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REPORT ON THE ACTIVITIES

OF THE

COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES

DURING THE

104TH CONGRESS

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One Hundred Fourth Congress

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[1] Resigned October 1, 1995.
[2] Appointed October 11, 1995.
[3] Resigned April 22, 1996.
[4] Appointed June 5, 1996.

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[1] Resigned October 1, 1995.
[2] Appointed October 11, 1995.
[3] Resigned April 22, 1996.
[4] Appointed June 12, 1996.
[5] Resigned June 12, 1996.

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of the meeting and the value and character of the travel expenses provided, the agency should consider in making such conflict of interest determinations the "nature and sensitivity of any matter pending at the agency affecting the interests" of non-federal source of payments and the significance of the employee's role in such a matter. 41 C.F.R. §304-1.5(a)(1)–(6) (1996). Such conflict of interest and ethics determinations, since they involve subjective judgments and issues of appearances relating to an agency's own mission and functions, as well as the specific duties and functions of one of its employees or officials, are the types of matters that have generally been found to be administrative determinations within the specific discretion and expertise of the agency itself.

Based on this language, it appears that Chairman Gould's decision to accept travel funds and expenditures from the AFL–CIO, at a minimum, presents itself as a conflict of interest. The AFL–CIO is a consortium of some of the largest and most powerful members of organized labor in the United States. To accept their funds and later adjudicate their issues is inappropriate on its face and calls into question the integrity of certain NLRB actions.

In addition, according to travel logs provided by the NLRB, Chairman Gould has traveled outside the Washington, D.C. area on official business 51 times during his 2½-year tenure at the NLRB. Equally disturbing is the fact that while on this "official" NLRB travel, Chairman Gould attended 42 separate sporting events, including 5 professional basketball games, 5 college baseball games, 31 professional baseball games, and the 1996 Major League All Star game.

The freedom with which the NLRB, including its Chairman, spends taxpayer dollars—whether it be on an ABA meeting in Hawaii during the winter months or the Chairman soliciting an invitation to the inauguration of Nelson Mandela in South Africa and later attending that function, calls into question the ability of this NLRB to act as good stewards of federal funds.

Corporate campaigns

John Sweeney, President of the AFL–CIO, declared a new direction for the international labor unions that the Federation represents. Mr. Sweeney declared that labor would become far more militant in the pursuit of organizing and collective bargaining objectives. The term used to organize formally non-union corporations became known as "corporate campaigns."

A "corporate campaign" has several distinct elements. Two of the most prominent elements are: having the target company perceived negatively by the company's investors, customers, employees and the public, and initiating enforcement and oversight actions by federal, State, and local governmental agencies. In other words, organized labor in a "corporate campaign" does not necessarily target the employees of the corporation as it had done historically, but rather focuses on corporate management. Perhaps Stephen Lerner, Organizing Director of the Service Employees International Union said it best—

> Instead of asking, 'How do we win a majority of (employee) votes?', we should be asking, 'How do we develop

power to force employers to recognize the union and sign a contract.'

During the course of the 104th Congress many concerns were raised by targeted corporations regarding the tactics used by organized labor and their attendant relationship with the NLRB. Employers argued that the NLRB was favoring organized labor and was indeed a willing pawn in the "corporate campaign" strategy. As a result of these repeated and serious allegations, the Subcommittee conducted two hearings and one round-table discussion.

The first hearing held by the Subcommittee invited NLRB Chairman Gould, General Counsel Feinstein, and a variety of small and large employers to recount their personal experiences. The second hearing held by the Subcommittee focused on the "corporate campaign" technique of salting—the placing of professional union organizers or members in a nonunion facility to harass or disrupt contractor operations, to increase costs, or to organize.

These two hearings raised a number of concerns for the Subcommittee including the following:

Organizing nonunion employees into a unified union membership is not necessarily the objective of union organizers;

Resources are not an obstacle for the unions when it comes to public relations;

The cost of frivolous complaints and other federal agency charges fall on the businesses and the federal taxpayer while the unions have no direct accountability or cost; and

Jeopardizing jobs and employer viability is ultimately more important than ensuring that workers have good wages, safe worksites and fulfilling jobs.

In conclusion, the pursuit of injunctive relief, the NLRB's handling of "salting" cases and the public comments of the NLRB Chairman have served as ample evidence that the NLRB may be biased against the regulated employer community.

