

# FEDERAL WORKERS ALLIANCE

COLLECTIVELY REPRESENTING OVER 550,000 FEDERAL AND POSTAL WORKERS

April 18, 2022

The Honorable Charles E. Schumer  
Majority Leader  
United States Senate  
322 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable Richard J. Durbin,  
Chairman  
Judiciary Committee  
United States Senate  
711 Hart Senate Office Building  
Washington, D.C., 20510

The Honorable Gary C. Peters, Sr.  
Chairman  
Homeland Security and Governmental  
Affairs Committee  
United States Senate  
724 Hart Senate Office Building  
Washington, D.C., 20510

Dear Majority Leader Schumer, Chairman Durbin, and Chairman Peters:

We write to you as members of the Federal Workers Alliance (FWA), an alliance of more than 30 national unions that collectively represent more than 550,000 federal workers across the country, to share our appreciation and support once more for the Biden-Harris Administration's commitment to protect the union rights of the federal workforce and also to share our frustration with the delay in confirming Susan T. Grundmann, nominee for Federal Labor Relations Authority (FLRA) Member.

In particular, we are disappointed to see the FLRA issue another decision (76 FLRA no. 146) last week that:

- Orders all Immigration Judges removed from their bargaining unit by erroneously classifying these Department of Justice (DOJ) employees as "management officials;" and
- Results in the loss of union members by effectively decertify their union, the National Association of Immigration Judges-IFPTE Judicial Council 2 (NAIJ), which has been a legally recognized union since 1979.

This most recent decision is one more example of how the Trump Administration is still operating today at the FLRA to improperly impede the rights of federal employees to belong to a union. This decision is a double win for the still-operating Trump Administration because it:

- Takes away union rights for more federal employee; and
- Enables future administrations to prejudice the impartiality of U.S. immigration court cases through extraordinary political autonomy and decreased adjudicatory transparency.

The DOJ began this antiunion effort during the Trump Administration as retaliation against a federal employee union that expressed grave concerns about the violation of judicial ethics and due process rights that were caused by unilateral changes in working conditions, improper management, and problematic agency policies. The original November 2, 2020 FLRA decision that removed the Immigration Judges' statutory union rights was issued by the two-member Trump appointed majority and was so deeply flawed and poorly reasoned that then-FLRA Member and now-FLRA Chair Ernest DuBester wrote a dissent that concluded, "it is abundantly clear that the majority's sole objective is to divest the IJs [Immigration Judges] of their statutory rights" (71 FLRA No. 207).

Immigration judges are non-supervisory DOJ attorneys appointed by the U.S. Attorney General to preside over administrative proceedings pertaining to immigration matters, including removal proceedings, and do not have employment protections that Judiciary Branch (Title III) judges enjoy. Therefore, labor unions are necessary to maintain qualified adjudicatory independence within the Immigration Court through the representation of its practitioners against improper or biased management actions or undue political influence.

Sadly, this attack on the union rights of Immigration Judges has continued 15 months into the Biden-Harris Administration despite the DOJ, under Attorney General Garland, filing a motion with the FLRA to withdraw the petition to misclassify Immigration Judges as management, as well as a motion withdrawing DOJ's opposition to NAIJ's motions for reconsideration. Although DOJ no longer seeks to take away Immigration Judges' union rights and decertify their union, the FLRA is continuing the Trump Administration's union-busting effort because FLRA decisions are issued by a two-member majority that was appointed by the Trump Administration. The failure to confirm Susan Grundmann to the FLRA not only has consequences for these DOJ employees, but all federal employees as this FLRA continues to issue poorly reasoned decisions and overturn decades of precedent.

We request once more that you give the utmost priority to confirming Susan T. Grundmann for FLRA Member as soon as possible, and advance and confirm Ernest W. DuBester for FLRA Member and Kurt Rumsfeld for FLRA General Counsel. If you have any questions, please contact FWA legislative co-chairs Faraz Khan [fkhan@ifpte.org](mailto:fkhan@ifpte.org) or Steve Lenkart [slenkart@nffe.org](mailto:slenkart@nffe.org).

Sincerely,

American Federation of Labor – Congress of Industrial Organizations (AFL-CIO)  
American Federation of State, County and Municipal Employees (AFSCME)  
Antilles Consolidated Education Association (ACEA)  
Department for Professional Employees, AFL-CIO (DPE)  
Federal Education Association/National Education Association (FEA/NEA)  
International Association of Fire Fighters (IAFF)  
International Association of Machinists and Aerospace Workers (IAMAW)  
International Brotherhood of Electrical Workers (IBEW)  
International Brotherhood of Teamsters (IBT)

International Federation of Professional and Technical Engineers (IFPTE)  
International Organization of Masters, Mates and Pilots (MM&P)  
Metal Trades Department, AFL-CIO (MTD)  
National Association of Government Employees, SEIU (NAGE)  
National Federation of Federal Employees (NFFE)  
National Weather Service Employees Organization (NWSEO)  
Overseas Federation of Teachers, AFT, AFL-CIO  
Professional Aviation Safety Specialists, AFL-CIO (PASS)  
Patent Office Professional Association (POPA)  
Seafarers International Union/NMU (SIU)  
Service Employees International Union (SEIU)  
SPORT Air Traffic Controllers Organization (SATCO)  
United Power Trades Organization (UPTO)

CC:

The Honorable Joseph R. Biden, Jr.,  
President of the United States

The Honorable Kamala D. Harris,  
Vice-President of the United States