”⁶ In the description of its oversight plan, the Committee states it will provide “particular scrutiny to the Board’s ... decisions affecting joint-employer standards ... under the NLRA.”⁷

In his letter to the oversight committees, the Inspector General found the deliberations in *Hy-Brand* to be so intertwined with those of *BFI* that they constituted the same proceeding.⁸ Member Emanuel’s participation was therefore subject to the President’s ethics pledge in Executive Order 13770, which prevents him from participating in a case where Littler Mendelson represents a party. Because *Hy-Brand* and *BFI* are now tainted by Member Emanuel’s conflict of interest, the Inspector General found that “the whole of the Board’s deliberative process is called into question” and that Member Emanuel’s participation in *Hy-Brand* “calls into question the validity of that decision.”

The Inspector General’s findings to date are especially disturbing for an agency designed to be a neutral adjudicator. Committee Democrats have inquired into the basis for Member Emanuel’s participation in *Hy-Brand*, but responses to date have been unsatisfactory. To that end, I respectfully ask that you schedule a hearing to secure answers and steps the NLRB has taken in light of the Inspector General’s findings of this “serious and flagrant problem and/or deficiency,” and what steps the Board will take to restore the public’s confidence.

Madame Chair, it is extremely rare for an Inspector General to issue a seven-day letter. The last time the NLRB’s Inspector General issued one was in 1999, and few have been issued by other agencies’ Inspectors General. A Committee hearing with the Inspector General and Members of the Board is necessary for Congress to explore what has gone wrong and how to correct it.

Sincerely,



ROBERT C. “BOBBY” SCOTT

Ranking Member

⁶ Oversight and Investigation Plan of the Committee on Education and the Workforce, adopted January 24, 2017, transmitted to the Committee on Oversight and Government Reform, https://edworkforce.house.gov/uploadedfiles/115th_ew_oversight_plan.pdf

⁷ *Id.*

⁸ Citing Executive Order 13770, the Inspector General concluded that *Hy-Brand* and *BFI* constitute the “same ‘particular matter involving specific parties.’” In supporting this finding, the Inspector General detailed how the consolidation of *Hy-Brand* into *BFI* “occurred at the inception of the *Hy-Brand* deliberations,” how the *Hy-Brand* decision extensively relied on the facts in *BFI* that were not before the Board in *Hy-Brand*, and how the *Hy-Brand* even “acknowledge[d] that the two deliberative processes are consolidated.”