



## Integrity Committee

Council of the Inspectors General on Integrity and Efficiency

1717 H Street, NW, Suite 825, Washington, DC 20006 • Integrity-Complaint@cigie.gov

September 6, 2019

The Honorable John F. Ring  
Chairman  
National Labor Relations Board

Dear Chairman Ring:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate, when appropriate, allegations of misconduct made against an Inspector General or a designated official within an Office of Inspector General (OIG). Pursuant to section 11(d)(8)(A) of the Inspector General Act of 1978, as amended, (IG Act), the IC hereby forwards its findings, conclusions, and recommendation regarding Inspector General (IG) David Berry, National Labor Relations Board (NLRB).

On November 15, 2018, the IC Chairperson initiated an investigation into allegations against IG Berry and engaged the U.S. Department of Interior OIG to conduct the investigation. After thoroughly reviewing the report of investigation (ROI) and accompanying exhibits, the IC adopted the findings in the ROI and concluded there was insufficient evidence to substantiate the allegations that IG Berry discriminated against agency employees, lacked independence or objectivity, or abused his authority in the conduct of his official duties. Accordingly, the IC recommends you take no disciplinary action and engage in a new management dialog with IG Berry now that he has staff to conduct investigations for the NLRB Office of Inspector General.

The IC also provided the attached report with our recommendation to the CIGIE Executive Chairperson, the CIGIE Chairperson, IG Berry, and the Congressional committees of jurisdiction, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6)

Scott Dahl  
Chairperson  
Integrity Committee

Enclosure



## Integrity Committee

Council of the Inspectors General on Integrity and Efficiency

1717 H Street, NW, Suite 825, Washington, DC 20006 • Integrity-Complaint@cigie.gov

September 6, 2019

The Honorable Michael Horowitz  
Chairperson  
Council of the Inspectors General on Integrity and Efficiency  
1717 H Street, N.W., Suite 825  
Washington, D.C. 20006

Dear Chairperson Horowitz:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General. Pursuant to section 11(d)(8)(A) of the Inspector General Act of 1978, as amended (IG Act), the IC hereby forwards the report of our findings and our recommendation regarding Inspector General David Berry of the National Labor Relations Board (NLRB).

The IC also provided the attached report with our recommendation to the CIGIE Executive Chairperson, the NLRB Chairperson, IG Berry, and the Congressional committees of jurisdiction, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

**(b) (6)**

Scott Dahl  
Chairperson  
Integrity Committee

Enclosure



## Integrity Committee

Council of the Inspectors General on Integrity and Efficiency

1717 H Street, NW, Suite 825, Washington, DC 20006 • Integrity-Complaint@cigie.gov

September 6, 2019

The Honorable Margaret Weichert  
Executive Chairperson  
Council of the Inspectors General on Integrity and Efficiency  
1717 H Street NW, Suite 825  
Washington, D.C. 20006

Dear Executive Chairperson Weichert:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General. Pursuant to section 11(d)(8)(A) of the Inspector General Act of 1978, as amended (IG Act), the IC hereby forwards the report of our findings and our recommendation regarding Inspector General David Berry of the National Labor Relations Board (NLRB).

The IC also provided the attached report with our recommendation to the CIGIE Chairperson, the NLRB Chairperson, IG Berry, and the Congressional committees of jurisdiction, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

**(b) (6)**

Scott Dahl  
Chairperson  
Integrity Committee

Enclosure



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

# **ALLEGED INAPPROPRIATE ACTIONS BY THE INSPECTOR GENERAL OF THE NATIONAL LABOR RELATIONS BOARD**



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

**REPORT OF INVESTIGATION**

<b>Case Title</b> Alleged Inappropriate Actions by the Inspector General of the National Labor Relations Board	<b>Case Number</b> OI-PI-19-IA-001
<b>Reporting Office</b> Program Integrity Division	<b>Report Date</b> June 11, 2019
<b>Report Subject</b> Report of Investigation	

**SYNOPSIS**

At the request of the Integrity Committee, Council of the Inspectors General on Integrity and Efficiency (CIGIE), we investigated allegations that Inspector General David Berry, National Labor Relations Board (NLRB), violated laws and regulations and acted with gross mismanagement. Specifically, NLRB officials alleged Berry discriminated against them because of their national origin or race and repeatedly initiated audits and investigations into their offices for prohibited reasons.