Partisanship, partiality and the declining stature of the National Labor Relations Board

During the past four years, the National Labor Relations Board (NLRB/Board) has received harsh criticism from U.S. Courts of Appeals for the legal reasoning underlying its rulings in several key cases. As the percentage of NLRB orders affirmed by federal appellate courts has sunk to all-time lows the current NLRB has ignored past NLRB and court precedent and has sidestepped key factual issues to reach outcomes that have been soundly rejected by appeals courts. Warren, Gorham & Lamont, Inside Labor Relations, (May 31, 1996). Similarly, in numerous NLRB requests for injunctive relief, federal district courts have also been unpersuaded by the NLRB's legal and factual conclusions in seeking preliminary remedies. While admittedly past NLRBs have also been admonished by the federal courts, the Committee was struck by the force of the strident criticism leveled at the Gould-Feinstein NLRB by federal judges.

The Perdue decision

In a case involving an attempt by the United Food & Commercial Workers Union (UFCW) to organize employees at a facility owned

by Perdue Farms, an employer had to resort to the highly unusual move of seeking injunctive relief in a U.S. district court to prevent the NLRB from persisting in moving toward ordering a third election at its facilities. The employer took this move after its employees rejected union representation by significant margins in two elections and after the NLRB largely ignored evidence of massive fraud in the collection of authorization cards and continued processing objections by the UFCW which would possibly lead to a third election. In scathing terms, the district court granted the employer's request and enjoined the NLRB from proceeding further in the matter until it had proven to the court that it had conducted an appropriate investigation into the allegations of fraud. The language of the court's opinion is notable for its harshness regarding the NLRB's conduct:

> At present, the only possible explanation for the NLRB's behavior is the one proposed by the employer: "that the Board is manipulating its election rules capriciously in order to foster the interests of the United Food & Commercial Workers Union." *Perdue Farms, Inc.* v. *Nat'l Labor Relations Bd.,* 935 F. Supp. 713, 721 (E.D. N.C. 1996).
>
> Thus, as the cases demonstrate, the Board has not only abandoned its Casehandling Manual, but no less than three times where this particular Union local is involved, its legal policy as well. *Such dramatic reversals tend to create an appearance of partisanship the Board can ill afford if it hopes to retain a supervisory role over labor relations.* 935 F. Supp. At 722 (emphasis added).
>
> *Yet the legal policy reversals do not reveal the full extent of the Board's efforts on behalf of the Union.* . . . 935 F. Supp. At 722 (emphasis added).
>
> . . . *The Board refuses to obey* this statutory duty by defying numerous guidelines and regulations, engaging a significant policy departure which *remains unexplained.* This occurs against the backdrop of [sic] *several legal policy reversals by the Board in favor of the Union,* a representation to the plaintiff by a Board field examiner that the current hearing is a sham, and ignorance of the plaintiff's FOIA requests sufficient to invoke district court jurisdiction over that dispute. 935 F. Supp. At 725 (emphasis added).

The strength of the district court's condemnation of the NLRB's handling of the Perdue election is troubling to the Subcommittee because of the message it sends to both employers and employees as to the fairness and effectiveness of the NLRB's processes for administering the NLRA. While in isolation the Perdue decision might be an unfortunate footnote to the Gould-Feinstein tenure at the NLRB, there have been similar decisions in which the federal courts have expressed profound objections to the NLRB's handling of both representation and unfair labor practice cases.

Other court decisions

In a series of decisions, the Fourth Circuit Court of Appeals twice had to admonish the NLRB to cease its attempts to revive a rep-

resentation proceeding and election at a facility owned by the Lundy Packing Company. The case involved a bargaining unit determination in which the employer was contending that the NLRB had improperly excluded industrial engineers from a unit of production and maintenance employees. The Fourth Circuit agreed with the employer and determined that the "NLRB's bargaining unit determination both contravened its own announced standards and accorded controlling weight to the extent of union organization at Lundy, thereby violating section 9(c)(5) of the National Labor Relations Act," which specifically prohibits such a factor from being dispositive. In cautioning the NLRB, the court remarked:

> The deference owed the Board as the primary guardian of the bargaining process is well established. It will not extend, however, to the point where the boundaries of the Act are plainly breached.

The court then denied enforcement of the NLRB's order that the employer begin to bargain with the union. *Nat'l Labor Relations Bd.* v. *Lundy Packing Co.,* 68 F.3d 1577, 1583 (4th Cir. 1995).

