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NOMINATION OF JOHN F. RING TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD

HEARING

OF THE

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

ON

EXAMINING THE NOMINATION OF JOHN F. RING, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD

MARCH 1, 2018

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C O N T E N T S

STATEMENTS

THURSDAY, MARCH 1, 2018

NOMINATION OF JOHN F. RING TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD

Thursday, March 1, 2018

U.S. SENATE,
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,
Washington, DC.

The Committee met, pursuant to notice, at 10:04 a.m., in room SD–430, Dirksen Senate Office Building, Hon. Lamar Alexander, Chairman of the Committee, presiding.

Present: Senators Alexander [presiding], Isakson, Cassidy, Hatch, Murray, Bennet, Baldwin, Warren, Kaine, Hassan, and Smith.

OPENING STATEMENT OF SENATOR ALEXANDER

The CHAIRMAN. The Senate Committee on Health, Education, Labor, and Pensions will please come to order.

This morning, we are holding a hearing on the nomination of John Ring to serve as a member of the National Labor Relations Board. Senator Murray and I will each have an opening statement. Then I'll introduce Mr. Ring. After his testimony, Senators will each have 5 minutes of questions.

Mr. Ring, you have been nominated to a position that is important both to workers and employers. The National Labor Relations Board was created in 1935 by the National Labor Relations Act in response to strife between employees and employers in the industrial workplace. The Board has five members with 5-year staggered terms and a General Counsel with a 4-year term.

Last year, this Committee approved Marvin Kaplan and Bill Emanuel and Peter Robb as General Counsel. You have been nominated to fill the vacancy created in December, when Philip Miscimarra's term ended.

Mr. Ring, you have varied experience. You worked for the International Brotherhood of Teamsters while attending college and law school. You have been a management lawyer with Morgan Lewis and Bockius since 1988. You earned your Bachelor's and J.D. from Catholic University.

We received your nomination on January 18. The Committee received your Committee paperwork and Office of Government Ethics paperwork on January 24. Based on these documents, the Office of Government Ethics has determined that you're in compliance with applicable laws and regulations governing conflicts of interest. I am looking forward to your testimony.

Under the previous administration, the Board too often acted as an advocate rather than an umpire. The additions of Mr. Kaplan and Mr. Emanuel last year helped restore some balance to the Labor Board and to our Nation's workplaces. First, the Board overturned its micro unions decision which disrupted workplaces and made it harder for employers to manage their workplace and do business.

For example, a local department store could splinter into dozens of factions that the employer would negotiate with—the men's clothing department, the bedding department, the fragrance department, and the women's shoe department—all represented by separate unions fighting over who gets the better raises and break rooms.

Then, second, this NLRB has requested comments on whether it should keep or modify the ambush elections rule, another rule that previous decisions upended stability in labor law. The rule means a union election can be forced in as little as 11 days, before an employer and many employees even have a chance to figure out what is going on. It also forces employers to hand over a lot of employees' personal information to unions. I hope confirming you, Mr. Ring, will continue this trend of returning balance to the administration of our labor laws.

Senator Murray.

OPENING STATEMENT OF SENATOR MURRAY

Senator MURRAY. Thank you very much, Mr. Chairman, for having this hearing.

Let me just say, in light of the President's ongoing efforts to undermine workers' rights and bargaining power, I'm especially glad we have the opportunity to talk about the future and vital work of the National Labor Relations Board.

As we are beginning a conversation that is fundamentally about workers' rights, I do want to start by noting that we should be doing everything we can today to protect workers, and that, by the way, includes protection from sexual harassment. We are seeing more and more men and women coming forward, sharing their stories, and it's clear we have to take much more action to prevent sexual harassment in workplaces, especially in those industries outside of the spotlight today.

Mr. Chairman, six weeks ago, the Democratic Members of this Committee asked to hold a hearing on this question of sexual harassment in the workplace. It's been almost four decades since the HELP Committee's last hearing on this, and I hope we can get that scheduled soon. I just want to put that on your radar that we do care about that.

The CHAIRMAN. Thank you.

Senator MURRAY. Mr. Ring, thank you for being here and your willingness to serve in this critically important role.

Over the past year, President Trump, as we've seen it, has broken promise after promise to our workers and made it easier for corporations to put workers' lives and safety at risk. He wants to allow businesses to deny workers the money they've earned, both in overtime pay and in tips, and, most relevant to today's hearing, he's launched a full-fledged assault on workers' right to speak up

together, to join a union, to negotiate collectively for better wages and conditions.

Mr. Ring, it is the policy of the United States to encourage collective bargaining. To be very clear, that is not my opinion. That is what the National Labor Relations Act states. The NLRA gives workers a voice, the ability to come together, advocate for higher pay and better working conditions, and to fight against unfair or predatory practices by their employers.

Unions and collective bargaining helped create in our country the middle class and helped millions of families become economically secure today. But over the past few decades, we know our economy has started to favor big corporations, those at the top. Corporate special interests have sought to undermine unions and workers' ability to negotiate with their employers. And as union membership has declined, we've seen more and more workers fall behind, struggling with stagnant wages and no real voice in the workplace, all while we are seeing big corporations make record profits.

I believe that in order to rebuild this middle class, we've got to get back to the core mission of our Nation's labor laws and give workers a fair shot to get ahead. Unfortunately, the Trump Administration is taking the National Labor Relations Board in the wrong direction.

