

**UNITED STATES GOVERNMENT**  
**National Labor Relations Board**  
**Office of Inspector General**



**Memorandum**

November 9, 2015

To: Board

From: David Berry   
Inspector General

Subject: Report of Investigation – OIG-I-516

This memorandum addresses an investigation conducted by the Office of Inspector General (OIG) involving Dennis Walsh (subject), Director, Region 4. The case was initiated after the OIG received information alleging that the subject's activity with the Peggy Browning Fund violated certain laws and/or created a conflict of interest with the subject's case handling duties. Our investigative efforts substantiated that the subject violated various regulatory provisions of the Standards of Ethical Conduct for Employees of the Executive Branch.

Because the Board appoints Regional Directors to his or her position, this report, with the attached investigative exhibits (IE), is issued to the Board for its review and consideration of appropriate administrative action.

**FACTS**

1. The subject was appointed to the position of Region 4 Director in March 2013. Prior to that appointment, the subject was the General Counsel at the Federal Labor Relations Authority, an NLRB Board Member, a Chief Counsel to former Board Member Peggy Browning, and held various other attorney positions at the NLRB. (IE 1 Pages 8-9)
2. Peggy Browning died during her term as a Board Member. (IE 1 Page 10)
3. To honor the memory of Member Browning, a group of individuals, including the subject, created a nonprofit organization identified as the Peggy Browning Fund to raise funds to sponsor law students in fellowships related to labor law practice and to conduct labor law seminars that expose law students to the labor law practice. (IE 1 Page 10)
4. The Peggy Browning Fund raises funds in a variety of ways that include conducting networking functions that are also known as "award ceremonies," soliciting donations for membership in the "Leadership Circle," publishing newsletters with an envelope for donations, and maintaining a Web site with links for donations. (IE 1 Exhibits 4, 7, & 17 & IE 2 Pages 6-7)

5. The Peggy Browning Fund conducts four to five networking functions each year in various cities including, Philadelphia, New York, Washington, Chicago, and Los Angeles. (IE 2 Page 7)
6. Each networking function has a specific fundraising goal. (IE 1 Pages 38-39 & IE 3)
7. The award recipients at the networking events generally include a union official, an attorney, and a neutral or arbitrator; however, Government officials have also been selected. (IE 2 Page 20)
8. Award recipients are chosen, in part, for his or her ability to raise funds for the Peggy Browning Fund, and award recipients are asked to raise a specific amount of money for the Peggy Browning Fund. (IE 1 Pages 38- 41, IE 2 Page 12)
9. Government officials and some of the arbitrators are not asked to raise the funds. (IE 2 Pages 12-13)
10. Each networking event has a Host Committee that is responsible for selecting the honoree; setting the dates and making arraignments for the event; and some members of the committee also participate in fundraising for the event. (IE 2 Pages 8-9)
11. Each Member of the Peggy Browning Fund Board of Directors is also a member of the Host Committee. (IE 1 Pages 41 & IE 2 Pages 11)
12. The Host Committee also includes Peggy Browning Fund Advisory Board members who are in the area that the networking event will be held; lawyers and other individuals who deal with labor or employment law issues; other individuals who are strong supporters of the Peggy Browning Fund; and individuals who are selected based on his or her ability to raise funds on behalf of the honoree. (IE 2 Page 11)
13. The Host Committee members receive invitations to the networking event to use to invite people who they think will buy tickets or make a contribution. (IE 2 Page 10 & IE 3)
14. The Peggy Browning Fund also sends invitations to individuals who attended prior networking events. (IE 2 Pages 10-11 & IE 3)
15. The Peggy Browning Fund generally receives contributions from individuals who have some affiliation with either the fund or the honoree and identify with what the fund does. (IE 2 Pages 13-14)
16. Approximately 5 to 6 years ago, the Peggy Browning Fund Board went through a self-examination process: (IE 2 Pages 15-16)
  - a. Up to that time, the fund was principally run by Joe Lurie, Peggy Browning's widower; the subject, and an executive director;

b. At that time, the fund had grown and there was a concern that Mr. Lurie would be spending less time on the fund's activity;

c. In that light, the fund's Board of Directors wanted to make changes to ensure that the fund would be self-sustaining;

d. During this process, the Board of Directors hired a Development Director to be in charge of its fundraising activity; and

e. The Development Director recommended to the Board of Directors that they put the names of the Host Committee members on the invitations so that people would know who was involved and the fund would look like a worthwhile organization.