To address these allegations, we interviewed 30 current and former NLRB employees, including the 6 employees of the NLRB Office of Inspector General (OIG). We also reviewed complaints the NLRB OIG had received since fiscal year 2015, 15 investigation and 17 audit reports, the 2015–2018 annual audit plans, and case management records. We found no evidence to support the allegations, nor could we substantiate Berry engaged in discriminatory behavior toward NLRB officials; however, we did find an instance when Berry acted in a manner with an NLRB staff member that the individual felt was demeaning. Berry admitted the action was unprofessional, but said he did not intend for his words to be demeaning.

We are providing this report to the Chair of the Integrity Committee, CIGIE, for any action deemed appropriate.

Reporting Official/Title (b) (6), (b) (7)(C)/Special Agent	Signature
Approving Official/Title (b) (6), (b) (7)(C)/Special Agent in Charge	Signature

Authentication Number: NA

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**OI-002 (05/10)**

## DETAILS OF INVESTIGATION

We initiated this investigation on December 7, 2018, after receiving a request for an independent investigation from the Integrity Committee, Council of the Inspectors General on Integrity and Efficiency (CIGIE), into allegations of wrongdoing by the National Labor Relations Board (NLRB) Inspector General, David Berry (**Attachment 1**). The request stemmed from allegations by NLRB officials that Berry bullied and discriminated against them because of their national origin or race and repeatedly initiated audits and investigations into their offices for prohibited reasons.

Specifically, NLRB (b) (6), (b) (7)(C) alleged Berry repeatedly initiated and delayed the resolution of investigations into her and her department for prohibited reasons. NLRB (b) (6), (b) (7)(C) alleged Berry harassed him by initiating audits and investigations against him and changed the standards by which those audits were conducted. (b) (6), (b) (7)(C) also alleged Berry entered his office during a senior staff meeting while yelling and shouting obscenities. In addition, NLRB (b) (6), (b) (7)(C) alleged Berry sought to undermine her role as (b) (6), (b) (7)(C) when he contacted the Office of Personnel Management about NLRB's processes regarding Senior Executive Service (SES) during an investigation (**Attachment 2**).

### **Berry's Use of His Office's Audit and Investigative Powers**

#### *No Evidence That Berry Initiated or Engaged in Audits and Investigations for Prohibited Reasons*

In her initial complaint, (b) (6), (b) (7)(C) said Berry continually opened and failed to resolve investigations into her office's work. (b) (6), (b) (7)(C) said that in 2015, she reported to her supervisor that Berry had received an unauthorized bonus for fiscal year 2013. She said that as a result, Berry began to retaliate against her by undertaking more inquiries and investigations about administrative matters (b) (6), (b) (7)(C) and her staff performed (**Attachments 3 and 4**, and see Attachment 1).

(b) (6), (b) (7)(C) also provided examples of instances in 2016 when she felt Berry became too involved in administrative and personnel issues that did not concern "fraud, waste, and abuse." Specifically, (b) (6), (b) (7)(C) described Berry's interest in SES development plans, a new method for processing Requests for Personnel Actions (SF-52) forms, workforce planning, and other administrative matters related to her division.

In response to (b) (6), (b) (7)(C) allegations, we reviewed hotline complaints, NLRB OIG case management system data, and 31 NLRB OIG audit and investigative reports. There was no evidence Berry opened investigations against (b) (6), (b) (7)(C) or her staff as a means of harassment or intimidation. We found Berry evaluated and investigated complaints he received according to CIGIE standards. These standards require OIGs to evaluate each case upon receipt based upon its investigative functions, priorities, and guidelines and to determine a course of action—initiate an investigation or audit, refer to the complainant's office for action, or take no action (**Attachment 5**). Although Berry initiated an audit into the SES bonuses, we found no evidence Berry exceeded his authority in reviewing programs and operations under (b) (6), (b) (7)(C) responsibility.

