

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 98**

and

Case 04-CC-223346

**SHREE SAI SIDDHI SPRUCE, LLC, D/B/A
FAIRFIELD INN & SUITES BY MARRIOTT**

**COUNSEL FOR THE ACTING GENERAL COUNSEL’S REPLY TO CHARGING
PARTY’S RESPONSE IN OPPOSITION TO THE ACTING GENERAL COUNSEL’S
MOTION TO DISMISS**

The Charging Party requests that the Board deny the Acting General Counsel’s motion to dismiss the complaint for two reasons.¹ The first reason, a strawman, is that given the stage of these proceedings, the Board, not the Acting General Counsel, has the authority to dismiss the complaint. (Opp. at 2, 6-9). No one contends otherwise; hence the Acting General Counsel has filed a motion to dismiss before the Board. The Charging Party’s second contention is that Acting General Counsel Peter Ohr “lacks the authority to do much of anything” because President Biden allegedly removed former General Counsel Peter B. Robb improperly. (Opp. at 2, 10-14). But under the National Labor Relations Act, the President may remove a General Counsel at any time,

¹ On February 25, 2021, Associated Builders and Contractors, Inc., and Contractors Eastern Pennsylvania Chapter (“Amici”) filed a motion for leave to file an amicus brief and an amicus brief. Although the Board has not yet ruled on the motion, we have responded to the amici brief herein.

even without giving a reason. Under Section 3(a) of the Act, Board members may be removed only for cause; Section 3(d) creates the position of the General Counsel yet states no such for-cause removal protection. The Charging Party fails to show that this distinction was anything other than what it appears to be on its face: a purposeful Congressional choice to decline to disturb the default rule that Senate-confirmed officers like the General Counsel are removable by the President at will.

I. The Acting General Counsel Articulated A Compelling Basis for Requesting That the Board Act Within Its Authority.

The Charging Party asserts that the Acting General Counsel has not articulated any basis for dismissal of the Complaint and that the Acting General Counsel is attempting to act beyond his authority. On the contrary, by filing its motion, the Acting General Counsel has only requested that the Board act within the Board’s authority to dismiss complaints. The Acting General Counsel’s motion does not challenge the clear, extant Board law relating to dismissal of complaints pending before it.²

Significantly, the Acting General Counsel based his request on extant Board law, which is plainly a basis upon which the Board may act. The Charging Party’s objection to the Board taking the requested action is fixated on the need for a “substantial remedy” to the alleged unfair labor practices. (Opp. at 7–8). However, no remedy is required where no unfair labor practice has occurred. Under current Board law, use of the inflatable rat at issue here does not constitute unlawful picketing and does not violate Section 8(b)(4).³ The Acting General Counsel does not

² See e.g., *Robinson Freight Lines*, 117 NLRB 1483, 1485 (1957).

³ See *Carpenters Local 1506 (Eliason & Knuth of Arizona)*, 355 NLRB 797 (2010); *Sheet Metal Workers Local 15 (Brandon Regional Medical Center) (Brandon II)*, 356 NLRB 1290 (2011). The Acting General Counsel also seeks remand, or alternatively dismissal, of allegations concerning Respondent’s use of a bullhorn, based on his view that the conduct here did not rise to the level of unlawful secondary coercion under the Act.

share former General Counsel Robb's desire to overturn Board law in this area. In accord with federal court rulings on this issue,⁴ the Acting General Counsel would have followed extant Board law and not issued complaint in this matter. Therefore, to prevent the expenditure of further Agency resources, and in the public interest, the Acting General Counsel requests that the Board, on the basis of current Board law, remand this matter to the Regional Director or, alternatively, dismiss the Complaint.⁵

II. The Charging Party's Challenge to the Authority of the AGC is Without Merit.

The Charging Party contests the question of whether Acting General Counsel Ohr is acting pursuant to a lawful designation under Section 3(d) of the Act, given that the vacancy he filled was created by the removal of former General Counsel Robb. As shown below, former General Counsel Robb was lawfully removed and Acting General Counsel Ohr was lawfully designated.

A. Background: By default, federal officers are removable at the will of the appointing authority.

Before turning to the text of Section 3(d) of the Act, we believe that some background will assist the Board. The basic principle is this: in the absence of any specific statutory provision to the contrary, the power to appoint to office carries with it the power to remove from that office at will. That default rule helps ensure that the President can carry out the functions of the Executive Branch. In this section, we describe the caselaw establishing that principle. In the next section, we show that Section 3(d) does not limit the President's power to remove the General Counsel.

