

Congress of the United States
Washington, D.C. 20515

August 6, 2020

The Honorable John Ring
Chairman
National Labor Relations Board
1015 Half Street, SE
Washington, D.C. 20570-0001

Dear Chairman Ring:

We are extremely concerned about reports that the General Counsel of the National Labor Relations Board (NLRB) plans to reorganize seven Regional Offices on August 17, 2020, under the guise of a “District IV Resource Sharing Plan.”¹ We understand that the NLRB intends to require each affected Regional Director to select a representative to serve on a monthly rotation with the task of assigning incoming cases to staff throughout the seven Regional Offices, including to Regional Offices other than where the charge was originally filed. We have also learned that this restructuring will involve the involuntary transfer of agency employees as well as reassigning NLRB employees from one of the busiest Regional Offices to Regional Offices with fewer cases.

This proposal would appear to undermine the NLRB’s ability to fairly and effectively protect workers’ rights under the National Labor Relations Act (NLRA). When a worker files a charge with the NLRB alleging that his or her employer committed an unfair labor practice, the Regional Director plays a unique and critical role in investigating, litigating, and settling the case. This is because the Regional Directors are experts in both labor law and the labor-management issues of the Regions where they serve, with decades of experience serving under both Republican- and Democratic-appointed General Counsels. There is no reason to sideline the Regional Directors’ expertise and shift the authority to assign and handle incoming cases away from the Regions.

Moreover, we are concerned that this effort is the latest by the Office of the General Counsel to usurp the authority of the Chairman and Members of the NLRB.² Congress has previously raised concerns about this issue when the General Counsel directed all Regional Directors to suspend representation elections in March.³ The NLRB’s Rules and Regulations provide the Regional Directors with discretion over the conduct of elections “unless otherwise directed by the Board,” but the General Counsel’s directive prohibited them from exercising their discretion to direct

¹ We understand that this restructuring plan will include the Regional Offices that constitute District IV: Region 19 (Seattle), Region 20 (San Francisco), Region 21 (Los Angeles), Region 27 (Denver), Region 28 (Phoenix), Region 31 (Los Angeles), and Region 32 (Oakland).

² See, e.g., *Changes to Case Processing Part 1*, Memorandum ICG 18-06 (July 30, 2018) (directing new procedures for assigning decision-writers in representation cases); Plan of Action for Regional Offices (Mar. 16, 2020) (directing Regional Directors to “postpone currently scheduled elections and hearings through March 31” instead of deferring to the Regional Directors).

³ See Letter from Rep. Robert C. “Bobby” Scott, Chairman of the House of Representatives Committee on Education and Labor, to Hon. John Ring, Chairman of the National Labor Relations Board (Mar. 31, 2020).

mail ballot elections. To date, the NLRB has not informed Congress of any authority permitting the General Counsel to interfere with that discretion over representation elections.

In this instance, the NLRB's delegation of authority and assigned responsibilities to the General Counsel, pursuant to Section 3 of the NLRA, states that "[t]he appointment, transfer, demotion, or discharge of any Regional Director or of any Officer-in-Charge of a Subregional office shall be made by the General Counsel only upon approval of the Board."⁴ By stripping the Regional Directors of the key responsibility of assigning cases to staff and managing those cases, this action qualifies as a demotion and cannot be implemented without approval of the Board.⁵ We are concerned that the Members of the Board are neglecting their duties while the General Counsel enacts sweeping changes to the agency that are beyond his statutory authority.⁶

One effect of this reorganization will be the demotion of three Black Regional Directors, two of whom are among the most senior Regional Directors in the entire agency. Ronald K. Hooks, Cornele A. Overstreet, and Valerie Hardy-Mahoney have established reputations as seasoned attorneys, but the reorganization's focus on the west coast Regional Offices will strip all three Regional Directors of core responsibilities. Six Regional Directors out of 24 are people of color. The plan we are aware of would demote half of the Regional Directors of color. In addition, fewer than half of all Regional Directors are women; under this reorganization four women would be demoted, further exacerbating existing underrepresentation. Thus, there are questions about the justification for initiating this process as well as the effect any reorganization would have on the diversity of the agency's senior staff.