Mr. Ring, as I'm sure, the NLRB is the only place workers can turn to to enforce their rights under the NLRA. But since President Trump's nominees were confirmed last year, they've worked to drastically erode workers' rights and to undermine the NLRB's ability to carry out its mission.

Last December, right before the Republican Chair's term expired, the Board made a number of 11th-hour decisions to undercut workers' protections, including, with its joint employment decision in *Hy-Brand*, permitting corporations to shirk responsibility to negotiate with workers for fair pay, scheduling, and working conditions. And despite his firm's work on this very case, William Emanuel participated in actions related to the joint employer standard.

Mr. Emanuel then made contradicting and potentially false statements when I asked him about his participation in this matter. The Board's independent watchdog, the Inspector General, is currently investigating Mr. Emanuel. In light of the IG's findings so far, the Board has already vacated its decision to overturn the Obama administration-era ruling on the joint employer standard.

We've also heard reports that the Board's General Counsel, Peter Robb, is proposing a drastic reorganization of the NLRB, including taking power away from career, nonpartisan Regional Directors and increasing the burden on workers to bring a case before the Board. These decisions are exactly the kinds of changes designed to advantage corporate special interests at the expense of workers' rights, bargaining power, and economic security.

Democrats are committed to shining a spotlight on them and doing everything we can to make sure workers and families know what's going on. Given all this—the last-minute, 11th-hour decisions to disempower workers, the proposals to reorganize the Board's operations in favor of big corporations, and the conflicts of interest already identified by the Inspector General—it's clear the

last thing our Nation's labor board needs is another champion for those at the top.

Mr. Ring, I know you have spent your years as a corporate lawyer representing the interests of companies, not workers, and you opposed the Board's reforms that stop companies from unnecessarily delaying union elections, and you've encouraged the Board to undermine long-established rights, like the right to coworker representation in disciplinary interviews. You have written advice for corporations on how to avoid providing workers with protections and how to deny them their rights.

After years of aiding corporate management in skirting worker protections, I find it difficult to believe that you will be able to uphold that core mission of the NLRA that I referred to. I'm here today to hope that your testimony will persuade me otherwise. So I'm looking forward to this.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murray.

I'm pleased to welcome our nominee, John Ring, to the hearing. I thank him for his willingness to serve our country. I welcome your family, Mr. Ring, and you're welcome to introduce them if you'd like as you begin your testimony.

As I mentioned in my opening statement, Mr. Ring worked for the International Brotherhood of Teamsters when he went to law school at night, and since then, he's been with Morgan Lewis and Bockius where he leads the Washington office's Labor and Management Practice Group. He's also a member of the American Bar Association, where he's held multiple positions, including on the NLRB Practice and Procedures Committee and the Committee on Development of the Law under the National Labor Relations Act.

Mr. Ring, welcome. You may begin your testimony.

STATEMENT OF JOHN F. RING, WASHINGTON, DC

Mr. RING. Thank you, Mr. Chairman. Chairman Alexander, Ranking Member Murray, and Members of the Committee, I'm honored to appear before you today as a nominee for the National Labor Relations Board.

I'd like to start by thanking my family, many of whom are with me today, for their support and their many sacrifices. I'd also like to acknowledge my parents, who are no longer with us, but to whom I owe so much. They instilled in me the value of hard work, fair play, and respect for others.

I want to thank President Trump for his confidence in me. There really is no greater honor for a labor lawyer than to serve on the NLRB. For me, this honor is somewhat more personal, because if it were not for the opportunities afforded to me by so many in the labor-management field, both labor and management, I would not be here today. I truly view my chance to serve on the NLRB as an extraordinary opportunity to give back.

I came to Washington in 1981 with virtually nothing but a strong work ethic and a belief that anything was possible. Upon graduating from public high school in my hometown of Clinton, Connecticut, college was only an option if I could figure out a way to pay for it. Fortunately, the Catholic University here in Washington offered me scholarships and financial aid. That tremendous help,

plus student loans and a lot of what I saved in high school working in a grocery store and in fast food, made college possible.

Nevertheless, I needed to work to earn money for books and living expenses. I found a part-time, $5 an hour file clerk job at the Teamsters Union headquarters just across the plaza from here. At the time, I wasn't really sure what the Teamsters did, but it was a paying job that I needed.

I worked at the Teamsters 20 to 30 hours a week, starting my first week of classes. Gradually, I moved up from my file clerk position to positions of more responsibility, and when I graduated from college in 1985, the Teamsters offered me a full time job. That job allowed me to put myself through law school in the evenings.

My almost 7 years at the Teamsters gave me a unique perspective, and I've never forgotten what I learned. I saw labor-management relations, collective bargaining, and union representation from that side. I also came to know a number of good, committed union officials. It was my completely accidental experience at the Teamsters that sparked my interest in labor law.

I ultimately decided to pursue labor law on the management side. As the Committee knows, lawyers in labor law typically represent either management or unions, but almost never both. In moving to the management side, I selected my law firm very carefully, considering reputation and approach to labor-management relations. I started at Morgan Lewis as a summer associate in May 1988 and I never left. I am now fortunate to co-lead the firm's Labor-Management Relations Practice Group and serve as the practice group leader for the Washington office Labor and Employment Group.

