



June 5, 2020

Dear Senator:

As National President of the National Treasury Employees Union, representing 150,000 federal employees in 33 federal agencies, I am writing to once again share my concerns with the nomination of Catherine Bird to be the General Counsel of the Federal Labor Relations Authority (FLRA) and to urge you to oppose her nomination. Ms. Bird is unqualified for this position.

As NTEU attempted to work with the Department of Health and Human Services (HHS) to develop a new collective bargaining agreement (CBA) for our members, Ms. Bird played an instrumental role in the negotiations and repeatedly engaged in bad faith bargaining. In that capacity, she eagerly championed a scheme to weaken federal-sector unions and strip employees of long-standing collective bargaining rights by essentially foreclosing any collective bargaining with NTEU to ensure that the dispute would promptly be sent to the Federal Service Impasses Panel (FSIP), where management's proposals to gut much of the existing contract would be imposed.

Federal law expressly states that collective bargaining is in the public interest and the General Counsel of the FLRA makes decisions on whether to issue unfair labor practice (ULP) complaints for violations of the Federal Service Labor-Management Relations Statute (the "Statute") based on charges filed by unions and agencies. ULPs could involve issues related to the duty to bargain and bargaining in good faith, failure to respond to information requests, interfering with the rights of bargaining unit employees to collectively bargain or exercise their other statutory rights, discrimination based on bargaining unit status, and other matters related to the collective bargaining process.

Throughout the negotiations with HHS, Ms. Bird repeatedly demonstrated a fundamental lack of understanding of federal sector labor law. She has very little experience in this area of law, which is limited to her work at HHS since 2017. Her actions at the HHS table combined with her lack of knowledge of the Statute resulted in our filing of five unfair labor practice grievances against HHS. These filings concern HHS's bad faith bargaining, including failing to discuss contract language at all; ignoring and failing to respond to NTEU's information requests on issues that were open at the table; the unprecedented request by the agency for mediation assistance after one day of bargaining; its unilateral declaration of impasse and submission of last best offers after one day of mediation; and its request for assistance from the FSIP when no impasse had been reached and the parties had not even discussed 32 of the 34 contract articles open for negotiation.

During NTEU's engagement with HHS on a new CBA, HHS was clear in its intent to severely limit employee and union rights and eliminate more than 41 issues from the grievance process. Important employee benefits like telework and leave, for example, are now solely at the supervisor's discretion, permitting them to allow or disallow it without any consistency or justification and leaving employees nearly powerless to object when they are treated unfairly. HHS is also trying to undermine the ability of the union to assist employees when they are mistreated by, for example, limiting the time that union leaders are given to provide such assistance, and for the first time in the history of our relationship, taking away union offices and preventing union stewards from using their government issued laptops and equipment to perform any representational activity. In nearly every instance, HHS' intent was to weaken the employees' voice in the workplace and undermine collective bargaining altogether. And despite NTEU's numerous attempts to discuss the proposed contract changes, seek information on HHS' concerns, and develop possible alternative proposals that the parties could agree on, HHS, led in large part by Ms. Bird, forced the term contract through the statutory impasse process to have its proposals imposed without first bargaining over them in good faith with NTEU, as the Statute requires.

On September 30, 2019, an independent arbitrator found that HHS engaged in bad faith bargaining and ordered the parties back to the table to resolve the matter, effectively invalidating the contract mandated by the FSIP. Furthermore, on December 12, 2019, a second arbitrator found that HHS committed an ULP by implementing the FSIP-mandated contract while there were six outstanding articles to be resolved by the parties. Whether representing labor or management, parties have a requirement to follow the law and HHS's conduct and that of Ms. Bird, is antithetical to the statutory obligation of both parties to bargain in good faith and to make a sincere effort to reach an agreement.

Given Ms. Bird's central role in these actions and her lack of understanding and experience with federal sector labor law, she is unqualified to serve in this position and we do not have any confidence that Ms. Bird will make impartial or legally correct decisions about whether to issue complaints or dismiss ULPs filed by unions. Therefore, NTEU strongly opposes her nomination and urges the Committee to do so as well.

Sincerely,

A handwritten signature in black ink that reads "Anthony M. Reardon". The signature is fluid and cursive, with the first name being the most prominent.

Anthony M. Reardon
National President