

# THE NATIONAL LABOR RELATIONS BOARD

## Performance and Accountability Report



FISCAL YEAR 2009

PROTECTING DEMOCRACY IN THE WORKPLACE SINCE 1935

# HOW THIS REPORT IS ORGANIZED

**This Performance and Accountability Report consists of the following sections:**

<b>MANAGEMENT DISCUSSION AND ANALYSIS</b>	The Management Discussion and Analysis (MDA) Section is an overview of the entire report. The MDA presents performance and financial highlights as well as the National Labor Relations Board's (NLRB) operational and casehandling highlights for fiscal year 2009. The MDA also contains a discussion of compliance with legal and regulatory requirements, such as the Federal Managers' Financial Integrity Act.
<b>PERFORMANCE SECTION</b>	The Performance Section compares the NLRB's performance to its annual performance goals as set forth in the 2007 – 2012 Strategic Plan. In fiscal year 2007, the NLRB revised its Strategic Plan and adopted three overarching performance measures. These measures are outcome-based, aligned with the mission of the NLRB, and are meaningful to the public the Agency serves. This is the third year that the NLRB is reporting its performance under these three overarching measures.
<b>FINANCIAL SECTION</b>	The Financial Section is comprised of the NLRB's financial statements and their related footnotes and the Independent Auditors' Report.
<b>OTHER ACCOMPANYING INFORMATION</b>	Other Accompanying Information provides an update on the Board's progress in addressing management and performance challenges identified by the Inspector General in the FY 2008 Performance and Accountability Report as well as any new challenges identified in this fiscal year. Also, included is the NLRB's summary of audit and management assurances.
<b>APPENDICES</b>	The Appendices contain a glossary of the acronyms and the definitions used throughout the report.

An electronic version of the NLRB FY 2009 Performance and Accountability Report is available on the Internet at [www.nlr.gov](http://www.nlr.gov). The NLRB's 2007 – 2012 Strategic Plan is also available at this Web site.

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## MESSAGE FROM THE CHAIRMAN

**Wilma B. Liebman**  
**Chairman**

November 4, 2009

On behalf of the National Labor Relations Board (NLRB), I am pleased to submit the Fiscal Year 2009 Performance and Accountability Report. This annual report provides insight into the workings of the NLRB, an independent federal agency established in 1935 to promote workplace democracy and “to serve as an important step toward the achievement of just and peaceful labor relations.” (President Franklin D. Roosevelt, 1935)

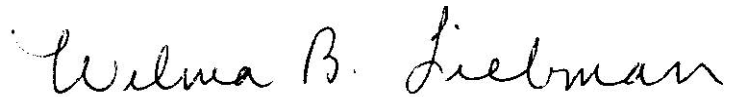
It was an unusual 12 months for the agency: The fiscal year began and ended with three vacancies on the five-member Board, the first time this has happened in NLRB history. Indeed, the Board has operated with only two members since January 1, 2008. Nevertheless, Member Peter C. Schaumber (who was Chairman until Jan. 20, 2009) and I have continued to issue decisions in cases on which we can agree, drawing on advice from the U.S. Department of Justice that, under certain circumstances, two members can act as a quorum. It has been our belief that the Board has an important public duty to keep functioning, and to avoid an indefinite shutdown in its decision-making, where there is a reasonable legal basis for concluding that the Board can act.

The two-member Board issued 256 decisions, of which 195 were unfair labor practice cases, and 61 were representation cases. Although many cases raised issues of significance, all were decided on the basis of existing precedent. Other cases raising novel or especially difficult issues – about 20% of the total – must wait to be decided by a larger Board. Despite these obstacles, the inventory of cases pending before the Board rose only slightly, from 171 at the beginning of FY 2009 to 193 at the end of it.

Most Board decisions made during this period were accepted by the parties or led to settlements, but several dozen were appealed to the federal courts on the grounds that the two-member decisions are not valid. While the U.S. Courts of Appeals for the First, Second and Seventh Circuits all held in favor of the Board, the District of Columbia Circuit ruled against it. On November 2, the U.S. Supreme Court agreed to take up the matter for review and we expect a decision by the end of this term, in June or July.

As the Board approaches its 75th anniversary, we await a ruling by the Supreme Court on the two-member Board issue and we await Senate confirmation of President Obama’s nominees to fill the three Board vacancies. Meanwhile, throughout this period, the Office of General Counsel – the prosecutorial side of the NLRB – has continued to function normally, along with the agency’s 51 field offices. As documented in this report, the Office of the General Counsel was able to make progress toward meeting targets for timely handling of complaints.

As Chairman of the NLRB, I certify that the NLRB's internal controls and financial systems meet and conform to the requirements of the Federal Managers' Financial Integrity Act. (A more detailed discussion of the Agency's internal controls can be found starting on page 18 of this report.) I have also made every effort to verify the accuracy and completeness of the financial and performance data presented in this report.

A handwritten signature in black ink that reads "Wilma B. Liebman". The signature is written in a cursive style with a large initial 'W' and 'L'.

Wilma B. Liebman  
Chairman

# BOARD MEMBERS



Wilma B. Liebman  
Chairman



Peter C. Schaumber  
Board Member



## MESSAGE FROM THE GENERAL COUNSEL

**Ronald Meisburg**  
**General Counsel**

October 27, 2009

The General Counsel of the National Labor Relations Board (NLRB) is responsible for the investigation and prosecution of the unfair labor practice cases filed in the NLRB's Regional, Subregional, and Resident Offices. As the General Counsel of the NLRB, I exercise general supervisory authority over this network of field offices. This network consists of 32 Regional Offices, 3 Subregional Offices, and 16 Resident Offices, and is staffed by approximately 1,200 employees. In addition to this network of field offices, the Office of the General Counsel is also composed of five Headquarters components which are responsible for

various casehandling, administrative, and personnel functions.

In FY 2009, 22,941 unfair labor practice cases and 2,912 representation cases were filed in the Regional Offices. Upon investigation, it was determined that 36.2 percent of the unfair labor practice charges were meritorious, which warranted the issuance of an unfair labor practice complaint. The Regional Offices settled more than 95 percent of these, thus providing speedy relief to the affected employees, unions, and employers without the delay and costs of litigation. In addition, the Regional Offices conducted more than 1,690 initial representation elections, more than 95 percent of which were held within 56 days of the filing of the petition. But processing time and casehandling percentages are not our only focus. The Office of the General Counsel has an extensive Quality Review Program that assures those who seek our help receive the best service from their government.

Since 2006, the NLRB has been working on the creation of an enterprise-wide automated casehandling system. This system, called the Next Generation Case Management System, or NxGen, will replace, when fully deployed, 11 legacy case-tracking systems and many manual, paper-based processes. Two Regional Offices have been piloting the system since 2007 and, in FY 2009, the Office of Appeals began processing all of its appeals through NxGen. Earlier this year, I made a decision in an Office of Appeals case based entirely upon an electronic record of the case. The case was an appeal of a Regional Director's determination to accept a settlement agreement where one of the parties felt the settlement was inadequate. This was a new experience for me as General Counsel, as it was the first case where no paper records were produced or required. All of the case documentation was contained entirely within the NxGen system. Ultimately, after careful consideration of all of the facts, I denied the appeal.

We continue to expand the strategic initiatives that I have instituted since becoming General Counsel. The successful efforts of the Outreach Program continued, with employees participating in 525 outreach activities. Although the NLRB does not initiate cases, outreach plays an important role in informing the public as to who we are and what we do. In addition to these outreach efforts, over two-thirds of the Regional Offices have issued newsletters that have been well-received by their communities. Another initiative, First

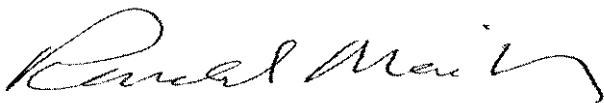


Contract Bargaining, was launched to address the high percentage of refusal-to-bargain charges in initial bargaining contract negotiations. Regional Offices must now submit such cases to the Division of Advice with recommendations as to whether the Agency should seek 10(j) interim relief from the courts, or other enhanced remedies from the Board. This initiative has led to favorable results in some cases, including ones where the parties were able to reach an actual contract agreement.

Employee development was again at the forefront in FY 2009. For the first time since 2003, the NLRB was able to significantly increase its employee training budget. We held a number of employee training conferences which provided training opportunities to new employees, managers and supervisors, and administrative staff. Having a well-trained staff and one that is well-grounded in the principles of the National Labor Relations Act goes a long way to accomplishing the NLRB's mission in an effective and efficient manner.

The General Counsel of the NLRB, on delegation from the Board, exercises general supervision over the administrative functions of the Agency, including financial management. I am pleased that this year's financial audit resulted in an unqualified opinion from our auditors, thereby vindicating the trust the public places in us as a guardian of its resources.

My term as General Counsel of the NLRB will expire in August 2010. I have served the NLRB since 2004, first as a Board Member, then as its General Counsel. As the Board enters its 75th year, I have a great sense of satisfaction in having been associated with an Agency with a long history of providing excellent service to the public and working with men and women dedicated to the principles of the National Labor Relations Act.



Ronald Meisburg  
General Counsel



## MANAGEMENT DISCUSSION AND ANALYSIS



PROTECTING DEMOCRACY IN THE WORKPLACE SINCE 1935

# ABOUT THE NLRB

***“Democracy cannot work unless it is honored in the factory as well as in the polling booth; men cannot be truly free in body and in spirit unless their freedom extends into the places where they earn their daily bread.”***

Senator Robert F. Wagner in 1935, upon offering his bill that was to become the nation’s basic labor law.

The National Labor Relations Board (NLRB) is an independent federal agency created by Congress in 1935 to administer and enforce the National Labor Relations Act (NLRA or Act), which is the primary federal statute governing labor relations in the private sector. Declared constitutional by the Supreme Court in 1937, the Act was substantially amended in 1947, 1959, and 1974, each amendment increasing the scope of the NLRB’s regulatory powers.

The Act embodies a bill of rights, which establishes freedom of association for purposes of collective bargaining. It defines and protects the rights of employees, unions, and employers, and seeks to eliminate certain unfair labor practices on the part of employers and unions so as to promote commerce and strengthen the Nation’s economy. Under the Act, the NLRB has two primary functions:

1. to conduct secret-ballot elections among employees to determine whether or not the employees wish to be represented by a union; and
2. to prevent and remedy statutorily defined unfair labor practices by employers and unions.

The NLRB acts only on those cases brought before it, and does not initiate cases. All proceedings originate with the filing of charges or petitions by employees, labor unions, private employers, and other private parties.

## MISSION STATEMENT

The mission of the National Labor Relations Board is to carry out the statutory responsibilities of the National Labor Relations Act, as efficiently as possible, in a manner that gives full effect to the rights afforded to all parties under the Act.



# STATUTORY STRUCTURE



The NLRB has an unusual structure among executive branch agencies. Agency leadership culminates in six presidential appointees—five Board Members (including the Chairman) and the General Counsel. Day-to-day management of the Agency is divided by law, delegation, and Agency practice between the Chairman, the five-member Board, and the General Counsel.

The five-member Board primarily acts as a quasi-judicial body in deciding cases on the basis of formal records in administrative proceedings. Board Members are appointed by the President with the advice and consent of the Senate, and serve staggered five-year terms. The President designates one of the Board Members as Chairman. Member Wilma B. Liebman was designated as Chairman by President Obama on January 20, 2009.<sup>1</sup>

Since January 2008, and continuing through the present, there have been three vacant seats on the Board. During this period,

the Board has operated as a two-member quorum, composed of Chairman Wilma B. Liebman and Member Peter C. Schaumber. Pending in the Senate are nominations to fill the three vacant seats. Nominated on July 9, 2009, by President Obama were Harold C. Becker, Brian E. Hayes, and Mark G. Pearce.

The General Counsel, currently Ronald Meisburg, is appointed by the President to a four-year term, with Senate consent, and is responsible for the investigation and prosecution of unfair labor practice cases and for the general supervision of the NLRB Regional Offices. General Counsel Meisburg's term runs through August 2010. In performing delegated functions, and in some aspects statutorily assigned functions, the General Counsel acts on behalf of the Board. However, with respect to the investigation and prosecution of unfair labor practice cases, the General Counsel has sole prosecutorial authority under the statute, independent of the Chairman or the Board.

<sup>1</sup> Board Member Peter C. Schaumber served as Chairman of the NLRB from March 19, 2008, through January 19, 2009.

# ORGANIZATION

BOARD	INSPECTOR GENERAL	OFFICE OF THE GENERAL COUNSEL
<b>Wilma B. Liebman</b> <i>Chairman</i>	<b>David P. Berry</b> <i>Inspector General</i>	<b>Ronald Meisburg</b> <i>General Counsel</i>
<b>Peter C. Schaumber</b> <i>Board Member</i>	<b>OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY</b>	<b>John E. Higgins, Jr.</b> <i>Deputy General Counsel</i>
<b>Vacant</b> <i>Board Member</i>	<b>Robert J. Poindexter</b> <i>Director</i>	<b>DIVISION OF OPERATIONS MANAGEMENT</b>
<b>Vacant</b> <i>Board Member</i>	<b>OFFICE OF EMPLOYEE DEVELOPMENT</b>	<b>Richard A. Siegel</b> <i>Associate General Counsel</i> (REGIONAL OFFICES)
<b>Vacant</b> <i>Board Member</i>	<b>Thomas J. Christman</b> <i>Director</i>	<b>DIVISION OF ENFORCEMENT LITIGATION</b>
<b>OFFICE OF THE EXECUTIVE SECRETARY</b>	<b>DIVISION OF ADMINISTRATION</b>	<b>John H. Ferguson</b> <i>Associate General Counsel</i>
<b>Lester A. Heltzer</b> <i>Executive Secretary</i>	<b>Gloria J. Joseph</b> <i>Director</i>	<b>DIVISION OF ADVICE</b>
<b>OFFICE OF REPRESENTATION APPEALS</b>	<b>OFFICE OF THE CHIEF INFORMATION OFFICER</b>	<b>Barry J. Kearney</b> <i>Associate General Counsel</i>
<b>Lafe Solomon</b> <i>Director</i>	<b>Bryan Burnett</b> <i>Chief Information Officer</i>	
<b>OFFICE OF THE SOLICITOR</b>		
<b>William B. Cowen</b> <i>Solicitor</i>		
<b>DIVISION OF JUDGES</b>		
<b>Robert A. Giannasi</b> <i>Chief, ALJ</i>		
<b>OFFICE OF PUBLIC AFFAIRS</b>		
<b>Nancy Cleeland</b> <i>Director</i>		

# CASEHANDLING FUNCTIONS

The purpose of the Nation's primary labor relations law is to serve the public interest by reducing interruptions in commerce caused by industrial strife. It seeks to do this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The overall job of the NLRB is to achieve this goal through administration, interpretation, and enforcement of the NLRA.

## UNFAIR LABOR PRACTICE PROCEEDINGS

The NLRA contains a code of conduct for employers and unions and regulates that conduct in unfair labor practice proceedings. Unfair labor practices are remedied through adjudicatory procedures under the NLRA, in which the Board and the General Counsel have independent functions.

Congress created the position of General Counsel in its current form in the Taft-Hartley Act of 1947. At that time, it gave the General Counsel sole responsibility—independent of the Board—to investigate charges of unfair labor practices, and to decide whether to issue complaints with respect to such charges. The Board, in turn, acts independently of the General Counsel in deciding unfair labor practice (ULP) cases.

The General Counsel investigates ULP charges through the Agency's network of Regional, Subregional, and Resident Offices (field offices). If there is reason to believe that a ULP charge has merit, the Regional Director, on behalf of the General Counsel, issues and prosecutes a complaint against the charged party unless a settlement is reached. With some exceptions, a complaint that is not settled or withdrawn is tried before an administrative law judge (ALJ), who issues a decision, which may be appealed by any party to the Board through the filing of exceptions. The Board decides cases on the basis of the formal trial record, according to the statute and the body of case law that has been developed by the Board and the federal courts.

If the Board finds that a violation of the Act has been committed, the role of the General Counsel thereafter is to act on behalf of the Board to obtain compliance with the Board's order remedying the violation. Although Board decisions and orders in ULP cases are final and binding with respect to the General Counsel, they are not self-enforcing. The statute provides that any party (other than the General Counsel) may seek review of the Board's decision in a United States Court of

Appeals. In addition, if a party refuses to comply with a Board decision, the Board itself must petition for court enforcement of its order. In court proceedings to review or enforce Board decisions, the General Counsel represents the Board and acts as its attorney. Also, the General Counsel acts as the Board's attorney in contempt proceedings and when the Board seeks injunctive relief under Sections 10(e) and (f) of the NLRA after the entry of a Board order and pending enforcement or review of proceedings in circuit court.

Section 10(j) of the NLRA empowers the NLRB to petition a federal district court for an injunction to temporarily prevent unfair labor practices by employers or unions and to restore the status quo, pending full review of the case by the Board. In enacting this provision, Congress was concerned that delays inherent in the administrative processing of ULP charges, in certain instances, would frustrate the Act's remedial objectives. In determining whether the use of Section 10(j) is appropriate in a particular case, the principal question is whether injunctive relief is necessary to preserve the Board's ability to effectively remedy the unfair labor practice alleged, and whether the alleged violator would otherwise reap the benefits of its violation.

Under NLRB procedures, after deciding to issue a ULP complaint, the General Counsel may request authorization from the Board to seek injunctive relief. The Board votes on the General Counsel's request and, if a majority votes to authorize injunctive proceedings, the General Counsel, through his Regional staff, files for injunctive relief with an appropriate federal district court.

In addition, Section 10(l) of the Act *requires* the Board to seek a temporary federal court injunction against certain forms of union misconduct, principally involving work stoppages or picketing with an unlawful secondary objective.

## REPRESENTATION PROCEEDINGS

In contrast to ULP proceedings, representation proceedings conducted pursuant to the Act are not adversarial. Representation cases are initiated by the filing of a petition—by an employee, a group of employees, an individual, or a labor organization acting on their behalf, or in some cases by an employer. The petitioner requests an election to determine whether a union represents a majority of the employees in an appropriate bargaining unit and therefore should be

certified as the employees' bargaining representative. The role of the Agency in such cases is to investigate the petition and, if necessary, to conduct a hearing to determine whether employees constitute an appropriate bargaining unit under the Act. The NLRB must also determine which employees are properly included in the bargaining unit and therefore eligible to vote, conduct a secret-ballot election if an election is determined to be warranted, hear and decide any post-election objections to the conduct of the election, and, if the election is determined to have been fairly conducted, to certify its results.

