Description of document:	Written responses or letters from the National Labor Relations Board (NLRB) to a Congressional Committee or Committee Chair, 2012 - 2013
Requested date:	18-April-2013
Released date:	07-June-2013
Posted date:	18-November-2013
Source of document:	NLRB FOIA Officer National Labor Relations Board 1099 14th Street, N.W., Room 10600 Washington, D.C. 20570 Fax: (202) 273-FOIA (3642)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL

FREEDOM OF INFORMATION OFFICE
Washington, D.C. 20570

DATE: June 7, 2013

Re: FOIA ID/LR-2013-0470
ES-2013-0025

This is the final response to your FOIA request, dated April 18, 2013, and received in this Office on April 26, 2013, in which you seek copies of written responses or letters from the NLRB to congressional committees (not congressional offices) (or committee chairs) for calendar years 2012 and 2013 to the present. You exclude from the scope of your request periodic reports and constituent responses to congressional offices.

Interim responses were sent to you on May 10, and May 24, 2013.

In accordance with the FOIA, the Agency has conducted a reasonable search for any responsive documents as of April 26, 2013. As to your request from the General Counsel's side of the Agency, my Office made inquiries of the Division of Operations-Management and the Office of the General Counsel. The Division of Operations-Management reported that they conducted a search of their records and found no responsive documents. The Office of the General Counsel found 51 pages of responsive documents. Those documents are enclosed.

As to your request from the Board-side of the Agency, the Office of the Executive Secretary made inquiries of the Board Chairman and Members, and the Special Counsel for Congressional and Intergovernmental Affairs and found 20 pages of responsive documents. Those documents are enclosed.

For the purpose of assessing fees, I have placed you in Category III, "all other requesters" category. As a requester in this category, you will not be charged for the first 100 pages of duplication or the first two hours of search time. **NLRB Rules and Regulations, 29 C.F.R § 102.117(d)(2)(ii)(D).** Accordingly, there is no charge for processing this FOIA request.

As to the above determination from the General Counsel's side of the Agency, the undersigned is responsible for the determination. You may obtain a review thereof under the provisions of the NLRB's Rules and Regulations, Section 102.117(c)(2)(v), by filing an appeal with the General Counsel, Office of Appeals, National Labor Relations Board, Washington, D.C., 20570, within 28 calendar days of the date of this letter. Thus, the appeal must be received by the close of business at 5:00 p.m. (ET) on July 5, 2013. Any appeal should contain a complete statement of the reasons upon which it is based. Questions concerning an appeal of this determination should be directed to the Office of Appeals.

As to the above determination from the Board-side of the Agency, the undersigned is responsible for the determination. To the extent you wish to appeal this determination, you may, pursuant to the NLRB Rules and Regulations, Section 102.117(c)(2)(v), file an appeal with the Chairman of the Board, National Labor Relations Board, Washington, D.C., 20570, within 28 calendar days of the date of this letter, that is, on or before July 5, 2013. Questions concerning an appeal of this determination should be directed to the Office of the Chairman.

Sincerely,

Jacqueline A. Young
Freedom of Information Officer

Enclosures

pl/kmb
LR-2013-0470.final
ES-2013-0025.final

UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

October 5, 2012

The Honorable John Kline, Chairman
U.S. House Committee on Education and the Workforce
2181 Rayburn House Office Building
Washington, D.C. 20515-6100

Dear Chairman Kline:

Please find enclosed a CD containing documents responsive to the Committee's August 8, 2012 request for information. In addition, Agency staff has contacted Committee staff to arrange the briefing requested in the August 8 letter.

Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at (202) 273-3700 if you would like additional assistance regarding this matter.

Sincerely,

William Cowen
Solicitor

Enclosures

cc: The Honorable George Miller, Ranking Minority Member
Committee on Education and the Workforce

United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlrb.gov

May 23, 2012

The Honorable John Kline, Chairman
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Chairman Kline:

I write in response to your May 9, 2012 letter regarding Guidance Memorandum GC 12-04. As you may know, on May 15, 2012, the Office of the General Counsel withdrew that memorandum and directed Regional Directors to process petitions under the procedures in effect before April 30, 2012.

Prior to the short-lived implementation of that memorandum, Regional practices with regard to scheduling pre-election hearings after the filing of a petition lacked uniformity and varied widely. For example, at the time that memorandum was issued, after a petition was filed, the notice of hearing initially scheduled the hearing in: 10 days in 19 offices, 7 days (or 5 "working days") in six offices, 8-10 days in two offices, 10-12 days in two offices, 7-10 days in one office, 9-12 days in one office, and 10-14 days in one office. No Region initially scheduled hearings to take place more than 14 days after the filing of a petition.

Although the Regions have reverted to their prior practices with respect to the scheduling of pre-election hearings, they will maintain their practice, which has been in place since at least 1990, that postponements should not be granted unless good and sufficient grounds are shown. In fact, since 1998 Regions have been instructed to open hearings within 10 – 14 days from the filing of the petition, whenever possible.[1] As you may know, Regional Directors have broad discretion to adapt the proceedings to the facts of individual cases.[2] The standard for determining whether a postponement should be granted is intended to be sufficiently broad to encompass a variety of circumstances and situations. As a result, the average length of time between filing a petition and the opening of a hearing, from October 2006 through August 2011, was 15 days.[3] While Regions do not initially schedule, as a matter of practice, pre-election between filing a petition and the actual opening of a hearing during the same period was 14 days. Finally, it is important to note that in about 90 percent of the cases,

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[1] Memorandum GC 98-1, *Representation Cases Best Practices Report*, Attachment at 3 (January 26, 1998).
[2] *See* NLRB Casehandling Manual, Part Two, Representation Elections, § 11140 ("Prior to the opening of a hearing, the Regional Director retains full authority with regard to a notice of hearing that has issued and may amend a notice of hearing, if need be, at any time prior to the opening of the hearing.").
[3] Cases blocked by unfair labor practice charges were not included in the calculation of the average.

with Board agent assistance, the parties agree to the election details, including the appropriate unit, the payroll period to be used in determining which employees in the appropriate unit are eligible to vote, and the method, place, date, and hours of voting. I am confident that utilizing the established standard for determining when postponement requests should be granted will continue to allow Regional Directors to evaluate the facts of each case, reaching decisions that ensure fairness to all the parties while avoiding unnecessary delay.

Enclosed please find documents and information related to the practices of each Region with respect to scheduling pre-election hearings and postponement of pre-election hearings. Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at 202-273-3700 if you would like additional assistance regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable George Miller, Ranking Minority Member
Committee on Education and the Workforce

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2181 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6100

May 9, 2012

Lafe E. Solomon
Acting General Counsel
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Dear Acting General Counsel Solomon:

I respectfully request information, documents, and communications relating to the new National Labor Relations Board (NLRB) policy requiring that representational pre-election hearings be scheduled seven days from the date the Notice of Representation Hearing (NOH) is issued. The Workforce Democracy and Fairness Act, passed last year by the U.S. House of Representatives, required at least 14 days between the NOH and the pre-election hearing. The 14 days would provide employers with a fair opportunity to hire an attorney, identify issues, and prepare their case for the pre-election hearing and give parties an opportunity to compromise and agree on election issues. Ensuring a fair pre-election hearing, an opportunity for compromise and agreement, and the ability of employees to make an informed decision with respect to union representation continues to be a priority for the committee.

On June 22, 2011, the NLRB proposed a number of changes to the union representational election process, including requiring the pre-election hearing to be scheduled seven days after the issuance of the NOH absent special circumstances. Small employers were particularly concerned with this requirement, as many had no previous experience with union elections or NLRB procedures. On July 7, 2011, John Carew, President of Carew Concrete & Supply Company, stated before the House Committee on Education and the Workforce that "it frequently takes longer than seven days to find and hire a consultant to advise them on their rights, abilities, and the complexity of union election regulations."[1] By the close of the comment

[1] Rushing Union Elections: Protecting the Interests of Big Labor at the Expense of Workers' Free Choice, Hearing before the Education and the Workforce Committee, 112th Cong., 1st Sess. at 3 (2011) (written testimony of John Carew).

period, the Board had received more than 65,000 public submissions.[2] Many of the comments argued the proposal would significantly shorten the time between the petition and the election, thus limiting employer free speech and employee free choice.[3]

Six months after introduction of the proposed rules, on December 21, 2011, the NLRB issued a final rule implementing a portion of the proposed rule. The seven day pre-election hearing requirement was not among those adopted. In the final rule, the Board specifically "decided to take no action at this time ... in order to permit more time for deliberation."[4]

Despite this clear statement that further deliberation by the Board was necessary, on April 26, 2012, you implemented a similar seven day pre-hearing requirement. Specifically, the new guidance requires NLRB regional offices to schedule the pre-election hearing seven days from the date of issuance of the NOH.[5] Under the new guidance, a postponement of seven days or less "will not be granted unless good and sufficient grounds are shown," and a postponement of more than seven days will only be granted in "extraordinary circumstances."[6] This new requirement could impede a fair pre-election hearing, particularly for small employers; reduce opportunities for compromise and agreement; and undermine a worker's ability to make an informed decision.

To ensure the new seven day requirement does not impede fair pre-election hearings, opportunities for compromise and agreement, or employee free choice, and to better understand the basis for this new requirement, please provide the following no later than May 23, 2012:

1. Documents and communications relating to the seven day pre-election hearing requirement, including any communications between the General Counsel's office and Board members;

2. Identify each NLRB regional office in which, prior to this guidance, it was the policy that pre-election hearings were scheduled seven days after the issuance of the NOH, and include the date in which this policy was implemented;

3. Identify each NLRB regional office in which, prior to this guidance, it was not the policy that pre-election hearings were scheduled seven days after the issuance of the NOH;

4. List each case since January 1, 2000, in which the time between the notice and pre-election hearing was extended or a request to extend the time between the notice and pre-election hearing was denied, including grounds for the denial or granting of the extension, the region in which the case occurred, the number days granted, and the size of the unit;

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[2] Regulations.gov, NLRB-2011-0002, RIN 3142-AA08, available at http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR;rpp=10;po=0;D=NLRB-2011-0002 (last visited 10/27/11).
[3] 76 FR 80138, 80150 (December 22, 2011).
[4] *Id.* at 80162.
[5] Office of the NLRB General Counsel Memorandum GC 12-04, pg. 4 (April 26, 2012).
[6] *Id.* at 5.

5. The annual average and median time between the notice and pre-election hearing nationally and by region since 2000; and

6. Documents and communications relating to what qualifies as "good and sufficient grounds" for extension.

If you have any questions regarding this request, please contact Marvin Kaplan, House Committee on Education and the Workforce Committee, at (202) 225-7101.

Sincerely,

JOHN KLINE
Chairman
Committee on Education and the Workforce

cc: The Honorable George Miller, Senior Democratic Member, Committee on Education and the Workforce

Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.

3. The Committee's preference is to receive documents in electronic form (i. e., CD, memory stick, or thumb drive) in lieu of paper productions.

4. Documents produced in electronic format should also be organized, identified, and indexed electronically.

5. Electronic document productions should be prepared according to the following standards:

   (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

   (b) Document numbers in the load file should match document Bates numbers and TIF file names.

   (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one *CD*, hard drive, memory stick, thumb drive, box or folder is produced, each *CD*, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.

8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.

9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.

11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.

12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.

14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.

16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.

18. Two sets of documents should be delivered, one set to the Majority Staff in Room 2181 of the Rayburn House Office Building and one set to the Minority Staff in Room 2101 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports. expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices. confirmations, telegrams. receipts. appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call. meeting or other communication. bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries. analyses, returns, summaries, minutes, bills, accounts, estimates, projections. comparisons, messages, correspondence, press releases. circulars. financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys. and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical. and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed. or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships. associations. corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal. business or government entities. and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains. embodies, reflect s, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlrb.gov

April 18, 2012

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

I write in response to your April 4, 2012, letter requesting information from January 20, 2009, to present about cases related to *Communications Workers of America et al. v. Beck et al.*, 487 U.S. 735 (1988). Your questions and my responses are set forth below.

1. Please expand on any personal interest you have in *Beck* issues.

My personal interest in *Beck* issues is not unlike my interest in other matters enumerated in Memorandum GC 11-11. It is, simply stated, to ensure that our statute is enforced. Since 1998, the Office of the General Counsel has consistently enforced the same policy with respect to *Beck* objectors. See, Memorandum GC 98-11, Guidelines Concerning Processing of *Beck* Cases, August 17, 1998. Over the last three years, cases involving *Beck* objectors have resulted in favorable Board decisions and workers have received offers of reinstatement, back pay, and dues and fees reimbursement totaling about $118,000.

