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July 2, 1996

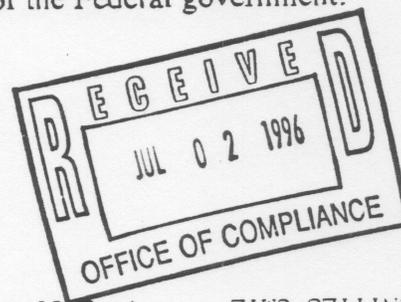
Chair of the Board of Directors
Office of Compliance
Room LA 200, John Adams Building
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Washington, DC 20540-1999

Dear Mr. Chairman:

These comments are in response to the Notice of Proposed Rulemaking of May 23, 1996 (S5552), concerning extension of the Federal Service Labor-Management Relations Act to certain Congressional offices under Section 220(e)(1)(B) of the Congressional Accountability Act.

As you know, we have long advocated extension of private sector workplace laws to the Congress and are particularly proud that passage of the Congressional Accountability Act (CAA) occurred in the opening days of the 104th Congress. The futility of past efforts, in Committee and on the Floor, to apply these laws to the House in prior Congresses are now, fortunately, a distant memory. What was once unprecedented has now become the norm.

The principle of "what is good for the private sector is good for the Congress" was the overarching theme of the CAA, and when specific laws had different requirements applicable to the private sector and the public sector, special efforts were made to apply the private sector requirements. For example, the waiver provisions and the liquidated damage remedies of the Age Discrimination in Employment Act were made applicable to the Congress even though neither of these provisions are applicable to the executive branch of the Federal government.



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However, the CAA also recognized that in a few areas strict adherence to private sector requirements was not possible. Hence, special rules for "interns" are allowed and punitive damages are excluded. Indeed, adoption of the Federal Service Labor-Management Relations Act (FSLMRA) instead of the private sector National Labor Relations Act was in recognition that it would be inappropriate for Congressional employees to have the right to strike.

Similarly, Section 220(e)(1)(B) also recognizes that there may be situations in which a simple extension of the FSLMRA to offices charged with evaluating and developing legislation may not be appropriate for various specified reasons.

Section 220(e)(1)(B) provides (emphasis added):

(B) that the Board shall exclude from coverage under this section any covered employees who are employed in offices listed in paragraph (2) if the Board determines that such exclusion is required because of--

- (i) a conflict of interest or appearance of a conflict of interest; or*
- (ii) Congress' constitutional responsibilities.*

The offices listed in "paragraph (2)" range from committees, to Member personal offices, to the Office of the Speaker, to the Office of the Minority Leader, to other types of legislative offices. However, purely administrative support offices, such as the Capitol Police and the Architect, are not covered.

While the Board has been instructed by the statute to exclude offices from coverage based on any of the specified three criteria, the Board has proposed exempting no offices and has issued proposed regulations providing that questions of whether or not a particular office should be excluded should be left to determination on a case-by-case basis. Under this approach, the Board would not resolve the question as to whether or not a specific office should be excluded under section 220(e)(1)(B) until that office has been subject to an organizing campaign. Presumably, the issue of whether that particular office should be excluded would then be litigated in a representational proceeding or during consideration of an unfair labor practice charge. This is a recipe for chaos and perpetual uncertainty. The purpose of section 220(e)(1)(B) in instructing the Board in mandatory language to examine the

numerous offices listed was to avoid this uncertainty, and in proposing a rule of case-by-case analysis, the Board has failed in its statutory responsibilities. The fact the Board proposed exempting no offices whatever, in and of itself, is indicative of this failure and, worse, suggests a bias towards a pre-ordained result of blanket coverage in the face of the contrary statutory language.

Comments submitted jointly by the Office of General Counsel and the Office of House Employment Counsel address these same issues in substantially more detail and we commend those comments to you for your review.

We urge the Board to reexamine its position.

Sincerely,



BILL GOODLING
Chairman
Committee on Economic and
Educational Opportunities



HARRIS W. FAWELL
Chairman
Subcommittee on Employer-
Employee Relations

RKJ:kaw