

August 27, 2021

The Honorable Dick Durbin
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

I am writing to support the nomination of Jennifer Sung to the Ninth Circuit Court of Appeals. I am a Board Member who serves with Board Member Sung on the Oregon Employment Relations Board (ERB). ERB is the Oregon state agency charged with resolving labor relations disputes for public employers, public employees, and labor organizations throughout Oregon. ERB also has jurisdiction over civil service appeals filed by employees of the State of Oregon.

I have served with Member Sung on the Board since March 2017, when she was initially appointed by Oregon Governor Kate Brown and confirmed by the Oregon Senate. In the selection of the three members of the Employment Relations Board, Oregon law requires the governor to give “due consideration to the interests of labor, management and the public.” ORS 240.060(1). Each member of the Board is required to “be trained or experienced in labor-management relations and labor law or the administration of the collective bargaining process.” By tradition established over many years, the governor appoints one board member who has a professional background working with or representing public sector employers, one board member who has a professional background working with or representing labor organizations, and one board member who serves as a public member. I have spent my career representing employers, primarily although not exclusively public sector employers. Member Sung has devoted her career to representing labor organizations. If we were lawyers representing clients, we would be opponents. Although, like anyone, we bring to our work the professional experiences that have formed us, as Board Members our duty is to perform our role with neutrality and objectivity.

Despite the fact that Member Sung and I have spent our professional careers on the “opposite” sides of the labor-management divide, I have consistently found Member Sung to be receptive to understanding how a particular case will affect public employers and the public managers who administer them. For example, when Member Sung and I have different perspectives on how to interpret the record in a case, Member Sung has consistently been willing to revisit the record to review testimony, exhibits, and briefing to reassess the evidence and legal arguments in light of my perspective. Although she may not ultimately agree with me, our

professional discussions about how to interpret a record or apply a principle of law are collegial, thoughtful, and grounded in the facts in the record and the applicable law. The Board does not have supporting legal staff or law clerks; the Board's opinions are drafted by the three board members themselves. When Member Sung and I have different views on how to express a legal principle or describe its application in a draft decision, Member Sung works diligently to propose revisions until the draft contains language that all three board members can support.

I can unreservedly say that Member Sung is hard working, fair, always prepared, and always courteous to the litigants and counsel who appear before us. She approaches the work of the Board, and the overall mission of ERB, with the utmost intellect and integrity. If confirmed for an appointment to the Ninth Circuit Court of Appeals, Member Sung will bring to the court the impartiality, judicial demeanor, and dedication to justice that she has demonstrated at ERB. I fully support her nomination.

Sincerely,

Lisa Umscheid