

2012

NATIONAL LABOR RELATIONS BOARD

Performance and Accountability REPORT



HOW THIS REPORT IS ORGANIZED

This Performance and Accountability Report consists of the following sections

MANAGEMENT DISCUSSION AND ANALYSIS	The Management Discussion and Analysis (MD&A) Section is an overview of the entire report. The MD&A presents performance and financial highlights as well as the National Labor Relations Board's (NLRB's) operational and casehandling highlights for Fiscal Year 2012. The MD&A also contains a discussion of compliance with legal and regulatory requirements, such as the Federal Managers' Financial Integrity Act.
PERFORMANCE SECTION	The Performance Section compares the NLRB's performance to its annual performance goals as set forth in the 2007-2012 Strategic Plan. The NLRB has three overarching performance associated with its two strategic goals. These measures are outcome-based, aligned with the mission of the NLRB, and are meaningful to the public the agency serves. This is the sixth year that the NLRB is reporting its performance under these three overarching measures.
FINANCIAL SECTION	The Financial Section is composed of the NLRB's financial statements and their related footnotes and the Independent Auditors' Report.
OTHER ACCOMPANYING INFORMATION	Other Accompanying Information provides an update on the Board's progress in addressing management and performance challenges identified by the Inspector General in the FY 2011 Performance and Accountability Report as well as any new challenges identified in this fiscal year. Also included is the NLRB's summary of audit and management assurances.
APPENDICES	The Appendices contain a glossary of the acronyms and definitions of terms used in the report.

An electronic version of the NLRB FY 2012 Performance and Accountability Report is available on the NLRB's web site at www.nlr.gov.

The NLRB's 2007-2012 Strategic Plan and its addendum are also available at this web site along with graphs and data which reflect the NLRB's work.

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MESSAGE FROM THE CHAIRMAN



October 22, 2012

As Chairman of the National Labor Relations Board, it is my pleasure to submit the Performance and Accountability Report for Fiscal Year 2012. This annual report provides insight into the finances and activities of the NLRB, an independent federal agency that protects the rights of employees to act together to improve the terms and conditions of their work.

The Board issued 341 decisions in contested cases during this year, and made a special effort to reduce the backlog of older cases. We resolved nine of the 10 oldest cases that were pending at the start of the fiscal year, and in so doing, cut the median age of pending cases in half – from 219 days to 108 days.

Decisions were issued in 277 unfair labor practice cases and 64 representation cases. Highlights include findings that:

- It is a violation of federal labor law to require employees to sign arbitration agreements that prohibit them from joining together in any forum to bring legal claims against the employer.
- Lawsuits filed by employers or unions may be unfair labor practices in certain circumstances.
- Musicians at three symphony orchestras are employees eligible to join a union.
- The discharge of a car salesman for negative Facebook postings did not violate labor law.
- Employers must have a good reason to raise the immigration status of employees during backpay determination proceedings.
- A major coal company violated the law by refusing to hire former unionized employees in order to avoid union obligations.


Also during this period, the Board finalized a rule to streamline the representation case process (currently suspended pending a court challenge), and invited briefs from the public on several significant issues, including the employment status of certain university faculty members and graduate teaching assistants.

MESSAGE FROM THE CHAIRMAN

In addition to its casework, the Board this year launched a new webpage about the rights of employees to act together for their mutual aid and protection, even if they are not in a union. The page, at www.nlr.gov/concerted-activity, tells the stories of more than a dozen recent cases involving Protected Concerted Activity (PCA), which can be viewed by clicking points on a map. The employees range from construction crews to office workers and their work-related concerns included safety and health issues as well as wages and benefits. While selected to show a variety of circumstances and outcomes, the cases have in common a finding at some point in the NLRB process that the activity the employees undertook was protected under federal labor law. Geared toward a broad audience, the PCA webpage is part of the Board's increasing emphasis on educating the general public about the protections afforded by the National Labor Relations Act.

The composition of the Board changed several times during the fiscal year. The recess appointment of Member Craig Becker expired on Jan. 3. Three new members — Richard F. Griffin, Jr., Sharon Block and Terence Flynn — were recess-appointed by President Obama and took office in early January. Member Flynn resigned his position effective July 24. The Board currently stands at four members, with Chairman Mark Pearce and Member Brian Hayes in addition to Members Griffin and Block.

As Chairman of the NLRB, I certify that the NLRB's internal controls and financial systems meet and conform to the requirements of the Federal Managers' Financial Integrity Act. (A more detailed discussion of the Agency's internal controls can be found starting on page 22 of this report.) I have also made every effort to verify the accuracy and completeness of the performance data presented in this report.



Mark Gaston Pearce
Chairman

BOARD MEMBERS



From Left to Right: Board Member Richard F. Griffin, Jr., Chairman Mark Gaston Pearce, Board Member Brian E. Hayes, and Board Member Sharon Block

MESSAGE FROM THE ACTING GENERAL COUNSEL



October 17, 2012

The Office of the General Counsel of the National Labor Relations Board is responsible for the investigation and prosecution of the unfair labor practice cases filed in the NLRB's 32 Regional, 3 Subregional, and 16 Resident Offices. The office exercises general supervisory authority over this network of field offices which is staffed with approximately 1,200 employees. In addition, the Office of the General Counsel directly oversees eight Headquarters components which are responsible for various casehandling, administrative, and personnel functions. This year, in response to evolving case intake in the Regional Offices and to take advantage of new technologies and create operational efficiencies, I have initiated pilot programs consolidating certain field offices and centralizing services in several headquarters divisions and branches.

The input received from Agency staff and external stakeholders has proved to be invaluable in assessing current and future operational restructuring.

It has been my privilege to serve as Acting General Counsel for this entire fiscal year. Some significant case handling highlights include: providing guidance to the Regions and members of the public with respect to employer social media policies and employees' social media interactions; providing effective remedies in cases involving the unlawful discharge of employees and other hallmark violations; and issuing guidelines that ensure full backpay remedies for illegally discharged employees.

Since becoming Acting General Counsel, I have seen the Agency move into an era where it is more open and engaged with the public. For example, our website was redesigned for greater outreach and usability with an array of audiences in mind and is noteworthy for its organizational structure, enhanced navigation, advanced search functions, increased information sharing, social media usage, electronic filing system, and visual presentation. We also successfully completed deployment of computer upgrades and the Agency's new enterprise-wide case management system to all field offices and some headquarters offices, which will enable full sharing of information and processes across the Agency, improve reporting capabilities, track all case events and documents in an electronic case file, reduce paperwork burdens, and integrate with the Agency's website providing for greater transparency. Further, the Public Information Program successfully expanded our outreach efforts, such as through our new Regional Office webpages and Protected Concerted Activity webpage, and we made great strides in communicating with those groups of employees with marginal knowledge of workers' rights and with limited English proficiency.

The Office of General Counsel, in addition to its other duties, is charged by the Board Members with supervising the administrative functions of the Agency. One of these functions directly pertains to financial management. It is with great pleasure that I can report that the Agency successfully achieved its aggressive plan to migrate the financial management systems for finance, acquisitions and budget to Oracle Federal Financials with improved functionality, reporting, transparency, and integration with other business systems. Along that same vein, I am also pleased to note that the Agency also recently established a new Office of the Chief Financial Officer, which will improve effectiveness and efficiency in financial operations, reliability of financial reporting, transparency of financial data, internal controls, and coordination between our Finance, Budget and Acquisition Management branches. Lastly, the Agency once again received an unqualified opinion from our auditors.

As Acting General Counsel, I am committed to conducting the business of the Office of the General Counsel in an open and transparent manner. I enjoy and encourage constructive relationships with representatives of both management and labor who appear before us as that enhances the performance of our mission to protect workplace rights and provide better service to the public.



Lafe E. Solomon
Acting General Counsel

EXECUTIVE SUMMARY

The National Labor Relations Board continued its tradition of service to the nation's employers and employees in Fiscal Year 2012. The Agency is building on efforts started or completed in the past two years to increase transparency and communication with the public, streamline operations, and define the employer/employee relationship in the new arena of social media.

In FY 2012, the NLRB redesigned its website to improve usability and engagement for the wide variety of audiences that need to access its content. Enhanced navigation, an advanced search function, social media tools, greater language capability and increased information sharing, make the NLRB website a more useful tool for the public. The site also serves as the entry point to a new electronic filing system to improve efficiency and ease the process of filing a claim.

The NLRB Public Information Program successfully expanded the Agency's outreach efforts through initiatives such as communicating with workers having limited proficiency in English, publicizing workers rights to audiences unfamiliar with their protections under the National Labor Relations Act, and creating new Regional Office webpages to more closely link the NLRB Regional Offices with the communities they serve.

The Acting General Counsel solicited valuable input from NLRB staff and external stakeholders to initiate several consolidation efforts in Agency field offices and centralize some services within headquarters. These initiatives are in part a response to new technologies that shrink the distance between field personnel, the public, and headquarters, creating the opportunity to realize operational efficiencies from consideration of new organizational structures.