17. As stated by the Development Committee Chairman, his general understanding is that: (IE 2 Page 16)

I think it's just to let people know in more detail who's involved in the Peggy Browning Fund because I think that people on the Host Committee, you know, you read who's on the Host Committee and you say, oh, I know that person. If that person is involved in the Peggy Browning Fund, it's a worthwhile organization.

18. After being appointed as the Region 4 Director, the subject submitted a financial disclosure form that listed his activity with the Peggy Browning Fund. (IE 4)

19. The Deputy Designated Agency Ethics Officer (DAEO) reviewed the subject's financial disclosure form and suggested to the subject that he seek permission for his activity with the Peggy Browning Fund, as it was considered outside employment. (IE 4)

20. On July 9, 2013, the subject submitted a request for outside employment to the Associate General Counsel, Division of Operations-Management, stating, in part, that: (IE 4)

I have been involved in the Fund since its inception, and have been a Member of its Board since that time. Since January 2011 I have been Chairman of the Board. I have no direct involvement in fundraising; i.e., I do not directly ask anyone for contributions, and I do not allow my name to be used on any literature that directly solicits contributions. My role is to run our quarterly meetings, keep track of committee assignments, and responsibilities, and I am Chair of the Committee that organizes the annual Law Students Conference. I also participate in the networking and fundraising events in various cities by introducing the guests who introduce the honorees, and by presenting the Peggy Browning Fund award to each honoree.

21. On July 11, 2013, the Associate General Counsel, Division of Operations-Management, approved the subject's request stating, in part, that: (IE 4)

I am approving it consistent with the information in your letter that you do not engage in fund raising activities nor do you allow your name to be used on any literature that directly solicits contributions. Should this situation change, please inform me. In addition, work for the Peggy Browning Fund should not be conducted on government time or using government resources or equipment, except to the extent that the work can be considered outreach for the NLRB.

22. When approving the request, the Associate General Counsel relied upon the facts provided to her in the subject's request. (IE 4 Transcript Page 11-13)

23. A review of the subject's Government email account disclosed that he had approximately 1,000 email messages regarding his activity at the Peggy Browning Fund that were sent or received via the Agency's email system. (IE 5)

24. Included in the email messages were messages from the Peggy Browning Fund detailing and updating the donations from individuals for the networking functions; draft and edited minutes of Board of Directors' meetings; and other activity relating to the fundraising activity, general business of the fund, and labor law seminars. (IE 5 & 6)

25. A comparison of the time and dates of the email messages and the subject's time and attendance records disclosed that the subject received and sent messages related to the Peggy Browning Fund during normal working hours. (IE 5)

26. A review of the content of the email messages and a comparison to the subject's time and attendance records disclosed that the subject conducted Board of Directors' meetings and other meetings while on official time. (IE 5 & 7)

27. The subject generally acknowledged that he used his Government email account and official time for activities related to the Peggy Browning Fund, but he asserted that some of the activity was related to approved outreach activities, and some of the meetings occurred during his lunch breaks. (IE I Pages 27-34)

28. The subject also acknowledged that he participated in telephonic meetings for the Peggy Browning Fund on the Government telephone in his office. (IE 1 Page 34)

29. When asked about his duties as the Board of Directors' Chairman, the subject stated that the description in the document provided by the Peggy Browning Fund was accurate with the exception that he was not directly involved in fundraising. (IE 1 Page 15)

30. When asked to explain what he meant by "directly involved in fundraising," the subject stated: (IE 1 Page 15-16)

My definition of it was always using my name to directly ask someone for money, that's my definition of it, or doing it myself on the phone or in writing. That was the way I interpreted it, based on the guidance that I had gotten from both ethics people here at the Board and the FLRA.

