

September 6, 2022

The Honorable Lauren McFerran  
Chair  
National Labor Relations Board  
1015 Half Street, SE  
Washington, DC 20570-0001

Dear Chair McFerran:

I write today to express my deep concern with the National Labor Relations Board (“the Board”)’s effort to dramatically reshape federal labor policy, in the absence of any direction or authorization by Congress to do so. Specifically, I am troubled the Board appears poised to reverse a series of policies with little regard for the impact on businesses in North Dakota and across the country subject to these proceedings.

During your less than two-year tenure as Chair, the Board has signaled its intent to revisit a number of matters directing federal labor policy, including examining the standard for independent contractor status under the National Labor Relations Act (“the Act”), and the standard for determining joint-employer status under the Act. These actions could result in the reclassification of hundreds of thousands of independent contractors as statutory employees. In addition, this would be a massive expansion of joint employer liability under the Act, creating additional barriers for employers and negatively impacting the small business community in North Dakota.

These are but a sampling of issues in which the Board has indicated its willingness to revisit. As you know, Congress has not made substantive changes to the Act for nearly five decades, because the proposals did not have broad support or consensus. Thus far, Congress has made clear the fulcrum of labor relations law is properly balanced, and has not granted any new authority to the NLRB to substantively upset the status quo.

There are over 75,000 small businesses and 196,000 small business employees across North Dakota, as noted by the U.S. Small Business Administration.<sup>1</sup> As these essential businesses contend with rampant inflation and a challenging economic landscape, it is troubling to see the Board consider such a consequential overhaul without any change in Congressional authority.

In light of these facts, I ask that you provide us with both the legal and factual bases on which the Board is relying to contemplate these changes, including the real or perceived inadequacy of the law as it is currently administered, and the facts supporting such conclusions. Please provide your best estimate of the cost to the U.S. taxpayer in terms of both FTE and

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<sup>1</sup> <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/08/30142548/Small-Business-Economic-Profile-ND.pdf>

dollars spent for the Board and its staff to entertain these proposed changes. Lastly, has the NLRB conducted an analysis on the effects these changes would have on jobs and local economies?

I look forward to your reply, and thank you for your time and attention to this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin Cramer", written in a cursive style.

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Kevin Cramer  
United States Senator

Cc: The Honorable Marvin E. Kaplan, Member  
The Honorable David M. Prouty  
The Honorable John F. Ring, Member  
The Honorable Gwynne A. Wilcox, member