2. How many alleged *Beck* violations are currently pending before the Office of the General Counsel? There are 118 alleged *Beck* violations currently pending in the Regional Offices of the Office of the General Counsel.

a. How many alleged *Beck* violations have resulted in the issuance of a complaint? 17

b. How many alleged *Beck* violations have resulted in the issuance of a settlement? 147

i. What type of relief has been provided to workers who received a settlement? Workers, who have alleged *Beck* violations in addition to other violations of the Act, have received a cumulative total of about $118,000.00 in back pay and dues and fees reimbursement, and 9 workers were offered reinstatement. For more details see the enclosed chart.

c. How many alleged *Beck* violations have been dismissed without the issuance of a complaint? Please explain the basis of each dismissal. 175. In fiscal year 2011, approximately 28% of all charges filed resulted in a settlement and approximately 6% of all charges filed resulted in the issuance of a complaint. Similar data for other fiscal years is available on the Agency's website at http://www.nlrb.gov/charges-and-complaints. Please see the enclosed chart to see a list of all closed cases. For all

cases dismissed on or after June 1, 2011, final dismissal letters should be posted on the Agency's website. Memorandum GC 11-12, Drafting and Redacting Agency Documents, April 29, 2011.

3. How many alleged *Beck* violations are pending before the Board? 3

a. How many alleged *Beck* violations have been decided by the Board? 7

b. How many of these cases have been decided in favor of the union? 1

c. How many of these cases have been decided in favor of the worker? 6

4. What is the average amount of time it takes the Office of the General Counsel to process an alleged *Beck* violation – from the filing date to a final disposition? Please provide an accounting of each alleged *Beck* violation and the length of time it took for the charge to reach a final disposition. 89.7 days. See enclosed chart.

a. How does the average amount of time it takes to process an alleged *Beck* violation compare to the average amount of time it takes to process other unfair labor practice charges? In fiscal year 2011, the Office of the General Counsel closed 72.5% of all C cases within 120 days. This data for other fiscal years can be found in the Agency's annual performance and accountability reports, which are available on line at http://www.nlrb.gov/annual-reports.

5. What is the average amount of time it takes for the Board to issue a decision in an alleged *Beck* violation? Please provide an accounting of each alleged *Beck* violation decided by the Board and the length of time it took to render a decision. Please see enclosed chart.

6. Does the Office of the General Counsel maintain the policy outlined in a 1998 General Counsel Memorandum that an unfair labor charge alleging improper agency fee charge should be dismissed if the objecting party generally asserts that he has been improperly charged?" The Office of the General Counsel maintains a policy in *Beck* cases, consistent with its policy with regard to other types of unfair labor practice allegations, that requires a charging party to present evidence and preliminary information which points to a prima facie case of a violation before the General Counsel will obtain and investigate the respondent's defense. NLRB Casehandling Manual, Unfair Labor Practices, Sec. 10054.4

a. Does the Office of the General Counsel maintain the policy that a worker must "present evidence or ... give promising leads that would lead to evidence that would support [a *Beck* violation]?" Under the policy set forth in the answer above, a *Beck* objector must provide some evidence, or at least a promising lead of evidence, in support of an assertion that he or she is being unlawfully charged for a particular expenditure identified by the union as representational. Memorandum GC 98-11, Guidelines Concerning Processing of *Beck* Cases, August 17, 1998. If he or she does not provide some such evidence or a promising lead of such evidence, the charge will be dismissed. Further, a *Beck* objector can always challenge the union's *Beck*-objector fee through the internal challenge procedure that the union is legally required to maintain, and the burden is on the union to establish that the expenditure is related to representational activities. Evidence presented during this proceeding can be used in support of an unfair labor practice charge filed with our Agency.

b. How does the Office of the General Counsel define a "promising lead?" As set forth in the answer above, a "promising lead" is evidence or information which points to a prima facie case of a violation. Charging parties can meet this burden by presenting evidence or other information that some of the expenditures claimed as chargeable were for non-representational activities. If a charging party raises a question regarding the chargeability of a category of expenses that could potentially include non-representational matters (e.g., the cost of a union news letter, which often address both non-representational and representational issues), the Office of the General Counsel would seek the union's explanation as to why those expenses were treated as representational and, if that explanation is not satisfactory, a complaint would issue.

c. How many cases have been dismissed by the Office of the General Counsel because a worker could not "present evidence" or a "promising lead" of an alleged *Beck* violation? 1

7. Does the Office of the General Counsel maintain the policy that "cases raising questions as to whether the charging party has met [the evidence burden] should be submitted to the Division of Advice?" Although Regional Offices were originally directed to submit these cases to the Division of Advice, there has been no such instruction in place since 2002. However, Regional Offices have the discretion to submit any case to the Division of Advice. Since January 20, 2009, there have been two such cases submitted.

a. If so, how many cases of alleged *Beck* violations has the Division of Advice determined to have met the burden? 1

b. How many cases of alleged *Beck* violations has the Division of Advice determined has not met the burden? 1

8. Does the Office of the General Counsel maintain the policy that the union must verify by an audit that the chargeable and non-chargeable expenditures were made? The Office of the General Counsel follows extant Board law, which requires that unions verify by an independent audit that the claimed chargeable and non-chargeable expenditures were made. See *Television Artists AFTRA (KGW Radio)*, 327 NLRB 474 (1999).

9. How many cases have been referred to the Division of Advice concerning the "type and level of audits unions must give *Beck* objectors?" 1

a. What is the current status of such cases? The Division of Advice authorized complaint and the case is pending.

b. How many resulted in the issuance of a complaint? 1

c. How many have been dismissed? 0

d. How many are pending before the Board? 0

10. How many cases have been referred to the Division of Advice that concern "whether *Beck* objectors are entitled to audits along with the notice of their *Beck* rights?" 0

a. What is the current status of such cases? N/A

b. How many resulted in the issuance of complaint? N/A

c. How many have been dismissed? N/A

d. How many are pending before the Board? N/A

11. Did you participate in advising the Board in its issuance of the "Employees Rights Under the National Labor Relations Act" poster rule? If so did you advise the Board they should consider including in the notice notification of a workers' *Beck* rights under the National Labor Relations Act in the poster? If not, why not? No, I did not participate in advising the Board in its issuance of the "Employees Rights Under the National Labor Relations Act" poster rule.

Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at (202) 273-3700 if you would like additional assistance regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143

MAJORITY (202) 225–5074
FACSIMILE (202) 225–3974
MINORITY (202) 225–5051
http://oversight.house.gov

April 4, 2011

Mr. Lafe Solomon
Acting General Counsel
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570-0001

Dear Mr. Solomon:

The House Committee on Oversight and Government Reform is examining the use of union dues and fees to fund political causes contrary to the will of many union workers. On February 8, 2012, the Committee held a hearing entitled, "The Right to Choose: Protecting Union Workers from Forced Political Contributions," that featured three union workers who testified that their rights are being violated by the use of their dues to support political activity. The full hearing video and testimony of all of the witnesses are available at http://issues.oversight.house.gov/worker-rights. I write to request additional information to further inform the Committee in its oversight of these issues.

It is indisputable that union political speech is subject to First Amendment protections; however, the First Amendment also protects against compelled speech of union workers. Indeed, the U.S. Supreme Court has long recognized that constitutional and statutory protections exist to protect a limited number of union workers from forced political contributions.[1] In a significant victory for these union workers, the Supreme Court held in *Communications Workers of America et al. v. Beck et al.*, that the National Labor Relations Act does not allow a union, over the objection of dues-paying nonmember workers, to spend fees on activities unrelated to collective bargaining and other representational activities.[2] Subsequent to this decision, the National Labor Relations Board (NLRB) mandated that unions abide by limited notification procedures to inform a union worker of their *Beck* rights and to object to non-representational expenditures by the union.[3]

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[1] *See, International Association of Machinists v. Street*, 367 U.S. 740 (1961); *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977); *Chicago Teachers Union, Local No. 1 v. Hudson*, 475 U.S. 292 (1986).
[2] *Communications Workers of America et al. v. Beck et al.*, 487 U.S. 735 (1988).
[3] *See, California Saw*, 320 NLRB 224, 233 (1995), enf'd 133 F.3d 1012 (7th Cir. 1998).

Nevertheless, worker rights advocates have expressed concern that significant government and union-imposed barriers remain for workers to exercise their rights.[4] Federal notification requirements have been rolled back under the Obama Administration, and Terry Bowman, a "proud" UAW member, testified at the hearing that he believes the UAW places only a "small paragraph" in its Solidarity Magazine just once a year to notify its workers about their *Beck* rights.[5] Further, it appears that the UAW requires that *Beck* objections must be renewed each year.[6] Disturbingly, Mr. Bowman explained that "workers who [do] exercise their *Beck* rights are frequently the victims of humiliation, persecution and harassment on the job for resigning their union membership, and union officials do nothing to stop or even discourage this intimidating tactic."[7]

It appears that "*Beck* issues" are a "policy issue in which [you are] particularly interested."[8] In light of this interest, and to assist the Committee in its examination of these issues, I request that you answer the following questions and provide relevant documents to substantiate your responses from the time period January 20, 2009, to present. A response is requested by April 18, 2012. For the purpose of the questions, an alleged "*Beck* violation" is defined as the collection of union fees as a condition of employment in excess of what is permitted under the Supreme Court's decision in *Communications Workers v. Beck* or without providing one or more of the procedural protections required under *Beck* as applied by the courts and the Board.

1. Please expand on any personal interest you have in *Beck* issues.

2. How many alleged *Beck* violations are currently pending before the Office of General Counsel?

    a. How many alleged *Beck* violations have resulted in the issuance of a complaint?

    b. How many alleged *Beck* violations have resulted in a settlement?

        i. What type of relief has been provided to workers who received a settlement?

    c. How many alleged *Beck* violations have been dismissed without the issuance of a complaint? Please explain the basis for each dismissal.

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[4] Raymond J. LaJeunesse, Jr., Esq, Workers' Experiences in Attempting to Exercise Their Rights Under Communications Workers v. Beck and Related Cases, Engage Volume 3 Apr. 2002.
[5] *The Right to Choose: Protecting Union Workers from Forced Political Contributions: Hearing Before the H. Comm. on Oversight & Govt. Reform,* 112th Cong. (2012) (Testimony of Terry Bowman).
[6] *See* UAW About, "Notice to persons covered by union security agreements regulated under National Labor Relations Act," *available at* http://www.uaw.org/page/notice-persons-covered-union-security-agreements-regulated-under-national-labor-relations-act (last visited March 8, 2012).
[7] *The Right to Choose: Protecting Union Workers from Forced Political Contributions: Hearing Before the H. Comm. on Oversight & Govt. Reform,* 112th Cong. (2012) (Testimony of Terry Bowman).
[8] Memorandum GC 11-11, Office of the General Counsel, *Mandatory Submissions to Advice*, Apr. 12, 2011.

3. How many alleged *Beck* violations are pending before the Board?
    a. How many alleged *Beck* violations have been decided by the Board?

    b. How many of these cases have been decided in favor of the union?

    c. How many of these cases have been decided in favor of the worker?

4. What is the average amount of time it takes the Office of General Counsel to process an alleged *Beck* violation—from the filing date to a final disposition? Please provide an accounting of each alleged *Beck* violation and the length of time it took for the charge to reach a final disposition.

    a. How does the average amount of time it takes to process an alleged *Beck* violation compare to the average amount of time it takes to process other unfair labor practice charges?

5. What is the average amount of time it takes for the Board to issue a decision in an alleged *Beck* violation? Please provide an accounting of each alleged *Beck* violation decided by the Board and the length of time it took to render a decision.

6. Does the Office of General Counsel maintain the policy outlined in a 1998 General Counsel Memorandum that "an unfair labor charge alleging improper agency fee charges should be dismissed if the objecting party generally asserts that he has been improperly charged?"[9]

    a. Does the Office of General Counsel maintain the policy that a worker must "present evidence or … give promising leads that would lead to evidence that would support [a *Beck* violation]?"[10]

    b. How does the Office of General Counsel define a "promising lead?"

    c. How many cases have been dismissed by Office of General Counsel because a worker could not "present evidence" or a "promising lead" of an alleged *Beck* violation?

7. Does the Office of General Counsel maintain the policy that "cases raising questions as to whether the charging party has met [the evidence burden] should be submitted to the Division of Advice?"[11]

    a. If so, how many cases of alleged *Beck* violations has the Division of Advice determined to have met the burden?

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[9] Memorandum GC 98-11, Office of the General Counsel, *Guidelines Concerning Processing of Beck Cases*, Aug. 17, 1998.
[10] *Id.*
[11] *Id.*

b. How many cases of alleged *Beck* violations has the Division of Advice determined has not met the burden?

8. Does the Office of General Counsel maintain the policy that the union must verify by an audit that the chargeable and non chargeable expenditures claimed were made?

9. How many cases have been referred to the Division of Advice concerning "the type and level of audits unions must give *Beck* objectors?"[12]

   a. What is the current status of such cases?

   b. How many have resulted in the issuance a complaint?

   c. How many have been dismissed?

   d. How many are pending before the Board?

10. How many cases have been referred to the Division of Advice that concern "whether *Beck* objectors are entitled to audits along with the notice of their *Beck* rights?"[13]

    a. What is the current status of such cases?

    b. How many resulted in the issuance of a complaint?

    c. How many have been dismissed?

    d. How many are pending before the Board?

11. Did you participate in advising the Board in its issuance of the "Employee Rights Under the National Labor Relations Act" poster rule?[14] If so, did you advise the Board that they should consider including in the notice notification of a workers' *Beck* rights under the National Labor Relations Act in the poster? If not, why not?

