

OFFICE OF THE GENERAL COUNSEL  
Division of Operations-Management

MEMORANDUM OM 08-63

June 20, 2008

TO: All Regional Directors, Officers-in-Charge,  
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Strategies for Meeting Overarching Goals

In 2007 the Agency, for the first time, formally adopted three “overarching” measures of timeliness in the performance of its core mission activities. These measures are designed to reflect the total time expended in the conduct of R and C cases. C case performance is further refined by examining elapsed time for merit cases—about one-third of total C case intake—and for all C cases. The measures are:

1. R cases closed within 100 days;
2. C cases closed within 120 days; and
3. Merit C cases closed within one year.

The associated goals are experience-based, and are intended to “stretch” the Agency’s performance by establishing gradually more ambitious targets. The goals are:

Year	Goal 1 (%)	Goal 2 (%)	Goal 3 (%)
2008	80	68	75
2009	81	68.5	75.5
2010	82	69.5	76
2011	83.5	70	76.5
2012	85	71	77

Although the Agency as a whole came close to meeting its 2007 goals, there is substantial disparity among the Regions in their performance. To address the question of how the Agency can best assure its compliance with the Overarching Goals (OAGs), the General Counsel convened a committee of experienced field managers, along with representatives of the Office of Appeals and the Division of Operations-Management, to

review recent case handling experience with reference to the OAGs, and to propose strategies for meeting the goals as they progress over the next five years.<sup>1</sup>

The Committee has recommended that a number of concrete steps be taken to improve the Agency's ability to meet the OAG targets. These steps include more careful attention to cases that are approaching the 120- and 365-day benchmarks; consistent streamlined procedures with respect to dismissals; more systematic and uniform treatment of merit dismissals and deferrals; and a more consistent policy with regard to closing informal settlement cases. Further, the Committee believes that closer tracking of cases as they approach the 100, 120, and 365 day marks will facilitate timely closing of cases where it is appropriate to do so, consistent with applicable case handling guidance.

After due consideration, I have decided to adopt the Committee's recommendations, as set forth below.

- *R Cases*

Regions have been generally successful in meeting the Measure 1 benchmark, pertaining to R cases. The types of cases that have been most likely to cause problems in this respect are UC cases and cases that are blocked by ULP charges.

The filing of a charge does not, of course, automatically block the processing of an R case. See Unfair Labor Practice Casehandling Manual Sec. 11730.<sup>2</sup> The Regional Director must assess whether the charge alleges conduct that, if proven, would interfere with employee free choice in an election and, as part of that assessment, Regions should require charging parties to: 1) submit a written offer of proof as a basis for blocking an R case; and 2) provide their evidence within a specified, brief time after the filing of the charge.

With respect to the processing of UC cases (as well as post-election matters), Regions should be cognizant of the Measure 1 goal of 100 days and, within the framework of Impact Analysis guidelines, alert to the possibility of resolving such cases within that goal.

- *Dismissals*

The Office of Appeals will limit routine extensions of time to appeal to seven days, with further extensions of time to be granted in those situations where the request

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<sup>1</sup> The Committee's members are: RD Bob Chester, ARD Mike Joyce, RA Dan Halevy, DRA Brian Sweeney, DOIC Pete Perez, AGC Joe Frankl, AGC Nelson Levin, DAGC Beth Tursell; and Office of Appeals Supervisory Attorney Mark Arbesfeld. Supervisory Program Analyst Colleen Hart provided invaluable resources to the committee during its deliberations.

<sup>2</sup> Accordingly, the current policy regarding proceeding to an election when there are late filed charges remains in effect. Unfair Labor Practice CHM 11731.5.

is based on circumstances justifying the need for additional time.<sup>3</sup> Regions should check ACTS, The Office of Appeals database, on a daily basis to learn of the filing of new appeals. They should transmit their case files to Appeals as soon as possible, but in any event no later than 14 days after the filing of the appeal. It is not necessary to delay sending the case file because a comment on appeal has not been completed. When the comment on appeal is submitted, it should include a notation of the 120-day deadline. Regions are also reminded that a comment on appeal is not needed in every case.

The Committee found that the practice as to when a case which has not been appealed is designated as “closed” varies from Region to Region. Some Regions note the date as 21 days after the dismissal letter issues. Others report the dates as the date the dismissal letter issued. In order to assure a consistent practice and because the dismissal letter is the last official action on an unappealed case, it was determined that the reported closing date should be the date of the dismissal letter.

- *Deferrals*

The Casehandling Manual requires that a Region must determine that there is “arguable merit” to a case before making the determination to defer the case to the grievance and arbitration procedures. Unfair Labor Practice CHM 10118.1. There is some variance in how the determination of “arguable merit” is reached from Region to Region. Regions should conduct a close examination of whether deferral is warranted in the first instance in every case where the potential exists. Thus, Regions must conduct at least a preliminary investigation—which may consist of taking an initial lead affidavit—to support the decision to defer a charge and should then carefully evaluate whether there is arguable merit to the charge. This practice should ensure that only cases that are truly appropriate for deferral under Board policy will be deferred. Thus, cases that do not warrant deferral can generally be resolved within the 120 day time frame.

A deferred case that results in an adjustment would be covered in the Measure 3 goal of 365 days. Regions should continue to regularly inquire into the status of deferred cases, with a view toward closing them in the absence of appropriate status reporting and other follow up action by the parties.