My almost 30 years of practice have involved representing corporate clients on all issues under the National Labor Relations Act. A focus has been collective bargaining and labor-management relations in heavily unionized industries. I have come to know many employers working hard to provide good jobs for their employees and fully committed to meeting all of their legal obligations. Thus, much of my work has involved counseling clients on NLRA compliance and avoiding NLRB litigation, although I have handled cases at all levels of the Board.

More recently, my practice has involved working on the Taft-Hartley plans. These plans, which are created and funded through collective bargaining and overseen by an equal number of labor and management trustees provide benefits for many unionized workplaces. If confirmed, I will bring this background and experience to my role at the NLRB.

From my past work, I know firsthand the importance of the NLRA being interpreted and enforced as it was written and consistent with its amendments. I understand the practical realities of how the Board's actions affect labor-management relations across the country, and I have seen the impact the Board's decisions can have on how people run their businesses as well as how employees, both union and non-union, work to support their families.

Finally, I would be remiss if I did not say that my years of practice have given me a tremendous respect for the NLRB and for the many career professionals who do the hard work of the agency. If

I am fortunate enough to be confirmed, it will be my honor to work with them.

Thank you for the opportunity to offer these opening remarks, and I welcome your questions.

[The prepared statement of Mr. Ring follows:]

PREPARED STATEMENT OF JOHN F. RING

Chairman Alexander, Ranking Member Murray and Members of the Committee:

I am honored to appear before you today as a nominee for the National Labor Relations Board.

I would like to start by thanking my family, many of whom are here with me today, for their support and many sacrifices. I also would like to acknowledge my parents, who are no longer with us but to whom I owe so much. They instilled in me the value of hard work, fair play, and respect for others.

I want to thank President Trump for his confidence in me. There really is no greater honor for a labor lawyer than to serve on the NLRB. For me, this honor is somewhat more personal. If it were not for the opportunities afforded to me by so many in the labor-management relations field—both labor and management—I would not be here today. I truly view my chance to serve on the NLRB as an extraordinary opportunity to give back.

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Nevertheless, I still needed to work to earn money for books and living expenses, and I found a part-time, $5-an-hour file clerk job at the Teamsters Union headquarters just across the plaza from here. At the time, I wasn't exactly sure what the Teamsters did, but it was a paying job. I worked at the Teamsters 20 to 30 hours a week starting my first week of classes. Gradually, I moved up from file clerk to positions of more responsibility, and when I graduated from college in 1985, the Teamsters offered me a full-time job. That job allowed me to put myself through law school in the evenings.

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I ultimately decided to pursue labor law on the management side. As this Committee knows, lawyers in labor law either represent management or unions, but almost never both. In moving to the management side, I selected the law firm carefully, considering reputation and approach to labor-management relations. I started at Morgan Lewis as a summer associate in May 1988, and I never left. I now am fortunate to co-lead the firm's Labor/Management Relations Practice Group and serve as the Practice Leader for the Washington Office Labor and Employment Group.

My almost 30 years of practice has involved representing corporate clients on all issues arising under the National Labor Relations Act. A focus has been collective bargaining and labor-management relations in heavily unionized industries. I have been involved at the bargaining table in some of the largest, industry-wide negotiations as well as worked with small and medium-sized companies negotiating local labor contracts and resolving labor disputes. I have come to know many employers working hard to provide good jobs for their employees and fully committed to meeting all of their legal obligations. Thus, much of my work has involved counseling clients on NLRA compliance and avoiding NLRB litigation, although I have handled cases at all levels of the Board.

More recently, my law practice has involved working with Taft-Hartley benefit plans. These plans, which are created and funded through collective bargaining and overseen by an equal number of labor and management trustees, provide benefits for many unionized work places. Serving as employer co-counsel on a number of these multiemployer pension and health and welfare plans, I advise the trustees on the wide range of issues required to administer benefits for tens of thousands of participants.

If confirmed, I will bring this background and experience to my role at the NLRB. From my past work, I know firsthand the importance of the NLRA being interpreted

and enforced as it is written and consistent with its amendments. I understand the practical realities of how the Board's actions affect labor-management relations across the county, and I have seen the impact the Board's decisions can have on how people run their businesses as well as how employees union and non-union work to support their families.

Additionally, in the world of labor negotiations and labor-management relations, whether in collective bargaining or at a trustees table, there can be sharp disagreements and strongly held views. It sometimes can be difficult to find common ground. I've learned during my years of practice that you must develop constructive relationships, treat people and their views with respect, and approach differences with an open mind. It does not necessarily mean abandoning your position or principles, but it does require working constructively to forge agreements in a positive manner. My experiences will help in dealing with the difficult issues that often come before the NLRB.

Finally, I would be remiss if I did not say that my years of practice have given me tremendous respect for the NLRB and for the many career professionals who do the hard work of the Agency. If I am fortunate enough to be confirmed, it will be an honor to work with them.

Thank you for the opportunity to offer these opening remarks. I welcome your questions.

The CHAIRMAN. Thank you, Mr. Ring. We'll now begin a round of 5-minute questions.

Mr. Ring, Senator Murray referenced the joint employer decision and NLRB member Emanuel. Here's what I understand happened. Mr. Emanuel apparently was assigned the *Hy-Brand* case when he came to the NLRB through the Board's normal process. The normal process involves the Ethics Office and the Executive Secretary's Office at the NLRB working together to develop a recusal list for Board members. Then the Executive Secretary's Office assigns cases based on that recusal list. *Hy-Brand* apparently was not on Mr. Emanuel's recusal list because, on its face, there was no conflict with his participating in the case.

