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AND THE WORKFORCE
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March 27, 2023

The Honorable Virginia Foxx
Chairwoman
Committee on Education and the Workforce
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Foxx:

I write regarding the subpoena for documents you sent last week to an employee of the National Labor Relations Board (NLRB). The rash manner in which the subpoena was issued undermines the seriousness of Congress's oversight power. The requisite notice is incomplete pursuant to Committee Rule 10 and lacked meaningful consultation; accordingly, it does not meet the requirements of Committee rules. In addition, the subpoena fails to comply with the standards of the House Ethics Committee.

The Subpoena is Defective Pursuant to Committee Rule 10

During my time as Committee Chair, I respectfully notified you well in advance of any decisions to issue a subpoena and exhausted all options before issuing a subpoena. Rule 10 requires that, "To the extent practicable, the Chair shall consult with the Ranking Member at least 24 hours in advance of a subpoena being issued..."¹ Although your staff provided mine with approximately 24-hours' notice in advance of the issuance of "a subpoena to a career employee at one of the agencies within the Committee's jurisdiction," my staff did not learn more information about the subpoena until it read about the subpoena in news reports that were published before your office even transmitted the subpoena to mine. The subpoena of a career employee at the NLRB was not even noticed to me, and I certainly was not consulted.

¹ The Rules of the H. Comm. on Educ. and the Workforce (118th Cong.), Rule 10
https://edworkforce.house.gov/uploadedfiles/118th_ew_committee_rules.pdf.

Committee Rule 10 also requires that, “As soon as practicable after issuing the subpoena under such authority, the Chair shall notify in writing all members of the Committee of the issuance of the subpoena.” Almost a week following the issuance of the subpoena, you have still not provided the notice required under the Rule. This lack of notice to the Members of the Committee is a clear violation of Committee Rule 10, thereby demonstrating that this subpoena has not been legitimately issued.

The Subpoena Violates the Standards of the House Committee on Ethics

The subject of the subpoena is pending before the NLRB’s Regional Director and before its Inspector General (IG), and the cover letter of your subpoena (not shared with me or my staff) makes allegations about the completeness of the NLRB Hearing Officer’s report while that report is still pending under the Regional Director’s review.² By intervening in pending matters, this subpoena contradicts guidelines set forth in the House Ethics Manual regarding judicial limitations on communications with federal agencies³:

[W]hen such an investigation focuses directly and substantially upon the mental decisional processes of a Commission *in a case which is pending before it*, Congress is no longer intervening in the agency’s *legislative* function, but rather its *judicial* function. At this latter point, [federal courts] become concerned with the right of private litigants . . . to the appearance of impartiality, which cannot be maintained unless those who exercise the judicial function are free from powerful external influences.⁴

Rather than permit the NLRB and its IG to complete their work, the subpoena applies undue pressure on the agency by requiring production of documents regarding employees’ “impartiality” and other mental decisional processes.⁵ In fact, the NLRB contacted both of our staff on March 24 and 26, noting that the subpoenaed employee’s counsel has reached out to your staff requesting that you narrow the scope of the subpoena, and the NLRB has sought to meet with both of our staff on the matter. Your office refused to engage with the agency and has not yet granted the employee’s request. This interference in pending matters is inconsistent with the above-referenced guidance in the Ethics Manual.

The subpoena also fails to follow the House Ethics Manual’s requirement that “official resources should not be devoted to doing the work of private businesses.”⁶ The letter you led on August 24, 2022, requesting an IG investigation into this matter explicitly relied only upon allegations

² Letter from Virginia Foxx, Chairwoman, H. Comm. on Educ. & the Workforce, to Rebecca A. Dormon, Assistant to the Regional Director, NLRB Region 15 (Mar. 22, 2023) https://edworkforce.house.gov/uploadedfiles/letter_from_chairwoman_foxx_march_22_2023.pdf.

³ U.S. House of Representatives Committee on Ethics, House Ethics Manual, p. 303 (citing *Pillsbury Co. v. FTC*, 354 F.2d 952 (5th Cir. 1966)).

⁴ *Pillsbury*, 354 F.2d at 964.

⁵ See Subpoena Schedule of Documents.

⁶ House of Representatives Ethics Manual, p. 313.

already made in Starbucks's own letter from August 15,⁷ and the current subpoena now interferes with the very IG investigation you requested. Moreover, the subpoenaed documents are required to be produced on the same date and at the same time as a long-scheduled Senate hearing involving similar issues.⁸ The timing of the subpoena advantages the company before another Chamber of Congress by acquiring internal agency documents in a matter currently under investigation. Indeed, Starbucks has made it publicly known that the subpoena is to its satisfaction.⁹

It is the Right of the Minority to Receive All Information Provided to the Majority

Pursuant to Clause 2(e)(2)(A) of Rule XI of the Rules of the U.S. House of Representatives, all Members of the House of Representatives are entitled to access all records of a Committee. This includes all information produced as a result of a subpoena. Moreover, Clause 9(g) of Rule X of the Rules of the U.S. House of Representatives states that Minority staff must be accorded equitable treatment, including with regard to access to committee records. Therefore, I hereby request that the Majority provide to the Minority a copy of all items received pursuant to the subpoena.

This subpoena was issued in violation of the rules of this Committee and the standards of the House Committee on Ethics. It interferes in a pending NLRB case and a pending IG investigation. Going forward, we should coordinate with the NLRB in order to conduct proper oversight.

Sincerely,



Robert C. "Bobby" Scott
Ranking Member

⁷ Compare Letter from Virginia Foxx, Ranking Member, House Committee on Education and Labor, et al., to David P. Berry, Inspector General, National Labor Relations Board (Aug. 24, 2022) https://edworkforce.house.gov/uploadedfiles/08.24.22_-_letter_to_nlrp_ig_re_nlrp_interference_in_starbucks_elections.pdf with Letter from Zabrina Jenkins, Acting Executive Vice President and General Counsel, and Kimberly J. Doud, Counsel, Starbucks, to Lauren McFerran, Chair, and Jennifer Abruzzo, General Counsel, National Labor Relations Board (Aug. 15, 2022).

⁸ Compare Subpoena with Sen. Comm. on Health, Educ., Labor & Pensions, *No Company is Above the Law: The Need to End Illegal Union Busting at Starbucks* (Mar. 29, 2023), <https://www.help.senate.gov/hearings/no-company-is-above-the-law-the-need-to-end-illegal-union-busting-at-starbucks>.

⁹ Jarrell Dillard, *Starbucks Gets an Ally in Its Union Fight as House Republicans Probe Labor Board*, Bloomberg (Mar. 22, 2023) ("A Starbucks spokesman said the company is pleased to learn of the development.") <https://www.bloomberg.com/news/articles/2023-03-22/starbucks-gets-ally-in-union-fight-with-house-gop-probe-of-nlrp?leadSource=verify%20wall>.

cc: The Honorable Jennifer Abruzzo
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