UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

McDONALD'S USA, LLC, A JOINT EMPLOYER, et al.

Cases 02-CA-093893, et al.
04-CA-125567, et al.

and

FAST FOOD WORKERS COMMITTEE AND SERVICE EMPLOYEES INTERNATIONAL UNION, CTW, CLC, et al.

McDONALD'S USA, LLC'S OPPOSITION TO CHARGING PARTIES' MOTION TO RECUSE CHAIRMAN RING AND MEMBER EMANUEL

There is no merit to the Service Employees International Union's Motion for Recusal of Chairman Ring and Member Emanuel.[1] With respect to Member Emanuel, there is no need for the Board even to address the merits of the Motion. This is because a party that becomes aware of alleged grounds for a Member's recusal must act promptly, and it may not wait to raise the issue only after the Member has participated in the case. Here, Member Emanuel *has* already participated in this case – without the objection from the SEIU – and the Union thus waived the claims against him that it now attempts to assert. *See Somerset Valley Rehab. & Nursing Ctr.*, Case No. 22-RC-13139, Order at *3-*6 (N.L.R.B. Nov. 16, 2011) (unanimously finding that motion to recuse Member Becker was untimely where, as Mr. Becker wrote, the moving party "did not raise any issue over [his] participation until after receiving the Board's August 26 decision");[2] *Schurz Commc'ns., Inc. v. Fed. Commc'ns. Comm'n.*, 982 F.2d 1057, 1060 (7th Cir. 1992) (Posner, ruling on motion) ("Litigants cannot take the heads-I-win-tails-you-lose position

[1] The Charging Parties in this case consist of the Service Employees International Union ("SEIU" or the "Union") and various labor organizations controlled by the SEIU. The Charging Parties' Motion for Recusal of Chairman Ring and Member Emanuel will be referred to herein as "SEIU Mot. at __."

[2] Available at https://www.nlrb.gov/cases-decisions/unpublished-board-decisions (last visited Aug. 21, 2018).

of waiting to see whether they win and if they lose moving to disqualify a judge who voted against them."); *see also McDonald's USA, LLC*, Case No. 02-CA-093893, Order at *2 (N.L.R.B. Jan. 16, 2018) (unanimous panel decision – which included Member Emanuel without SEIU objection – that "the judge abused her discretion in requiring an unwarranted discovery procedure").[3]

More fundamentally, the SEIU has not identified any substantive legal or ethical reason that Chairman Ring or Member Emanuel should recuse themselves. Primarily, the Union contends that Chairman Ring should be recused because he "was a partner at the firm Morgan Lewis." SEIU Mot. at 2. Member Emanuel, the Union claims, should be recused because he "was a shareholder of the firm Littler Mendelson." *Id.* at 4. But as the SEIU concedes, Morgan Lewis and Littler Mendelson "did not appear as counsel of record in this case." *Id.* at 6. Neither firm has filed a notice of appearance, signed any filing, or participated in argument before the Administrative Law Judge or a Board Member. Further, Morgan Lewis and Littler Mendelson are not parties to this case, and Chairman Ring and Member Emanuel did not personally represent any party during any relevant time period. In this setting, Executive Order 13770 and 5 C.F.R. § 2635.502 – the controlling ethics provisions – do not require the recusal of either Board Member.

Perhaps recognizing this, the Union also argues that "the case presents a unique situation," SEIU Mot. at 7, and that here "a reasonable person . . . would question" Chairman Ring's and Member Emanuel's "impartiality in ruling on any appeal (or other filing)," *id.* at 4. But no "reasonable person" would question Chairman Ring's or Member Emanuel's impartiality

[3] Available at https://www.nlrb.gov/cases-decisions/unpublished-board-decisions (last visited Aug. 21, 2018).

on the circumstances presented. To the contrary, the Board has rejected any number of recusal motions that raised claims far more tangible than the Union's present assertions. For example, former Member Becker "served as Associate General Counsel to . . . the Service Employees International Union" immediately prior to his recess appointment.[4] Nevertheless, the SEIU saw no conflict – actual or apparent – that would bar Member Becker from immediately deciding cases involving SEIU Locals. *Compare SEIU, Nurses Alliance, Local 121RN (Pomona Valley Hosp. Med. Ctr.)*, 355 NLRB 234, 246 (2010) (Members Becker and Pearce Ruling On Motions) ("[A] 'reasonable person' appearing before the Board will distinguish between the roles I played as an advocate and a scholar in the past and the position I now hold as a Member of the NLRB.") *with* SEIU 2016 Constitution and Bylaws[5] (providing that "[t]his organization shall be known as the Service Employees International Union . . . and shall consist of an unlimited number of Local Unions chartered by it, and the membership thereof").

