



**UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
1099 14th Street, N.W.
Washington, D.C. 20570-0001**

February 29, 2012

Mr. Nathan Mehrens
Mr. Mark Wohlschlegel
Americans for Limited Government
9900 Main Street
Suite 303
Fairfax, VA 22031

Subject: FOIA ID ES-2012-0023

Gentlemen:

We have received your January 12, 2012 appeal from the National Labor Relations Board's Freedom of Information Officer's December 29, 2011 response to the above-referenced electronic Freedom of Information Act (FOIA) request. On February 2, 2012, the Office of the Solicitor notified you that the Agency would require an extension of time to process your appeal, until February 29, 2012.

Your original FOIA request sought the following records, created on or after August 14, 2007:

1. All records and documents concerning or relating to the Petition of United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, and other labor organizations for Rulemaking Regarding Members-Only Minority-Union Collective Bargaining, including but not limited to:
2. Records that pertain to communications to or from any Member of the NLRB or their immediate staff and labor organizations or their immediate staff about the petition.
3. Records that pertain to communications to or from any Member of the NLRB or their immediate staff and Dr. Charles Morris, acknowledged author of the petition.

On December 7, 2011, Mr. Nathan Mehrens clarified that the request did not cover internal communications or news clippings relating to the petition. On

December 29, 2011, Freedom of Information Officer Jacqueline A. Young provided you with responsive documents.

Your appeal challenges the adequacy of the search for documents that are responsive to your FOIA inquiry. Your appeal appears to focus on the following statement in the letter accompanying Ms. Young's response to your request: "[t]he Chief Information Officer informed this Office that there are no Exchange repositories for former Members Battista, Kirsanow, and Walsh, who also served during the specified time period." Your appeal contends that you are entitled to a "new search of the NLRB's 'related office files' for hard copy prints of the emails of the former Members." In response to your appeal, a thorough review of the procedures used in locating documents responsive to your FOIA request has been undertaken and completed, with the following results:

Your appeal is granted, as set out below.

1. In response to your concern that only electronic files and no "related office files" of former Chairman Battista and former Members Kirsanow and Walsh had been searched, a de novo review has been conducted of "related office files" for those individuals. The search encompassed all files that could contain responsive materials, whether email hard copies or other types of documents. No further responsive documents were located.

2. In addition, our review of the original FOIA search demonstrates that the full scope of your request was made clear to officials who had control over, or who directed individuals responsible for maintaining, files that could contain records relevant to your request. Our review of the search demonstrates that both paper records (i.e., "related office files") and electronic records in the Agency's possession were searched for responsive materials. In this regard, we note that, along with the responsive documents that were provided to you, some non-responsive paper documents were submitted to the FOIA officer.

3. However, our review of the original search disclosed that two individuals who would have had control over, or who directed individuals responsible for maintaining, files that could contain records relevant to your request were inadvertently excluded from the officials contacted by the FOIA officer. When this omission was discovered, those officials were provided with a copy of your FOIA request and instructed to conduct thorough searches of any and all files that could contain relevant documents. Both officials undertook such searches, and no further responsive documents were found.

In sum, the manner in which the original FOIA search was conducted, together with the de novo review of relevant office files for former Chairman Battista and former Members Walsh and Kirsanow, and the corrective measures described in paragraph 3, demonstrate that a reasonable search, within the

meaning of FOIA, has been conducted. All responsive documents located by that search have previously been provided to you.

William B. Cowen, at the direction of and pursuant to the policies established by Mark Gaston Pearce, Chairman, National Labor Relations Board, is responsible for this determination. Judicial review of this determination may be obtained by filing a complaint in the district court of the United States in the district in which the complainant resides, or in which the records are situated, or in the District of Columbia, as provided in FOIA, 5 U.S.C. § 552(a)(4)(B).

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448

Sincerely,

Mark Gaston Pearce
Chairman
National Labor Relations Board

By: William B. Cowen /SGK
William B. Cowen
Solicitor
National Labor Relations Board

cc: Executive Secretary