31. The subject acknowledged that, on occasion, he talked to the Board of Directors about fundraising strategy, but that he did not engage in it himself. (IE 1 Page 17)
32. When asked to describe the Peggy Browning Fund supporters, the subject described the donors as international unions, vendors and companies that support unions, individuals who are interested in workers' rights, and attorneys on both the management and labor side. (IE 1 Page 12)
33. When asked to explain handwritten notes on a printed email message, the subject recalled that the notes were regarding a telephone call with the AFL-CIO General Counsel following up with her to check on whether she spoke to other international union general counsels about renewing Leadership Circle contributions. (IE 1 Page 17-20; See also IE 1 Exhibit 3)
34. Email messages in the subject's Government email account do not support the subject's assertion that he was not involved in fundraising or that he "scrupulously kept myself away from direct fundraising because of my affiliation with the Board." [In this context "Board" refers to the NLRB.] (IE Page 12 & IE 8)
35. Prior to networking events, the subject received the invitation for the event that had printed on it his name as a member of the Host Committee. (IE 3)
36. The invitations for each of the networking events were identical in format and included a request for a monetary donation and specific levels for giving. (IE 3)
37. When asked about the role of the Host Committee, the subject acknowledged that the goal of the Host Committee was to reach a certain level of funding; however, he stated that he only agreed to have his name listed as a Host Committee member, and he was not involved in any fundraising aspect of the committee. (IE 1 Page 43)
38. The subject acknowledged that he received updates on the progress of the Host Committee's efforts to collect contributions and that the updates included the names of the individuals who made contributions. (IE 1 Pages 44-47)
39. The subject acknowledged that he knew his name was on the invitations for each of the networking events and that the purpose of the invitation was to invite people to the event and to make a contribution. (IE 1 Page 47)
40. The subject acknowledged that he knew that the Host Committee members would send the invitations to their contacts. (IE 1 Page 48)
41. The subject acknowledged that he knew that the Host Committee used monetary sponsorship levels that correspond to advertisements and acknowledgments in the networking event's program book. (IE 1 Pages 49-51)

42. The subject agreed that a significant number of the advertisements in the program books are from unions, the internationals and locals, law firms that have some association with unions, and entities that provide services to unions. (IE 1 Page 51; See also IE I Exhibit 15)

43. The subject acknowledged that most of the entities, law firms that represent unions and the local and international unions, are prohibited sources. (IE 1 Page 51)

44. A review of the content of the email messages in the subject's Government email account documented the subject's receipt of regular and reoccurring updates on the status of the fundraising receipts for each networking conference that included the name of the donor, the date and amount of the contribution, and, for some contributions, the individual who secured the contribution. (IE 6)

45. A review of the lists of individuals and entities that made contributions to the Peggy Browning Fund networking conferences disclosed that numerous labor organizations made monetary donations to the Peggy Browning Fund. (IE 9)

46. A comparison of the individuals and entities listed as making monetary contributions in support of the Philadelphia networking event to a list of cases pending in Region 4 between March 2013 and September 2015, found that of the 2,628 charges pending during that time, 1,519 (57.8 percent) involved at least one prohibited source who made a contribution to the Peggy Browning Fund. (IE 9)

47. The Web site for the Peggy Browning Fund listed the subject by his name and title as the Region 4 Director, National Labor Relations Board directly across from an Internet link to make a donation to the Peggy Browning Fund. (IE 1 Exhibit 4)

48. The subject acknowledged that he was aware that the Peggy Browning Fund's Web site had "ways" to make donations. (IE 1 Page 21)

49. The Spring 2015 Peggy Browning Fund newsletter contained a column signed by the subject that had the following as the last paragraph: (IE 1 Exhibit 7 & IE 10)

Our award receptions in Los Angeles, Philadelphia and New York were a resounding success and contributed greatly to our ability to continue these programs that have made such a lasting contribution to the workers' rights movement. It is the students who are embarking on the adventure of these fellowships today who need your help to continue this great work. Thank you for all you do for the Peggy Browning Fund.

50. The Spring 2015 newsletter also included an envelope for the purpose of sending the Peggy Browning Fund a contribution and listed the subject as the Board of Directors Chair by name and "NLRB Region 4." (IE 1 Exhibit 7)

51. When asked about the newsletter, the subject stated that it was his understanding that the past contributors received the newsletter, but he was not certain of that fact; he did not intend the

paragraph in the Spring 2015 newsletter as a request for contributions; and he was aware that the newsletters contained the envelope for contributions. (IE 1 Pages 34-37)

52. When asked if part of the equation for selecting an awardee was who would draw the contributions to help support the Peggy Browning Fund, the subject responded: (IE 1 Page 38)

I expect it was, but I don't know that for sure, but I expect that that would be it, yes.