A new Office of the Chief Financial Officer (OCFO) was established in FY 2012 to improve the efficiency and effectiveness of all financial operations, including budget, accounting and acquisitions. This consolidation of functions under a Chief Financial Officer is expected

to create greater transparency of financial data while improving the reliability of financial reporting, internal controls and coordination of efforts among the components of the OCFO. In addition, the Agency continued its record of receiving an unqualified opinion from its auditors.

The NLRB made major improvements to its technology and application infrastructure during FY 2012. The Agency has now successfully completed deployment of a new enterprise case management system to all field offices and integrating it in most of headquarters. The NxGen case management system enables full electronic sharing of case files across the Agency, integrates with the NLRB website for greater transparency, improves tracking, reduces paperwork, and improves records management. In addition, the Agency migrated its financial management system for acquisition, budget and finance to Oracle Federal Financials.

Standout cases and themes for FY 2012 included: the issuance of guidelines to ensure full backpay remedies for illegally discharged employees; providing clarification to the interaction between employer social media policies and employees' social media use; and providing effective remedies in cases involving employee unlawful discharge and other hallmark violations.

As the NLRB looks forward to the future, it understands that its mission, irrespective of social and technological changes, remains constant: to continue to safeguard workplace rights and protect productive management-labor relationships. The NLRB will use its FY 2012 performance as the basis to continually improve its mission performance in the years to come.

2012

MANAGEMENT DISCUSSION AND ANALYSIS



Protecting Democracy in
the Workplace Since 1935

ABOUT THE NLRB



THE NATIONAL LABOR RELATIONS ACT (NLRA)

- Basic law governing relations between labor unions and business enterprises engaging in interstate commerce in the private sector
- Purpose – serve the public interest by reducing interruptions in commerce caused by conflict between employers and employees
- Embodies a bill of rights, which establishes freedom of association for purposes of collective bargaining
- Defines and protects the rights of employees, unions, and employers

THE NATIONAL LABOR RELATIONS BOARD (NLRB)

- Independent federal agency created in 1935 to administer and enforce the NLRA
- Under the Act, the NLRB has two primary functions:
 - 1) to conduct secret-ballot elections among employees to determine whether or not the employees wish to be represented by a union; and
 - 2) to prevent and remedy statutorily defined unfair labor practices by employers and unions.

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

MISSION STATEMENT

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

In its 77-year history the NLRB has counted millions of votes, investigated hundreds of thousands of charges, and issued thousands of decisions. These numbers tell an important part of the Agency's story. Information regarding the following can be found on NLRB's web site:

- Charges and Complaints – Data related to charges of unfair labor practices received by Regional Offices and their disposition over time, including dismissals, complaints, and settlements.
- Petitions and Elections – Data related to petitions for representation and decertification elections received by Regional Offices, elections held, and outcomes.
- Decisions – Data related to decisions by the Board and NLRB Administrative Law Judges
- Litigation – Data related to litigation pursued by Board attorneys in federal court, including petitions



EMPLOYEE RIGHTS UNDER THE NLRA

The National Labor Relations Act extends rights to many private-sector employees, including the right to organize and to bargain collectively with their employer. Employees covered by the Act are protected from certain types of employer and union misconduct and have the right to attempt to form a union where none currently exists or to attempt to improve their working conditions through other group action.

Examples of Employee Rights Under the NLRA Are:

- Forming, or attempting to form, a union among the employees of an employer.
- Joining a union whether the union is recognized by the employer or not.
- Assisting a union in organizing employees.
- Engaging in protected concerted activities. Generally, “protected concerted activity” is group activity that seeks to change wages or working conditions.
- Refusing to do any or all of these things. However, the union and employer, in a State where such agreements are permitted, may enter into a lawful union-security clause requiring employees to pay union dues and fees.

The NLRA forbids employers from interfering with, restraining, or coercing employees in the exercise of rights relating to organizing, forming, joining or assisting a labor organization for collective bargaining purposes, or engaging in protected concerted activities, or refraining from these activities. Similarly, unions may not restrain or coerce employees in the exercise of these rights.

for temporary injunctions, defending Board decisions in court, and pursuing enforcement and compliance actions.

- Remedies – Data related to remedies obtained to resolve unfair labor practices, including backpay and offers of reinstatement.

STATUTORY STRUCTURE

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

THE FIVE-MEMBER BOARD

The five-member Board primarily acts as a quasi-judicial body in deciding cases on the basis of formal records in administrative proceedings. Board Members are appointed by the President with the advice and consent of the Senate, and serve staggered five-year terms.¹ The President designates one of the Board Members

¹ Even though Board Members’ terms are for five years, a new five-year term begins running immediately upon the expiration of the previous Member’s term. The seat remains vacant until an individual is nominated and confirmed by the Senate. Therefore, a significant lapse of time could occur between when a term expires and a new Board Member is confirmed, which means that a new Board Member might serve only a portion of a five-year term. In recent years, the NLRB has experienced significant delays in the confirmation of new Board Members.

MANAGEMENT DISCUSSION AND ANALYSIS

as Chairman. Board Member Mark Gaston Pearce was designated Chairman on August 28, 2011.

During the first quarter of FY 2012, the Board operated with three members – Chairman Pearce and Board Members Craig Becker and Brian E. Hayes. Board Member Becker was serving on a recess appointment which expired on January 3, 2012. Absent the confirmation or recess appointment of at least one other Board Member, with the expiration of Board Member Becker's appointment, the Board would have been left with only two members, which would have halted the issuance of decisions in Board cases.² On January 4, 2012, President Obama recess appointed three new Board Members – Sharon Block, Terrance F. Flynn, and Richard F. Griffin, Jr., which gave the Board a full complement of members. All three were nominated on February 13, 2012.

Various court challenges have been filed as to the constitutionality of the appointments. Most maintain that the Senate was still technically in session when the recess appointments were made, and that any subsequent decisions issued by the Board are invalid because it did not have a lawful quorum.

² The Supreme Court ruled in June 2010 that the Board was not authorized to act as a two-member quorum when decisions issued by then-Chairman Wilma B. Liebman and former Board Member Peter C. Schaumber were challenged in various courts of appeal.

Board Member Flynn resigned effective July 24, 2012, and his nomination was withdrawn from consideration. Board Member Hayes' term expires on December 16, 2012, and Chairman Pearce's on August 27, 2013. Because they are serving on recess appointments, Board Members Block's and Griffin's terms will expire at the end of the next session of the Senate.

NLRB GENERAL COUNSEL

Congress created the position of General Counsel in its current form in the Taft-Hartley Act of 1947. The General Counsel is appointed by the President to a four-year term, with Senate consent, and is responsible for the investigation and prosecution of unfair labor practice cases and for the general supervision of the NLRB Regional Offices. In performing delegated functions, and in some aspects statutorily assigned functions, the General Counsel acts on behalf of the Board.

However, with respect to the investigation and prosecution of unfair labor practice cases, the General Counsel has sole prosecutorial authority under the statute, independent of the Board. Lafe E. Solomon has been serving as Acting General Counsel since June 21, 2010 and was nominated by President Obama to a full four-year term on January 5, 2011. His confirmation is pending in the Senate.



ORGANIZATION

BOARD		OFFICE OF THE GENERAL COUNSEL
Mark Gaston Pearce <i>Chairman</i>		Lafe E. Solomon <i>Acting General Counsel</i>
Brian E. Hayes <i>Board Member</i>	INSPECTOR GENERAL	Celeste J. Mattina <i>Deputy General Counsel</i>
Sharon Block <i>Board Member</i>	David P. Berry <i>Inspector General</i>	DIVISION OF OPERATIONS-MANAGEMENT
Richard F. Griffin, Jr. <i>Board Member</i>	OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY	Anne G. Purcell <i>Associate General Counsel (REGIONAL OFFICES)</i>
Vacant <i>Board Member</i>	Brenda Valentine-Harris <i>Director</i>	DIVISION OF ENFORCEMENT LITIGATION
OFFICE OF PUBLIC AFFAIRS	OFFICE OF HUMAN RESOURCES	John H. Ferguson <i>Associate General Counsel</i>
Nancy Cleeland <i>Director</i>	Jacqueline Mills <i>Director</i>	DIVISION OF ADVICE
OFFICE OF THE EXECUTIVE SECRETARY	OFFICE OF EMPLOYEE DEVELOPMENT	Barry J. Kearney <i>Associate General Counsel</i>
Lester A. Heltzer <i>Executive Secretary</i>	Thomas J. Christman <i>Director</i>	
OFFICE OF REPRESENTATION APPEALS	DIVISION OF ADMINISTRATION	
Vacant <i>Director</i>	Vacant <i>Director</i>	
OFFICE OF THE SOLICITOR	OFFICE OF THE CHIEF INFORMATION OFFICER	
William B. Cowen <i>Solicitor</i>	Bryan Burnett <i>Chief Information Officer</i>	
DIVISION OF JUDGES	OFFICE OF THE CHIEF FINANCIAL OFFICER	
Robert A. Giannasi <i>Chief, ALJ</i>	Vacant <i>Chief Financial Officer</i>	

CASEHANDLING FUNCTIONS

The primary function of the NLRB is the effective and efficient resolution of charges and petitions filed voluntarily under the NLRA by individuals, employers, or unions. In carrying out the NLRA's mandates, the NLRB supports the collective bargaining process and seeks to eliminate certain unfair labor practices on the part of employers and unions so as to promote commerce and strengthen the Nation's economy.