In the processing of representation cases, the Board and the General Counsel have shared responsibilities. The Regional Offices, which are under the day-to-day supervision of the General Counsel, process representation petitions and conduct elections on behalf of the Board based on a delegation of authority made in 1961. As a result, the General Counsel and the Board have historically worked together in developing procedures for the conduct of representation proceedings. The Board has ultimate authority to determine such matters as the appropriateness of the bargaining unit and to rule on any

objections to the conduct of an election. The Regional Directors have been delegated authority to render initial decisions in representation matters, which are subject to Board review.

## COMPLIANCE PROCEEDINGS

In order to obtain compliance with the Board's Orders and settlement agreements, the General Counsel's staff must follow up to ensure that the results of the processes discussed above are enforced. Staff must be prepared to work with employees whose rights have been violated to calculate backpay, work with respondents when terminated employees are entitled to reinstatement or having their records expunged in unlawful disciplinary actions, or monitor the bargaining process when the Board has ordered the parties to bargain. Noncompliance or disputes on findings may require additional hearings or actions by the judicial system.

# ADMINISTRATIVE FUNCTIONS

Section 3(d) of the Act assigns the General Counsel supervision over all attorneys employed by the Agency, with the exception of the ALJs, who are under the general supervision of the Board, and the attorneys who serve as counsel to the Board Members. The Board has also delegated to the General Counsel general supervision over the administrative functions of the Agency.





# PERFORMANCE HIGHLIGHTS

The Board and the General Counsel share a common goal of ensuring that the NLRA is fully and fairly enforced. Although they have separate statutory functions, the Board and the General Counsel work together in developing one comprehensive Strategic Plan and annual Performance Plan. The NLRB's Strategic Plan was updated in FY 2007 and covers fiscal years 2007–2012.

The NLRB's annual Performance Plan is integrated into its budget request to form the basis of its Performance Budget. The NLRB strengthens budget and performance linkages by establishing a direct, vertical relationship between the performance plans of individual executives in its Regional and Headquarters offices and the performance goals for their programs, which are derived from the Agency's broader strategic goals. Agency goals are implemented through the daily actions of individual managers leading programs and activities throughout the Agency.

The two goals of the NLRB's Strategic Plan represent the core functions of the Agency in enforcing the NLRA. They thus reflect both the short- and long-term goals of the Agency. These strategic goals translate the Agency's mission into major policy directions and are focused on the unique characteristics of the organization.

The NLRB's two strategic goals are supported by three overarching performance measures. The Agency's performance measures focus on the time it takes to process an entire case, from beginning to end. They are outcome-based, aligned with the mission of the NLRB, and are meaningful to the public the Agency serves. The performance measures were instituted in the latter part of FY 2007 and the Agency has either met or exceeded the targets set for all of the performance measures in the first full two years of this program.

The NLRB's Strategic Goals and Performance Measures as stated in its Strategic Plan are:

## Strategic Goal No. 1

Resolve all questions concerning representation impartially and promptly.

### **Performance Measure No. 1**

The percentage of representation cases resolved within 100 days of filing of the election petition.

## Strategic Goal No. 2

Investigate, prosecute, and remedy cases of unfair labor practices by employers or unions, or both, impartially and promptly.

### **Performance Measure No. 2**

The percentage of ULP charges resolved by withdrawal, by dismissal, or by closing upon compliance with a settlement or Board order or Court judgment within 120 days of the filing of the charge.

### **Performance Measure No. 3**

The percentage of meritorious (prosecutable) ULP cases closed on compliance within 365 days of the filing of the ULP charge.

**Measure No. 1**, the performance measure associated with Goal No. 1, focuses on the total time taken to resolve a representation case, from beginning to end, including time spent on the case on both the General Counsel and Board sides of the Agency. In representation cases, elections result from petitions filed by unions, employees, or employers seeking a secret ballot determination as to whether a majority of employees wish union representation. Included in this measure are withdrawals, dismissals, settlements, hearings, and elections, which occur in the field. It also includes requests by aggrieved parties for review of Regional decisions by the Board in Washington, DC.

**Measures No. 2 and No. 3**, the performance measures associated with Goal No. 2, address the timely resolution of ULP cases, including time spent on the case by both the General Counsel and Board sides of the Agency. On a yearly basis, there are more than six times as many ULP cases as representation cases, usually involving more complicated issues for Regions to address.

We are pleased to report that the NLRB exceeded the goals for its three performance measures for FY 2009.

**Measure No. 1: By 2012, resolve questions concerning representation in at least 85.2 percent of all representation cases within 100 days from the filing of the representation case petition.**

Year	Interim Goal	Actual Performance
FY 2007	79.0%	79.0%
FY 2008	80.0%	83.5%
FY 2009	81.0%	84.4%

*Measure No. 2: By 2012, resolve at least 72 percent of all charges of unfair labor practice cases by withdrawal, by dismissal, or by closing upon compliance with a settlement or Board order or court judgment within 120 days of the filing of the charge.*

Year	Interim Goal	Actual Performance
FY 2007	67.5%	66.0%
FY 2008	68.0%	68.0%
FY 2009	68.5%	71.0%

*Measure No. 3: By 2012, close 80.2 percent of meritorious (prosecutable) unfair labor practices on compliance within 365 days of the filing of the unfair labor practice charge.*

Year	Interim Goal	Actual Performance
FY 2007	74.0%	73.5%
FY 2008	75.0%	76.0%
FY 2009	75.5%	79.7%

## FINANCIAL HIGHLIGHTS

The NLRB prepares annual financial statements in accordance with Generally Accepted Accounting Principles (GAAP) for Federal Government entities and subjects the statements to an independent audit to ensure their integrity and reliability in assessing performance. The NLRB’s financial statements summarize the financial activity and financial position of the Agency. The financial statements, footnotes, and the balance of the required supplementary information appear in the Financial Section of this Performance and Accountability Report (PAR).

### ANALYSIS OF FINANCIAL STATEMENTS

**Balance Sheet**—The NLRB assets were approximately \$38 million as of September 30, 2009. The Fund Balance with Treasury, which was \$27 million, represents the NLRB’s largest asset. The Fund Balance consists of unspent appropriated and unappropriated funds from the past six fiscal years and in prior fiscal years included backpay funds. Backpay funds are funds owed to discriminatees by employers due to the filing of ULP charges with the NLRB. The source of these funds is either the original employer or a bankruptcy court disposition. During the time it takes the Agency to locate discriminatees, these funds are sometimes invested in United States Treasury market-based securities. Effective for the period beginning after September 30, 2008, the investments made for backpay funds and related cash will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide information about these fiduciary activities. The NLRB Property, Plant and Equipment was over \$10 million and was related to Information Technology.

**Statement of Net Cost**—The NLRB’s appropriation is used to resolve representation cases or ULP charges filed by employees, employers, unions, and union members. Of the \$277 million net cost of operations in FY 2009, 16 percent was used for representation case activities and 84 percent was used to resolve ULP charges.

**Statement of Changes in Net Position**—The Statement of Changes in Net Position reports the change in net position during the reporting period. Net position is affected by changes in its two components: Cumulative Results of Operations and Unexpended Appropriations. From FY 2008 to FY 2009, there was a change in net position of \$1,089,651.

**Statement of Budgetary Resources**—The Statement of Budgetary Resources shows budgetary resources available and the status at the end of the period. It represents the relationship between budget authority and budget outlays, and reconciles obligations to total outlays. For FY 2009, the NLRB had available budgetary resources of \$267 million, the majority of which were derived from new budget authority. This represents a \$11 million increase from FY 2008, when available budgetary resources were \$256 million. For FY 2008 and FY 2009 the status of budgetary resources shows obligations of \$252 million and \$263 million, respectively, or about 98 percent of funds available in each year. Total outlays for FY 2009 were \$256 million, which is a \$6 million increase from FY 2008.

Of the budget appropriation received by the NLRB, approximately 90 percent of the payments are for employees' salaries and benefits, space rent, and building security. The remaining 10 percent is utilized for expenses integral to the Agency's casehandling mission, such as casehandling travel; transcripts in cases requiring a hearing; interpreter services, reflective of a growing community of non-English-speaking workers; witness fees; and information technology.

## LIMITATIONS OF PRINCIPAL FINANCIAL STATEMENTS

The principal financial statements of the NLRB have been prepared to report the financial position and results of operations of the Agency, pursuant to the requirements of 31 U.S.C. 3515(b). While the statements have been prepared from the books and records of the entity in accordance with generally accepted accounting principles for federal entities and the formats prescribed by Office of Management and Budget, the statements are in addition to the financial reports used to monitor and control budgetary resources which are prepared from the same books and records.

The statements should be read with the realization that they are for a component of the U.S. Government, a sovereign entity.

## FINANCIAL PLANNING COMMITTEE

The NLRB's Financial Planning Committee has met annually since 1992 to review and update the NLRB's Five-year Financial Management Plan. The committee met in early FY 2009 to assess the Agency's performance under the FY 2008 goals and to review and approve the goals for FY 2009. After reviewing the goals, and the tasks and milestones associated with each goal, the committee determined that the NLRB's five-year financial management goals should be:

1. Improved financial accountability;
2. Improved financial systems;
3. Development of financial management human resources;
4. Improved administration of the credit card program; and
5. Use of electronic commerce to improve financial management.

The NLRB obtains the bulk of its financial systems and services from the Department of the Interior's National Business Center (NBC). NBC provides the following systems:

- Momentum Financials and Momentum Acquisitions – Integrated systems that allow the sharing of data and information between the NLRB's Finance Branch and its Acquisitions Management Branch.
- Finmart Reporting System – A system of various accounting and budgetary reports that are used by staff in the Finance and Budget Branches and the Budget Allowance Holders to monitor the Agency's financial activities. The reports in this system are custom designed for the NLRB's use.
- Hyperion – The system used for the preparation of the Agency's audited financial statements, which are contained in the PAR. Statements are prepared annually and quarterly.
- Federal Payroll and Personnel System, or FPPS – Integrated with the Momentum system, it provides for more efficient payroll processing.
- E<sup>2</sup>Solutions – The eTravel system provided by Carlson Wagonlit, the NLRB's Travel Management Service.

To increase efficiencies in the financial management area, the Agency outsourced its invoice payment function to NBC beginning in September 2007.



# MANAGEMENT ASSURANCES

## FEDERAL MANAGERS' FINANCIAL INTEGRITY ACT (FMFIA)

The FMFIA requires federal agencies to develop and implement appropriate and cost-effective internal controls for results-oriented management, assess the adequacy of those internal controls, identify needed areas of improvement, take corresponding corrective action, and provide an annual statement of assurance regarding internal controls and financial systems. This annual statement of assurance is provided in the PAR.

NLRB management is responsible for establishing and maintaining an environment throughout the Agency that is positive and supportive of internal controls and conscientious management. Internal control systems are expected to provide reasonable assurance that the following objectives are being achieved:

- Effectiveness and efficiency of operations;
- Reliability of financial reporting; and
- Compliance with applicable laws and regulations.

The NLRB's approach to assessing its internal controls included the identification and assessment of risks by 23 designated managers on an Agencywide basis, in accordance with OMB Circular A-123, *Management's Responsibility for Internal Control*, dated December 21, 2004. In completing this annual review, the designated managers, in conjunction with subordinate staff as needed, used personal judgment as well as other sources of information. These sources included: knowledge gained from day-to-day operations; Inspector General audits and investigations; program evaluations; reviews of financial systems; annual performance plans; and management reviews

for the purpose of assessing internal controls. The designated managers were responsible for conducting reviews of program operations; assisting program offices in identifying risks and conducting internal control reviews; issuing reports of findings and making recommendations to improve internal controls and risk management.

Based on the internal controls program, reviews, and consideration of other information, senior management's assessment of the NLRB's internal controls is that controls are adequate to provide reasonable assurance in support of effective and efficient operations, reliable financial reporting, and compliance with laws and regulations.

Section 2 of the FMFIA requires federal agencies to report, on the basis of annual assessments, any material weaknesses that have been identified in connection with their internal and administrative controls. The reviews that took place in FY 2009 provide reasonable assurance that NLRB systems and internal controls comply with the requirements of FMFIA and there are no material weaknesses to report relating to Section 2 of the FMFIA. This is based primarily on written assessments by the 23 designated managers who responded to an extensive survey.

Section 4 of the FMFIA requires that agencies' financial management systems controls be evaluated annually. The NLRB evaluated its financial management systems for the year ending September 30, 2009, in accordance with the FMFIA and OMB Circular A-127, *Financial Management Systems*, Section 7 guidance. The annual statement by the Chief, Finance Branch, indicates that the NLRB's financial systems, taken as a whole, conform to the principles and standards developed by the Comptroller General, OMB, and the Department of Treasury.



**UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, DC**

**November 2, 2009**

## STATEMENT OF ASSURANCE

The NLRB's management is responsible for establishing and maintaining effective internal control and financial management systems that meet the objectives of the Federal Managers' Financial Integrity Act (FMFIA). The NLRB conducted its assessment of the effectiveness of internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations in accordance with OMB Circular A-123, Management's Responsibility for Internal Control. Based on the results of this evaluation, the NLRB can provide reasonable assurance that its internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations as of September 30, 2009, was operating effectively and no material weaknesses were found in the design or implementation of internal controls.

Handwritten signature of Wilma B. Liebman in black ink.

Wilma B. Liebman  
Chairman

Handwritten signature of Ronald Meisburg in black ink.

Ronald Meisburg  
General Counsel

# OPERATIONAL HIGHLIGHTS FOR FISCAL YEAR 2009

The NLRB strives to create a positive labor-management environment for the nation's employees, unions, and employers by assuring employees free choice on union representation and by preventing and remedying statutorily defined unfair labor practices. The NLRB maintains a citizen-centered and results-oriented philosophy to best serve the needs of the American people.

The NLRB acts only on those cases brought before it, and does not initiate cases. All proceedings originate with the filing of charges or petitions by employees, labor unions, or private employers who are engaged in interstate commerce. During fiscal year 2009, the public filed 22,941 charges alleging that employers or labor organizations committed unfair labor practices prohibited by the Act, adversely affecting employees. Also, in FY 2009, the NLRB received 2,912 representation petitions, including 2,696 petitions to conduct secret-ballot elections in which workers in appropriate groups select or reject unions to represent them in collective bargaining with their employers, as well as 97 petitions for elections in which workers voted on whether to rescind existing union-security agreements. The NLRB also received 7 petitions to amend the certification of existing collective bargaining and 112 petitions seeking clarification of an existing bargaining unit.

## EFFECT OF THE TWO-MEMBER BOARD

Since January 2008, the five-member Board has operated as a two-member quorum with Chairman Wilma B. Liebman and Board Member Peter C. Schaumber. Section 3(b) of the NLRA permits "the Board to delegate to any group of three or more members any or all of the powers which it may itself exercise." This Section also provides that, where the Board has delegated its power to a group of three or more members, a quorum of the group shall be two members. Furthermore, Section 3(b) states that "[a] vacancy on the Board shall not impair the right of the remaining members to exercise all of the powers of the Board."<sup>2</sup> The four-member Board consisting of Members Liebman, Schaumber, and former

Board Members Dennis P. Walsh and Peter C. Kirsanow<sup>3</sup> delegated its powers to a three-member panel consisting of Members Liebman, Schaumber, and Kirsanow on December 28, 2007. When the recess appointments of Members Walsh and Kirsanow expired on December 31, 2007, the three-member Board began operating as a two-member quorum as provided for by Section 3(b) of the Act.

During this period, the Board has issued nearly 500 decisions, but the authority of the two-member Board has been challenged in the Courts of Appeals.

On May 1, 2009, two circuit courts weighed in on the authority of the two-member Board—as a legitimate quorum of a three-member group—to issue decisions. In *Laurel Baye Healthcare*, the D.C. Circuit rejected the Board's authority; in *New Process Steel, L.P.*, the Seventh Circuit affirmed it. Prior to these two rulings, the First Circuit, on March 13, 2009, decided in *Northeastern Land Services v. NLRB* that the two-member Board was authorized to issue decisions.

On September 29, 2009, the U.S. Department of Justice, on behalf of the NLRB, asked the Supreme Court to settle the question of the two-member Board. The request was made in two actions: a petition for *certiorari* in *Laurel Baye* and a response to a *certiorari* petition filed by the employer in *New Process Steel*.

On September 29, 2009, the U.S. Department of Justice, on behalf of the NLRB, asked the Supreme Court to settle the question of the two-member Board. The request was made in two actions: a petition for *certiorari* in *Laurel Baye* and a response to a *certiorari* petition filed by the employer in *New Process Steel*. On November 2, the Supreme Court agreed to grant *certiorari* in *New Process Steel*. A decision is expected before the current term ends in June or July.

Meanwhile, with decisions from the First and Seventh Circuits affirming their authority to operate as a two-member quorum, and citing the 2003 Office of Legal Counsel opinion, Chairman Liebman and Member Schaumber determined that, as a quorum

<sup>2</sup> On March 4, 2003, the Justice Department's Office of Legal Counsel issued an opinion which concluded that "if the Board delegated all of its powers to a group of three members, that group could continue to issue decisions as long as a quorum of two members remained."

<sup>3</sup> The term of former Chairman Robert J. Battista had expired on December 17, 2007.

of the NLRB, they would continue to issue decisions and orders in ULP and representation cases. They also petitioned the D.C. Circuit Court asking it to reconsider the panel's decision in *Laurel Baye Healthcare*. Subsequent to these actions, on June 17, 2009, the Second Circuit in *Snell Island SNF LLC v. NLRB* concluded that, in light of the legislative history of the Taft-Hartley amendments to the Act, and the language of the statute, the Board's interpretation of the quorum requirement of the Act was a "reasonable" one.

Pending in the Senate are nominations to fill the three vacant positions on the Board. Nominated on July 9, 2009, by President Obama were Harold C. Becker, Brian E. Hayes, and Mark G. Pearce. While progress is being made on nominating and confirming new Board members, the battle over the viability of the two-member Board as a functioning body continues to be fought in the courts.

