

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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April 27, 2023

Mr. David P. Berry
Inspector General
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570

Inspector General Berry:

The Committee on Oversight and Accountability is investigating your attempt to undermine a legitimate congressional investigation by investigating a subpoena issued by Committee on Education and the Workforce (E&W Committee) Chairwoman Virginia Foxx to the National Labor Relations Board (NLRB) that was based on whistleblower accounts.

On March 29, 2023, you notified various congressional staff on the E&W Committee, this Committee, and multiple other congressional committees that your office had “initiated an investigation to determine whether the Congressional subpoena issued [by Chairwoman Foxx] to an NLRB employee resulting in the employee’s subsequent actions involving the use of official time to search violated the Anti-deficiency Act or section 4a of the NLRA.”¹ This is a novel attempt to redefine—and indeed, reverse—the relative powers of inspectors general and the body (*i.e.*, Congress) that created them. The Oversight Committee is baffled by such absurd efforts to obstruct a congressional investigation by a retaliatory investigation initiated by an agency inspector general. The Oversight Committee requests documents and information from you and your office.

On March 22, 2023, E&W Committee Chairwoman Virginia Foxx issued a subpoena to a whistleblower at the NLRB for documents required for its investigation and based on its discussion with the NLRB whistleblower.² The subpoena—consistent with the authority delegated to the E&W Committee by the Rules of the United States House of Representatives and to the Chairwoman by the E&W Committee’s rules—cannot be reasonably read or construed, consistent with the longstanding exercise of congressional subpoena power, to require the whistleblower to investigate the NLRB on behalf of Congress or the E&W Committee.

¹ Email from David P. Berry, Inspector General, National Labor Relations Board, to staff of H. Comm. on Oversight and Accountability, H Comm. on Educ. and the Workforce, S. Comm. on Health, Education, Labor, and Pensions, and S. Comm. on Homeland Security and Governmental Affairs (Mar. 29, 2023, 10:17AM EST).

² Subpoena to Nat’l Lab. Relations Board, dated Mar. 22, 2023, from H. Comm. on Ed. & Workforce.

However, on March 29, 2023, you notified E&W Committee staff that you had initiated an investigation of *the congressional subpoena itself*.³ You informed E&W Committee staff that the OIG was also drafting a request for the Government Accountability Office's General Counsel to provide a decision on this matter.⁴

Your determination to investigate an NLRB employee's compliance with a congressional subpoena is a blatant attempt to obstruct a congressional investigation. Congress has oversight authority over inspectors general; inspectors general do not have oversight authority over Congress. Indeed, Congress has established the offices of numerous inspectors general, including one within the NLRB, to improve its ability to gather information necessary to tailor government programs and operations, among other reasons.⁵ Congress explicitly identified that the main purpose of inspectors general is to keep both the affiliated entity head and Congress "fully and currently informed" of fraud and "other serious problems, abuses, and deficiencies" in such programs and operations, as well as progress in implementing related corrective actions.⁶ Since Congress created inspectors general, it has amended their authorization to increase the facilitation of information flowing from inspectors generals to Congress.⁷ Congress has not provided the legal authority to any inspector general to investigate or question the means by which Congress itself directly conducts and fulfills its oversight responsibilities.

On April 4, 2023, you informed Chairwoman Foxx that you would end your investigation into purported "appropriations law and related NLRA questions" associated with the E&W Committee subpoena. However, despite halting your investigation, you appear not to have disclaimed the unprecedented contention that the OIG could investigate a congressional subpoena. Your statement that "[t]he response to the subpoena does not appear to be related to carrying out any function vested in the NLRB by the *National Labor Relations Act*, *Labor-Management Relations Act*, or any other purposes authorized by any other laws"⁸ clearly misunderstands, for example, Article I of the Constitution as well as Supreme Court precedents that affirm Congress's broad power to obtain information, including from the executive branch.⁹

³ *Supra*, fn. 1.

⁴ *Id.*

⁵ P.L. 95-452; Inspector General Act of 1978, as amended, is listed in 5 U.S.C. Appendix (IG Act), which is accessible at <http://uscode.house.gov/view.xhtml?path=/prelim@title5/title5a/node20&edition=prelim>.

⁶ 5 U.S.C. Appendix (IG Act), §2.

⁷ See The Inspector General Act Amendments of 1988 (P.L. 100-504); The Inspector General Reform Act of 2008 (P.L. 110-409) established a new Council of Inspectors General on Integrity and Efficiency (CIGIE) to coordinate and oversee the IG; The Inspector General Empowerment Act of 2016 (P.L. 114-317); The Securing Inspector General Independence Act of 2022 and the Integrity Committee Transparency Act of 2022 (Title LII of P.L. 117-263, the FY2023 National Defense Authorization Act).

⁸ Letter from David Berry to Chairwoman Foxx at 2 (Apr. 4, 2023).

⁹ See e.g., *Watkins v. United States*, 354 U.S. 178, 187 (1957) ("We start with several basic premises on which there is general agreement. The power of the Congress to conduct investigations is inherent in the legislative process. That

The Committee on Oversight and Accountability has initiated an investigation into you and your Office's actions. To assist the Committee with its investigation, please provide a briefing to Committee staff no later than May 3, 2023. Additionally, please provide the following documents and communications no later than May 10, 2023:

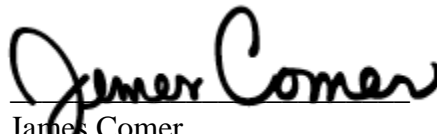
1. All documents or communications between or among any employees of the NLRB and/or the NLRB Office of Inspector General relating to the March 29, 2023 decision to initiate an investigation into the E&W Committee's March 22, 2023 subpoena; and
2. All documents or communications between or among any employees of the NLRB and/or the NLRB Office of Inspector General relating to whether an NLRB employee responding to the March 22, 2023 subpoena issued by the E&W Committee violated the Anti-deficiency Act or the National Labor Relations Act.

An attachment to this letter provides additional instructions for responding to the Committee's request. To make arrangements to deliver documents or to ask any related follow-up questions, please contact Committee on Oversight and Accountability staff at (202) 225-5074.

The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

Thank you for your prompt attention to this important investigation.

Sincerely,



James Comer
Chairman

Committee on Oversight and Accountability

cc: The Honorable Jamie Raskin, Ranking Member
Committee on Oversight & Accountability

power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes.... It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste."); *Barenblatt v. United States*, 360 U.S. 109 (1959); *McGrain v. Daugherty*, 273 U.S. 135 (1927).