As if the Fourth Circuit's admonition were not enough, the NLRB treated the decision as a mere distraction and proceeded to count the challenged ballots to determine if certification of the union would be appropriate. This action forced the employer to return to the Fourth Circuit, and the court told the NLRB in no uncertain terms that "the attempt by the Board to revive the representation petition and the election that followed exceeds the Board's jurisdiction." (*Nat'l Labor Relations Bd.* v. *Lundy Packing Co.,* 81 F. 3d 25, 26) (4th Cir. 1996). Nonetheless, the NLRB refused to take no for an answer and asked the Fourth Circuit to reconsider, whereupon the seemingly exasperated court stated:

> The NLRB acted in clear contravention of its jurisdictional limits and sought to bypass this court. . . . As we explained in our order of February 15, 1996, the NLRB has no such authority. The court reiterates its respect for the NLRB's role in the area of national labor relations law. The court expects in turn respect for its processes and mandates. *Nat'l Labor Relations Bd.* v. *Lundy Packing Co.,* No. 95–1364(L) (4th Cir. March 21, 1996) (unpublished opinion) (quoted in part in *Perdue,* 935 F. Supp. 713).

Like both the *Perdue* and the *Lundy Packing* cases, *Shepard Convention Servs., Inc.* v. *Nat'l Labor Relations Bd.* (85 F. 3d 671) (D.C. Cir. 1996) represents another instance where the NLRB disregarded long-standing NLRB policy and had to be reined in by a federal court. That case involved an organizing effort by the International Alliance of Theatrical Stage Employees where the union, citing the large number of eligible voters that will be on-call workers, requested that the election be conducted by mail. The NLRB Regional Director denied the request, and the union filed a "special request" for review by the NLRB. The NLRB, finding that the Regional Director had abused his discretion by denying the union's request, directed a mail ballot election for the on-call employees. After the Regional Director ordered all eligible employees to vote by mail, the employer requested review, as the NLRB's order had

referred only to on-call employees. The employer's request for review was summarily denied.

A mail ballot election was then conducted over a period of two weeks. Only 77 of the 438 eligible employees, or approximately 17.5 percent of the workforce, voted. Of the 68 ballots that were not challenged, 40 were cast for the union that was then certified as the bargaining despite the objections to the election that were filed by Shepard. After Shepard refused to bargain with the union, the NLRB issued an order finding the employer's refusal an unfair labor practice.

The District of Columbia Court of Appeals found that the Regional Director had "properly denied the union's request for an election by mail" and that the NLRB "undertook to second-guess the Regional Director in violation of its own regulations." 85 F. 3d at 674. The court went on to conclude:

> In sum, the NLRB's reversal of the Regional Director's discretionary decision to conduct a manual election cannot be upheld. Had the NLRB left the decision intact, as its regulations required, voter turnout might well have been higher. . . . It could hardly have been lower. 85 F. 3d at 675.

The Seventh Circuit Court of Appeals has also had strong words for the NLRB. In a case involving an NLRB decision to certify a union over the objections of the employer that supervisory employees were improperly included in the bargaining unit, the Seventh Circuit had this admonition for the NLRB:

> While we adhere to the generally accepted standard of review discussed above, the fact of the matter is that "[a]n administrative agency, like any other first-line tribunal, earns—or forfeits—deferential judicial review by its performance." In the context of classifying supervisors, the NLRB's manipulation of the definition provided in section 152(11) has earned it little deference. We remain mindful of the statutory prescription of judicial restraint but note that such restraint "does not entail complete abdication of the judicial role. *Nat'l Labor Relations Bd.* v. *Winnebago Television Corp.,* 75 F.3d 1208, 1214 (7th Cir. 1996).

A November 8, 1996, decision by the Court of Appeals for the District of Columbia was similarly critical of the Board in the case of *Skyline Distribs.* v. *Nat'l Labor Relations Bd.,* No. 95–1571, slip opinion, (Nov. 8, 1996). In that case, the Board ordered the employer to bargain with the union, even though the union had been rejected by the employees involved, based on an alleged unfair labor practice concerning a pay raise. While recognizing that such a bargaining order may be appropriate in extreme situations, Judge Harry T. Edward rejected the remedy, noting that the Board had "no basis" to issue such an order and that "Indeed, the Board's decision to issue a bargaining order in this case is so lacking in evidentiary support and reasoned decisionmaking that it seems whimsical." The court also noted that the Board's remedy could not be enforced "because the Board has given no credence whatsoever to employee "free choice." These are strong criticisms indeed—here

made more alarming by the fact that the Board's remedy would have forced employees to be represented by a union they had rejected.