## NEXT GENERATION CASE MANAGEMENT

The NLRB began in August 2006 to build an enterprise-wide common case management platform to replace or optimize manual, paper-based processes and "stovepipe" legacy case tracking systems. This project, called Next Generation Case Management or NxGen, is a standards-based solution leveraging commercial off-the-shelf tools and a service-oriented architecture approach. NxGen will enable the Agency to:

- Process cases in a paperless environment
- Collect and compile information about case trends
- Provide more information to the public through its Web site
- Facilitate the transmission of information between Agency offices
- Deliver notification of decisions to parties by close of business day



The Agency began piloting the system in December 2007 in its Regional Offices in Cincinnati (Region 9) and Atlanta (Region

10). Beginning on November 17, 2008, in Headquarters, the Office of Appeals, the Agency office in charge of reviewing cases in which a Regional Director has refused to issue a complaint, began processing all of its appeals within NxGen. As of September 30, 2009, the Office of Appeals has closed 1,917 appeals through the system. In early 2009, General Counsel Ronald Meisburg made his first decision in an Office of Appeals case, based entirely upon a paperless record. This paperless case arose in one of the Regional Offices piloting NxGen and involved the appeal of a Regional Director's determination to accept a settlement agreement where one of the parties felt the settlement was inadequate. The Office of Appeals presented the case electronically and, after careful review, the appeal was denied.

Over the next two years, the NxGen system will be expanded Agencywide, allowing the Agency to provide more efficient service to the public. The system has numerous built-in security measures for the materials placed in it, and to further protect the materials, only certain Agency offices are permitted to view an electronic case file, depending on the stage it is in. Once fully deployed, NxGen will replace 11 legacy case tracking systems currently in use throughout the Agency.



## E-FILING ENHANCEMENTS

The NLRB places a high priority on offering timely case information to participants, citizens, and employees based on their specific needs, rather than using a "one-size-fits-all" model for information distribution. The Agency's portal-based solution provides all NLRB stakeholders with a single point of entry for case content and processes. It provides a gateway for the public, including participants in NLRB cases, and the Agency to communicate with each other in the course of transacting business, as well as offering Freedom of Information Act (FOIA) data and documents online.

The NLRB Web Portal offers a self-service solution to citizens so they can submit documents and obtain and store information on

cases. The Portal allows for a more transparent case processing system, giving participants and the public a broader view of Agency activities.

In FY 2009, the Agency was selected as a finalist in the 2009 Excellence.Gov Awards, which recognize best practices in the federal government's management and use of information technology, and in particular, "programs [which] have achieved exceptional results in the management of IT to support the government's mission and serve citizens." The NLRB project for which it was selected a finalist was building and deploying a Web site portal and master data management model to allow Agency case participants to electronically file case documents, track case updates, receive decisions electronically, and manage their profile online.

In FY 2009, the Agency made changes to its E-Filing program designed to simplify and encourage electronic filings. The Agency moved its deadline from 5:00 PM to 11:59 PM to reduce late filings. By requiring that service of E-Filed documents on other parties to a proceeding be effectuated by email whenever possible, the Agency sought to eliminate the cost and inconvenience of its prior expedited service requirements. The Agency also eliminated the requirement that E-Filers also must submit physical copies of long documents, further reducing the parties' costs and inconveniences.

Additionally, the Agency formally launched a pilot project for the electronic issuance and service of final decisions of the Board and its Administrative Law Judges (ALJ). Under the pilot project, final Board and ALJ decisions are issued electronically at the close of each business day by being listed on a daily E-Docket sheet posted on the NLRB Web site. Parties who voluntarily register for electronic service receive an email constituting formal notice of the Board's or ALJ's decision and an electronic link to the decision.

In FY 2010, the Agency is undertaking an ambitious plan to link its constituent self-service, E-Filing, and E-Issuance efforts to the NxGen program. This will provide a solid foundation for the Agency's long-term unified case management vision: to provide better services, more efficient casehandling, and greater transparency, while continuing to improve quality.

## OUTREACH ACTIVITIES

The NLRB's Regional Offices continue to engage in significant outreach to our stakeholders and the community at large. The Agency's Speaker's Bureau (available on the Agency's Web site) continues to attract requests from diverse members of the public within and outside the United States. The Agency has recently established an Office of Public Affairs, staffed with a director and

a media specialist. One of the purposes of this office will be to build outreach to citizens and community groups, in addition to enhancing and maintaining our traditional relationships within the labor and employment relations communities.

Board agents participated in 525 outreach events during FY 2009, providing information in person to over 32,000 stakeholders. The events reported in FY 2009 included outreach activities that were directed at local communities, bar associations, labor organizations, employer/management organizations, government organizations, and educational institutions. A number of these events such as the Teen Leadership Summit sponsored by Congressman Elijah Cummings in Baltimore, Maryland; "From Haymarket to the NLRA" presentation in Anchorage, Alaska; the National Lesbian, Gay, Bisexual, Transgender Bar Association Lavender Law Conference; the Plaza Las Americas Mall joint outreach activity in Puerto Rico; participation on radio talk shows; and public service announcements in publications have reached several hundreds, if not thousands, of people.

In addition to those mentioned above, some significant outreach events in which Agency representatives participated included: a conference about the NLRA and immigration at a symposium sponsored by the NY Latino Resources and Research Network; a presentation about the Agency and the Act tied to Black History month made to military service members, engineering and logistic professionals, and non-technical workers; joint presentations with other federal agencies, including one with local Native American tribes about tribal sovereignty and jurisdictional issues; discussions about protected concerted and union activities with employee advocacy groups and at workers' rights centers; and overviews of the Agency and the Act provided to elected officials, attorneys, health care professionals, federal and state agencies, small business owners, human resource professionals, union stewards, educators and students.

During FY 2009, 22 Regional Offices published and disseminated newsletters within their individual communities, targeted to the specific interests of constituents in their geographic areas. These newsletters are posted on the Agency's Web site under "About Us" at [http://www.nlr.gov/about\\_us/regional\\_news/regional\\_newsletters.aspx](http://www.nlr.gov/about_us/regional_news/regional_newsletters.aspx).

The Regional Offices received and responded to 106,321 telephonic inquiries pertaining to workplace issues, through either direct contacts to an office or the Agency's toll-free number. In addition, Regions are continuing their efforts to obtain air time on radio and public television stations, including Spanish-language stations.



## CASEHANDLING HIGHLIGHTS

### IBEW Local 48

On May 20, 2009, Board Agents from Region 19 (Seattle) and its Subregional Office in Portland, OR, distributed backpay checks totaling approximately \$1.8 million to employees who were victims of Local 48 of the International Brotherhood of Electrical Workers unlawful disregard of its hiring hall job referral rules in various respects. Resolving a case that first began with the filing of unfair labor practice charges in 1993 and following a Board order that issued in 2004, Board Agents from the Regional Office collaborated with professionals from the NLRB's Appellate and Supreme Court Litigation Branch and Division of Operations-Management to achieve a settlement under the auspices of a mediator appointed by the U.S. Court of Appeals for the District of Columbia Circuit. The product of many years of determined investigation and litigation, the settlement evoked many positive responses from the workers, including one who told Board Agents the backpay enabled him to avoid foreclosure on his home, and another who explained that the money came just as his unemployment benefits ran out.

### E.I. duPont de Nemours and Company

On February 9, 2009, approximately 70 employees from the Tonawanda, NY, plant of E.I. DuPont de Nemours and Company assembled at Region 3's Buffalo, NY, office to collect backpay and benefits checks totaling \$3 million in settlement of unfair labor practice cases pending since 2001. In what Regional Director Rhonda Ley told the employees and staff was the largest settlement in Region 3's history, the Director added that the company and its employees' union, Paper, Allied Industrial, Chemical and Energy Workers International Union, Local 1-6992, had signed a new collective-bargaining agreement after many years without one, and had settled all the cases pending before the NLRB. The settlement followed a 2006 order by the NLRB, which the U.S. Second Circuit Court of Appeals enforced in June 2007. With the assistance of an NLRB ALJ, the Region, the company, and the union reached their settlement in November 2008, leading to the \$3 million distribution at the Regional office in February.

### Bernard Dalsin Manufacturing Co

An ALJ found in the General Counsel's favor in this matter, concluding that the employer, Bernard Dalsin Manufacturing, unlawfully refused to return striking employees to their jobs upon their unconditional offers to return to work. While the employer contended that it had hired permanent replacements and, under the NLRA an employer has this right, a complaint was issued under the theory that the employer had in fact hired temporary replacements and converted them to permanent status with an "independent unlawful purpose." See *Hot Shoppes, Inc.* 146 NLRB 802 (1964). Thus, while the employer

had converted the replacements to permanent status before the strikers' unconditional offers to return to work, the evidence supported a finding that the sole purpose in converting the replacements was to prevent striking employees from returning to work. In the absence of exceptions taken to the decision, the Board issued an order affirming the ALJ's decision.

### Fluor Daniel

An ALJ approved a Compliance Agreement on September 23, 2009, between Fluor Daniel, Inc., a coalition of labor unions, and Region 28 (Phoenix). The Compliance Agreement, reached after an eight-month compliance hearing, provides for the payment of \$12 million to 169 workers. Under the Compliance Agreement, Fluor Daniel, Inc. has agreed to pay \$10 million to 120 employees, primarily from Arizona and Louisiana. This complies with orders issued by the NLRB and enforced by the U. S. Court of Appeals for the Sixth Circuit in 2001 and 2003. Fluor Daniel will pay the remaining \$2 million to 49 workers, most of whom live in Kentucky. This represents Fluor Daniel's agreement to comply with a 2007 NLRB order arising out of unfair labor practice litigation in Region 26 (Memphis), which was pending in the U.S. Second Circuit Court of Appeals at the time the ALJ approved the Compliance Agreement.

### Vermont Car Wash

On September 22, 2009, the Board approved a formal settlement stipulation negotiated by Region 31 (Los Angeles) with Vermont Car Wash, Inc. and the Carwash Workers Organizing Committee. The settlement stipulation provides for the entry of a Board order and a consent judgment by any United States Court of Appeals against Vermont Car Wash, one of the largest car wash enterprises in Southern California. Resolving an unfair labor practice complaint issued by Region 31, the settlement stipulation requires Vermont Car Wash to cease making illegal threats against workers supporting union organizing efforts by the Carwash Workers Organizing Committee, affiliated with the United Steelworkers Union. It also provides approximately \$50,000 in backpay to four workers illegally discharged because of their activity on behalf of the Carwash Workers Organizing Committee. The case received substantial media attention in Los Angeles and the settlement occurs in the context of the Carwash Workers Organizing Committee's efforts to organize carwash workers throughout Southern California.

### Smithfield Packing

In 2009, Region 11 (Winston Salem) conducted an election at Smithfield Packing Co that involved a unit of approximately 4,500 employees, of which about 2,000 were exclusively Spanish speaking. A team of 14 Board agents from four Regional Offices conducted the election over two days. No objections were filed and the union was quickly certified.

## STATISTICAL HIGHLIGHTS

- The Board issued 256 decisions in contested cases in FY 2009.
- Because of the success of its pilot program, the Board made permanent in FY 2009 its Alternative Dispute Resolution (ADR) Program which assists parties in settling ULP cases pending before the Board. Settlements were reached in approximately 60 percent of the cases processed through the pilot program.
- 95.5 percent of all initial elections were conducted within 56 days of filing of the petition.
- Initial elections in union representation cases were conducted in a median of 37 days from the filing of the petition.
- Acting on the results of professional staff investigations, which produced a reasonable cause to believe unfair labor practices had been committed, Regional Offices of the NLRB issued 1,166 complaints, setting the cases for hearing.
- A 95.2 percent settlement rate was achieved in the Regional Offices in meritorious ULP cases.
- The Regional Offices won 90.1 percent of Board and ALJ ULP decisions in whole or part in FY 2009.
- A total of \$92,567,421 was recovered on behalf of employees as backpay or reimbursement of fees, dues, and fines with 2,021 employees offered reinstatement.
- The Agency received in FY 2009 124,389 inquiries through its Public Information Program.<sup>4</sup>
- Agency representatives participated in 525 outreach events during FY 2009.
- In FY 2009, the NLRB's Web site attracted 2.4 million visitors with 9.4 million page views.
- The Agency received 30,285 calls through its toll-free number in FY 2009.

<sup>4</sup> The Public Information Program provides information about the NLRB directly to individuals or entities that contact the Agency seeking assistance. In responding to these inquiries, Board Agents, acting as "Information Officers," explain the coverage of the NLRA, accept charges, or refer parties to other Federal or state agencies.



Region 21 (Los Angeles) Employees Counting Mail Ballots.

## PROGRAM PERFORMANCE



PROTECTING DEMOCRACY IN THE WORKPLACE SINCE 1935

# PERFORMANCE GOALS AND OBJECTIVES

This section of the PAR details the NLRB's efforts to meet its strategic and performance goals. The two goals of the NLRB's Strategic Plan represent the core functions of the Agency in enforcing the NLRA. These strategic goals, as fully described in this section of the PAR, translate the Agency's mission into major policy directions and are focused on the unique characteristics of the organization.

## STRATEGIC GOAL NO. 1

***Resolve all questions concerning representation impartially and promptly.***

### Objectives

The Act recognizes and expressly protects the right of employees to freely and democratically determine, through a secret-ballot election, whether they want to be represented for purposes of collective bargaining by a labor organization. In enforcing the Act, the Agency does not have a stake in the results of that election. It merely seeks to ensure that the process used to resolve such questions allows employees to express their choice in an open, uncoerced atmosphere. The NLRB strives to give sound and well-supported guidance to all parties and to the public at large with respect to representation issues. Predictable, consistent procedures have been established to better serve our customers and avoid unnecessary delays. The Agency processes representation cases promptly in order to avoid unnecessary disruptions to commerce and to minimize the potential for unlawful or objectionable conduct.

The objectives are to:

- A. Encourage voluntary election agreements by conducting an effective stipulation program.
- B. Conduct elections promptly.
- C. Issue all representation decisions in a timely manner.
- D. Afford due process under the law to all parties involved in questions concerning union representation.

### Strategies

1. Give priority in timing and resource allocation to the processing of representation cases that implicate the core objectives of the Act and are expected to have the greatest impact on the public. A core objective of the Act is to conduct

- secret ballot elections among employees to determine whether the employees wish to be represented by a union.
2. Evaluate the quality of representation casework regularly to provide the best possible service to the public.
3. Give sound and well-supported guidance to the parties, and to the public at large, on all representation issues.
4. Share best practices in representation case processing to assist Regional Offices in resolving representation case issues promptly and fairly.
5. Identify and utilize alternative decision-making procedures to expedite Board decisions in representation cases.
6. Assure that due process is accorded in representation cases by careful review of Requests for Review, Special Appeals and Hearing Officer Reports, and, where appropriate, the records in the cases.
7. Analyze and prioritize the critical workforce skills needs of the Agency and address these needs through training and effective recruitment in order to achieve Agency goals.
8. Provide an information technology environment that will give NLRB employees technology tools and access to research and professional information comparable to that of their private-sector counterparts.

## STRATEGIC GOAL NO. 2

***Investigate, prosecute, and remedy cases of unfair labor practices by employers or unions, or both, impartially and promptly.***

Certain conduct by employers and labor organizations leading to workplace conflict has been determined by Congress to burden interstate commerce and has been declared an unfair labor practice under Section 8 of the NLRA. This goal communicates the Agency's resolve to investigate charges of unfair labor practice conduct fairly and expeditiously. Where violations are found, the Agency will provide such remedial relief as would effectuate the policies of the Act, including, but not limited to, ordering reinstatement of employees; ensuring that employees are made whole, with interest; directing bargaining in good faith; and ordering a respondent to cease and desist from unlawful conduct. The Agency will give special priority to resolving disputes with the greatest impact on the public and the core objectives of the Act.



### Objectives

- A. Conduct thorough ULP investigations and issue all ULP decisions in a timely manner.
  - B. Give special priority to disputes with the greatest impact on the public and the core objectives of the Act. One of these core objectives is to prevent and remedy statutorily defined unfair labor practices by employers and unions.
  - C. Conduct effective settlement programs.
  - D. Provide prompt and appropriate remedial relief when violations are found.
  - E. Afford due process under the law to all parties involved in ULP disputes.
4. Share best practices in the processing of ULP cases to assist Regional Offices in resolving ULP issues promptly and fairly.

### Strategies

1. Take proactive steps to disseminate information and provide easily accessible facts and information to the public about the Board's jurisdiction in ULP matters and the rights and obligations of employers, employees, unions, and the Board under the Act.
  2. Evaluate the quality of ULP casework regularly in order to provide the best possible service to the public.
  3. Utilize impact analysis to provide an analytical framework for classifying ULP cases in terms of their impact on the public so as to differentiate among them in deciding both the resources and urgency to be assigned to each case.
5. Emphasize the early identification of remedial and compliance issues and potential compliance problems in merit cases; conduct all phases of litigation, including settlement, so as to maximize the likelihood of obtaining a prompt and effective remedy.
  6. Utilize injunctive proceedings to provide interim relief where there is a threat of remedial failure.
  7. Emphasize and encourage settlements as a means of promptly resolving ULP disputes at all stages of the casehandling process.
  8. Identify and utilize alternative decision-making procedures to expedite Board decisions in ULP cases.
  9. Analyze and prioritize the critical workforce skills needs of the Agency and address these needs through training and effective recruitment in order to achieve Agency goals.
  10. Provide an information technology environment that will give NLRB employees technology tools and access to research and professional information comparable to that of their private-sector counterparts.

# MEASURING PERFORMANCE

The NLRB has three overarching performance measures that support the two strategic goals. These performance measures were instituted in FY 2007 upon the updating of the NLRB's Strategic Plan.

The NLRB is an agency with a long history of performance measurement that dates back to before Congress passed the Government and Performance Results Act (GPRA). Traditionally, the NLRB's performance measurement approach was to emphasize individual segments of case processing to promote timely, efficient, and well-managed casehandling. These measures are still used by the NLRB as internal guides in assessing performance. The three overarching performance measures introduced in FY 2007 emphasize outcomes, and best serve to answer the question most important to the public: What is the Agency's overall success in bringing effective resolution to labor disputes in a timely manner?