- *Merit Dismissals*

A survey of the Regions showed that there has not been a uniform practice by Regions in closing merit dismissal cases. Some Regions record them as merit cases, others do not. To ensure consistency, Regions should record the case as “meritorious” in CATS. If the charged party, during the six months after issuance of the dismissal letter, does not engage in any alleged ULP that is meritorious, the case should be

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<sup>3</sup> The Office of Appeals also is taking a number of internal steps to facilitate the processing of cases likely to be closed within the 120-day framework.

considered adjusted when the second letter dismissing the charge issues. Normally, this would entail the issuance of a CCR reflecting the terms under which the case is being closed.

- *Settlements*

There is also some variation among the Regions with regard to the manner in which they treat settled cases when new charges are filed before the settled case is closed. Regions should close such cases, subject to reopening, where it does not appear that newly charged conduct would likely warrant setting aside the settlement. Regions should exercise their discretion to keep open only those cases where it is anticipated that the settlement will be set aside. Reasonable justification would include settled cases in which the Region: (1) considers the settled allegations to be related to other pending cases (see *The Carney Hospital*, 350 NLRB No. 56 (Aug. 13, 2007); *Redd-I*, 290 NLRB 1115 (1988)); (2) the witnesses needed to support those allegations will cooperate and appear before an ALJ if necessary; or (3) the additional remedy we could secure by prosecuting the settled case makes pursuing the settled case worthwhile (e.g. could result in a broad order, could result in cease and desist provisions different than those available through prosecution of the newer cases). Conversely, if compliance with the settlement agreement has otherwise been achieved, and there is little reason to justify its reactivation, the settled case should be closed.

- *Tracking of Cases Approaching Time Benchmarks*

To assist the Regions in monitoring their cases with reference to the benchmarks, the Committee developed an easy to operate query, which can be run in “real time” from the Region’s CATS database and displayed as an Excel file. Cases that are approaching the time benchmarks are prominently displayed, as are those that have already exceeded the goal. This application is being made available to all persons charged with responsibility for monitoring the Region’s OAG performance. This tool must be used to monitor the Region’s progress with regard to the Agency’s overarching goals. Assistance in installation and training in its use will be provided on request. Please contact Colleen Hart, Supervisory Program Analyst for assistance. Further information about the use of this application is provided in Appendix A.

If you have any questions concerning these matters, please contact your AGC, Deputy or me.

/s/  
R.A.S.

Attachments

cc: NLRBU  
Release to the Public

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## Appendix A—Use of “Smart Reports”

The query can be run from an icon installed on the user’s desktop. The only customization required is the number of the Region. It is important, however, that the user was last in the CATS Regional database and not the national database in order to pull the correct data when the query opens. Once it opens, the user must enable the macros at the prompt. It does not matter whether the user is currently logged into CATS or not. The query will open as an Excel spreadsheet and be updated “real time” from CATS. It will take about 20 seconds for the calculations to appear on the screen.

The query defaults to Measure #1 but there are tabs at the bottom of the Excel spreadsheet for Measures #2 and #3. By simply clicking on the appropriate tab, the desired measure will open. Each measure is sorted, by default, to the number of days from filing to the date the report is run. The only cases shown are those cases that are still open in the Region’s CATS database. And, calculations are in real time, so a case that is 45 days old when the report is run on a Monday will be 49 days old if the report is run the following Friday. Cases that closed since the last time the query was run will not appear on the newer query.

The data within the measures has been color coded. Red type cases are those open cases that have already exceeded the stated goal within the measure. Blue type cases are those open cases that are getting near to the stated goal within the measure. Black type cases are all the rest. The committee strongly recommends that Regions run the query regularly and identify cases that are appropriate for closing within the stated goals. In testing the query, we have found that Regions have also been able to identify data input errors and have been able to correct those errors.

It is possible that analysis of the Red cases will enable the Region to identify patterns and be able to implement procedures to avoid situations in the future where similar types of cases go over the stated goal. The Blue cases present the most fertile areas for consideration. We strongly recommend that the Blue cases be given priority consideration to identify those cases where it is appropriate that an action can be taken to close these cases within the stated goal.

The overarching goal for Measure #1 is to close a stated percentage of R-cases within 100 days of filing. Those open cases that are 100 days or more from date of filing appear in red. Those cases that are 80 to 99 days old appear in blue. The remainder of the open cases appears in black. The overarching goal for Measure #2 is to close a stated percentage of all C-cases within 120 days of filing. Those open cases that are 120 days or more from date of filing appear in red. Those cases that are 90 to 119 days old appear in blue. The remainder of the open cases appears in black. The overarching goal for Measure #3 is to close a stated percentage of all meritorious C-cases within 365 days of filing. Those open cases that are 365 days or more from date of filing appear in red. Those cases that are 300 to 364 days old appear in blue. The remainder of the open cases appears in black. Obviously, not all cases identified in the

Measure #3 query will be meritorious cases and counted as not meeting the goal if they are closed in 365 days or greater. However, we do not believe there is a good way to accurately filter out the potentially non-merit cases from this measure. Thus, the Region's analysis of the cases identified in Measure #3 will require greater scrutiny.

Each measure within the query contains columns of information. Although the default sort is by number of days since the charge was filed, the Region can sort the data in a number of ways to assist it in its analysis. For example, the data in the "Board Agent" column can be filtered to only show those cases assigned to a specific agent or the "Board Agent" column can be sorted to display the data grouped alphabetically by Board Agent. Similarly, the data can be filtered by status so that only those cases in Pending Settlement Compliance or Deferred will be displayed. Regardless of the filter or the sort chosen, the data will be in Red, Blue or Black type for identification of those cases.