⁴ See cases discussed in Acting General Counsel's Motion at pp. 2–3.

⁵ See e.g., *Dow Chemical Co.*, 349 NLRB 104, 104–05 (2007) (the Board majority finding public interest not served by expending potentially significant future Board resources, including the possibility of litigating the Board's order in appellate court, and therefore granting General Counsel's Motion to Sever and Remand cases).

Although the Constitution details how executive-branch officers may be appointed,⁶ it is “silent with respect to the power of removal from office,”⁷ aside from the power of Congress to impeach and convict. Through the years, therefore, the Supreme Court has repeatedly been called upon to construe the nature of, and limitations on, the power to remove officers. These cases dictate a clear standard. Where Congress has not spoken to the question of removal of an officer, that officer may be removed at any time by the person or body authorized to make the appointment.⁸ But where Congress has limited this authority, such limitations offend the Constitution where they would interfere with the President’s duty to “take Care that the Laws be faithfully executed.”⁹

Parsons v. United States established long ago that merely stating a term of years for an office did not imply any limitation upon the President’s authority to remove officials from that office.¹⁰ As the Supreme Court there explained, a statute providing a four-year term of office for United States Attorneys established a limitation on the period of time for which those attorneys could hold office, but did not entitle them “to hold for four years as against any power of the President to remove.”¹¹ In short, the default rule is that the President has authority to remove, at will, officers he appoints, absent clear congressional indication to the contrary.

⁶ See U.S. Const., Art. II, Sec. 2, Cl. 2.

⁷ *Ex parte Hennen*, 38 U.S. (13 Pet.) 230, 258 (1839).

⁸ *Free Enterprise Fund v. Public Co. Acct’g Oversight Bd.*, 561 U.S. 477, 493 (2010) (citing *Sampson v. Murray*, 415 U.S. 61, 70, n. 17 (1974); *Myers v. United States*, 272 U.S. 52, 119 (1926); *Ex parte Hennen*, 38 U.S. (13 Pet.) 230, 259-60 (1839)).

⁹ U.S. Const., Art. II, Sec. 3, Cl. 5.

¹⁰ 167 U.S. 324, 342 (1897).

¹¹ *Id.*

B. The NLRB's General Counsel serves at the pleasure of the President.

The Charging Party asserts that former General Counsel Peter B. Robb could not be removed from office by President Biden. This contention is based on the Charging Party's argument that the Act *implicitly* limits the President's power to remove the General Counsel. This argument fails.

1. The Act does not shield the General Counsel from removal.

Section 3(a) of the Act establishes the Board, provides that members “shall be appointed for terms of five years each,” and states that “[a]ny member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.” By contrast, Section 3(d) of the Act, states that the General Counsel “shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years.”

The plain text demonstrates that the General Counsel, unlike the Board, is not insulated from removal by the President. The Board's tenure provisions are standard for a multi-member independent administrative agency.¹² The General Counsel's tenure provisions—and absence of a removal restriction—are standard for an officer carrying out a prosecutorial function.¹³ If the 1947 Congress, when creating the General Counsel position, had wanted to grant tenure protection, it

¹²*E.g.* 12 U.S.C. § 242 (Federal Reserve Act) (“each member [of the Board of Governors] shall hold office for a term of fourteen years from the expiration of the term of his predecessor, unless sooner removed for cause by the President”); 15 U.S.C. § 41 (FTC Act) (“Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.”).

¹³ *Parsons*, 167 U.S. at 342. Amici's attempt (Amici at 6) to distinguish the General Counsel from the U.S. attorneys in *Parsons* is unavailing—the relevant comparison is that they are both entrusted with charging violations of federal law before adjudicatory tribunals and hold term appointments without statutory removal protections. Amici also unpersuasively point the Board to an interpretation of *Parsons* in a vacated district court opinion, *Borders v. Reagan*, 518 F. Supp 250, 259 (D.D.C. 1981), *vacated*, 732 F.2d 181 (D.C. Cir. 1982). But that decision merely held that the President could not remove a member of a District of Columbia commission without cause because of “the nature and function” of that specific commission.