However, as the measures are discussed, it should be noted that it is difficult for an Agency such as the NLRB to measure "outcomes" in the sense intended by the authors of GPRA. In the representation case area, for instance, the Agency does not control or seek to influence the results of elections, but strives instead to ensure the rights of employees to freely and democratically determine, through a secret ballot election, whether they wish to be represented by a labor organization. If the Agency concludes that all of the necessary requirements for the conduct of an election have been met, it will either direct an election or approve the parties' agreement to have an election. The performance measure the Agency has established for the conduct of elections is objective and is not dependent on the results of the election. The true outcome of properly conducted elections is employees, employers, and unions voluntarily and freely exercising their statutory rights as set out in the NLRA.

The same difficulty is inherent in any attempt to define "outcomes" in the prevention of unfair labor practice conduct. The aim of the Agency is to prevent industrial strife and unrest that burdens the free flow of commerce. An indicator of success in the achievement of this aim is labor peace. In the absence of a mechanism to accurately gauge "labor peace" or the impact of Agency activities among a range of variables influencing that goal, the NLRB established two performance measures. In particular, the timeliness and quality of case processing, from the filing of an ULP charge to the closing of a case upon compliance with a litigated or agreed-to remedy, are the focus of those performance measures.

The tables in this section show the proposed annual targets for the three overarching measures for the five-year period covered by the current Strategic Plan (2007-2012), and the actual results achieved for FY 2007, FY 2008, and FY 2009, because those are the only three years for which actual data is available.

**GOAL NO. 1: Resolve all questions concerning representation impartially and promptly.**

**MEASURE NO. 1: The percentage of representation cases resolved within 100 days of filing of the election petition.**

An employer, labor organization, or group of employees may file a petition in an NLRB Regional Office requesting an election to determine whether a majority of employees in an appropriate bargaining unit wish to be represented by a labor organization. When a petition is filed, the Agency works with parties toward a goal of reaching a voluntary agreement regarding the conduction of an election. However, if a voluntary agreement is not reached, the Director of the Regional Office, after a hearing is conducted, will determine whether to conduct an election and the details of the election. The parties have a right to appeal to the Board the Director's decision. This measure reflects the percentage of representation cases closed within 100 days.

Representation cases are resolved and closed in a number of ways:

- Cases may be dismissed before an election is scheduled or conducted. Dismissals at an early stage in processing may be based on a variety of reasons: For example, the employer does not meet the Agency's jurisdictional standards; the petitioner fails to provide an adequate showing of interest to support the petition; and/or the petition was filed in an untimely manner.
- Cases may also be withdrawn by the petitioner for a variety of reasons including the lack of support among the bargaining unit and/or failure to obtain an adequate showing of interest.
- The majority of cases are resolved upon either a certification of representative (the union prevails in the election) or a certification of results (the union loses the election).
- In a small percentage of cases, there are post-election challenges or objections to the election. These cases are not considered resolved and the case is not closed until the challenges and/or objections have been investigated either administratively or by a hearing and a report that has been adopted by the Board.

In FY 2009, the Agency closed 84.4 percent of its representation cases within 100 days of the filing of a petition, a 0.9 percent increase over FY 2008's results. The Agency exceeded the interim goal of 81 percent by 3.4 percent, and it appears well-positioned to achieve its 5-year goal of 85.2 percent.

### GOAL NO. 1, TABLE 1

Percentage of Representation Cases Resolved Within 100 Days

YEAR	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
TARGET	79.0%	80.0%	81.0%	82.5%	84.0%	85.2%
ACTUAL	79.0%	83.5%	84.4%			

Counting of days: The 100 days is calculated from the date the petition is docketed.

**GOAL NO. 2: Investigate, prosecute, and remedy cases of unfair labor practices by employers or unions or both, impartially and promptly.**

**MEASURE NO. 2: The percentage of ULP charges resolved by withdrawal, by dismissal, or by closing upon compliance with a settlement or Board order or Court judgment within 120 days of the filing of the charge.**

A ULP case is resolved and closed when it has been finally processed. The issues raised by the charging party's charge have been answered and, where appropriate, remedied. There is no further action to be taken by the Agency.

In FY 2009, the NLRB closed 71 percent of all ULP cases within 120 days of the docketing of the charge, an increase of 3 percent over the FY 2008 achievement of 68 percent. The Agency also exceeded the FY 2009 goal of 68.5 percent by 2.5 percent. As evidenced by the last two year's performance, the NLRB is confident that it will meet the long-term target of 72.0 percent.

### GOAL NO. 2, TABLE 2

Percentage of ULP Charges Resolved Within 120 Days

YEAR	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
TARGET	67.5%	68.0%	68.5%	70.0%	71.0%	72.0%
ACTUAL	66.0%	68.0%	71.0%			

Counting of days: The 120 days is calculated from the date the charge is docketed.

**MEASURE NO. 3: The percentage of meritorious (prosecutable) ULP cases closed on compliance within 365 days of the filing of the ULP charge.**

This measure focuses on meritorious (prosecutable) ULP cases, and the time taken to close them on compliance, including time spent on both the General Counsel and Board sides. Compliance marks the point where an employer or union has ceased engaging in the ULP conduct being prosecuted and has taken appropriate affirmative action, including the payment of backpay, to make whole those injured by the unfair labor practice.

Once a Regional Director has determined an ULP charge has merit, it is scheduled for a hearing date before an administrative law judge. However, efforts to obtain voluntary compliance or appropriate settlements begin immediately and continue throughout the course of any necessary litigation. Most settlements are achieved before trial. Once the ALJ issues a decision, the decision can then be appealed to the Board. The Board, in turn, will consider the case and issue a final order resolving the ULP case. Ordinarily, the Regional Office will attempt to secure compliance in the 30-day period following the Board's order. If compliance cannot be obtained, the Region will refer the case to the Appellate and Supreme Court Litigation Branch of the Division of Enforcement Litigation, which, if it is unable to secure voluntary compliance or a settlement meeting established standards, will proceed to seek a judgment from an appropriate U.S. Court of Appeals enforcing the Board's order.

Following final court judgment, any disagreements about what steps are necessary before the case can be closed on compliance are resolved either in compliance proceedings before the Board and reviewing court proceedings, or in extreme cases, in contempt of court proceedings.

ULP cases are closed on compliance when the remedial actions ordered by the Board or agreed to by the party charged with the violation of the NLRA are complete. This measure includes all litigated cases including those appealed to the circuit courts of appeals.

In FY 2009, the NLRB closed 79.7 percent of all prosecutable ULP cases in 365 days from the docketing of the charge. Thus, the Agency exceeded the interim goal of 75.5 percent by 4.2 percent. It was also a 3.7 percent increase over the actual results achieved in FY 2008. Assuming continued stability in resources and intake, it is anticipated that the Agency will be able to meet the long-term target of 80.3 percent in FY 2012.

**GOAL NO. 2, TABLE 3**

Percentage of ULP Cases Closed on Compliance Within 365 Days

YEAR	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
TARGET	74.0%	75.0%	75.5%	80.0%	80.2%	80.3%
ACTUAL	73.5%	76.0%	79.7%			

Counting of days: The 365 days is calculated from the date the charge is docketed.



## FACTORS AFFECTING AGENCY PERFORMANCE

Various factors can affect each goal, objective, and performance measure contained in the NLRB's strategic and annual performance plans. These factors can also affect Agency performance as a whole. These factors include the following:

### BUDGET

In FY 2009, the NLRB's budget was \$262.595 million, which represented an increase of \$10.83 million over the funding provided in FY 2008. This was the largest increase the NLRB had received since FY 2003. However, the full appropriation amount was not received until March 2009 upon passage of an omnibus spending bill and, up until that point, the NLRB operated under a Continuing Resolution (CR), which funded the Agency at its FY 2008 appropriation level of \$251.762 million. Since the NLRB only received a budget increase of \$250,000 in FY 2008, the CR funding had a significant impact on operations. Approximately 80 percent of the Agency's total budget is devoted to personnel costs, and budget shortfalls, such as those experienced by the NLRB in the past five years, and delays in receiving full funding, directly influence staffing resources and limit the Agency's ability to facilitate casehandling.

The requested funding for FY 2010, if enacted by Congress, will provide the resources necessary to cover staffing, training, space requirements, information technology, and other activities critical to handling the Agency's caseload, and ensuring continued integration and tracking of budget and performance. Our goals assume the level of funding set forth in the President's Budget request.

### Case Intake

During FY 2009, 22,941 ULP cases were filed with the NLRB, of which 36.2 percent were found to have merit, and 2,912 representation cases were filed, of which the merit factor rate was 64.2 percent. In FY 2009, the Agency's representation case intake decreased by 14.4 percent and ULP case intake increased by 1.96 percent, with overall case intake decreasing by 0.19 percent.

Based on current trends, the General Counsel estimates that the total of ULP and representation cases will remain level in FY 2010.

Several factors could affect case intake, however, thereby impacting the Agency's effectiveness in accomplishing its strategic goals. As noted, the Agency does not control the number of cases filed. However, any event or issue that affects labor can spur potential union organizing, possibly resulting in an increase in caseload. Factors such as immigration

reform or focused organizing drives in protected communities or industries could affect Agency caseload levels. Recent increases in union organizing among the service industries shows no sign of diminishing as organizing activities continue in the nursing home industry and among janitorial staffs. Furthermore, the passage of new labor law legislation, such as the Employee Free Choice Act bill currently pending in Congress, would most likely result in an even greater increase in case intake.

Additional factors that could affect the NLRB's intake and the complexity of its work include: public perception about unionization and the role of the Agency, employment trends, stakeholder strategies, globalization of the economy, industrial economic trends, corporate reorganizations and bankruptcies, the overall health of the nation's economy, the level of labor-management cooperation efforts, and statutory changes. Also, as noted earlier, three nominations are currently pending in the Senate for three Board Members which, when they are confirmed, would for the first time in almost two years give the Board a full complement of five members. Historical trends show that Agency case intake increases when there is a new Board.

### SETTLEMENTS

Currently, of those cases in which merit is found, approximately 95 percent are settled without formal litigation. Cases are settled through the Agency's settlement program, by which the parties agree to a remedy and thereby avoid time-consuming and costly litigation. While the Agency has experienced outstanding success in achieving the voluntary resolution of ULP and representation cases, the settlement rate is, of course, not entirely subject to the Agency's control.

Disputes cannot always be resolved informally or in an expeditious manner. Parties may conclude that litigation serves their legitimate and/or tactical interests. The Agency's procedures provide for administrative hearings, briefs, and appeals. When the process becomes formal and litigation takes over, Agency costs increase. Every one-percent drop in the settlement rate costs the Agency more than \$2 million. Therefore, maintaining high settlement rates promotes performance, efficiency, and cost savings.

### BOARD MEMBER VACANCIES

Another factor outside the control of the Agency that impacts case production is the failure of the Senate to confirm Presidential appointees to Board Member positions, or to permit recess appointments, causing prolonged vacancies on the Board. As a result, the assigned caseload of individual Board Members increases and decisions can be delayed.

Board Member vacancies are the primary reason for delays in issuance of Board decisions. The lack of a full-Board complement impairs Board productivity.

Since January 2008, the Board has operated as a two-member quorum with Chairman Wilma B. Liebman and Board Member Peter C. Schaumber.<sup>5</sup> While the Board has issued approximately 500 decisions during this period, the lack of a full Board, or even a three-member Board panel, prevented issuance of decisions in approximately 20-25 percent of cases. Also, there have been challenges in the courts to the authority of the two-Member Board. Depending on the outcome in the

courts, the productivity of the Board could be further impacted. Affected case decisions may have to be reconsidered and those cases would have to wait until such time as there is a full complement of Board Members or, at the very least, one more Board Member, to allow the Board to operate as a three-member panel as permitted by the NLRA.

Pending in the Senate are nominations to fill the three vacancies currently on the Board. Nominated on July 9, 2009 by President Obama were Harold C. Becker, Brian E. Hayes, and Mark G. Pearce.

<sup>5</sup> The term of former Chairman Robert J. Battista expired on December 16, 2007, and the recess appointments of former Board Members Dennis P. Walsh and Peter C. Kirsanow ended upon the adjournment of Congress on December 31, 2007. Board Member Peter C. Schaumber served as Chairman of the NLRB from March 2008 until January 2009. Board Member Wilma B. Liebman was designated as Chairman by President Obama on January 20, 2009.

## RELIABILITY OF PERFORMANCE DATA

The NLRB's performance measurement system used to track case processing times has been highly regarded for decades and modeled by other federal agencies. Most of the data collected tracks how much time is spent in each step of the case processing "pipeline." The Agency does not rely on any outside sources for the data it uses in its performance measurement system.

This system has been incorporated into an electronic database called the Case Activity Tracking System (CATS). CATS provides case activity and status information to all NLRB offices on the new cases filed each year, as well as cases carried over from the previous year. It provides support for the function and work requirements of the NLRB's attorneys, field examiners, managers, and support staff. CATS has been a key tool for managing caseload and human resources.

Each NLRB office is responsible for collecting performance measurement data and verifying it. Most of the performance information for the GPRA measures is obtained through the CATS data generated to assess the casehandling process initiated in the Regional Offices. Data about each case is

collected and reported in all offices daily. Data and reports are available online to users at the Regional and National levels. Verification of the accuracy of the data collected occurs regularly in all Regional Offices, as most resource allocation decisions are made on the basis of this data. The Board maintains its own case management system, supported by Documentum, called the Judicial Case Management System, which handles all internal case processing, including the storage, circulation, and approval of documents.

In Headquarters offices there are several other automated systems that furnish data for the performance measures of the Headquarters offices and aid in managing caseload and staff in those offices. Systemic verification occurs monthly during management reviews and during various phases of the budget and GPRA reporting cycles. Data is cross-checked and compared to historical trends to ensure the validity and reliability of the performance data.

When pertinent to the conduct of ongoing audit activities, the Inspector General will review performance measures to consider their appropriateness.

# PROGRAM EVALUATION

The NLRB evaluates whether programs are achieving their GPRA and other performance targets through various techniques and mechanisms. The Board regularly tracks the status of all of its cases to determine performance against yearly targets that support the Agency's overarching measures and strategic goals. A standing committee (Triage Committee) composed of senior management officials meets weekly to review the status of cases that have entered the issuance process, plus other cases that are likely to require special handling. Triage representatives report back to the Board Members on performance data and staff workload, among other issues. The Board has an electronic casehandling management system that captures all case events in a database from which reports are generated. The Board Members also regularly meet and communicate with each other to discuss cases.

The NLRB also tracks how the various circuit courts have treated the Board's cases on appeal. Over the past several years the Agency's enforcement rate has been among the highest in its history. This trend continued in FY 2009. During that period, the United States Courts of Appeals decided 61 enforcement and review cases involving the Board, compared with 72 in FY 2008. Of these cases, 88.5 percent of Board decisions were enforced in full or in part and 78.7 percent were enforced in full. In FY 2009, 6.6 percent of enforcement and review cases were remanded entirely, compared with 4.2 percent in FY 2008.

Further, the General Counsel has had an evaluation program in place for many years to assess the performance of its Regional operations. The Quality Review Program of the Division of Operations-Management reviews ULP, representation, and compliance case files annually to ensure that they are processed in accordance with substantive and procedural requirements, and that the General Counsel's policies are implemented appropriately. Those reviews have

assessed, among other things, the quality and completeness of the investigative file, the implementation of the General Counsel's priorities in the areas of representation cases, Impact Analysis prioritization of cases, and compliance with Agency decisions. Additionally, personnel from the Division of Operations-Management review all complaints issued in the Regions to ensure that pleadings are correct and supported. They also conduct site visits during which they evaluate Regional casehandling and administrative procedures. In addition, to assess the quality of litigation a field and Operations-Management Committee reviews all ALJ and Board decisions that constitute a significant loss. Moreover, the Regional Offices' performance with regard to quality, timeliness, and effectiveness in implementing the General Counsel's priorities is incorporated into the Regional Directors' annual performance appraisals.

The Division of Operations-Management regularly reviews case decisions to determine the quality of litigation. Other branches and offices, such as the Office of Appeals, Division of Advice, Contempt Litigation and Compliance Branch, and Office of Representation Appeals, provide valuable insight and constructive feedback on the performance and contributions of field offices. Top Agency management also meets regularly with relevant committees of the American Bar Association to obtain feedback on their members' experiences practicing before the NLRB.

In addition to the evaluation of Regional Office activities, the Office of the General Counsel monitors the litigation success rate before the Board and before district courts with regard to injunction litigation. The success rate before the Board has been approximately 86.7 percent and before the district courts has been 85 to 90 percent.



FINANCIAL SECTION



PROTECTING DEMOCRACY IN THE WORKPLACE SINCE 1935



## LETTER FROM THE DIRECTOR OF ADMINISTRATION

**Gloria Joseph**  
**Director of Administration**

As the Director of Administration for the National Labor Relations Board (NLRB), I am pleased to present the NLRB's financial statements for fiscal year 2009 and to note that for FY 2009 the NLRB received an unqualified opinion from the auditors on its financial statements. Such an opinion reinforces the stewardship principles to which we strive to adhere in the management of the taxpayer dollars entrusted to us. The financial statements presented here represent a fair and accurate financial picture of the NLRB and reflect our commitment to those principles.

The NLRB obtains the majority of its financial systems services (accounting, payroll, and personnel) through the Department of the Interior's National Business Center (NBC). The NLRB upgraded its accounting system to NBC's Momentum Financials in FY 2004. Over several years, we have encountered a number of problems with NBC in connection with Momentum related to costs and the level of service provided. We considered moving to another shared service provider. However, based on the direct cost of shifting to a new service provider and/or changing systems, as well as the indirect cost of the human resources involved, we decided to remain with NBC. We continue to work with the provider to resolve issues, pursue a better and more predictable cost model, and manage the system vendor's expectations and financial demands. Meanwhile, we have had to abandon an aging version of Momentum that no longer meets the requirements of the National Institute of Standards and Technology (NIST) and invested in an upgrade to a current version of Momentum. We will continue to press our case with the service provider to fulfill the promise of shared services as a way to contain costs and enhance services to the government, by providing its clients with dependable corporate financial systems.