In preparing your answers to these questions, please answer each question individually and include the text of each question with your response. When producing documents to the Committee, please deliver production sets to the Majority Staff in room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

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[12] Memorandum GC 11-11, Office of the General Counsel, *Mandatory Submissions to Advice*, Apr. 12, 2011.
[13] *Id.*
[14] *See* National Labor Relations Act, Employee Rights under the National Labor Relations Act, *available at* http://www.nlrb.gov/sites/default/files/documents/1562/employeerightsposter-8-5x11.pdf.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

If you have any questions about this request, please contact the Committee at 202-225-5074. Thank you for your attention to this matter.

Sincerely,

Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143

Majority (202) 225–5074
Minority (202) 225–5051

Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.

3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.

4. Documents produced in electronic format should also be organized, identified, and indexed electronically.

5. Electronic document productions should be prepared according to the following standards:

   (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

   (b) Document numbers in the load file should match document Bates numbers and TIF file names.

   (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.

8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.

9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.

11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.

12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.

14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.

16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.

18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157of the Rayburn House Office Building and the Minority Staff in Room 2471of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

April 13, 2012

The Honorable John Kline, Chairman
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Chairman Kline:

Thank you for your interest in the efforts of the National Labor Relations Board (the Agency) to inform employers and employees about the right under the National Labor Relations Act (the Act) to engage in protected concerted activity. These efforts to ensure proper administration of the Act have enjoyed broad support on both the Board and General Counsel side of the Agency.

The effort began in 2006 when former General Counsel Ronald Meisburg announced his intention to contact high schools, trade schools, local community colleges and other community organizations to provide information about the types of cases the Agency handles, "including those involving concerted protected activities as well as union activities."[1] In the Agency's fiscal year 2007 Performance and Accountability Report, General Counsel Meisburg noted that under the Act "workers are also afforded workplace protections for engaging in... protected concerted activities, and it is these protections of which workers need to be informed."[2] He announced further that under his expanded outreach program, "NLRB agents independently or also in partnership with others such as the Equal Employment Opportunity Commission, are initiating contact with schools, community groups, churches, *business organizations*, and others to provide information about the NLRB, and the rights and obligations under the NLRA *applicable not only to employers and unions, but also to individual workers.*"[3] General Counsel Meisburg continued this program through the end his tenure and the Agency has remained committed to it since his departure.[4]

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[1] *Outreach to Promote Broader Awareness of the Act*, Memorandum OM 06-66, May 11, 2006.
[2] The National Labor Relations Board Performance and Accountability Report (PAR) Fiscal Year 2007 at 4.
[3] *Id.* (emphasis added).
[4] *See* PAR 2008 and 2009.

In 2011, the Agency recognized that new advancements in technology and communications required renewed focus on informing employers and employees about their rights and responsibilities related to protected concerted activity. At the time, Acting General Counsel Solomon noted that "[r]ecent developments in the Office of the General Counsel have presented emerging issues concerning the protected and/or concerted nature of employees' Facebook and Twitter and postings, the coercive impact of a union's Facebook and YouTube postings, and the lawfulness of employers' social media policies and rules."[5] The Office of the General Counsel continued to report on the issue[6] and, in March of this year, Chairman Pearce directed his staff to develop a webpage to explain protected concerted activity in way that is more accessible to employers and employees. The webpage will be completed within a month. In addition, the Agency has continued the outreach initiative begun by former General Counsel Meisburg.

For your convenience, we have enclosed a number of documents that outline the origins and history of our efforts to inform the public about their rights and responsibilities under the Act to engage in protected concerted activity. Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at (202) 273-3700 if you would like additional assistance regarding this matter.

Sincerely,

William B. Cowen
Solicitor

cc: The Honorable George Miller, Ranking Member,
House Committee on Education and the Workforce

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[5] *Report of the Acting General Counsel Concerning Social Media Cases*, Memorandum Om 11-74, August 18, 2011.

[6] *Report of the Acting General Counsel Concerning Social Media Cases*, Memorandum Om 12-31, January 24, 2012.

United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlrb.gov

April 11, 2012

The Honorable John Kline, Chairman
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Chairman Kline:

Thank you for your interest in the Office of the General Counsel's (OGC's) proposed pilot program to reorganize Regions 14, 17, 25 and Subregion 33. I appreciate the opportunity to discuss this proposal.

In March of last year, I testified before the Labor, HHS Subcommittee of the House Committee on Appropriations. During that hearing, I assured the Committee that the OGC is committed to adjusting to the realities of declining national case intake and budget uncertainty. One month later, the National Labor Relations Board's Office of Inspector General issued an audit report that included relevant data and recommendations. Since that time, I have directed my staff to seek out long-term, national solutions that guarantee efficient use of agency resources and continued exemplary service to the public.

The proposed pilot program to reorganize Regions 14, 17, 25 and Subregion 33 is designed to test the effects of consolidation on some of our offices. Among our goals is to equalize office sizes in order to move towards a model where case intake in one office is more consistent with case intake in others. To that end, we have proposed a pilot program for consolidation of our St. Louis office, exclusive of our Peoria Subregional Office, with our Kansas City Regional Office, inclusive of the Tulsa Resident Office. During the proposed pilot, the Peoria Subregional Office would be consolidated with our Indianapolis Regional Office.

Should the pilot proceed, the top management structure for Regions 14 and 17 will be combined under the sitting Director of Region 17, and the responsibility for oversight of Subregion 33, Peoria, will be assumed by the sitting Director of Region 25, Indianapolis. Please be assured that the proposed restructuring pilot does not carry with it a final decision that either Region 17, Kansas City, or Region 14, St. Louis, will be the ultimate home of a sitting Regional Director. Rather, the proposed pilot merely affords the Agency the opportunity to assess the performance of a combined Regional Office.

Likewise, there is no plan to close any Regional, Subregional or Resident Office under the proposed pilot. Rather, the proposed pilot is designed to provide insight into ways to minimize any anticipated and unanticipated obstacles resulting from restructuring that would tend to interfere with each office's casehandling effectiveness. It is expected that the Regional Director's goal of regularly travelling between offices and the Agency's significant technological accomplishments – including the Federal Government's leading legal case management system – will allow all offices to remain efficient, responsive organizations during the pilot period. Should the consolidation proceed, as with the pilot, there would be no plan to close any office.

Thus far, this office has received robust input from various stakeholders. In February, we announced the proposed pilot program to the Practice and Procedure Committee of the Section of Labor and Employment Law of the American Bar Association. As a result of that announcement, a group of practitioners in St. Louis, Missouri requested and received a telephone briefing by this office. Subsequently, a group of local union officials in Illinois requested and received a telephone briefing by this office. In addition to those briefings, this office has received letters from members of Congress and other members of the Illinois and Missouri communities. Those letters are enclosed.

I intend to make a decision as to whether to institute the pilot program within the next few days. I look forward to working with you on this Agency's efforts to achieve efficient use of our resources. Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at 202-273-3700 if you have additional questions regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable George Miller, Ranking Minority Member
Committee on Education and the Workforce

UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD
1099 14TH STREET NW. SUITE 11600
WASHINGTON DC 20570

March 16, 2012

The Honorable Claire McCaskill
Chairman
The Honorable Rob Portman
Ranking Member
Subcommittee on Contracting Oversight
U.S. Senate Committee on Homeland Security & Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC, 20510

Chairman McCaskill and Ranking Member Portman,

This is in response to your letter dated February 28, 2012, to National Labor Relations Board Chairman Mark G. Pearce seeking information regarding the National Labor Relations Board's contracts for "the acquisition of public relations, publicity, advertising, communications, or similar services."

As an initial matter, it should be noted that the Agency does not routinely retain outside services for the purpose of external communications or other public relations services. While there have been limited exceptions to this practice over the years, such exceptions are rare and typically address a discrete event. In this regard, enclosed please find a spreadsheet with information about contracts that may be responsive to your request. As you can see, Agency expenditures in this area are minimal.

If you have further questions or need further assistance, please feel free to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at 202-273-1070.

Sincerely,

William B. Cowen
Solicitor

UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD
1099 14TH STREET NW. SUITE 11600
WASHINGTON DC 20570

75 YEARS
NATIONAL LABOR RELATIONS BOARD
1935 - 2010

March 20, 2012

The Honorable John Kline, Chairman
U.S. House Committee on Education and the Workforce
The Honorable Phil Roe, M.D.
Chairman, Subcommittee on Health, Employment,
Labor, and Pensions
2181 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Kline and Chairman Roe:

Please find enclosed a CD containing mostly unredacted emails responsive to the Committee's January 6, 2012 request for information. The redactions made in this production include material that is personal privacy information. Aside from those redactions, the Committee is receiving some information that is not being disclosed to the public pursuant to FOIA.

Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at (202) 273-3700 if you would like additional assistance regarding this matter.

Sincerely,

William B. Cowen
Solicitor

Enclosures

cc: The Honorable George Miller, Ranking Minority Member
Committee on Education and the Workforce

UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD
1099 14TH STREET NW. SUITE 11600
WASHINGTON DC 20570

February 13, 2012

The Honorable Darrell Issa, Chairman
U.S. House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

This is in response to your letter dated January 30, 2012, to National Labor Relations Board Chairman Mark G. Pearce, regarding work done by the National Labor Relations Board (Board) after the Supreme Court decision in *New Process Steel, L.P. v. NLRB*, 130 S. Ct. 2635 (2010).

From January 2008 to March 2010, the Board operated with three of its five seats vacant. The two remaining members – Wilma Liebman, a Democrat, and Peter Schaumber, a Republican – issued 595 decisions in cases where they could agree, setting aside the rest of the cases to be decided once additional Board Members were seated. In March 2010, President Obama announced the recess appointments of Mark Pearce and Craig Becker and they took office in April. Member Pearce and Brian Hayes, a new nominee, were confirmed by the Senate on June 22, 2010. Member Schaumber left the Board at the end of August 2010 when his term expired, and Chairman Liebman left the Board at the end of her term in August 2011.

On June 17, 2010, the United States Supreme Court issued its decision in *New Process*, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. At that time, 102 of the 595 two-member decisions were pending review before the U.S. Courts of Appeals or the U.S. Supreme Court. After the *New Process* decision, those 102 decisions were returned to the Board for further proceedings in light of *New Process*. In addition, the Acting General Counsel submitted four other cases to the Board for further proceedings in light of *New Process*.

The Board did not hire additional staff for the purpose of processing the 106 returned cases. Board staff worked on those 106 cases, along with other cases pending before the Board, in their normal course of employment. The work done on

those 106 cases during the two-member Board period was available to the Board when it considered the cases after *New Process*.

All but one of the 106 returned cases have now been decided by the Board and are fully precedential. In the great majority of the cases, the Board reached the same outcome as that reached by the two-member Board. In some cases, the Board modified or elaborated on the rationale of the decision issued by the two-member Board. In other cases, the Board updated the remedies ordered by the two-member Board. Attached is an accounting of all 106 returned cases, including information about the status of each case and whether the two-member decision was modified by the Board.

In addition to processing the 106 returned cases, in July 2010, the Board ratified all personnel, administrative, and procurement actions taken by the two Members during the 27-month period. This action did not require the Board to replicate any work that had been done by the two-Member Board.

The vast majority of the 595 decisions issued by the two-member Board did not return to the Board after *New Process* and therefore required no additional action or work that had to be replicated by Board Members or employees. Although decided by only two members, those cases continue to support the pre-existing precedent upon which they were based.

With respect to your request for documents "referring or relating to the recess appointments of Sharon Block, Terence Flynn, and Richard Griffin to the NLRB," please note that the Board was not consulted regarding the President's decision whether to make these appointments. The Chairman was made aware that the President intended to make the appointments shortly before they occurred. We are in the process of collecting documents that may be within the scope of your request. We will provide documents to you once we identify and review them. As you may be aware, there is a pending Freedom of Information Act request on this topic that we are now processing, and we will make sure that any documents produced in response to that request are also made available to you.

Please be advised that the validity of the recess appointments has been raised in several matters now before the Board or the federal courts. As you may know, the U.S. Department of Justice will represent the U.S. Government in the federal courts with respect to the constitutionality of the appointments to the Board. The Board and the Department of Justice have a strong interest in protecting the confidentiality of materials related to those ongoing proceedings.

If you have any questions or need further assistance, please feel free to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at (202) 273-1700.