Berry said (b) (6), (b) (7)(C) had never been a subject of an OIG investigation, but was among other NLRB SESs who had been involved in an audit of SES bonus process. Berry explained he had received a hotline complaint that alleged (b) (6), (b) (7)(C) and several other recent SES appointees had

received bonuses to which they were not entitled. Berry's preliminary inquiry revealed more recipients of the SES bonuses than had been initially reported and he determined the problem was systemic rather than malfeasant, so he engaged a contracted company to audit the process. Berry added that, based on her position (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) was routinely made aware of any investigations of NLRB employees who work in her office and was provided the associated reports issued by the OIG (**Attachments 6 and 7**). We found Berry's decision aligned with CIGIE guidelines.

Regarding his interest in the processing of SF-52s, Berry said he never initiated an audit or an investigation into it. He explained that when he learned of the new process, he felt it could be related to workforce planning, which was one of the management's challenges his auditors had identified in previous years. Berry said he asked (b) (6), (b) (7)(C) to coordinate a meeting with Hamilton to discuss the details of the new process. Berry said the meeting was supposed to be informal, but (b) (6), (b) (7)(C) had invited many of her senior staff. Berry said he did ask (b) (6), (b) (7)(C) questions about the process to see whether the initiative fell within the parameters of workforce planning. Although it was determined that it did not, if it had, Berry would have instructed his audit staff to monitor the process and audit its effectiveness in future years. Berry added he did not berate or embarrass (b) (6), (b) (7)(C) (**Attachments 8 and 9**).

(b) (6), (b) (7)(C) the NLRB OIG (b) (6), (b) (7)(C) said Hamilton had not been the subject of an investigation, but there were ongoing investigations regarding matters in her department (**Attachments 10 through 13**). (b) (6), (b) (7)(C) said he had not seen Berry abuse his power or open investigations to harass individuals.

#### *No Evidence Berry Initiated Audits and Investigations Based on Protected Class*

(b) (6), (b) (7)(C) said he felt he was being targeted and treated differently than his predecessor, a white male (**Attachments 14 and 15**, and see Attachment 1). (b) (6), (b) (7)(C) said only after he was promoted (b) (6), (b) (7)(C) in 2016, the OIG expanded the scope of its 2017 annual Federal Information System Control Audit Manual (FISCAM) financial audit of his office and requested more information than it had during the previous audits in 2015 and 2016. (b) (6), (b) (7)(C) said when he tried to meet with the contracted auditor to clarify the auditor's needs, Berry became upset, told him he had approved the audit plan, and prevented the meeting. (b) (6), (b) (7)(C) said Berry also sent an email requesting the information be provided to the auditors in a shorter amount of time than usual.

Berry said a contract audit company, whose lead auditor was very thorough, conducted a financial audit of the Office of the Chief Information Officer (OCIO) and found the OCIO's procedures were outdated and did not meet current audit standards. He explained that he prevented the meeting between (b) (6), (b) (7)(C) and the contractor because he did not feel it was necessary: the additional items the contractor had requested were within the audit's scope and the short deadline for providing them was because they should have been readily available (see **Attachments 6 and 7**).

(b) (6), (b) (7)(C) said NLRB OIG performs a variety of audits, including the FISCAM audit, as part of its annual audit plan, which (b) (6), (b) (7)(C) approves. The audits are generally conducted by contract auditors, who work within the scope of the audit. (b) (6), (b) (7)(C) added that the contractor auditor conducting the 2017 FISCAM audit was new to the company and was extremely thorough, and the additional information the auditor requested was within the scope of the audit. (b) (6), (b) (7)(C) said he never heard Berry make any remarks about anyone's race, gender, or national origin (**Attachment 16 and 17**).

