

**MEMORANDUM OF AGREEMENT
BETWEEN
THE NATIONAL LABOR RELATIONS BOARD
AND
THE DEPARTMENT OF LABOR
OFFICE OF LABOR-MANAGEMENT STANDARDS
REGARDING
THE SHARING OF INVESTIGATORY INFORMATION**

This Memorandum of Agreement (MOA) is intended to supplement the December 29, 2020 Memorandum of Understanding (MOU) between the National Labor Relations Board, Office of General Counsel (NLRB) and Department of Labor (DOL), and to govern the exchange, use, and safeguarding of data exchanged between NLRB and the Department's Office of Labor-Management Standards (OLMS) (collectively, "the parties") to support their respective missions.

I. PERSONS TO CONTACT

Pursuant to MOU paragraph 1 ("Facilitating Communication") and paragraph 2 ("National Office Coordination Group"), the parties designate the following staff as contacts to fulfill the sharing of information called for in this MOA:

For OLMS: Andrew Davis, Director of the Office of Program Operations
Davis.andrew@dol.gov; 202-693-1254

Karen Torre, Acting Chief of the Division of Interpretations and Standards
Torre.karen@dol.gov; 202-693-1209

For NLRB: Nancy E. Kessler Platt, Associate General Counsel, Division of Legal Counsel
nancy.platt@nlrb.gov; 202-273-2937

II. INFORMATION TO BE SHARED

Pursuant to paragraph 3 of the MOU ("Sharing Information"), the parties agree that:

A. Information to be shared by OLMS upon NLRB's request:

1. Upon NLRB's request to the OLMS district office officials identified in Section 1 (Facilitating Cooperation) of the MOU, OLMS will share the following information:
 - a. Information regarding investigations of the existence of a labor organization; and

- b. Information regarding special reports cases (Form LM-10 employer reporting and Forms LM-20 and LM-21 labor relations consultant reporting).
2. Should NLRB wish to request additional information from OLMS regarding particular cases, it will make a request to the OLMS point of contact identified in Section I (Persons to Contact) of this MOA.

B. Information to be shared by NLRB upon OLMS's request:

1. NLRB Division of Operations-Management will share appropriate categories of information about representation cases that would be publicly-releasable.
2. Should OLMS wish to request additional information from NLRB records regarding particular cases, it will make a request to the NLRB Associate General Counsel for the Division of Legal Counsel (or any contact designated by such official). NLRB may release information beyond the parameters of item "II.B.1" based upon a showing of OLMS's specific investigatory need.

Should OLMS wish to use that additionally-requested information in a proceeding, such as a hearing or a trial, OLMS will comply with the procedures set forth in NLRB's regulations at 29 CFR 102.118. NLRB will then process that request under GC-18-01, Delegation of Section 102.118 Authorization to the Division of Legal Counsel (October 19, 2017).

- C. Additional data elements as well as data exchanges and/or technical arrangements (e.g., for transferring data by new channels or protocols) that are not covered by this MOA will require the written consent of the Parties through the contacts referenced in section I of this MOA.**

III. INFORMATION SHARING RESPONSIBILITIES

A. NLRB

1. If NLRB becomes aware of information suggesting potential noncompliance with the laws that OLMS enforces by covered individuals or entities, NLRB will refer that information and person to the OLMS point of contact identified in Section I (Persons to Contact) of this MOA.
2. If NLRB continues to be involved in a matter that has been referred to OLMS, NLRB will coordinate its activities regarding that matter to the greatest extent possible.
3. NLRB shall notify OLMS if information provided by OLMS under this MOA is used by NLRB during the course of its investigation.

B. OLMS

1. If OLMS becomes aware of information suggesting potential noncompliance with the NLRA, OLMS will promptly share that information with the designated NLRB point of contact identified in Section I (Persons to Contact) of this MOA.
2. If OLMS continues to investigate a matter involving facts that also relate to a matter under NLRB's authority, OLMS will coordinate its activities regarding that matter with NLRB to the greatest extent possible.
3. OLMS shall notify NLRB if information provided by NLRB under this MOA results in OLMS's initiation of an investigation.

C. Consistent with applicable laws, regulations, and policies, and the availability of resources, both Parties will commit personnel and resources sufficient to support this MOA.

IV. SAFEGUARDING DATA

The parties recognize that the records to which OLMS and NLRB will be granted access pursuant to the information-sharing provisions of this MOA are covered by the Privacy Act. The parties agree to comply with the laws, regulations, and directives that provide requirements for safeguarding Federal information systems and personally-identifiable information (PII) used in Federal agency business processes, as well as related reporting requirements. Additionally, the government has a need for Federal agencies to provide information to each other without making a public disclosure of the information. The parties do not consider a release of information pursuant to this agreement to constitute a public disclosure under the Freedom of Information Act. Instead, the parties' release of information constitutes a "limited disclosure."

Under this limited disclosure release, the parties require that they maintain the confidentiality of the information. In the event that a request is made by an outside party for information subject to this limited disclosure release, the parties will refer requests for each other's records to the other agency for response.

Controlled Unclassified Information (CUI).

Each party acknowledges its responsibilities under Executive Order (EO) 13556, Controlled Unclassified Information (CUI) (November 4, 2010) and 32 CFR Part 2002, as well as other relevant authorities, regarding treatment of Controlled Unclassified Information (CUI). The parties will abide by such authorities as appropriate, consistent with each party's resources and progress toward implementation of the CUI Program. See 32 CFR § 2002.4(h).

NLRB generally considers all NLRB records to constitute Controlled Unclassified Information, under 32 CFR Part 2002. This is because 29 CFR 102.118(a) places such controls on those records (“[N]o present or former employee or specially designated agent of the Agency will produce or present any files, documents, reports, memoranda, or records of the Board or of the General Counsel . . . without the written consent of the Board or the Chairman of the Board . . .”).

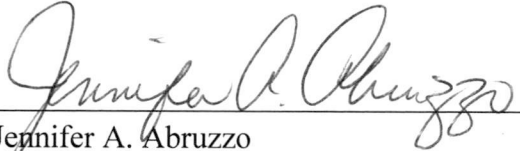
V. EFFECTIVE DATE, MODIFICATION, REVIEW, AND TERMINATION OF AGREEMENT

The terms of this MOA will take effect on the date of the last signature of the Parties, unless terminated by either Party in accordance with the terms described in paragraph 7 of the MOU.

The signatories below warrant and represent that they have the competent authority on behalf of their respective agencies to enter into the obligations set forth in this agreement.

Jeffrey Freund
Director
Office of Labor-Management Standards

Date



Jennifer A. Abruzzo
General Counsel
National Labor Relations Board

11/23/21
Date