In the FY 2008 audit, the NLRB's Office of the Inspector General issued a management letter which contained three findings, one that involved IT-related findings from previous financial audits and two new findings. The two new findings involved compliance with a Federal Acquisition Regulation and the incremental funding of non-severable contracts. Both the Office of the Chief Information Officer and the Division of Administration worked throughout FY 2009 to address the recommendations contained in the management letter, and the auditors have monitored progress throughout the year as we implemented solutions to meet those recommendations.

In FY 2008, the Office of Management and Budget issued guidance through its Office of Federal Procurement Policy on conducting an internal controls review of agencies' procurement functions. While the NLRB, as a non-CFO Act agency, was not required to conduct a formal assessment, we did reevaluate the procurement function and its organizational placement within the Agency. Based on this evaluation, the new Acquisitions Management Branch was established within the Division of Administration with the single mission of managing contracting and procurement for the Agency. Over the years, federal procurement has

become an increasingly complex and mission-critical function. The NLRB, like most agencies, has found it needs a highly-trained and motivated staff to procure the goods and services required to accomplish the mission of the Agency. This is especially true as the Agency devotes more funding to procuring IT-related equipment and services. Having a single office committed solely to the procurement function standardizes and institutionalizes processes and is in keeping with the concept of strong internal controls as required by the Federal Managers' Financial Integrity Act. We are very pleased with the results of the collaboration of our financial team members, both seasoned and new, who, in implementing these organizational changes, have demonstrated a commitment to continued excellence.

As the Agency approaches its 75th anniversary, we continue, with responsible stewardship and committed leadership, to manage and thus maximize our resources to strengthen and support the mission of the NLRB – protecting democracy in the workplace.

A handwritten signature in black ink, appearing to read "Gloria Joseph". The signature is fluid and cursive, with the first name "Gloria" written in a larger, more prominent script than the last name "Joseph".

Gloria Joseph  
Director of Administration

# INDEPENDENT AUDITOR'S REPORT

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



## Memorandum

November 5, 2009

To: Wilma B. Liebman  
 Chairman

From: David P. Berry *D-1PE-y*  
 Inspector General

Subject: Audit of the National Labor Relations Board Fiscal Year 2009 Financial Statements  
 (OIG-F-14-10-01)

This memorandum transmits Carmichael, Brasher, Tuvell & Company's (CBTC) audit report on the National Labor Relations Board (NLRB) Fiscal Year (FY) 2009 Financial Statements.

The Accountability of Tax Dollars Act of 2002 requires the NLRB to prepare and submit to Congress and the Director of the Office of Management and Budget (OMB) annual audited financial statements. We contracted with CBTC, an independent public accounting firm, to audit the financial statements. The contract required that the audit be done in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States and Bulletin 07-04, *Audit Requirements for Federal Financial Statements*, issued by OMB.

### Results of Independent Audit

CBTC issued an unqualified opinion on the NLRB FY 2009 financial statements. CBTC previously issued an unqualified audit opinion on the FY 2008 information included with the consolidated statements. CBTC is not required to and did not provide an opinion on internal control. In its audit report, CBTC did not identify any significant deficiencies. A significant deficiency is a deficiency in internal control, or a combination of deficiencies, that adversely affects the Agency's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the Agency's financial statements that is more than inconsequential will not be prevented or detected.

CBTC also reported that the Agency did not adhere to the *bona fide* needs rule (31 U.S.C. § 1502) when the NLRB's Division of Administration purchased \$250,000 of postage on September 29, 2009. The Director of Administration, in her comments to the audit report, stated



that she believed that the purchase of the postage was prudent and consistent with sound business practice. The Director's response, dated November 4, 2009, follows CBTC's report.

#### **Evaluation of CBTC's Audit Performance**

In connection with the contract, we reviewed CBTC's report and related documentation and inquired of its representatives. Our review, as differentiated from an audit in accordance with generally accepted government auditing standards, was not intended to enable us to express, and we do not express, opinions on the NLRB's financial statements or internal control or conclusions on compliance with laws and regulations. CBTC is responsible for the attached auditor's report dated November 4, 2009, and the conclusions expressed in the report. However, our review disclosed no instances where CBTC did not comply, in all material respects, with generally accepted government auditing standards.

The Office of Inspector General appreciates the courtesies and cooperation extended to CBTC and our staff during the audit. If you have any questions, please contact me or Emil T. George, Assistant Inspector General for Audits.

Attachments

cc: General Counsel

**INDEPENDENT AUDITORS' REPORT**

To David P. Berry, Inspector General  
National Labor Relations Board

The Accountability of Tax Dollars Act of 2002 made the National Labor Relations Board (NLRB) subject to the annual financial statement reporting requirements of the Chief Financial Officers Act of 1990, which requires agencies to report annually to Congress on their financial status and any other information needed to fairly present the agencies' financial position and results of operations.

The objectives of the audit are to express an opinion on the fair presentation of NLRB's principal financial statements, obtain an understanding of the Agency's internal control, and test compliance with laws and regulations that could have a direct and material effect on the financial statements.

We have audited the balance sheets of NLRB as of September 30, 2009 and 2008, and the related consolidated statements of net cost, changes in net position, and budgetary resources for the years then ended.

NLRB's management is responsible for preparing the financial statements in conformity with accounting principles generally accepted in the United States of America; establishing, maintaining, and assessing internal controls over financial reporting; preparing the Management's Discussion and Analysis (MD&A); and complying with laws and regulations.

Our responsibility is to express an opinion on the Fiscal Year (FY) 2009 and 2008 financial statements of NLRB based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 07-04, *Audit Requirements for Federal Financial Statements*. These standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatements. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

As described in Note 3 to the financial statements, NLRB has adopted Statement of Federal Financial Accounting Standards (SFFAS) 31, *Accounting for Fiduciary Activities*, which states fiduciary activities are no longer to be reported on the financial statements but are required to be reported on schedules in the notes to the financial statements. The previous year's financial statements have not been restated in accordance with paragraph 9 of SFFAS 31 because comparative information is not required.

## **OPINION ON FINANCIAL STATEMENTS**

In our opinion, the financial statements referred to above present fairly, in all material respects, the assets, liabilities, and net position of NLRB, as of September 30, 2009 and 2008; and the net cost, changes in net position, and budgetary resources for the years then ended in conformity with accounting principles generally accepted in the United States of America.

## **REPORT ON INTERNAL CONTROL**

In planning and performing our audit, we considered NLRB's internal control over financial reporting by obtaining an understanding of the design effectiveness of its internal controls, determined whether internal controls had been placed in operation, assessed control risk, and performed tests of controls as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements. We limited our internal control testing to those controls necessary to achieve the objectives described in OMB Bulletin No. 07-04. We did not test all internal controls relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982, such as those controls relevant to ensuring efficient operations. The objective of our audit was not to provide assurance on internal control or on the effectiveness of NLRB's internal control. Because of inherent limitations in internal control, misstatements due to error or fraud, losses, or noncompliance may nevertheless occur and not be detected. Consequently, we do not provide an opinion on the effectiveness of NLRB's internal control.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected by the entity's internal control.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the entity's internal control.

Our consideration of internal control was for the limited purpose described above and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control that we consider to be material weaknesses, as defined above. However, we identified certain other matters in internal control that came to our attention during our audit which we communicated in writing to management and those charged with governance.

We considered NLRB's internal control over Required Supplementary Information (RSI) by obtaining an understanding of the Agency's internal control, determining whether these internal controls had been placed in operation, assessing control risk, and performing tests of controls as required by OMB Bulletin No. 07-04. The objective of our audit was not to provide assurance on these internal controls. Accordingly, we do not provide an opinion on such controls.

## REPORT ON COMPLIANCE WITH LAWS AND REGULATIONS

As part of obtaining reasonable assurance about whether the Agency's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts, and certain other laws and regulations specified in OMB Bulletin No. 07-04. We limited our tests of compliance to these provisions and we did not test compliance with all laws and regulations applicable to NLRB. We caution that noncompliance may occur and not be detected by these tests and that such testing may not be sufficient for other purposes.

Our tests of compliance with certain provisions of laws and regulations discussed in the preceding paragraph disclosed the following instance of noncompliance required to be reported under U. S. generally accepted government auditing standards and OMB audit guidance.

NLRB did not adhere to the *bona fide* needs rule (31 U.S.C. § 1502) when NLRB's Division of Administration purchased \$250,000.00 of postage on September 29, 2009. The postage purchase was not necessary to meet the need of FY 2009 nor was it necessary to avoid a disruption of the NLRB's operations. The amount of postage purchased at year end was unreasonable and was therefore excessive.

**U. S. Code, Title 31, Section 1502(a)** states "The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title. However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law."

Except as noted above, our tests of compliance with selected provisions of laws and regulations disclosed no other instances of noncompliance that would be reportable under U. S. generally accepted government auditing standards or OMB audit guidance.

Providing an opinion on compliance with laws and regulations was not an objective of our audit and, accordingly, we do not express such an opinion.

## OTHER ACCOMPANYING INFORMATION

Our audit was conducted for the purpose of forming an opinion on the financial statements of NLRB taken as a whole. The accompanying financial information is not a required part of the financial statements.

The other accompanying information included in the MD&A and RSI sections of the Performance and Accountability Report are required by the Federal Accounting Standards Advisory Board and OMB Circular A-136, *Financial Reporting Requirements*. We have applied limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the information. We did not audit the other accompanying information and, accordingly, do not express an opinion or any other form of assurance on it.

This communication is intended solely for the information and use of the management of NLRB, others within the organization, OMB, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

CARMICHAEL, BRASHER, TUVELL & COMPANY, PC

*Carmichael, Brasher, Tuvell + Co., P.C.*

Atlanta, Georgia  
November 4, 2009

## NLRB RESPONSE

**UNITED STATES GOVERNMENT**  
**National Labor Relations Board**  
**Division of Administration**  
Memorandum



TO: David P. Berry  
Inspector General

FROM: Gloria Joseph  
Director of Administration

DATE: November 4, 2009

SUBJECT: Response to Audit Report – NLRB Fiscal Year 2009 Financial Statements

We have reviewed the Audit Report submitted by Carmichael Brasher Tuvell & Company (Carmichael) and are pleased that the FY 2009 audit of the NLRB's financial statements has resulted in an unqualified opinion with no recommendations for corrective actions. Per your memo dated November 4, 2009, you indicated that, as part of my response, I could comment on other aspects of the report. My comments follow below.

While the audit did result in an unqualified opinion, Carmichael did note in its audit report its conclusion that the NLRB was noncompliant with the *bona fide* needs rule (31 U.S.C. §1502) when it purchased on September 29, 2009, \$250,000 in postage. I disagree with this conclusion.

It has been the practice of the Agency to add funds to the postage account toward the end of the fiscal year. This year was no different in that regard. In determining the amount of postage to be added at the end of fiscal year 2009, the following factors were considered: The amounts added in previous years; possible mail ballot elections in the field; the possibility of a postage increase; and funding availability.

Moreover, in addition to the factors noted above, which would be variables in any year, we also considered the impact of an impending expansion of the Board, which historically increases the Agency's workload and which, in turn, has a direct and predictable impact on the administrative services in support of that workload.

Accordingly, a figure of \$250,000 appearing as a planned expenditure in late FY 2009 for mail metering in FY 2010, even absent the other factors, appeared to be reasonably justified as a *bona fide* need and was, as a category of expenditure, entirely routine. In making this decision, managers in the Division of Administration drew upon their experience, past practice, and the anticipation of the effect of external factors outside of their control in making an informed decision about the appropriate level of funding of

Page Two  
David P. Berry

postage in FY 2010. While I appreciate the auditors' perspective on the issue, I believe that management's actions were prudent and consistent with sound business practice.

If you have any questions, please do not hesitate to contact me.

cc: Board  
General Counsel

# PRINCIPAL FINANCIAL STATEMENTS

<b>National Labor Relations Board</b>		
Balance Sheet		
As of September 30, 2009 and 2008		
( in dollars )		
	FY 2009	FY 2008
<b>Assets:</b>		
Intragovernmental:		
Fund balance with Treasury (Note 2)	\$ 27,295,075	\$ 24,894,658
Investments, net (Note 3)	–	4,349,913
Advances (Note 4)	276,086	968
<b>Total Intragovernmental</b>	<b>27,571,161</b>	<b>29,245,539</b>
Accounts receivable, net (Note 5)	36,307	43,450
General property, plant and equipment, net (Note 6 and 10)	10,180,286	8,910,658
<b>Total Assets</b>	<b>\$ 37,787,754</b>	<b>\$ 38,199,647</b>
<b>Liabilities:</b>		
Intragovernmental:		
Accounts payable (Note 7)	1,439,222	\$ 999,354
Employer contributions and payroll taxes	1,888,037	1,658,122
FECA liability (Note 8 and 10)	785,013	930,545
Other	151,222	–
<b>Total Intragovernmental</b>	<b>4,263,494</b>	<b>3,588,021</b>
Accounts payable:	\$ 5,311,634	\$ 2,737,933
Estimated future FECA liability (Note 8 and 10)	2,511,450	1,666,412
Accrued payroll and benefits	8,089,841	7,255,123
Accrued annual leave (Note 8 and 10)	14,691,885	13,687,550
Backpay settlement due to others (Note 3, 8 and 9)	–	7,338,443
Custodial liability (Note 8 and 9)	–	96,366
<b>Total Liabilities</b>	<b>\$ 34,868,304</b>	<b>\$ 36,369,848</b>
<b>Net position:</b>		
Unexpended appropriations	10,691,205	9,160,197
Cumulative results of operations (Note 10)	(7,771,755)	(7,330,398)
<b>Total Net Position</b>	<b>2,919,450</b>	<b>1,829,799</b>
<b>Total Liabilities and Net Position</b>	<b>\$ 37,787,754</b>	<b>\$ 38,199,647</b>

The accompanying footnotes are an integral part of these financial statements.



<b>National Labor Relations Board</b>		
Statement of Net Cost		
For the Periods Ended September 30, 2009 and 2008		
<i>( in dollars )</i>		
	FY 2009	FY 2008
<b>Program Costs:</b>		
<b>Resolve Representation Cases</b>		
<b>Total Gross Cost</b>	\$ 45,368,125	\$ 42,766,870
<b>Resolve Unfair Labor Practices</b>		
<b>Total Gross Cost</b>	\$231,417,384	\$218,126,327
<b>Other:</b>		
Gross Costs	132,918	102,764
Less: Earned Revenue	132,918	102,764
<b>Total Net Cost – Other</b>	–	–
<b>Net Cost of Operations (Note 11)</b>	\$ 276,785,509	\$ 260,893,197

The accompanying footnotes are an integral part of these financial statements.

<b>National Labor Relations Board</b>		
Statement of Changes In Net Position		
For the Periods Ended September 30, 2009 and 2008		
<i>( in dollars )</i>		
	FY 2009	FY 2008
<b>Cumulative Results of Operations:</b>		
Beginning Balance	\$ (7,330,398)	\$ (10,669,600)
<b>Budgetary Financing Sources:</b>		
Appropriations-used	260,063,478	249,805,059
<b>Other Financing Sources (Non-Exchange):</b>		
Imputed financing costs (Note 13)	16,280,674	14,427,340
<b>Total Financing Sources</b>	<b>276,344,152</b>	<b>264,232,399</b>
Net Cost of Operations	(276,785,509)	(260,893,197)
<b>Net Change</b>	<b>(441,357)</b>	<b>3,339,202</b>
<b>Cumulative Results of Operations (Note 10)</b>	<b>(7,771,755 )</b>	<b>(7,330,398)</b>
<b>Unexpended Appropriations:</b>		
Beginning Balance	9,160,197	8,907,172
<b>Budgetary Financing Sources:</b>		
Appropriations-received	262,595,000	256,238,000
Appropriations-used	(260,063,478)	(249,805,059)
Recissions & cancelled appropriations	(1,000,514)	(6,179,916)
<b>Total Budgetary Financing Sources</b>	<b>1,531,008</b>	<b>253,025</b>
<b>Total Unexpended Appropriations</b>	<b>10,691,205</b>	<b>9,160,198</b>
<b>Net Position</b>	<b>\$ 2,919,450</b>	<b>\$ 1,829,799</b>

The accompanying footnotes are an integral part of these financial statements.

**National Labor Relations Board**  
**Statement of Budgetary Resources**  
For the Periods Ended September 30, 2009 and 2008  
*(in dollars)*

	FY 2009	FY 2008
<b>Budgetary Resources:</b>		
Unobligated balance, brought forward, October 1:	\$ 4,610,732	\$ 5,360,240
Recoveries of prior year unpaid obligations	840,433	704,286
<b>Budget authority:</b>		
Appropriations (Note 14)	262,595,000	256,238,000
Spending authority from offsetting collections:		
Earned	—	—
Collected	216,802	173,502
Subtotal	262,811,802	256,411,502
Permanently not available (Note 14)	(1,000,514)	(6,179,916)
<b>Total Budgetary Resources (Note 15)</b>	<b>\$267,262,453</b>	<b>\$ 256,296,112</b>
<b>Status of Budgetary Resources:</b>		
<b>Obligations incurred:</b>		
Direct	\$262,958,149	\$251,582,616
Reimbursable	132,735	102,764
Subtotal (Note 15)	\$263,090,884	\$251,685,380
<b>Unobligated balance:</b>		
Apportioned (Note 15)	336,774	543,715
Unobligated balance not available	3,834,795	4,067,017
<b>Total Status of Budgetary Resources</b>	<b>\$267,262,453</b>	<b>\$256,296,112</b>
<b>Change in Obligated Balance:</b>		
Obligated balance, brought forward, October 1:	\$ 17,199,031	\$ 16,348,138
Obligations incurred, net	263,090,884	251,685,380
Gross Outlays	(256,477,197)	(250,130,201)
Recoveries of prior year unpaid obligations, actual	(840,433)	(704,286)
<b>Obligated balance, net, end of period:</b>	<b>\$ 22,972,285</b>	<b>\$ 17,199,031</b>
<b>Net Outlays:</b>		
Gross outlays	256,477,197	250,130,201
Offsetting collections	(216,802)	(173,502)
<b>Net Outlays</b>	<b>\$256,260,395</b>	<b>\$249,956,699</b>

The accompanying footnotes are an integral part of these financial statements.