53. The subject acknowledged that he sent the following email message from his Government computer: (IE 1 Pages 39-39; IE 1 Exhibit 8)

**From:** [Walsh, Dennis](#)  
**To:** [Martz@afscme.org](#); [rbrean@usw.org](#); [jkokolos@calibrepcpa.com](#); [wbliebman@██████████.m](#); [wbliebman@██████████.n](#); [Joseph Lurie](#); [lrhineha@afficio.org](#); [pat.szymanski@changetowin.org](#); [GwynneW@1199.org](#)  
**Cc:** [Rhonda G. Kelley](#); [Joseph Lurie](#); [Mary Anne Moffa](#)  
**Subject:** RE: DC Event  
**Date:** Thursday, April 25, 2013 2:57:00 PM

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PBF Board Members:

I'm reaching out to you so soon after our Board meeting yesterday because the third awardee for our DC Awards Reception has declined. Letter Carriers President Frederic Rolando would be very happy to be recognized and may do so for next year, but he declined for this year. That leaves us light on those awardees who would actively raise funds for our programs. We have an assigned goal of \$100,000 for the DC event. Bricklayers President James Boland has agreed to raise between \$40-\$50,000. We still need another person to help Nancy Schiffer raise the remaining \$50,000.

Please review your contacts and suggest either another labor leader or union attorney who could be asked **right away** to finalize this process! Thank you very much.

Dennis Walsh

54. The Peggy Browning Fund Web site contained images of the subject wearing a name badge that identified him the Region 4 Director, NLRB, a member of the Host Committee, and the Chairman of the Peggy Browning Fund Board of Directors. (IE 11)

55. The subject acknowledged that at the networking functions he wore a badge that identified him as the Region 4 Director and that he introduced individuals as part of the award ceremony. (IE 1 Page 56)

56. The subject could not recall discussing his activities with the Peggy Browning Fund with Margery Lieber, the prior NLRB DAEO who also happened to be the wife of the Peggy Browning Fund's Development Committee Chair.

57. The Deputy General Counsel provided the following information regarding the corrective action taken by the NLRB: (IE 12)

a. The subject's permission to engage in outside employment as the Chairman of the Peggy Browning Fund Board of Directors was revoked;

b. The subject was asked to resign his position as the Chairman of the Peggy Browning Fund and requested that the Peggy Browning Fund stop using his name and NLRB position to endorse its activities;

c. The Acting DAEO worked with the Division of Operations-Management to address conflicts issues with the cases involving the individual who reported the allegations that resulted in the OIG investigation, and the Acting DAEO continues to work with the Division of Operations-Management to address other recusal issues that have arisen;

d. The Acting DAEO contacted the Peggy Browning Fund to address issues related to the activities of NLRB employees and the Peggy Browning Fund activities;

e. The Acting DAEO spoke to NLRB employees about speaking at Peggy Browning Fund events and is in the process of preparing material to be issued to NLRB employees on that issue; and

f. Since late 2014, the NLRB Ethics Office has taken a more active and comprehensive approach when advising employees about service on non-profit boards.

## **ANALYSIS**

The following analysis is provided to assist you in understanding the basis for the investigation. The Board should consult with the Agency's Division of Legal Counsel and the Office of Human Resources to determine what, if any, administrative action should be taken as a result of an OIG investigation.

### **Overview**

Reasonable cause exists to find that the subject violated the Standards of Ethical Conduct for Employees of the Executive Branch (*Standards*) by personally soliciting funds from prohibited sources, using his official position to engage in fundraising, allowing his NLRB employment to be used to endorse the activities of the Peggy Browning Fund; and by using official time and Government resources for activities related to his outside employment with the Peggy Browning Fund. Additionally, given that the subject knowingly allowed his name to be used to solicit contributions from prohibited sources who were involved in cases pending in Region 4, and the number of charges that involved prohibited sources, we find that the subject engaged in a course of action that created the perception that his official actions could be influenced in exchange for support of the Peggy Browning Fund.