would simply have cribbed the language it had already used regarding Board members in 1935.¹⁴ Cases too legion to count hold that the use of different language in analogous parts of the same statute requires that those sections be construed to have different meanings.¹⁵ And the Charging Party does not even attempt an argument as to why that settled canon of statutory construction does not apply here. Applying the plain language according to its terms also accords with the well-entrenched default rule that removal authority follows appointment authority.¹⁶ When Congress wants to alter the President’s ability “to keep [executive] officers accountable—by removing them from office, if necessary,” it does (and must) clearly express its intent to do so.¹⁷

The Act’s context further supports this plain reading of its text. Here, Section 3(d)’s language reflects that Congress had every reason to want to treat the General Counsel differently

¹⁴ Amici’s citation (Amici at 5, n.4) to the statutory protections given to the General Counsel of the Federal Labor Relations Authority under a different statute is thus inapposite. And Amici’s suggestion that the language of the FLRA indicates that Congress would have “shortened” the term of the General Counsel of the NLRB if it wanted to flies in the face of the default rule discussed above at p. 4 (President may remove official absent statutory protection).

¹⁵ *E.g.*, *Maine Cmty. Health Options v. United States*, 140 S. Ct. 1308, 1323 (2020) (“This Court generally presumes that when Congress includes particular language in one section of a statute but omits it in another, Congress intended a difference in meaning.”) (cleaned up) (citing *Digital Realty Trust, Inc. v. Somers*, 583 U.S. ___, 138 S.Ct. 767, 777 (2018); *Loughrin v. United States*, 573 U.S. 351, 358 (2014)); *Intel Corp. Inv. Policy Comm. v. Sulyma*, 140 S. Ct. 768, 777 (2020) (“Instead we ‘generally presum[e] that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another.’”) (quoting *BFP v. Resolution Trust Corporation*, 511 U.S. 531, 537 (1994)); *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 544 (2012) (“Where Congress uses certain language in one part of a statute and different language in another, it is generally presumed that Congress acts intentionally.”) (citing *Russello v. United States*, 464 U.S. 16, 23 (1983)); *Fairbanks v. Superior Court*, 46 Cal. 4th 56, 62 (2009) (“The use of differing language in otherwise parallel provisions supports an inference that a difference in meaning was intended.”); *accord Lincoln Lutheran of Racine*, 362 NLRB 1655, 1659 n.18 (2015) (quoting *Russello*, 464 U.S. at 23), *overruled on other grounds*, *Valley Hosp. Med. Ctr.*, 368 NLRB No. 139 (2019), *rev. granted and remanded sub nom.*, *Local Jt. Exec. Bd. of Las Vegas v. NLRB*, __ Fed. Appx. __, 2020 WL 7774953 (9th Cir. Dec. 30, 2020).

¹⁶ *See supra* n. 8.

¹⁷ *Free Enterprise Fund*, 561 U.S. at 483.

from the Board with respect to tenure. The General Counsel and Board have entirely distinct functions. The Board makes rules, 29 U.S.C. § 156, issues certificates of representative, 29 U.S.C. § 159, adjudicates unfair labor practice cases, 29 U.S.C. § 160(c), and subpoenas evidence, 29 U.S.C. § 161.

In contrast, the General Counsel's sole statutory functions are to supervise attorneys and regional office officials, 29 U.S.C. § 153(d), and litigate unfair labor practice complaints, 29 U.S.C. § 160(b). In performing those functions, the General Counsel acts with significant prosecutorial discretion, holding the sole power to initiate or refuse to initiate an unfair labor practice case.¹⁸ The remainder of the General Counsel's functions are delegated to that position by the Board, pursuant to Section 3(d)'s authorization to perform "such other duties as the Board may prescribe." And while the Board has delegated *executive* functions to the General Counsel,¹⁹ two powers that the General Counsel has no authority whatsoever to exercise are the enactment of quasi-legislative rules under Section 6 and the adjudication of cases under Sections 9 and 10.²⁰

In short, the General Counsel is a purely executive position under the plain text of the Act. Congress's decision to provide tenure protections for the Board-member office in no way suggests Congress intended such restrictions to implicitly extend to the very different General Counsel role. The difference in treatment of those two offices was no coincidence.

¹⁸ *E.g.*, *Vaca v. Sipes*, 386 U.S. 171, 182 (1967) ("the Board's General Counsel has unreviewable discretion to refuse to institute an unfair labor practice complaint").