Particularly against that backdrop, the SEIU's present arguments as to Chairman Ring and Member Emanuel are little more than political maneuvering. *Cf.* 5 C.F.R. § 2635.502(b)(1)(v) ("Nothing in this section shall be construed to suggest that an employee should not participate in a matter because of his political, religious or moral views."); *Hy-Brand Indus. Contractors, Ltd.*, 366 NLRB No. 93, at *3 n.1 (2018) (Chairman Ring and Member Kaplan concurring) (warning against efforts to recast ethics standards "as a weapon to tie up important cases").[6] The Board should reject the Union's Motion in its entirety.

[4] *See* https://www.nlrb.gov/who-we-are/board/craig-becker (last visited Aug. 21, 2018).

[5] Available at https://d3jpbvtfqku4tu.cloudfront.net/img/constitution-2016.pdf (last visited Aug. 21, 2018).

[6] *See also Boeing Co.*, 366 NLRB No. 128, at *1 n.1 (2018) (summarily rejecting "a motion requesting that Chairman Ring and Members Emanuel and Kaplan 'immediately cease deciding any Board case including this case'").

BACKGROUND

In December 2012, the SEIU and its affiliates began filing charges against certain McDonald's franchisees. Many of the charges alleged that McDonald's USA, LLC[7] was vicariously liable as a joint employer. Former General Counsel Richard Griffin viewed these joint employment allegations as a vehicle to potentially change the law.[8] *See* Tr. 21254:12-16 (noting the objective "to update Joint Employer law within the Board context").[9] In late 2014, he issued a number of complaints that contained both substantive unfair labor practice allegations against Charged Franchisees – the entities accused of actual wrongdoing – and added joint employment allegations against McDonald's USA. The former General Counsel issued these complaints even though NLRA joint employment law in the franchisor/franchisee context had been settled for decades. *See, e.g.*, *Love's Barbeque Rest. No. 62*, 245 NLRB 78 (1978), *enf'd. in rel. part*, 640 F.2d 1094 (9th Cir. 1981). And he did so even though, in the 60-plus years that McDonald's USA has franchised restaurants, neither the Board nor the Courts have found the Company to be a joint employer under any standard.[10]

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[7] McDonald's USA, LLC will be referred to as "McDonald's USA" or the "Company."

[8] Prior to his appointment, former General Counsel Griffin "served on the board of directors for the AFL-CIO Lawyers Coordinating Committee, a position he held since 1994." *See* https://www.nlrb.gov/who-we-are/general-counsel/richard-f-griffin-jr (last visited Aug. 21, 2018). That committee requires member lawyers to "represent[] AFL-CIO affiliated unions." *See* http://lcc.aflcio.org/ (last visited Aug. 21, 2018). It exists to "facilitate[] the exchange of information and strategies" to "mobilize[] union-side lawyers in labor movement programs." *Id.*

[9] Attached as Exhibit ("Ex.") 3 to McDonald's USA, LLC's Special Appeal from the Administrative Law Judge's July 17, 2018 Order Denying Motions to Approve Settlement Agreements (Aug. 13, 2018) (hereinafter, "McD 8/13/18 Special Appeal").

[10] *See, e.g.*, *Ochoa v. McDonald's USA, LLC,* 133 F. Supp. 3d 1228, 1241 (N.D. Cal. 2015); *Evans v. McDonald's Corp.*, 936 F.2d 1087, 1089-90 (10th Cir. 1991); *Cropp v. Golden Arch Realty Corp.*, No. 2:08-cv-96, at 18 (D.S.C. March 30, 2009); *Mosley v. McDonald's Corp.*, No. 05-CV-7290 (N.D. Ill. Dec. 06, 2006); *Alberter v. McDonald's Corp*., 70 F. Supp. 2d 1138, 1144 (D. Nev. 1999); *Dotson v. McDonald's Corp.*, 1998 U.S. Dist. LEXIS 4676, at *8-9 (N.D. Ill. Mar. 31, 1998); *Kennedy v. McDonald's Corp*., 610 F. Supp. 203, 205 (S.D.W.Va. 1985); *Whitfield v. McDonald's,* No. 08-118582-NO (Mich. Cir. Ct. July 28, 2010); *Hall v. McDonald's Corp*., No. 84-270803 (Mich. Cir. Ct. June 22, 1986).