Sincerely,

William B. Cowen
Solicitor

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

Case Name	Case No.	Two-Member Decision	Case Name in Circuit	Circuit	Case No. in Circuit	New Board Decision	Comment
A & C Healthcare Services, Inc.	20-CA-33588	354 NLRB No. 33				356 NLRB No. 100	Same outcome
ADB Utility Contractors	14-CA-27386	353 NLRB No. 21	NLRB v. American Directional Boring	8th Cir	09-1194	355 NLRB No. 172	Same outcome (with further explanation of basis for bargaining order)
ADF, Inc.	01-CA-45068	355 NLRB No. 14	NLRB v. ADF, Inc.	1st Cir	10-1669	355 NLRB No. 62	Same outcome
Akal Security, Inc.	19-CA-30891	354 NLRB No. 11	United Government Security Officers Local 118 v. NLRB (Akal Security)	DC Cir	09-1208; 09-1183	355 NLRB No. 106	Same outcome
Alan Ritchey, Inc.	32-CA-18149	354 NLRB No. 79	Warehouse Union Local 6, Int'l Longshore and Warehouse Union v. NLRB	9th Cir	09-73444		
Allied Mechanical Services, Inc.	07–CA–40907	352 NLRB No. 83; 352 NLRB 662	Allied Mechanical Servs., Inc. v. NLRB	DC Cir	08-1213; 08-1240 (denial of reconsid)	356 NLRB No. 1	Same outcome
Aloft Chicago O'Hare	13-CA-45561	355 NLRB No. 9	NLRB v. Aimbridge Employee Service Corp.	DC Cir	10-1023	355 NLRB No. 117	Same outcome
Alta Vista Regional Hospital	28–CA–21896	352 NLRB No. 100; 352 NLRB 809	San Miguel Hosp. v. NLRB	DC Cir	08-1245; 08-1300	355 NLRB No. 212	Same outcome
AM Property Holding Corp	2-CA-33146	352 NLRB 279	SEIU Local 32BJ v. NLRB	2nd Cir	08-1661-ag	355 NLRB No. 151	Same outcome
American Standard Companies, Inc.	08–CA–33352	352 NLRB No. 80; 352 NLRB 644	American Standard Cos., Inc. v. NLRB	DC Cir	08-1388; 09-1003	356 NLRB No. 4	Same outcome (modified rationale)
Atlas Refinery, Inc.	22-CA-28403	354 NLRB No. 120				357 NLRB No. 155	Same outcome
Bally's Atlantic City	04–CA–36109; 04–RC–21286	352 NLRB No. 95; 352 NLRB 768; 352 NLRB No. 51; 352 NLRB 316	Bally's Park Place, Inc. v. NLRB	DC Cir	08-1325; 08-1326	356 NLRB No. 40	Same outcome
Barstow Community Hospital	31–CA–26057	352 NLRB No. 125; 352 NLRB 1052	NLRB v. Barstow Community Hosp.	9th Cir	09-70771	356 NLRB No. 15	Same outcome
Bentonite Performance Minerals, LLC	27-CA-20596	353 NLRB No. 75	Bentonite Performance Minerals LLC v. NLRB	5th Cir	09-60034	355 NLRB No. 104	Same outcome
Bristol Hospital EMS	34-CA-12481	354 NLRB No. 116	Bristol Hospital EMS, LLC v. NLRB	DC Cir	09-1330; 10-1018	355 NLRB No. 120	Same outcome
Capital Iron Works Co.	17-CA-24499	355 NLRB No. 20	NLRB v. Capital Iron Works Co.	10th Cir	10-9522	355 NLRB No. 138	Same outcome
Carambola Beach Resort	24-CA-10951	353 NLRB No. 8	J.S. Carambola v. NLRB	3rd Cir	08-4729; 09-1035	355 NLRB No. 69	Same outcome
Carpenters Local 43 (McDowell Building & Foundation)	34-CB-03047	354 NLRB No. 122	Carpenters Local 43 v. NLRB	DC Cir	10-1014; 10-1048	355 NLRB No. 132	Same outcome (with further elaboration)
Chrysler, LLC	07-CA-51553	354 NLRB No. 128	NLRB v. Chrysler, LLC	6th Cir	10-1255	355 NLRB No. 61	Same outcome
Coastal Cargo Co.	15-CA-18215	353 NLRB No. 86	NLRB v. Coastal Cargo Co.	5th Cir	09-60156	355 NLRB No. 145	Same outcome

Case Name	Case No.	Two-Member Decision	Case Name in Circuit	Circuit	Case No. in Circuit	New Board Decision	Comment
Coastal Insulation Corp.	22-CA-28439	354 NLRB No. 70	Coastal Insulation Corp. v. NLRB	DC Cir	09-1250; 09-1258	355 NLRB No. 146	Same outcome
Community Medical Center	4-CA-34888	354 NLRB No. 26	Community Medical Center v. NLRB	3rd Cir	09-2953, 09-3485	355 NLRB No. 128	Same outcome
Compass Group North America, et al.	07-CA-51876	354 NLRB No. 106	NLRB v. Compass Group North America	6th Cir	10-1769	355 NLRB No. 137	Same outcome (with further elaboration)
Compucom Systems, Inc.	22-CA-28969	354 NLRB No. 87	Compucom Systems v. NLRB	DC Cir	09-1255; 09-1257	356 NLRB No. 25	Same outcome
Contractor Services, Inc.	10–CA–28856	Unpublished Order (9/27/2008)	IBEW Locals 337 & 343 v. NLRB (Contactor Services, Inc.)	DC Cir	08-1322	Unpublished Order (12/20/2010)	Same outcome
Corrections Corporation of America	26-CA-23180	354 NLRB No. 105	Vevria Nelson v.. NLRB	5th Cir	09-60939	355 NLRB No. 110	Same outcome
County Waste of Ulster, LLC	02-CA-37437	353 NLRB No. 89	County Waste of Ulster LLC v. NLRB	2nd Cir	09-1038-ag; 09-1646-xap	355 NLRB No. 64	Same outcome
CSS Healthcare Services	10-CA-37628	355 NLRB No. 5	CSS Healthcare Services, Inc. v. NLRB	11th Cir	10-10568; 10-10914	355 NLRB No. 79	Same outcome
Diversified Enterprises, Inc.	09–CA–43110	353 NLRB No. 120	Diversified Enterprises, Inc. v. NLRB	4th Cir	09-1464; 09-1537	355 NLRB No. 88	Same outcome
Divi Carina Bay Resort	24–CA–11101	353 NLRB No. 131	NLRB v. Grapetree Shores, Inc.	3rd Cir	09-3234; 09-3423	355 NLRB No. 194	Same outcome (relying on certain facts)
Domsey Trading Corp.	29-CA-14548	353 NLRB No. 12	NLRB v. Domsey Trading Corp	2nd Cir	09-73383	355 NLRB No. 89	Same outcome
E.A. Sween Co.	13-CA-45563	354 NLRB No. 117	NLRB v. E.A. Sween Company	7th Cir	10-1075	355 NLRB No. 87	Same outcome
Eagle Ray Electric Co.	14-CA-29685	354 NLRB No. 27	Eagle Ray Electric Co. v. NLRB	DC Cir	09-1164; 09-1183	355 NLRB No. 111	Same outcome
Essex Valley Visiting Nurses Association	22–CA–24770	352 NLRB No. 61	Essex Valley Visiting Nurses Assn. v. NLRB	DC Cir	08-1334; 08-1364	356 NLRB No. 18	Same outcome
Eugene Iovine, Inc.	29-CA-21052	353 NLRB No. 36	NLRB v. Eugene Iovine, Inc.	S Ct	09-0217-ag	356 NLRB No. 134	Same outcome (modified rationale and updated remedial relief)
Food and Commercial Workers Local 4 (Safeway, Inc.)	19-CB-09660	353 NLRB No. 47	NLRB v. UFCW Local 4	9th Cir	09-70922	355 NLRB No. 133	Same outcome
Fred Meyer Stores	19-CA-32171	354 NLRB No. 127	Fred Meyer Stores, Inc. v. NLRB	DC Cir	10-1010	355 NLRB No. 141	Same outcome
Fred Meyer Stores, Inc.	19-CA-32311	355 NLRB No. 30	Fred Meyer Stores Inc. v. NLRB	DC Cir	10-1095; 10-1102	355 NLRB No. 130	Same outcome (relying on certain facts)
Galicks, Inc.	08-CA-36079 (0)	354 NLRB No. 39	Galicks, Inc. v. NLRB	6th Cir	09-1972; 09-2441	355 NLRB No. 68	Same outcome (without relying on certain facts)
Garner/Morrison, LLC	28-CA-21311	353 NLRB No. 78	Garner/Morrison, LLC v. NLRB	DC Cir	09-1057; 09-1058; 09-1101	356 NLRB No. 63	Same outcome (modified rationale)
Gelita USA, Inc.	18-CA-18406	352 NLRB No. 406				356 NLRB No. 70	Same outcome
Goffstown Truck Center, Inc.	1-RC-22272	354 NLRB No. 49				356 NLRB No. 33	Same outcome

Case Name	Case No.	Two-Member Decision	Case Name in Circuit	Circuit	Case No. in Circuit	New Board Decision	Comment
Goya Foods of Florida	12–CA–23524	352 NLRB No. 109; 352 NLRB 884	Goya Foods of Florida v. NLRB	DC Cir	09-1227; 09-1240	356 NLRB No. 184	Same outcome (modified remedy)
Greensburg Manufacturing, LLC	25-CA-30467	354 NLRB No. 35	NLRB v. Greensburg Manufacturing, LLC	7th Cir	10-1742	355 NLRB No.139	Same outcome
Harmon Auto Glass	18-CA-18134	354 NLRB No. 98	Leiferman Enterprises/Harmon Auto Glass v. NLRB	8th Cir	09-73383	355 NLRB No. 66	Same outcome
Hospital Pavia Perea	24–CA–10505	352 NLRB No. 60; 352 NLRB 418	NLRB v. Metro Mayaguez, Inc.	1st Cir	09-1344	355 NLRB No. 215	Same outcome
Interstate Bakeries Corp.	17–CA–23404; 17–CB–6146	353 NLRB No. 14	Teamsters Local 523 v. NLRB	S Ct	09-1404	357 NLRB No. 4	Same outcome (modified rationale)
Kentucky River Medical Center	09-CA-37734 (SS	354 NLRB No. 42	Jackson Hosp. Corp. v. NLRB	DC Cir	09-1203	355 NLRB No. 114	Same outcome
KSM Industries, Inc.	30-CA–13762	353 NLRB No. 117	KSM Industries, Inc. v. NLRB	DC Cir	09-1126; 09-1140	355 NLRB No. 220	Same outcome
Laborer's Local 1075 (McCarthy & Smith, Inc.)	07-CC-01831	355 NLRB No. 6	Laborers' Local 1075 v. NLRB	6th Cir	10-1157; 10-1317	355 NLRB No. 80	Same outcome
Laurel Bay Health & Rehabilitation Center	22-CA-27192	353 NLRB No. 24	Laurel Bay Health & Rehabilitation v. NLRB	DC Cir	08-1337; 08-1385	356 NLRB No. 3	Same outcome
Laurel Baye Healthcare of Lake Lanier, LLC	10–CA–35958	352 NLRB No. 30; 352 NLRB 179	NLRB v. Laurel Baye Healthcare of Lake Lanier, Inc	DC Cir	09-377 (SCt); 08-1162, 08-1214 (DC)	355 NLRB No. 118	Same outcome
Legacy Health Systems	36-CA-10299	354 NLRB No. 45	NLRB v. Legacy Health Systems	9th Cir	09-73383	355 NLRB No. 76	Same outcome (without passing on one theory of violation)
Los Angeles Airport Hilton Hotel & Towers	31-CA-27837 (0)	354 NLRB No. 17	Fortuna Enterprises, LP v. NLRB	DC Cir	09-1136; 09-1143	355 NLRB No. 122	Same outcome
Los Angeles Airport Hilton Hotel & Towers	31-CA-27837 (S)	354 NLRB No. 95	Fortuna Enterprises, LP v. NLRB	DC Cir	09-1136; 09-1143	355 NLRB No. 122	Same outcome
Loyalhanna Care Center	06–CA–28609	352 NLRB No. 105; 352 NLRB 863	Loyalhanna Health Care Associates v. NLRB	3rd Cir	08-3092; 08-3596	355 NLRB No. 102	Same outcome
M&B Services, Inc.	15-CA-18808	354 NLRB No. 21	NLRB v. M & B Services, Inc.	5th Cir	10-60198	355 NLRB No. 136	Same outcome
McCarthy Construction Co.	07-CA-51474	355 NLRB No. 10	NLRB v. McCarthy Construction Co.	6th Cir	10-1742	355 NLRB No. 67	Same outcome
McElroy Coal Company	06–CA–35806	353 NLRB No. 108	McElroy Coal Co. v. NLRB	4th Cir	09-1332; 09-1427	355 NLRB No. 121	Same outcome
Mercedes-Benz of Orlando	12-CA-26377	354 NLRB No. 72	Contemporary Cars, Inc. v. NLRB	DC Cir	09-1235; 09-1248	355 NLRB No. 113	Same outcome
Monmouth Care Center	22-CA-27287	354 NLRB No. 2	Monmouth Care Ctr. v. NLRB	DC Cir	09-1128; 09-1144	356 NLRB No. 29	Same outcome (updated remedy)
New Country Audi, Inc.	34-CA-12563	355 NLRB No.16	New Country Audi, Inc. v. NLRB	DC Cir	10-1060; 10-1072	356 NLRB No. 22	Same outcome
New Process Steel	25–CA–30470	353 NLRB No. 13	New Process Steel v. NLRB	7th Cir	08-1457	355 NLRB No. 108	Same outcome
New Process Steel	25–CA–30632	353 NLRB No. 25	New Process Steel v. NLRB	7th Cir	08-1457	355 NLRB No. 97	Same outcome

