



March 5, 2020

Dear Subcommittee Chairman Raskin,

The National Labor Relations Board Professional Association is the employee representative for professionals working at the NLRB Headquarters. We are writing to you about recent actions by General Counsel Peter Robb and Chairman John Ring of the National Labor Relations Board that potentially undermine legal protection for the Agency's LGBTQ employees. We value your overall commitment to protecting LGBTQ federal employees from discrimination in the workplace and, particularly, your recent oversight hearing describing how the Trump Administration has rolled back protection against discrimination based on sexual orientation and gender identity. Given your leadership on these issues (and since many of us are your constituents), we want to make sure that you are aware of similar ongoing concerns about management's efforts to undermine the legal protection against LGBTQ discrimination at the NLRB.

Our most immediate concern is about Agency proposals to eliminate contractual prohibitions on discrimination based on sexual orientation and gender identity from its collective-bargaining agreements with its employees. The collective-bargaining agreement between the NLRB and the NLRBPA has protected employees against discrimination based on sexual orientation since 2002. In 2017, the NLRB and the NLRBPA agreed to a Memorandum of Understanding (MOU) additionally prohibiting discrimination based on gender identity, expression, or transition, which by its terms was incorporated into the existing collective-bargaining agreement between the parties. In 2019, the Agency terminated the collective-bargaining agreement with the NLRBPA, though it remains legally obligated to maintain the existing terms and conditions of employment until it bargains to a new contract or impasse. So you can imagine our dismay when we received contract proposals from management eliminating the contractual provisions prohibiting discrimination based on sexual orientation and stating that any "prior MOUs, agreements, or settlements executed prior to the latest date below are not incorporated into this agreement." As Pride at Work has explained, "contract non-discrimination clauses are the front-line defense for LGBT people against discrimination and harassment on the job." The Agency's position, then, is a giant step backward in the fight to ensure that LGBTQ workers receive equal treatment under the law.

But it gets worse. The Agency is not only trying to get rid of the prohibition on discrimination based on sexual orientation and gender identity, it also proposes to eliminate the contractual agreement to maintain a standing joint labor-management Equal Employment Opportunity Committee. On equal employment opportunity issues, they have turned what was historically a cooperative relationship between management and the union into an adversarial relationship. When they should lead with an outstretched hand, they instead offer the back of their hand.

Finally, in their employment discrimination coup de grace, General Counsel Robb and Chairman Ring also propose to take away employees' contractual protection against any and all forms of employment discrimination. Like virtually every collective-bargaining agreement, the Agency and the NLRBPA have resolved workplace disputes through a grievance and arbitration system for decades. Yet now the Agency is trying to eviscerate that system. The Agency proposes to effectively gut the grievance and arbitration procedure by excluding virtually every conceivable workplace dispute from the definition of a grievance, including any allegation of discrimination. The Agency specifically proposes that employees have no contractual protection against "allegations of discrimination including but not limited to: race, color, religion, sex, national origin, age, disability, genetic information, or retaliation, that could be filed as an EEO complaint." The Agency would take away employees' right to determine how best to pursue their dispute, while at the same time, through related proposals on use of official time, they would drastically curtail the union's ability to assist employees in filing and litigating EEO complaints. Here again, LGBTQ employees are uniquely vulnerable. As you are aware, the Trump Administration has argued in three recent cases before the Supreme Court that Title VII protections against discrimination do not include protection against discrimination based on sexual orientation. If the NLRB succeeds in its attempt to remove its employees' contractual protection against discrimination based on sexual orientation, then, our LGBTQ members will have no legal protection from discrimination.

Through its actions, the Agency seeks to impose outdated, discriminatory policies that do not reflect the values of the modern American workplace or effective employment policies. Their proposals exacerbate the disenchantment in a workplace that is already plagued by plummeting morale and ethical scandals involving the Agency's leadership. In the most recent 2019 Federal Employee Viewpoint Survey conducted by the Office of Personnel Management (OPM), the NLRB ranked as the 24th best place to work out of 25 mid-size federal workplaces. The Agency ranked last in employees' respect for senior leadership and senior leaders' honesty, integrity, and ability to motivate employees. The job satisfaction ranking is entirely predictable when, for the second year in a row, the Agency is under a GAO investigation for failing to spend funds that Congress allocated. Staffing levels have been cut so low that, in the most recent Labor-HHS Appropriations legislation, Congress was forced to include report language requiring the Agency to submit plans to fill vacancies and to provide monthly staffing reports to the Appropriations Committees. This is an agency in crisis, but our leadership attention is focused on stripping LGBTQ employees of their rights in the workplace. General Counsel Robb and Chairman Ring should spend more energy trying to fulfil the statutory mission of the Agency and less time trying to roll back its employees' hard-fought contractual protections against discrimination.

We greatly appreciate your attention to these matters. It is a mark of shame that employment discrimination against LGBTQ employees, including federal employees, has been tolerated for so long, and to callously take any protections away after so long a struggle for equal treatment would be unconscionable. In that spirit, we would be most grateful for any oversight of the Agency and help that you can provide to defend the workplace rights of our LGBTQ brothers and sisters. If you have any questions or

concerns, please contact NLRBPA President Karen Cook, karen.cook@nrb.gov, or NLRBPA Legislative Affairs Director Adam Naill, adam.naill@nrb.gov.

In gratitude,
Karen Cook
NLRBPA President