Over McDonald's USA's objection, the Administrative Law Judge,[11] went on to order perhaps the largest consolidation of cases in the history of the Agency: 71 unfair labor practice charges, alleging 176 separate violations of the Act against 30 different independent franchisees located across the country and McDonald's USA as a putative joint employer. *See* ALJ's Order Denying Respondents' Motions to Sever (Feb. 19, 2015).[12] The General Counsel's case-in-chief began in March 2016. Since then, the proceedings have generated 142 hearing days, 123 witnesses, 3,035 admitted exhibits, and 21,190 transcript pages. As the Board has recognized, nevertheless, the matter is nowhere near completion. *See UPMC*, 365 NLRB No. 153, at *8 n.7 (2017) (noting that if the McDonald's litigation were to "proceed . . . to finality, [it] could last for decades"); *see also McDonald's USA, LLC*, 362 NLRB No. 168, at *2 (2015) (Miscimarra, dissenting) (warning that this case could be reversed based on procedural issues alone, wasting "years of litigation" in this "large consolidated case").

Against this backdrop, the General Counsel, McDonald's USA, and the Charged Franchisees recently reached a reasonable global settlement. *See Independent Stave Co.*, 287 NLRB 740, 741-43 (1987) (noting the Board's longstanding policy of "encouraging the peaceful, nonlitigious resolution of disputes," a policy that allows parties to "accept a compromise rather than risk receiving nothing or being required to provide a greater remedy.") (internal citations and quotations omitted). The settlement provides immediate, certain, and complete relief on all substantive allegations in the underlying complaints. This relief mirrors what the General Counsel would hope to obtain if he ultimately prevailed on all his substantive allegations – full

[11] Prior to joining the Agency (first as counsel to the General Counsel and then as an Administrative Law Judge), the Judge worked for a law firm that regularly represented SEIU Local 32BJ. *See AM Property Holding Corp., Maiden 80/90 NY LLC*, 350 NLRB 998, 1008 (2007).

[12] Attached as Ex. 10 to McD 8/13/18 Special Appeal.

notice postings and full monetary remedies for all alleged discriminatees. The settlement does not ask McDonald's USA to admit joint employer status or otherwise act as if it were a joint employer. (If that were the General Counsel's demand, there would have been no settlement.) As a compromise, though, it requires the Company to take meaningful action to help ensure that the Charged Franchisees – the entities accused of violating the Act – meet their obligations.

The SEIU "vehemently oppose[s]" the settlement, preferring additional years of uncertain litigation to full relief for the alleged discriminatees and full relief on all of the General Counsel's substantive unfair labor practice allegations. *See* ALJ Order Denying Motions to Approve Settlement, at 18 (July 17, 2018).[13] The Administrative Law Judge sided with the Union, withholding approval from the settlement in a July 17, 2018 order. *See id.* On August 13, 2018, McDonald's USA filed a Special Appeal of the Administrative Law Judge's ruling, arguing (among other things), that the Judge assessed the settlement under incorrect legal standards under the guise of applying the controlling *Independent Stave* test, misstated the posture of the case and the facts surrounding the settlement, and failed to accept the differences between the Judge's role and the role of the General Counsel. The next day, the SEIU filed the instant Motion.

ARGUMENT

The SEIU contends that Executive Order 13770 and 5 C.F.R. § 2635.502 require Chairman Ring to recuse himself because he was a partner at Morgan Lewis and Member Emanuel to recuse himself because he was a shareholder at Littler Mendelson. The Union's positions are groundless.

[13] Attached as Ex. 1 to McD 8/13/18 Special Appeal.

A. The SEIU Waived Its Claims With Respect To Member Emanuel.

As an initial matter, the SEIU contention that Member Emanuel should be recused is untimely. A party that becomes aware of purported grounds for a Member's recusal must act promptly, and it may not wait to raise the issue only after the Member has participated in the case. *See, e.g.*, *Somerset Valley*, Case No. 22-RC-13139, Order at *3 (N.L.R.B. Nov. 16, 2011) (unanimously rejecting motion to recuse Member Becker where the moving party "did not move for recusal until after the Board issued the underlying decision"); *see also Schurz Commc'ns., Inc.*, 982 F.2d at 1060 (Posner, ruling on motion) (finding "motion to disqualify untimely" where movants "waited until two weeks after the decision was handed down before filing the motion to disqualify").

