



Casehandling Efficiency

Report No. OIG-AMR-97-22-04

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Memorandum from the Associate General Counsel, Division of
Operations-Management, OIG Casehandling Efficiency Audit
Report OIG-AMR-97, dated June 16, 2022

EXECUTIVE SUMMARY

In December 2018, Memorandum GC-19-02, Reducing Case Processing Time was issued stating that one of the major objectives was to ensure the processing of cases in a timely manner and improve the National Labor Relations Board's (NLRB) service to the public.

The memorandum included the NLRB's Strategic Plan FY 2019 – FY 2022, with Objective 1, Initiative 2, Measure 1 stated as “[r]ealize a 5% annual decrease in the average time required to resolve unfair labor practice charges through withdrawal, dismissal, settlement, or issuance of complaint.” To measure progress in meeting the goal, the NLRB established Fiscal Year (FY) 2018 as the base year.

The objective of this audit was to determine the impact and effectiveness of Memorandum GC 19-02. The scope of this audit was unfair labor practice or “C cases” processed during FY 2019 and 2020.

We found that the Filing to Disposition Reports used to create the FY 2018 base year and the calculation of performance data for the reduction in time from the filing of a charge to its disposition in the FY 2019 and FY 2020 Performance and Accountability Reports (PAR) were incomplete. Our testing also found that the data in the Filing to Disposition Reports could not be verified or reconciled to the data in the NLRB's NxGen case processing system's data fields and was therefore not accurate. Additionally, the NLRB lacked internal controls to ensure that it met its strategic goals.

We also found that the case processing time goal to achieve a 20 percent reduction in the filing to disposition time was set in a manner that was arbitrary and the NLRB statistic reported in the FY 2019 and FY 2020 PARs is misleading. Our trend analysis of charge dispositions in FY 2019 and FY 2020 did not support that the objective of reducing case processing time was met. We made three recommendations for corrective action.

In the Management Comments, the Division of Operations-Management generally agreed with the findings and recommendations. The comments also stated that the recommendation regarding cease using the Filing to Disposition Report was implemented on June 1, 2022. Additionally, the comments stated that Memorandum GC 19-02 was rescinded on May 27, 2022, by Memorandum GC 22-05, a memorandum that sets goals for the processing of initial unfair labor practice investigations. The comments also discuss the Strategic Plan FY 2022-2026 that was adopted in March 2022. Both Memorandum GC 22-05 and the Strategic Plan FY 2022-2026 were included with the comments as attachments. The Management Comments are provided in their entirety at Appendix B.

BACKGROUND

The National Labor Relations Board (NLRB or Agency) was established in 1935 to administer the National Labor Relations Act (NLRA). The NLRB has two primary functions: (1) to investigate and resolve (through settlement, prosecution, or dismissal) allegations of statutorily defined unfair labor practices (ULP or C cases) by employers and unions; and (2) to investigate and resolve questions concerning representation among employees to determine whether the employees wish to be represented by a union.

A ULP is initiated by a charge that is filed in a Regional Office. The General Counsel is responsible for ULP investigations. The former General Counsel, who served in that position from November 17, 2017 to January 20, 2021, issued Memorandum GC 19-02 (GC 19-02), Reducing Case Processing Time on December 7, 2018. The memorandum stated that one of the General Counsel's major objectives was to ensure the processing of cases in a timely manner. In the memorandum, the General Counsel also stated that he sought to improve the NLRB's service to the public and described statistics that showed the median processing time to issue a complaint in a merit ULP case had increased since the 1980s while the case intake has dropped. The memorandum explained that this was a disturbing trend, and that the Agency had adopted a strategic plan calling for a 5 percent reduction per year in case processing time. The memorandum also stated that impact analysis would no longer be used to prioritize the processing of ULPs, and that Regional Directors would be rated on three measures including the time between the filing of the charge and its disposition.

The memorandum included the NLRB's FY 2019 – FY 2022 Strategic Plan as an attachment. Objective 1, Initiative 2, Measure 1, was “[r]ealize a 5% annual decrease in the average time required to resolve unfair labor practice charges through withdrawal, dismissal, settlement, or issuance of complaint.” To measure progress in meeting the goal, the NLRB established Fiscal Year (FY) 2018 as the base year. In FY 2020, the General Counsel issued a memorandum stating the Regional Offices “made exceptional strides to meet our strategic goal” and praised the Agency personnel. The statistic was also used in rating Regional Directors’

performance and reported in the FY 2019 and FY 2020 Performance and Accountability Reports (PAR).

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of this audit was to determine the impact and effectiveness of Memorandum GC 19-02.

When the Office of Inspector General (OIG) issued the engagement memorandum, the objectives also included determining the impact and effectiveness of performance-based staffing levels and the consolidation of representation case decision writing. In light of the findings and recommendations regarding the objective to determine the impact and effectiveness of GC 19-02, the OIG determined that a report on that objective should not be delayed, and separate audits should be conducted, and reports issued regarding the objectives related to performance-based staffing and the consolidation of the representation case decision writing.

The scope of this audit was ULP or C cases processed during FY 2019 and 2020.

We reviewed laws, regulations, and Governmentwide policies related to performance management. We also reviewed the NLRA and the Agency's policies and procedures related to C case processing and data management. We interviewed staff in the Division of Operations-Management to learn about C case processing, strategic planning, and internal controls. We reviewed the NLRB's strategic plans and PARs.

We reviewed the NxGen Filing to Disposition Report relied upon by the Agency for performance reporting to determine its completeness and accuracy. For that testing, we compiled data from NxGen data fields and tested the compiled data to ensure its accuracy by selecting a statistically valid random sample of charges for the Charge Filed Date data field and action disposition data for each type of disposition. Using those samples, we determined whether the date in the NxGen data fields was accurate and reliable. We used a generally accepted sampling criteria to achieve a 90 percent confidence level. The 90 percent confidence level is consistent with Government Accountability Office (GAO) guidance and our expected

deviation rate. The results of our testing can be projected to the population.

We reviewed the strategic plans and related documentation to determine compliance with Governmentwide guidance. We also evaluated case processing data to determine the effectiveness of GC 19-02.

We reviewed GAO's *Standards for Internal Control in the Federal Government*, dated September 2014, to identify the relevant internal control standards related to C case processing and performance management. We evaluated the internal control policies and procedures to see whether they met GAO's internal control standards. We also evaluated the effectiveness of the internal controls over C case processing as they relate to performance management.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS) during the period from May 2021 through May 2022. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

FINDINGS SUMMARY

The Filing to Disposition Reports used to create the FY 2018 base year and then calculate the performance data for the reduction in time from the filing of a charge to its disposition in the FY 2019 and FY 2020 PARs were incomplete. Also, the data in the Filing to Disposition Reports could not be verified or reconciled to the data in the NLRB's NxGen case processing system's data fields and was therefore not accurate. Additionally, the NLRB lacked internal controls to ensure that it met its strategic goals.

We also found that:

- The case processing time goal to achieve a 20 percent reduction in the filing to disposition was arbitrary and set

in a manner that was contrary to the Office of Management and Budget's (OMB) guidance;

- The NLRB failed to accurately describe the methodology for determining the filing to disposition statistic and, as a result, the statistic reported in the FY 2019 and FY 2020 PARs is misleading; and
- The trend analysis of charge dispositions does not support that the objective of reducing case processing time was met.

DATA COMPLETENESS AND ACCURACY

The GAO's *Standards for Internal Control in the Federal Government* states that management designs a process that uses the entity's objectives and related risks to identify the information requirements needed to achieve the objectives and address the risks. Management then obtains relevant data from reliable internal and external sources in a timely manner based on the identified information requirements. Reliable internal and external sources provide data that are reasonably free from error and bias and faithfully represent what they purport to represent. When assessing the reliability of data, GAO guidance states:

- *Completeness* refers to the extent to which relevant data records and fields are present and sufficiently populated.
- *Accuracy* refers to the extent that recorded data reflect the actual underlying information.

Identifying Information Requirements

In December 2018, GC 19-02 was issued, announcing that the NLRB adopted a strategic plan that called for an overall 20 percent reduction in case processing time at a rate of 5 percent each year over a 4-year period. The memorandum also stated that the Regional Directors' performance would be measured based, in part, on the reduction in case processing time.

To measure the annual decrease in the average time required to resolve a ULP, the NLRB established FY 2018 as the base

year and created a Filing to Disposition Report using a data field called the “Implemented Date” that automatically populated for some dispositions but required data entry for others.

According to the Division of Operations-Management, for purposes of the Filing to Disposition Report the “disposition” actions included: (1) dismissal, withdrawal, the issuance of a complaint; settlement; or deferral; and (2) anytime that the charge was not being processed by the Regional Office because it was referred to Headquarters or was otherwise being held in abeyance. It was explained that charges could be held in abeyance and counted as a disposition so the time would not count against the Regional Director. The documentation provided by the Division of Operations-Management also included an explanation that a “disposition” included a deferral or submission to the Division of Advice. To calculate the performance measures, the Division of Operations-Management worked with the Office of the Chief Information Officer (OCIO) to create three new reports including the Filing to Disposition Report that would use the Implemented Date data field for the disposition date and allow the Regional staff to manually enter the dates for deferrals and Division of Advice submissions.

Completeness

We reviewed the Filing to Disposition Report data for FY 2018, 2019, and 2020 to determine whether the reports were complete. We extracted data from the NxGen data fields using the C Situation Merit Factor Report that lists case numbers and the disposition date of the charge through either complaint, withdrawal, dismissal, or settlement. We then extracted and analyzed NxGen data for Division of Advice submissions to identify the charges that were submitted to the Division of Advice and the date of the submission. We also obtained a list of deferred charges for each fiscal year from the OCIO. We used the data to create a list of charges for FY 2017 to FY 2020 with the dates of the disposition as outlined by the Division of Operations-Management. For each “disposition,” we also conducted data accuracy testing to ensure the data in the NxGen data fields met GAO’s standards for the tolerable error rate and

could be relied upon for our testing. We determined that the data we compiled met the accuracy standards.

To determine whether the Filing to Disposition Reports were complete, we compared the disposition data we compiled to the Filing to Disposition Report for each fiscal year. For FY 2018, the base year from which any change in filing to disposition time was calculated, we determined that the NLRB used an incomplete set of case processing data.

The comparison of the FY 2018 Filing to Disposition Report's charges to the data from the NxGen data fields resulted in discrepancies for 5,312 charges. Because of the large number of discrepancies, for the discrepancy between the charges in the Filing to Disposition Report and data for the charges listed in the C Situation Merit Factor Report, we used statistical random sampling to make a projection of the error rate. For each charge in the random sample of discrepancies, we reviewed the charge's case file and the NxGen data to determine the reason for the discrepancy and whether the disposition was in FY 2018. We found that 74.36 percent of the charges in our sample did in fact have a FY 2018 disposition and should have been included in the FY 2018 Filing to Disposition Report. We observed that the basis for the discrepancies included both no data in the Implemented Date data field that was created to capture disposition dates for the Filing to Disposition Report and data entry errors. For the charges with data in the Filing to Disposition Report but not the C Situation Merit Factor Report, we generally observed that the errors were the result of the report rather than the data. For the discrepancies in the deferral and Division of Advice submission charges, we reviewed the NxGen data and verified that the action occurred in FY 2018.

The table below summarizes the result of our testing:

	Number of Charges
Charges in the FY 2018 Filing to Disposition report	15,440
Charges that were included in the FY 2018 Filing to Disposition Report but had a disposition either before or after FY 2018 – projection based on sample testing	103
Charges that had an FY 2018 disposition but were not included in the FY 2018 Filing to Disposition Report – projection based on sample testing	3,421
Charges deferred or submitted to Headquarters that were not included in the FY 2018 Filing to Disposition report	342
Estimate of the number of charges not included in the FY 2018 Filing to Disposition Report	3,763
Percent incomplete as compared to the disposition dates in the NxGen data fields	19.7%

We completed the same process for FY 2019 and FY 2020. That testing showed that the Filing to Disposition Reports for those fiscal years were more complete with FY 2019 missing 2.1 percent and FY 2020 missing 5.3 percent of the charges that had a corresponding disposition date in the NxGen data fields.

Based on these results, we determined that the Filing to Disposition Report data was incomplete and was therefore unreliable for use in calculating a change in the charge filing to disposition time.

Accuracy

We reviewed the data in the Filing to Disposition Reports and found that each report accurately calculated the data it was provided. When we tested the underlying data, however, we found that the data could not be verified or reconciled against the disposition date data in the NxGen data fields.

The data in the Charge Filed Date data field could not be verified. Using a statistical random sample of the charges filed during the scope period, we found that the data in the Charge Filed Date data field was either inaccurate due to a data entry error or could not be verified in the charge’s case file documentation for more than the established acceptable error rate of 10 percent. As a result of that error rate, we

could not recalculate the filing to disposition time for the charges and meet the GAGAS standards.

Because we could not recalculate the Filing to Disposition statistic, we tested the accuracy of the data by reconciling the disposition date in the Filing to Disposition Report data to the underlying data in the NxGen data fields. This testing would demonstrate whether the reporting methodology of the Filing to Disposition Report was sound and if the internal controls related to data and performance management were effective.

By comparing the Implemented Date of the charges in the Filing to Disposition Reports with the disposition dates in the NxGen data fields, we found that 17.9 percent of the FY 2019 charges and 6.9 percent of the FY 2020 charges did not have matching dates between the Implemented Date in the Filing to Disposition Report and the date in the corresponding NxGen data field.

When this comparison testing is combined with the completeness testing, it shows a significant deviation between the disposition data in the Filing to Disposition Reports and the underlying disposition dates in the NxGen data fields. This also demonstrates that the NLRB did not have internal controls in place to ensure that management uses quality information to achieve the NLRB's objectives. A complete listing of the internal control analysis is provided in Appendix A.