Case Name	Case No.	Two-Member Decision	Case Name in Circuit	Circuit	Case No. in Circuit	New Board Decision	Comment
New York Presbyterian Hospital	02-CA-38512	354 NLRB No. 5	New York Presbyterian Hosp. v. NLRB	DC Cir	09-1200; 09-1210	355 NLRB No. 126	Same outcome
NLS Group	01-CA-39447	352 NLRB No. 89; 352 NLRB 744	Northeastern Land Servs., Ltd./b/a NLS Group v. NLRB	1st Cir	09-213	355 NLRB No. 169	Same outcome
Oaktree Capital Management, LLC	37–CA–06601 (0 & S)	353 NLRB No. 127	Oaktree Capital Mgmt. LP v. NLRB	5th Cir	09-60327	355 NLRB No. 147	Same outcome
Operating Engineers Local 324 (Hydro Exchange, LLC)	07-CB-15343	353 NLRB No. 85	David Williamson, III v. NLRB	6th Cir	09-2550	355 NLRB No. 125	Same outcome
Palmer House Hilton	13-CA-44223	353 NLRB No. 90	Unite/Here Local 1 v. NLRB	DC Cir	09-1099; 09-1106; 09-1123	356 NLRB No. 2	Same outcome
Pavilions at Forrestal	22-CA-27066	353 NLRB No. 60	Atrium at Princeton, LLC v. NLRB	DC Cir	08-1399; 09-1043	356 NLRB No. 6	Same outcome (finding it unnecessary to reach certain issue)
PDK Investments, LLC	16-CA-26292	354 NLRB No. 1	PDK Investments, LLC. v. NLRB	DC Cir	09-1127; 09-1137	355 NLRB No. 115	Same outcome
Powellton Coal Co.	09-CA-44608	354 NLRB No. 60	Fola Coal Co. v. NLRB	4th Cir	09-1938; 09-2057	355 NLRB No. 75	Same outcome
Quickway Transportation, Inc.	05-CA-33111	354 NLRB No. 80	NLRB v. Quickway Transportation	4th Cir	10-1317; 10-1418	355 NLRB No. 140	Same outcome
Racetrack Food Services, Inc.	04-CA-35158	353 NLRB No. 76	Racetrack Food Servs. v. NLRB	3rd Cir	09-1090; 09-1509	355 NLRB No. 204	Same outcome
Ralphs Grocery Company	31–CA–27160	352 NLRB No. 18; 352 NLRB 128	UFCW Local 770 v. NLRB	9th Cir	08-70977	355 NLRB No. 210	Same outcome
Raymond Interior Systems	21-CA-37649	354 NLRB No. 85	Painters Dist. Council 36 v. NLRB	9th Cir	09-73210; 10-70208; 10-70209; 10-70511	355 NLRB No. 209	Same outcome
Regal Health and Rehab Center, Inc.	13-CA-44481	354 NLRB No. 71	NLRB v. Regal Health and Rehab, Inc.	7th Cir	10-2038	355 NLRB No. 63	Same outcome
Regency Grande Nursing & Rehabilitation Center	22-CA-28331	354 NLRB No. 75	Regency Grande Nursing & Rehab. Ctr. v. NLRB	DC Cir	09-1263; 09-1289	355 NLRB No. 109	Same outcome
Regency Grande Nursing & Rehabilitation Center	22-CA-26231	354 NLRB No. 93	Regency Grande Nursing & Rehab. Ctr. v. NLRB	DC Cir	09-1265; 09-1286	355 NLRB No. 99	Same outcome
Regency Heritage Nursing and Rehabilitation Center	22–CA–27992	353 NLRB No. 103	Regency Heritage Nursing & Rehabilitation Ctr. v. NLRB	DC Cir	09-1132; 09-1146	355 NLRB No. 103	Same outcome
Rochelle Waste Disposal, LLC	33–CA–15298; 33–RC–5002.	353 NLRB No. 038	Rochelle Waste Disposal, LLC v. NLRB	7th Cir	08-4079	355 NLRB No. 100	Same outcome
San Luis Trucking, Inc.	28–CA–20387	352 NLRB No. 34; 352 NLRB 211	San Luis Trucking, Inc. v. NLRB	DC Cir	08-1176; 08-1181	356 NLRB No. 36	Same outcome (updated remedy)

Case Name	Case No.	Two-Member Decision	Case Name in Circuit	Circuit	Case No. in Circuit	New Board Decision	Comment
SFO Good-Nite Inn, LLC	20–CA–32754	352 NLRB No. 42; 352 NLRB 268	SFO Good-Nite Inn v. NLRB	DC Cir	08-1148; 08-1170	357 NLRB No. 16	Same outcome (modified rationale)
Sheehy Enterprises, Inc.	25-CA-30583	353 NLRB No. 84	Sheehy Enterprises, Inc. v. NLRB	7th Cir	09-1383; 09-1656	355 NLRB No. 83	Same outcome
Shore Acres Rehabilitation and Nursing Center, LLC	12–CA–25854	352 NLRB No. 106	Snell Island SNF LLC v. NLRB	2nd Cir	09-328 (SCt)	356 NLRB No. 24	Same outcome
Southern Power Company	10–CA–37348	353 NLRB No. 116	Southern Power Co. v. NLRB	DC Cir	09-1116; 09-1129	356 NLRB No. 43	Same outcome (updated remedy)
SPE Utility Contractors, LLC	07–CA–50767	353 NLRB No. 123	SPE Utility Contractors, LLC v. NLRB	6th Cir	09-1692; 09-1730	355 NLRB No. 60	Same outcome
Spectrum Health	07-CA-50996	353 NLRB No. 99	Spectrum Health-Kent Community College v. NLRB	DC Cir	09-1122; 09-1181	355 NLRB No. 101	Same outcome
Spurlino Materials, LLC	25–CA–30053	353 NLRB No. 125	NLRB v. Spurlino Mat'ls, LLC	7th Cir	09-2426	355 NLRB No. 77	Same outcome
St. George Warehouse	22-CA-23223	353 NLRB No. 50	St. George Warehouse, Inc. v. NLRB	3rd Cir	08-4875; 09-1269	355 NLRB No. 81	Same outcome
Stagehands Referral Service	34-CA-10971	354 NLRB No. 7	IATSE Local 84 v. NLRB	DC Cir	09-1158; 09-1197	356 NLRB No. 152	Same outcome
Starbucks Coffee Co.	02-CA-37548	354 NLRB No. 99	Starbucks Corp v. NLRB	DC Cir	09-1273; 09-1295	355 NLRB No. 135	Same outcome
Talmadge Park	34-CA-12209	352 NLRB No. 90	NLRB v. Talmadge Park	2nd Cir	09-2601-ag	Unpublished Decision and Order (8/25/2010)	Same outcome
Teamsters Local 886 (United Parcel Service)	17-CB-06356	354 NLRB No. 52	Teamsters Local 886 v. NLRB	DC Cir	09-1214; 09-1239	355 NLRB No. 105	Same outcome
The Continental Group	12-CA-24045	353 NLRB No. 31	The Continental Group v. NLRB	DC Cir	08-1328; 08-1359	357 NLRB No. 39	Same outcome (with further elaboration)
Transportation Solutions, Inc.	06-CA-36628	355 NLRB No. 2	NLRB v. Transportation Solutions, Inc.	3rd Cir	10-2326	355 NLRB No. 142	Same outcome
Trump Marina Casino Resort	04-CA-36528	354 NLRB No. 123	Trump Marina Assocs., LLC v. NLRB	DC Cir	10-1012; 10-1015	355 NLRB No. 107	Same outcome
Trump Marina Hotel Casino	04-CA-35334	353 NLRB No. 93	Trump Marina Assocs., LLC v. NLRB	DC Cir	09-1097; 09-1107	355 NLRB No. 208	Same outcome
Trump Plaza Hotel and Casino	04–CA–36217; 04–RC–21263	352 NLRB No. 146; 352 NLRB No. 76	Trump Plaza Assocs. v. NLRB	DC Cir	08-1304; 08-1340	355 NLRB No. 202	Same outcome (with modified description of facts)
Union-Tribune Publishing Co.	21–CA–37535	353 NLRB No. 2	Graphic Communications Conference Local 432(M), Teamsters v. NLRB (Union-Tribune)	DC Cir	08-1321	356 NLRB No. 77	Same outcome (updated remedy)

Case Name	Case No.	Two-Member Decision	Case Name in Circuit	Circuit	Case No. in Circuit	New Board Decision	Comment
Venetian Casino Resort, LLC	28-CA-16000	354 NLRB No. 9	Venetian Casino Resort, LLC v. NLRB	DC Cir	09-1154	355 NLRB No. 165 357 NLRB No. 147	Same outcome as two-member decision as to two issues and severed one issue (355 NLRB No. 165); subsequently found violation that two-member decision had withdrawn (357 NLRB No. 147).
Wayneview Care Center	22–CA–26987	352 NLRB No. 129; 352 NLRB 1089	Wayneview Care Center v. NLRB	DC Cir	08-1307; 08-1348	356 NLRB No. 30	Same outcome (with additional explanation of rationale and updated remedial relief)
White Oak Manor	11-CA-21786	353 NLRB No. 83	White Oak Manor v. NLRB	DC Cir	09-1068; 09-1098	355 NLRB No. 211	Same outcome
Whitesell Corporation	18–CA–18143	352 NLRB No. 138; 352 NLRB 1196	NLRB v. Whitesell Corp.	8th Cir	08-3291	355 NLRB No. 134	Same outcome
Windstream Corporation	06–CA–35290	352 NLRB No. 9; 352 NLRB 44	NLRB v. Windstream Corp.	3rd Cir	09-2207; 09-2394; 09-2208; 09-2395	355 NLRB No. 74	Same outcome
Windstream Corporation	06–CA–35483	352 NLRB No. 68; 352 NLRB 510	NLRB v. Windstream Corp.	3rd Cir	09-2207; 09-2394; 09-2208; 09-2395	355 NLRB No. 119	Same outcome

UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD
1099 14TH STREET NW, SUITE 11600
WASHINGTON DC 20570

January 20, 2012

The Honorable John Kline, Chairman
U.S. House Committee on Education and the Workforce
The Honorable Phil Roe, M.D.
Chairman, Subcommittee on Health, Employment,
Labor, and Pensions
2181 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Kline and Chairman Roe:

This is in response to your letter dated January 6, 2012, to National Labor Relations Board Chairman Mark G. Pearce, regarding the appointment of Sharon Block, Terence Flynn, and Richard Griffin to the National Labor Relations Board (Board).

Your letter expresses an interest in understanding the new Members' qualifications and background and requests "every document drafted in whole or in part" by the new Members during their time of employment at the Board. The number of documents that is potentially responsive to this request is enormous and includes primarily deliberative, pre-decisional documents generated, cumulatively, during approximately 16 years of employment over the past 30 years. The time period of the request includes periods where documents were not routinely maintained in electronic form and, indeed, many of these documents may be no longer in existence.

The Board treats deliberative, pre-decisional documents and communications with the highest level of confidentiality, and has previously declined to produce such documents. Many draft documents are known to and have been seen by only their authors and immediate supervisors. Documents that are ultimately presented to an individual Board Member are rarely shared with other staff members not directly involved in the consideration of the case. Similarly, communications between Board Members generally are not shared beyond those involved in the immediate distribution of that communication, and it is very rare for any deliberative, pre-decisional communication to be distributed more broadly than those persons directly involved in the consideration of the case. Moreover, our information technology systems are built with security controls that protect the confidentiality of deliberative, pre-decisional materials. In short, at the Board, nothing is more confidential than these materials.

While Board Members may, from time to time, speak about the deliberative process generally, it is a long-standing tradition that they do not publically reveal the deliberations on any particular case. Whether Republican, Democrat, or Independent, Board Members have adhered to these principles because they recognize that the Board can function effectively only in an environment where the free flow of ideas is not compromised by the fear of public disclosure of private communications.

The Board remains willing to work with the Committee to accommodate its legitimate oversight needs. In that regard, please feel free to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at (202) 273-1700, to discuss this matter further.

Sincerely,

William B. Cowen
Solicitor

cc: The Honorable George Miller, Ranking Member,
House Committee on Education and the Workforce

United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlrb.gov

December 5, 2012

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Issa:

This letter serves as my continuing response to the subpoena served on the National Labor Relations Board, Office of the General Counsel on August 7, 2011. In that regard, I am enclosing a CD containing mostly unredacted emails responsive to that subpoena. In addition, I am enclosing documents that are being produced to a Freedom of Information Act requester as a courtesy. The redactions made to subpoena responsive documents include material that is not germane to the request or is personal privacy information. Aside from those redactions, the Committee is receiving information that is not being disclosed to the public pursuant to FOIA.

This office will continue to provide documents to the Committee on a rolling basis as the collection and review process described in our September 9, 2011 letter proceeds. Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at (202) 273-3700 if you would like additional assistance regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
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December 5, 2012

The Honorable John Kline, Chairman
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

The Honorable Phil Roe, Chairman
Subcommittee on Health, Employment,
Labor and Pensions
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Chairman Kline and Chairman Roe:

Today, in response to your December 16, 2011 request for additional information about the Boeing case, I have enclosed a CD containing mostly unredacted emails responsive to that request. In addition, I am enclosing as a courtesy documents that are being produced to a Freedom of Information Act requester. I provide these communications in order to supplement my December 20, 2011 letter explaining the legal and factual basis of the complaint, and the multitude of documents already provided to the Committee germane to those matters.