The two major goals of the NLRB are:

- To promptly resolve all questions concerning representation
- To promptly investigate, prosecute, and remedy unfair labor practices by employers or unions

UNFAIR LABOR PRACTICE PROCEEDINGS

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

The General Counsel has sole responsibility — independent of the Board — to investigate charges of unfair labor practices, and to decide whether to issue complaints with respect to such charges. The Board, in turn, acts independently of the General Counsel in deciding ULP cases.

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

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

record, according to the statute and the body of case law that has been developed by the Board and the federal courts.

If the Board finds that a violation of the Act has been committed, the role of the General Counsel thereafter is to act on behalf of the Board to obtain compliance with the Board's order remedying the violation. Although Board decisions and orders in ULP cases are final and binding with respect to the General Counsel, they are not self-enforcing. The statute provides that any party (other than the General Counsel) may seek review of the Board's decision in a United States Court of Appeals. In addition, if a party refuses to comply with a Board decision, the Board itself must petition for court enforcement of its order. In court proceedings to review or enforce Board decisions, the General Counsel represents the Board and acts as its attorney. Also, the General Counsel acts as the Board's attorney in contempt proceedings and when the Board seeks injunctive relief under Sections 10(e) and (f) of the NLRA after the entry of a Board order and pending enforcement or review of proceedings in circuit court.

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

unfair labor practice alleged, and whether the alleged violator would otherwise reap the benefits of its violation.

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

In addition, under Section 10(l) of the Act, when a Region's investigation of a charge yields reasonable cause to believe that a union has committed certain specified unfair labor practices such as a work stoppage or picketing with an unlawful secondary objective, the Regional Director is required, on behalf of the Board, to seek an injunction from a federal district court to halt the alleged unlawful activity.

REPRESENTATION PROCEEDINGS

In contrast to ULP proceedings, representation proceedings conducted pursuant to the Act are not adversarial. Representation cases are initiated by the filing of a petition — by an employee, a group of employees, an individual, or a labor organization acting on their behalf, or in some cases by an employer. The petitioner requests an election to determine whether a union has the support of a majority of the employees in an appropriate bargaining unit and therefore should be certified or decertified as the employees' bargaining representative. The role of the Agency in such cases is to investigate the petition and, if necessary, to conduct a hearing to determine whether employees constitute an appropriate bargaining unit under the Act. The NLRB must also determine which employees are properly included in the bargaining unit and therefore eligible to vote, conduct a secret-ballot election if an election is determined to be warranted, hear and decide any post-election objections to the conduct of the election, and, if the election is determined to have been fairly conducted, to certify its results.

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

COMPLIANCE PROCEEDINGS

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

ADMINISTRATIVE FUNCTIONS

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

PERFORMANCE HIGHLIGHTS

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

The NLRB's Strategic Plan states the Agency's Strategic Goals and Performance Measures.

Strategic Goal No. 1

Resolve all questions concerning representation impartially and promptly.

Performance Measure No. 1

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

Strategic Goal No. 2

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

Performance Measure No. 2

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

Performance Measure No. 3

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

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

The NLRB's two strategic goals are supported by three overarching performance measures. Rather than focus on the individual segments of the casehandling process, these performance measures focus on the time it takes to process an entire case, from start to finish. They are outcome-based, aligned with the mission of the NLRB, and are meaningful to the public the Agency serves. The NLRB tracks the total time taken to accomplish three outcomes: resolution of all questions concerning representation; the processing, investigation, and remedy of ULP charges; and the resolution of those ULP charges found to have merit. The goal is to resolve representation matters within 100 days, resolve all ULP cases within 120 days, and resolve meritorious ULP cases within 365 days.



Because the Agency either met or exceeded the annual targets set since the institution of these performance measures in 2007, it undertook a review of the annual targets and revised them for FYs 2010, 2011, and 2012.

In accordance with the Government Performance and Results Modernization Act (GPRAMA), the NLRB in FY 2012 issued an addendum to its Strategic Plan (2007 – 2012). While the strategic goals and associated measures remain unchanged, the addendum provided the Agency’s performance targets for FY 2013 and 2014, updates on its initiatives, and changes to its structure. As per GPRAMA requirements, a new plan will be issued in February 2014.

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

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

usually involving more complicated issues for Regions to address.

We are pleased to report that, for FY 2012, the NLRB exceeded the goals for performance measures No. 2 and No. 3 and came close to meeting the target goal for measure No. 1.

In FY 2012, the learning curve associated with the transition to the newly-deployed Next Generation Case Management System (NxGen) in our Regional Offices and a number of retirements among senior regional leadership had an impact on operational efficiency in the short-term and resulted in the Agency not meeting its target goal for Measure No. 1.

In order to meet its FY 2013 goal, the Agency conducted NxGen Training, much of which focused on the processing of representation cases. It is the Agency’s plan to continue this training to each of its field offices over the next year. Consistent with operating needs, those executive and managerial positions left vacant by retiring senior leadership have been filled, and it is expected that improved efficiencies will result. In addition, as the sum total of representation cases is small, the processing of a few cases can greatly affect our percentages. In fact, the Agency failed to meet its goal by only 0.7 percent, which amounted to 18 cases.

Measure No. 1. Resolve questions concerning representation in all representation cases within 100 days from the filing of the representation case petition.

Year	Interim Goal	Actual Performance
FY 2007	79.0%	79.0%
FY 2008	80.0%	83.5%
FY 2009	81.0%	84.4%
FY 2010	85.0%	86.3%
FY 2011	85.0%	84.7%
FY 2012	85.2%	84.5%

Measure No. 2. Resolve all charges of unfair labor practice cases by withdrawal, by dismissal, or by closing upon compliance with a settlement or Board order or court judgment within 120 days of the filing of the charge.

Year	Interim Goal	Actual Performance
FY 2007	67.5%	66.0%
FY 2008	68.0%	68.0%
FY 2009	68.5%	71.0%
FY 2010	71.2%	73.3%
FY 2011	71.2%	72.5%
FY 2012	72.0%	72.7%

Measure No. 3. Close meritorious (prosecutable) unfair labor practices on compliance within 365 days of the filing of the unfair labor practice charge.

Year	Interim Goal	Actual Performance
FY 2007	74.0%	73.5%
FY 2008	75.0%	76.0%
FY 2009	75.5%	79.7%
FY 2010	80.0%	84.6%
FY 2011	80.2%	83.2%
FY 2012	80.3%	83.8%

LINKING BUDGET AND PERFORMANCE

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



FINANCIAL HIGHLIGHTS

Towards the end of FY 2012, the NLRB created the Office of the Chief Financial Officer (OCFO), which includes the Budget, Finance, and Acquisition Management Branches. This new structure integrates and enhances Agency financial management. Specifically, the establishment of this structure with a Chief Financial Officer (CFO) outside of the Division of Administration, who reports directly to the Chairman and the General Counsel, will improve effectiveness and efficiency in financial operations, reliability of financial reporting, transparency of financial data, and compliance with applicable laws and regulations. The CFO will infuse more discipline, structure, and internal control in the financial management lifecycle and throughout the financial management process.

ANALYSIS OF FINANCIAL STATEMENTS

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

Balance Sheet – The NLRB assets were \$41 million as of September 30, 2012. The Fund Balance with Treasury, which was \$27 million, represents the NLRB's largest asset. The Fund Balance consists of unspent appropriated and unappropriated funds from the past six fiscal years.

The NLRB Property, Plant and Equipment was \$14 million and was primarily related to information technology.

Statement of Net Cost – The NLRB's appropriation is used to resolve representation cases or ULP charges filed

by employees, employers, unions, and union members. Of the \$293 million net cost of operations in FY 2012, 16 percent was used for representation case activities and 84 percent was used to resolve ULP charges.

Statement of Changes in Net Position – The Statement of Changes in Net Position reports the change in net position during the reporting period. Net position is affected by changes in its two components: Cumulative Results of Operations and Unexpended Appropriations. From FY 2011 to FY 2012, there was a change in net position of \$1.9 million.

Statement of Budgetary Resources – The Statement of Budgetary Resources shows budgetary resources available and the status at the end of the period. It represents the relationship between budget authority and budget outlays, and reconciles obligations to total outlays. For FY 2012, the NLRB had available budgetary resources of \$284 million, the majority of which were derived from new budget authority. This represents a \$4.6 million decrease from FY 2011. For FY 2011 and FY 2012, the status of budgetary resources shows obligations of \$284 million and \$278 million. Total outlays for FY 2012 were \$278 million, which is a \$14 million decrease from FY 2011.