Here, Member Emanuel's Board tenure began on September 26, 2017.[14] Less than a month later, on October 9, 2017, McDonald's USA filed a special appeal regarding the Administrative Law Judge's order that the Company must provide the General Counsel with an expert report.[15] The SEIU opposed that special appeal, in part, but it did not seek Member Emanuel's recusal.[16] Member Emanuel went on to participate in the Board's decision to reverse the Administrative Law Judge's ruling. *See McDonald's USA, LLC*, Case No. 02-CA-093893, Order at *2 (N.L.R.B. Jan. 16, 2018) (unanimous panel decision that "the judge abused her discretion in requiring an unwarranted discovery procedure").[17]

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[14] *See* https://www.nlrb.gov/who-we-are/board/board-members-1935 (last visited Aug. 21, 2018).

[15] *See* McDonald's USA, LLC's Urgent Appeal From The Administrative Law Judge's Order Granting Petitions To Revoke Subpoenas *Duces Tecum* And Orders Regarding Production Of Expert's Report (Oct. 9, 2017).

[16] *See* Charging Parties' And Non-Parties' Consolidated Opposition To McDonald's Expedited Request For Special Permission To Appeal ALJ's Order Granting Petitions To Revoke (Oct. 16, 2017).

[17] Available at https://www.nlrb.gov/cases-decisions/unpublished-board-decisions last visited Aug. 21, 2018).

At the time that McDonald's USA filed its October 9, 2017 special appeal, the SEIU knew or should have known that Member Emanuel could participate in the adjudication of that special appeal. *See Somerset Valley*, Case No. 22-RC-13139, at *4 (noting that "all Board Members, even those not initially assigned to a panel, may participate in the adjudication of [a] case"). Further, the Union's instant motion cites to testimony and exhibits that were in the record below as of October 16, 2017. As such, the Union's failure to seek recusal of Member Emanuel in October 2017 constitutes a waiver, and the Union's present claims as to him should be rejected on that basis alone. *See id*.

B. Chairman Ring And Member Emanuel Have No Obligation To Recuse Themselves Under Executive Order 13770.

Waiver issues aside, there is no substantive merit to the Union's suggestion, SEIU Mot. at 1-2, that Executive Order 13770 requires Chairman Ring and Member Emanuel to recuse themselves. As the SEIU concedes, SEIU Mot. at 6, Chairman Ring's and Member Emanuel's respective former firms – Morgan Lewis and Littler Mendelson – "did not appear as counsel of record in this case." That unavoidable concession standing alone is dispositive for purposes of Executive Order 13770.

In its relevant section, Executive Order 13770 required Chairman Ring and Member Emanuel to commit that they will not participate in matters "directly and substantially related" to their "former clients" or their "former employer[s]." 82 Fed. Reg. 9,333, § 1(6).[18] Thus, for a period of two years, they generally may not participate in matters in which their "former employer or a former client is a party or represents a party." *See id.* at § 2(d) (defining "directly

[18] In full, Section 1(6) of Executive Order 13770 required Chairman Ring and Member Emanuel to promise:

> I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

and substantially related"). For purposes of this restriction, the term "former client[]" is limited to those that Chairman Ring and Member Emanuel represented *personally* within the applicable, two-year time period. *See id.* at § 2(i) (defining the term as including "any person for whom the appointee served personally as . . . attorney . . . within the 2 years prior to the date of his or her appointment"). The term "former employer" is limited to "any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as . . . general partner." *See id.* at § 2(j).