### **Specific Violations**

The *Standards* state that a Federal employee may engage in fundraising in his personal capacity provided that he does not "personally solicit funds or other support . . . from any person . . . known to the employee . . . to be a prohibited source . . ." 5 C.F.R. 2635.808(c)(1)(i). A "prohibited source" is any person who: is seeking official action by the NLRB; conducts activities regulated by the NLRB; or has an interest that may be substantially affected by the performance or nonperformance of the subject's official duties. See, 5 C.F.R. 2635.203(d)(1). An organization that



is made up of members that are prohibited sources is also a prohibited source. *Id.* For the purposes of the *Standards*, a “person” includes both individuals and entities. See, 5 C.F.R. 2635.102(k). It is well-settled that the private sector unions and employers, and their representatives, are prohibited sources for the purposes of the application of the *Standards* to the activities of NLRB employees.

Despite the subject’s assertion that he did not engage in direct fundraising, he did in fact personally solicit funds from unions regulated by the NLRB and their representatives. “Personally solicit” includes not only asking directly for a donation through person-to-person contact, it also includes using one’s name or identity in correspondence that requests or otherwise encourages donations or by permitting others to do the same. 5 C.F.R. 2635.808(a)(4). The subject permitted the Peggy Browning Fund and its Host Committees to use his name on invitations for the networking functions. The Board of Directors, of which the subject is the Chairman, was advised to include their names on the invitations by the Peggy Browning Fund Development Director and thereafter implemented the recommendation. In fact, according to the subject, the only thing he agreed to do with regard to the Host Committee duties was allow the use of his name on the invitations. The subject knew that the invitations were used to solicit donations, and that the solicitations were targeted at prohibited sources. A conclusion otherwise is simply not supported by the facts. Prior to each networking event, the subject received copies of the invitations. After the solicitations by the Host Committee began, the subject then received regular and reoccurring updates at his Government email account documenting that prohibited sources, including local unions that had charges pending in or otherwise disposed by Region 4, had in fact made donations to the Peggy Browning Fund and the amount of the donations. Additionally, networking event program booklets mostly consisted of advertisements procured by donations from prohibited sources. Finally, when asked about the individuals and entities that supported the Peggy Browning Fund, the subject listed categories that are clearly prohibited sources.

We also find that the exception regarding solicitations made through the media, oral remarks, or mass produced correspondence is not applicable to the Peggy Browning Fund’s method of solicitations for the networking functions. See, 5 C.F.R. 2635.808(a)(4). That exception does not apply if the employee knows that the solicitation is targeted towards prohibited sources. *Id.* As detailed in the facts above, the Peggy Browning Fund specifically targeted the unions and their representatives. No reasonable argument can be made that supports a finding that it was just coincidental that prohibited sources were solicited and that 57.8 percent of the charges involved a prohibited source. See, OGE 93x8. The simple fact, as explained by the Development Committee Chairman, is that the Peggy Browning Fund is supported by groups of individuals and entities with a homogeneous interest in labor relations. That group is made up of entities that are regulated by the NLRB and individuals that have an interest that can be affected by the subject’s performance of his official duties.

The *Standards* also prohibit an employee from using, or permitting the use, of his or her “official title, position or any authority associated with his public office to further the fundraising effort . . .” 5 C.F.R. 2635.808(c)(2). The subject permitted his name, Region 4, and National Labor Relations Board to be used in newsletters that solicited donations. He also permitted his name and his position as the NLRB Region 4 Director to be used on the Peggy Browning Fund Web site that solicited donations. He voluntarily attended the networking session wearing a name badge that tied his official position to the Peggy Browning Fund position. Those acts clearly violated the prohibition stated in the *Standards*.

The *Standards* also required the subject use his official time in an "honest effort" to perform official duties. See, 5 C.F.R. 2635.705(a). The subject was not authorized to use official time to conduct the business of the Peggy Browning Fund. In fact, the subject was instructed in writing not to use official time for his outside employment activity related to the Peggy Browning Fund. Despite that directive, he did.