Berry said he did not initiate investigations based on race, national origin, or any other protected class, further explaining that audits and investigations were either part of the OIG's annual plan or came in via the OIG hotline. They were then evaluated and, if warranted, investigated (see Attachments 6 through 9). Berry denied using his authority or office to threaten anyone.

(b) (6), (b) (7)(C) said he was not surprised employees complained about Berry, but he was surprised the complaint alleged Berry initiated investigations or audits for inappropriate reasons (see Attachments 16 and 17). (b) (6), (b) (7)(C) said senior managers did not like being told what to do in a direct manner, and Berry was "very direct." He said Berry treated everyone the same, and he had not seen Berry act unprofessionally in any way.

(b) (6), (b) (7)(C) said Berry did not care about race or national origin, only that an employee was competent (see Attachments 10 through 13). (b) (6), (b) (7)(C) said Berry raised questions about organizational processes within the NLRB, but it was never because of an employee's protected status. (b) (6), (b) (7)(C) said only he and Berry conducted the investigations, and they did not have time or resources "to be that petty."

We found no indications Berry initiated cases on specific demographics; instead, we found the OIG initiated cases after evaluating the credibility of the complainants' information (see Attachment 5). We did not find that any particular race, ethnicity, national origin, or gender was overrepresented in the complaints and investigations we reviewed. We also found that Berry selected and hired an ethnically and racially diverse staff during his time at the NLRB OIG.

### **Berry's Objectivity and Independence**

Although two individuals questioned Berry's objectivity, we found no direct evidence Berry behaved or communicated in a manner that would call into question the objectivity and independence of his position.

When asked about Berry's objectivity and independence, (b) (6), (b) (7)(C) said he had monthly meetings and interactions with Berry and felt Berry was "thorough, well organized, and meticulous," but could also make a judgement on a matter based upon his opinion of someone (**Attachments 18 and 19**). (b) (6), (b) (7)(C) could not provide specific examples.

Likewise, (b) (6), (b) (7)(C) NLRB's Office of General Counsel, told us she and Berry had heated discussions because Berry at times jumped to conclusions before he completed an audit or investigation (**Attachments 20 and 21**). She cited her impression that Berry had pre-judged (b) (6), (b) (7)(C) and thought (b) (6), (b) (7)(C) was incapable of running the OCIO effectively. (b) (6), (b) (7)(C) said she questioned Berry's objectivity in this matter, and "would push back" against his pre-judgment of the situation.

(b) (6), (b) (7)(C) said he and Berry routinely discussed their investigations, and Berry always advised him they were there to elicit the facts and not to make judgments (see Attachments 9 through 12). (b) (6), (b) (7)(C) said in his experience Berry did not reach conclusions early on in a case.

Berry said he routinely briefed the chairman and the general counsel on ongoing investigations and preliminary audit findings (see Attachments 8 and 9). Berry could not recall opining about the potential outcome of an investigation. He said it was his and his staff's goal to find the truth. Berry said it was likely that when speaking within his office he and his staff discussed possible scenarios and potential



outcomes of audits and investigations, but Berry strongly disagreed with the assertion that he was not objective.

Our review of 955 hotline complaints received by NLRB OIG and a sampling of the reports it produced since 2015, which included 15 investigations and 17 audit reports, revealed no evidence of questionable objectivity (see Attachment 5).

### **Berry's Actions When Dealing With NLRB Staff**

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) said Berry was very abusive, unprofessional, and disrespectful, and felt Berry targeted him based on his ethnicity (see Attachments 1, 14, and 15). (b) (6), (b) (7)(C) recalled he was on a conference call with his senior staff on February 20, 2018, when Berry came into his office shouting and swearing about a problem with information being on the internet. (b) (6), (b) (7)(C) was taken aback and recalled looking at his computer monitors to see what Berry was talking about. One of his staff reminded him he was on a conference call, so (b) (6), (b) (7)(C) quickly ended it. He said Berry then informed him the OIG hotline had been compromised and protected information was publicly available on the website. (b) (6), (b) (7)(C) said Berry continued to yell, looked at him angrily, pointed, and said, "You are going to fix this" and "You're not even taking a potty break." (b) (6), (b) (7)(C) said he told Berry, "Yes, that's what I am going to do," and he did.