Importantly for present purposes, the Executive Order also details what it means to "represent" a party for purposes of its restrictions. It does so through a cross reference to 18 U.S.C. § 207, a statute addressing post-employment restrictions on certain government officials. *See* 82 Fed. Reg. 9,333, § 2(x) ("Terms that are used herein and in the pledge, and also used in section 207 of title 18, United States Code, shall be given the same meaning as they have in section 207 and any implementing regulations issued or to be issued by the Office of Government Ethics, except to the extent those terms are otherwise defined in this order."). Among other things, that statute places "[p]ermanent restrictions on *representation* on particular matters." 18 U.S.C. § 207(a)(1) (emphasis added). Explaining this restriction, the statute states that former executive branch employees may not "knowingly make[], with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person . . . ." *Id.*; *see also* 5 C.F.R. § 2641.201(d)(3) (regulation associated with 18 U.S.C. § 207(a)(1)) ("Nothing in this section prohibits a former employee from providing assistance to another person, provided that the assistance does not involve a communication to or an appearance before an employee of the United States."); *id.* (Example 3

to paragraph (d)) (providing that restrictions on departing employees do not preclude an individual from "prepar[ing] a paper describing the persons at her former agency who should be contacted and what should be said to them in an effort to . . . resolve favorably a dispute"). By cross referencing 18 U.S.C. § 207, then, Executive Order 13770 likewise limits its two-year restriction to instances in which a Board Member's former firm "represents" a party by appearing before the Member or otherwise communicating with the Member in an attempt to influence him. In other words, the restriction is limited to instances in which the Board Member's former firm appears as a counsel of record in a matter before that Member.

Here, the only firms that Chairman Ring and Member Emanuel[19] worked for during the applicable time period are Morgan Lewis and Littler Mendelson, respectively.[20] Those firms are not counsel of record here – they never entered an appearance, filed a paper, or otherwise communicated with the Administrative Law Judge, Chairman Ring, Member Emanuel, or any other Board Member. Because of this, Morgan Lewis and Littler Mendelson do not "represent a party" for purposes of Executive Order 13770, and that provision does not require recusal.

[19] The Union notes that "Member Emanuel was a former partner at the law firm of Jones Day." SEIU Mot. at 5. Member Emanuel has not worked for Jones Day for nearly 15 years. *See* Member Emanuel's Executive Branch Personnel Public Financial Disclosure Report (stating that he became a Littler Mendelson shareholder in July 2004), available at http://altgov2.org/wp-content/uploads/Emanuel-William-final278.pdf (last visited Aug. 21, 2018). For that reason, Jones Day is neither Member Emanuel's "former employer" nor an entity with which he has a "covered relationship" for purposes of the governing rules. *See* 82 Fed. Reg. 9,333, § 2(j) (defining "former employer" to include "any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as . . . general partner"); *see also* 5 C.F.R. § 2635.502(b)(1)(iv) (defining the term "covered relationship" for purposes of the Standards of Ethical Conduct for Employees of the Executive Branch to include employers for whom he or she has worked "within the last year"); *Overnite Transp. Co*, 329 NLRB 990, 999 (1999) (Separate Statement of Member Liebman) (denying motion for recusal from matter involving the International Brotherhood of Teamsters, noting "my relationship with the Teamsters terminated over 10 years ago").

[20] As noted, Morgan Lewis and Littler Mendelson also are not parties to this case, and there is no allegation that either Chairman Ring or Member Emanuel personally represented any party during the applicable time period.

C. Chairman Ring And Member Emanuel Should Not Recuse Themselves Under 5 C.F.R. § 2635.502.

The Union further contends that Chairman Ring and Member Emanuel "should" recuse themselves – absent waiver from a designated agency official – because "the circumstances would cause a reasonable person with knowledge of the relevant facts to question [their] impartiality." SEIU Mot. at 2 (quoting 5 C.F.R. § 2635.502(a)); *see also* 5 C.F.R. § 2635.101(b)(14) ("Employees shall endeavor to avoid any actions creating the appearance that they are violating . . . ethical standards"). For two reasons, the Union's contentions miss the mark.

First, as the SEIU acknowledges, SEIU Mot. at 2, 5 C.F.R. § 2635.502 imposes the "same restriction[s]" as Executive Order 13770 – albeit only for "a one-year period" – and therefore the Union's claims under the provisions thus rise and fall together.[21] As detailed above, *supra* at 7-10, the SEIU's contentions under Executive Order 13770 fail because Morgan Lewis and Littler Mendelson are not parties, have not entered an appearance, and have not otherwise communicated with the Administrative Law Judge or any Board Member about the matter. For these same reasons, the Union's arguments under 5 C.F.R. § 2635.502 also fail.