The NLRB's mission – the resolution of labor disputes through investigation, settlement, advocacy, and adjudication – relies on skilled and professional employees; accordingly, most of the Agency's budget, approximately 80 percent, is dedicated to personnel costs. Of the remaining 20 percent, about 10 percent is required for rent and associated security costs, and the other 10 percent is allocated among other operating costs and activities, including IT development, acquisition and maintenance, telecommunications, court reporting, case-related travel, witness fees, interpreters, maintenance of current legal research collections, training, and compliance with government-wide statutory and regulatory mandates.

LIMITATIONS OF PRINCIPAL FINANCIAL STATEMENTS

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

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

FINANCIAL PLANNING COMMITTEE

The NLRB's Financial Planning Committee has met annually since 1992 to review and update the NLRB's Five-year Financial Management Plan. The committee met in FY 2012 to assess the Agency's performance under the FY 2011 goals and to review and approve the goals for the year. After reviewing the goals, and the tasks and milestones associated with each goal, the committee determined that the NLRB's five-year financial management goals should be:

- 1) Improved financial accountability
- 2) Improved financial management systems
- 3) Development of financial staff
- 4) Improved administration of Travel/Purchase Card program
- 5) Use of electronic commerce to improve financial management

New initiatives for FY 2012 included:

- Implementation of Oracle Federal Financials

- Implementation of new Department of Treasury requirements related to Governmentwide Treasury Account Symbol Adjusted Trial Balance System (GTAS)
- Implementation of OTCnet (over the counter channel application system)

Migration from Momentum Financials to Oracle Federal Financials was the major financial initiative of FY 2012. While both systems are offered by the Department of the Interior's National Business Center, the increasing cost of supporting Momentum, along with the improved functionality, business processes, and data analytics offered by Oracle Federal Financials, prompted the NLRB to implement the new system. An aggressive implementation schedule was undertaken and the Agency will go live with the new system at the beginning of FY 2013.

Some new initiatives for FY 2013 include technological research and development or procurement of a solution that better incorporates acquisition management with budget and finance processes, as well as establishing new protocols for purchase card and cash transactions.

In support of the NLRB's Five-year Financial Management Goals, the NLRB undertook the following initiatives:

IMPROVED FINANCIAL ACCOUNTABILITY

- Timely financial reporting to include preparation and reconciliation of required Treasury reports and unaudited and audited financial statements

IMPROVED FINANCIAL MANAGEMENT SYSTEMS

- Purchase of special software for Backpay System for preparation of W-2s to backpay recipients and 1099s to vendors
- Implementation of Oracle Federal Financials
- Training users of E2Solutions to improve understanding and expand use of eTravel

DEVELOPMENT OF FINANCIAL STAFF

- Cross-training program for employees of the Finance Branch
- Succession planning
- Training for allottees and budget allowance holders
- Training for Regional Office Managers on new Oracle system

IMPROVED ADMINISTRATION OF TRAVEL/ PURCHASE CARD PROGRAMS

Purchase Card Program

- Train purchase cardholders

- Continued refinement of documentation of charges
- Issue to applicable vendors 1099-MISC for payments of over \$600

Travel Card Program

- Train travel cardholders
- Review monthly reports
- Report misuse to Special Counsel

USE OF ELECTRONIC COMMERCE:

- Implementation of Treasury's GTAS system

MANAGEMENT ASSURANCES

FEDERAL MANAGERS' FINANCIAL INTEGRITY ACT

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

NLRB management is responsible for establishing and maintaining an environment throughout the Agency that is positive and supportive of internal controls and conscientious management. The NLRB is committed to management excellence and recognizes the

importance of strong financial systems and an internal control system that promotes integrity, accountability, and reliability.

Internal control systems are expected to provide reasonable assurance that the following objectives are being achieved:

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

In assessing whether these objectives are being achieved, the NLRB used the following standards in accordance with OMB Circular A-123, *Management's Responsibility for Internal Control*, dated December 21, 2004.

Control Environment	Creating and maintaining an organizational structure that promotes a high level of integrity and personal and professional standards and sets a positive and supportive attitude toward internal controls through conscientious management
Risk Assessment	Identification and analysis of risks that could impede the achievement of agency goals and objectives
Control Activities	Policies, procedures, techniques, and mechanisms to ensure proper stewardship and accountability for government resources and for achieving effective and efficient program results
Information and Communications	Ensures the agency's control environment, risks, control activities, and performance results are communicated throughout the agency
Monitoring	Assessing quality of performance over time ensuring that internal control processes are appropriate and effective

The NLRB's approach to assessing its internal controls included the identification and assessment of risks by 25 designated managers on an Agency-wide basis. In completing this annual review, the designated managers, in conjunction with subordinate staff as needed, used personal judgment as well as other sources of information. These sources included: knowledge gained from day-to-day operations; Inspector General audits and investigations; program evaluations; reviews of financial systems; annual performance plans; and management reviews for the purpose of assessing internal controls. The designated managers were responsible for conducting reviews of program operations, assisting program offices in identifying risks and conducting internal control reviews, issuing reports of findings, and making recommendations to improve internal controls and risk management.

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

The Statement of Assurance provided on page 25 is required by the Federal Managers' Financial Integrity Act (FMFIA) and OMB Circular A-123, *Management's Responsibility for Internal Control*. The assurance is for internal controls over operational effectiveness (we do the right things to accomplish our mission) and operational efficiency (we do things right).

FMFIA Section 2, Management Control

Section 2 of the FMFIA requires federal agencies to report, on the basis of annual assessments, any material weaknesses that have been identified in connection with their internal and administrative controls. The reviews that took place in FY 2012 provide reasonable assurance that NLRB systems and internal controls comply with the requirements of FMFIA and there are no material weaknesses to report relating to Section 2 of the FMFIA. This is based primarily on

written assessments by 25 designated managers who responded to an extensive survey.

FMFIA Section 4, Financial Management Systems

Section 4 of the FMFIA requires that agencies' financial management systems controls be evaluated annually. The NLRB evaluated its financial management systems for the year ending September 30, 2012, in accordance with the FMFIA and OMB Circular A-127, *Financial Management Systems*, Section 7 guidance. The annual statement by the Chief, Finance Branch, indicates that the NLRB's financial systems, taken as a whole, conform to the principles and standards developed by the Comptroller General, OMB, and the Department of Treasury.

FINANCIAL SYSTEM STRATEGIES

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

- Momentum Financials and Momentum Acquisitions — Integrated systems which allow the sharing of data and information between the NLRB's Finance Branch, the Budget Branch, and its Acquisitions Management Branch.
- Finmart Reporting System — A system of various accounting and budgetary reports that are used by staff in the Finance and Budget Branches and the Budget Allowance Holders to monitor the Agency's financial activities. The reports in this system are custom designed for the NLRB's use.
- Hyperion — Hyperion is the system used for the preparation of the Agency's audited Financial Statements which are contained in the Performance and Accountability Report. Statements are prepared annually and quarterly.
- FPPS — Federal Payroll and Personnel System — Integrated with the Momentum system, providing for more efficient payroll processing.

MANAGEMENT DISCUSSION AND ANALYSIS

- E²Solutions – eTravel system provided by Carlson Wagonlit, the NLRB’s Travel Management Service.

In FY 2012, the Agency embarked on an aggressive plan to migrate the financial management systems for finance, acquisitions and budget to NBC’s shared instance of Oracle Federal Financials. The primary drivers were the high cost of support for NBC’s legacy Momentum system and better centralization of processes by the three financial management branches.

The Agency began using the new systems at the start of FY 2013 and expects Oracle Federal Financials to:

- Offer similar but improved functionality to its legacy Momentum system, including integration with the Federal Personnel and Payroll System and E-Travel.
- Leverage a common data model across all its modules, enabling improved business processes and financial data analytics.
- Deliver significantly improved enterprise reporting that increases transparency and mitigates the need of account holders to manage budgets outside the system.
- Provide a web-based interface that will support remote access thereby providing improved telework options for staff in finance, acquisitions, budget, and those office managers in the regional offices that perform financial functions.

While this migration offers an attractive return on investment from the support perspective, the Agency is optimistic that there may be savings attributable to the productivity afforded by a modern financial management system, such as the integration of decentralized functions into a central core system, the elimination of redundant data input, streamlined financial reporting functions, enhanced internal controls, improved segregation of duties, and enhanced data analysis.





UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
WASHINGTON, DC

November 1, 2012

ANNUAL STATEMENT OF ASSURANCE

The NLRB's management is responsible for establishing and maintaining effective internal control and financial management systems that meet the objectives of the Federal Managers' Financial Integrity Act (FMFIA). The NLRB conducted its assessment of the effectiveness of internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations in accordance with OMB Circular A-123, *Management's Responsibility for Internal Control*. Based on the results of this evaluation, the NLRB can provide reasonable assurance that its internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations as of September 30, 2012, was operating effectively and no material weaknesses were found in the design or implementation of internal controls.