As a result of these tests, we determined that the Filing to Disposition Report data could not be reconciled to the NxGen data fields and therefore is not accurate.

Recommendation

1. We recommend that the NLRB cease using the Filing to Disposition Report for any purpose.

In the Management Comments, the Division of Operations-Management reported that the Recommendation 1 was implemented effective June 1, 2022.

CASE PROCESSING TIME GOAL

Memorandum GC 19-02 announced the initiative to reduce case processing time by 20 percent over 4 years and provided the FY 2019 to 2022 strategic plan. The strategic plan's Goal 1 (Mission) Initiative 2 was "[a]chieve enhanced performance for the resolution of all unfair labor practice charges." Measure 1 under Goal 1 was "[r]ealize a 5% annual decrease in the average time required to resolve unfair labor practice charges through withdrawal, dismissal, settlement, or issuance of complaint."

The memorandum does not provide information regarding why the determination that a 20 percent reduction in case processing time was appropriate or how it was achievable. The memorandum states that the median time to issue a complaint from the filing of the charge increased from between 44 and 55 days in the 1980s to a current time of 128 days. The memorandum also explained that from FY 2012 to the end of FY 2018, there was a 38 percent increase in overage cases while the charge intake for the same period decreased by nearly 13 percent.¹ The memorandum states the conclusion that this is a "disturbing trend," but it does not explain how that conclusion was reached, what may be the cause, or the relationship between the time to issue a complaint as compared to the time to reach any other particular charge disposition. Additionally, the memorandum does not provide specific guidance to the Regions on how they are to implement the new strategic goal. Rather, the memorandum states that the General Counsel is vesting them with wide discretion to develop systems and processes.

When we reviewed the documentation that was provided to the OIG in response to a request for all documentation related to development and implementation of GC 19-02, we did not find any information that explained how the 20 percent reduction in 5 percent yearly increments was established or how such a reduction was appropriate to ensure effective enforcement of the NLRA. There was no documentation that the performance of individual Regional

¹ The statistical information in GC-19-02 was not audited and is provided here only for the purposes of describing the information provided in the memorandum to explain or otherwise justify the change in performance measures and for the finding of whether the NLRB complied with OMB guidance. The OIG makes no representations regarding the accuracy of that information or whether it can be relied upon for any particular purpose.

Offices was reviewed to determine if each office could achieve that goal. There was documentation that the initiative to reduce the charge filing to disposition time by 20 percent in 5 percent increments was established prior to the calculating the FY 2018 statistic for the Regional Offices. There is also documentation that the Division of Operations-Management and the Regions engaged in a process to develop ideas that streamline case processing. There was no documentation, however, that when the goal was announced the results of that effort were leveraged to establish formal policies or guidelines that would assist Regional Offices in implementing strategies to meet the 20 percent reduction goal.

We asked an Agency manager in the Division of Operations-Management who was involved in the establishment of the objective to achieve a 5 percent reduction in case processing time about the process of establishing that objective. The manager explained that the overall goal of a 20 percent reduction was chosen because it could be evenly divided in four increments of 5 percent. When we asked if there was analysis of the impact or feasibility of obtaining a 20 percent reduction in case processing time over 4 years, we were told that there was not.

We also spoke with a former Agency manager who was involved in the development of the initiative to reduce the charge filing to disposition time by 20 percent. We were told that after doing the historical analysis, a decision was made that cases were originally processed in 45/60 day time target, it was felt that 80 days from filing to disposition would be reasonable based on:

- Decrease in case intake;
- Stability in Field office (Regional Office) staff;
- Elimination of end of the month reporting;
- Field agents had laptops and iPhones;
- Funding to the OCIO to improve the network;
- Settlement criteria was made more flexible; and

- Consolidation of R Case decision writing would free up staff.

The former Agency manager also stated that Regional Directors who were already meeting the 80-day benchmark were not subject to the 20 percent reduction in filing to disposition time.

We also spoke to a former leadership official who generally provided information that aligned with the information provided by the former Agency manager. The former official, however, also stated that they recalled the 80-day benchmark was used to establish the 20 percent reduction goal. It was their recollection that the FY 2018 charge filing to disposition statistic was at or about 100 days and to get to 80 days it would be about a 20 percent reduction. They also explained that the intent was to set up a system that would provide an accurate number to measure the charge disposition going forward because the prior method was riddled with exceptions, was generally considered inaccurate, and was subject to abuses by Regional management officials. The former official explained that Regional Directors who met the 80 day benchmark would not be required to further reduce the time and that their performance ratings were not strictly tied to the goal.

The OMB guidance for strategic planning provides a broad overview of what agencies should consider in the planning process. Based upon the Agency documentation and interviews, we found no evidence that the Agency engaged in the process contemplated in that guidance. There is no evidence that the Agency considered the risks of the change to the NLRB's overall mission, objectives, or priorities. Also, there was no documentation that the Agency used strategic foresight to systematically consider a longer time horizon and a broader scope of issues. Although the memorandum listed case processing time statistics, there was no trend analysis that might explain the root cause of the increase of case processing time.

Using the data that was provided to the Regional Directors for the FY 2018 base year, we calculated the number of days that Regions with a processing time over 80 days would be at if they reduced the time by 20 percent. As a result of that

calculation, 27 percent of the Regions would remain over 80 days if they met the 20 percent target in 4 years. We also observed that 27 percent of the Regions were below 80 days prior to issuance of GC 19-02.² In GC 19-02, it states that “[a]ll General Counsel side divisions are subject to this 5% reduction goal . . .” The Filing to Disposition Report states that the FY 2018 statistic is 90 rather than 100 days.³ A 20 percent reduction from 90 days would result in a benchmark of 72 rather than 80 days. As stated above, this statistic was not calculated and available to the Regional Directors until after the goal to reduce the filing to disposition time by 20 percent was announced. Also, the report to calculate the statistic was not available in the NxGen system until January 2019. We observed that the General Counsel’s message in the FY 2019 PAR states “Regional Offices nearly met our four-year 20% goal by reducing the time of filing to disposition of unfair labor practice cases from 90 to 74 days – a decrease of 17.5%.” When considered all together, this information also tends to show that the 80-day benchmark was not the basis for the goal.

The statement by the former Agency Manager that Regional Directors who met an 80-day benchmark were not subject to the 20 percent reduction in filing to disposition time initiative is not supported by other statements and is contradicted by the Regional Director appraisals. We spoke with management officials in each of the 19 Regional Office that had an Agency calculated FY 2018 charge filing to disposition time that was below 100 days. We selected those Regions because if the 80-day benchmark was communicated to the Regions, we would expect those officials to recall that information. We verified that the person we were speaking to was in the Regional Office at the time that the goal to reduce the charge filing to disposition time was implemented by the former General Counsel. Every Regional management official stated that it was their understanding that the Region needed to reduce the charge filing to disposition time by 20 percent without regard to the

²This analysis is provided for determining whether the strategic goal was established in an appropriate manner. As stated above, we found that the data used to calculate the FY 2018 base year was both incomplete and not accurate. This data was, however, used by the Agency in implementing GC 19-02 and reporting performance. We make no representation regarding the actual number of Regions above or below the 80-day benchmark.

³ Id.

Region's FY 2018 base year starting point. None of the officials recalled an 80-day benchmark. Our review of the performance appraisal documentation provided by the Division of Operations-Management confirmed that the goal was used in the Regional Directors' appraisals.

Given all these circumstances, without documentation that supports that there was an analysis that a 20 percent reduction in the Agency's charge filing to disposition was warranted and achievable, setting a strategic goal in this manner was arbitrary and contrary to the guidance provided by OMB.

To gain an understanding of the effect of the goal, we reviewed the documentation and spoke with Regional Directors. We learned that the Regional Directors came up with various strategies in an attempt to reduce the filing to disposition time. Some strategies appear to be related to better oversight of the case investigation process and included scheduling meetings known as an "Agenda" to review a case at a set time, such as 7 weeks after a charge was filed, and reviewing every open case weekly. Other strategies stated the following without reference to the merits of the charge:

- Stress to the Board Agents that easy cases should go first;
- Press charging parties to withdraw if they are not ready to proceed with their evidence;
- Decrease the turnaround time for charged parties to submit their evidence; and
- Get rid of lack of cooperation cases faster.

The purpose of an ULP investigation, according to the NLRB's ULP Casehandling Manual, "is to ascertain, analyze, and apply the relevant facts and law in order to arrive at the proper disposition of the case." The ULP Casehandling Manual also provided that the "planning and organization of Board agent's approach must be guided, at least in part, by the application to the principles set forth in the Agency's Impact Analysis program." In addition to setting the 20

percent reduction in filing to disposition time goal, however, GC 19-02 stated that the Impact Analysis program was not helpful to achieving the goal to reduce case processing time by 5 percent annually. There were no corresponding changes to the investigative policies sent forth in the ULP Casehandling Manual.

Prioritizing cases based on ease, pressing charging parties to withdraw charges because they need additional time to collect evidence, reducing time for charged parties to submit evidence, and getting rid of lack of cooperation cases for the sole purpose of reducing a time processing statistic and without regard to the merits of the charge runs counter to the ULP Casehandling Manuals' stated purpose of a ULP investigation that "is to ascertain, analyze, and apply the relevant facts and law in order to arrive at the proper disposition of the case." The decision to implement those actions should be based on sound investigative reasoning in accordance with documented guidance in the ULP Casehandling Manual and with regard to the merits of the charge, not in an effort to meet an arbitrary goal to reduce a time processing statistic.

When we spoke with a Regional Director, in a Region with an Agency calculated FY 2018 filing to disposition time below 72 days, the Director explained that Regional personnel had a lack of understanding about how to achieve the reduction in the charge filing to disposition time and they felt demoralized. The Regional Director also noted that Headquarters required that supervisors receive a poor performance appraisal based on the statistic, resulting in supervisors believing that there was an overemphasis on the statistics and a lack of power because there were instances when a delay was beyond their control. Another Regional Director explained that the charge disposition was not always within the Region's control because they did not control the nature of the charges that were filed.

Had the NLRB considered the risks of the change to its overall mission, objectives, or priorities or used strategic foresight to systematically consider a longer time horizon and a broader scope of issues, the strategic goal to reduce the charge filing to disposition time could have been better developed in a manner that was not arbitrary, but rather served to make actual improvement in the quality and efficiency of the ULP charge investigative process.

For FY 2022 to FY 2026, the NLRB issued a new strategic plan. Because that plan does not incorporate the case processing time reductions, we are making no recommendations regarding this finding. Additionally, on May 27, 2022, the current General Counsel issued Memorandum GC 22-05, rescinding Memorandum GC 19-02 and reimplementing the Impact Analysis program with noted changes. The Management Comments, provided at Appendix B to this report, included Memorandum GC 22-05 and Strategic Plan FY 2022-2026 as attachments.

MISLEADING STATISTIC

Memorandum GC 19-02 does not define what is considered a charge “disposition.” The Strategic Plan FY 2019 – FY 2022, however, states the measure as “[r]ealize a 5% annual decrease in the average time required to resolve unfair labor practice charges through withdrawal, dismissal, settlement, or issuance of complaint.” The statistic reported for that measure is the average days calculated in the Filing to Disposition Report.

When we interviewed the Division of Operations-Management manager, we were told that, for the purposes of the Filing to Disposition Report, charge dispositions also included deferrals and submitting the charge to Headquarters for review by the Division of Advice or some other office. This was also confirmed in our review of the documents provided by the Division of Operations-Management and interviews of a Regional Director. As explained above, when we tested for completeness, we used the disposition categories as explained by the Division of Operations-Management.

When we compared the Filing to Disposition Report to the charges that were deferred or submitted to the Division of Advice, we found the following:

Charges in the Filing to Disposition Report with a Date that Matched the Deferral or Division of Advice Submission Date	
FY 2018	950
FY 2019	1185
FY 2020	1571

The statistic from the Filing to Disposition report was used to report the charge filing to disposition time in the PAR. The statistic is also prominently featured in the General Counsel's Message, a narrative statement at the beginning of the PAR. For FY 2019, the General Counsel included language from GC 19-02 regarding the prior years' casehandling statistics and his conclusion that it was a "disturbing trend." The message then states that results for FY 2019 were "outstanding – far exceeding expectations" and that the Regions nearly met the 4-year goal.

The Strategic Plan FY 2019 to FY 2022 specifically limits the disposition of charges for reporting the reduction in time to withdrawal, dismissal, settlement, or the issuance of complaint. We find that using the Filing to Disposition Report statistics that were tabulated with different criteria for charge dispositions to report the NLRB's performance for FY 2019 and FY 2020 was misleading. As result of using misleading performance data to report performance, the corresponding PARs cannot be relied upon as a reliable source of the NLRB's performance in meeting its strategic goal to reduce the charge filing to disposition time.

Recommendation

2. We recommend that the NLRB put a disclaimer on the PARs that contain Filing to Disposition Report statistics for FY 2019 and FY 2020 regarding the accuracy of that data.

CHARGE DISPOSITION TREND ANALYSIS

As discussed above, because of data accuracy issues with the date that charges were filed, we cannot recalculate the filing to disposition statistic and use that information to determine the impact and effectiveness of GC 19-02. We did, however, determine that the deferral action disposition type and the fiscal year for disposition date data elements were accurate. With that information we reviewed the disposition of charges to evaluate the impact and effectiveness of GC 19-02.

We observed that in FY 2019 and FY 2020, the number of deferrals increased while the number of other types of actual

charge dispositions, as listed in the Strategic Plan FY 2019 – FY 2022, decreased.