It's my understanding that how the decision in *Hy-Brand* was reached, along with a number of other things that occurred after the case was assigned, led the Ethics official to then determine that Mr. Emanuel should have been recused, although the initial process in which the Ethics official participated said he should not be recused. So under the circumstances, I think the Board did the only thing it could have done and vacated the *Hy-Brand* decision.

Now, Mr. Ring, that puts us back to where we were before the *Hy-Brand* decision, which was the Obama era joint employer standard announced in the Board's *Browning-Ferris* case in 2015. In my opinion, that decision by the NLRB in 2015 was the biggest attack on the owners of 780,000 franchise locations this country has seen in a long time. It reversed a 30 year old standard that was in effect and stated that mere indirect control or even unexercised potential to control working conditions could make a business a joint employer. So my view of the joint employer standard is the same as it's always been. I'd like to see us return to the decades-old precedent that made a business a joint employer only if it had direct control over the terms and conditions of a worker's employment.

You've had extensive experience counseling clients in the wake of the *Browning-Ferris* decision. What real-world effects did the *Browning-Ferris* decision have on employers as far as expansion and daily business operations? How did it complicate compliance for employers? And how important is it to have clarity for employers, unions, and employees on the issue of joint employment?

Mr. RING. Senator, thank you for the question. As you know, if confirmed as a Board member, my role will be to fairly and impartially adjudicate the cases that come before the Board, and for that reason, I need to take care not to prejudge the case. And if the joint employer issue comes before the Board, I commit to looking at the facts of that case with an open mind.

I understand the concerns that you have raised, and I will speak to the clarity aspect of this. There are whole industries that were built up based on certain laws and the structures of certain laws, and in the last year or so now, we've had a flip-flop of those laws, and employers, unions, employees need to have some clarity, some predictability in the way they can conduct their business and conduct their lives. So I think it's very important for the integrity of the Board to have some finality and clarity on the joint employer issue as soon as possible.

The CHAIRMAN. Mr. Ring, the former NLRB General Counsel issued a memorandum in October 2016 stating that scholarship football players at private colleges and universities should be considered employees under the National Labor Relations Act. That memorandum has been withdrawn by the new General Counsel in December 2017.

I was a student athlete at Vanderbilt University. I did not have an athletic scholarship. But I did not think of myself as an employee of the university or would not have had I had a scholarship. Senator Byrd did have a scholarship. He was on the Wake Forest football team. I was on the Knight Commission on Intercollegiate Athletics, which included a distinguished group of college presidents and others who strongly disagreed with the idea that scholarship college athletes should be considered employees of the schools they attend. Should they be?

Mr. RING. Senator, I'm very familiar with the issue, but, once again, I will say that that is an issue that could come before the Board, and so I want to take care not to prejudge the issue. The issue of students or teaching assistants being able to organize is a very fact-intensive one, and if a case comes before the Board, I would look forward to reviewing the facts with an open mind, looking at the position of the parties, the precedent, and giving a fair decision.

The CHAIRMAN. Teaching assistants is yet a separate issue, but——

Mr. RING. Right.

The CHAIRMAN——. my time is up.

Senator Murray.

Senator MURRAY. Thank you very much, and let me visit this one more time.

Mr. Ring, our ethics laws are supposed to make sure people serving in government are making decisions in the best interest of the public. However, as we have talked about, Member William Emanuel of the NLRB, who, like you, came from a large law firm, is now under investigation for participating in a case that involved his former law firm, even though he actually told me in written questions that his firm represented a party in that case.

As we know, the Inspector General took a highly unusual step of issuing a report that occurs only in instances where there are

particularly serious or flagrant problems, abuses, or divisions. She is calling into question the very validity of a significant Board ruling.

I wanted to ask you today: Can you give me a commitment that you will be rigorous in your approach to ensuring that you do not participate in cases where there is a conflict of interest or an appearance of a conflict?

Mr. RING. Senator, I appreciate the opportunity to talk about this. I think these ethical issues are something that are very concerning, and they kind of cast a shadow on the good work of the Board. Let me address—I can't speak to Member Emanuel, but I can speak from my situation. I take the ethical commitment very, very seriously, as does my law firm. I think one of my primary responsibilities—the primary responsibility of any Board member is to ensure that the stakeholders of the Board know that there's impartiality in decision-making. So, for me, I take that commitment very, very seriously.

I have signed a commitment to comply with all government ethics rules. I can make that commitment to you today. I am working now—my law firm and I are working with the Board and the Board's Ethics Office to compile a list, and I'm going to make sure that list is complete, because I don't want to have an issue—anything like has happened. I will say, as I mentioned in my opening statement, my practice has been in assisting employers in compliance and trying to avoid litigation at the Board.

I will have a list of clients that, obviously, will require recusal. My hope is that my list will be shorter and that the conflicts will be less.

Senator MURRAY. Okay. I appreciate that. That's what I wanted to hear.

The NLRA actually gives workers the right to speak up together and act collectively to assist each other. The Board has ruled a worker is protected when she seeks her co-worker's help in dealing with a workplace problem. Under President Bush, the NLRB effectively carved out an exception to the rule for sexual harassment claims. They said sexual harassment is a rare occurrence, and coworkers have less of an interest in assisting each other to confront sexual harassment than they would if other issues were at stake.