# NOTES TO PRINCIPAL STATEMENTS

## NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

### A. Reporting Entity

The National Labor Relations Board (NLRB) is an independent federal agency established in 1935 to administer the National Labor Relations Act (NLRA). The NLRA is the principal labor relations law of the United States, and its provisions generally apply to private sector enterprises engaged in, or to activities affecting, interstate commerce. The NLRB's jurisdiction includes the U.S. Postal Service (other government entities, railroads, and airlines are not within the NLRB's jurisdiction). The NLRB seeks to serve the public interest by reducing interruptions in commerce caused by industrial strife. The NLRB does this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The NLRB has two principal functions: (1) to determine and implement, through secret ballot elections, free democratic choice by employees as to whether they wish to be represented by a union in dealing with their employers and, if so, by which union; and (2) to prevent and remedy unlawful acts, called unfair labor practices (ULP), by either employers, unions, or both. The NLRB's authority is divided both by law and delegation. The five-member Board (Board) primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel investigates and prosecutes ULP before administrative law judges, whose decisions may be appealed to the Board; and, on behalf of the Board, conducts secret ballot elections to determine whether employees wish to be represented by a union.

### B. Basis of Accounting and Presentation

These financial statements have been prepared to report the financial position, net cost, changes in net position, and budgetary resources of the NLRB as required by the Accountability of Tax Dollars Act of 2002. These financial statements have been prepared from the books and records of the NLRB in accordance with accounting principles generally

accepted in the United States of America (GAAP), and the form and content requirements of the Office of Management and Budget (OMB) Circular No. A-136, *Financial Reporting Requirements, revised as of June 10, 2009*. GAAP for federal entities are the standards prescribed by the Federal Accounting Standards Advisory Board (FASAB), which is the official standard-setting body for the federal government. While the statements have been prepared from the books and records of the NLRB in accordance with GAAP for federal entities and the formats prescribed by OMB, the statements are in addition to the financial reports used to monitor and control budgetary resources which are prepared from the same books and records. These financial statements present proprietary and budgetary information.

The Balance Sheet presents agency assets and liabilities, and the difference between the two, which is the agency net position. Agency assets include both entity assets—those which are available for use by the agency—and non-entity assets—those which are managed by the agency but not available for use in its operations. Agency liabilities include both those covered by budgetary resources (funded) and those not covered by budgetary resources (unfunded). Effective for period beginning after September 30, 2008, the investments made for backpay funds will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide information about its fiduciary activities. See Note 1F, Fiduciary Activities, for additional information.

The Statement of Net Cost presents the gross costs of programs less earned revenue to arrive at the net cost of operations for both programs and for the Agency as a whole.

The Statement of Changes in Net Position reports beginning balances, budgetary and other financing sources, and net cost of operations, to arrive at ending balances.

The Statement of Budgetary Resources provides information about how budgetary resources were made available as well as their status at the end of the period. Recognition and measurement of budgetary information reported on this statement is based on budget terminology, definitions, and guidance in OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget, dated August 2009*.

The Agency is required to be in substantial compliance with all applicable accounting principles and standards established, issued, and implemented by the FASAB, which is recognized by the American Institute of Certified Public Accountants (AICPA) as the entity to establish GAAP for the federal government. The Federal Financial Management Integrity Act (FFMIA) of 1996 requires the Agency to comply substantially with (1) federal financial management systems requirements, (2) applicable federal accounting standards, and (3) the U.S. Government Standard General Ledger at the transaction level.

The fiscal year (FY) 2011 Budget of the United States (also known as the President's Budget) with actual numbers for FY 2009 was not published at the time that these financial statements were issued. The President's Budget is expected to be published in February 2010 and will be available from the United States Government Printing Office. There are no differences in the actual amounts for FY 2008 that have been reported in the FY 2010 Budget of the United States and the actual numbers that appear in the FY 2008 Statement of Budgetary Resources.

OMB financial statement reporting guidelines for FY 2009 require the presentation of comparative financial statements for all of the principal financial statements. The NLRB is presenting comparative FY 2009 financial statements for the Balance Sheet, Statement of Net Cost, Statement of Changes in Net Position, and Statement of Budgetary Resources, and these statements have been prepared in accordance with generally accepted accounting principles.

The financial statements should be read with the realization that they are for a component of the United States Government, a sovereign entity. One implication of this is that liabilities cannot be liquidated without legislation that provides resources and legal authority to do so.

The accounting structure of federal agencies is designed to reflect both accrual and budgetary accounting transactions. Under the accrual method of accounting, revenues are recognized when earned, and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash.

The budgetary accounting principles, on the other hand, are designed to recognize the obligation of funds according to legal requirements, which in many cases is prior to the occurrence of an accrual based transaction. The recognition of budgetary accounting transactions is essential for compliance with legal constraints and controls over the use of federal funds.

The information as presented on the Statement of Net Cost is based on the programs below:

**Representation Cases** are initiated by the filing of a petition by an employee, a group of employees, an individual or labor organization acting on their behalf, or in some cases by an employer. The petitioner requests an election to determine whether a union represents, or in some cases continues to represent, a majority of the employees in an appropriate bargaining unit and therefore should be certified as the employees' bargaining representative. The role of the Agency is to investigate the petition and, if necessary, conduct a hearing to determine whether the employees constitute an appropriate bargaining unit under the NLRA. The NLRB must also determine which employees are properly included in the bargaining unit, conduct the election if an election is determined to be warranted, hear and decide any post-election objections to the conduct of the election and, if the election is determined to have been fairly conducted, to certify its results.

**ULP Cases** are initiated by individuals or organizations through the filing of a charge with the NLRB. If the NLRB Regional Office believes that a charge has merit, it issues and prosecutes a complaint against the charged party, unless settlement is reached. A complaint that is not settled or withdrawn is tried before an administrative law judge (ALJ), who issues a decision, which may be appealed by any party to the Board. The Board acts in such matters as a quasi-judicial body, deciding cases on the basis of the formal trial record according to the law and the body of case law that has been developed by the Board and the federal courts.

## C. Budgets and Budgetary Accounting

Congress annually adopts a budget appropriation that provides the NLRB with authority to use funds from the U.S. Treasury (Treasury) to meet operating expense requirements. The NLRB has single year budgetary authority and all unobligated amounts at year-end are expired. At the end of the fifth year all amounts not expended are canceled. All revenue received from other sources must be returned to the Treasury.

Budgetary accounting measures appropriation and consumption of budget/spending authority or other budgetary resources and facilitates compliance with legal constraints and controls over the use of federal funds. Under budgetary reporting principles, budgetary resources are consumed at the time of purchase. Assets and liabilities, which do not consume current budgetary resources, are not reported, and only those liabilities for which

valid obligations have been established are considered to consume budgetary resources.

Transactions are recorded on an accrual accounting basis. Under the accrual method, revenues are recognized when earned and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash.

#### **D. Financing Sources**

The NLRB receives funds to support its programs through annual appropriations. These funds may be used to pay program and administrative expenses (primarily salaries and benefits, occupancy, travel, and contractual service costs).

For accounting purposes, appropriations are recognized as financing sources (appropriations used) at the time expenses are accrued. Appropriations expended for general property, plant and equipment are recognized as expenses when the asset is consumed in operations (depreciation and amortization).

#### **E. Fund Balance with the Treasury**

The NLRB does not maintain cash in commercial bank accounts. Cash receipts and disbursements are processed by the Treasury. The agency's records are reconciled with those of Treasury. The fund balances with the Treasury are primarily appropriated funds that are available to pay current liabilities and to finance authorized purchases. Funds with the Treasury represent the NLRB's right to draw on the Treasury for allowable expenditures. In addition, funds held with the Treasury also include escrow funds that are not appropriated but are backpay funds that are the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings. Effective for the period beginning after September 30, 2008, the cash received and the investments made for backpay funds will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide information about its fiduciary activities. See Note 1F, Fiduciary Activities, for further explanation.

See Note 2 for additional information on Fund Balance with Treasury.

#### **F. Fiduciary Activities**

Fiduciary activities are the collection or receipt, and the management, protection, accounting, and investment, and disposition by the Federal Government of cash or other assets in which non-Federal individuals or entities have an ownership interest that the Federal Government must uphold. Fiduciary cash and other assets are not assets of the Federal Government. Beginning in FY 2009, fiduciary activities will no longer be recognized on the proprietary financial statements, but they are required to be reported on schedules in the notes to the financial statements. (see SFFAS No. 31, Accounting for Fiduciary Activities).

The fiduciary funds collected by NLRB and held in escrow accounts with the Treasury are funds that are not appropriated but are backpay funds that are the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings. The NLRB invests funds in federal government securities for backpay that are held in the escrow account at Treasury. Effective for the period beginning after September 30, 2008, the cash received and the investments made for backpay funds will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide information about its fiduciary activities. See Note 3, Fiduciary Activities.

The federal government securities include Treasury market-based securities issued by the Federal Investment Branch of the Bureau of the Public Debt. Market-based securities are Treasury securities that are not traded on any securities exchange, but mirror the prices of marketable securities with similar terms.

It is expected that Investments will be held until maturity; therefore they are valued at cost and adjusted for amortization of discounts, if applicable. The discounts are recognized as adjustments to interest income, utilizing the straight-line method of amortization for short-term securities (i.e., bills). Investments, redemptions, and reinvestments are controlled and processed by the Department of the Treasury.

There exists a signed Memorandum of Understanding (MOU) between the NLRB and the Treasury establishing the policies and procedures that the NLRB and the Treasury agree to follow for investing monies in, and redeeming investments held by, the deposit fund account in Treasury.

See Note 3 for additional information on Fiduciary Activities.

## G. Advances

Advances consist of amounts advanced by the NLRB for the transit subsidy program, United States Postal Service for penalty mail and for commercial payment system for postage.

See Note 4 for additional information on the Advances.

## H. Accounts Receivable, Net of Allowance for Doubtful Accounts

Accounts Receivable primarily consists of health benefit premiums due the NLRB from Agency employees. Accounts receivable are stated net of allowance for doubtful accounts. The allowance is estimated based on an aging of account balances, past collection experience, and an analysis of outstanding accounts at year end.

See Note 5 for additional information on Accounts Receivable.

## I. General Property, Plant and Equipment

General property, plant and equipment consist primarily of telephone systems, computer hardware and software. The Agency has no real property.

General property, plant and equipment with a cost of \$15,000 or more per unit is capitalized at cost and depreciated using the straight-line method over the useful life. Other property items are expensed when purchased. Expenditures for repairs and maintenance are charged to operating expenses as incurred. The useful life for this category is five to twelve years. There are no restrictions on the use or convertibility of general property, plant and equipment.

*Internal Use Software.* Internal use software (IUS) includes purchased commercial off-the-shelf software (COTS), contractor-developed software, and software that was internally developed by Agency employees. IUS is capitalized at cost if the acquisition cost is \$100,000 or more. For COTS software, the capitalized costs include the amount paid to the vendor for the software; for contractor-developed software it includes the amount paid to a contractor to design, program, install, and implement the software. Capitalized costs for internally developed software include the full cost (direct and indirect) incurred during the software development stage. The estimated useful life is two to five years for calculating amortization of software using the straight-line method.

*Internal Use Software in Development.* Internal use software in development is software that is being developed, but not yet put into production. At the time the software is moved into production the costs will be moved into the IUS account described above. The NLRB is currently undertaking a major software development project called the Next Generation Case Management System (NxGEN) that will replace a number of case tracking systems with one enterprise-wide system. NxGEN will support the President's Management Agenda, such as for e-Gov, E-Filing, e-FOIA, and public Web-based access to NLRB data. This project is a multiple year undertaking in which various portions of the system will be rolled out as they are developed. The overall cost of this project is expected to exceed \$7 million.

See Note 6 for additional information on General Property, Plant and Equipment, Net.

## J. Non-Entity Assets

Assets held by the NLRB that are not available to the NLRB for obligation are considered non-entity assets.

See Note 9 for additional information on Non-Entity Assets.

## K. Liabilities

Liabilities represent the amount of monies or other resources that are likely to be paid by the NLRB as the result of a transaction or event that has already occurred. However, no liability can be paid by the NLRB absent an appropriation. Liabilities for which an appropriation has not been enacted are therefore classified as Liabilities Not Covered by Budgetary Resources and there is no certainty that the appropriation will be enacted. Also, liabilities of the NLRB arising from other than contracts can be abrogated by the government, acting in its sovereign capacity.

## L. Liabilities Not Covered by Budgetary Resources

Liabilities represent the amount of monies or other resources that are likely to be paid by the NLRB as the result of a transaction or event that has already occurred. Liabilities not covered by budgetary resources result from the receipts of goods or services in the current or prior periods, or the occurrence of eligible events in the current or prior periods for which appropriations, revenues, or other financing sources of funds necessary to pay the liabilities have not been made available through Congressional appropriations or current earnings of the reporting entity.

***Intragovernmental***

The U.S. Department of Labor (DOL) paid Federal Employees Compensation Act (FECA) benefits on behalf of the NLRB which had not been billed or paid by the NLRB as of September 30, 2009 and 2008, respectively.

***Federal Employees Workers' Compensation Program.***

The Federal Employees Workers' Compensation Program (FECA) provides income and medical cost protection to covered federal civilian employees injured on the job, to employees who have incurred work-related occupational diseases, and to beneficiaries of employees whose deaths are attributable to job-related injuries or occupational diseases. The FECA program is administered by DOL, which pays valid claims and subsequently seeks reimbursement from the NLRB for these paid claims.

The FECA liability consists of two components. The first component is based on actual claims paid by DOL but not yet reimbursed by the NLRB. The NLRB reimburses DOL for the amount of the actual claims as funds are appropriated for this purpose. There is generally a two- to three-year time period between payment by DOL and reimbursement by the NLRB. As a result, the NLRB recognizes a liability for the actual claims paid by DOL and to be reimbursed by the NLRB.

The second component is the estimated liability for future benefit payments as a result of past events. This liability includes death, disability, medical, and miscellaneous costs. The NLRB determines this component annually, as of September 30, using a method that considers historical benefit payment patterns.

The NLRB uses the methodology of reviewing the ages of the claimant on a case-by-case basis (because of the small number of claimants) to evaluate the estimated FECA liability. The determination was made to use the life expectancy of claimants of 80 and 84 years for male and female, respectively.

See Notes 8 and 10 for additional information on the FECA liability.

***Other***

Accrued annual leave represents the amount of annual leave earned by the NLRB employees but not yet taken.

See Notes 8 and 10 for additional information on Annual Leave.

**M. Contingencies**

The criteria for recognizing contingencies for claims are:

1. a past event or exchange transaction has occurred as of the date of the statements;
2. a future outflow or other sacrifice of resources is probable; and
3. the future outflow or sacrifice of resources is measurable (reasonably estimated).

The NLRB recognizes material contingent liabilities in the form of claims, legal action, administrative proceedings and suits that have been brought to the attention of legal counsel, some of which will be paid by the Treasury Judgment Fund. It is the opinion of management and legal counsel that the ultimate resolution of these proceedings, actions and claims, will not materially affect the financial position or results of operations.

Contingencies are recorded when losses are probable, and the cost is measurable. When an estimate of contingent losses includes a range of possible costs, the most likely cost is reported; where no cost is more likely than any other, the lowest possible cost in the range is reported. This item will normally be paid from appropriated funds.

See Note 16 for additional information on Contingencies.

**N. Unexpended Appropriations**

Unexpended appropriations represent the amount of the NLRB's unexpended appropriated spending authority as of the fiscal year-end that is unliquidated or is unobligated and has not lapsed, been rescinded, or withdrawn.

**O. Annual, Sick, and Other Leave*****Annual and Sick Leave Program.***

Annual leave is accrued as it is earned by employees and is included in personnel compensation and benefit costs. Each year, the balance in the accrued annual leave liability account is adjusted to reflect current pay rates. Annual leave earned but not taken, within established limits, is funded from future financing sources. Sick leave and other types of non-vested leave are expensed as taken.

See Note 10 for additional information on Annual Leave.



## P. Life Insurance and Retirement Plans

### ***Federal Employees Group Life Insurance (FEGLI) Program.***

Most of NLRB employees are entitled to participate in the FEGLI Program. Participating employees can obtain “basic life” term life insurance, with the employee paying two-thirds of the cost and the NLRB paying one-third. Additional coverage is optional, to be paid fully by the employee. The basic life coverage may be continued into retirement if certain requirements are met. The Office of Personnel Management (OPM) administers this program and is responsible for the reporting of liabilities. For each fiscal year, OPM calculates the U.S. Government’s service cost for the post-retirement portion of the basic life coverage. Because the NLRB’s contributions to the basic life coverage are fully allocated by OPM to the pre-retirement portion of coverage, the NLRB has recognized the entire service cost of the post-retirement portion of basic life coverage as an imputed cost and imputed financing source.

### ***Retirement Programs.***

The NLRB employees participate in one of two retirement programs, either the Civil Service Retirement System (CSRS), a defined benefit plan, or the Federal Employees Retirement System (FERS), a defined benefit and contribution plan. On January 1, 1987, FERS went into effect pursuant to Public Law 99-335. Most the NLRB employees hired after December 31, 1983, are automatically covered by FERS and Social Security. Employees hired prior to January 1, 1984, could elect to either join FERS and Social Security or remain in CSRS. Employees covered by CSRS are not subject to Social Security taxes, nor are they entitled to accrue Social Security benefits for wages subject to CSRS. The NLRB contributes a matching contribution equal to 7 percent of pay for CSRS employees.

FERS consists of Social Security, a basic annuity plan, and the Thrift Savings Plan. The Agency and the employee contribute to Social Security and the basic annuity plan at rates prescribed by law. In addition, the Agency is required to contribute to the Thrift Savings Plan a minimum of 1 percent per year of the basic pay of employees covered by this system and to match voluntary employee contributions up to 3 percent of the employee’s basic pay, and one-half of contributions between 3 percent and 5 percent of basic pay. For FERS employees, the Agency also contributes the employer’s share of Medicare. The maximum amount of base pay that an employee participating in FERS may contribute is \$16,500 in calendar year (CY) 2010 to this plan. Employees belonging to CSRS may also contribute up to \$16,500

of their salary in CY 2010 and receive no matching contribution from the NLRB. The maximum for catch-up contributions for CY 2010 is \$5,500. For CY 2009, the regular and catch-up contributions may not exceed \$22,000. The sum of the employees’ and the NLRB’s contributions are transferred to the Federal Retirement Thrift Investment Board.