Deferrals

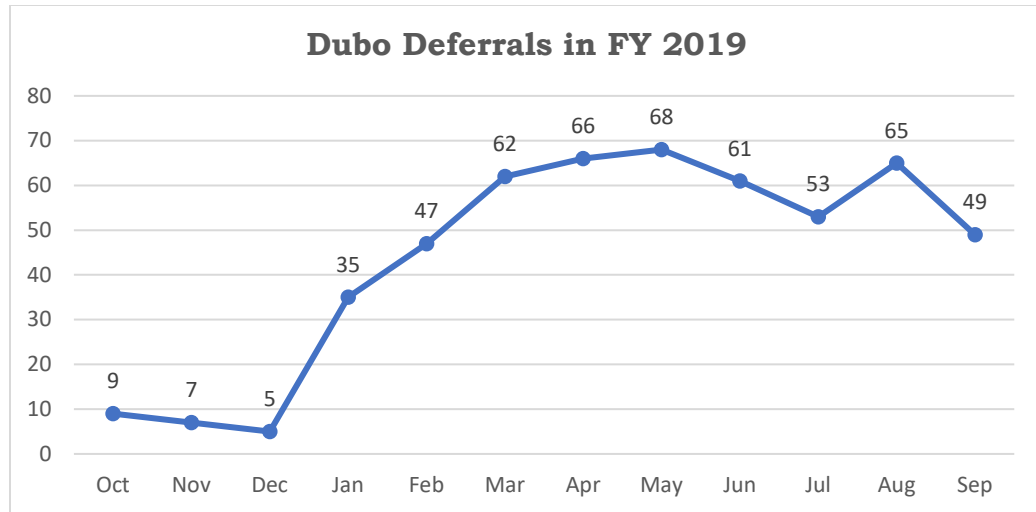
The number of deferred charges increased each year with a significant increase in FY 2020.

	Number of Charges			Percent Change (From FY 2018)	
	FY 2018 Base Year	FY 2019	FY 2020	FY 2019	FY 2020
Charges that were disposed of by a Deferral	1,210	1,258	1,573	4	30

There are different types of charge deferrals, but most charges are deferred based upon two types identified by NLRB decisions known as *Dubo* and *Collyer*. On December 28, 2018, the former General Counsel, who served in that position from November 17, 2017 to January 20, 2021, issued a memorandum on the use of *Dubo* deferrals. The memorandum states that *Dubo* deferrals can be made early without the need for significant investigation beyond the basic facts and that a *Dubo* deferral cannot be appealed. The table below shows the details of the charges by *Dubo* and *Collyer* deferral type:

Deferral Type	Number of Charges			Percent Change (From FY 2018)	
	FY 2018 Base Year	FY 2019	FY 2020	FY 2019	FY 2020
<i>Dubo</i>	61	527	1,123	764	1741
<i>Collyer</i>	1,134	710	438	-37	-61

We reviewed the *Dubo* deferrals and observed that the use of *Dubo* deferrals significantly increased starting January 2019. The graph below shows the number of charges deferred under *Dubo* by month:



Actual/Final Dispositions

For each fiscal year we calculated the number of non-deferral and Division of Advice charge dispositions by complaint, dismissal, withdrawal, and settlement. The chart below shows that while deferrals increased, the number of actual/final dispositions decreased.

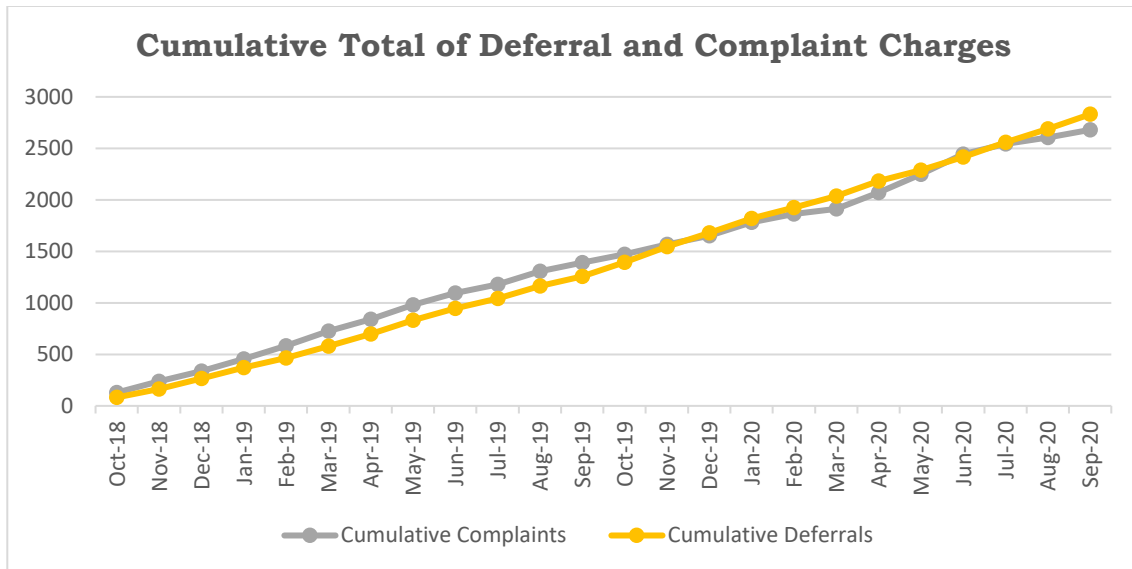
Fiscal Year	Number of Charges			Percent Change (From FY 2018)	
	2018 Base Year	2019	2020	2019	2020
Charges Disposed of by a Complaint	1,778	1,391	1,289	-22	-28
Charges Disposed of by Dismissal	4,568	4,563	4,157	0	-9
Charges Disposed of by Withdrawal	10,090	9,685	8,396	-4	-17
Charges disposed of by Settlement	1,051	1,039	860	-1	-18

To consider the effect of charge intake, for each fiscal year and using the categories of dispositions that were used to tabulate the Filing to Disposition Report, we calculated the annual percentage of charges for each disposition category.

The table below shows comparison:

Disposition	FY 2018 Base Year		FY 2019		FY 2020	
	Charges	Percent	Charges	Percent	Charges	Percent
Complaints	1,778	9.42	1,391	7.69	1,289	7.69
Dismissals	4,568	24.20	4,563	25.22	4,157	24.80
Withdrawals	10,090	53.45	9,685	53.53	8,396	50.08
Settlements	1,051	5.57	1,039	5.74	860	5.13
Deferrals	1,210	6.41	1,258	6.95	1,573	9.38
Advice	182	0.96	156	0.86	490	2.92

The analysis shows that while the overall number of disposition actions decreased, the deferral actions increased both in number and their proportion of the total disposition. Additionally, as shown in the table below, near the beginning in FY 2020, the cumulative total of deferred charges for FY 2019 and FY 2020 began to exceed the cumulative number of complaints issued.



The increase in the proportion of Division of Advice submission is likely attributable to COVID-19 and guidance to the Regional Offices to submit all charges related to COVID-19 issues to the Division of Advice. When we reviewed the post-Division of Advice dispositions of the charges for FY 2020, we found that 43 were complaint dispositions and 28 were deferrals. Those amounts were not sufficient to alter the analysis that the FY 2020 deferrals exceeded complaints.

The trend analysis tends to show that the GC 19-02 initiative was not effective in achieving faster actual disposition of charges and therefore did not have a beneficial impact on the filing to disposition time as the dispositions are defined in the Strategic Plan FY 2019 – FY 2022 and the corresponding PAR. The deferral of the charge does not dispose of the charge for either party. Because a deferral holds an investigation in abeyance and therefore delays the actual disposition of a charge, deferring more charges and delaying the actual final disposition of the charge by complaint, dismissal, withdraw, or settlement runs counter to the stated purpose of the goal to reduce the average charge actual filing to disposition time. The impact of more deferrals on the filing to disposition time is greater for *Dubo* over *Collyer* deferrals because, as noted in the *Dubo* deferral memorandum, the *Dubo* deferrals can be made earlier without the need for investigation beyond the basic facts and they cannot be appealed.

The NLRB does not collect data to measure the time from the deferral to the resumption of charge processing by the Regional Office, nor does it capture the time from the end of the deferral to the disposition of the deferred charge. Therefore, we could not determine the full impact of the deferral on the case processing time.

As stated above, for FY 2022 to FY 2026, the NLRB issued a new strategic plan. Because that plan does not incorporate the case processing time reductions, we are making no recommendations regarding this finding.

INTERNAL CONTROLS

From the GAO's *Standards for Internal Control in the Federal Government* we selected the internal control attributes and standards that are applicable to performance management. We generally found the Division of Operations-Management was not meeting those standards as they related to strategic planning and Regional casehandling performance measurements and data management. The cause of these internal control findings, based upon our review of documents and interviews with NLRB personnel, is that the individuals involved in developing the strategic plan engaged

in an ad hoc process and then did not provide adequate implementing guidance to the Regional Office. Rather, according to GC 19-02, the General Counsel left the implementation of the process to meet the plans goals to the Regional Directors. Additionally, the Division of Operations-Management did not engage in a sound data verification or accuracy testing process and failed to identify what would have been apparent data errors had such action been taken. The effect was that the Agency was not effective in meeting the initiative set out in GC 19-02. The details of our internal control review are provided at Appendix A.

Recommendation

3. We recommend that Division of Operations-Management develop appropriate internal controls related to strategic planning, goal implementation management, and data management.

APPENDIX A

GAO – STANDARDS	CONCLUSION	RESULTS
<p>Management adjusts excessive pressures on personnel in the entity. Pressure can appear in an entity because of goals established by management to meet objectives or cyclical demands of various processes performed by the entity, such as year-end financial statement preparation. Excessive pressure can result in personnel “cutting corners” to meet the established goals. Management is responsible for evaluating pressure on personnel to help personnel fulfill their assigned responsibilities in accordance with the entity’s standards of conduct. Management can adjust excessive pressures using many different tools, such as rebalancing workloads or increasing resource levels.</p>	<p align="center">DOES NOT MEET</p>	<p>Leadership and managers created a performance standard in an arbitrary manner. Leadership and managers in the Division of Operations-Management did not determine the cause of what it perceived to be a lack of efficiency in the time taken between the charge filing date and the charge disposition for the individual Regional Offices. The leadership made a universal time reduction standard as a measurement in determining the Regional Director performance regardless of how efficient the Region had been prior to the initiative. As a result, the Regional Directors felt pressured to achieve the time reduction standard regardless of how well the Region had been performing prior to the implementation of the time reduction. Also, implementing guidance was not provided when issuing the performance standards.</p>
<p>Management defines objectives in specific and measurable terms to enable the design of internal control for related risks.</p>	<p align="center">MEETS</p>	<p>The Agency's FY 2019 - 2022 Strategic Plan identifies a specific and measurable initiative to reduce case processing time in Objective 1, Initiative 2, Measure 1 - 5% annual decrease in the average time required to resolve unfair labor practice charges through withdrawal, dismissal, settlement, or issuance of complaint.</p>
<p>Management evaluates and, if necessary, revises defined objectives so that they are consistent with these requirements and expectations.</p> <p>Management determines whether performance measures for the defined objectives are appropriate for evaluating the entity’s</p>	<p align="center">DOES NOT MEET</p>	<p>Management did not document any studies or risk analysis regarding the appropriate duration of time from the filing of the charge to its disposition of a charge. Also, management did not document that they took any action to determine if it was possible to achieve the performance standard to reduce the charge filing to</p>

APPENDIX A

GAO – STANDARDS	CONCLUSION	RESULTS
<p>performance in achieving those objectives.</p>		<p>disposition processing time by 20 percent in 4 years or by 5 percent per year.</p>
<p>Management defines risk tolerances for the defined objectives. Risk tolerance is the acceptable level of variation in performance relative to the achievement of objectives. Risk tolerances are initially set as part of the objective-setting process.</p>		
<p>Management identifies risks throughout the entity to provide a basis for analyzing risks. Risk assessment is the identification and analysis of risks related to achieving the defined objectives to form a basis for designing risk responses.</p>		
<p>Management estimates the significance of the identified risks to assess their effect on achieving the defined objectives at both the entity and transaction levels.</p>		
<p>Management designs responses to the analyzed risks so that risks are within the defined risk tolerance for the defined objective. Management designs overall risk responses for the analyzed risks based on the significance of the risk and defined risk tolerance. These risk responses may include Acceptance, Avoidance, Reduction, and Sharing.</p>		
<p>As part of risk assessment or a similar process, management identifies changes that could significantly impact the entity’s internal control system. Management identifies, on a timely basis, significant changes to internal and external conditions that have already occurred or are expected to occur. Changes in internal conditions include changes to the entity’s programs or activities, oversight structure, organizational structure, personnel, and technology.</p>		

APPENDIX A

GAO – STANDARDS	CONCLUSION	RESULTS
<p>As part of risk assessment or a similar process, management analyzes and responds to identified changes and related risks in order to maintain an effective internal control system. Changes in conditions affecting the entity and its environment often require changes to the entity’s internal control system, as existing controls may not be effective for meeting objectives or addressing risks under changed conditions.</p>		
<p>Management tracks major entity achievements and compares these to the plans, goals, and objectives set by the entity.</p> <p>Management compares actual performance to planned or expected results throughout the organization and analyzes significant differences.</p>	<p>DOES NOT MEET</p>	<p>Management did not track the actual performance for the measurement stated in the FY 2019 - FY 2022 Strategic Plan. After Memorandum GC 19-02 was issued, the Filing to Disposition Report was created to measure the Regions' filing to disposition time. In implementing Memorandum GC 19-02, the NLRB authorized the use of deferral and Division of Advice submission dates as a "disposition." The Filing to Disposition Report used the data field identified as "Implemented Date" to capture the charge disposition date. The Implemented Date data field allowed for manual data entry. Employees were instructed to manually enter the deferral and Division of Advice submission dates in the Implemented Date data field. The Agency then used the Filing to Disposition Report that included deferral and Advice submission dates to calculate the filing to disposition statistics in the Performance and Accountability Reports (PAR) and to rate Regional Directors. As a result, the Filing to Disposition statistic as reported in the PAR was misleading.</p>