Now, fortunately, during the Obama presidency, the Board overturned that poorly reasoned decision, but now General Counsel Robb has indicated he might urge the Board to return to that Bush era standard. I wanted to ask you: Do you believe workplace sexual harassment is a rare occurrence?

Mr. RING. Well, I can't speak to the prevalence, but I will say any sexual harassment in the workplace is too many. There should be no place for sexual harassment in the workplace. I can't speak to the General Counsel's views——

Senator MURRAY. I would not expect you to. But let me just ask you: Do you believe a worker seeking help from a co-worker on a problem related to any term or condition of employment should be protected from punishment from her employer for doing so?

Mr. RING. Well, again, that is an issue that may come before the Board, so I have to take care not to prejudge it. But I think what we've seen in the public is that having the ability for those who

have been harassed to publicize and make known the concerns advances the protections.

Senator MURRAY. Okay. One more quick question on joint employment. You know, corporations are making record profits, and working families are struggling. So we are watching this issue and trying to figure out how we can change that. And for millions of workers, their working conditions are controlled by more than one company. In some cases, both an individual store and a corporate headquarters make decisions that impact that worker. As you know, the Board recently attempted to narrow its joint employer standard, which would make it impossible for a lot of workers to exercise their rights.

You just said a minute ago that certainty is important for workers, and I agree. But changes in the economy have really frustrated workers' attempt to exercise their right to collective bargaining, and I wanted to ask you: Do you agree that changes in the economy have created some new challenges for workers, especially low-income workers? And how should we ensure that meaningful collective bargaining is not out of reach for millions of our workers today?

Mr. RING. Well, Senator, I appreciate that question. I do think there have been a number of changes in the workplace and created a number of challenges for workers and for companies. As a Board member, if confirmed, my role is to enforce the National Labor Relations Act as it is written with its amendments. So if Congress were to make changes to address changes in the economy and issues that have created those kinds of challenges that you mentioned, I would enforce those. But I think as a Board member, my responsibility is to enforce the National Labor Relations Act.

Senator MURRAY. I've run out of time, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murray.

Senator Isakson.

Senator ISAKSON. Thank you, Mr. Chairman.

Mr. Ring, congratulations on your nomination. Glad to have you.

Mr. RING. Thank you, Senator.

Senator ISAKSON. Does the NLRB have a standard they go by in terms of double checking to make sure there is no conflict of interest on a decision rendered by the Board?

Mr. RING. Well, Senator, during the nomination process, I haven't been privy to the Board's ethics process. But I can assure you that the first thing I'm going to do when I get to the Board is to understand what that ethics process is and to make sure that I am covered and that I can be confident that when the Ethics officer at the Board says I can decide a case that I can.

Senator ISAKSON. The reason I asked the question is that Wednesday, one of my—or last week, actually, one of my employees in my Washington office came to me to ask for a recommendation of an attorney to potentially represent them in a matter that she and her husband were facing, and I called a good friend of mine who is with a firm that has offices not only here, but in Atlanta, Dallas, Houston, Los Angeles, and some overseas—a big law firm.

I posed a question—I said, "I have a young lady here, and I have recommended that you talk to her to see if you could represent her in a matter before"—and I said, "I'll leave the room and let you all

discuss it." He said, "Don't leave the room." I put her on the phone, and the first thing he asked her were the names of the parties involved and her name, former name, and things like that. He said, "Well, let me run this against our company records and make sure there's no conflict of interest, and I'll call you back and we'll set up an appointment." I assumed that was his regular response because it sounded like it, and I'm not a lawyer.

In most cases, don't people—attorneys pre-check before they accept a client that they don't have any conflict of interest with another plaintiff from the case or a defendant?

Mr. RING. That's standard practice. It's been my experience in my law firm that that's one of the first questions you have to ask.

Senator ISAKSON. You know a conflict of interest when you see it, don't you?

Mr. RING. Well, most often. But there are times when you have to check the records and make sure you've got the—you know, sometimes there's corporate relationships and so forth that you need to check. So it's a process.

Senator ISAKSON. Sometimes that process is not at the beginning of the relationship but in the middle. I'm the Chairman of the Ethics Committee in the Senate, and I have been for 11 years, and I have found that on more than one occasion, we find a case before us that gets to a point where somebody else arises as an interested party or a party affected or whatever, where I might have had a relationship, and I have to think, "Now, can I make a decision in this case now, given the fact that this person is in there?" So that happen in something before the NLRB, too.

Mr. RING. Absolutely.

Senator ISAKSON. My point is that it's very important to avoid the appearance of a conflict of interest, it's very important not to have a conflict of interest, so you have integrity in the decisions that you're making. So it's not just what you knew when the case came to the NLRB Board, but it's what you know as it develops to always measure yourself against that standard so you never knowingly have a situation where you're opining one way or another on something where there's a conflict of interest.

Mr. RING. I absolutely agree, Senator.

Senator ISAKSON. Second, I'm not an attorney, but I've learned after 41 years in elected office as a legislator that most everything we do creates a market for a bunch of consumers for attorneys. I mean, every time we pass new laws, every time we pass new regulations and things of that nature—and the joint employer situation, in terms of the NLRB, but in terms of practice, opens a whole new field of litigation or potential of regulated people by bringing in the old joint employer standard—people who previously were not considered an employee or employer because of relationship. Is that not true?

Mr. RING. It potentially expands the *Browning-Ferris* decision—it potentially expands the number of employee-employer relationships, yes.

