

Congress of the United States

Washington, DC 20510

April 25, 2018

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

Dear General Counsel Robb,

We are concerned about recent reports that the Office of Management and Budget has directed the National Labor Relations Board (NLRB) to freeze funding in preparation for a possible rescission package.¹ There have also been reports of plans for the Agency to reorganize Regions and change casehandling procedures based on the funding level proposed in the President's budget.² If these reports are true, this would violate the letter and spirit of our bipartisan budget deal, it would have a significant negative impact on workers across the country, and we urge you to change course immediately.

We remind you that Congress, not the Administration, has the ultimate authority to set funding levels for executive branch agencies. GAO has previously concluded that "amounts withheld as a consequence of a 'cancellation proposal' constitute impoundments that agencies may take only after the President transmits a special message to Congress under the Impoundment Control Act."³ In other words, agencies may not withhold appropriated funds from obligation in advance of submitting a special impoundment message. They also may not withhold funds from obligation based on the President's budget proposal, outside of the special impoundment message procedures. We expect that all Agency spending and reorganizations will be made in

¹ Hassan A. Kanu, *White House said to Freeze Labor Board Funding*, Bloomberg BNA Daily Labor Report, April 17, 2018, available at <https://www.bna.com/white-house-pause-n57982091192/>

² NLRB Gen. Couns. Mem. 18-03 at 2 (Mar. 14, 2018) (stating, with regard to "Potential Reorganization of Field Operations and Changes to Case Handling Procedures" the following: "The purpose of these changes would be to bring the Agency in line with OMB Directive 17-22 and to meet the FY 18 and 19 budget."); Hassan A. Kanu, *Labor Board Official Parries Criticism on 'No-Plan' Plan*, Bloomberg BNA Daily Labor Report, Apr. 4, 2018; Andrew Hanna, *NLRB general counsel tells staff cuts still possible*, Politico Pro, Mar. 27, 2018.; E-mail from Michael Lotito, Littler Mendelson P.C., to Peter Robb, NLRB General Counsel (Jan. 17, 2018) (on file with the Committee on Health, Education, Labor and Pensions) ("Your reorganization [i]s leaking. BNA reporter wants to talk to me. What do you want me to do. Guidance please."). We are especially troubled by the latter exchange. Although you did not comment in writing, it appears that you have coordinated to some extent with Littler Mendelson in crafting or contemplating reorganization plans and that, long before Congress or the public was aware, Mr. Lotito understood you to have a "reorganization."

³ *Impoundment of the Advanced Research Projects Agency-Energy Appropriation Resulting from Legislative Proposals in the President's Budget Request for Fiscal Year 2018 (B-329092)*, U.S. Government Accountability Office, December 12, 2017, available at <https://www.gao.gov/products/B-329092#mt=e-report>

accordance with federal law, especially the Impoundment Control Act, and that the NLRB will consult with Congress wherever appropriate.

Any actions to unilaterally reduce spending or improperly reorganize like the ones reported would be particularly troubling given that President Trump just recently signed bipartisan legislation that set spending levels and guidance for agencies into law, based on negotiations by us and other members of Congress on both sides of the aisle. Any attempt to go back on the deal we made would be an extreme act of bad faith, in addition to being bad for workers and a violation of the law.

Thank you for your attention to this letter. We would appreciate a prompt reply that includes assurances you will abide by all applicable provisions of the Consolidated Appropriations Act, 2018, as well as the Impoundment Control Act.

Sincerely,



ROSA L. DeLAURO
Member of Congress



PATTY MURRAY
United States Senator

Cc: The Honorable John F. Ring, Chairman
The Honorable William J. Emanuel, Member
The Honorable Marvin E. Kaplan, Member
The Honorable Lauren McFerran, Member
The Honorable Mark Gaston Pearce, Member
National Labor Relations Board
1015 Half Street S.E.
Washington, D.C. 20570

The Honorable Mick Mulvaney, Director
The White House Office of Management & Budget
725 17th Street, NW Washington, DC 20503