APPENDIX A

GAO – STANDARDS	CONCLUSION	RESULTS
<p>A variety of control activities are used in information processing. Examples include edit checks of data entered; accounting for transactions in numerical sequences; comparing file totals with control accounts; and controlling access to data, files, and programs.</p>	<p>DOES NOT MEET</p>	<p>Management does not have effective controls to ensure that the Implemented Date is correct. The Implemented Date field is auto populated when a charge is disposed of by dismissal, withdrawal, settlement, or complaint. The data in the Implemented Date field is manually entered for deferrals and Division of Advice submissions. We could not reconcile the data in the Implemented Date data field from the FY 2019 and FY 2020 Filing to Disposition Reports to the disposition dates in the NxGen data field. The FY 2019 Filing to Disposition report had an error rate of 17.9 percent and was incomplete by 2.1 percent and the FY 2020 Filing to Disposition Report had an error rate of 6.9 percent and was incomplete by 5.3 percent.</p>
<p>Management establishes activities to monitor performance measures and indicators. These may include comparisons and assessments relating different sets of data to one another so that analyses of the relationships can be made, and appropriate actions taken. Management designs controls aimed at validating the propriety and integrity of both entity and individual performance measures and indicators.</p>	<p>DOES NOT MEET</p>	<p>Management did not establish activities to monitor performance measures and indicators. We found significant deviation between the disposition dates in the Filing to Disposition Reports and the underlying disposition dates in the NxGen data fields. Also, we found that the average days reported in the PAR were misleading.</p>

APPENDIX A

GAO – STANDARDS	CONCLUSION	RESULTS
<p>Transactions are promptly recorded to maintain their relevance and value to management in controlling operations and making decisions. This applies to the entire process or life cycle of a transaction or event from its initiation and authorization through its final classification in summary records. In addition, management designs control activities so that all transactions are completely and accurately recorded.</p>	<p align="center">DOES NOT MEET</p>	<p>The transactions were not recorded in an accurate and timely manner. The Charge Filed Date is used to determine the Filing to Disposition statistic. During our data accuracy testing, we found that Charge Filed Date data field had an error rate greater than 10 percent. Also, the FY 2018 Filing to Disposition Report that was used as the base year is incomplete by 19.7 percent. The FY 2019 Filing to Disposition Report had an error rate of 17.9 percent and was incomplete by 2.1 percent and the FY 2020 Filing to Disposition Report had an error rate of 6.9 percent and was incomplete by 5.3 percent.</p>
<p>Management clearly documents internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination. The documentation may appear in management directives, administrative policies, or operating manuals, in either paper or electronic form. Documentation and records are properly managed and maintained.</p>	<p align="center">DOES NOT MEET</p>	<p>Management did not create documentation of internal controls related to Memorandum GC 19-02 or the FY 2019 - FY 2022 Strategic Plan. Management created a report in a manner that allowed for the manipulation of performance data. Management did not document that the Filing to Disposition Report was calculating a statistic using the deferral and Division of Advice submission dates in addition to the complaint, settlement, withdrawal, and dismissal dates. As a result, the methodology for the Filing to Disposition Reports did not match the measure in the FY 2019 - FY 2022 Strategic Plan. Management's report of performance for FY 2019 and FY2020 was misleading and unreliable. As a result, management did not have any control activities to determine the continued relevance and effectiveness in achieving the objective to reduce the filing to disposition time or address any related risks. Management was acting in an ad hoc manner without any documented policies for its</p>
<p>Management documents in policies for each unit its responsibility for an operational process's objectives and related risks, and control activity design, implementation, and operating effectiveness.</p>		
<p>Management periodically reviews policies, procedures, and related control activities for continued relevance and effectiveness in achieving the entity's objectives or addressing related risks. If there is a significant change in an entity's process, management reviews this process in a timely manner after the change to determine that the</p>		

APPENDIX A

GAO – STANDARDS	CONCLUSION	RESULTS
control activities are designed and implemented appropriately.		operational processes to achieve the reduction in filing to disposition time.
<p>Management designs a process that uses the entity’s objectives and related risks to identify the information requirements needed to achieve the objectives and address the risks.</p> <p>Management obtains relevant data from reliable internal and external sources in a timely manner based on the identified information requirements. Reliable internal and external sources provide data that are reasonably free from error and bias and faithfully represent what they purport to represent.</p> <p>Management processes the obtained data into quality information that supports the internal control system. Quality information is appropriate, current, complete, accurate, accessible, and provided on a timely basis. Management uses the quality information to make informed decisions and evaluate the entity’s performance in achieving key objectives and addressing risks.</p> <p>Management communicates quality information throughout the entity using established reporting lines. Quality information is communicated down, across, up, and around reporting lines to all levels of the entity. Management communicates quality information down and across reporting lines to enable personnel to perform key roles in achieving objectives, addressing risks, and supporting the internal control system. In these communications, management assigns the internal control responsibilities for key roles.</p>	DOES NOT MEET	<p>Management did not use relevant and reliable data to communicate quality information throughout the Agency and with external parties. The Filing to Disposition Report issued during the period of FY 2018, FY 2019, and FY 2020 were incomplete. Also, the Charge Filed date field that was used to calculate the average filing to disposition days was determined inaccurate and unreliable. The information in the Filing to Disposition Report was used to report case processing efficiency statistics to Agency officials and public. Therefore, information communicated throughout the entity and external parties was not accurate and reliable.</p>

APPENDIX A

GAO – STANDARDS	CONCLUSION	RESULTS
<p>Management communicates with, and obtains quality information from, external parties using established reporting lines. Open two-way external reporting lines allow for this communication.</p>		
<p>Management establishes a baseline to monitor the internal control system. The baseline is the current state of the internal control system compared against management’s design of the internal control system.</p> <p>Management performs ongoing monitoring of the design and operating effectiveness of the internal control system as part of the normal course of operations. Ongoing monitoring includes regular management and supervisory activities, comparisons, reconciliations, and other routine actions.</p> <p>Management evaluates and documents the results of ongoing monitoring to identify internal control issues.</p>	<p>DOES NOT MEET</p>	<p>Management did not establish a baseline to monitor and evaluate the internal controls related to implementing Memorandum GC 19-02. No documented policies or guidance was provided regarding dispositions. Management did not conduct adequate reviews to ensure that the Filing to Deposition Reports were complete and accurate.</p>

UNITED STATES GOVERNMENT
National Labor Relations Board
Division of Operations-Management

Memorandum

TO: David P. Berry, Inspector General
FROM: Joan A. Sullivan, Associate General Counsel
DATE: June 16, 2022
SUBJECT: OIG Casehandling Efficiency Audit Report OIG-AMR-97

Thank you for the opportunity to review the draft audit report of the Agency's implementation of Memorandum GC 19-02, Reducing Case Processing Times [rescinded May 27, 2022 by [Memorandum GC 22-05](#), Goals for Initial Unfair Labor Practice Investigations]. Your report concluded that former General Counsel Peter Robb's goals for processing of initial unfair labor practice investigations were arbitrary, not fully described, and based on unreliable data. The undersigned accepts your findings and conclusions, as previewed by you in your draft report and adopts all three of the recommendations you advanced.

In this response, I will describe the Agency's action plan for moving forward taking account the concerns raised in your report. Steps to chart a new path in this area began in early 2021 at the direction of then Acting General Counsel Peter Sung Ohr. The Agency's [Strategic Plan \(FY 2022 - 2026\)](#) adopted in March 2022 by Chairman Lauren McFerran, and General Counsel Jennifer A. Abruzzo contemplated a reformed approach to timeliness goals. Additionally, on May 27, 2022, General Counsel Abruzzo rescinded Memorandum GC 19-02. Below explains both steps already taken and future steps to be taken to address the concerns your report raises.

The Agency has Rescinded Memorandum GC 19-02 and Instituted New Efficiency Standards

In March 2021, then Acting General Counsel Ohr convened a workgroup consisting of Regional Directors, field managers, field supervisors, and staff in the Division of Operations-Management to examine the field offices' experiences with the timeliness standards described by Memorandum GC 19-02, and he charged the workgroup with examining the then existing goals and proposing new ones for various aspects of casehandling in the field offices.

In September 2021, the workgroup presented a summary of its consideration and recommendations to General Counsel Abruzzo, all Regional Directors, and representatives of the Field Managers Association (FMA), which represents the Agency's

managers, supervisors, and administrative officers in the field offices. After considering the report and recommendations, the feedback of Regional Directors, representatives of the FMA, and the Division of Operations-Management, General Counsel Abruzzo sought additional examination and input from the workgroup. General Counsel Abruzzo then convened a Labor-Management Forum (LMF) to consider the timeliness goals for initial unfair labor practice investigations and make recommendations. This LMF was comprised of field office representatives from both managers and supervisors and National Labor Relations Board Union members.

On May 27, 2022, General Counsel Abruzzo issued Memorandum GC 22-05, adopting the LMFs recommendations and thereby rescinding Memorandum GC 19-02. The timeliness goals, which are the subject of your audit, have been rescinded, effective June 1, 2022. Other details about the new goals are described in Memorandum GC 22-05 and attachments. The LMF will reconvene no later than February 2023 to examine the Agency's experience with the new goals and to recommend whether any modifications should be undertaken.

OIG Recommendations

We agree with the audit's recommendations as follows:

1. We recommend that the NLRB cease using the Filing to Disposition Report for any purpose.

Effective June 1, 2022, the NLRB ceased using the Filing to Disposition Report for any purpose. The Agency does not plan to use this report for any goal measuring purpose in the future.

2. We recommend that the NLRB put a disclaimer on the PARs that contain Filing to Disposition Report statistics for FY 2019 and FY 2020 regarding the accuracy of that data.

The Agency will amend the PARs for FY 2019 and FY 2020 to include a disclaimer regarding the accuracy of that data.

3. We recommend that Division of Operations-Management develop appropriate internal controls related to strategic planning, goal implementation management, and data management.

In collaboration with the Office of the General Counsel, the Division of Operations-Management has engaged in strategic planning that produced a new set of timeliness goals that took into account the field office's implementation of previous efficiency standards and goals. See GC 22-05. Moving forward, the Division of Operations-Management will ensure internal controls are in place for strategic planning, goal implementation management, and data management. Specifically, the Division of Operations-Management will develop internal controls that will include a set of criteria to

be implemented in future strategic planning, as well as describing the Division's protocols for implementing new goals and managing data related to the goals.

I am available to discuss details of what we contemplate, at your convenience.

JOAN
SULLIVAN

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JOAN SULLIVAN
Date: 2022.06.17
12:50:34 -04'00'

Joan A. Sullivan
Associate General Counsel
Division of Operations-Management

Attachments:

Memorandum GC 22-05
2022-2026 Strategic Plan

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 22-05

May 27, 2022

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

FROM: Jennifer A. Abruzzo, General Counsel

SUBJECT: Goals for Initial Unfair Labor Practice Investigations

In [Memorandum GC 19-02](#), the former General Counsel introduced new timeliness goals for certain aspects of field office case processing, notably the time to complete the initial investigation of unfair labor practice cases. That memorandum attached [the Agency's FY 2019-2022 Strategic Plan](#), which has since been superseded by [the Agency's FY 2022-2026 Strategic Plan](#). Memorandum GC 19-02 and the superseded FY 2019-2022 Strategic Plan set the goal for completing unfair labor practice investigations as a 5% per year reduction in average case processing times from a baseline of FY 2018 performance, for a targeted reduction of 20% overall over four years. The timeliness goals prior to Memorandum GC 19-02 measured investigations from filing of charge to satisfaction of the Dispose of Allegations target date in the NxGen system, taking into account overage case explanations. The system announced in GC 19-02 instead measured from filing of charge to the NxGen system's implementation date and did not account for any overage case explanations.

The timeliness of initial unfair labor practice investigations is one of many important Agency goals. The maxim "justice delayed is justice denied" is certainly applicable in the NLRA context, whether it be for victims of unfair labor practices who must endure coercion and economic strain until the Agency can vindicate their rights, or for charged parties who must wait for exoneration before they can fully move on with their operations. However, the greatest priority in our investigative work is to perform at the highest quality level. Thus, when I arrived back at our Agency, I asked managers about their experiences with Memorandum GC 19-02 and whether they comported with our greatest priority.

After receiving input, a Labor-Management Forum (LMF), comprised of Agency managers and representatives of the National Labor Relations Board Union, engaged in productive collaboration, after which they submitted their recommendations to me.

Based upon the input received, I have decided to implement the following in order to better effectuate timely and quality processing of unfair labor practice charges:

1. I am eliminating the goal of requiring each Region to annually reduce the average number of days from filing of charge to disposition of the charge.

- Beginning June 1, 2022, the Agency will assess timeliness of initial unfair labor practice investigations based on the average number of days from filing of the charge until the Region either disposes of the charge or reaches a stopping point at which the Region can no longer advance the investigation pending the occurrence of some event beyond the Region’s control (Abeyance). The overall goal will be to reach this milestone in average of 91 days or fewer. This will be an Agency goal, as well as a goal for each Region.

2. I am reimplementing Impact Analysis as a tool to manage the timely processing of unfair labor practice cases towards the 91 day goal, but with some key changes to the Impact Analysis system.