Senator ISAKSON. My point is—and that also could potentially bring about a lot of interesting consequences if you take a standard like that and broaden it. For example, the IRS has a standard for independent contractors. I ran a company that was taken to court

by the Nixon administration years ago in the 1960's over a case of whether or not we should withhold on independent contractors for social security and taxes.

We defended we should not because an independent contractor is not our employee. They're associated with us through a contract. That went all the way to the—it went all the way, ultimately, to the highest court in the land to determine what an independent contractor was, and they put an independent contractor's standard in there. So you now know if you're a company and you form yourself as an employer-employee company, you have one set of rules with the IRS, and if you have an independent contractor standard, you have another, and how you treat those people determines which standard you have.

My only point being that by going into a situation where you broaden the definition of employer, which you would certainly do by expanding the *Browning-Ferris* decision, then you're opening a whole new ground and territory for potential litigation or potential regulation for people that previously were not affected and also would end up running—putting somebody in afoul of the very regulations that affect them by the government under the IRS, because under the IRS, you can't have control. Under joint employer, you have to have control to, in fact, be liable.

My point is the conflict of interest thing—you have to constantly be aware of not crossing the line and making sure—we need to be sure we don't expand those who might be guilty. You need to make sure you're never opining on a case that, at some point along the way, a conflict of interest could have been developed or could come about. So I'm confident from what I've read about what you've done from your obvious level of law and labor-management law from the beginning of your career, and I'm sure you'll do that, and I wish you the best of luck.

Mr. RING. I appreciate that, Senator.

The CHAIRMAN. Thank you, Senator Isakson.

Senator Hassan.

Senator HASSAN. Thank you, Chairman Alexander and Ranking Member Murray.

Thank you as well to our nominee and congratulations, Mr. Ring, on your nomination. I enjoyed our conversation in my office very much.

The National Labor Relations Board is critical in ensuring the rights of workers and safeguarding against unfair labor practices. Over the course of my service in the New Hampshire State Senate, as Governor, and now here, I have spent considerable time learning about the issues that impact employers and their employees, and I'm really looking forward to continuing our discussion today.

The National Labor Relations Board's General Counsel, Peter Robb, recently proposed a reorganization of regional offices that would be supervised by agency officials who would directly report to the General Counsel. Right now, regional directors who are career employees resolve roughly 85 percent of NLRB cases without bringing them to the General Counsel level at all.

These regional directors regularly work with local employers, employees, and the unions, providing important perspective when deciding a case. The change that has been suggested by the General

Counsel would move the decision-making power from the regional offices to agency officials who may be politically appointed and are far removed from the case and its stakeholders.

In addition, Mr. Robb has also proposed changes to case processing procedures which would increase filing burdens on workers who file charges for violations of their rights, including a change to enable Board staff to dismiss workers' charges without the approval of regional leadership.

Mr. Ring, given the significant implications of these changes, as a Board member, would you require that General Counsel Robb seek the approval of the Board and seek public comment before moving forward with implementing these plans?

Mr. RING. Senator, thank you for the question, and I will just say I appreciated our conversation as well. It was interesting to hear about your experience in collective bargaining and to share experiences about where labor-management relations actually work.

To your question, I have not had the opportunity to see in detail General Counsel Robb's proposal, and I haven't had the opportunity to talk to him about the proposal and the effort variant counsel of why such a proposal may be proposed. So it would be unfair for me to try to comment on it here, but I will say——

Senator HASSAN. Well, let me—and I'm sorry to interrupt. But, look, it's a significant—if the reports of the proposal are true, the question isn't what do you think of the proposal, but do you think the scope of the proposal is such that it should require Board approval?

Mr. RING. Well, my understanding, again, just from what I've read of what General Counsel Robb is proposing—part of the structure within the regional directors and the regional offices requires a delegation from the Board, and so it would—again, my understanding, based on just what I've seen, is what he is proposing would require Board action in order to amend the delegation.

Senator HASSAN. That is helpful to understand. I look forward to following up with you on that. I also wanted to point out that the General Counsel has suggested that one of the reasons for the proposed changes is budgetary concerns that the Board has. So, if confirmed, do you plan to appeal to Congress for additional appropriated funds to ensure that public service needs are met? Similarly, are you expecting to be involved in developing and ultimately approving any NLRB spending recommendations or plans?

Mr. RING. I appreciate that. As a nominee, I haven't been involved in the budget issue, either. But I have seen a number of the press accounts about General Counsel Robb's justification for some of his changes based on budgetary cuts. What I would say to you is, if confirmed, I would make it a priority to come up to speed on the budget issues at the Board immediately. I think there's always—you know, as stewards of taxpayers' moneys, we are obligated to look for ways to do things more efficiently, although my experience with the Board is that it runs fairly efficiently. But I would look forward to working with General Counsel Robb and being very involved in that budget process.

Senator HASSAN. Well, I appreciate that, and I just would add that there's a difference between being efficient and effective and strategic with taxpayer dollars and being penny-wise and pound-

foolish. And at a certain point, we need to have staff and capacity to do the work to protect workers' rights and make sure that the process runs in a way that's good for both employers and employees so that they can get resolution. So I would urge you to get very involved in that.

I have another question. I'm out of time, but I will submit it for the record—just about the way the Board has been actively reversing precedent recently. It's something you and I talked about in my office, and I look forward to getting your response. Thank you very much.