¹⁹ Board Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the National Labor Relations Board, 20 Fed. Reg. 2175 (April 1, 1955), at § 1(b) (court litigation to enforce the Act).

²⁰ Regional offices do supply hearing officers in most representation and jurisdictional-dispute cases, but such hearing officers are acting on behalf of the Regional Director and the Board, respectively, and all such cases are subject to review *by the Board*, not the General Counsel. 29 C.F.R. §§ 102.67; 102.71; 102.90.

Nor is this some recent *ad hoc* interpretation of the Act. To the contrary, the Executive Branch has so understood the Act since it was enacted. Current Chief Justice John Roberts, then a member of the White House counsel’s office, explained the Executive Branch position on this very question in a memorandum written in 1983.²¹ And as that memorandum makes clear, this merely reaffirmed long-held views. *Id.*²²

Finally, the construction that the Charging Party would put on the Act may raise questions about whether such a construction would be constitutional.²³ If there were any ambiguity, the Board would have to construe the Act to avoid any such questions.²⁴ And given that such a construction is not only readily available here, but also the best reading of the statute, there is no reason to follow the Charging Party’s invitation down the proverbial primrose path.

2. Neither Charging Party’s nor Amici’s arguments have merit.

In the teeth of this overwhelming authority, the Charging Party primarily asserts (Opp. 2, 10-14) that the General Counsel is “not a purely executive officer” who acts at the behest of the President because the General Counsel acts at the behest of the Board (Opp. at 3, 11-12; *see also* Amici at 6). But even were that a basis for reading removal restrictions into the statute, *but see*

²¹ Memo from John Roberts to Fred Fielding, White House Counsel re: NLRB Dispute 1, 3 (July 18, 1983), attached as **Exhibit 1** (“clear” that General Counsel is “a purely executive officer and that the President has inherent constitutional power to remove him from office at pleasure”) (cleaned up).

²² Charging Party’s observation (Opp. at 1) that past Presidents elected not to remove General Counsels appointed by their predecessors does not in any way imply that they could not have done so; it shows only that for their own reasons, they chose not to. Officials do not acquire for-cause removal protection by adverse possession.

²³ *Seila Law*, 140 S. Ct. 2182, 2199 (2020) (unconstitutional to insulate Director of the Consumer Finance Protection Bureau from removal at the President’s pleasure).

²⁴ *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Const. Trades Council*, 485 U.S. 568, 575 (1987).

supra, the Charging Party’s characterization runs afoul of *NLRB v. UFCW Local 23*.²⁵ That case—which involved an attempt to judicially review prosecutorial actions taken by the General Counsel “on behalf of” the Board—explained that “the structure of the Act . . . leads inescapably to the conclusion that Congress distinguished orders of the General Counsel from Board orders.”²⁶ And rightly so—Section 3(d) of the Act gives the General Counsel supervision over any agency attorneys “other than administrative law judges and legal assistants to Board members.” The two sides of the agency have entirely different functions, personnel, and chains of command.²⁷ So it does not detract from the General Counsel’s independence from the Board that Congress included in Section 3(d) language “on behalf of the Board.” (Opp. at 3, 11-12.) That language was included merely to make clear that the NLRB is a single agency. As the *UFCW* Court recognized, the legislative history of the 1947 amendments to the Act shows that the acts of the General Counsel were not to be considered “acts of the Board.” *UFCW*, 484 U.S. at 128-29.

The Charging Party acknowledges the above history more than once. *See* Opp. at 3, 12 (Congress “wished the General Counsel to be independent of the Board itself.”). It thereby makes a convoluted argument, consisting of two parts. The first part, echoed by Amici (Amici at 6-7), appears to be that even a General Counsel without statutory removal protections from the President is nonetheless entitled to them per his relationship to the Board (whose members have statutory removal protection from the President). This argument was thoroughly debunked above.²⁸ The

²⁵ 484 U.S. 112, 128-29 (1987).

²⁶ *Id.* at 128.

²⁷ *NLRB v. FLRA*, 613 F.3d 275, 278 (D.C. Cir. 2010).