The redactions made in this production include material that is not germane to the request or is personal privacy information. Aside from those redactions, the Committee is receiving information that is not being disclosed to the public pursuant to FOIA. As described in my December 20, 2011 letter, this office will continue to provide responsive documents to the committee on a rolling basis as the collection and review process continues.

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Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable George Miller, Ranking Minority Member
Committee on Education and the Workforce

United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
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November 8, 2012

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Issa:

This letter serves as my continuing response to the subpoena served on the National Labor Relations Board, Office of the General Counsel on August 7, 2011. In that regard, I am enclosing a CD containing mostly unredacted emails responsive to that subpoena. In addition, I am enclosing documents that are being produced to a Freedom of Information Act requester as a courtesy. The redactions made to subpoena responsive documents include material that is not germane to the request or is personal privacy information. Aside from those redactions, the Committee is receiving information that is not being disclosed to the public pursuant to FOIA.

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Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

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November 8, 2012

The Honorable John Kline, Chairman
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

The Honorable Phil Roe, Chairman
Subcommittee on Health, Employment,
Labor and Pensions
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
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Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable George Miller, Ranking Minority Member
Committee on Education and the Workforce

United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlrb.gov

October 12, 2012

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Issa:

This letter serves as my continuing response to the subpoena served on the National Labor Relations Board, Office of the General Counsel on August 7, 2011. In that regard, I am enclosing a CD containing mostly unredacted emails responsive to that subpoena. In addition, I am enclosing documents that are being produced to a Freedom of Information Act requester as a courtesy. The redactions made to subpoena responsive documents include material that is not germane to the request or is personal privacy information. Aside from those redactions, the Committee is receiving information that is not being disclosed to the public pursuant to FOIA.

This office will continue to provide documents to the Committee on a rolling basis as the collection and review process described in our September 9, 2011 letter proceeds. Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at (202) 273-3700 if you would like additional assistance regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlrb.gov

October 12, 2012

The Honorable John Kline, Chairman
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

The Honorable Phil Roe, Chairman
Subcommittee on Health, Employment,
Labor and Pensions
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Chairman Kline and Chairman Roe:

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Sincerely,

Lafe E. Solomon
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NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlrb.gov

September 18, 2012

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Issa:

This letter serves as my continuing response to the subpoena served on the National Labor Relations Board, Office of the General Counsel on August 7, 2011. In that regard, I am enclosing a CD containing mostly unredacted emails responsive to that subpoena. The redactions made to subpoena responsive documents include material that is not germane to the request or is personal privacy information. Aside from those redactions, the Committee is receiving information that is not being disclosed to the public pursuant to FOIA.

This office will continue to provide documents to the Committee on a rolling basis as the collection and review process described in our September 9, 2011 letter proceeds. Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at (202) 273-3700 if you would like additional assistance regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

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September 18, 2012

The Honorable John Kline, Chairman
Committee on Education and the Workforce
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2181 Rayburn House Office Building
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The Honorable Phil Roe, Chairman
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July 16, 2012

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Dear Chairman Kline and Chairman Roe:

Today, the Office of the General Counsel is enclosing documents that are being produced to Freedom of Information Act requesters pursuant to the Agency's administrative review process. The majority of the enclosed documents were previously produced to the Committee in unredacted form.

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June 18, 2012

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
House of Representatives
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June 18, 2012

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May 31, 2012

The Honorable John Kline, Chairman
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Chairman Kline:

I write in response to your May 17, 2012 letter regarding the federal court litigation of the National Labor Relations Board's (NLRB's) notice poster rule. Currently, an appeal is pending before the U.S. Court of Appeals for the District of Columbia. As you may know, the D.C. Circuit has set a briefing schedule and the NLRB's brief is due at the end of June. Although the NLRB has publicly stated its intent to appeal the decision of the South Carolina district court, the notice of appeal has not yet been filed and there is no briefing schedule set in the U.S. Court of Appeals for the Fourth Circuit.

With respect to your question regarding how the NLRB would enforce the regulation nationwide "in the event federal circuits take conflicting views on the legality of the regulation," that would depend on what issues are resolved by those circuit court decisions and the nature of the conflicts that remain. Until the circuit courts have issued their rulings, and it has become clear whether any potential split in the circuits will be reviewed by the Supreme Court, it is impossible to say how it would be appropriate for the NLRB to proceed in conformity with those entirely hypothetical opinions at present.

Until this matter has been finally resolved by the courts, I have instructed my staff to keep Committee staff up to date on the progress of the litigation. Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at 202-273-3700 if you would like additional assistance regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

cc: The Honorable George Miller, Ranking Minority Member
Committee on Education and the Workforce

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2181 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

May 17, 2012

Lafe E. Solomon
Acting General Counsel
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Dear Acting General Counsel Solomon:

Last year, 35 House Members and I filed amicus briefs in the District of Columbia and South Carolina federal courts opposing the National Labor Relations Board's (NLRB) regulation requiring employers to post a vague and biased general notice of employee rights under the National Labor Relations Act (NLRA). The disposition of this final rule continues to be a priority for the committee. Therefore, I respectfully request that you describe the NLRB's position on nationwide enforcement of a regulation in the event of a split in the federal circuits.

On August 30, 2011, the NLRB issued a final rule requiring almost all private employers to post a vague and biased general notice of employee rights under the NLRA in the workplace.[1] Following issuance of the final rule, believing the NLRB lacked authority to mandate the postings, interested parties filed suits in the District of Columbia and South Carolina federal courts.

On March 2, 2012, the U.S. District Court for the District of Columbia held that the NLRB had authority to require covered employers to post a general notice of employee rights under the NLRA, but failure to post was not automatically an unfair labor practice nor did it automatically toll the statute of limitations.[2] In contrast, on April 13, 2012, the U.S. District Court for the District of South Carolina held that the NLRB lacked statutory authority to require covered employers to post a general notice of employee rights under the NLRA.[3] Both decisions have been appealed.

[1] Final Rule, 76 FR 54042 (August 30, 2011).
[2] *National Association of Manufacturers v. NLRB*, D.D.C., No. 11-cv-1629 (March 2, 2012).
[3] *Chamber of Commerce v. NLRB*, D.S.C., No. 11-cv-2516 (April 13, 2012).

I hope you agree that conflicting decisions in federal circuits regarding employer obligations can create confusion and uncertainty for the nation's job creators. A nationwide injunction by the U.S. Court of Appeals for the District of Columbia has temporarily blocked enforcement of the regulation pending appeal, but there is a real possibility of conflicting rulings in the future.[4] While I continue to believe this NLRB regulatory overreach should be withdrawn in its entirety, the NLRB has a responsibility to ensure employers understand their obligations regarding the posting of the general notice of employee rights under the NLRA in the future. Toward that end, please describe how the NLRB plans to enforce the poster regulation nationwide in the event federal circuits take conflicting views on the legality of the regulation. Please provide your description by May 31, 2012.

If you have any questions regarding this request, please contact Marvin Kaplan, House Committee on Education and the Workforce, at (202) 225-7101.

Sincerely,

JOHN KLINE
Chairman
Committee on Education and the Workforce

cc: The Honorable George Miller, Senior Democratic Member, Committee on Education and the Workforce

[4] *National Association of Manufacturers v. NLRB*, D.C. Cir, No. 12-5068 (April 17, 2012).

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May 4, 2012

The Honorable John Kline, Chairman
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House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

The Honorable Phil Roe, Chairman
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April 18, 2012

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

I write in response to your April 4, 2012, letter requesting information from January 20, 2009, to present about cases related to *Communications Workers of America et al. v. Beck et al.*, 487 U.S. 735 (1988). Your questions and my responses are set forth below.

1. Please expand on any personal interest you have in *Beck* issues.

My personal interest in *Beck* issues is not unlike my interest in other matters enumerated in Memorandum GC 11-11. It is, simply stated, to ensure that our statute is enforced. Since 1998, the Office of the General Counsel has consistently enforced the same policy with respect to *Beck* objectors. See, Memorandum GC 98-11, Guidelines Concerning Processing of *Beck* Cases, August 17, 1998. Over the last three years, cases involving *Beck* objectors have resulted in favorable Board decisions and workers have received offers of reinstatement, back pay, and dues and fees reimbursement totaling about $118,000.

2. How many alleged *Beck* violations are currently pending before the Office of the General Counsel? There are 118 alleged *Beck* violations currently pending in the Regional Offices of the Office of the General Counsel.

a. How many alleged *Beck* violations have resulted in the issuance of a complaint? 17

b. How many alleged *Beck* violations have resulted in the issuance of a settlement? 147

i. What type of relief has been provided to workers who received a settlement? Workers, who have alleged *Beck* violations in addition to other violations of the Act, have received a cumulative total of about $118,000.00 in back pay and dues and fees reimbursement, and 9 workers were offered reinstatement. For more details see the enclosed chart.

c. How many alleged *Beck* violations have been dismissed without the issuance of a complaint? Please explain the basis of each dismissal. 175. In fiscal year 2011, approximately 28% of all charges filed resulted in a settlement and approximately 6% of all charges filed resulted in the issuance of a complaint. Similar data for other fiscal years is available on the Agency's website at http://www.nlrb.gov/charges-and-complaints. Please see the enclosed chart to see a list of all closed cases. For all

cases dismissed on or after June 1, 2011, final dismissal letters should be posted on the Agency's website. Memorandum GC 11-12, Drafting and Redacting Agency Documents, April 29, 2011.

3. How many alleged *Beck* violations are pending before the Board? 3

a. How many alleged *Beck* violations have been decided by the Board? 7

b. How many of these cases have been decided in favor of the union? 1

c. How many of these cases have been decided in favor of the worker? 6

4. What is the average amount of time it takes the Office of the General Counsel to process an alleged *Beck* violation – from the filing date to a final disposition? Please provide an accounting of each alleged *Beck* violation and the length of time it took for the charge to reach a final disposition. 89.7 days. See enclosed chart.

a. How does the average amount of time it takes to process an alleged *Beck* violation compare to the average amount of time it takes to process other unfair labor practice charges? In fiscal year 2011, the Office of the General Counsel closed 72.5% of all C cases within 120 days. This data for other fiscal years can be found in the Agency's annual performance and accountability reports, which are available on line at http://www.nlrb.gov/annual-reports.

5. What is the average amount of time it takes for the Board to issue a decision in an alleged *Beck* violation? Please provide an accounting of each alleged *Beck* violation decided by the Board and the length of time it took to render a decision. Please see enclosed chart.

6. Does the Office of the General Counsel maintain the policy outlined in a 1998 General Counsel Memorandum that an unfair labor charge alleging improper agency fee charge should be dismissed if the objecting party generally asserts that he has been improperly charged?" The Office of the General Counsel maintains a policy in *Beck* cases, consistent with its policy with regard to other types of unfair labor practice allegations, that requires a charging party to present evidence and preliminary information which points to a prima facie case of a violation before the General Counsel will obtain and investigate the respondent's defense. NLRB Casehandling Manual, Unfair Labor Practices, Sec. 10054.4

a. Does the Office of the General Counsel maintain the policy that a worker must "present evidence or ... give promising leads that would lead to evidence that would support [a *Beck* violation]?" Under the policy set forth in the answer above, a *Beck* objector must provide some evidence, or at least a promising lead of evidence, in support of an assertion that he or she is being unlawfully charged for a particular expenditure identified by the union as representational. Memorandum GC 98-11, Guidelines Concerning Processing of *Beck* Cases, August 17, 1998. If he or she does not provide some such evidence or a promising lead of such evidence, the charge will be dismissed. Further, a *Beck* objector can always challenge the union's *Beck*-objector fee through the internal challenge procedure that the union is legally required to maintain, and the burden is on the union to establish that the expenditure is related to representational activities. Evidence presented during this proceeding can be used in support of an unfair labor practice charge filed with our Agency.

b. How does the Office of the General Counsel define a "promising lead?" As set forth in the answer above, a "promising lead" is evidence or information which points to a prima facie case of a violation. Charging parties can meet this burden by presenting evidence or other information that some of the expenditures claimed as chargeable were for non-representational activities. If a charging party raises a question regarding the chargeability of a category of expenses that could potentially include non-representational matters (e.g., the cost of a union news letter, which often address both non-representational and representational issues), the Office of the General Counsel would seek the union's explanation as to why those expenses were treated as representational and, if that explanation is not satisfactory, a complaint would issue.

c. How many cases have been dismissed by the Office of the General Counsel because a worker could not "present evidence" or a "promising lead" of an alleged *Beck* violation? 1

7. Does the Office of the General Counsel maintain the policy that "cases raising questions as to whether the charging party has met [the evidence burden] should be submitted to the Division of Advice?" Although Regional Offices were originally directed to submit these cases to the Division of Advice, there has been no such instruction in place since 2002. However, Regional Offices have the discretion to submit any case to the Division of Advice. Since January 20, 2009, there have been two such cases submitted.

a. If so, how many cases of alleged *Beck* violations has the Division of Advice determined to have met the burden? 1

b. How many cases of alleged *Beck* violations has the Division of Advice determined has not met the burden? 1

8. Does the Office of the General Counsel maintain the policy that the union must verify by an audit that the chargeable and non-chargeable expenditures were made? The Office of the General Counsel follows extant Board law, which requires that unions verify by an independent audit that the claimed chargeable and non-chargeable expenditures were made. See *Television Artists AFTRA (KGW Radio)*, 327 NLRB 474 (1999).