Mr. RING. Thank you.

The CHAIRMAN. Thank you, Senator Hassan.

Senator Baldwin.

Senator BALDWIN. Thank you, Mr. Chairman and Ranking Member.

Thank you, Mr. Ring, for your willingness to serve. I want to focus on the issue of joint employment. For a majority of the NLRA's existence, the Board found joint employment when a company directly or indirectly controlled workers' employment. This is important because meaningful collective bargaining can only occur if every company controlling workers' employment is sitting at the bargaining table.

Do you believe that employers must exercise direct and immediate control in order to be employers under the NLRA?

Mr. RING. Senator, I appreciate the opportunity to talk about the joint employer issue. I know it's a very controversial issue, as we can tell from the various questions. Under the prior standard, the standard is direct control. Under the newer standard, it is the right to control, and that's setting the difference that has been the struggle.

I have always thought of the joint employer issue as something that's very, very fact-specific, and it's very fact-intensive. Whether an employer controls or doesn't control or has the right to control is very, very fact-intensive. So if a joint employer issue comes before the Board, I would look at those facts with an open mind and consider the parties, consider the past precedents, and make a ruling on the case. I just want to be careful not to prejudge any joint employer case that may come before me.

Senator BALDWIN. I'll get to the fact-specific issues in a moment. But in terms of the way the NLRB looks at this question over time, are there specific legal authorities that back up the direct or immediate control conclusion that has been taken?

Mr. RING. Well, I think the precedent where the direct control has been in place is pretty well documented.

Senator BALDWIN. Is it in the NLRA?

Mr. RING. Oh, is it in the NLRA?

Senator BALDWIN. No, I——

Mr. RING. Oh, no, no, it's not in the NLRA.

Senator BALDWIN. Okay. And is it elsewhere in specific legal authorities? Is it in the restatement of the agency?

Mr. RING. I'm not familiar with that. But I will say that I think one of the arguments that has been made with respect to the *Hy-Brand* position—the prior position before *Browning-Ferris*—is that

the direct control is more in line with the common law thought of employer status.

Senator BALDWIN. Again, we'll get to fact-specific issues in a second. But do you believe that reserved but unexercised control over workers is at least probative of employer status?

Mr. RING. Senator, if a joint employer case comes before me, I will consider all of the positions of the parties, and I'm sure that would be one of them. So I would not want to prejudge that, but it would be something I would look at.

Senator BALDWIN. Well, let's do a look at the principle without a case before you. In principle, do you think that if Company A caps wages for workers at Company B, both companies need to be at the bargaining table for a meaningful collective bargaining to take place? And I'm not asking you about a specific case, but if that's all, I'm asking you about that principle.

Mr. RING. I think your example illustrates the fact-intensiveness of this issue, because how an employer caps those wages could be very probative about whether or not there's control or not control or whether there's indirect control. So I think while in principle you could make a position known, I think it really would vary based on the facts.

Senator BALDWIN. I'm noticing that my time is running out. I will be submitting some additional questions for the record on this matter, as well as some of the late breaking news about the Board hiring freeze that has been announced.

Mr. RING. I'd welcome that.

The CHAIRMAN. Thank you, Senator Baldwin.

Senator Hatch, do you have comments or questions?

Senator HATCH. I just want to congratulate you and welcome you to the Committee. These are tough jobs, and you are very qualified, and I intend to support you.

Mr. RING. Thank you very much, Senator Hatch.

The CHAIRMAN. That was right to the point from the senior member of the Senate.

[Laughter.]

The CHAIRMAN. Senator Smith.

Senator SMITH. Thank you very much, Chair Alexander and Ranking Member Murray. I appreciate it.

Mr. Ring, thank you so much for being here and thank you also for your willingness to serve. I appreciate it.

In 2016, just a couple of days before Thanksgiving, a Minnesota trucking company which had collective bargaining closed its doors and began to reorganize as a non-union company. The workers at the company that had collective bargaining—they lost their jobs, and many of them also didn't receive their final paychecks.

Unfortunately, this is not a rare occurrence. It happens all too often where company owners attempt to set up new firms to avoid having to bargain with a union at an older firm that they own. We've seen this occur not just in the trucking industry but also in building trades and other industries where it's pretty easy to shift assets from one corporate legal entity to another. Of course, this practice of shifting work from a union company to a non-union company, if one company is just the alter ego of the other, is illegal.

My first question is: Do you agree that that's illegal?

Mr. RING. Senator, I appreciate the question, and I will tell you I spent most of my career working in the trucking industry, so I know it well. Under Board law, shifting assets to an alter ego in order to avoid a collective bargaining agreement—my understanding is that that is illegal.

Senator SMITH. That's my understanding, too. So the question is: What should be done about it, and what are sort of the—the problem is that it's very easy to do, and it's difficult to track what's happening. So what do you think, from the position of the NLRB, ought to be done to kind of let employers know that this is not acceptable, and there will be, accountability for doing it?

Mr. RING. Well, I believe there is accountability under the National Labor Relations Act and enforced by the NLRB currently, and I believe the sanctions for an employer that does something like that can be quite severe.

Senator SMITH. Related to that, one of the concerns that I've heard from employees is that from the perspective of the employees, it can be really difficult to figure out who owns and controls a company, and, often, it's very difficult to prove that two companies have common management or common assets or even have, characteristics that would lead them to be treated as a single employer or alter ego.