OPM is responsible for reporting assets, accumulated plan benefits, and unfunded liabilities, if any, applicable to CSRS participants and FERS employees government-wide, including the NLRB employees. The NLRB has recognized an imputed cost and imputed financing source for the difference between the estimated service cost and the contributions made by the NLRB and covered CSRS employees.

The NLRB does not report on its financial statements FERS and CSRS assets, accumulated plan benefits, or unfunded liabilities, if any, applicable to its employees. Reporting such amounts is the responsibility of OPM. The portion of the current and estimated future outlays for CSRS not paid by the NLRB is, in accordance with Statement of Federal Financial Accounting Standards (SFFAS) No. 5, Accounting for Liabilities of the federal government, included in the NLRB’s financial statements as an imputed financing source.

Liabilities for future pension payments and other future payments for retired employees who participate in the Federal Employees Health Benefits and the FEGLI programs are reported by OPM rather than the NLRB.

SFFAS No. 5, Accounting for Liabilities of the Federal Government, requires employing agencies to recognize the cost of pensions and other retirement benefits during their employees’ active years of service. OPM actuaries determine pension cost factors by calculating the value of pension benefits expected to be paid in the future, and provide these factors to the agency for current period expense reporting. Information was also provided by OPM regarding the full cost of health and life insurance benefits.

In FY 2009, the NLRB, utilizing OPM provided cost factors, recognized \$7,086,193 of pension expenses, \$9,166,430 of post-retirement health benefits expenses, and \$28,051 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$16,280,674 as an imputed financing source to the extent that these intragovernmental expenses will be paid by OPM.

In FY 2008, the NLRB, utilizing OPM provided cost factors, recognized \$6,688,767 of pension expenses, \$7,711,245 of post-retirement health benefits expenses, and \$27,328 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$14,427,340 as an imputed financing source to the extent that these intragovernmental expenses will be paid by OPM.

See Note 13 for additional information

### **Q. Operating Leases**

The NLRB has no capital lease liability or capital leases. Operating leases consist of real and personal property leases with the General Services Administration (GSA). Regarding NLRB's building lease, the GSA entered into a lease agreement for the NLRB's rental of building space. The NLRB pays GSA a standard level users charge for the annual rental. The standard level users charge approximates the commercial rental rates for similar properties. The NLRB is not legally a party to any building lease agreements, so it does not record GSA-owned properties. The real property leases are for NLRB's Headquarters and Regional Offices and the personal property leases are for GSA cars.

See Note 12 for additional information on Operating Leases.

### **R. Net Position**

Net position is the residual difference between assets and liabilities and is composed of unexpended appropriations and cumulative results of operations. Unexpended appropriations

represent the amount of unobligated and unexpended budget authority. Unobligated balances are the amount of appropriations or other authority remaining after deducting the cumulative obligations from the amount available for obligation. The cumulative results of operations are the net result of the NLRB's operations since inception.

### **S. Use of Management Estimates**

The preparation of the accompanying financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make certain estimates and assumptions that directly affect the results of reported assets, liabilities, revenues, and expenses. Actual results could differ from these estimates.

### **T. Tax Status**

The NLRB, as an independent Board of the Executive Branch, a federal agency, is not subject to federal, state, or local income taxes, and, accordingly, no provision for income tax is recorded.

### **U. Comparative Data**

Comparative data for the prior year have been presented for the principal financial statements and their related notes.

## NOTE 2. FUND BALANCE WITH TREASURY

Treasury performs cash management activities for all federal agencies. The net activity represents Fund Balance with Treasury. The Fund Balance with Treasury represents the right of the NLRB to draw down funds from Treasury for expenses and liabilities. Fund Balance with Treasury by fund type as of September 30, 2009 and September 30, 2008 consists of the following:

### Fund Balance with Treasury by Fund Type:

(in thousands)	FY2009 Entity Assets	Non-Entity Assets	Total	FY2008 Entity Assets	Non-Entity Assets	Total
General Funds	\$ 27,144		\$ 27,144	\$ 21,810		\$ 21,810
Escrow Funds		151	151		3,085	3,085
<b>Total Fund Balance with Treasury</b>	<b>\$ 27,144</b>	<b>\$ 151</b>	<b>\$ 27,295</b>	<b>\$ 21,810</b>	<b>\$ 3,085</b>	<b>\$ 24,895</b>

Effective for the period beginning after September 30, 2008, the cash received and held in escrow for backpay funds will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide information about its fiduciary activities. See Note 1 F, Fiduciary Activities, for further explanation.

The status of the fund balance may be classified as unobligated available, unobligated unavailable, and obligated. Unobligated funds, depending on budget authority, are generally available for new obligations in current operations. The unavailable balance includes amounts appropriated in prior fiscal years, which are not available to fund new obligations. The obligated but not yet disbursed balance represents amounts designated for payment of goods and services ordered but not yet received or goods and services received but for which payment has not yet been made.

Obligated and unobligated balances reported for the status of Fund Balance with Treasury do not agree with obligated and unobligated balances reported on the Statement of Budgetary Resources because the Fund Balance with Treasury includes items for which budgetary resources are not recorded, such as deposit funds and miscellaneous receipts.

Status of Fund Balance with Treasury as of September 30, 2009 and September 30, 2008 consists of the following:

### Fund Balance with Treasury by Availability:

(in thousands)	FY 2009	FY 2008
<b>Unobligated Balance</b>		
Available	\$ 337	\$ 544
Unavailable	3,835	4,067
Obligated balance not yet disbursed	22,972	17,199
Non-budgetary fund balance with Treasury	151	3,085
<b>Totals</b>	<b>\$ 27,295</b>	<b>\$ 24,895</b>

## NOTE 3. FIDUCIARY ACTIVITIES

Effective for the period beginning after September 30, 2008, the cash received and the investments made for backpay funds will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide information about its fiduciary activities. See Note 1F, Fiduciary Activities, for further explanation.

Backpay funds are the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings. NLRB holds these funds in an escrow account with Treasury and invests the funds that are authorized by the Regional Compliance Officers and other management officials in market-based Treasury securities issued by the Federal Investment Branch of the Bureau of Public Debt.

There exists a signed Memorandum of Understanding (MOU) between the NLRB and the U.S. Treasury (Treasury) establishing the policies and procedures that the NLRB and the Treasury agree to follow for investing monies in, and redeeming investments held by, the deposit fund account in Treasury.

### Schedule of Fiduciary Activity

(As of September 30, 2009 and 2008)

(in thousands)	FY 2009	FY 2008
Fiduciary net assets, beginning of the year	\$ 7,338	\$ 3,680
Fiduciary revenues	15,388	15,229
Investment earnings	7	34
Disbursements to and on the behalf of beneficiaries	(18,862)	(11,605)
Increase (Decrease) in fiduciary net assets	(\$ 3,467)	\$ 3,658
<b>Fiduciary net assets, end of year</b>	<b>\$ 3,871</b>	<b>\$ 7,338</b>

### Fiduciary Net Assets

(As of September 30, 2009 and 2008)

(in thousands)	FY 2009	FY 2008
<b>Fiduciary Assets</b>		
Cash and cash equivalents	\$ 1,487	\$ 2,988
Investments	2,384	4,350
<b>Fiduciary Liabilities</b>		
Less: Liabilities	—	—
<b>Total Fiduciary net assets</b>	<b>\$ 3,871</b>	<b>\$ 7,338</b>

## NOTE 4. ADVANCES

### Intragovernmental

Intragovernmental Advances to the United States Postal Service (USPS) for September 30, 2009 were \$261,437 and \$968 for September 30, 2008. The remainder of the balance for FY 2009 was with the Department of Transportation for the transit subsidy.

## NOTE 5. ACCOUNTS RECEIVABLE, NET OF ALLOWANCES FOR DOUBTFUL ACCOUNTS

The FY 2009 intragovernmental accounts receivable is zero and the FY 2008 amount was also zero:

(in thousands)	FY 2009	FY 2008
With the public		
Accounts receivable	\$ 38	\$ 45
Allowance doubtful accounts	(2)	(2)
<b>Accounts receivable-net</b>	<b>\$ 36</b>	<b>\$ 43</b>

## NOTE 6. GENERAL PROPERTY, PLANT AND EQUIPMENT, NET

General property, plant and equipment consist of that property which is used in operations and consumed over time. The table below summarizes the cost and accumulated depreciation for general property, plant and equipment.

Depreciation expense for the years ended September 30, 2009 and September 30, 2008 was \$1,211,053 and \$1,462,108 (in dollars), respectively.

(in thousands) FY 2009	Asset Cost	Accumulated Depreciation/ Amortization	Net Asset Value
Equipment	\$ 1,854	\$ 1,543	\$ 311
Internal Use Software	5,038	3,178	1,860
Internal Use Software in Development	8,009	-	8,009
<b>Totals</b>	<b>\$ 14,901</b>	<b>\$ 4,721</b>	<b>\$ 10,180</b>

(in thousands) FY 2008	Asset Cost	Accumulated Depreciation/ Amortization	Net Asset Value
Equipment	\$ 1,866	\$ 1,239	\$ 627
Internal Use Software	5,038	2,354	2,684
Internal Use Software in Development	5,600	-	5,600
<b>Totals</b>	<b>\$ 12,504</b>	<b>\$ 3,593</b>	<b>\$ 8,911</b>

## NOTE 7. INTRAGOVERNMENTAL ACCOUNTS PAYABLE

These accounts payables are with our federal trading partners of whom the largest amounts are with the General Services Administration (GSA).

## NOTE 8. LIABILITIES NOT COVERED BY BUDGETARY RESOURCES

Liabilities not covered by budgetary resources represent amounts owed in excess of available congressionally appropriated funds or other amounts. The custodial liability represents amounts collected from the public for court costs, freedom of information requests and other miscellaneous amounts that must be transferred to the Treasury. Effective for period beginning after September 30, 2008, the investments made for backpay funds will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide information about its fiduciary activities. See Note 3, Fiduciary Activities, for additional information.

The composition of liabilities not covered by budgetary resources as of September 30, 2009 and September 30, 2008, is as follows:

(in thousands)	FY 2009	FY 2008
<b>Intragovernmental:</b>		
FECA-Unfunded	\$ 785	\$ 931
Total Intragovernmental	785	931
Estimated Future – FECA	2,511	1,666
Accrued Annual Leave	14,692	13,688
Backpay Settlement Due to Others	–	7,338
Custodial Liability	–	96
Total Liabilities not covered by budgetary resources	17,988	23,719
Total Liabilities covered by budgetary resources	16,880	12,651
<b>Total Liabilities</b>	<b>\$ 34,868</b>	<b>\$ 36,370</b>

## NOTE 9. NON-ENTITY ASSETS

Non-Entity assets, restricted by nature, consist of miscellaneous receipt accounts. These amounts represent cash collected and accounts receivable (net of allowance for doubtful accounts). The miscellaneous receipts represent court costs and freedom of information requests that must be transferred to the Treasury. The backpay settlement due to others represents monies to be disbursed to discriminatees at a later date. Effective for period beginning after September 30, 2008, the investments made for backpay funds will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide information about its fiduciary activities. See Note 3, Fiduciary Activities, for additional information.

The composition of non-entity assets as of September 30, 2009 and September 30, 2008, is as follows:

(in thousands)	FY 2009	FY 2008
<b>Non-entity assets</b>		
Intragovernmental:		
Fund Balance with Treasury	\$ 151	\$ 96
Total Intragovernmental	\$ 151	\$ 96
Backpay Settlement Due to Others	–	7,338
Total Non-entity assets	\$ 151	\$ 7,434
<b>Entity assets</b>	\$37,637	30,766
<b>Total Assets</b>	<b>\$37,788</b>	<b>\$38,200</b>

## NOTE 10. CUMULATIVE RESULTS OF OPERATIONS

(in thousands)	FY 2009	FY 2008
FECA paid by DOL	\$ (305)	\$ (348)
FECA – Unfunded	(785)	(931)
Estimated Future FECA	(2,511)	(1,666)
Accrued Annual Leave	(14,692)	(13,688)
General Property, Plant & Equipment, Net	10,180	8,911
Other	341	392
<b>Cumulative Results of Operations</b>	<b>\$ (7,772)</b>	<b>\$ (7,330)</b>

## NOTE 11. INTRAGOVERNMENTAL COSTS AND EXCHANGE REVENUE

For the intragovernmental costs, the buyer and seller are both federal entities. The earned revenue is the reimbursable costs from other federal entities. The NLRB provided administrative law judges' services to other federal entities. There is no exchange revenue with the public.

(in thousands)	FY 2009	FY 2008
<b>Resolve Representation Cases</b>		
Intragovernmental Costs	\$ 8,839	\$ 8,474
Costs with the Public	36,529	34,293
<b>Total Net Cost - Resolve Representation Cases</b>	<b>\$ 45,368</b>	<b>\$ 42,767</b>
<b>Resolve Unfair Labor Practices</b>		
Intragovernmental Costs	\$ 44,720	\$ 42,869
Costs with the Public	186,697	175,257
<b>Total Net Cost - Resolve Unfair Labor Practices</b>	<b>\$ 231,417</b>	<b>\$ 218,126</b>
<b>Other</b>		
Intragovernmental Costs	\$ 133	\$ 103
Less: Intragovernmental Earned Revenue	133	103
<b>Total Net Cost - Other</b>	<b>\$ 0</b>	<b>\$ 0</b>
<b>Net Cost of Operations</b>	<b>\$ 276,785</b>	<b>\$ 260,893</b>



## NOTE 12. OPERATING LEASES

**GSA Real Property.** Most of NLRB's facilities are rented from the GSA, which charges rent that is intended to approximate commercial rental rates. The terms of NLRB's occupancy agreements (OA) with GSA will vary according to whether the underlying assets are owned by GSA or another federal agency or rented by GSA from the private sector. The NLRB has OAs with GSA, which sets forth terms and conditions for the space the Agency will occupy for an extended period of time. Included within the OAs are 120 to 180 day notification requirements for the Agency to release space. For purposes of disclosing future operating lease payments in the table below, federally-owned leases are included in years 2010 through 2014.

Rental expenses for operating leases as of September 30, 2009 were \$27,793,326 for Agency lease space and \$2,260,673 for Agency building security. For FY 2008 the operating lease costs were \$27,888,552 and the Agency building security portion was \$2,319,835.

Fiscal Year (in thousands)	GSA Real Property
2010	\$ 28,490
2011	29,202
2012	29,933
2013	30,681
2014	31,448
After 5 Years	-
<b>Total Future Lease Costs</b>	<b>\$ 149,754</b>

## NOTE 13. IMPUTED FINANCING

OPM pays pension and other future retirement benefits on behalf of federal agencies for federal employees. OPM provides rates for recording the estimated cost of pension and other future retirement benefits paid by OPM on behalf of federal agencies. The costs of these benefits are reflected as imputed financing in the consolidated financial statements. Expenses of the NLRB paid or to be paid by other federal agencies at September 30, 2009 and 2008 consisted of:

(in thousands)	FY 2009	FY 2008
<b>Office of Personnel Management:</b>		
Pension expenses	\$ 7,086	\$ 6,689
Federal employees health benefits	9,166	7,711
Federal employees group life insurance program	28	27
<b>Total Imputed Financing</b>	<b>\$16,280</b>	<b>\$14,427</b>

## NOTE 14. APPROPRIATIONS RECEIVED

The NLRB received \$262,595,000 and \$256,238,000 in warrants for the FYs ended September 30, 2009 and 2008, respectively. The amount shown on the Statement of Budgetary Resources under caption "Permanently not available" for FY 2009 was the cancelled appropriation for FY 2004 for the amount of \$1,000,514. For FY 2008, the total amount \$4,476,478 for a rescission in FY 2008 and \$1,703,438 for the cancelled appropriation for FY 2003.

## NOTE 15. STATEMENT OF BUDGETARY RESOURCES

The Statement of Budgetary Resources provides information about how budgetary resources were made available as well as their status at the end of the period. It is the only financial statement exclusively derived from the entity's budgetary general ledger in accordance with budgetary accounting rules that are incorporated GAAP for the Federal Government. The total Budgetary Resources of \$267,262,453 as of September 30, 2009 and \$256,296,112 as of September 30, 2008, includes new budget authority, unobligated balances at the beginning of the year, spending authority from offsetting collections, recoveries of prior year obligations and permanently not available. The NLRB's unobligated balance available at September 30, 2009 was \$336,774 and at September 30, 2008 was \$543,715.

### Apportionment Categories of Obligations Incurred.

NLRB's obligations incurred as of September 30, 2009 and September 30, 2008 by apportionment Category A and B is shown in the following table. Category A apportionments distribute budgetary resources by fiscal quarters and Category B apportionments typically distribute budgetary resources by activities, projects, objects or a combination of these categories.

(in thousands)	Apportioned		Not Subject to Apportionment	
	Category A	Category B		Total
<b>FY 2009</b>				
Obligations Incurred:				
Direct	\$ 248,686	\$ 14,272		\$ 262,958
Reimbursable	133			133
<b>Total Obligations Incurred</b>	<b>\$ 248,819</b>	<b>\$ 14,272</b>		<b>\$ 263,091</b>

(in thousands)	Apportioned		Not Subject to Apportionment	
	Category A	Category B		Total
<b>FY 2008</b>				
Obligations Incurred:				
Direct	\$ 241,013	\$ 10,569		\$ 251,582
Reimbursable	103			103
<b>Total Obligations Incurred</b>	<b>\$ 241,116</b>	<b>\$ 10,569</b>		<b>\$ 251,685</b>

## NOTE 16. CONTINGENCIES

The NLRB is a party to several threatened or pending litigation claims. NLRB management believes that all the claims listed have a remote possibility of a cost to the Agency. The Agency has and will continue to vigorously contest these claims. In the opinion of NLRB's management, the ultimate resolution of pending litigation will not have a material effect on NLRB's financial statements.

