

Congress of the United States
House of Representatives
Washington, DC 20515

May 4, 2012

VIA FACSIMILE:

The Honorable Brian Hayes
Board Member
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570-0001

Dear Member Hayes:

I respectfully request that you provide us and the Committees on Education and the Workforce and Oversight and Government Reform with information concerning your supervision of Mr. Terence Flynn while he was your Chief Counsel at the National Labor Relations Board (“the Board”).

As you know, the Board’s Inspector General has issued two reports¹ this year that highlight Mr. Flynn’s disclosure of internal, deliberative information outside the Board. These two reports follow on the heels of the Inspector General’s investigation² into concerns that improper enticements were made to you to resign your position as Member to prevent the Board from issuing a rule.

According to the Inspector General, your former Chief Counsel Terence Flynn passed internal, deliberative information to former Board Member Peter Kirsanow and Mr. Flynn’s previous supervisor, former Board Chairman Peter Schaumber.³ The incidents cited by the Inspector General in his reports occurred while he was under your direct supervision.

The Inspector General’s reports described how Mr. Flynn passed information about a number of matters under deliberation to Mr. Schaumber, whose post-Board career included advising *Romney for President, Inc.* on labor policy. Former Chief Counsel Flynn also possessed on his computer Mr. Schaumber’s purported private sector business plan, which called for Mr. Schaumber leveraging his agency connections to assist clients, according to the Inspector General.

¹ See Memorandum, Report of Investigation-OIG-I-468 from Board Inspector General David Berry (March 19, 2012) at 11. See also, Memorandum, Supplemental Report of Investigation-OIG-I-468 from Board Inspector General David Berry to the Board (April 30, 2012).

² See Memorandum, Report of Investigation-OIG-I-467 from Board Inspector General David Berry to Board Chairman Mark Pearce and Board Member Brian Hayes (January 23, 2012).

³ See Memorandum, Report of Investigation-OIG-I-468 from Board Inspector General David Berry (March 19, 2012)

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Most concerning, however, are the Inspector General's findings issued this week that "Mr. Flynn released deliberative nonpublic information that included, among other things, a draft of a Board majority decision and four dissents that had not yet been issued, as well as other deliberative nonpublic information involving the processing of cases and issues by the Board."⁴

The Inspector General's findings raise questions about your supervision of Mr. Flynn. In addition, as a current Board Member with supervisory responsibilities, it is imperative for Congress to know what actions, if any, you have taken or will be taking in light of the Inspector General's findings to prevent such confidential breaches going forward.

Accordingly, please provide answers to the following questions to us no later than Friday, May 11, 2012.

1. Please explain the steps that you took when you were Mr. Flynn's direct supervisor to manage, supervise and/or oversee his actions? Was your oversight of Mr. Flynn's work any different than your oversight of other subordinates at the Board? If so, please explain how and why.
2. While you were supervising Mr. Flynn, were you aware of his disclosure(s) to parties outside the Board cited by the Inspector General?
 - a. If you were aware, did you consider these disclosures to be appropriate or inappropriate at that time? Please explain why or why not.
 - b. Now that the Inspector General has completed his investigation, do you agree with him that those disclosure(s) were inappropriate? Please explain why or why not.
3. Have you ever instructed Mr. Flynn to disclose information regarding pending cases or pending rulemakings to parties outside the Board? If so, please explain.
4. Have you ever instructed Mr. Flynn to disclose information to former Members Peter Schaumber and/or Peter Kirsanow? If so, please explain and provide any communications between you and Mr. Flynn regarding these disclosures.
5. Have you ever instructed Mr. Flynn not to disclose information to parties outside the Board? If so, please explain and provide any communications between you and Mr. Flynn regarding these non-disclosures.

⁴ See Supplemental Report of Investigation-OIG-468 at 1.

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6. According to the Board's Inspector General, Mr. Flynn possessed on his computer former Chairman Peter Schaumber's purported private sector business plan. The business plan states: "I have had many discussions with the newly confirmed Republican Member, Brian Hayes..." referring to your confirmation at the Board just prior to Mr. Schaumber's departure.
 - a. When did you become aware of Mr. Schaumber's purported business plan?
 - b. Were you aware of any role that Mr. Flynn had in developing that plan?
 - c. Were you aware of the use of your name in that business plan? Did you consent to that use? If so, please explain.
7. Please provide any communications between you and Mr. Flynn from August 27, 2010 when Mr. Flynn was assigned to your staff and January 9, 2012 when Mr. Flynn received a recess appointment that reference or otherwise relate to former Member Schaumber's post-Board activities.
8. On what date did you learn of the Inspector General's investigation of Mr. Flynn? How did you come to learn of the Inspector General's investigation of Mr. Flynn?
9. Mr. Flynn has asserted that he committed "no wrongdoing" in response to the Inspector General's findings.⁵ As Mr. Flynn's supervisor during the time of the actions identified by the Inspector General, do you agree that Mr. Flynn committed "no wrongdoing"? Please explain.
10. In light of the Inspector General's findings, what changes, if any, have you made to the manner in which you oversee subordinates at the Board? Have you communicated any instructions to your subordinates or other staff regarding the disclosure of information to parties outside the Board? If so, please explain and provide such instructions.

If you have questions regarding this request, please contact Kate Ahlgren of the Education and Workforce staff at (202) 225-3725 or Claire Coleman of the Oversight and Government Reform staff at (202) 225-5051. We appreciate your attention to this matter.

⁵ Statement of Terence Flynn, Member, National Labor Relations Board (March 26, 2012).

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Sincerely,



GEORGE MILLER
Senior Democratic Member
Committee on Education and the Workforce



ELIJAH E. CUMMINGS
Senior Democratic Member
Committee on Oversight and Government
Reform

cc: The Honorable John Kline
Chairman, Committee on Education and the Workforce
The Honorable Darrell E. Issa
Chairman, Committee on Oversight and Government Reform