Handwritten signature of Mark Gaston Pearce in cursive.

Mark Gaston Pearce
Chairman

Handwritten signature of Lafe E. Solomon in cursive.

Lafe E. Solomon
Acting General Counsel

2012 YEAR IN REVIEW

RESTRUCTURING

Regional Office Consolidation

In response to evolving patterns of case intake in its nationwide network of Regional Offices, the NLRB undertook a pilot program as to the restructuring of some of its field offices. The pilot program was designed to allow the NLRB to take advantage of new technologies and create operational efficiencies while gathering information on internal management and case processing issues that might arise. While the program seeks to consolidate offices, no offices will be closed under the proposed reorganization at this time.

Regional Office consolidation started with a pilot program to merge Regional Offices in Atlanta, Georgia (Region 10) and Winston-Salem, North Carolina (Region 11). The Regional Director would be located in Atlanta. That pilot was followed by another, consolidating St. Louis, Missouri (Region 14) and Kansas City, Kansas (Region 17). The Regional Director would be located in St. Louis. That pilot program also changed the jurisdiction of the Sub-regional office in Peoria, Illinois from St. Louis to the Regional Office in Indianapolis, Indiana (Region 25).

With the retirement of the Regional Director in Region 1 (Boston) in July 2012, another consolidation proposal is under consideration which would make the Regional Office in Hartford, Connecticut (Region 34) a subregion of the Boston, Massachusetts Regional Office (Region 1). The Regional Director would be located in Boston. Under another proposal, based on the transfer of the Regional Director in Region 26 (Memphis) to Region 19 (Seattle), the Regional Office in Memphis, Tennessee (Region 26) would be a Sub-region of the New Orleans, Louisiana Regional Office (Region 15) and the Resident Office in Little Rock, Arkansas would fall under the jurisdiction of the New Orleans office as well. The Regional Director would be located in New Orleans. Further, the Nashville Resident Office would leave the jurisdiction of Region 26 and would become a Resident Office under the jurisdiction of Region 10 (Atlanta).

Input from Agency staff and external stakeholders continues to be solicited and considered by the Acting General Counsel and the Board before any action is taken to formally adopt any or all consolidation proposals discussed above.


Headquarters Restructuring

Related to this consolidation effort in the field, the NLRB has begun processes related to centralizing services in several different branches and divisions within headquarters, and reducing headquarters office space. This centralization includes moving non-mission related legal and advisory support services to a new and independent Division of Legal Services and shifting records, forms and library functions to our current OCIO in keeping with advances in electronic processing, storage, and retrieval systems, and moving printing, copying, and mailroom functions to our current Facilities and Property Branch. In doing so, the Agency will eliminate duplication of functions, improve delivery of services, centralize services and streamline management functions.

EMPLOYEE RIGHTS NOTICE

In August 2011, the NLRB issued a final rule which requires employers to notify employees of their rights under the NLRA. As the rule states, its purpose is to “increase knowledge of the NLRA among employees, in order to better enable the exercise of rights under the statute.” The original effective date of the rule was November 14, 2011, but the Board postponed implementation until January 31, 2012 to allow for enhanced education and outreach to employers, especially for those who operated small and medium-sized businesses. The Board again postponed the effective date until April 30, 2012 at the request of the federal court in Washington, DC but, prior to that date, the DC Circuit Court of Appeals enjoined the rule, requiring further postponement.

The rule requires notification in the form of a poster for work locations and, if the employer customarily



Employee Rights

Under the National Labor Relations Act

The National Labor Relations Act (NLRA) guarantees the right of employees to organize and bargain collectively with their employers, and to engage in other protected concerted activity or to refrain from engaging in any of the above activity. Employees covered by the NLRA* are protected from certain types of employer and union misconduct. This Notice gives you general information about your rights, and about the obligations of employers and unions under the NLRA. Contact the National Labor Relations Board (NLRB), the Federal agency that investigates and resolves complaints under the NLRA, using the contact information supplied below, if you have any questions about specific rights that may apply in your particular workplace.

Under the NLRA, you have the right to:

- Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.
- Form, join or assist a union.
- Bargain collectively through representatives of employees' own choosing for a contract with your employer setting your wages, benefits, hours, and other working conditions.
- Discuss your wages and benefits and other terms and conditions of employment or union organizing with your co-workers or a union.
- Take action with one or more co-workers to improve your working conditions by, among other means, raising work-related complaints directly with your employer or with a government agency, and seeking help from a union.
- Strike and picket, depending on the purpose or means of the strike or the picketing.
- Choose not to do any of these activities, including joining or remaining a member of a union.

Under the NLRA, it is illegal for your employer to:

- Prohibit you from talking about or soliciting for a union during non-work time, such as before or after work or during break times; or from distributing union literature during non-work time, in non-work areas, such as parking lots or break rooms.
- Question you about your union support or activities in a manner that discourages you from engaging in that activity.
- Fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in concerted activity for mutual aid and protection, or because you choose not to engage in any such activity.
- Threaten to close your workplace if workers choose a union to represent them.
- Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support.
- Prohibit you from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances.
- Spy on or videotape peaceful union activities and gatherings or pretend to do so.

Under the NLRA, it is illegal for a union or for the union that represents you in bargaining with your employer to:

- Threaten or coerce you in order to gain your support for the union.
- Refuse to process a grievance because you have criticized union officials or because you are not a member of the union.
- Use or maintain discriminatory standards or procedures in making job referrals from a hiring hall.
- Cause or attempt to cause an employer to discriminate against you because of your union-related activity.
- Take adverse action against you because you have not joined or do not support the union.

If you and your co-workers select a union to act as your collective bargaining representative, your employer and the union are required to bargain in good faith in a genuine effort to reach a written, binding agreement setting your terms and conditions of employment. The union is required to fairly represent you in bargaining and enforcing the agreement.

Illegal conduct will not be permitted. If you believe your rights or the rights of others have been violated, you should contact the NLRB promptly to protect your rights, generally within six months of the unlawful activity. You may inquire about possible violations without your employer or anyone else being informed of the inquiry. Charges may be filed by any person and need not be filed by the employee directly affected by the violation. The NLRB may order an employer to rehire a worker fired in violation of the law and to pay lost wages and benefits, and may order an employer or union to cease violating the law. Employees should seek assistance from the nearest regional NLRB office, which can be found on the Agency's Web site: <http://www.nlrb.gov>.

You can also contact the NLRB by calling toll-free: 1-866-667-NLRB (6572) or (TTY) 1-866-315-NLRB (1-866-315-6572) for hearing impaired.

If you do not speak or understand English well, you may obtain a translation of this notice from the NLRB's Web site or by calling the toll-free numbers listed above.

*The National Labor Relations Act covers most private-sector employers. Excluded from coverage under the NLRA are public-sector employees, agricultural and domestic workers, independent contractors, workers employed by a parent or spouse, employees of air and rail carriers covered by the Railway Labor Act, and supervisors (although supervisors that have been discriminated against for refusing to violate the NLRA may be covered).

This is an official Government Notice and must not be defaced by anyone.

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communicates with its employees about personnel rules by such means, the posting of a notice on company workplace policy-related internet sites. The rule received over 7,000 comments following its publication in the Federal Register in December 2010.

Until the court resolves the issues before it, the Acting General Counsel has instructed Regional Offices not to implement the rule. The D.C. Circuit appeal has been fully briefed, argued, and is pending decision. The case is also being appealed in the Fourth Circuit, and is currently being briefed, with argument anticipated next year.

REPRESENTATION CASE PROCEDURES

The NLRB moved forward with a proposal to amend its election procedures as part of an initiative examining ways the Board could streamline procedures to provide

better service to the labor relations community. Building from an initial rules-change proposal, the process started with a November vote on the proposed changes, progressed to adoption and implementation of the amended rules and at this time has been suspended in response to a District Court decision.

The changes are intended to simplify procedures, make them uniform across regional offices and reduce unnecessary litigation. An open meeting held in July 2011 on the proposed rule generated testimony from 66 speakers, with the Board receiving over 65,000 written comments from the public.

The amendments apply to a small percentage of NLRB-supervised elections delayed by litigation and disputes that could not be resolved prior to the voting date. Among other changes, they limit the subjects that can be raised in a pre-election hearing to those that are directly relevant to the election, and they postpone any related appeals to the Board until after the election is held. The changes that were adopted in the rule were considered by the Board to be less controversial than other portions of the overall rule that generated the comments at the public hearing and the written comments received.

The Acting General Counsel published a memo in April 2012, detailing how regional offices would implement the new representation case procedures and bringing a uniform approach to the NLRB's conduct of elections nationwide. The Acting General Counsel issued a set of Frequently Asked Questions explaining the procedures to provide additional guidance to regional staff, labor law practitioners and the general public.