- Under the newly implemented Impact Analysis system, Category 3 (highest impact) cases will be assigned the longest time to investigate because history has demonstrated that these cases frequently are more complex, involve more issues, and require a more in-depth investigation; as a result, Category 3 cases generally have taken longer to investigate than Category 1 and 2 cases.
- Accordingly, I am adjusting the targets for investigating each category of case. The targets will be as follows: the target time for investigating Category 3 cases will be 105 days; the target time to investigate Category 2 cases will be 91 days; and the target time to investigate Category 1 cases will be 49 days.

	As of 2018	New
Category 1	98 days	49
Category 2	77 days	91
Category 3	49 days	105

- Though I am setting target dates for Category 1, 2 and 3 cases, the purpose of these targets is to assist Regions in meeting the overall goal for all cases which is an average of 91 days from filing to disposition date or stopping point of investigation beyond the Region’s control. The Agency’s institutional timeliness goals for initial unfair labor practice investigations will be (1) the 91 day overall goal across all three categories of cases and (2) the 105 day goal for Category 3 cases specifically. The target dates for Category 1 and 2 will be used only for case management.

3. In order to ensure consistency, Regions will use the list attached as Appendix A to categorize a case as a Category 1, 2 or 3. Similarly, Regions will use Appendix B, which is a list of “Dispositions of Initial Investigation.” Regions are permitted to place a case in abeyance in the circumstances indicated on Appendix B but must document that decision in the NxGen case file.

The Agency’s new goal for timeliness of initial unfair labor practice investigations is effective June 1, 2022. Because impact analysis categorization has not been consistent thus far during Fiscal Year 2022, only the overall average will be considered for FY 2022.

I fully recognize and applaud the Field office staff members for their admirable investigative work despite significant challenges associated with a flat-lined budget, loss of resources, and increased case intake and mission-critical initiatives. In making the decision referenced above, I was especially cognizant of (1) the enormous strain case processing in a time of increasing intake and diminishing staff has placed on the Field, (2) the uncertainty of future intake and staffing, particularly given budget dependency, and (3) the necessity for reliable data to ensure the accuracy and integrity of our ultimate performance measurements.

I also agree with the LMF's recommendation that they reconvene no later than February 2023 to examine initial experiences with the system, assess related data, and submit recommended modifications, if deemed appropriate. Relatedly, I look forward to their recommendations regarding a system for measuring post-abeyance case handling.

I am so grateful to all who contributed to helping develop these recommendations and I appreciate the commitment of all of you to meet or surpass these new goals. Your dedication to our mission of protecting the rights of workers in this country to engage in union and protected concerted activities is laudable and much appreciated.

/s/
J.A.A.

Appendix A

Disposition of Initial Investigation

In a Region's control

- Approve Withdrawal Request
- Issue Dismissal Letter
- Issue Merit Dismissal
- Issue Deferral Letter
- Issue Complaint
- Approve Informal Settlement Agreement
- Submit to Advice (Regional Advice Branch)
- Submit to Injunction Litigation Branch (prior to issuing complaint)
- Submit to CCSLB (pre-complaint)
- Referring to the Board a petition revoke investigative subpoenas or filing in district court for enforcement investigative subpoenas

Out of a Region's Control (Abeyance)

- Submitted to Ethics and cannot move forward
- Submitted to E-Litigation Branch and cannot move forward
- Coordination with another Region (formal or informal)
- Coordination with other federal or state agency
- Submitted to Operations for referral to the National Mediation Board
- Submitted to Operations for possible action involving the General Counsel's Front Office
- Incapacity of Charging Party verified and charge impacted by 10(b)
- Related cases (C or R) pending that could impact settlement/complaint
- Partial dismissal/deferral pending in Appeals where Region cannot issue complaint or approve settlement on the remainder of the case until there is a ruling on the appeal

Appendix B

➤ Category 3 (Exceptional Impact; 105 days)

- All allegations involving loss of employment, loss of recognition, or refusal to recognize.
- All allegations emanating from an organizing campaign
- All allegations arising during first contract negotiations, including successor situations (including *Weingarten*, retaliation for union activities, information requests, unilateral changes, refusal to bargain, surface bargaining, etc.)
- 8(a)(1) discharge
- 8(a)(2) assistance/interference involving imposition of bargaining representative
- 8(a)(3) discharge (recognizing that existing guidance requests that nip-in-the-bud cases and some 10(j) situations be investigated in fewer than 98 days)¹
- 8(a)(1), (3) and (4) refusal to hire (moved this from Cat. 2)
- 8(a)(3)/8(a)(5) ongoing strike or lockout
- 8(a)(3) subcontracting, shut down or relocation
- 8(a)(3) refusal to hire in successor avoidance cases
- 8(a)(4) discharge
- 8(a)(5) withdrawal of recognition
- 8(b)(2) resulting in loss of employment
- 8(g)

➤ Category 2 (Significant Impact; 91 days)

- 8(a)(1) all conduct (except loss of employment or *Weingarten* violation)
- 8(a)(2) assistance (not involving imposition of bargaining representative)
- 8(a)(3), (4) discipline less than discharge and any adverse action less than discipline (more onerous working conditions, reduction in hours, etc.)
- 8(a)(5) all bargaining violations short of loss of recognition or refusal to recognize (unilateral change, refusal to meet, 8(d), information request, refusal to sign successor contract, etc.)
- 8(a)(1), (3) retaliatory lawsuits
- 8(b)(1)(A) duty of fair representation cases or other coercive conduct
- 8(b)(1)(A) fees, fines, assessments and *Beck*
- 8(b)(1)(A) and (2) Hiring hall (not involving ongoing loss of work)
- 8(b)(2) anything that does not involve loss of employment
- 8(b)(3) refusal to bargain when filed by an employer
- Likely deferral cases (determine likelihood of deferral as soon as possible; recategorize if necessary)
- *Weingarten* violations

➤ Category 1 (Important Impact; 49 days)

- Clear no merit cases (no jurisdiction; 10(b) period has expired)
- 8(a)(5) filed by an individual in error
- 8(b)(3) filed by an individual in error



STRATEGIC PLAN

FY 2022 - FY 2026

GOVERNMENT PERFORMANCE AND RESULTS ACT
(GPR)MODERNIZATION ACT OF 2010

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I. MESSAGE FROM THE CHAIRMAN AND GENERAL COUNSEL

On behalf of the National Labor Relations Board (NLRB or Agency), we are pleased to present the NLRB’s Strategic Plan for Fiscal Years (FY) 2022 – 2026. This strategic plan includes the NLRB’s strategic goals, objectives, initiatives, strategies, and associated performance measures for managing operations and assessing the NLRB’s achievements.

The NLRB is an independent federal agency established in 1935 to promote workplace democracy and, in the words of President Franklin Delano Roosevelt, “to foster the development of the employee contract on a sound and equitable basis.” For more than 86 years, the NLRB has been at the forefront of the effort to promote and protect the rights and obligations of employees, unions, and employers under the National Labor Relations Act (NLRA or the Act). This Strategic Plan will permit the NLRB to continue to adopt best practices for long-range planning.

This Strategic Plan contains five goals designed to guide and objectively measure our success in achieving the Agency’s mission. These goals focus the Agency on timely and effectively enforcing the NLRA for employees, unions, and employers; building, supporting, and retaining a talented and diverse workforce; effectively managing its budgetary and other resources; and ensuring public awareness of and equitable access to the Agency’s services. Each goal, moreover, is supported by specific objectives, initiatives, and strategies that provide a clear roadmap to achieving success. Last, each goal incorporates objective measures that will enable the Agency and the public to assess our success.

These goals are tied to specific, objective measures, all of which have annual percentage targets, specific projects, or deliverables that can be accounted for with a “yes” or a “no”. The measures, in turn, are supported by management strategies that are specifically designed to ensure that we meet those measures. Together, the measures and their underlying strategies will ensure that we achieve our goals.

Dated February 23, 2022

Lauren McFerran
Chairman

Jennifer A. Abruzzo
General Counsel

II. NATIONAL LABOR RELATIONS BOARD AT A GLANCE

FISCAL YEAR 2021 INFORMATION	
Established:	1935
Number of Employees:	1,210
Overall Case Intake:	
Unfair Labor Practice Cases:	15,081
Representation Cases:	1,638
Public Inquiries:	32,106
Toll Free Phone Inquiries:	23,833
NLRB MISSION	
<p>Vigorously advance the policies of the NLRA to promote collective bargaining by ensuring that workers can freely express their wishes regarding union representation and protecting workers’ fundamental right to act together for their mutual aid or protection.</p>	
NLRB VISION	
<p>Achieving our mission by broadening public awareness and understanding of the NLRA, effectively allocating resources, and ensuring productivity, diversity, equity, inclusivity, and accessibility among the Agency’s highly talented current and future workforce.</p>	
STRATEGIC GOALS	
<ol style="list-style-type: none"> 1. Ensure effective enforcement of the National Labor Relations Act through timely and quality consideration and resolution of unfair labor practices with appropriate remedies. 2. Protect employee free choice with timely and effective mechanisms to resolve questions concerning representation. 3. Achieve organizational excellence and serve as a model employer. 4. Manage Agency resources efficiently and in a manner that instills public trust. 5. Improve public awareness of the Agency’s mission and its activities. 	

III. ORGANIZATIONAL DISCUSSION/OVERVIEW

The NLRB is an independent federal agency created in 1935 to administer and enforce the NLRA, the primary federal statute governing labor-management relations in the private sector. The NLRA protects the right of employees to choose for themselves, without interference by employers or unions, whether to form, join, assist, or collectively bargain through a labor organization, and to otherwise join together for their mutual aid or protection, or to refrain from all such activity. The NLRB enforces these statutory rights to remedy the known inequality of bargaining power between employees and their employers, to promote the full freedom of association of workers, and to strengthen the Nation's economy by promoting the peaceful resolution of disputes that might otherwise cause disruptions to commerce.

The NLRB has two primary functions:

- To investigate and resolve (through settlement, prosecution, or dismissal) allegations of statutorily defined unfair labor practices by employers and unions; and
- To investigate and resolve questions concerning representation among employees to determine whether the employees wish to be represented by a union.

The Board also may engage in rulemaking as appropriate to implement the policies and provisions of the Act.

Top Agency leadership consists of the five Board Members and the General Counsel, each of whom is appointed by the President with the advice and consent of the Senate. The President designates one of the five Board Members as Chairman. Day-to-day management of the Agency is divided between the Chairman, the full Board, and the General Counsel. Board members serve staggered five-year terms and the General Counsel serves a term of four years from commission. The NLRA assigns separate and independent responsibilities to the 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. The General Counsel's role is administrative and prosecutorial.

Neither the Board nor the General Counsel may initiate cases or investigations. All NLRB proceedings originate with the filing of charges or petitions by employees, labor unions, employers, or other private parties. Unlike some other federal agencies, Board remedial orders are not self-enforcing. There is no time limit requiring parties to petition for court review. If the parties do not voluntarily comply with Board orders remedying unfair labor practices, the Board must request that the appellate courts enforce its orders.

The Board and the General Counsel maintain a Headquarters in Washington, D.C., and the Agency also maintains a network of Field offices and three satellite offices of administrative law judges. Approximately 70 percent of the Agency's staff is employed in the Field offices, where all unfair labor practice charges and representation petitions are initially processed. Currently, the Field offices include 26 Regional Offices, nine (9) Sub-Regional Offices, and 13 Resident Offices.

IV. MEASURING OUR PERFORMANCE

Performance measures are not a new concept for the Agency. Our system of organization and measurement has been highly regarded for decades and has served as a model used by other federal agencies. We have long used performance measures to pursue a dual approach to excellence in customer service, striving to deliver results that are both timely and of high quality. Our consistent emphasis on timeliness recognizes that the rights afforded employees under the NLRA are most meaningful when they can be quickly invoked and enforced to stop and remedy unfair labor practices or to effectuate employees' choice regarding union representation. Accordingly, we have set objectively measurable time targets for both unfair labor practice and representation cases to ensure a high level of responsiveness to the public as well as efficiency within our organization.

We have also aimed to maintain the highest standards of fairness, quality, and effectiveness, in order to promote public trust in the operation of our organizational units. We have a multi-level review system to continually evaluate the quality of casehandling work. For example, the Division of Operations-Management reviews the quality of cases processed by Field offices by critically and constructively assessing the casehandling work of the Field offices and providing timely feedback to effectuate necessary changes to ensure the highest quality standards are met. Similarly, the Board is regularly apprised of the outcomes of cases that have been appealed to the federal appellate courts, where the Board has historically achieved a high rate of judicial enforcement of its orders. This task of combining timeliness with quality is one of the Agency's highest priorities, as reflected in our general goals.

V. PROGRAM EVALUATION

The NLRB uses various techniques and mechanisms to evaluate whether programs are achieving their Government Performance and Results Act (GPRA) goals and other performance targets. The Agency monitors the status of all its cases to track its performance against yearly targets that support the Agency's overarching measures and strategic goals. As to the Board, at the beginning of each fiscal year, it evaluates its entire docket of pending cases to identify those unfair labor practice cases and representation cases that, if not issued before the end of the year, will have been pending before the Board for more than 18 months and 12 months, respectively. The Board then creates a list of these cases, prioritizes them for issuance, and ensures that all Board staff personnel are aware of these priority cases. In addition, a committee comprising senior management officials, including the Executive Secretary and the Board Members' respective Deputy Chief Counsels, communicates weekly to review the status of cases, to prioritize additional cases, and to develop lists of cases that the Board Members will jointly focus on each week in order to facilitate the issuance of decisions in those cases. These representatives also regularly report back to the Board Members on performance data and staff workload, among other issues. The Board also has an electronic casehandling management system that captures all case events in a database from which case production reports are generated. The Executive Secretary uses this database to create weekly spreadsheet reports to apprise the Board Members and their staffs of the status of all priority cases. The Board Members also regularly meet and communicate with each other to discuss cases.

