

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

August 6, 2020

The Honorable Peter B. Robb
General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, D.C. 20570-0001

Dear Mr. Robb:

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

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

The Office of the General Counsel does not have the authority to initiate this reorganization without a vote by the Board. According to the NLRB’s delegation of authority and assigned responsibilities of the General Counsel, pursuant to Section 3 of the NLRA, “[t]he appointment, transfer, demotion, or discharge of any Regional Director or of any Officer-in-Charge of a Subregional office shall be made by the General Counsel only upon approval of the Board.”² By stripping the Regional Directors of the key responsibility of assigning cases to staff and managing those cases, this action qualifies as a demotion and cannot be implemented without approval of the Board.³ Moreover, any effort to centralize the handling of union representation

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

² *Further Amendment to Memorandum Describing Authority and Assigned Responsibilities of the General Counsel*, 77 Fed. Reg. 45696 (Jul. 27, 2012).

³ This permanent removal of a key responsibility goes much further than previous efforts such as the Interregional Assistance Program, which only engaged in temporary resource-sharing upon a Regional Director’s expressing a specific need.

cases, including the assignment of decision-writers,⁴ is contrary to Section 3 of the NLRA and the NLRB's own Rules and Regulations, which provide Regional Directors with discretion over the conduct of elections unless directed otherwise by the Board.⁵

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

Moreover, the effort to shield this overhaul from transparency raises serious concerns. You have previously stated to the American Bar Association that “[c]hanges related to the structure of the Field will be open for public comment prior to implementation, as appropriate.”⁶ In response to previous inquiries from Congress on this exact matter, you also stated that, if you believed any changes to the structure of the Regions were warranted, you would “work to develop potential plans to be shared publicly.”⁷ Moreover, the NLRB's past practice has been to brief Senators and Representatives in the states and districts that will be affected by any contemplated reorganization or consolidation, allowing Members of Congress to provide input on behalf of their affected constituents. The NLRB functions best when the public, the agency's stakeholders, and Congress are apprised of the agency's operations and of any planned changes to them. This departure from your previous commitment to transparency and the NLRB's past practice is therefore an alarming course of action.

We therefore request that the NLRB suspend the current reorganization plan until the agency provides full transparency to Congress and the public, including a public notice and comment period, and the General Counsel abides by the NLRB's delegation of authority and assigned responsibilities. As part of the transparency process, please provide dates before August 24, 2020 on which you are available to provide a briefing on these matters, and dates on which all the affected Regional Directors are available to provide a briefing on these matters. Please also provide the following information not later than August 17, 2020:

⁴ *Changes to Case Processing Part 1*, Memorandum ICG 18-06 (July 30, 2018); see Robert Iafolla, “NLRB Aims to Centralize Decision-Writing for Election Cases,” *Bloomberg Law* (Mar. 5, 2020) <https://news.bloomberglaw.com/daily-labor-report/nlr-aims-to-centralize-decision-writing-for-election-cases>.

⁵ 29 U.S.C. § 153 (governing the delegation of powers to Regional Directors); 29 C.F.R. § 102.69 (placing with Regional Directors the discretion to supervise elections “[u]nless otherwise directed by the Board.”).

⁶ *Report on the Midwinter Meeting of the ABA Practice and Procedure Under the National Labor Relations Act Committee of the Labor and Employment Law Section*, Memorandum GC 18-03 (Mar. 14, 2018).

⁷ Letter from Peter B. Robb, General Counsel of the National Labor Relations Board, to Rep. Robert C. “Bobby” Scott, Rep. Gregorio Kilili Camacho Sablan, and Rep. Donald Norcross (Mar. 1, 2018).

1. A detailed explanation of the rationale for centralizing the process for assigning cases throughout the seven affected Regions. In describing this rationale, please state alternatives that were considered and why they were rejected.
2. All documents that demonstrate that the General Counsel sought Board approval for the District IV Resource Sharing Plan. If the General Counsel did not seek approval from the Board, then please provide a detailed explanation on the rationale for not seeking Board approval for the District IV Resource Sharing Plan and for not publishing a notice of such reorganization in the Federal Register.
3. All documents detailing or relating to the District IV Resource Sharing Plan, including any documents detailing or relating to the process for assigning cases and the involuntary transfer of NLRB staff to different supervising Regions.
4. All communications, including but not limited to solicitation of comments and related responses, about the development or implementation of the District IV Resource Sharing Plan between you or any person employed by your office, including the Division of Operations-Management, and the following individual(s):
 - a. The Chairman, any Member of the NLRB, or the staff of the Chairman or of a Member;
 - b. Any Regional Director or employee of a Regional Office; and
 - c. Any person outside the NLRB.
5. A detailed description of the efforts taken to brief Members of Congress representing districts and states affected by the District IV Resource Sharing Plan. If no such efforts have been made, please explain why the NLRB departed from its past practice.
6. A detailed description of the efforts made to provide public notice and comment on the District IV Resource Sharing Plan. If no such efforts have been made, please explain why the NLRB departed from the General Counsel's earlier commitment to providing notice and comment.
7. All communications, including but not limited to solicitation of comments and related responses, on the development or implementation of Memorandum ICG 18-06, regarding the centralization of decision-writing in representation cases, between you or any person employed by your office, including the Division of Operations-Management, and the following individual(s):
 - a. The Chairman, any Member of the NLRB, or the staff of the Chairman or of a Member;
 - b. Any Regional Director or employee of a Regional Office; and
 - c. Any person outside the NLRB.

8. A detailed description of any consideration the NLRB gave to the effect of the District IV Resource Sharing Plan or any reorganization plan on the diversity of the NLRB's Regional Directors or of the agency's Senior Executive Service. Please produce any relevant documents the NLRB developed on this issue.
9. A detailed description of what alternatives to involuntary transfer to different supervising Regions were considered and why they were rejected.
10. A detailed description of whether a plan similar to the District IV Resource Sharing Plan is being considered in any other district of the NLRB. Please include all documents and communications related to any such plan, including but not limited to solicitation of comments and related responses, between you or any person employed by your office, including the Division of Operations-Management, and the following individual(s):
 - a. The Chairman, any Member of the NLRB, or the staff of the Chairman or of a Member;
 - b. Any Regional Director or employee of a Regional Office; and
 - c. Any person outside the NLRB.
11. The current staffing levels, broken down by classification, of each field office throughout the agency.
12. The current case intake of each field office throughout the agency, broken down by case type, since January 1, 2019.
13. For each field office throughout the agency, the percentage of unfair labor practice charges filed since January 1, 2019, found to have merit.
14. A budgetary analysis of the costs of the District IV Resource Sharing Plan, including the costs of any travel expected as a result of the plan.
15. The number of employees, designated by classification and tenure, in each field office who will receive a notice of involuntary transfer. For each employee, please state the field office to which they will be expected to transfer.
16. A detailed description of the efforts made to provide notice to and bargain with the National Labor Relations Board Union regarding the District IV Resource Sharing Plan. If no such efforts were made, please explain why not.
17. A detailed description of any plans related to the mandatory reopening of Regional Offices and terminating Regional Directors' discretion to continue operations virtually during the COVID-19 pandemic. Please include any communications related to this plan, including but not limited to solicitation of comments and related responses, between you or any person employed by your office, including the Division of Operations-Management, and the following individual(s):

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- a. The Chairman, any Member of the NLRB, or the staff of the Chairman or of a Member;
- b. Any Regional Director or employee of a Regional Office; and
- c. Any person outside the NLRB.

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

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

Sincerely,



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



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



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