²⁸ Amici unsuccessfully tries to buttress this argument (Amici at 7) by referencing Justice Kagan’s dissent in *Seila Law*. But while Justice Kagan noted that the Board is an independent agency, she was referring to the Board itself and its statutory removal protections, not to the General Counsel (who, does not share the Board’s statutory removal protections). *Seila Law*, 140 S. Ct at 2224-25 (Kagan, J. dissenting in part).

second part appears to be that even if the General Counsel is “independent” from the Board and its removal protection, he is also “independent” from the President in the sense that he is constitutionally entitled to (implicit) removal protection of his own. (Opp. at 10-13; Amici at 6-7).

But as noted above, the plain text of the statute does not provide the General Counsel with removal protection. Additionally, the Board should construe Section 3(d) of the Act to avoid constitutional questions, not invent them. Here, the Charging Party and Amici have contrived a strained interpretation of *Humphrey’s Executor* and *Wiener v. United States*²⁹ as mandating for-cause removal protection for the General Counsel. (Opp. at 10-11, 13-14; Amici at 6-7). Contrary to their assertions, the General Counsel’s duties, discussed above, are not akin to a member of the adjudicatory board in *Humphrey’s Executor*, nor to the member of an adjudicating war claims commission in *Wiener*. And Charging Party’s and Amici’s suggestion that any Executive-Branch official with some arguably quasi-judicial or quasi-legislative functions must enjoy some removal protection is contrary to Supreme Court precedent. *See Seila Law*, 140 S. Ct. at 2193, 2200 (finding head of Consumer Finance Protection Bureau is not insulated from removal at the President’s pleasure despite rulemaking or adjudicatory duties); *accord Swan v. Clinton*, 932 F. Supp. 8, 12-13 (D.D.C. 1996) (same), *aff’d*, 100 F.3d 973 (D.C. Cir. 1996).³⁰

²⁹ 357 U.S. 349, 352, 356 (1958).

³⁰ What’s more, the Charging Party’s and Amici’s assertion that the General Counsel, via the Office of Appeals, performs an “adjudicative function” totally misreads *Humphrey’s Executor* and *Wiener*. Those decisions upheld (and, in *Wiener*, inferred) for-cause removal protection for quasi-judicial tribunals that “‘adjudicated according to law,’ that is, on the merits of each claim, supported by evidence and governing legal considerations[.]” *Wiener*, 357 U.S. at 355 (quoting *Humphrey’s Executor*, 295 U.S. at 629). They apply by their terms only to officials who engage in formal adjudications of cases with evidentiary records.

In short, President Biden had the constitutional and statutory power and authority to remove former General Counsel Robb, and he exercised that power.³¹ The Charging Party's arguments are contrary to the Act and seek to casually overthrow over a hundred years of settled law on the question of removal of federal officers. The Board should not entertain this request.

Respectfully submitted,

Dated: March 5, 2021



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³¹ *See Myers*, 272 U.S. at 119 (“This principle [that the power of removal of executive officers was incident to the power of appointment] as a rule of constitutional and statutory construction, then generally conceded, has been recognized ever since [the First Congress].”)

EXHIBIT 1

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 18, 1983

FOR: FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: NLRB Dispute

On July 14, Donald Dotson sent Mr. Hauser a note advising that Dotson and NLRB member Robert Hunter wanted to meet with him to "discuss alternatives" in connection with the dispute at NLRB concerning the respective powers of the Solicitor and the General Counsel. Dotson enclosed a legal analysis of the dispute and noted that it was urgent that the matter be resolved. Hauser asked that I review the question and determine (1) whether the Board had the authority to act as it did in transferring authority from the General Counsel to the Solicitor, (2) whether the General Counsel may be removed by the President, (3) if the General Counsel's defiance of the Board directive constitutes "cause" for removal of the General Counsel, and (4) how Mr. Meese's office is involved in the dispute.

I first reported on this dispute in a memorandum of May 18, 1983 (attached). You will recall that on May 4, 1983, the Board required the General Counsel to submit "all pleadings and briefs in proceedings involving enforcement, review, Supreme Court litigation, contempt, and miscellaneous litigation" to the Solicitor for his review, and directed that such pleadings and briefs may be filed only after approval of the Solicitor, acting for the Board. The Board also assumed authority to "transfer, promote, discipline, discharge" and take other appropriate personnel action with respect to NLRB attorneys engaged in the activities to be reviewed by the Solicitor. The General Counsel, however, was directed to exercise "general supervisory responsibility" over those attorneys.

