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B-179833

January 4, 1974

The Honorable John H. Fanning
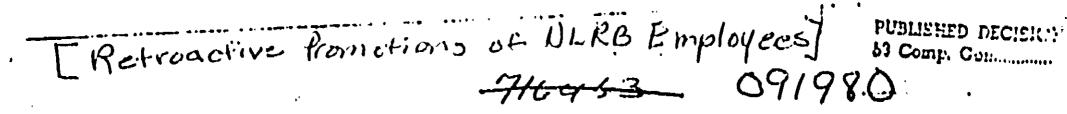Acting Chairman, National Labor
Relations Board

Dear Mr. Fanning:

Further reference is made to your letter of October 3, 1973, wherein you request a decision as to whether retroactive promotions may be made to certain employees of the National Labor Relations Board under the following conditions.

You state that it has been the practice of the National Labor Relations Board to make promotions effective at the beginning of the pay period following the date the "notice" of such action is received by the Personnel Office. The result of this policy has, in many cases, denied employees of an increase in compensation for periods up to 13 days. Since it has been established that Sunday is the beginning of a pay period, an employee who is notified on Monday, the next workday of the new pay period, that he is promoted, must wait until the beginning of the next pay period for the promotion to become effective. Thus the employee has lost the new rate of pay for 13 days.

To correct what you consider to be an inequity you propose to establish a policy which, for pay purposes, would designate Monday, following the close of the pay period, as the beginning of a new pay period. You feel that it would be only fair and just to include all employees who were promoted on or after July 1, 1973, retroactively.

Section 5504(a) of title 5, United States Code, provides that the pay period for an employee covers two administrative workweeks. Section 6101 provides that it is the duty of the head of the departments and agencies to establish a basic administrative workweek of 40 hours. Civil Service regulation, section 610.121 of title 5, Code of Federal Regulations, governing hours of duty, provides that except when the head of an agency determines that the agency would be seriously handicapped in carrying out its functions or that the costs would be substantially increased he shall provide that the basic 40-hour workweek is scheduled on 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive. Under this statutory language and regulation it would be within your discretion as Acting Head of your agency to designate

Monday as the beginning of the pay period for employees of the National Labor Relations Board.

However, even if Monday was designated as the beginning of the pay period and notice of the promotion was received in the personnel office on that day, this would not solve the problem. This is so because the word "following" as used in the phrase "It has been the practice of the National Labor Relations Board to make promotions effective at the beginning of the pay period following the date 'notice' of such action is received by the Personnel Office" means generally next after. The next pay period after receipt of notice of a promotion in the personnel office on Monday, the beginning of the pay period, would be 14 days.

It is suggested that the purpose sought could be accomplished by the promulgation of a regulation stating that promotions are effective at the beginning of the pay period following the approval of the promotion by an official authorized to approve promotions.

Regarding your request concerning retroactive promotions for those employees who were promoted on or after July 1, 1973, it has long been the rule of our Office that a personnel action may not be retroactively effective so as to increase the right of an employee to compensation. 40 Comp. Gen. 207 (1960). Exceptions have been made to the rule where through bona fide administrative error a personnel action was not effected as intended. 31 Comp. Gen. 15 (1951); 34 id. 380 (1955). There is nothing contained in your letter indicating that an administrative error was made in these cases. Accordingly, retroactive promotions of the employees here involved may not be made.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States