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COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

2181 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

May 13, 2011

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The Honorable John Kline
Chairman
Committee on Education and the Workforce
2181 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Kline:

I am in receipt of your May 11, 2011 letter to National Labor Relations Board Chairman Wilma Liebman regarding your request for what amounts to deliberative documents and communications from the pending National Labor Relations Board case, *Specialty Healthcare and Rehabilitation Center of Mobile and United Steelworkers, District 9*.¹ As with your original March 7, 2011 request for such documents, I continue to have serious concerns about the nature of the inquiry.

To avoid any appearance of misguided or improper congressional influence and to ensure that the rights of the parties in the *Specialty* case are protected, I once again ask that you suspend your request for the deliberative documents at least until the case is no longer pending before the Board. I also note that your latest request states your intent to treat these documents as if received in executive session. Executive session alone does not address my concerns.

The Board is an independent, quasi-judicial agency that enforces and administers the rights of employers and employees in disputes arising under the National Labor Relations Act.² The *Specialty* case has yet to be decided on the merits. You have requested non-public, deliberative documents and communications, including those between the judges and between the judges and their staff, on a pending case, with deliberations still presumably underway and a decision still to be rendered.

The request unnecessarily injects the Committee directly into the adjudicatory process of the Board in an active case between private parties. The making of the request has significant potential to interfere with, disrupt, or even cause a court to invalidate the deliberative process. I strongly feel that this request may jeopardize the due process rights of the parties to the case and would have the same chilling effect on adjudicatory deliberations as asking for the internal deliberations and memos of any other court in the midst of its decision-making process.

The Board should be subjected to proper oversight. But the Committee must be careful not to misuse its oversight authority to influence, or risk the appearance of improperly influencing, the outcome of pending cases.

¹ Case 15-RC-8733

² 29 USC 151 et. seq.

The Honorable John Kline
May 13, 2011
Page 2

Your request to the Board for deliberative documents does not come in a vacuum. It comes amidst multiple inquiries about this pending case as well as funding threats against the Board.

These include:

- On February 11, 2011, criticisms of the pending *Specialty* case were raised during a hearing before this Committee's Subcommittee on Health, Employment, Labor, and Pensions.
- On February 17, 2011, House Republicans attempted to eliminate all funding for the Board for the remainder of FY 2011 and on February 19, 2011 ultimately voted to cut the Board's budget by \$50 million.
- On April 6, 2011, Board Member Wilma Liebman and Acting General Counsel Lafe Solomon were questioned by Republican Labor/HHS Appropriations subcommittee members about the pending *Specialty* case during testimony before the subcommittee on the Board's FY 2012 budget request.

This context only heightens my concern about the problematic nature of the current request.

The Board has a statutory job to do. Private parties have due process rights before the Board. The Committee has oversight responsibilities. These rights and responsibilities need not conflict with one another. While people may disagree with Board decisions or policy, the Committee must take care to not interfere with the fair adjudication of cases before the Board.

The Board's independence and integrity must be maintained. While making a request of this nature during pendency of the case is itself problematic, such action is difficult to undo. I continue to believe that your request for deliberative documents of a pending case puts us in uncharted territory and is extremely troubling.

To ensure the integrity of the adjudicatory process, I once again ask that you suspend your request for the deliberative documents at least until the case is no longer pending before the Board.

Sincerely,



GEORGE MILLER
Senior Democratic Member

cc: The Honorable Darrell Issa, Chairman
House Committee on Oversight and Government Reform
The Honorable Elijah Cummings, Ranking Member
House Committee on Oversight and Government Reform