We therefore request that the NLRB suspend the current reorganization plan until the agency provides full transparency to Congress and the public, including a public notice and comment period, and the Board exercises its duties under the NLRA and its delegation of authority and assigned responsibilities to the General Counsel. As part of the transparency process, we request that you please provide the following information not later than August 17, 2020:

1. All documents indicating that the General Counsel briefed the Board on the development and implementation of the District IV Resource Sharing Plan or any reorganization of the Regional Offices. If the General Counsel briefed the Board, please provide the Board decision authorizing the reorganization. If the General Counsel did not brief the Board, please include a detailed explanation on the rationale for permitting the General Counsel to develop and implement the District IV Resource Sharing Plan without requiring the Board to first deliberate on the plan.

⁴ *Further Amendment to Memorandum Describing Authority and Assigned Responsibilities of the General Counsel*, 77 Fed. Reg. 45696 (Jul. 27, 2012).

⁵ This permanent removal of a key responsibility goes much further than previous efforts such as the Interregional Assistance Program, which only engaged in temporary resource-sharing upon a Regional Director's expressing a specific need.

⁶ 29 U.S.C. § 153 (detailing the composition and duties of the Board and General Counsel).

2. All documents detailing or relating to the District IV Resource Sharing Plan, including any documents detailing or relating to the process for assigning cases or the involuntary transfer of NLRB staff.
3. All communications about the development or implementation of the District IV Resource Sharing Plan between you, your staff, or any Member of the Board or staff for a Member of the Board, and the following individual(s):
 - a. The General Counsel or any person employed by the Office of the General Counsel, including the Division of Operations-Management;
 - b. Any Regional Director or employee of a Regional Office; and
 - c. Any person outside the NLRB.
4. All communications on the development or implementation of Memorandum ICG 18-06, regarding the centralization of decision-writing in representation cases, between you, your staff, or any Member of the Board or staff for a Member of the Board, and the following individual(s):
 - a. The General Counsel or any person employed by the Office of the General Counsel, including the Division of Operations-Management;
 - b. Any Regional Director or employee of a Regional Office; and
 - c. Any person outside the NLRB.
5. A detailed description of whether a plan similar to the District IV Resource Sharing Plan is being considered in any other district of the NLRB. Please include all documents and communications related to any such plan, including but not limited to solicitation of comments and related responses, between you or any person employed by your office and the following individual(s):
 - a. The General Counsel or any person employed by the Office of the General Counsel, including the Division of Operations-Management;
 - b. Any Regional Director or employee of a Regional Office; and
 - c. Any person outside the NLRB.
6. A detailed description of any plans related to the mandatory reopening of Regional Offices and terminating Regional Directors' discretion to continue operations virtually during the COVID-19 pandemic. Please include any communications related to this plan, including but not limited to solicitation of comments and related responses, between you or any person employed by your office and the following individual(s):
 - a. The General Counsel or any person employed by the Office of the General Counsel, including the Division of Operations-Management;
 - b. Any Regional Director or employee of a Regional Office; and
 - c. Any person outside the NLRB.

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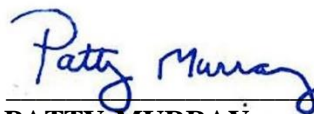
If you have any questions or would like to discuss compliance with this request, please contact Kyle deCant at Kyle.deCant@mail.house.gov for the House Committee on Education and Labor (Majority staff), Yeongsik Kim at Yeongsik_Kim@help.senate.gov for the Senate HELP Committee (Minority staff), and Philip Tizzani at Philip.Tizzani@mail.house.gov for the House Committee on Appropriations' Subcommittee on Labor, Health and Human Services, Education, and Related Agencies (Majority staff). Please direct all official correspondence to Tylease Alli, Chief Clerk for the House Committee on Education and Labor (Majority staff) at Tylease.Alli@mail.house.gov, Yeongsik Kim for the Senate HELP Committee (Minority staff), and Philip Tizzani for the House Committee on Appropriations' Subcommittee on Labor, Health and Human Services, Education, and Related Agencies (Majority staff).

Thank you for your attention to this matter, and we look forward to your response.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chairman
House Committee on Education and Labor



PATTY MURRAY
Ranking Member
Senate Committee on Health, Education,
Labor, and Pensions



ROSA L. DELAURO
Chair
Subcommittee on Labor, Health and
Human Services, Education, and Related
Agencies
Committee on Appropriations