9. How many cases have been referred to the Division of Advice concerning the "type and level of audits unions must give *Beck* objectors?" 1

a. What is the current status of such cases? The Division of Advice authorized complaint and the case is pending.

b. How many resulted in the issuance of a complaint? 1

c. How many have been dismissed? 0

d. How many are pending before the Board? 0

10. How many cases have been referred to the Division of Advice that concern "whether *Beck* objectors are entitled to audits along with the notice of their *Beck* rights?" 0

a. What is the current status of such cases? N/A

b. How many resulted in the issuance of complaint? N/A

c. How many have been dismissed? N/A

d. How many are pending before the Board? N/A

11. Did you participate in advising the Board in its issuance of the "Employees Rights Under the National Labor Relations Act" poster rule? If so did you advise the Board they should consider including in the notice notification of a workers' *Beck* rights under the National Labor Relations Act in the poster? If not, why not? No, I did not participate in advising the Board in its issuance of the "Employees Rights Under the National Labor Relations Act" poster rule.

Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at (202) 273-3700 if you would like additional assistance regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

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Committee on Oversight and Government Reform

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

April 4, 2011

Mr. Lafe Solomon
Acting General Counsel
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570-0001

Dear Mr. Solomon:

The House Committee on Oversight and Government Reform is examining the use of union dues and fees to fund political causes contrary to the will of many union workers. On February 8, 2012, the Committee held a hearing entitled, "The Right to Choose: Protecting Union Workers from Forced Political Contributions," that featured three union workers who testified that their rights are being violated by the use of their dues to support political activity. The full hearing video and testimony of all of the witnesses are available at http://issues.oversight.house.gov/worker-rights. I write to request additional information to further inform the Committee in its oversight of these issues.

It is indisputable that union political speech is subject to First Amendment protections; however, the First Amendment also protects against compelled speech of union workers. Indeed, the U.S. Supreme Court has long recognized that constitutional and statutory protections exist to protect a limited number of union workers from forced political contributions.[1] In a significant victory for these union workers, the Supreme Court held in *Communications Workers of America et al. v. Beck et al.*, that the National Labor Relations Act does not allow a union, over the objection of dues-paying nonmember workers, to spend fees on activities unrelated to collective bargaining and other representational activities.[2] Subsequent to this decision, the National Labor Relations Board (NLRB) mandated that unions abide by limited notification procedures to inform a union worker of their *Beck* rights and to object to non-representational expenditures by the union.[3]

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[1] *See, International Association of Machinists v. Street,* 367 U.S. 740 (1961); *Abood v. Detroit Board of Education,* 431 U.S. 209 (1977); *Chicago Teachers Union, Local No. 1 v. Hudson,* 475 U.S. 292 (1986).
[2] *Communications Workers of America et al. v. Beck et al.,* 487 U.S. 735 (1988).
[3] *See, California Saw,* 320 NLRB 224, 233 (1995), enf'd 133 F.3d 1012 (7th Cir. 1998).

Nevertheless, worker rights advocates have expressed concern that significant government and union-imposed barriers remain for workers to exercise their rights.[4] Federal notification requirements have been rolled back under the Obama Administration, and Terry Bowman, a "proud" UAW member, testified at the hearing that he believes the UAW places only a "small paragraph" in its Solidarity Magazine just once a year to notify its workers about their *Beck* rights.[5] Further, it appears that the UAW requires that *Beck* objections must be renewed each year.[6] Disturbingly, Mr. Bowman explained that "workers who [do] exercise their *Beck* rights are frequently the victims of humiliation, persecution and harassment on the job for resigning their union membership, and union officials do nothing to stop or even discourage this intimidating tactic."[7]

It appears that "*Beck* issues" are a "policy issue in which [you are] particularly interested."[8] In light of this interest, and to assist the Committee in its examination of these issues, I request that you answer the following questions and provide relevant documents to substantiate your responses from the time period January 20, 2009, to present. A response is requested by April 18, 2012. For the purpose of the questions, an alleged "*Beck* violation" is defined as the collection of union fees as a condition of employment in excess of what is permitted under the Supreme Court's decision in *Communications Workers v. Beck* or without providing one or more of the procedural protections required under *Beck* as applied by the courts and the Board.

1. Please expand on any personal interest you have in *Beck* issues.

2. How many alleged *Beck* violations are currently pending before the Office of General Counsel?

    a. How many alleged *Beck* violations have resulted in the issuance of a complaint?

    b. How many alleged *Beck* violations have resulted in a settlement?

        i. What type of relief has been provided to workers who received a settlement?

    c. How many alleged *Beck* violations have been dismissed without the issuance of a complaint? Please explain the basis for each dismissal.

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[4] Raymond J. LaJeunesse, Jr., Esq, Workers' Experiences in Attempting to Exercise Their Rights Under Communications Workers v. Beck and Related Cases, Engage Volume 3 Apr. 2002.
[5] *The Right to Choose: Protecting Union Workers from Forced Political Contributions: Hearing Before the H. Comm. on Oversight & Govt. Reform,* 112th Cong. (2012) (Testimony of Terry Bowman).
[6] *See* UAW About, "Notice to persons covered by union security agreements regulated under National Labor Relations Act," *available at* http://www.uaw.org/page/notice-persons-covered-union-security-agreements-regulated-under-national-labor-relations-act (last visited March 8, 2012).
[7] *The Right to Choose: Protecting Union Workers from Forced Political Contributions: Hearing Before the H. Comm. on Oversight & Govt. Reform,* 112th Cong. (2012) (Testimony of Terry Bowman).
[8] Memorandum GC 11-11, Office of the General Counsel, *Mandatory Submissions to Advice*, Apr. 12, 2011.

3. How many alleged *Beck* violations are pending before the Board?
    a. How many alleged *Beck* violations have been decided by the Board?

    b. How many of these cases have been decided in favor of the union?

    c. How many of these cases have been decided in favor of the worker?

4. What is the average amount of time it takes the Office of General Counsel to process an alleged *Beck* violation—from the filing date to a final disposition? Please provide an accounting of each alleged *Beck* violation and the length of time it took for the charge to reach a final disposition.

    a. How does the average amount of time it takes to process an alleged *Beck* violation compare to the average amount of time it takes to process other unfair labor practice charges?

5. What is the average amount of time it takes for the Board to issue a decision in an alleged *Beck* violation? Please provide an accounting of each alleged *Beck* violation decided by the Board and the length of time it took to render a decision.

6. Does the Office of General Counsel maintain the policy outlined in a 1998 General Counsel Memorandum that "an unfair labor charge alleging improper agency fee charges should be dismissed if the objecting party generally asserts that he has been improperly charged?"[9]

    a. Does the Office of General Counsel maintain the policy that a worker must "present evidence or ... give promising leads that would lead to evidence that would support [a *Beck* violation]?"[10]

    b. How does the Office of General Counsel define a "promising lead?"

    c. How many cases have been dismissed by Office of General Counsel because a worker could not "present evidence" or a "promising lead" of an alleged *Beck* violation?

7. Does the Office of General Counsel maintain the policy that "cases raising questions as to whether the charging party has met [the evidence burden] should be submitted to the Division of Advice?"[11]

    a. If so, how many cases of alleged *Beck* violations has the Division of Advice determined to have met the burden?

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[9] Memorandum GC 98-11, Office of the General Counsel, *Guidelines Concerning Processing of Beck Cases*, Aug. 17, 1998.
[10] *Id.*
[11] *Id.*

b. How many cases of alleged *Beck* violations has the Division of Advice determined has not met the burden?

8. Does the Office of General Counsel maintain the policy that the union must verify by an audit that the chargeable and non chargeable expenditures claimed were made?

9. How many cases have been referred to the Division of Advice concerning "the type and level of audits unions must give *Beck* objectors?"[12]

   a. What is the current status of such cases?

   b. How many have resulted in the issuance a complaint?

   c. How many have been dismissed?

   d. How many are pending before the Board?

10. How many cases have been referred to the Division of Advice that concern "whether *Beck* objectors are entitled to audits along with the notice of their *Beck* rights?"[13]

    a. What is the current status of such cases?

    b. How many resulted in the issuance of a complaint?

    c. How many have been dismissed?

    d. How many are pending before the Board?

11. Did you participate in advising the Board in its issuance of the "Employee Rights Under the National Labor Relations Act" poster rule?[14] If so, did you advise the Board that they should consider including in the notice notification of a workers' *Beck* rights under the National Labor Relations Act in the poster? If not, why not?

In preparing your answers to these questions, please answer each question individually and include the text of each question with your response. When producing documents to the Committee, please deliver production sets to the Majority Staff in room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

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[12] Memorandum GC 11-11, Office of the General Counsel, *Mandatory Submissions to Advice*, Apr. 12, 2011.
[13] *Id.*
[14] *See* National Labor Relations Act, Employee Rights under the National Labor Relations Act, *available at* http://www.nlrb.gov/sites/default/files/documents/1562/employeerightsposter-8-5x11.pdf.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

If you have any questions about this request, please contact the Committee at 202-225-5074. Thank you for your attention to this matter.

Sincerely,

Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143

Majority (202) 225–5074
Minority (202) 225–5051

Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.

3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.

4. Documents produced in electronic format should also be organized, identified, and indexed electronically.

5. Electronic document productions should be prepared according to the following standards:

   (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

   (b) Document numbers in the load file should match document Bates numbers and TIF file names.

   (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.

8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.

9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.

11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.

12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.

14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.

16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.

18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157of the Rayburn House Office Building and the Minority Staff in Room 2471of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlrb.gov

April 11, 2012

The Honorable John Kline, Chairman
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Chairman Kline:

Thank you for your interest in the Office of the General Counsel's (OGC's) proposed pilot program to reorganize Regions 14, 17, 25 and Subregion 33. I appreciate the opportunity to discuss this proposal.

In March of last year, I testified before the Labor, HHS Subcommittee of the House Committee on Appropriations. During that hearing, I assured the Committee that the OGC is committed to adjusting to the realities of declining national case intake and budget uncertainty. One month later, the National Labor Relations Board's Office of Inspector General issued an audit report that included relevant data and recommendations. Since that time, I have directed my staff to seek out long-term, national solutions that guarantee efficient use of agency resources and continued exemplary service to the public.

The proposed pilot program to reorganize Regions 14, 17, 25 and Subregion 33 is designed to test the effects of consolidation on some of our offices. Among our goals is to equalize office sizes in order to move towards a model where case intake in one office is more consistent with case intake in others. To that end, we have proposed a pilot program for consolidation of our St. Louis office, exclusive of our Peoria Subregional Office, with our Kansas City Regional Office, inclusive of the Tulsa Resident Office. During the proposed pilot, the Peoria Subregional Office would be consolidated with our Indianapolis Regional Office.

Should the pilot proceed, the top management structure for Regions 14 and 17 will be combined under the sitting Director of Region 17, and the responsibility for oversight of Subregion 33, Peoria, will be assumed by the sitting Director of Region 25, Indianapolis. Please be assured that the proposed restructuring pilot does not carry with it a final decision that either Region 17, Kansas City, or Region 14, St. Louis, will be the ultimate home of a sitting Regional Director. Rather, the proposed pilot merely affords the Agency the opportunity to assess the performance of a combined Regional Office.

Likewise, there is no plan to close any Regional, Subregional or Resident Office under the proposed pilot. Rather, the proposed pilot is designed to provide insight into ways to minimize any anticipated and unanticipated obstacles resulting from restructuring that would tend to interfere with each office's casehandling effectiveness. It is expected that the Regional Director's goal of regularly travelling between offices and the Agency's significant technological accomplishments – including the Federal Government's leading legal case management system – will allow all offices to remain efficient, responsive organizations during the pilot period. Should the consolidation proceed, as with the pilot, there would be no plan to close any office.

Thus far, this office has received robust input from various stakeholders. In February, we announced the proposed pilot program to the Practice and Procedure Committee of the Section of Labor and Employment Law of the American Bar Association. As a result of that announcement, a group of practitioners in St. Louis, Missouri requested and received a telephone briefing by this office. Subsequently, a group of local union officials in Illinois requested and received a telephone briefing by this office. In addition to those briefings, this office has received letters from members of Congress and other members of the Illinois and Missouri communities. Those letters are enclosed.

I intend to make a decision as to whether to institute the pilot program within the next few days. I look forward to working with you on this Agency's efforts to achieve efficient use of our resources. Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at 202-273-3700 if you have additional questions regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable George Miller, Ranking Minority Member
Committee on Education and the Workforce

COMMITTEE ON EDUCATION
AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2181 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

March 28, 2012

Lafe E. Solomon
Acting General Counsel
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Dear Acting General Counsel Solomon:

I respectfully request a briefing on and documents and communications related to the St. Louis, Missouri and Kansas City, Kansas National Labor Relations Board (NLRB) regional office consolidation pilot program your office is considering. The efficient operation of the NLRB is of the utmost importance to this committee, employees, and employers.