The legal memorandum submitted by Dotson defends the Board's action by noting the statutory authority of the Board to "appoint... attorneys... necessary for the proper performance of its duties... Attorneys appointed under this section may, at the discretion of the Board, appear for and represent the Board in any case in court." 29 U.S.C. § 154(a). The Board recognizes that the General Counsel, under 29 U.S.C. § 153(d), has independent authority to investigate charges and issue unfair labor practice complaints. The Board's action does not affect attorneys employed in these areas. The Board maintained, however, that the General Counsel's

authority to represent the Board in court is based not on any similar statutory grant of authority but rather on a revocable delegation of authority from the Board. The Board's legal memorandum notes that a similar dispute between the Board and its General Counsel arose in 1950, and was resolved when the President requested and obtained the General Counsel's resignation.

We have not been provided with a copy of the General Counsel's legal analysis, but I understand that it focuses on the language of 29 U.S.C. § 153(d): "The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board..." This clear statutory language, according to the General Counsel, flatly prohibits any effort by the Board to place control over enforcement and appellate attorneys in the hands of the Solicitor. Simply stating, as the Board did, that the General Counsel will continue to exercise "general supervisory responsibility" over such attorneys is a meaningless assertion in the face of the Board's requirement that the Solicitor review and approve briefs and pleadings and the Board's assertion of authority over attorney promotions, disciplining, transfers, and terminations.

As I pointed out in my earlier memorandum, the Board's position is not illogical, nor does it contravene the intent of the Taft-Hartley Act, which established the office of NLRB General Counsel. It was the purpose of that Act to insulate the General Counsel from the Board with respect to the presentation of complaints before the Board. Such insulation with respect to enforcement of orders issued by the Board was not necessary (no problem of commingling adjudicative and prosecutive roles being present once the Board had issued an order), and accordingly this question was not specifically addressed by the Taft-Hartley amendments. In addition, there is a great deal of common sense appeal to the proposition that the Board should be able to control the legal arguments presented on its behalf before the courts.

On the other hand, the plain language of 29 U.S.C. § 153(d) presents a major hurdle to the Board's legal analysis. Even if the intent of Congress was only to insulate NLRB attorneys from the Board with respect to the filing of complaints, the language chosen -- giving the General Counsel "general supervision over all attorneys employed by the Board" (emphasis supplied) -- is not so limited. In sum, it is not apparent which side in this dispute would prevail if the matter were put to the proof, which in this case would presumably entail an Attorney General opinion rather than a court test.

There is a clear answer to the second query posed by Mr. Hauser. In an opinion dated March 11, 1959, Malcolm Wilkey, then Assistant Attorney General for the Office of Legal Counsel, concluded that "the General Counsel of the Board is a purely Executive Officer and that the President has inherent constitutional power to remove him from office at pleasure under the rule of Myers v. United States, 272 U.S. 52." We were advised in April of this year that the Department of Justice still adhered to the Wilkey opinion. Since the General Counsel serves at the pleasure of the President, it is unnecessary to consider Mr. Hauser's third question, viz., whether the General Counsel's conduct constitutes "cause" justifying Presidential dismissal for cause.

With respect to the fourth question, Ken Cribb advised me on July 15 that it was his understanding that Craig Fuller would be meeting with Dotson to discuss the matter, at Mr. Meese's direction. Hauser called Fuller, who seemed unaware of any such arrangement. In any event, Hauser advised Fuller that our office was looking into the matter and should be kept apprised of any developments.

In light of the NLRB's status as an independent agency, we should keep some distance from the legal dispute. Dotson may want a meeting to discuss firing the General Counsel, the step taken over thirty years ago when the NLRB was similarly deadlocked. Since such a move can only come from the President, we are inevitably involved if Dotson seeks that solution. I would, however, recommend against taking sides in the legal dispute. Dotson took this action without consulting us or, more appropriately, the Justice Department, and we should not be anxious to sleep in a bed not of our own making.

CERTIFICATE OF SERVICE

I hereby certify that copies of the **COUNSEL FOR THE ACTING GENERAL COUNSEL'S REPLY TO CHARGING PARTY'S RESPONSE IN OPPOSITION TO THE ACTING GENERAL COUNSEL'S MOTION TO DISMISS** in Case 04-CC-223346 were served on the 5th day of March 2021, on the following persons by email:

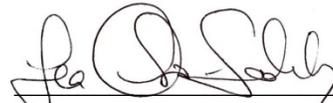
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