It is difficult for an Agency such as the NLRB to measure "outcomes" in the sense intended by the authors of the GPRA. In the representation case area, the Agency does not control or seek to influence the results of elections but strives instead to ensure the right of employees to freely decide whether they wish to be represented by a labor organization. In the unfair labor practice area, the aim of the Agency is to timely

address and resolve charge allegations to vindicate the rights of employees, serve the broader public interest in effective enforcement of the Act, and minimize the potential for industrial strife and unrest to burden the free flow of commerce. An indicator of success in the achievement of these aims is timeliness and quality of case processing, from the filing of a representation case petition or unfair labor practice charge to the closing of the case.

The Office of the General Counsel established several committees in fiscal year 2021 to evaluate case processing. Some of those committees have submitted reports to the General Counsel for review and adjustments have already been made based on the renewed emphasis on quality. It is expected that those Committees that have not yet submitted their reports for the General Counsel's consideration may recommend adjustments to casehandling in light of the Agency's renewed ability to hire staff in the Field offices.

Further, the General Counsel has an evaluation program to assess the performance of its Field operations. The Quality Review Program of the Division of Operations-Management reviews unfair labor practice, 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 and effectuated appropriately. Those reviews have assessed, among other things, the quality and completeness of the investigative file, the implementation of the General Counsel's priorities, and compliance with Agency decisions. Additionally, administrative law judge and Board decisions that constitute significant losses are reviewed to ensure quality casehandling, and the litigation success rate before the Board and before district courts with regard to injunction litigation is monitored. Further, when safe to do so, Field office site visits will be reinstated to evaluate local casehandling and administrative procedure.

In addition to the Division of Operations-Management's regular review of case decisions to determine the quality of litigation, other divisions, branches, and offices, such as the Office of Appeals, Division of Advice, Contempt, Compliance and Special Litigation Branch, and the Office of Representation Appeals, provide valuable insight and constructive feedback on the performance and contributions of Field offices.

In addition, the Agency actively engages with the public to seek feedback on our operations. As one example, senior Agency management meets regularly with the practice and procedure committee of the American Bar Association and with entities and practitioners representing various employers and labor organizations or other third-party interests, to obtain feedback on experiences when practicing before the NLRB. Similarly, the Agency recently published an Advance Notice of Proposed Rulemaking in the Federal Register seeking feedback on the Agency's expanded use of videoconference technology during the COVID-19 pandemic to conduct hearings, and whether, and to what extent, virtual hearings should remain an option even after the pandemic ends.

VI. STRATEGIC FIVE-YEAR GOALS

GOAL 1 (MISSION): ENSURE EFFECTIVE ENFORCEMENT OF THE NATIONAL LABOR RELATIONS ACT THROUGH TIMELY AND QUALITY CONSIDERATION AND RESOLUTION OF UNFAIR LABOR PRACTICES WITH APPROPRIATE REMEDIES

Objective 1: Achieve timely consideration and appropriate resolution of unfair labor practice charges at every stage of processing.

Measure 1: The Field office operations reach determinations on all unfair labor practice charges within 90 percent of the Agency’s timeliness goal.

Measure 2: Issue 90 percent of pending unfair labor practice cases that, by the end of the fiscal year, will have been pending before the Board for more than 18 months.

Measure 3: Ensure that the median age of all cases pending before the Board at the end of each fiscal year is 180 days or less.

Management Strategies:

- Maintain and enhance existing interregional assistance programs to ensure that unfair labor practice cases in offices with backlogs are transferred to offices with available staff.
- Using the Board’s electronic case management system, continually monitor the status of unfair labor practice cases pending before the Board to ensure that priority cases are on track to issue by the end of the fiscal year.

Objective 2: Demonstrate high quality performance in the prosecution and adjudication of meritorious unfair labor practice charges.

Measure 1: Conduct annual quality reviews of all Field offices’ unfair labor practice case files with overall ratings.

Management Strategies:

- Provide regular and timely feedback to the Regions of the quality of their unfair labor practice investigation and prosecution.
- Maintain and enhance alternative decision-making procedures to expedite Board and ALJ decisions in unfair labor practice cases; on the Board side, for example, maximize opportunities to circulate cases with pre-prepared draft opinions in order to fast-track the issuance of final decisions.
- Proactively pursue voluntary settlement of unfair labor practice cases, including through the Board’s Alternative Dispute Resolution program that is available to parties following the issuance of a decision by an administrative law judge.
- Utilize intra-agency working groups and committees to continually evaluate quality of investigations, litigation, and compliance.
- Evaluate all losses of adjudicated unfair labor practices deemed significant to institute modifications to the Agency’s litigation program, as appropriate.

Objective 3: Promptly pursue remedies for statutory violations.

Measure 1: Ensure that at least 85 percent of Board Orders are closed or advanced to the nextstage in fewer than 300 days.

Measure 2: Ensure that at least 85 percent of Federal Circuit Court Orders are closed or advancedto the next stage in fewer than 300 days.

Management Strategy:

- Share best practices in unfair labor practice processing to assist Field offices in resolving unfair labor practice case issues promptly and fairly.

Definitions:

Advanced to the Next Stage – The following actions consists of advancements: a) the filing of a petition for court enforcement or review, b) referral to contempt, or c) issuance of a Compliance Specification.

Modifications to Case Processing – Through training and performance management, modify practices or approaches that are not consistent with the Agency’s quality standards – such modifications will also include identifying new best practices that improve the quality of the Agency’s case processing, and disseminating these, through updates to case processing guidance and related training.

Significant Losses of Adjudicated Unfair Labor Practices – Significant losses of adjudicated unfair labor practices are Administrative Law Judge or Board decisions resulting in either dismissal of the entire complaint, or dismissal of allegations that substantially affect the make-whole remedy, such as reinstatement or other terms and conditions of employment.

GOAL 2 (MISSION): PROTECT EMPLOYEE FREE CHOICE WITH TIMELY AND EFFECTIVE MECHANISMS TO RESOLVE QUESTIONS CONCERNING REPRESENTATION

Objective 1: Achieve timely resolution of all questions concerningrepresentation of employees.

Measure 1: Reach 85 percent pre-election agreement rate in representation elections not involving issues regarding the way the elections are conducted.

Measure 2: Issue 90 percent of pending representation cases that, by the end of the fiscal year,will have been pending before the Board for more than 12 months.

Measure 3: Ensure that the median age of all cases pending before the Board at the end of each fiscal year is 180 days or less.

Management Strategies:

- Using the Board’s electronic case management system, continually monitor the status of representation cases pending before the Board to ensure that priority cases are on track to issue by the end of the fiscal year.
- Maintain and enhance streamlined alternative decision-making procedures, such as circulating cases to the Board with draft opinions, rather than following the process of soliciting votes on case issues prior to a draft decision being prepared to expedite Board decisions in representation cases.
- Maintain and enhance existing interregional assistance programs to ensure that representation cases in offices with backlogs are transferred to offices with available staff.
- Identify and utilize procedures to ensure careful and timely processing of Requests for Review, Special Appeals, and Hearing Officer Reports.
- Stay abreast of other federal and state agencies’ approaches to representation case processing and share bestpractices in representation case processing internally to assist Field offices in resolving representation case issues promptly and fairly.

Objective 2: Increase employees’ opportunities to freely participate in election proceedings by making appropriate and effective use of technology.

Measure 1: Promote awareness of the option to file election petitions electronically, in English or Spanish, through the Agency’s website.

Management Strategies:

- Enhance the effectiveness of existing technologies, and investigate the potential benefits offered by new technologies, to maximize employees’ opportunities to participate in election proceedings.
- Increase greater access to the Agency’s electronic filing system for non-English filers.

GOAL 3 (SUPPORT): ACHIEVE ORGANIZATION EXCELLENCE AND SERVE AS A MODEL EMPLOYER

Objective 1: Improve employee morale and labor relations

Measure 1: Maintain target employee engagement index score of 67 percent on the Federal Employee Viewpoint Survey (FEVS), and in subsequent years establish new initiatives with the goal of increasing employee engagement.

Management Strategies:

- Examine the feasibility of creating employee resource groups (ERGs) to promote better employee engagement by following appropriate OPM and EEOC guidance and utilizing best practices of similar agencies.
- Ensure that managers engage with the Agency’s employees and their representatives to help implement and effectuate Agency policies and collective bargaining agreements that balance performance, productivity, and workplace flexibilities.

Objective 2: Increase opportunities for career enhancement through employee development

- Ensure that managers engage with the Agency’s employees and their representatives to help implement and effectuate Agency policies and collective bargaining agreements that balance performance, productivity, and workplace flexibilities.

Objective 3: Increase opportunities for career enhancement through employee development

Measure 1: Satisfaction percentage rating (65 percent or above) of the “Talent Management Index” using the annual FEVS results.

Management Strategies:

- Explore the use of employee affinity groups at headquarters and in Field offices for recruitment, retention, and developmental activities.
- Maintain a current strategic plan that includes human capital goals, objectives, and strategies and a workforce plan that is consistent with the Human Capital Framework (HCF) of the Office of Personnel Management (OPM).
- Enhance employee development and learning opportunities through Skillport, West Legal Ed, and other on-line and blended media.
- Identify core competencies for managers and actions necessary to close skill gaps.
- Promote individual development plans (IDPs) for employees by proactively encouraging participation.

Objective 4: Recruit and retain a talented and diverse workforce

Measure 1: Satisfaction percentage rating (65 percent or above) for the “Job Satisfaction Index” using the annual FEVS results.

Management Strategies:

- Clearly and consistently communicate to employees how their work supports the Agency’s ability to achieve its mission.
- Regularly seek opportunities to give employees appropriately challenging work assignments to develop their skills, grow their engagement, and enhance their opportunities for advancement.
- Create and grow participation in formal and informal mentorship programs for new hires and new supervisors, specifically to include those who identify as a member of an underrepresented group, to maximize their prospects for long-term success in the Agency.

Measure 2: Satisfaction percentage rating (65 percent or above) for the “Support for Diversity Index” using the annual FEVS results.

Management Strategies:

- Involve all Agency employees as participants and responsible agents of diversity, mutual respect, and inclusion.
- Reassess Agency mentoring programs to ensure they are used as tools to maintain a diverse workforce and consistently provide opportunities to participate in such programs in all organizational units.
- Encourage participation in special emphasis observances.
- Fully and timely comply with all relevant federal laws, regulations, applicable executive orders, management directives and policies related to promoting diversity, equity, inclusion, and accessibility in the workplace.
- Demonstrate leadership accountability, commitment, and involvement regarding diversity, equity, inclusion, and accessibility.
- Provide on-going diversity, equity, inclusion, and accessibility training for senior leadership.
- Evaluate all levels of management on their proactivity in maintaining an inclusive work environment.
- Continue to attract qualified and diverse applicants from different demographics, including veterans and persons with disabilities, by following the Office of Personnel Management (OPM) and Equal Employment Opportunity Commission (EEOC) guidance and utilizing best practices of similar agencies.

GOAL 4 (SUPPORT): MANAGE AGENCY RESOURCES EFFICIENTLY AND IN A MANNER THAT INSTILLS PUBLIC TRUST

Objective 1: Make effective use of Agency’s resources by proactively planning how best to deploy those resources, and continually monitor and reevaluate the execution of such plans to ensure we have strong processes and internal controls in place to identify and prevent any misuse or inefficiencies in the allocation of Agency resources.

Measure 1: Achieving a clean audit opinion by ensuring that OCFO’s operations are guided by appropriate processes and internal controls.

Management Strategies:

- Effective management of fiscal resources by administering the NLRB’s budget through the development and implementation of an annual Operating Plan that aligns the budget resources to the Agency’s priorities and the Strategic Plan.
- Meeting contracting goals through strengthened acquisition planning and creating innovative business strategies that achieve cost-effective contracting solutions.

Measure 2: Continue to support telework by employees and contractors, as well as virtual access to Agency processes by members of the public, to create opportunities to reduce costs associated with maintaining the Agency’s footprint in its Headquarters and Field offices, in accordance with General Service Administration (GSA) directives.

Management Strategies:

- Increase information sharing within the Agency through mechanisms that are easy for employees to contribute to and access.
- Employ ongoing, transparent project oversight from the Administrative Systems Integrated Project Team comprised of users/customers and developers.
- Modernize the Agency’s systems using technological advances, automation tools, and artificial and business intelligence protocols to continuously improve the productivity of the Agency while maintaining aspects of the current systems based on organizational priorities.
- Achieve more effective and efficient program operations in the NLRB administrative functions by automating and improving processes and information sharing within the Agency.

Objective 2: Conduct all internal and external Agency business in an ethical and timely manner.

Measure 1: Make progress towards an employee satisfaction percentage rating (65 percent or above) for the Agency’s ethical culture using the annual FEVS results.

Measure 2: Continue to respond to Freedom of Information Act (FOIA) inquiries in a timely manner.

Management Strategies:

- Fully and timely comply with all relevant federal laws, regulations, applicable executive orders, management directives and policies related to ethics in the workplace.
- Use technology to maintain an ethics education program that reaches all NLRB employees at all levels.
- Ensure substantial compliance with employee ethics training and financial disclosure requirements.

Objective 3: Develop a culture of Enterprise Risk Management (ERM) and Internal Controls to support the Agency’s decision-making process.

Measure 1: Reach an ERM maturity level-3 by FY 2026.

Management Strategies:

- Establish and develop an ERM program to include policies and procedures that will strengthen leadership decision making.
- Integrate Internal Control activities into Agency operations.

Definition:

Substantial Compliance – Compliance with the substantial or essential regulatory requirements that satisfies their purpose or objective even though there may be individual deficiencies beyond the organization’s control.

