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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

August 12, 2022

The Honorable Ernest DuBester
Chairman
Federal Labor Relations Authority
1400 K St. NW
Washington, D.C. 20424

Dear Chairman DuBester,

On June 20, 2022, the National Immigration and Customs Enforcement (ICE) Council (hereinafter, the Council) filed a complaint with the Department of Labor (DOL) against its parent organizations, the American Federation of Government Employees (AFGE) and AFL-CIO. The Council requested that DOL investigate AFGE leadership and staff related to numerous allegations of misuse of funds, sexual harassment, and other wrongdoing. A few weeks after the Council filed the complaint with DOL, AFGE National President Everett Kelley filed a “disclaimer of interest” petition with the Federal Labor Relations Authority (FLRA). The effect of granting the petition was that the Council would be dissolved, allowing AFGE to absorb its assets.

Neither party in this dispute represented the Council’s interests and its members’ preference against the dissolution of the Council and the seizure of its assets. However, on August 3, 2022, FLRA Regional Director for the Washington Region, Jessica Bartlett denied the Council’s request to intervene in this matter. Illustrating the fact that AFGE’s and the Council’s interests were not aligned, on August 10, the Council filed an unfair labor practice complaint against AFGE. With this in mind, I am concerned that the FLRA did not have all of the information necessary to bring this matter to an equitable resolution. And yet it granted the disclaimer of interest petition on August 11. I am further concerned that ICE employees’ interests will be poorly represented now that the Council has been decertified.

Over the course of many years, you have testified before the Homeland Security and Governmental Affairs Committee about the backlog of cases before the Authority. This matter has been processed with remarkable speed, especially considering the novelty of this petition – a matter with little, if any, precedent or well-tested process.

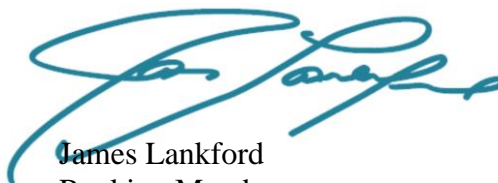
Please respond to the following questions no later than August 19, 2022:

1. What is the FLRA’s process for investigating and making a determination relating to a disclaimer of interest petition?
2. How was the process established for investigating and making a determination relating to this disclaimer of interest petition? Did you have any role in formalizing the process?
3. What opportunity, if any, did the ICE Council have to provide statements for the record as part of the FLRA’s process?
4. What are the criteria used by the FLRA in determining whether a disclaimer of interested petition is granted or denied?
5. How did the FLRA establish the criteria used to grant this disclaimer of interest petition? Did you have any role in establishing the criteria?

6. We have reviewed the FLRA's denial of the Council's request to intervene. What are the circumstances in which an entity, though not a party in a matter but whose existence and assets are in question and central to the matter before the FLRA, would have standing to intervene?
7. What weight, if any, did the FLRA give to the allegation or appearance that the disclaimer of interest petition was filed as part of either retaliation and/or part of a pattern of unfair labor practices?
8. Earlier this year, I became aware of allegations of *ex parte* communications between you and AFL-CIO, which was a party in this matter. Did you and your chief counsel, Kurt Rumsfeld, recuse yourselves from any official action related to this matter?
9. From the period of June 20, 2022 until the present, did you or Mr. Rumsfeld have any communication, whether through official or unofficial channels, with non-FLRA individuals known or reasonably expected to be engaged in this matter?
10. From the period of June 20, 2022 until the present, did you or Mr. Rumsfeld discuss this matter with any member or employee of the FLRA?
11. What avenue, if any, does the Council have to appeal the August 11 decision?

Please reach out to Clark Hedrick (clark_hedrick@hsgac.senate.gov) on my staff with any questions. Thank you for your attention to this matter.

In God We Trust,



James Lankford
Ranking Member
Subcommittee on Government
Operations and Border Management