(b) (6), (b) (7)(C) said that on August 7, 2017, he was called to the OIG office suite for a meeting and Berry "grabbed" his laptop (see Attachments 1, 14, and 15). He said Berry's tone was very threatening when he informed him he was confiscating the laptop and said, "You are under investigation." Berry also informed him he was under oath and whatever he said would be documented. (b) (6), (b) (7)(C) asked why he was being investigated and Berry replied that it was related to a Freedom of Information Act (FOIA) complaint. (b) (6), (b) (7)(C) recalled that (b) (6), (b) (7)(C) were present during the seizure. (b) (6), (b) (7)(C) said Berry had the laptop for approximately 2 months but his work was not affected because he was able to get a replacement. (b) (6), (b) (7)(C) said he was never interviewed for the FOIA investigation and Berry later told him that an interview had not been necessary.

Berry confirmed he did "burst" into (b) (6), (b) (7)(C) office when he discovered a security breach involving the OIG hotline (see Attachments 6 and 7). He said he allowed his emotions to get the best of him and his actions were unprofessional. He could not recall if he cursed, but he did acknowledge telling (b) (6), (b) (7)(C) he could not take a "potty break" sounded like something he would say. Berry said the OCIO found that a contractor had made a global change to the NLRB website without testing or consulting anyone. Berry added that the OCIO restored the security of the site and was told the contractor had been released from the contract. Berry said he did call a meeting with (b) (6), (b) (7)(C) in the OIG office so he could seize (b) (6), (b) (7)(C) laptop computer as part of an investigation into alleged retaliation against an NLRB employee. Berry said he explained to (b) (6), (b) (7)(C) the reason for taking the computer and thought both (b) (6), (b) (7)(C) were present at the time. That investigation resulted in a finding of no wrongdoing by (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) acknowledged he was present during (b) (6), (b) (7)(C) laptop seizure (see Attachments 16 and 17). (b) (6), (b) (7)(C) recalled that Berry explained to (b) (6), (b) (7)(C) that he was under investigation and he needed to seize his computer as part of that investigation. (b) (6), (b) (7)(C) described Berry's management

style as “very direct” but added he did not think Berry held grudges or blew matters out of proportion. (b) (6), (b) (7)(C) was aware of the seizure but did not recall being present (see Attachments 9 and 10).

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) described Berry’s manner with employees as that of a “gotcha” guy, meaning she felt he was “continually harassing me and my employees” as if “we’re doing something incorrectly,” which led her to feel frustrated and stressed (**Attachments 22 and 23**). (b) (6), (b) (7)(C) said she found Berry’s demeanor to be “frightening” at times, and she wanted him to stop badgering and mistreating her and her staff. (b) (6), (b) (7)(C) said she became ill and was out sick for a week during the investigation into the SES pay increases because of this treatment by Berry. (b) (6), (b) (7)(C) said Berry contacted the Office of Personnel Management (OPM) about her office’s SES processes, which she thought undermined her authority. (b) (6), (b) (7)(C) said she met with Berry, (b) (6), (b) (7)(C) and another inspector general auditor on May 1, 2018, when Berry told her he had spoken with the OPM, and Human Resources would probably not receive its certification.

Berry acknowledged he contacted the OPM but only after he had determined that he and (b) (6), (b) (7)(C) needed to understand the OPM’s regulations regarding SES processes before proceeding with the audit (see Attachments 6 through 9). Berry said he was professional and did not threaten anyone when requesting documentation from the agency, but added that he would remind anyone who resisted his requests of the Inspector General Act’s requirements.