In May 2012, the NLRB temporarily suspended the implementation of the approved amendments as a result of a District Court decision. The Board has appealed that ruling to the D.C. Circuit, but no briefing schedule has been set as of yet.

PROTECTED CONCERTED ACTIVITY WEB PAGE

To educate the public about the right to engage in protected concerted activity under the NLRA, the



NLRB published a webpage (www.nlr.gov/concerted-activity) that describes the rights of employees to act together for their mutual aid and protection, even if they are not in a union.

Stories of more than a dozen recent cases involving protected concerted activity can be viewed by clicking points on an interactive map. The cases were selected to show a variety of situations, but they have in common a finding that, at some point in the NLRB process, the activity the employees undertook was protected under federal labor law.

The right to engage in certain types of concerted activity has been upheld in numerous court decisions since the passage of the NLRA in 1935. Non-union concerted activity accounts for almost 9 percent of the NLRB's recent caseload. As the concept of non-union concerted activity is not as well-known as union-employer matters, the Agency was prompted to pursue further educational outreach in this regard.

TECHNOLOGY AND E-GOVERNMENT ADVANCES

The NLRB Office of the Chief Information Officer (OCIO) is executing enterprise-architecture-based technology programs that deliver value and advance the Agency's mission. The current Information Technology (IT) initiatives support the Agency's broader efforts to improve productivity and provide greater transparency. The Agency's major IT initiatives are results-oriented and are designed to:

- Improve the productivity of the Agency's case management processes by standardizing business processes on a single unified case management system.
- Optimize business processes by providing employees ready access to the tools, data and documents they require from anywhere, at anytime.
- Transform the way the NLRB serves the public, including making its case processes transparent and providing more information to its constituents in a timely matter.

- Reduce the paperwork burden on constituents, including individuals, labor unions, businesses, government entities, and other organizations.

The Agency's present efforts to accomplish these objectives include six major IT initiatives:

- Next Generation Case Management System (NxGen)
- Infrastructure Modernization and Consolidation
- Unified Communications
- Desktop Modernization and HSPD-12 Development
- E-Government
- Financial System Modernization (see "Financial Systems Strategies")

Next Generation Case Management (NxGen)

The Agency's enterprise case management system, NxGen, has now transitioned from its development phase to a balance of continued development, operations, and maintenance. This system was architected to replace 11 separate legacy systems and integrate into a single unified system multiple technologies. This is the most comprehensive technology project ever undertaken at the NLRB, and its success is essential to the Agency's mission.

The system presently is in comprehensive use for:

- General Counsel's fifty-one Field Offices – whose Case Activity Tracking (CATS) legacy system has been retired.
- General Counsel's Office of Appeals – whose Appeals Case Tracking (ACTS) legacy system has been retired.
- General Counsel's Division of Advice – whose Regional Advice and Injunction Litigation (RAILS) legacy system has been retired.
- Board Offices – whose Pending Case List (PCL) legacy system has been retired.
- Integration with the Board's collaborative Judicial Case Management System (JCMS).
- Integration with the Division of Judges' Case Tracking System (TIGER).

- All Offices for processing incoming electronically-filed documents, including hearing transcripts and exhibits.
- Electronic issuance of Board and Division of Judges Decisions.

The Agency's efforts for FYs 2013 and 2014 are focused on replacing the remaining substantial systems case tracking applications, expanding reporting, integrating inter-office workflows, and modernizing its records management system. The Agency plans to make NxGen the official Regional Office case file for all cases filed on or after October 1, 2012.

Infrastructure Modernization and Consolidation

In FY 2012, the NLRB completed its implementation of an ambitious plan to modernize and consolidate its IT infrastructure. These efforts significantly strengthened the Agency's continuity of operations plans, provided greater storage capacity and manageability, and afforded staff improved access to resources. Through continuing to modernize and consolidate its IT infrastructure, the NLRB is able to provide cost-effective access to the tools, data and documents employees require from anywhere, at anytime, along with the service and support they require. For FY 2013, the Agency will begin developing IT solutions to unify administrative processes and systems that include HR, EEO, and other functions, as well as to assist with centralizing all FOIA requests and appeals processing.

Unified Communications

In FY 2012, the Agency began developing a plan to consolidate its data, voice, video and wireless networks. Currently, the Agency utilizes disparate networks for its data and video conferencing services and manages 52 legacy phone systems from different voice service providers in the field and headquarters. The segregation of data, voice, and video services results in an inefficient use of Agency resources and creates communication and collaboration silos within critical business processes. Additionally, the Agency's present communications infrastructure provisions remote access for certain business processes only to Agency laptops,

MANAGEMENT DISCUSSION AND ANALYSIS

with limited support for mobile and tablet devices. The Agency envisions unified communications services that increase both productivity and agility through:

- Presence – Being able to find and reach contacts regardless of where they are working.
- Communication – Being able to communicate via messaging, voice and video anywhere and at any time.
- Collaboration – Being able to work on and share documents and information anywhere and at any time.
- Multiple Device Support – Being able to use the “right” device to perform the Agency’s work.

In FYs 2013 and 2014, the Agency’s efforts will focus



on implementing the aforementioned services and provisioning consolidated voice services. Based on current research, the Agency expects that voice services will be provided by a combination of Voice Over Internet Protocol (VOIP) and mobile services.

Desktop Modernization and HSPD-12 Deployment

One of the most significant efforts of FY 2012 involved the development and deployment of a Windows 7 image that included upgrades to Office 2007, Adobe Acrobat X, and Internet Explorer 9. The Agency’s Windows 7 release utilized a single configuration across different models to provide identical applications, configuration and functionality regardless of a computer’s make or model.

Development of the Windows 7 image resulted in a new approach for computer and image deployment. The Agency developed a lite-touch installation process designed to provide a repeatable and automated approach for deployment. Using Microsoft Deployment Toolkit (MDT) technologies, the OCIO devised a process incorporating automated data backup, Windows 7 image installation and data restoration.

Concurrent with the deployment of the new equipment and desktop software, the Agency delivered the tools and Personal Identity Verification (PIV) card certificates required to enable all staff to use PIV cards for network login. As the Agency has not mandated PIV card use for logical access at this time, this effort delivered the necessary capabilities but has yet to bring the Agency into compliance with Homeland Security Presidential Directive 12 (HSPD-12). Throughout FY 2013, the Agency will increase its use of PIV-based authentication with updated policies, procedures and training.

E-Government

The NLRB places a high priority on offering timely and relevant information to case participants, citizens, and employees. To that end, the Agency maintains online resources that provide access to these groups, so that they can obtain, maintain and share information. The Agency debuted a redesigned public website in February 2011 that included a direct link to the case data and documents in NxGen. This new resource furthered the Agency’s commitment to transparency and made it easier for those interested in the Agency’s work to find information as efficiently as possible.

The NLRB is developing a Digital Government Strategy that directly aligns with the aforementioned goals of improving the productivity of the Agency’s case management procedures, optimizing business processes by providing employees ready access to the tools, data and documents they require from anywhere at any time, transforming the way the NLRB serves the public through increased transparency and information provided to its constituents, and by reducing the paperwork burden on its employees and constituents.

The NLRB recognizes that developing and executing its Digital Government Strategy is not solely a technology issue. Technology and digital services are enablers, but the delivery of services and assistance to constituents is fundamental to NLRB's mission. In the rapidly evolving digital world and mobile environment, NLRB is committed to improving its capabilities and offerings in the areas of public access and digital services.

In FYs 2013 and 2014, the Agency will execute ambitious plans to offer constituent self-service through the NxGen program; expand E-Issuance beyond the Board and Division of Judges; and increase the number and types of E-Filing submissions. These efforts will provide better services and greater transparency to our constituents, and more efficient case handling and improved quality internally.

DEFERRAL POLICY

As part of an effort to review NLRB practices to identify ways to better serve parties in contractual grievance-arbitration procedures, the Acting General Counsel proposed that the Board consider revising its existing policy of deferring charges to arbitration in certain circumstances. When it is anticipated that charges alleging violations of Section 8(a)(1) and (3) - including discharges or other forms of discrimination based upon union activities, will not be resolved or arbitrated within a year, the Acting General Counsel urged the Board to decide such cases on its merits, rather than defer.

The Acting General Counsel's goal, described in a memo sent to the Board, is to ensure a prompt resolution of disputes in those cases where backlogs hold up the process, sometimes for many years. By having Regional staff investigate the possibility of backlogs and refer the case to Headquarters for review instead of deferral, the Agency can identify trends and quickly bring the issue to the Board.

Deferral of cases to the parties' collective bargaining agreement grievance-arbitration procedures has been the NLRB's long-standing policy to encourage collective bargaining and the private resolution of disputes. However, excessive delay can cause the circumstances

at the job site to change so much over time that it makes pointless the enforcement of a Board order. This change in the Deferral Policy strengthens the Board's ability to effect meaningful compliance with the NLRA.