GOAL 5 (MISSION): IMPROVE PUBLIC AWARENESS OF AGENCY MISSION AND ACTIVITIES

Objective 1: Improve agency outreach and public engagement, especially among members of underserved communities.

Measure 1 : Increase the number of users who access the NLRB’s English and non-English language digital resources, including our public website and social media platforms.

Measure 2: Increase the number of participants, including foreign language speakers, in the NLRB’s outreach to students.

Management Strategies:

- Expand Agency outreach programs to better reach underserved communities.
- Begin gathering and analyzing meaningful demographic data about individuals and organizations—on a voluntary and anonymous basis—that use or are considering using Agency services.
- Expand digital resources for non-English speakers
- Augment the Agency’s outreach effort by creating a dedicated Outreach Committee chaired by a senior official from the Division of Operations-Management with partners from Field offices, the Office of Congressional and Public Affairs, and other Headquarters Mission Support Divisions, with responsibility to develop and implement national and field outreach initiatives that expand access to underserved and underrepresented communities.
- Continue the NLRB Equity Assessment Team’s exploration of additional ways to achieve the key goal of Executive Order 13985 to advance equity for all in understanding and accessing the Agency’s services.
- Employ increased non-traditional outreach to the following underserved populations:
 - Historically Marginalized Populations
 - Immigrant Populations
 - Youth Population
- Improve accessibility and functionality of Agency website and social media. Institute an automated satisfaction survey for website users and evaluate responses for further action.
- Engage with organizations to better educate workers and employers, through activities, such as:
 - Letters of Agreement (LOA) with embassies
 - Joint outreach with sister agencies
 - Memorandums of Understanding (MOU) with other agencies related to coextensive investigations
- Focus on Protected Concerted Activity, Collective Bargaining, and Union Activity:
 - Expand public usage of the NLRB’s social media network, including the NLRB’s Smartphone app and other technology
 - Provide additional information on the NLRB’s public website
 - Continually evaluate opportunities for the Agency to make greater use of existing and new social media platforms
 - Develop more internal informational materials housed in a centralized location for use by board agents at recruitment and outreach events

VII. EXTERNAL FACTORS AFFECTING ACHIEVEMENT OF STRATEGIC PLAN

Various factors can affect achievement of each Strategic Goal and our ability to implement the supporting objectives and management strategies. These factors include budget, case intake, settlements, vacancies in the Office of the General Counsel or on the Board, the potential effect of statutory changes, and circumstances affecting government as a whole, such as the current pandemic.

BUDGET

Our goals and measures assume appropriate funding of the Agency’s budget, as submitted by the President to Congress. As a labor-intensive agency, over 90 percent of our budget is dedicated to fixed costs, including about 80 percent for salaries and benefits. If less than appropriate funding is authorized, the Agency’s ability to produce the results and benefits set forth in this plan may be impacted.

CASE INTAKE

Although the Agency projects caseload based on certain known factors and recent history, it cannot control the number of cases filed. As explained above, the Agency does not initiate unfair labor practice or representation cases, but instead responds to charges and petitions filed by employees, unions, employers, and other members of the public. As a result, public perceptions about unionization and the role of the Agency, employment trends, stakeholder strategies, globalization of the economy, industrial economic trends, corporate reorganizations, and the level of labor-management cooperation efforts can all have an impact on case intake and the complexity of the work. Difficult issues can arise when companies relocate or close, dissipate or hide assets, file for bankruptcy, reorganize or operate through a different corporate entity. An unexpectedly large increase in intake or in the complexity of issues would likely result in significant delays in processing cases. Based on historical data and taking into account the extraordinary economic conditions caused by the COVID pandemic and climate-related issues affecting safety and health, it is projected that overall case intake over the next five years will increase from FY 2021 case intake figures. Given current Agency initiatives, we anticipate that case intake will increase for both ULP and representation cases. The Agency notes that current FY 2022 intake for ULP and representation cases shows an increase in intake compared to the same time period in FY 2021.

SETTLEMENTS

While the Agency has experienced outstanding success in achieving voluntary resolutions of unfair labor practice and representation cases pending before the Agency, as well as cases being litigated in the courts, it cannot control the desires of the other parties. Parties may conclude that litigation serves their strategic interests. The Agency's due process procedures provide for administrative hearings, briefs, and appeals. Disputes cannot always be resolved informally or in an expeditious manner. It is estimated that a one percent drop in the settlement rate will cost the Agency more than \$2 million as the process becomes formal and litigation takes over.

GENERAL COUNSEL and BOARD MEMBER VACANCIES

The timely nomination of Presidential appointees and their confirmation by the Senate is another factor outside the control of the Agency. A failure to timely appoint and confirm a General Counsel and Board Members can lead to vacancies that adversely affect the timeliness of case processing. The Agency has experienced vacancies in these critical positions lasting many months, which significantly impairs the Board's ability to issue decisions and the General Counsel's ability to prosecute matters. The adverse impact of operating with less than a full Board has been fully described in past Congressional hearings conducted by the Government Reform and Oversight Committee. Having a full complement of Board Members and a Senate-confirmed General Counsel increases the Agency's ability to achieve its goals, objectives, and measures.

LEGISLATIVE CHANGES

Any regulatory or statutory changes either in the Act or in the management of the federal government could affect the Agency's ability to meet the goals of this plan.

OTHER EXTERNAL FACTORS

The NLRB has achieved great success in maintaining its operations over the course of the COVID-19 pandemic and climate-related emergencies. Nevertheless, it must be recognized that future events could impact the Agency's ability to achieve its strategic goals. The Agency is actively evaluating its experiences to prepare as much as possible, but future events are fraught with uncertainty.

VIII. OFFICE OF INSPECTOR GENERAL STRATEGIC PLAN



United States Government
National Labor Relations Board
Office of Inspector General

Strategic Plan
Fiscal Years 2021 to 2026

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A MESSAGE FROM THE INSPECTOR GENERAL

I am pleased to present the National Labor Relations Board (NLRB) Office of Inspector General (OIG) Strategic Plan for Fiscal Years 2021 to 2026. The Plan provides an overview of the OIG's strategic goals and objectives.

Our Strategic Plan is the culmination of a process requiring reflection and dialogue, during which OIG staff views and input were solicited and considered when finalizing our strategic goals, objectives, and priorities. Our approach is to strive for excellence in process and results. Through our goal-oriented approach, we produce relevant, timely, and impactful results; maintain a high morale among our staff by seeking employee engagement and engaging in transparent decision making. We also leverage technology to share information and foster collaboration.

These strategic goals will guide the OIG staff as they provide independent oversight of the NLRB's programs and operations.

A handwritten signature in black ink, appearing to read "David Berry".

David Berry
Inspector General

STRATEGIC ENVIRONMENT

OFFICE OF INSPECTOR GENERAL STRUCTURE

The OIG is composed of the Audits Section, the Investigations Section, and the Legal Counsel Section. The Audits Section conducts, coordinates, and supervises independent audits of the Agency's programs and operations. The Investigations Section investigates allegations of criminal, civil, and administrative violations relating to NLRB programs and operations by NLRB employees as well as external parties. The Legal Counsel Section serves as the general counsel to the Inspector General and the OIG staff in all matters relating to the OIG's operations and activities.

The OIG continues to develop a culture of leadership, which will ensure consistency and continuity in the OIG's business practices and operations. Our strategic planning process provides OIG employees with opportunities to contribute to the development of the OIG's strategic goals, objectives, and priorities.

MISSION, VISION, AND VALUES

Mission

The mission of the OIG is to promote the integrity, efficiency, and effectiveness of the critical programs and operations of the NLRB and to detect and prevent fraud and abuse in such programs. We accomplish this mission by the following:

- Conducting independent and objective audits and other reviews of NLRB programs and operations;
- Conducting independent and objective investigations of potential criminal, civil, and administrative violations that undermine the ability of the NLRB to accomplish its statutory mission;
- Preventing and detecting fraud and abuse in NLRB programs and operations;
- Identifying vulnerabilities in NLRB systems and operations and making recommendations to improve them;
- Communicating timely and useful information that facilitates management decision making and the achievement of measurable gains; and
- Keeping the Congress, Chairman, and Board fully and currently informed of significant issues and developments.

Vision

The OIG is an independent, professional organization that contributes to the success of the NLRB and acts as a catalyst for positive change in the NLRB's programs and operations. We realize this vision by being engaged, insightful, proactive, and versatile.

Values

The OIG recognizes several values that apply to its work. These values are also fundamental to the OIG accomplishing its mission and conducting its daily operations.

INTEGRITY: Consistent with the Inspector General Act, as amended, the OIG is independent and objective in its activities. We hold ourselves and each other to the highest ethical standards.

EXCELLENCE: The OIG is committed to the highest standards of excellence in pursuing its mission.

ACCOUNTABILITY: The OIG embraces the responsibility with which it is charged. We hold ourselves accountable to the public and take responsibility for achieving the OIG's mission.

EFFECTIVENESS: The OIG strives to work creatively, proactively, and effectively in performing its oversight work and continually looks for ways to make its business processes more efficient and effective.

TEAMWORK: The OIG recognizes that its success lies in working together; fostering an inclusive and mutually supportive environment; and providing each team member opportunities to contribute, develop, grow, and learn.

FAIRNESS: The OIG treats its employees and all its stakeholders with dignity, fairness, professionalism, and respect. We follow applicable professional standards and ensure that we make decisions in a fair and ethical manner.

OIG Leadership Values

OIG management has identified the following leadership values that guide OIG leadership in its daily endeavor to strive for continued excellence with our results, people, and processes.

INTEGRITY: We do the right thing for the right reasons. Our actions are guided by consistent principles of honesty, accountability, fairness, courage, trust, and humility.

COMPETENCE: We hire leaders who are skilled in their fields of expertise and know how to lead others to accomplish accurate, reliable, value-added results. Our leaders develop and mentor our staff, set the right goals and objectives, and adapt to changing conditions to achieve optimal effectiveness, efficiency, and organizational success.

COLLABORATION: We work together in a manner that facilitates harmonious communication internally and externally. Our leaders encourage the exchange of information, feedback, and other points of view to achieve the OIG's mission.

OUR APPROACH: THE OIG STRIVES FOR CONTINUED EXCELLENCE WITH OUR RESULTS, PEOPLE, AND PROCESSES.

STRATEGIC GOAL 1: Deliver results that promote integrity, efficiency, and effectiveness in the NLRB's programs and operations.

OBJECTIVE 1.1: Produce relevant, timely, and impactful results.

Priorities:

- Issue accurate, clear, concise, and convincing products;
- Continuously monitor and assess NLRB programs and operations to identify emerging and high-risk areas, and target resources accordingly;
- Complete audits in a timely manner as established in the Annual Audit Plan and the individual audit plans;
- Issue the Annual Audit Plan in the first month of the Fiscal Year; and
- In administrative misconduct matters, within 90 days complete investigative field work and issue the report.

OBJECTIVE 1.2: Continually enhance the quality of our products in accordance with applicable professional standards.

Priorities:

- Identify opportunities to enhance quality controls and streamline reporting processes;
- Issues reports that contain no typographical errors; and
- Ensure the integrity of OIG operations through timely and effective quality assurance programs.

STRATEGIC GOAL 2: Advance an inclusive and dynamic OIG culture that inspires high performance.

OBJECTIVE 2.1: Maintain high staff morale through employee engagement and transparent decision making.

Priorities:

- Leverage individual and team contributions to achieve high-level organizational performance;
- Employ, retain, and engage a highly qualified, motivated, and diverse workforce;
- Ensure that all OIG employees meet or exceed the OIG training requirements;
- Promote initiatives that improve employee satisfaction and foster a positive work environment; and
- Foster a transparent environment that includes updating staff on decisions/directions affecting the OIG.

OBJECTIVE 2.2: Increase collaboration and staff knowledge to promote information sharing, continuous learning, and teamwork in support of the OIG's mission.

Priorities:

- Create more collaborative communication opportunities to enhance the OIG staff's understanding of critical issues and decisions;
- Encourage collaboration and information sharing throughout the OIG; and
- Provide opportunities for the OIG staff to develop professional and leadership skills.

STRATEGIC GOAL 3: Improve the effectiveness and efficiency of OIG processes through continuous innovation, collaboration, and communication.

OBJECTIVE 3.1: Leverage technology to share information and foster collaboration.

Priorities:

- Seek opportunities to use technology to improve information gathering and presentation; and
- Continue to provide employees with the information technology and tools that enhance mobility, collaboration, and communication.

OBJECTIVE 3.2: Enhance the OIG's processes to further the OIG's mission.

Priorities:

- Review and solicit feedback on OIG policies, procedures, and processes to identify potential improvements and/or sound business practices;
- Review NLRB policies and procedures to assess OIG applicability and issue guidance to staff as needed; and
- Develop and use innovative methods to identify oversight opportunities.

OBJECTIVE 3.3: Continue the OIG's efforts to communicate the mission and role of the office to our stakeholders.

Priorities:

- Continue effective communication with internal and external stakeholders;
- Meet monthly with the Board and at least annually with the Agency's Congressional oversight committee staff; and
- Enhance outreach efforts to promote awareness of the OIG's mission by meeting with new Presidential appointees and Regional Directors to ensure that they have an understanding of the OIG mission and processes; conducting outreach with field staff through the exchange programs; and offering outreach programs to the bargaining units.

OIG GENERAL OFFICE CONTACT INFORMATION

TELEPHONE: (202) 273-1960

WEB: <https://www.nlr.gov/about-nlr/who-we-are/inspector-general>

MAIL: Office of Inspector General
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

REPORT FRAUD, WASTE, OR ABUSE

To report suspected fraud, waste, or abuse in NLRB programs or operations, as well as NLRB staff or contractor misconduct, use our online OIG hotline complaint form at <https://apps.nlr.gov/webform/webform1.aspx>, call (800) 736-2983 or (202) 273-1960, or email at OIGHotline@nlrb.gov.