Conclusion

The opinions of both the federal courts and of labor law practitioners regarding the conduct of the NLRB are of concern to the Subcommittee. This is the case because the very nature of the NLRB's responsibilities requires that it maintain the respect and interest of both labor and management as it uses the applicable law to drive the parties toward peaceful and orderly resolution of labor disputes. The statutory make-up of the NLRB, where various arms of the agency are both judge and prosecutor of alleged violations of the law, demands a strong commitment to impartiality. But, unfortunately, it does not appear that such a commitment has been made by the current NLRB. Both the review of court decisions assessing the NLRB's actions and the oversight activities of the Subcommittee indicate that Chairman Gould and General Counsel Feinstein have apparently neglected the traditions of the NLRB to the detriment of the agency's stature in the eyes of the federal courts, the Congress and the public.

Mismanagement within the Department of Education, Office of Postsecondary Education: Creation of A Student Loan Hierarchy

Since the inception of the Federal Direct Student Loan Programs (FDSLP) and its unique chain of command, new problems have arisen within the Department of Education. These problems include infighting among high ranking employees that have negatively impacted the efficient and effective operation of the higher education lending programs. According to a June 1996 report to the Subcommittee from the Department of Education's Office of the Inspector General (OIG) these personality differences "exacerbated the poor communication, contributed to poor coordination between their respective staffs, a further deterioration of morale, and heightened human resource management concerns in the bifurcated structure."

One of the major functions of the Department of Education involves administering student financial aid programs for higher education. The Subcommittee is seriously concerned about reports that the divided management structure intended to implement the student financial aid programs has been one of the most significant failings of the Department of Education. Indeed, in August 1995 the Advisory Committee on Student Financial Assistance (Advisory Committee) wrote a scathing report about the divided management of the FDSLP and the Federal Family Education Loan Program (FFELP). In particular the Advisory Committee stated:

> [The] Department of Education has chosen a structure that cannot adequately address its major management challenges: the redesign of the Title IV delivery system, implementation of the [FDSLP], and reform of the FFELP. Furthermore, responsibility for both implementing the [FDSLP] and overseeing FFELP reform is concentrated in a special advisor to the Secretary (Leo Kornfeld). However,

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The Committee raised these concerns with Secretary of Education Riley in a letter signed by Chairman Bill Goodling and Subcommittee Chairman Pete Hoekstra dated November 28, 1995. This letter also requested background documentation concerning the Secretary's furlough decisions. The Secretary of Education responded promptly and included several documents that had been requested. Unfortunately, the Secretary's response completely misstated the interpretation of the Antideficiency Act's handling of alternatively funded programs, specifically, the provision that such programs can continue operating despite the lack of a current appropriation to fund the administration of such programs.

Of even greater concern is that the Department of Education included in its initial response a letter from its own General Counsel, Judith Winston, to the Attorney General asking him to confirm the General Counsel's opinion that forward funded programs at the Department of Education should not be suspended by the lack of a current appropriation. Since no response from the Attorney General was included and since no other documentation concerning this opinion was provided, the Committee must conclude that the Department of Education not only went against every recent interpretation of the Antideficiency Act, but also went against or ignored the opinion of its own legal counsel—an unprecedented action, one which raised further concerns about the Clinton Administration's handling of the government shutdown.

The Committee sent a follow-up letter to the Department of Education on December 18, 1995, which again restated the law, and pointed out the opinion of the Department of Education's own General Counsel, which was in total agreement with the position of the Committee. The letter concluded by demanding that the Department of Education begin obligating funds as required by law.

Three days later, on December 21, 1995, the Department of Education sent a letter to the Committee stating in relevant part that:

> The Department is taking steps to authorize the necessary staff to return to work to perform this activity [operate alternatively funded programs] . . . this authorization applies to payments for programs with budget authority currently available from prior year appropriations.

While this letter confirmed the validity of the Committee's position, and allowed many Department of Education employees who were wrongfully furloughed to return to work, it only heightened the Committee's concern that the Administration was not handling the government shutdown in accordance with applicable law.