SPECIAL REMEDIES

Seeking 10(j) injunctive relief is an effective remedy the Board has used for many years in cases involving an employer's unlawful conduct during an organizing campaign. In 2010, the Acting General Counsel initiated a streamlined process for seeking 10(j) injunctive relief in these types of cases. The intent of the streamlined process was to ensure that these cases were identified and processed in "real time" to provide relief to affected employees. However, often times, discharges are accompanied by other serious unfair labor practices such as threats, solicitation of grievances, promises or grants of benefits, interrogations, or surveillance. These additional unfair labor practices also have a serious impact on employee free choice, as they inhibit employees from engaging in union activity and dry up channels of communications between them. Thus, the Acting General Counsel is seeking in appropriate cases the following remedies to enhance the effectiveness of Section 10(j) of the Act and ultimate Board relief.

PUBLIC READING OF BOARD NOTICES. In organizing cases, the Board's cease-and-desist and notice posting remedies announce to employees, who have been subjected to interference, restraint, and coercion with respect to their right to select a bargaining representative, that they have a protected right to



engage in such activity free from unlawful reprisal. A public reading of a Board notice not only ensures that the information set forth in the notice is disseminated to all employees, but also allows employees to take in all of the notice, as opposed to hurriedly scanning the posting, under the scrutiny of others. Regions can specifically seek language in an order that the notice should be read to the widest audience possible.

ACCESS REMEDIES. The full exercise by employees of their Section 7 rights requires that employees be fully informed not only concerning those rights, but also concerning the advantages and disadvantages of selecting a particular labor organization, or any labor organization, as their bargaining representative. Where an employer unlawfully interferes with communications between employees, or between employees and a union, the impact of that interference requires a remedy that will ensure free and open communication. Remedies include: union access to non-work areas on non-work time, to employer bulletin boards and to employee contact information; union notice of, and equal time and facilities for, the union to respond to any address made by the employer regarding union organizing; and a union right to deliver a speech to employees before a representation election.

These access remedies assure employees that they can learn about unionization and can contact union representatives in an atmosphere free of restraint or coercion and without fear of retaliation.

In addition to the special remedies in organizing campaigns, for the past several years the NLRB has pursued special remedies in first-contract bargaining cases. Regional Offices were instructed to consider remedies beyond the standard bargaining order to effectively address the consequences of bad faith bargaining and other violations during initial contract negotiations. These remedies included: public notice reading, required bargaining on a set or compressed schedule, periodic reports on bargaining status, a minimum six-month extension of the certification year, and reimbursement of bargaining expenses and/or litigation expenses.

The Acting General Counsel also issued guidelines that provide more effective backpay remedies for illegally discharged employees. These guidelines outline new methods for calculating backpay that includes daily compounded interest and compensates for search-for-work-related expenses and tax penalties on lump sum payments.

ACTING GENERAL COUNSEL CONTINUES FOCUS ON SOCIAL MEDIA

The NLRB Acting General Counsel issued two new reports on social media cases brought to the agency, continuing a focus that started in 2011 with the issuance of its first report on this new aspect of labor law.

Given the evolving nature of social media cases, by reviewing over 75 cases submitted by field offices, the Acting General Counsel has made a concerted effort to use actual case information to provide guidance to the labor law and human resources community. This comprehensive review was done in the interest of developing a consistent approach to this area of labor law involving technology and forms of expression that did not exist at the time of the passing of the NLRA.

The first report issued in FY 2012 represents the Acting General Counsel's interpretation of the Act as it applies to social media. It notes that these cases are extremely fact-specific and reinforce the main points from the report issued in 2011. The report describes social media cases reviewed by the Acting General Counsel's office, combining with last year's report to provide guidance to practitioners and human resource professionals on questions about employee disciplines and discharges as a result of social media activities.

The second FY 2012 report (third in the series) focuses exclusively on company policies governing the use of social media by employees. It covers seven cases involving such policies and provides specific examples from those cases of policies that were found to be partially or fully lawful. Taken together, the reports provide current information and guidance on all aspects of the evolving intersection of social media and

employee rights under the NLRA.

The reports issued thus far underscore two main points:

- Employer policies should not be so sweeping that they prohibit the kinds of activity protected by federal labor law
- An employee's comments on social media are generally not protected if they are mere gripes not made in relation to group activity among employees

PUBLIC INFORMATION PROGRAM

The Agency's Public Information Program is one of the critical services provided to employers, unions, and employees. Under this program, officers in the field provide information directly to individuals or entities that contact the Agency seeking assistance. In responding to these inquiries, Board agents spend considerable time explaining the coverage of the NLRA, accepting charges, or referring parties to other federal or state agencies. In FY 2012, the NLRB's Field Offices received 82,669 public inquiries regarding workplace issues.

The public can also contact the Agency through a toll-free telephone service (1-866-667-NLRB) designed to provide easy and cost-free access to information. Callers to the toll-free number may listen to messages recorded in English and Spanish that provide a general description of the Agency's mission and connections to other government agencies or Information Officers



located in the Agency's Regional Offices. In FY 2012, 37,723 inquiries were received through the Agency's toll-free number.

Public outreach is encouraged and has been embraced at all levels of the Agency. Over the past few years, the Board Members, General Counsel, and Acting General Counsel participated in numerous speaking engagements at a myriad of events, including law schools, American Bar Association meetings and events, the Chamber of Commerce, and various employer and union groups. Similarly, other Agency representatives participated in outreach events, independently and in partnership with other organizations such as the Equal Employment Opportunity Commission, the Department of Labor, and through the NLRB's Regional Offices. Agency employees visited and spoke at schools, community groups, churches, other federal agencies, business organizations, workers' rights centers, human resources professional groups, labor organizations, and other similar type groups to make information about the NLRB available to individual workers. Agency representatives also reached out to employers, unions, workers, and soon-to-be workers to educate them regarding the role of the NLRB as an impartial enforcement agency. Furthermore, many Regional Offices publish newsletters, participate on radio talk shows, and make presentations in their local communities.

The NLRB continues to reach out to those communities of workers who have limited English proficiency by incorporating an easy to use, bilingual toll-free telephone service for inquiries. In addition, the Agency employs full-time Spanish-speaking language assistants whose sole job is to provide interpretation and translation service to our field offices. Our public web site contains Agency publications about our statute and processes translated into Spanish, Chinese, Creole, Korean, Russian, Somali and Vietnamese. Our electronic document templates available in Spanish continue to increase and our database of translated representation case notices and ballots has expanded to include 31 languages. Also, an Agency film about representation case processing has been recorded for the benefit of the Spanish-speaking community.

CASEHANDLING HIGHLIGHTS

The NLRB acts only on those cases brought before it, and does not initiate cases. All proceedings originate with the filing of charges or petitions by employees, labor unions, or private employers who are engaged in interstate commerce. During FY 2012, the public filed 21,629 charges alleging that employers or labor organizations committed unfair labor practices prohibited by the Act, adversely affecting employees. Also, in FY 2012, the NLRB received 2,563 representation petitions, including 2,484 petitions to conduct secret-ballot elections in which workers in appropriate groups select or reject unions to represent them in collective bargaining with their employers, as well as 79 petitions for elections in which workers voted on whether to rescind existing union representation. The NLRB also received 14 petitions to amend the certification of existing collective bargaining and 69 petitions seeking clarification of an existing bargaining unit.

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

- 34 The following cases highlight this philosophy and reflect the NLRB's mission of protecting democracy in the workplace:

HTH Corp., Pacific Beach Corp. and Koa Management LLC, a single employer, d/b/a Pacific Beach Hotel, Cases 37-CA-7311

Because of Pacific Beach Hotel's continuing unfair labor practices, some of which violated an initial injunction order of the District Court, issued in March 2010 and affirmed in July 2011, the Agency sought both a second injunction and a contempt order from the U.S. District Court in these cases. The contempt motion sought, *inter alia*, attorneys' fees for the NLRB attorneys involved in the litigation.

The court issued its second decision granting an injunction against the hotel, ordering it to post the decision and have the decision read to employees during work time by the owners of the hotel, to again reinstate an employee who had been previously reinstated pursuant to a Board order, to furnish information requested by the union, and to rescind unilateral changes by lifting its ban of two union agents from hotel property and restoring the daily room assignments to housekeepers.

Shortly thereafter, the court issued a decision granting in part and denying in part the Agency's Motion for an Order in Civil Contempt and for Compensatory Relief. This order required the hotel to pay the reinstated employee backpay and to pay the union and the Board their fees and costs in seeking the contempt action through June 14, 2011. The court ultimately directed the payment of approximately \$250,000 in attorney fees and costs.

Finally, the U.S. Court of Appeals (9th Circuit) issued a consolidated decision (*Frankl ex rel. NLRB v. HTH Corp "HTH 2"*) granting the Board's application for enforcement of its June 14, 2011 decision and order (which found that numerous violations of Section 8(a) (1), (3) and (5) of the NLRA had been committed and ordered among other remedies the payment of the union's negotiation expenses). In the same decision, the 9th Circuit also affirmed the district court's Section 10(j) order. (HTH did not appeal the contempt sanctions.)