In accordance with the Inspector General Act, as amended, information regarding the identity of individuals who contact the OIG to make a report is held in confidence. Although the OIG encourages complainants to provide information on how we may contact them for additional information, we also accept anonymous complaints.

COMMENTS AND IDEAS

The NLRB OIG also seeks ideas for possible future audits, evaluations, or reviews. We will focus on high-risk programs, operations, and areas where substantial economies and efficiencies can be achieved. Please send your input to OIGHotline@nlrb.gov.

IX. APPENDICES

The appendices provide additional information regarding Agency performance measures, outlines of the types of cases arising under the Labor Management Relations Act, the basic procedures in the processing of cases within the Agency, and overviews of each strategic goal.

A-1 PERFORMANCE MEASURES

In support of our mission-related goals and objectives, the Agency has a long, successful history of performance measurement focusing on the highest quality investigation, litigation, and compliance of unfair labor practice charges and representation cases. Alongside quality, we have also always emphasized efficiency in our case handling process because we know that timely resolving labor disputes and questions concerning representation is equally essential to ensuring that the public enjoys the full benefits and protections afforded by the Act.

In support of the mission-related goals in this Fiscal Year 2022-2026 strategic plan, the Agency developed five goals with respective objectives, measures, and management strategies that help drive the mission and vision of the Agency.

B-1 ORGANIZATIONAL CHART



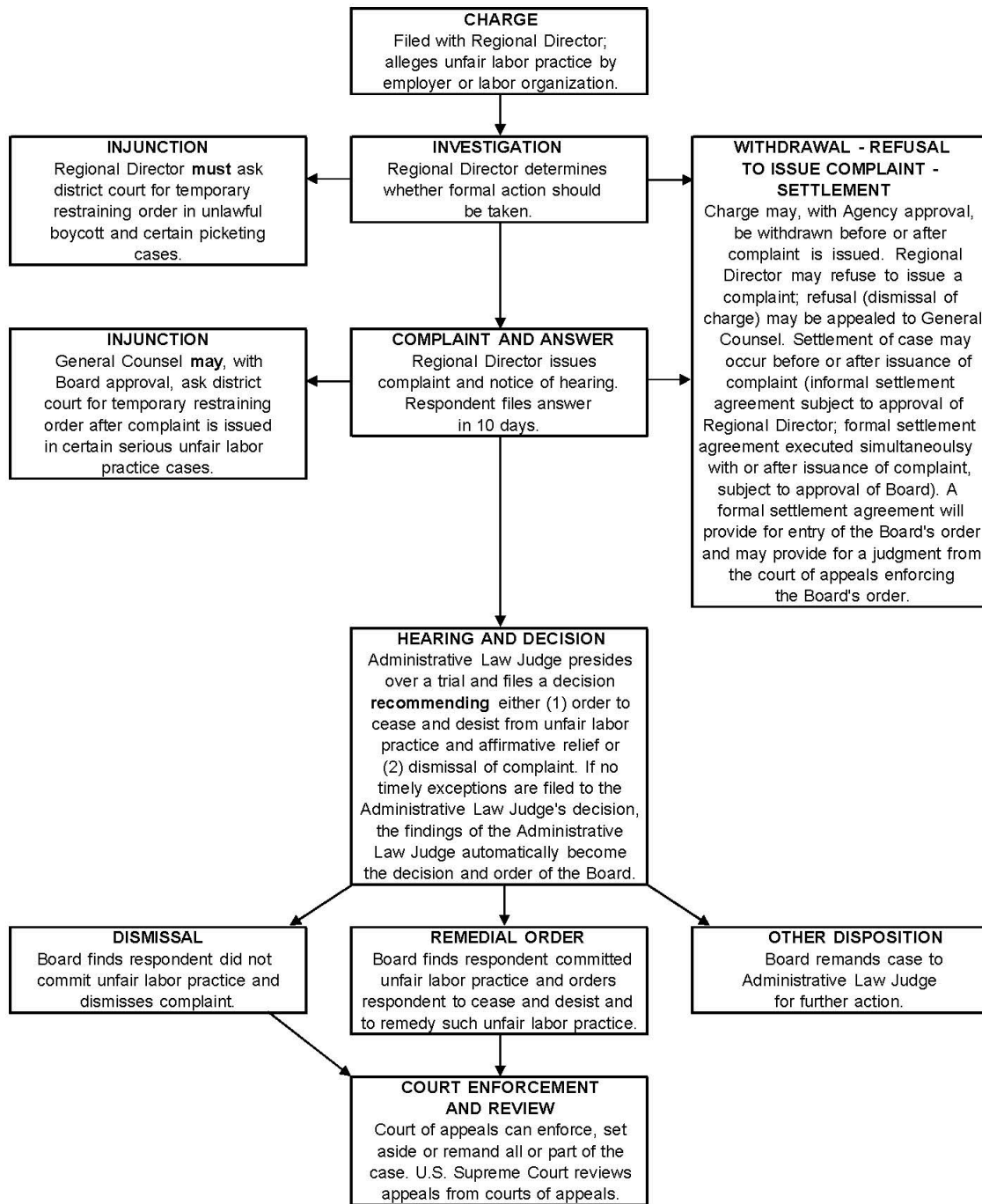
C-1 TYPES OF NLRB CASES

1. CHARGES OF UNFAIR LABOR PRACTICES (C CASES)						
Charges Against Employer	Charges Against Labor Organization					Charge Against Labor Organization and Employer
Section of the Act CA	Section of the Act CB	Section of the Act CC	Section of the Act CD	Section of the Act CG	Section of the Act CP	Section of the Act CE
8(a)(1) To interfere with, restrain, or coerce employees in exercise of their rights under Section 7 (to join or assist a labor organization or to refrain).	8(b)(1)(A) To restrain or coerce employees in exercise of their rights under Section 7 (to join or assist a labor organization or to refrain).	8(b)(4)(i) To engage in, or induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce, to engage in a strike, work stoppage, or boycott, or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object is: (A) To force or require any employer or self-employed person to join any labor organization or to enter into any agreement prohibited by Section 8 (e). (B) To force or require any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or force or require any other employer to recognize or bargain with a labor organization as the representative of its employees unless such labor organization has been so certified.	(C) To force or require any employer to recognize or bargain with a particular labor organization as the representative of its employees if another labor organization has been certified as the representative. (D) To force or require any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another trade, craft, or class, unless such employer is failing to conform to an appropriate Board order or certification.	8(g) To strike, picket, or otherwise concertedly refuse to work at any health care institution without notifying the institution and the Federal Mediation and Conciliation Service in writing 10 days prior to such action.	8(b)(7) To picket, cause, or threaten the picketing of any employer where an object is to force or require an employer to recognize or bargain with a labor organization as the representative of its employees, or to force or require the employees of an employer to select such labor organization as their collective-bargaining representative, unless such labor organization is currently certified as the representative of such employees: (A) where the employer has lawfully recognized any other labor organization and a question concerning representation may not appropriately be raised under Section 9(c). (B) where within the preceding 12 months a valid election under Section 9(c) has been conducted, or (C) where picketing has been conducted without a petition under Section 9(c) being filed within a reasonable period of time not to exceed 30 days from the commencement of the picketing; except where the picketing is for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, and it does not have an effect of interference with deliveries or services.	8(e) To enter into any contract or agreement (any labor organization and any employer) whereby such employer ceases or refrains or agrees to cease or refrain from handling or dealing in any product of any other employer, or to cease doing business with any other person.
8(a)(2) To dominate or interfere with the formation or administration of a labor organization or contribute financial or other support to it.	8(b)(1)(B) To restrain or coerce an employer in the selection of its representatives for collective bargaining or adjustment of grievances.					
8(a)(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.	8(b)(2) To cause or attempt to cause an employer to discriminate against an employee.					
8(a)(4) To discharge or otherwise discriminate against employees because they have given testimony under the Act.	8(b)(3) To refuse to bargain collectively with employer.					
8(a)(5) To refuse to bargain collectively with representatives of its employees.	8(b)(5) To require of employees the payment of excessive or discriminatory fees for membership.					
	8(b)(6) To cause or attempt to cause an employer to pay or agree to pay money or other things of value for services which are not performed or not to be performed.					
2. PETITIONS FOR CERTIFICATION OR DECERTIFICATION OF REPRESENTATIVES (R CASES)				3. OTHER PETITIONS		
By or in Behalf of Employees		By an Employer	By or in Behalf of Employees		By a Labor Organization or an Employer	
Section of the Act RC	Section of the Act RD	Section of the Act RM	Section of the Act UD	Board Rules UC	Board Rules AC	
9(c)(1)(A)(i) Alleging that a substantial number of employees wish to be represented for collective bargaining and their employer declines to recognize their representative. *	9(c)(1)(A)(ii) Alleging that a substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. *	9(c)(1)(B) Alleging that one or more claims for recognition as exclusive bargaining representative have been received by the employer. *	9(e)(1) Alleging that employees (30 percent or more of an appropriate unit) wish to rescind an existing union-security agreement.	Subpart C Seeking clarification of an existing bargaining unit.	Subpart C Seeking amendment of an outstanding certification of bargaining representative.	

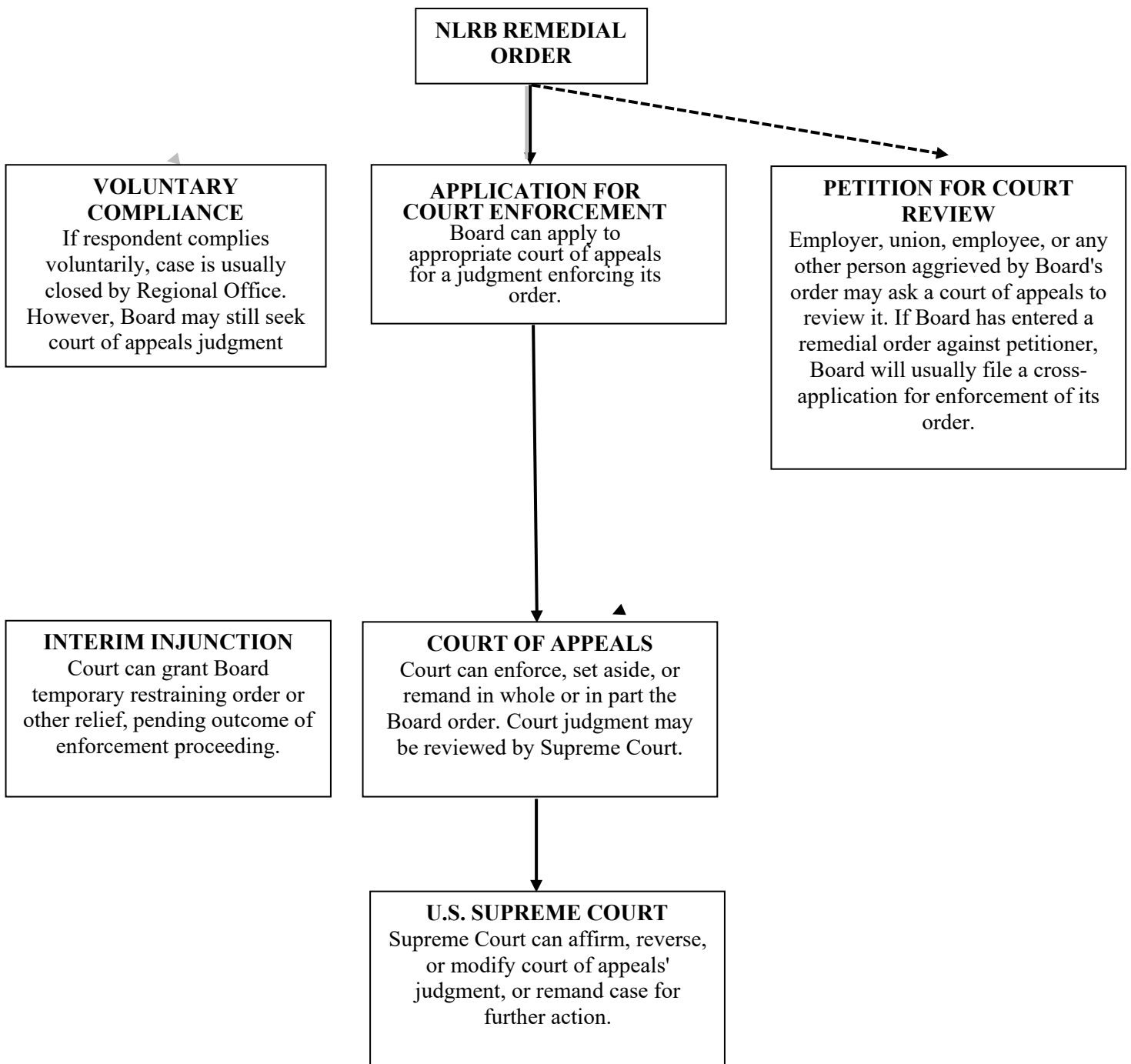
* If an 8(b)(1) charge has been filed involving the same employer, these statements in RC, RD, and RM petitions are not required.

Charges filed with the National Labor Relations Board are letter-coded and numbered. Unfair labor practice charges are classified as "C" cases and petitions for certification or decertification of representatives as "R" cases. This chart indicates the letter codes used for "C" cases and "R" cases, and also presents a summary of each section involved.

C-2 PROCEDURES IN CASES INVOLVING CHARGES OF UNFAIR LABOR PRACTICES



C-3 NLRB ORDER ENFORCEMENT CHART



C-4 OUTLINE OF REPRESENTATION PROCEDURES UNDER SECTION 9(c)

