



National Labor Relations Board Professional Association  
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General Counsel Robb,

We are writing to express our concerns regarding the “C Case Outline” casehandling proposals that were distributed by Beth Tursell on January 29, 2018, as well as your discussion of those proposals and the restructuring of Field offices in GC Memo 18-03. Our members are troubled by the proposed modifications described in the outline and your memo. We wish to share the NLRBPA’s views regarding some of the potential consequences of implementing these changes and to express our disapproval of any changes which would interfere with the mission of the Agency.

Specifically, we urge you to reconsider those portions of the C Case Outline and GC Memo 18-03 that pose a risk of reducing the public’s access to the Agency or interfering with the discretion of Board Agents to conduct thorough and rigorous investigations. The proposal to require charging parties to submit position statements, declarations, lists of witnesses, and documentary evidence at the time of the filing of a charge will dramatically impair the role of the Agency in enforcing the Act and will thwart parties’ efforts to vindicate their rights under the Act. These novel threshold requirements for filing a charge also ignore the inescapable fact that the charged party typically possesses the bulk of the information relevant to an investigation. In addition, your suggested changes to the structure of the Field offices would add at least one wholly unnecessary additional layer of management while impairing Board Agents’ demonstrated ability to settle cases expeditiously without the need to devote further Agency resources to investigation and case processing.

Our members are committed to ensuring that charges filed by members of the public are given thoughtful consideration. We occupy a diverse range of roles at the Agency. In the Division of Advice, our members provide guidance to the Regional Offices, while in the Office of Appeals, NLRBPA members perform crucial work ensuring that meritorious charges are not wrongly dismissed. These offices rely on continued high-quality investigative work in the field in order to fulfill their important agency functions. The proposed changes would imperil that high quality investigative work and therefore diminish the thoroughness of those offices. The C Case Outline proposals would also directly impact Board-side, Division of Legal Counsel, and Division of Enforcement attorneys. These changes would reduce the number of cases that are allowed to move forward or would authorize cases to be settled for inadequate remedies. These actions will diminish case intake in those divisions and will likely make it more difficult for individual charging parties to pursue and litigate cases. We believe many of the proposals will operate as barriers to public access, with the predictable consequence that meritorious charges will never be filed or, if they are filed, will not receive the attention and consideration they deserve.

We also share the concerns raised by our brothers and sisters in the NLRBU in their letter to you on February 23 regarding the lack of clarity in the proposals and our uncertainty as to the connection, if any, between the casehandling proposals and your stated goals of streamlining the Agency's processes and the possible need to anticipate a budget shortfall. GC Memo 18-03 has amplified our concerns regarding the multiple, inconsistent justifications that you have invoked in the course of proposing changes to casehandling and to the structure of the Field. We believe you are pursuing widespread changes to the Agency that would irreparably undermine the Agency's ability to carry out its mission based on partisan predictions of future Congressional allocations.

Even if your assumptions regarding future funding levels were accurate, however, many of the proposed changes strike us as unlikely to generate cost savings for the Agency. What they do seem likely to achieve is the frustration of our efforts to provide members of the public with high quality, thorough investigation of their charges. For example, proposal 58 states that investigations will not seek employer identification numbers, manuals, policies, or handbooks unless they are directly related to alleged violations. While it is hard to envision cost savings from this proposal, it seems purpose-built to facilitate charged parties' schemes to withhold information and escape scrutiny. Similarly, we are concerned by the requirement that charging parties submit declarations from witnesses with their charges. If the Board will still primarily rely on witness affidavits, then the proposal will lead to greater redundancy, delay, and confusion in investigations while failing to achieve the desired efficiencies. On the other hand, if the Board will assess merit based on declarations provided by charging parties rather than affidavits by Board Agents, then the proposal will significantly undermine the quality of Board investigations, in contravention of GC Memo 18-03's stated objectives.

We would welcome the opportunity to meet with you to discuss the concerns we have raised in this letter and look forward to maintaining an ongoing dialogue with you regarding the best ways to streamline case processing, support the high-quality investigative work that takes place in our Field offices, and improve the Agency's efficiency. Should you move forward with implementing the proposed changes, we also echo the NLRBU's request that we receive notice and an opportunity to bargain over any negotiable aspects of the proposed changes themselves or their impact and implementation. Thank you in advance for taking the time to contemplate the best path forward and for your willingness to meet with us to discuss any changes to casehandling you plan to pursue.

Regards,  
NLRB Professional Association

cc: John Kyle