As the Regional Director, the subject was the senior Agency official in the Regional Office and was, for all purposes, its leader. Unless in an approved absence status, the subject was obligated to be at work attending to the business of the Region by leading the Region's enforcement of the National Labor Relations Act. Absenting himself for Peggy Browning Fund Board Meetings or participating in its conference calls rendered the subject unavailable to the Regional staff for that time. Time spent reading and replying to Peggy Browning Fund email messages was time not spent on the activities related to managing the Regional Office and enforcing the National Labor Relations Act. That the subject may have worked outside of normal working hours to make up lost time is not a mitigating factor. A Regional Director simply does not "punch a clock." In fact, the subject, as a member of the Senior Executive Service, is not permitted to earn credit hours. See, 5 C.F.R. 610.408. For a Regional Director, the "honest effort" means being there when he or she is needed, not when it is convenient given the Director's other priorities in life.

We do not concur that the subject's activity related to the Peggy Browning Fund's law conferences were appropriate "outreach" activities. Outreach is intended to be appearing on behalf of the NLRB at functions to promote the activities of the NLRB. Our review of the subject's email messages found that his law conference activity far exceeded what was appropriate NLRB outreach activity. Nevertheless, the subject's misuse of time and resources for the law conferences is far eclipsed by the misconduct related to his case handling duties, and we determined that our investigative report should not be delayed while we attempt to quantify the lost time.

The *Standards* also state that an employee shall not use Government property for other than an authorized purpose. 5 C.F.R. 2635.704. The term "Government property" includes telecommunications equipment and services. *Id.* The subject was directed not to use the Agency's email system in support of the Peggy Browning Fund. Notwithstanding that specific direction, the subject violated the NLRB's written policy of acceptable use of its information technology resources. That policy states, in part, that it is unacceptable to use the email system for activity related to outside employment. See, National Labor Relations Board Administrative Policies and Procedures Manual, Chapter IT-6, *Acceptable Use of Agency Information Technology Resources*.

The *Standards* provide that, as a general principle, "[p]ublic service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain" and "[e]mployees shall endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards . . ." 5 C.F.R. 2535.101(b)(1) and (14). The subject was the Chairman of the Peggy Browning Fund, an entity that can only act through its officers and directors. The subject allowed his name and his employment at the NLRB to become integral component of the Peggy Browning Fund's image, and he did so for the purpose of enhancing the ability of the fund to solicit donations from entities and individuals associated with organized labor. The subject appeared at networking events with a name badge that directly linked his position as the Board of Directors' Chairman to his position as the NLRB's Region 4 Director. The subject's name and employment at the NLRB were used on the Peggy Browning

Fund's appeals for donation on its Web site and in its newsletters. Any one of these facts is bad, but taken together they created the perception that the subject's official actions could be influenced in exchange for support of the Peggy Browning Fund. The local union officials and their representatives make a donation, get drinks and dinner, and hang out with the decision-maker for their NLRB cases. Under these circumstances, why wouldn't a rank and file unit member who filed a duty of fair representation charge or a charged employer perceive that the union officials had some special access to the NLRB process? It is a perfectly reasonable and logical assumption. Unfortunately, it is a perception that could taint over half of the charges in Region 4 and the work of its staff.

The subject is not entitled to safe harbor as provided by 5 C.F.R. 2635.107. The subject failed to disclose all relevant information when seeking permission to engage in outside employment related to his position as the Chairman of the Peggy Browning Fund Board of Directors. The duties he described in the request were not as extensive as the duties outlined in the Peggy Browning Fund position description nor did he accurately describe what he actually did. Additionally, at the time of his request, the subject knew that his name was in fact used by the Peggy Browning Fund on the invitations for the networking events.

It is true that the NLRB ethics program officials could have been more attentive to their duties and that this situation may have been avoided if the ethics officials had taken a proactive role in advising the subject. Nevertheless, it is the subject who had the duty to ensure that his conduct conformed to the *Standards*, and he alone bears the responsibility for his misconduct. Although the NLRB has taken some action to remediate the situation, and will apparently continue to examine what could be done better, for purposes of addressing the subject's misconduct, shifting the focus from the subject to the ethics program is inappropriate. See, OGE 06x4.