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March 28, 2012

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Over the past year, the Committee has been conducting a wide-ranging investigation of officials at the National Labor Relations Board (NLRB) who you allege were “exceeding their legal authority to pursue a partisan agenda” when they filed a complaint against the Boeing Company for discriminating against workers in Washington State.¹ As part of that investigation, you sent broad requests for documents, held a Committee hearing in which you required the Acting General Counsel of the NLRB to testify, and issued a subpoena compelling the production of tens of thousands of sensitive internal documents.

Last week, a report issued by the NLRB’s Inspector General concluded that a current Board member, Terrance Flynn, committed unethical and potentially criminal conduct when he disclosed confidential pre-decisional information that he obtained through his official position.²

I am writing to request that the Committee conduct transcribed interviews of two former Board members who were the recipients of this information—Peter Schaumber and Peter Kirsanow—in order to determine the extent to which they or their clients may have benefitted. I also request that the Committee send document requests to these former Board members in order to prepare for these interviews.

¹ House Committee on Oversight and Government Reform, *Hearing on Unionization Through Regulation: The NLRB’s Holding Pattern on Free Enterprise*, 112th Cong. (June 17, 2011). See also Issa Condemns NLRB on Boeing Dispute: “Far in Excess of their Mandate,” Daily Caller (June 20, 2011) (online at www.dailycaller.com/2011/06/20/issa-condemns-nlr-on-boeing-dispute-far-in-excess-of-their-mandate/).

² National Labor Relations Board, Office of Inspector General, *Report on Investigation, OIG-I-468* (Mar. 19, 2012).

Inspector General's Report

The Inspector General's investigative report concluded that current NLRB Member Terence Flynn "violated the provisions of the Standards of Ethical Conduct for Employees of the Executive Branch" while serving as Chief Counsel. The Inspector General reported that Mr. Flynn shared "deliberative, pre-decisional information that was protected from disclosure and considered by the NLRB to be the most confidential of Agency information" with two former Board Members: Peter Schaumber and Peter Kirsanow. According to the Inspector General's report, these former Board Members obtained confidential pre-decisional information, as well as attorney-client privileged information, on both active litigation and proposed rulemakings.

Based on these findings, the Inspector General concluded as follows:

We also find that the improper disclosure of information to former Members Kirsanow and Schaumber amounted to a conversion of the information for the private benefit of former Member Kirsanow and his client, the National Association of Manufacturers, and former Member Schaumber's labor relations consulting and/or legal practice. The improper disclosures of information to former Member Schaumber were particularly detrimental to the Board's deliberative process in that they involved the positions of Board Members and staff prior to the public announcement of Board decisions and disclosure of the type of information that could have a chilling effect on the operation of the Board and may prejudice the due process rights of the parties in pending and future cases.

According to the Inspector General's report, after leaving the NLRB, Mr. Schaumber obtained the following information from Mr. Flynn:

- Internal memoranda between the Office of General Counsel and the Board, one of which contained legal advice to the Board;
- An email disclosing recommendations by the NLRB's Acting General Counsel regarding whether the Board should join in litigation as an amicus party;
- A document that listed the Member and attorney assignments and status of cases pending before the Board; and
- An e-mail attaching analysis and comments prepared by three Board counsels for a Board Member on the resolution for the representation rule that would be considered at the Board's open meeting.

According to the Inspector General's report, investigators located on Mr. Flynn's computer a business plan that appeared to have been created by Mr. Schaumber. The file, named "Schaumber business plan.doc," stated:

My practice will be developed in part by leveraging my Agency connections and focusing the attention of senior management on the likely priorities of the Obama Board and strategies to respond to them.

Another file, entitled "Schaumber SuppBusPlan.doc," described how Mr. Schaumber would "serve as a liaison for the firm on matters requiring high level intervention at the National Labor Relations Board and other Government agencies."

Similarly, according to the Inspector General's report, Mr. Kirsanow obtained from Mr. Flynn attorney-client privileged information relating to his representation of the National Association of Manufacturers (NAM) in an action against the NLRB, seeking to prevent the NLRB from implementing a recently proposed notice posting rule. Mr. Kirsanow also received research assistance from Mr. Flynn in relation to his representation of NAM in the notice posting rule litigation, according to the Inspector General's report.

Request for Interviews and Documents

Based on the investigative report, it appears that the Inspector General did not conduct interviews of either Mr. Schaumber or Mr. Kirsanow. In addition, since the Inspector General's report focused predominantly on the conduct of the current Board Member, Mr. Flynn, it relied primarily on records already in the custody and control of the NLRB.

Given our Committee's oversight of NLRB, I request that the Committee conduct transcribed interviews of former Board Members Peter Schaumber and Peter Kirsanow to determine to what the extent they may have used the information they obtained for their private benefit or to advance their clients' business interests.

To prepare for these interviews, I also request that the Committee send letters to both former Board members seeking the following documents for the time period beginning on the date each departed the Board to the present:

- (1) All communications with Terence Flynn, including communications forwarding correspondence with Mr. Flynn to other recipients; and
- (2) All documents and communications to, from, and relating to the NLRB, including but not limited to pending cases, proposed and final rulemakings, congressional activity, and any legal or business strategy for clients with business before the NLRB.

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Thank you for your consideration of this request.

Sincerely,


Elijah E. Cummings
Ranking Member