In conclusion, the Committee remains concerned that the intent of the Antideficiency Act was not followed by either the Department of Labor or the Department of Education. Furthermore, these actions put the education of American students and the safety of American workers in jeopardy. In short, politics was apparently placed above sound public policy by the Clinton Administration.

Abuse of power at the Department of Labor

Over the course of the last two years, allegations have been made that political appointees within the Clinton Administration have used their positions to influence matters involving interested third

parties. While some of these allegations simply involve parties unhappy with the Administration's legitimate disposition of a relevant matter, the case leading up to the dismissal of Mr. Richard F. Sawyer is a remarkable study in the damage that can be done when inappropriate selections are made for high-level positions at an executive agency.

Mr. Sawyer, a Secretary's Representative at the United States Department of Labor, abused the power of his office by attempting to exert undue influence in an ongoing labor dispute between Somers Building Maintenance, Inc. (Somers), a janitorial services company located in northern California, and the Service Employees International Union (SEIU). These facts are demonstrated in a detailed investigative report prepared by the Department of Labor's Office of the Inspector General.

BACKGROUND

1. Somers Building Maintenance, Inc. and the SEIU

Somers is a janitorial services contractor headquartered in Sacramento, California, with offices throughout northern California and Oregon. Somers is the largest non-union janitorial contractor in Sacramento and currently employs over 600 people.

The SEIU is the fourth largest and fastest growing union in America with more than one million members working in health care, government, and private industry. The SEIU was engaged in efforts to organize janitorial workers at Somers. This campaign, which was initiated against Somers by SEIU Local 1877 in mid-1994, is still a part of the SEIU's national organizing campaign known as "Justice for Janitors."

2. Department of Labor's wage and hour investigation of Somers

Coincident with the SEIU campaign to organize the janitorial workers of Somers in late 1994, as part of a national initiative designed to target past violators of the Fair Labor Standards Act (FLSA), the Department of Labor's Wage and Hour Division began a proactive investigation of possible FLSA violations at Somers. In the midst of this investigation, Mr. Richard Sawyer became involved.

3. Mr. Richard F. Sawyer

On January 9, 1994, Mr. Richard F. Sawyer was appointed to the position of Secretary's Representative with the Department of Labor's Office of Congressional and Intergovernmental Affairs. Prior to his appointment, Mr. Sawyer was employed as a Business Manager, Central Labor Council of Santa Clara and San Benito Counties, AFL–CIO, from March 1986 until January 1994. From March 1973 to March 1986, Mr. Sawyer was an SEIU representative in Everett, Washington.

The position of Secretary's Representative is located in the Office of Congressional and Intergovernmental Affairs, Office of Intergovernmental Affairs, Regional Intergovernmental Affairs Office, with the duty station in one of the 10 Department of Labor regions. As defined by the Department of Labor, the duties and responsibilities of the Secretary's Representative include:

undertakes a variety of special non-recurring confidential and politically sensitive assignments based upon an understanding of the Administration goals and the Secretary's policies, as well as utilization of own personal and extended experience in labor-related affairs.

ALLEGATIONS OF MISCONDUCT

Allegations concerning Mr. Sawyer were made on June 27, 1995, by Mr. Randall Schaber, a member of the Board of Directors for Somers. At that time, Mr. Schaber provided evidence of a formal complaint that he, on behalf of Somers, had filed with the Department of Labor's Office of the Inspector General alleging misconduct and ethical violations of Executive Order No. 12674, on the part of Mr. Sawyer.

In his complaint, Mr. Schaber alleged that Mr. Sawyer had "conducted himself in a manner that was intended to induce and coerce Somers to enter into a recognition agreement and/or a collective bargaining agreement with SEIU Local 1877 under the penalty of having the Department of Labor continue its investigation of alleged wage and hour violations and impose a fine of an extraordinary amount for said violations and seize goods produced by clients of Somers under the hot goods provisions of the Fair Labor Standards Act." In support of his formal complaint, Mr. Schaber provided a detailed chronology of events including information regarding a telephone conversation between Mr. Sawyer, and Somer's largest client, Valued Customer

On June 27, 1995, Mr. Schaber filed another formal complaint, which he directed to the Department of Labor's Office of the Inspector General through Mr. Michael A. Hackard, an attorney representing Somers. In his complaint, Mr. Hackard requested that the Office of the Inspector General conduct an investigation of the Sawyer matter, citing "serious breaches of governmental ethics and probable violations of federal criminal law including, but not limited to, violations of the Racketeering Influenced and Corrupt Organizations (RICO) Act [and] violations of the Hobbs Act, Mail Fraud, Conspiracy and Bribery."

