

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND REFORM

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August 12, 2020

The Honorable John F. Ring  
Chairman  
National Labor Relations Board  
1015 Half Street, S.E.  
Washington, D.C. 20570

Dear Chairman Ring:

We remain concerned about the attempts of the National Labor Relations Board (NLRB) to remove essential workplace protections from its collective-bargaining agreement with the NLRB Professional Association (NLRBPA), including nondiscrimination protections for LGBTQ+ employees and the ability to bring discrimination claims in the grievance and arbitration process. We have yet to receive a satisfactory response to these concerns.

The NLRB had been on the right track regarding LGBTQ+ protections by introducing nondiscrimination protections based on sexual orientation in 2002 and gender identity in 2017, but now it appears that NLRB wants to move backwards.<sup>1</sup> The NLRB has confirmed that it seeks to remove sexual orientation and gender identity from the list of classes protected under the agency's collective bargaining agreement (CBA), and it has conceded that it intends to strip employees of the right to challenge any act of equal employment opportunity (EEO) discrimination under the CBA's negotiated grievance procedure. The sole explanation the NLRB has provided for these alarming changes is that the agency wishes to "streamline" the CBA to avoid duplicating federal statutes.<sup>2</sup> This motivation is a woefully inadequate reason to deprive NLRB employees of a meaningful right to challenge discrimination through the grievance process.

During a staff briefing on June 2, 2020, your team repeatedly failed to provide any evidence that these changes were necessary. For example, the NLRB was unable to answer a basic question on whether the CBA contains an election of remedies clause preventing duplicative litigation; identify any duplicative litigation that would necessitate the proposed "streamlining;" identify any problem with the current grievance process to support the proposed

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<sup>1</sup> Letter from Karen Cook, President, National Labor Relations Board Professional Association, to Chairman Jamie Raskin, Subcommittee on Civil Rights and Civil Liberties, Committee on Oversight and Reform (Mar. 5, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/NLRBPA%20Raskin%20letter%20.pdf>).

<sup>2</sup> Letter from Chairman John F. Ring, National Labor Relations Board, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (Apr. 22, 2020).

changes; or identify any other non-EEO provision in the CBA that was stripped for “streamlining.”<sup>3</sup> Your staff committed to following up with responses to each of those queries, however, no such information has been furnished. In short, the NLRB appears unable to provide any factual support demonstrating the need for its proposed changes. Instead, the justification appears to be that the NLRB is seeking to force these changes on its employees as part of a baseless ideological campaign.

The decision to remove sexual orientation and gender identity is particularly galling in light of the Supreme Court’s recent decision in *Bostock v. Clayton County*.<sup>4</sup> Before *Bostock*, it was unclear whether federal law would protect either class of persons moving forward. By blocking those claims under the CBA, the NLRB appeared ready to gamble on whether its employees would have *any* means of protection against or redress for discrimination based on LGBTQ+ status. Since the *Bostock* decision, the NLRB’s continued insistence on stripping LGBTQ+ protections from the CBA appears to be nothing more than intransigence.

Though the NLRB insists its proposed changes have no substantive effect on its employees, this is untrue. For example, by eliminating EEO grievances, the agency is forcing its employees to challenge discriminatory employment actions through the Equal Employment Opportunity Commission (EEOC) or the Merit Systems Protection Board (MSPB).<sup>5</sup> Doing so removes an efficient, low-cost pathway to relief, as arbitration proceedings are often quicker and employees can avail themselves of assistance from the union to avoid expensive legal fees. Forcing employees to the MSPB—where cases can languish for years, as the agency lacks a quorum—or the EEOC—where federal sector cases are delayed in a substantial backlog—may discourage employees from seeking vindication of their basic rights and effectively deny them any meaningful relief for discrimination.<sup>6</sup>

There does not seem to be any credible explanation for the NLRB’s reversal in position other than the apparent determination to use these fundamental employee rights as a bargaining chip. That cavalier approach trivializes essential protections. We condemn this move and implore the NLRB to bargain in good faith without requiring employees to bargain over their right to work free from discrimination.

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<sup>3</sup> Briefing by Ed Egee, Director, Office of Congressional and Public Affairs, and Christine Lucy, Special Counsel and Chief of Staff to Chairman Ring, National Labor Relations Board, to Majority and Minority Staff, Committee on Oversight and Reform (June 2, 2020).

<sup>4</sup> *Bostock v. Clayton County*, 590 U.S. \_\_\_\_ (2020).

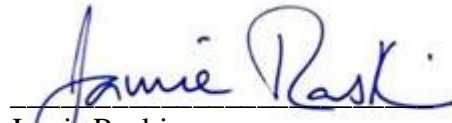
<sup>5</sup> Equal Employment Opportunity Commission, *Filing a Formal Complaint* (online at [www.eeoc.gov/federal-sector/filing-formal-complaint](http://www.eeoc.gov/federal-sector/filing-formal-complaint)) (accessed on July 27, 2020); Merit Systems Protection Board, *How to File an Appeal* (online at [www.mspb.gov/appeals/appeals.htm](http://www.mspb.gov/appeals/appeals.htm)) (accessed on July 27, 2020).

<sup>6</sup> *Administration Pushes for Senate to Move on MSPB Chair Nomination*, The Hill (July 2, 2020) (online at <https://thehill.com/homenews/administration/505719-administrations-mspb-chair-pick-calls-for-senate-to-move-on-his>); *More and More Workplace Discrimination Cases Are Being Closed Before They’re Even Investigated*, Vox (June 14, 2019) (online at [www.vox.com/identities/2019/6/14/18663296/congress-eeoc-workplace-discrimination](http://www.vox.com/identities/2019/6/14/18663296/congress-eeoc-workplace-discrimination)).

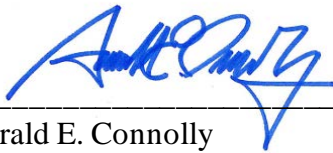
Sincerely,



Carolyn B. Maloney  
Chairwoman  
Committee on Oversight and Reform  
LGBTQ+ Equality Caucus



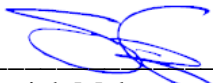
Jamie Raskin  
Chairman  
Subcommittee on Civil Rights  
and Civil Liberties  
Vice Chair, LGBTQ+ Equality  
Caucus



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Sean Patrick Maloney  
Co-Chair, LGBTQ+ Equality Caucus



Mark Pocan  
Co-Chair, LGBTQ+ Equality  
Caucus



Mark Takano  
Co-Chair, LGBTQ+ Equality Caucus

cc: The Honorable James R. Comer, Ranking Member  
Committee on Oversight and Reform

The Honorable Chip Roy, Ranking Member  
Subcommittee on Civil Rights and Civil  
Liberties

The Honorable Jody B. Hice, Ranking Member  
Subcommittee on Government Operations