### SUBJECT

David Berry, Inspector General (SES), NLRB.

### DISPOSITION

We are providing this report to the Chair of the CIGIE Integrity Committee for any action deemed appropriate.

### ATTACHMENTS

1. CIGIE Request for Independent Inspector General Investigation, dated November 30, 2018.
2. NLRB Complaint of Discrimination by (b) (6), (b) (7)(C) dated November 30, 2018.
3. IAR – Interview of (b) (6), (b) (7)(C) on February 5, 2019.
4. Transcript of (b) (6), (b) (7)(C) interview on February 5, 2019.
5. DOI OIG Review of NLRB OIG documentation, dated March 23, 2019.
6. IAR – Interview of David Berry on December 12, 2018.
7. Transcript of Berry interview on December 12, 2018.
8. IAR – Interview of David Berry on March 29, 2019.

9. Transcript of Berry interview on March 29, 2019.
10. IAR – Interview of (b) (6), (b) (7)(C) on December 18, 2018.
11. Transcript of (b) (6), (b) (7)(C) interview on December 18, 2018.
12. IAR – Interview of (b) (6), (b) (7)(C) on March 29, 2019.
13. Transcript of (b) (6), (b) (7)(C) interview on March 29, 2019.
14. IAR – Interview of (b) (6), (b) (7)(C) on December 20, 2018.
15. Transcript of (b) (6), (b) (7)(C) interview on December 20, 2018.
16. IAR – Interview of (b) (6), (b) (7)(C) on December 18, 2018.
17. Transcript of (b) (6), (b) (7)(C) interview on December 18, 2018.
18. IAR – Interview of (b) (6), (b) (7)(C) on February 28, 2019.
19. Transcript of (b) (6), (b) (7)(C) interview on February 28, 2019.
20. IAR – Interview of (b) (6), (b) (7)(C) on March 7, 2019.
21. Transcript of (b) (6), (b) (7)(C) interview on March 7, 2019.
22. IAR – Interview of (b) (6), (b) (7)(C) on February 5, 2019.
23. Transcript of (b) (6), (b) (7)(C) interview on February 5, 2019.



**United States Government**  
**NATIONAL LABOR RELATIONS BOARD**  
**OFFICE OF INSPECTOR GENERAL**  
Washington, DC 20570-0001

June 25, 2019

The Honorable Scott Dahl  
Chairperson  
Integrity Committee  
Council of the Inspectors General on Integrity and Efficiency  
1717 H Street, NW, Suite 825  
Washington, DC 20006

Dear Mr. Dahl:

The purpose of the letter is to respond to the draft report regarding the allegations that I violated laws and regulations and acted with gross mismanagement. Specially, that I discriminated against National Labor Relations Board (NLRB) employees because of their national origin or race and repeatedly initiated audits and investigation into their offices for prohibited reasons.

I am pleased that the investigation, conducted by the Office of Inspector General, U.S. Department of Interior, found that the allegations are not substantiated.

There is one place where my conduct was faulted. The report concludes that my actions were unprofessional at one point. The full context of that situation is not immediately apparent in the report, and it is important to consider. My office had issued a report to Congress that generated considerable press interest. We believed that reporters and others were searching information on our webpage. In the course of that, we learned that the identities of each person who had contacted our Hotline was on the webpage – publicly available to any person who Googled our office. Because this is such sensitive information, and because I knew our webpage was very likely being looked at during that time, I knew this was a situation that had to be dealt with immediately. It was a substantial breach of the trust that whistleblowers place in our office. While I acknowledge that my actions, in hindsight, were not professional, as noted in the report, I never intended those actions to be demeaning. My only concern at that time was acting swiftly to remove the Hotline information from the Internet. The report of investigation does not state that this single incident rises to the level of a violation of a regulation, law, or the standards set forth by the Counsel of Inspectors General on Integrity and Efficiency.

I appreciate the opportunity to provide these comments.

Sincerely,

**(b) (6)**

David Berry  
Inspector General