## NOTE 17. RECONCILIATION OF NET COST OF OPERATIONS TO BUDGET

For the Month Ended September 30, 2009 and 2008

(in thousands)	FY 2009	FY 2008
<b>Resources Used to Finance Activities</b>		
Current Year Gross Obligations	\$ 263,091	\$ 251,685
<b>Budgetary Resources from Offsetting Collections:</b>		
Spending Authority from Offsetting Collections		
Earned	–	–
Collected	(217)	(174)
Recoveries of Prior Year Unpaid Obligations	(840)	(703)
<b>Other Financing Resources:</b>		
Imputed Financing Sources	16,280	14,427
<b>Total Resources Used to Finance Activity</b>	<b>\$ 278,314</b>	<b>\$ 265,235</b>
<b>Resources Used to Finance Items Not Part of the Net Cost of Operations</b>		
<b>Budgetary Obligations and Resources not in the Net Cost of Operations:</b>		
Change in Undelivered Orders	(1,970)	(1,003)
Current Year Capitalized Purchases	(2,481)	(4,379)
<b>Components of the Net Cost of Operations which do not Generate or Use Resources in the Reporting Period</b>		
<b>Revenues without Current Year Budgetary Effect:</b>		
Other Financing Sources Not in the Budget	(16,280)	(14,427)
<b>Costs without Current Year Budgetary Effect:</b>		
Depreciation and Amortization	1,211	1,462
Future Funded Expenses	859	424
Imputed costs	16,280	14,427
Bad Debt Expense	2	5
Other Expenses Not Requiring Budgetary Resources	850	(851)
<b>Net Cost of Operations</b>	<b>\$ 276,785</b>	<b>\$ 260,893</b>



OTHER ACCOMPANYING INFORMATION



PROTECTING DEMOCRACY IN THE WORKPLACE SINCE 1935

# INSPECTOR GENERAL'S TOP MANAGEMENT AND PERFORMANCE CHALLENGES

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



## **Memorandum**

October 14, 2009

To: Wilma B. Liebman  
Chairman

Ronald Meisburg  
General Counsel

From: David Berry *David Berry*  
Inspector General

Subject: Issue Alert No. OIG-IA-10-01: Top Management and Performance Challenges

As part of the Performance and Accountability Report, the Office of Inspector General (OIG) is required by section 3516 of title 31 to summarize what the Inspector General considers to be the most serious management and performance challenges facing the Agency and briefly assess its progress in addressing those challenges. This report meets that requirement. The information provided in this report is based upon our reviews and investigations, as well as our general knowledge of the National Labor Relations Board's (NLRB or Agency) operations.

These challenges should not be viewed as charges of mismanagement or wrongdoing. Rather, they are situations occurring at the NLRB that could impact the ability of the Agency's leadership to either carry out the Agency's mission or properly attend to its administrative functions. For a number of challenges, such as those dealing with procurement and e-government, the Agency made significant progress and their inclusion in this memorandum should be viewed, in part, as an acknowledgement of the success of hard work.

At the beginning of Fiscal Year (FY) 2009, we identified seven management and performance challenges. For this report, we are addressing those seven challenges and adding two. For six of the seven pre-existing challenges, we included a box titled "Action Progress" and assigned a color score for actions taken to meet the challenge. The scores are: Green for substantial progress; Yellow for progress; and Orange for not substantially addressed. We believe that the goal related to issuing Board decisions is out of the control of the Agency and is therefore not scored. The new challenges are also not scored.

Overall, we believe that this is a good Top Management and Performance Challenges memorandum for the Agency. We appreciate the efforts of the many individuals who contributed to the considerable progress that was made during FY 2009.

## NEW CHALLENGES

### **Implementation of the Next Generation Case Management System.**

The Agency is in the final stages of implementing an enterprise-wide electronic case management and processing system. This system will replace 13 separate legacy systems by integrating them into a single unified system using multiple technologies, including 5 distinct software solutions for customer relationship management, document management, collaboration, business analytics, and Web-based services for external constituents. This is the most comprehensive information technology project ever undertaken at the NLRB and its success is critical to the Agency's mission.

### **Seize opportunities to create more productive and efficient procedures and organizations.**

Through our audit efforts, we observed that managers at times miss opportunities to adopt new procedures and organizational structures to meet new demands or opportunities.

With the new case processing system about to be implemented, now is the time for managers involved in case processing to critically assess their operations and seize the opportunity to maximize efficiency and control. With changes in personnel and a drive toward electronic processing, similar opportunities exist for managers in support offices. This is particularly true for the Human Resources Branch and the Office of the Executive Secretary. Without regard to the mission of the office, layering a new business process on outdated procedures and organizations simply will not result in productive and efficient operations.

## CONTINUING CHALLENGES

### **Engage in a meaningful deliberative process while issuing Board decisions in a timely manner so as to ensure the effective enforcement of the National Labor Relations Act.**

Since the beginning of the Top Management and Performance Challenges memorandum process in 2004, we have included a challenge related to the process of issuing Board decisions.

The current Board's performance met this challenge in an admirable manner. Although cases with more difficult issues remain awaiting a full Board, in FY 2009 the two-Member Board issued 256 decisions in contested cases. That success, however, should not mask how imperative it is that the Board be restored to a full complement of five Members. The

continued delay in doing so has the very real effect of impairing the enforcement of the National Labor Relations Act (NLRA).

**Maintain the Agency’s institutional knowledge.**

There have been many changes in technology, laws and regulations, and management systems that have altered the manner in which employees perform their official duties. As change occurs, the policy and procedures are not always updated on a timely basis and individual offices come to rely upon the collective institutional knowledge of the staff. While this may be a short-term solution, it puts far too much reliance on the skills of individual employees while lacking the safeguards of a well-managed internal control system. This problem is compounded by the fact that in an Agency of this size specialized tasks are often performed by a limited number of employees. Also, 40 percent of the supervisors and 75 percent of the Senior Executive Service managers were eligible to retire at the beginning of FY 2009.

This year we saw progress, particularly in the training and the restoration of conferences for the supervisors and managers. The Division of Operations-Management also had several rotations of the exchange program at Headquarters for field support and professional staff. These types of activities can assist in the transfer of knowledge and help prepare a new corps of Agency leaders. In our audit work, however, we continued to see a lack of documentation of policy and procedures that could have an adverse impact on the Agency operations with the loss of key personnel.

<b>Action Progress</b>	
Develop methods and processes to maintain and transfer institutional knowledge.	Yellow

**Manage the Agency during periods of time that are covered by continuing resolutions and appropriations that are expected to be flat or provide only nominal increases.**

A continuing resolution (CR) generally restricts an agency’s contracting function or spending to a certain level. Over the last several years, the Agency has operated for significant periods of time under a CR at a level of funding that was equal to the prior year. When there has been an appropriation following a CR, the increases in funding have been limited. This situation creates significant challenges because approximately 90 percent of the Agency’s appropriation is allocated to space rent, building security, and personnel related costs.

Fiscal Year 2009 was not a normal year for the Agency. The beginning of the year saw the normal tight fiscal restraint as a result of a CR. There were delays in filling vacancies and postponing decisions on performance awards, training and conferences, and upgrades for the financial management and information technology systems. Then mid-year the Agency received an appropriation that provided a boost in funding as compared to prior years. There



was funding for training opportunities that had been eliminated in prior years, monetary performance awards, and many improvements to the Agency's business processes that had long been delayed due to limited fiscal resources. Because the funding came mid-year, there were additional management challenges associated with a shortened lead time for planning and procurement.

In FY 2009, we also saw a period of greater transparency in the allocation and spending of fiscal resources. Part of that success came from greater participation in the fiscal management of the Agency by Board staff and part came from the cooperative efforts of the General Counsel's staff. We believe that these efforts netted better management and stewardship of the Agency's resources.

Despite the fiscal good fortunes and cooperation, we remain concerned that experiences in FY 2009 will not be repeated indefinitely. We will again, for some period of time in FY 2010, be under a CR. With the uncertainties of the economy and potential statutory changes to the NLRA, adequate funding or the need for continued growth may not occur. Given these uncertainties, we are keeping this challenge in place.

<b>Action Progress</b>	
Develop a system to effectively monitor the accrual of expense.	Green
Address the issue of a reserve at the end of the fiscal year.	Green
Create greater transparency in fiscal management.	Green

### **Manage the Agency's procurement process to ensure compliance with the Federal Acquisition Regulation.**

In prior years, the OIG conducted audits involving the Agency's procurement function. These audits found numerous problems that could generally be attributed to some breakdown in the internal control process. Although we believe that through this audit process we have assisted the Agency in making positive changes, we were concerned that the Agency's procurement function could put the Agency's budgetary resources at risk.

Adequate staffing, competence, and communication are critical to maintaining a well-managed procurement process. In prior years, the convergence of budgetary issues and a shortage of competent candidates to fill vacant positions in a highly competitive field resulted in an understaffed procurement office. That lack of staffing created delays in processing procurement actions and greatly increased the opportunity for mistakes.

In FY 2009, the Agency made significant progress in this area. A new Acquisitions Management Branch was created and staffed with individuals that appear to be well-qualified. The Chief of the new branch is at a grade level that puts that position at an equal status with other Branch Chiefs in the Division of Administration. We have informally observed and been told that communication with the procurement staff has greatly improved.

Agency managers seem to have a renewed confidence in the procurement process. If these trends continue, we expect to remove this challenge in our next report.

<b>Action Progress</b>	
Consolidate the procurement process.	Green
Issue a new Administrative Policy and Procedures Manual chapter for the procurement function.	Yellow
Improve the legal review process.	Green
Maintain a sufficient staffing level of competent procurement officials.	Green

**Strengthen control over employees' use of Agency information technology assets to include Internet access.**

The Agency continues to devote significant resources to improving and upgrading information technology equipment and capability. The OIG has devoted a significant amount of resources to investigating improper use and auditing information technology control and security issues.

During FY 2009, the Office of the Chief Information Officer (OCIO) made progress in implementing controls over Internet use in the Agency's field offices. The OCIO staff expects to extend those controls to Headquarters in the near future. Also in FY 2009, through our audit process, we became aware of significant weaknesses in controls over laptop computers. The OCIO is currently working to implement the recommendations associated with the audit.

As the Agency moves into the final stage of implementing an electronic case processing and management system, the need for control and oversight of employees' use of the information technology assets becomes more significant. Wasting time on the Internet is no longer a solitary activity impacting only the performance of the employee who is engaged in that activity. The combined effect of that activity across the Agency's network can dramatically decrease the speed at which work is processed and increase cost to operate the system. Likewise, the loss of a laptop computer or other information technology equipment can create a significant risk to the Agency's network and sensitive information.

<b>Action Progress</b>	
Develop a method to control the use of information technology assets.	Yellow

### **Implement e-government initiatives to effectively communicate with parties and the public.**

In November 2006, the NLRB relaunched its Web site and deployed a companion portal, [mynlrn.nlr.gov](http://mynlrn.nlr.gov), as components in a long-term unified management of its Government to Constituent operations. The site now allows users to transact business online with the Agency more easily. Several important enhancements are included within “MyNLRB,” including those enabling participants who e-file documents to establish their own accounts in order for the system to automatically fill in data fields on e-filing forms; and an expanded e-filing program for filing documents electronically with the General Counsel’s Office of Appeals; Regional, Subregional, and Resident Offices; and the Division of Judges. A vast amount of case processing data can be accessed by the public via the Internet.

The Agency continues to meet this challenge through the effective leveraging of its technology resources to make improvements. A significant amount of information is available to individual workers on the Web site and parties can electronically submit case related documents to the Agency. The parties can now also electronically serve the documents to each other. The Board and Administrative Law Judge decisions can now be issued electronically. Progress towards allowing the electronic submission of charges and petitions to the Regional Offices – the initiation of cases – largely remains dependent on the development of the Agency’s Next Generation Case Management System.

The Agency also recently hired its first New Media Specialist. The position, located within the Office of Public Affairs, will lead the Agency’s Web site – both internal and public – and new media strategies. A key task will be the modernization and integration of the public and internal Web sites. It is anticipated that this effort will allow Agency employees more efficient access to available resources and improve intra-division communication to enable better citizen services

<b>Action Progress</b>	
Complete e-government initiatives.	Green

### **Implement audit findings in a timely manner.**

We added this challenge in FY 2008 because the Agency was not implementing audit recommendations in a timely manner, had a recurrence of findings, disagreed with audit recommendations without a sufficient basis, and often chose not to implement cost-saving recommendations.

In December 2007, we received a request from the Chairman of the U.S. House of Representatives’ Committee on Oversight and Government Reform for detailed information on all audit recommendations. In July 2008, we were again asked to provide the Committee with information regarding the implementation of our recommendations. Then in April 2009, the Ranking Member of the Committee asked for additional information regarding our

unimplemented recommendations. In each instance, the requests were made to each Office of Inspector General.

We started FY 2009 with 10 recommendations and added 12 recommendations. During the year, 5 recommendations were closed leaving 17 recommendations open. Of the open recommendations, eight are more than a year old and must be reported in the Semiannual Report to Congress.

<b>Action Progress</b>	
Implement audit recommendations in a timely manner.	Orange
Work in a collegial manner to reach agreement on recommended actions.	Green
Avoid reoccurrence of audit findings.	Not Observed

## SUMMARY OF AUDIT AND MANAGEMENT ASSURANCES

### I. SUMMARY OF FINANCIAL STATEMENT AUDIT

Audit Opinion			Unqualified		
Restatement			No		
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Ending Balance
	0	0	0	0	0
TOTAL	0	0	0	0	0

### II. SUMMARY OF MANAGEMENT ASSURANCES EFFECTIVENESS OF INTERNAL CONTROL OVER OPERATIONS (FMFIA §2)

Statement of Assurance			Unqualified			
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

### COMPLIANCE WITH FINANCIAL SYSTEMS REQUIREMENTS (FMFIA §4)

Statement of Assurance			Systems conform with financial management systems requirements			
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

# IMPROPER PAYMENTS INFORMATION ACT

The Improper Payments Information Act (IPIA) defined requirements to reduce improper/erroneous payments made by the federal government. OMB has also established specific reporting requirements for agencies with programs that possess a significant risk of erroneous payments and for reporting on results of recovery auditing activities. A significant erroneous payment as defined by OMB guidance is an annual erroneous payment in a program that exceeds both 2.5 percent of the program payments and \$10 million.

As such, the NLRB does not make program payments as described in the IPIA and has no information to report with respect to erroneous program payments.

## APPENDICES



PROTECTING DEMOCRACY IN THE WORKPLACE SINCE 1935

# APPENDIX A

## ACRONYMS

ADR . . . . .	Alternative Dispute Resolution
ALJ . . . . .	Administrative Law Judge
CATS . . . . .	Case Activity Tracking System
CR . . . . .	Continuing Resolution
FMFIA . . . . .	Federal Managers' Financial Integrity Act
FOIA . . . . .	Freedom of Information Act
FY . . . . .	Fiscal Year
GAAP . . . . .	Generally Accepted Accounting Principles
GPRA . . . . .	Government Performance and Results Act
IPIA . . . . .	Improper Payments Information Act
NxGen . . . . .	Next Generation Case Management System
NIST . . . . .	National Institute of Standards and Technology
NLRA . . . . .	National Labor Relations Act
NLRB . . . . .	National Labor Relations Board
OIG . . . . .	Office of Inspector General
OMB . . . . .	Office of Management and Budget
PAR . . . . .	Performance and Accountability Report
ULP . . . . .	Unfair Labor Practice



# APPENDIX B

## DEFINITIONS

**Case:** The general term used in referring to a charge or petition filed with the Board. Each case is numbered and carries a letter designation indicating the type of case.

**Charge:** A document filed by an employee, an employer, a union, or an individual alleging that a ULP has been committed by a union or employer.

**Complaint:** A document that initiates “formal” proceedings in a ULP case. It is issued by the Regional Director when he or she concludes on the basis of a completed investigation that any of the allegations contained in the charge have merit and the parties have not achieved settlement. The complaint sets forth all allegations and information necessary to bring a case to hearing before an administrative law judge pursuant to due process of law. The complaint contains a notice of hearing, specifying the time and place of the hearing.

**Compliance:** The carrying out of remedial action as agreed upon by the parties in writing; as recommended by the administrative law judge in the decision; as ordered by the Board in its decision and order; or as decreed by the court.

**Dismissed Cases:** Cases may be dismissed at any stage. For example, following an investigation, the Regional Director may dismiss a case when he or she concludes that there has been no violation of the law, that there is insufficient evidence to support further action, or for other legitimate reasons. Before the charge is dismissed, the charging party is given the opportunity to withdraw the charge by the Regional Director. A dismissal may be appealed to the Office of the General Counsel.

**Formal Action:** Formal actions may be documents issued or proceedings conducted when the voluntary agreement of all parties regarding the disposition of all issues in a case cannot be obtained, and where dismissal of the charge or petition is not warranted. Formal actions are those in which the Board exercises its decision-making authority in order to dispose of a case or issues raised in a case. “Formal action” also describes a Board decision and consent order issued pursuant to a stipulation, even though a stipulation constitutes a voluntary agreement.

**Impact Analysis:** Provides an analytical framework for classifying cases so as to differentiate among them in deciding both the resources and urgency to be assigned each case. All cases are assessed in terms of their impact on the public and their significance to the achievement of the Agency’s mission. The cases of highest priority, those that impact the greatest number of people, are placed in Category III. Depending on their relative priority, other cases are placed in Category II or I.

**Overage Case:** To facilitate or simplify Impact Analysis, case processing time goals—from the date a charge is filed through the Regional determination—are set for each of the three categories of cases, based on priority. A case is reported “overage” when it is still pending disposition on the last day of the month in which its time target was exceeded. Cases that cannot be processed within the timelines established under the Impact Analysis program for reasons that are outside the control of the Regional Office are not considered to be overage.

**Petition:** A petition is the official NLRB form filed by a labor organization, employee, or employer. Petitions are filed primarily for the purpose of having the Board conduct an election among certain employees of an employer to determine whether they wish to be represented by a particular labor organization for the purposes of collective bargaining with the employer concerning wages, hours, and other terms and conditions of employment.

**Test of Certification:** A “test of certification” presents the issue of whether an employer has unlawfully refused to bargain with a newly-certified union. Because the Act does not permit direct judicial review of representation case decisions, the only way to challenge a certification is a refusal to bargain followed by a Board finding. However, because all relevant legal issues were or should have been litigated in the Representation case, the related ULP case is a no-issue proceeding that can be resolved without a hearing or extensive consideration by the Board.



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