[21] The language of 5 C.F.R. § 2635.502 wholly supports this conclusion. Specifically, the language makes clear that a Board Member need assess whether a "reasonable person" might question a Member's "impartiality in the matter," *only* if "a person with whom [the Member] has a covered relationship is or represents a party." In its relevant portion, the regulation provides:

> Where an employee knows that . . . a person with whom he has a covered relationship is or represents a party to [a particular matter involving specific parties], and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

5 C.F.R. § 2635.502(a); *see also* 5 C.F.R. § 2635.502(b)(1)(iv) (defining the term "covered relationship" to include employers for whom a Member worked "within the last year").

Second, the Union's contentions under 5 C.F.R. § 2635.502 fail in all events because no "reasonable person" would question Chairman Ring's or Member Emanuel's impartiality on the circumstances presented. To the contrary, the Board has long *rejected* recusal motions raising claims far more material and tangible than the Union's transparently political Motion. As noted, former Member Becker repeatedly declined to recuse himself from cases involving SEIU locals – even though immediately prior to his confirmation he "was employed by and served as counsel to the SEIU." *SEIU, Nurses Alliance, Local 121 RN*, 355 NLRB 234, 242 (2010). In doing so, Member Becker acknowledged that the relationship between the SEIU and its locals was "often cooperative." *Id.* Nevertheless, he denied that there was any apparent conflict for purposes of 5 C.F.R. § 2635.502 because "a 'reasonable person' appearing before the Board will distinguish between the roles I played as an advocate . . . in the past and the position I now hold as a Member of the NLRB." *Id.* at 246; *see also Somerset Valley*, Case No. 22-RC-13139, Order at *5 (N.L.R.B. Nov. 16, 2011) (Member Becker Ruling On Motions) ("I am not required, however, to recuse myself from cases simply because, as here, a local union affiliated with SEIU is a party."); *Regency Heritage & Rehab. Ctr.*, 355 NLRB 603, 603 n.2 (2010) (denying recusal noting that Mr. Becker was "never . . . general counsel" of SEIU Local 1199).

Here, the Union does not assert that Chairman Ring or Member Emanuel acted as the general counsel of any party or any party affiliate. *Compare* SEIU 2016 Constitution and Bylaws (providing that the Service Employees International Union "shall consist of an unlimited number of Local Unions chartered by it, and the membership thereof"), available at https://d3jpbvtfqku4tu.cloudfront.net/img/constitution-2016.pdf (last visited Aug. 21, 2018). Rather, the Union asserts that Morgan Lewis and Littler Mendelson provided franchisees with legal advice regarding the National Labor Relations Act. *See* SEIU Mot. at 3 (asserting that

"Morgan Lewis was paid by McDonald's to provide legal training to the Respondent Franchisees regarding how to address labor relations issues"); SEIU Mot. at 5 (asserting that "McDonald's specifically retained Littler Mendelson to operate [a] hotline for Respondent Franchisees in order to provide them with free legal guidance"). But even assuming *arguendo* that the Union's assertions were accurate,[22] Chairman Ring and Member Emanuel are not alleged to have provided any of that legal advice, and it is undisputed that Morgan Lewis and Littler Mendelson are not a counsel of record in this case. *Cf.* 5 C.F.R. § 2641.201(d)(3) ("Nothing in this section prohibits a former employee from providing assistance to another person, provided that the assistance does not involve a communication to or an appearance before an employee of the United States."). Under the Board's long-established standards, no reasonable person could question Chairman Ring or Member Emanuel's impartiality under these circumstances.

CONCLUSION

For the foregoing reasons, the Board should deny the SEIU's Motion for Recusal of Chairman Ring and Member Emanuel.

[22] To be clear, McDonald's USA does not agree with the assessment of the evidence (or even the allegations) in this case. Further, the Company absolutely denies that it is a joint employer with any of the Charged Franchisees or that there is any evidence in the record that would remotely support such a finding.

Dated: August 21, 2018

Respectfully submitted,

s/ *Willis J. Goldsmith*

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CERTIFICATE OF SERVICE

The undersigned, an attorney, affirms under penalty of perjury that on August 21, 2018, he/she caused a true and correct copy of McDonald's USA, LLC's Opposition To Charging Parties' Motion To Recuse Chairman Ring And Member Emanuel to be electronically filed using the National Labor Relations Board's Internet website and to be served upon counsel for the Parties by e-mail at the following addresses designated for this purpose:

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