Subsequently, on July 10, 1995, 18 Members of Congress signed a letter requesting an investigation into allegations of "an apparent conspiracy to coerce non-union building maintenance contractors into signing union contracts against the will of their employees."

ACTIONS BY THE OVERSIGHT SUBCOMMITTEE

In December 1995, the Subcommittee initiated a preliminary investigation into the allegations concerning Mr. Sawyer and Somers. After conducting several interviews and concluding that such allegations merited further examination, the Subcommittee sent a formal letter of inquiry to Secretary of Labor Robert B. Reich on December 14, 1995. In this letter, the Subcommittee reiterated the allegations contained in Mr. Schaber's complaint and conveyed the gravity with which the Subcommittee held the allegations:

> This Subcommittee and others are extraordinarily troubled by the seriousness of these allegations. They suggest strongly that a high-level Department of Labor official was

> attempting to use his political influence to coerce Somers into signing a union contract by putting pressure upon Valued Customer These allegations also raise concerns regarding serious breaches of ethics, abuse of power, collusion, and the misuse of federal funds by a Department of Labor employee.

The letter requested that the Department of Labor conduct a "prompt and thorough review of the allegations" and provide Members with the findings of such review and any planned actions by January 12, 1996.

On December 21, 1995, Solicitor of Labor Thomas S. Williamson responded to the letter on behalf of Secretary of Labor Reich. In that letter, Solicitor Williamson indicated that his office had consulted with the Office of the Inspector General and confirmed that there was, in fact, an active and ongoing investigation. In addition, Mr. Williamson indicated that while his office believed it had identified the Department of Labor official involved, it did not "wish to risk any possibility of inadvertent interference with the [Office of the Inspector General's] investigation—" and, therefore, would . . . withhold any final action pending the conclusion of the Office of the Inspector General's investigation. In the interim, however, Mr. Williamson indicated that the Department of Labor had decided to place the official involved under administrative leave (with pay), pending completion of the Office of the Inspector General's investigation. During this time, the official would be relieved of all official duties and have no authority to act on behalf of the Department of Labor.

FINAL REPORT OF THE INSPECTOR GENERAL, U.S. DEPARTMENT OF LABOR

On February 28, 1996, the Department of Labor's Office of the Inspector General completed its 500-hour investigation into the matter involving Somers and Mr. Sawyer. After reviewing the Office of the Inspector General's final report, the Subcommittee sent a letter on March 1, 1996, to Secretary of Labor Reich. In this letter, the Subcommittee conveyed its concerns over the findings of the Office of the Inspector General stating:

> We are greatly concerned by the [Office of the Inspector General's] Report. Based upon that Report it appears that Mr. Sawyer:
>
> (1) Misused his position and aided the Service Employees International Union (SEIU) in its attempt to organize janitorial services of Somers;
>
> (2) Contacted Valued Customer which is one of Somers largest clients, and disclosed investigative information which was damaging to Somers; and
>
> (3) Influenced the Department of Labor's Wage and Hour Division in an attempt to intimidate Somers into recognizing the SEIU.

The Subcommittee also conveyed its concerns over information included in the Office of the Inspector General's report suggesting that several other Department of Labor officials, including high-ranking officials within the Department of Labor's Wage and Hour

Division, had not only been aware of Mr. Sawyer's actions, but also may have supported or encouraged these actions.

In March 1996, the Subcommittee was advised that Mr. Sawyer was no longer employed by the Department of Labor. On that same day, the Subcommittee responded by sending a letter to Secretary Reich requesting information relating to the Department of Labor's response to the Office of the Inspector General's investigation and documentation pertaining to Mr. Sawyer's termination. The Department of Labor's response was provided to the Subcommittee in a letter dated April 1, 1996, from the Acting Solicitor of Labor, J. Davitt McAteer.

On April 25, 1996, the Subcommittee held a hearing on Somers and the alleged misconduct by Mr. Sawyer. Testifying at the hearing were Mr. Schaber and Mr. Charles C. Masten, Inspector General at the Department of Labor.