Last year, the NLRB's Office of Inspector General (OIG) issued an audit report on case processing costs.[1] Regional efficiency was evaluated by computing a "production unit" cost.[2] The OIG found that the cost per production unit varied significantly between the regions. The NLRB's Region 5 office, serving the Baltimore area, had a cost per production unit[3] of $1,788.54 and employed eight managers and supervisors and 20 professional employees.[4] In contrast, Region 26 office, serving the Memphis area, had a cost per production unit of $2,741.22 and employed seven managers and supervisors and 11 professional employees.[5] Based on its findings, the OIG recommended that the NLRB could achieve greater efficiencies by "consolidating offices and eliminating positions in overstaffed Regions by attrition."[6] Additionally, it recommended "relocating offices in high rent urban office districts to locations that offer lower lease costs when the relocation will result in cost savings."[7]

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[1] *NLRB Case Processing Costs Report,* OIG-AMR-64-11-02 (April 7, 2011).
[2] *Id.* at 1.
[3] Cost Per Unit = Total Production Units / Case Processing Cost. For example, Boston's total production units were 2,780.09 and case processing costs were $5,671,964.86, therefore, the cost per unit was $2,040.21. *Id.* at 6.
[4] *Id.* at 6.
[5] *Id.*
[6] *Id.* at 1.
[7] *Id.*

On February 27, 2012, you announced consideration of a pilot program to "consolidate Regional Offices in St. Louis, Missouri (Region 14) and Kansas City, Kansas (Region 17)."[8] The release states that you will "thoroughly consider input from Agency staff and from external stakeholders, including practitioners, members of the management-labor relations community, and Members of Congress, before making a final decision about whether to proceed with the pilot program."[9] To enable the committee to better understand the scope of the reorganization, the issues involved, the interests of internal and external stakeholders, and to ensure the efficient operation of the NLRB, please contact committee staff to arrange a briefing and provide the following no later than April 11, 2012:

1. All documents and communications relating to the pilot program to consolidate Region 14 and 17 offices;

2. A list of all outside parties from which the NLRB has received documents and communications relating to the pilot program to consolidate Region 14 and 17 offices; and

3. A list of all meetings held with external stakeholders relating to the pilot program to consolidate Region 14 and 17 offices, including a list of stakeholders in attendance, the date of the meeting, and a summary of the meeting.

To arrange the briefing or request additional information, please contact Marvin Kaplan, House Education and the Workforce Committee, at (202) 225-7101.

Sincerely,

JOHN KLINE
Chairman
Committee on Education and the Workforce

cc: The Honorable George Miller, Senior Democratic Member, Education and the Workforce Committee

[8] *Pilot Program Under Consideration to Consolidate Regional Offices,* National Labor Relations Board (February 27, 2012).
[9] *Id.*

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND THE WORKFORCE
MAJORITY OFFICE
2181 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

OFFICIAL BUSINESS

M.C.

Lafe E. Solomon
Acting General Counsel
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570

United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlrb.gov

April 9, 2012

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Issa:

Today, the Office of the General Counsel is enclosing documents that are being produced to Freedom of Information Act requesters pursuant to the Agency's administrative review process.

Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at 202-273-3700 if you would like additional assistance regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlrb.gov

April 9, 2012

The Honorable John Kline, Chairman
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

The Honorable Phil Roe, Chairman
Subcommittee on Health, Employment,
Labor and Pensions
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Chairman Kline and Chairman Roe:

Today, in response to your December 16, 2011 request for additional information about the Boeing case, I have enclosed a CD containing mostly unredacted emails responsive to that request. I provide these communications in order to supplement my December 20, 2011 letter explaining the legal and factual basis of the complaint, and the multitude of documents already provided to the Committee germane to those matters.

The redactions made in this production include material that is not germane to the request or is personal privacy information. Aside from those redactions, the Committee is receiving information that is not being disclosed to the public pursuant to FOIA. As described in my December 20, 2011 letter, this office will continue to provide responsive documents to the committee on a rolling basis as the collection and review process continues.

Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at 202-273-3700 if you would like additional assistance regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable George Miller, Ranking Minority Member
Committee on Education and the Workforce

United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlrb.gov

April 9, 2012

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Issa:

This letter serves as my continuing response to the subpoena served on the National Labor Relations Board, Office of the General Counsel on August 7, 2011. In that regard, I am enclosing a CD containing mostly unredacted emails responsive to that subpoena. The redactions made in this production include material that is not germane to the request or is personal privacy information. Aside from those redactions, the Committee is receiving information that is not being disclosed to the public pursuant to FOIA.

This office will continue to provide documents to the Committee on a rolling basis as the collection and review process described in our September 9, 2011 letter proceeds. Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at (202) 273-3700 if you would like additional assistance regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlrb.gov

March 20, 2012

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

Please find enclosed a CD containing mostly unredacted emails responsive to the Committee's February 13, 2012 request for information. The redactions made in this production include material that is personal privacy information. Aside from those redactions, the Committee is receiving some information that is not being disclosed to the public pursuant to FOIA.

Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at (202) 273-3700 if you would like additional assistance regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlrb.gov

March 20, 2012

The Honorable John Kline, Chairman
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

The Honorable Phil Roe, Chairman
Subcommittee on Health, Employment,
Labor and Pensions
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Chairman Kline and Chairman Roe:

Today, in response to your December 16, 2011 request for additional information about the Boeing case, I have enclosed a CD containing mostly unredacted emails responsive to that request. I provide these communications in order to supplement my December 20, 2011 letter explaining the legal and factual basis of the complaint, and the multitude of documents already provided to the Committee germane to those matters.

The redactions made in this production include material that is not germane to the request or is personal privacy information. As described in my December 20, 2011 letter, this office will continue to provide responsive documents to the committee on a rolling basis as the collection and review process continues.

Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at 202-273-3700 if you would like additional assistance regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable George Miller, Ranking Minority Member
Committee on Education and the Workforce

United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlrb.gov

March 13, 2012

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

This letter serves as my continuing response to the subpoena served on the National Labor Relations Board, Office of the General Counsel on August 7, 2011. In that regard, I am enclosing a CD containing mostly unredacted emails responsive to that subpoena. The redactions made in this production include material that is not germane to the request or is personal privacy information. Aside from those redactions, the Committee is receiving all information that is not being disclosed to the public pursuant to FOIA.

This office will continue to provide documents to the Committee on a rolling basis as the collection and review process described in our September 9, 2011 letter proceeds. Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at (202) 273-3700 if you would like additional assistance regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlrb.gov

March 13, 2012

The Honorable John Kline, Chairman
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

The Honorable Phil Roe, Chairman
Subcommittee on Health, Employment,
Labor and Pensions
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Chairman Kline and Chairman Roe:

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Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at 202-273-3700 if you would like additional assistance regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable George Miller, Ranking Minority Member
Committee on Education and the Workforce

United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlrb.gov

February 22, 2012

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

This letter serves as my continuing response to the subpoena served on the National Labor Relations Board, Office of the General Counsel, on August 7, 2011. In that regard, I am enclosing a CD containing mostly unredacted emails responsive to that subpoena. The redactions made in this production include material that is not germane to the request or is personal privacy information. Aside from those redactions, the Committee is receiving some information that is not being disclosed to the public pursuant to FOIA.

This office will continue to provide documents to the Committee on a rolling basis as the collection and review process described in our September 9, 2011 letter proceeds. Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at (202) 273-3700 if you would like additional assistance regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlrb.gov

February 22, 2012

The Honorable John Kline, Chairman
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

The Honorable Phil Roe, Chairman
Subcommittee on Health, Employment,
Labor and Pensions
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Chairman Kline and Chairman Roe:

Today, in response to your December 16, 2011 request for additional information about the Boeing case, I have enclosed a CD containing mostly unredacted emails responsive to that request. I provide these communications in order to supplement my December 20, 2011 letter explaining the legal and factual basis of the complaint, and the multitude of documents already provided to the Committee germane to those matters.

The redactions made in this production include material that is not germane to the request or is personal privacy information. As described in my December 20, 2011 letter, this office will continue to provide responsive documents to the committee on a rolling basis as the collection and review process continues.

Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at 202-273-3700 if you would like additional assistance regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable George Miller, Ranking Minority Member
Committee on Education and the Workforce

United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlrb.gov

February 7, 2012

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

This letter serves as my continuing response to the subpoena served on the National Labor Relations Board, Office of the General Counsel on August 7, 2011. In that regard, I am enclosing a CD containing mostly unredacted emails responsive to that subpoena. The redactions made in this production include material that is not germane to the request or is personal privacy information. Aside from those redactions, the Committee is receiving some information that is not being disclosed to the public pursuant to FOIA.

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Lafe E. Solomon
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Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

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February 7, 2012

The Honorable John Kline, Chairman
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

The Honorable Phil Roe, Chairman
Subcommittee on Health, Employment,
Labor and Pensions
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Chairman Kline and Chairman Roe:

Today, in response to your December 16, 2011 request for additional information about the Boeing case, I have enclosed a CD containing mostly unredacted emails responsive to that request. I provide these communications in order to supplement my December 20, 2011 letter explaining the legal and factual basis of the complaint, and the multitude of documents already provided to the Committee germane to those matters.

The redactions made in this production include material that is not germane to the request or is personal privacy information. As described in my December 20, 2011 letter, this office will continue to provide responsive documents to the committee on a rolling basis as the collection and review process continues.

Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at 202-273-3700 if you would like additional assistance regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable George Miller, Ranking Minority Member
Committee on Education and the Workforce

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January 17, 2012

The Honorable John Kline, Chairman
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

The Honorable Phil Roe, Chairman
Subcommittee on Health, Employment,
Labor and Pensions
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Chairman Kline and Chairman Roe:

Today, in response to your December 16, 2011 request for additional information about the collective-bargaining agreement reached between the Boeing Company (Boeing) and the International Association of Machinists (IAM) and the dismissal of the Boeing complaint, I have enclosed a CD containing mostly unredacted emails responsive to that request. I provide these communications in order to supplement our January 3, 2012 CD containing emails responsive to the Committee's request and my December 20, 2011 letter explaining the legal and factual basis of the complaint and the events leading up to the withdrawal of the complaint against Boeing.

The redactions made in this production include material that is not germane to the request or is personal privacy information. As described in my December 20, 2011 letter, this office will continue to provide responsive documents to the Committee on a rolling basis as the collection and review process continues.

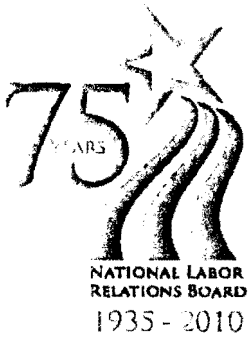
Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at 202-273-3700 if you would like additional assistance regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable George Miller, Ranking Minority Member
Committee on Education and the Workforce



United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570
www.nlrb.gov

January 17, 2012

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

Today, in response to the Committee's December 14, 2011 request for additional information regarding the collective-bargaining agreement reached between the Boeing Company (Boeing) and the International Association of Machinists (IAM) and the dismissal of the Boeing complaint, I have enclosed a CD containing mostly unredacted emails responsive to that request. I provide these communications in order to supplement our January 3, 2012 CD containing emails responsive to the Committee's request and my December 20, 2011 letter explaining the events leading up to the withdrawal of the complaint against Boeing.

The redactions made in this production include material that is not germane to the request or is personal privacy information. This office continues to collect and review documents consistent with the search parameters agreed to with the Committee. Thus far, many of the documents that contain the agreed upon search terms are not germane to the Committee's request. We will continue to thoroughly search and review those documents and would appreciate the opportunity to continue to discuss with the Committee ways to prioritize our search based on the Committee's ongoing interest in this matter.

Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at (202) 273-3700 if you would like additional assistance regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

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January 3, 2012

The Honorable John Kline, Chairman
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

The Honorable Phil Roe, Chairman
Subcommittee on Health, Employment,
Labor and Pensions
Committee on Education and the Workforce
House of Representatives
2181 Rayburn House Office Building
Washington, DC 20515-6100

Dear Chairman Kline and Chairman Roe:

Today, in response to your December 16, 2011 request for additional information about the theory and disposition of the Boeing case, I have enclosed a CD containing mostly unredacted emails responsive to that request. I provide these communications in order to supplement my December 20, 2011 letter explaining the legal and factual basis of the complaint and the events leading up to the withdrawal of the complaint against Boeing.

The redactions made in this production include material that is not germane to the request or is personal privacy information. As described in my December 20, 2011 letter, this office will continue to provide responsive documents to the Committee on a rolling basis as the collection and review process continues.

Please do not hesitate to contact Jose Garza, Special Counsel for Congressional and Intergovernmental Affairs, at (202) 273-3700 if you would like additional assistance regarding this matter.

Sincerely,

Lafe E. Solomon
Acting General Counsel

Enclosures

cc: The Honorable George Miller, Ranking Minority Member
Committee on Education and the Workforce

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January 3, 2012

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

Today, in response to the Committee's December 14, 2011 request for additional information regarding the collective-bargaining agreement reached between the Boeing Company (Boeing) and the International Association of Machinists (IAM) and the dismissal of the Boeing complaint, I have enclosed a CD containing mostly unredacted emails responsive to that request. I provide these communications in order to supplement my December 20, 2011 letter explaining the events leading up to the withdrawal of the complaint against Boeing.

The redactions made in this production include material that is not germane to the request or is personal privacy information. As described in my December 20, 2011 letter, this office will continue to provide responsive documents to the Committee on a rolling basis as the collection and review process continues.

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