What legal standard do you think should be applied to figuring out—in helping employees determine what information they can ask for to try to establish this alter ego problem we have?

Mr. RING. You raise a good question, and it goes to the joint employer issue we've been talking about. I think Chairman Alexander asked about clarity and I spoke mostly about clarity on the part of employers. But I think the uncertainty happens with employees, too, where employees don't know who their employer is. So I think, without prejudging, any case in the joint employer area, I would say that it is important that there be clarity so that employees can understand who is responsible to them as their employer.

Senator SMITH. Do you think that if an employee has a reasonable basis for believing that a non-union company may be an alter ego for the company that they were formerly employed by, which is what happened in Minnesota—do you think that kind of having them have a reasonable basis is sufficient to allow that employee to ask for further information? Or would they be required, do you think, to provide specific facts before they could kind of take that next step? Because that's the problem that I understand people are having. Again, you can't get the information because you don't have the facts, but you don't have the facts because you don't have the information.

Mr. RING. Well, if I'm understanding your question and your fact pattern correctly, it would seem to me that part of the process that would be effective is by filing a charge with the Board, with the NLRB, and the Board has—and the investigatory process, and Board agents have wide discretion in many cases to seek information. So I think the Board processes provide a good avenue for that.

Senator SMITH. Thank you.

Mr. Chair, I'm almost out of time. I have one final question, which I ask permission to submit, having to do with the problem

we have in this country with wage theft and people who are not paid the money that they've earned.

Mr. Ring, I'd like very much to hear your perspective on that. It's a bigger problem than robbery in this country in terms of the money that people earn and aren't able to get.

Mr. RING. I welcome the question.

The CHAIRMAN. Thank you, Senator Smith.

Senator Murray has another important appointment she has to leave for, so I'm going to call on her and then go to Senator Warren, if that's all right.

Senator MURRAY. Mr. Ring, I just want to thank you for being here and for your ability to answer questions. I will have some that I will submit for the record that we need to get back expeditiously.

Senator MURRAY. But I appreciate you being here and all of our Members' questions.

Mr. Chairman, thank you for accommodating us.

The CHAIRMAN. Thank you, Senator Murray.

Senator Warren.

Senator WARREN. Thank you, Mr. Chairman.

A big ethics cloud now hangs over the National Labor Relations Board. President Trump's last nominee for the NLRB, William Emanuel, faces an investigation by the agency's Inspector General because he broke the ethics rules by participating in a case that his former law firm is involved in. The Board has now vacated one of its most consequential decisions because the IG determined that it was tainted by Mr. Emanuel's conflict of interest.

Mr. Ring, you have a background that is very similar to that of Mr. Emanuel. You've spent decades representing the interests of large corporations for a notoriously anti-union law firm. This Committee needs to dot every I and cross every T when it comes to making sure that you are able to serve without the kinds of ethical conflicts that have been created by Mr. Emanuel.

Let me ask: If confirmed, you've said you'll follow the White House's Ethics Pledge and refrain from participating in matters involving your former clients, which include companies like Amazon, Marriott, Pratt and Whitney. Is that correct?

Mr. RING. Right. Yes, Senator.

Senator WARREN. Good. I also want to ask—Mr. Emanuel gave me exactly that same assurance. Do you understand that you must recuse yourself in any matter in which your former law firm, Morgan Lewis, represents a party?

Mr. RING. That's my understanding of the ethics rules, yes.

Senator WARREN. Okay. And in order to ensure that you do so, will you commit to providing me and other Members of this Committee a list of cases currently pending before the NLRB in which your law firm represents a party?

Mr. RING. Senator, we discussed this earlier, and I want to just say that I take this issue very, very seriously, and for that reason, we are compiling a list for the very reason you discussed, because I do not want to be in the position that Member Emanuel finds himself in, and I do not want to put another cloud over the NLRB.

Senator WARREN. I'm sorry. So is that a yes, that you will provide this list?

Mr. RING. Yes.

Senator WARREN. Because the only reason we know about Mr. Emanuel's apparent ethics violations is because we were able to dig up information after he was confirmed, it would be nothing short of negligent at this point for this Committee to let it come to that again. So I want to be sure about this, and I want to know we're going to get this list of all the clients before we have to take a vote on your nomination. Is that right?

Mr. RING. That's my understanding, yes.

Senator WARREN. Okay. Good. Will you also commit to providing a list of cases that have been decided by the NLRB but that are currently on appeal in which your law firm represents a party?

Mr. RING. On appeal before an appellate court?

Senator WARREN. Right. We need—yes, the ones that are still not resolved finally.

Mr. RING. I believe that's part of the list that we're compiling.

Senator WARREN. Good. All right. I'll take that as a yes.

Mr. RING. Yes.

Senator WARREN. All right. Thank you very much. Thank you, Mr. Ring. That's it for me.

The CHAIRMAN. Thank you, Senator Warren.

I see no other senator. So thank you, Mr. Ring, for being here.

If Senators wish to ask additional questions of the nominee, the questions for the record are due by 5 p.m. Friday, March 2d. For all other matters, the hearing record will remain open for 10 days. Members may submit additional information for the record within that time. The next meeting of our Committee will be Wednesday, March 7, to vote on the nomination of Mr. Ring and others.

Thank you for being here. The Committee will stand adjourned.

[Whereupon, at 10:58 a.m., the hearing was adjourned.]

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