CONCLUSION

Based on the Office of the Inspector General's investigation and the testimony of other witnesses at the hearing, it is obvious that Mr. Richard F. Sawyer abused his position as the Secretary's Representative by intervening on behalf of the SEIU in its campaign to organize the janitorial workers of Somers. This information establishes several irrefutable facts:

(1) Mr. Sawyer contacted officials of Valued Customer Somers' largest client, and specifically discussed the Department of Labor's active and on-going investigation of Somers.

(2) Mr. Sawyer contacted the Department of Labor's Wage and Hour investigators to request information on the status of the Somers' investigation and to complain about the progress of said investigation.

(3) Mr. Sawyer improperly provided the SEIU with specific information regarding the Department of Labor's active and on-going investigation of Somers—information that was used by the SEIU both privately and publicly to pressure Somers to capitulate to the union's organizational demands.

(4) Mr. Sawyer contacted high-ranking officials within the Wage and Hour Division's national office to complain about the progress of the Somers' investigation.

(5) In response to Mr. Sawyer's repeated contacts, high-ranking officials within the Wage and Hour Division's national office assigned five additional investigators to the Somers' investigation and directed investigators to give Somers special attention.

(6) The Somers' investigation was kept open well beyond the point the lead Wage and Hour investigator deemed warranted by the facts.

(7) Despite the involvement of no less than six investigators and 500 hours of investigative work, the Wage and Hour Division discovered only $317.44 in FLSA violations.

These facts clearly illustrate that Mr. Sawyer was engaged in a conscious effort to use his position as the regional representative of Labor Secretary Robert Reich to assist his former employer, the SEIU, in its efforts to organize the janitorial workers of Somers. As such, the Subcommittee believes it wholly appropriate that Mr.

Sawyer's employment with the Department of Labor was terminated.

The Subcommittee also remains concerned about the extent to which other Department of Labor employees had knowledge of, supported or assisted Mr. Sawyer in his efforts to coerce Somers into signing a union contract with the SEIU. As noted previously, Mr. Sawyer's position as a Secretary's Representative falls under the purview of the Office of Congressional and Intergovernmental Affairs and his official Department of Labor job description clearly states that the "Incumbent reports directly to the Director of the Office of Intergovernmental Affairs * * * [and] consults with the Director on decisions or matters which appropriately require personal attention." Based on this description of Mr. Sawyer's supervisory controls, it is reasonable to expect that high-level Departmental officers, like the Director of the Office of Intergovernmental Affairs would have been aware of Mr. Sawyer's actions concerning Somers. It is also reasonable to assume that Ms. Geri Palast, Assistant Secretary of Congressional and Intergovernmental Affairs, would also have knowledge of Mr. Sawyer's actions. If not, the Subcommittee cannot help but question the efficacy of the Department of Labor's supervisory controls with respect to the Secretary's Representatives.

The Subcommittee has similar concerns regarding the extent to which officials within the Department of Labor's Wage and Hour Division had knowledge of, supported or assisted Mr. Sawyer in his efforts to coerce Somers into signing a collective bargaining agreement with SEIU. In particular are concerns regarding the extent to which Ms. Maria Echaveste, Administrator of the Wage and Hour Division, was aware of, encouraged, or facilitated Mr. Sawyer's actions.

As previously noted, senior Wage and Hour Division officials responded to Mr. Sawyer's meddling by assigning an additional five investigators to the Somers case. In total, Wage and Hour personnel devoted no less than 500 hours to the investigation. In doing so, the Department of Labor far exceeded the number of investigative hours devoted to any of the other top ten Wage and Hour investigations that were closed during fiscal year 1995—the largest involved only 386 investigative hours. Certainly, any case that would merit this level of Wage and Hour activity must have had the attention and scrutiny of the Division's most senior official, Ms. Echaveste.

At best, these facts call into question whether or not Ms. Echaveste is administering the Department of Labor's Wage and Hour Division in the most effective and efficient manner possible under the watchful eye of the Secretary of Labor. At worst, these facts belie Ms. Echaveste's contentions that she neither encouraged nor supported Mr. Sawyer's coercion of Somers. The fact that Ms. Echaveste approved, directly or otherwise, both the expansion and extension of the Somers case beyond the point at which the lead investigator deemed the facts warranted suggests that she did, in fact, collude with Mr. Sawyer and representatives of the SEIU.