Piggly Wiggly Midwest, LLC, Cases 30-CA-018574, et.al.

Multiple cases involving stores of Piggly Wiggly Midwest, LLC, a Wisconsin supermarket chain, were resolved pursuant to a series of settlements between Piggly Wiggly and UFCW Local 1473.

In *Piggly Wiggly Midwest, LLC, 30-CA-018574, et.al.*, the Board found that Piggly Wiggly unlawfully refused to provide information requested by the union. The failure to provide this information precluded the union

from bargaining over the effects of the Piggly Wiggly's decision to sell one of its corporate-operated stores to a franchise operator. The case was appealed to the U.S. Court of Appeals. Consistent with the terms of the overall settlement, the parties petitioned the Court to dismiss this case. The Court granted the dismissal without prejudice.

In *Piggly Wiggly Midwest, LLC*, 30-CA-067117, et. al., the NLRB obtained a Section 10(j) injunction ordering Piggly Wiggly to immediately reinstate 19 affected employees to their previous full-time positions and pay them backpay. The Board ultimately found that the Piggly Wiggly unlawfully reduced 19 full-time employees to part-time, unlawfully causing four of those employees to quit, and made many unilateral changes to terms and conditions of employment. Following the Board's decision, the Agency filed for enforcement in the U.S. Court of Appeals. As part of the overall settlement, Piggly Wiggly agreed to drop its opposition and the Court granted enforcement of the Board's order.

Piggly Wiggly Midwest, LLC, 30-CA-018915, et.al., involved five separate bargaining units and raised a wide range of allegations against Piggly Wiggly, including overall bad faith bargaining, unlawful declarations of impasse and implementation of its respective final bargaining offers for new collective bargaining agreements, bad faith bargaining regarding the effects of Piggly Wiggly's decisions to sell additional corporate-operated stores to franchise operators, refusals to provide information relevant to both contract bargaining and effects bargaining, efforts to promote a decertification petition in one of the bargaining units, discharging an employee, reassigning and/or disciplining several employees based on its unlawful unilateral changes, and a variety of unlawful coercive statements and other acts. The parties executed a comprehensive formal Board settlement to resolve these cases, in which Piggly Wiggly agreed to sign collective bargaining agreements with the union, to reinstate discharged workers, to provide about 500 employees a total of more than \$570,000 in backpay, and to keep open a

store that had been slated for closure. The settlement is pending final Board approval.

Finally, *Piggly Wiggly Midwest, LLC*, 30-CA-074572, et. al., involved eight unfair labor practice cases against Piggly Wiggly and two against the Union, related to more employer unilateral changes, refusals to provide information, and announcement of the closure of the remaining store in Sheboygan, WI. The parties reached a non-Board settlement based on concessions made by each party with respect to terms in the formal settlement agreement executed in Case 30-CA-018915, et. al.

Hartman and Tyner, Inc. d/b/a Mardi Gras Casino and Hollywood Concessions, Inc. Cases 12-CA-072234, et al.

On September 18, 2012, an NLRB ALJ ruled that Mardi Gras Casino committed numerous violations of Section 8(a)(1) and (3) of the Act including interrogation, threat of discharge, threat of unspecified reprisals, threat of arrest and the discharges of eight employees who assisted the union in an organizing campaign. As found by the ALJ, five of the eight discharged employees engaged in protected concerted activities by going to the casino in a group, in part, to seek compliance with a neutrality agreement between the union and the casino. The ALJ rejected the casino's argument that the group of employees was disruptive when they visited the casino and found that the discharges violated Section 8(a)(1) and (3) of the Act. The ALJ ordered that Mardi Gras Casino reinstate the eight employees and awarded the employees back pay because they were unlawfully discharged.

In related 10(j) litigation, on June 29, 2012, the District Court for the 11th Circuit issued an order denying interim reinstatement, but ordering Mardi Gras Casino to cease and desist from engaging in any further unfair labor practices in violation of Section 8(a)(1) and (3) of the Act. An appeal is currently pending regarding the Court's failure to grant interim reinstatement.

Illinois Central Bus Company, Cases 13-CA-075688 et al.

This was a “nip in the bud” case involving an initial organizing drive with over 30 independent 8(a)(1) violations, two discharges, and a series of reductions in wages. The Region reached a settlement at the eve of the trial that put both discharged employees back to work, with 100 percent backpay awarded to all discriminates. The employer also agreed to a stipulated rerun election and granted the union equal access to its facility to meet with unit employees. The Notice to Employees will also be mailed to all unit employees in both English and Spanish.



Latino Express, Case 13-CA-046528

Latino Express Inc. operates a bus service that transports students to public schools and offers charters to the general public. In the fall of 2010, drivers began discussing grievances with each other and contacted the International Brotherhood of Teamsters. Several drivers were seen by managers leaving a restaurant with union organizers in December 2010. In the following days, many of the drivers who were at the restaurant were summoned to meetings with company managers and asked about union support, and two were fired. The union prevailed in a subsequent secret ballot election. In July of 2011, an NLRB ALJ found that Latino Express had violated the Act, as alleged above. Under Section 10(j), a federal district court ordered Latino Express to reinstate two drivers on an interim basis who were fired after signing cards in favor of a union election, and to stop questioning employees about

their union activities. The Board subsequently upheld the ALJ's decision on exceptions.

Times Union, Capital Newspapers Division of the Hearst Corp., Cases 03-CA-027347 and 03-CA-027367

The Buffalo Regional Office (Region 3) approved a settlement agreement calling for the reinstatement of three employees and payment of more than \$800,000 in backpay, medical expenses, pension losses and interest to 11 employees in a case involving the unlawful unilateral imposition of a final offer in the absence of a good faith impasse in bargaining. While the parties were bargaining over the selection criteria for layoffs, but before having reached an agreement, the Times Union unilaterally imposed its own such criteria, and laid off the 11 employees.

Stamford Plaza Hotel & Conference Center, Case 34-CA-13031

On March 22, 2012, a United States District Court Judge ordered that Stamford Plaza Hotel reinstate 28 employees who had been laid off and re-hired by a subcontractor to perform the same work they had been performing when directly employed by the hotel. The Judge found reasonable cause to believe that the move to subcontract the work was an unlawful scheme to disrupt an organizing campaign being conducted by United Food and Commercial Workers Union Local 371. In issuing the injunction, the Court found that the Acting General Counsel was likely to prevail given the timing of the hotel's decision to subcontract, its shifting explanations for the decision, and testimony that it continued to structure its subcontracting arrangements with the goal of frustrating union activity. The Court readily found that injunctive relief was just and proper, observing that even though the employees were re-hired by a subcontractor, the maneuver froze the union's organizing efforts. In September 2012, an ALJ found that the subcontracting and certain other conduct was unlawful and recommended that the employer be ordered to rescind certain subcontracting agreements it had entered into and to reinstate affected employees to their former positions of employment, with no loss

of earnings or benefit, and that it make said employees whole for any loss of benefits they may have suffered as a result of the unlawful conduct.

Flaum Appetizing Corp., Case 29-CA-28502

The Brooklyn Regional Office (Region 29) negotiated a settlement ending a long-running dispute involving immigrant workers at Flaum Appetizing Corp. In June 2009, the Board found the company committed multiple violations of federal labor law by alternately threatening and making promises to employees to discourage them from supporting the Industrial Workers of the World. Additionally, the Board found the respondent unlawfully refused to allow employees to return to work following a two-day strike that the workers and union staged to protest the firing of a co-worker. In December 2011, a Supplemental Decision and Order issued dismissing the respondent's defense that no backpay was owed because the discriminatees

were ineligible to work. The Board dismissed Flaum's defense because it did not show it had a good faith basis to support its immigration-related claim. Just before a compliance hearing was scheduled to begin, settlement was reached wherein the respondent agreed to pay \$186,000 in backpay to 15 discriminatees.

NTN Bower Corporation, Cases 10-CA-37271, et al.

On April 20, 2011, the Board issued a decision finding NTN Bower Corporation violated Sections 8(a)(1), (3) and (5) of the Act. These violations included a failure to offer reinstatement and/or to reinstate employees who were former strikers and implementation of unlawful unilateral changes. A settlement was reached with the assistance of a mediator assigned by the U.S. Court of Appeals for the District of Columbia Circuit. The settlement requires the reinstatement of 60 former strikers, payment of approximately \$1.85 million in



backpay and interest to current and former employees, and recognition of the United Automobile, Aerospace & Agricultural Workers of America. The settlement resolved multiple pending cases and several recently-filed charges.

Atlantic Scaffolding Company, Case 16-CA-26108

Atlantic Scaffolding Company had contracted with ExxonMobil to perform scaffolding work at its Beaumont, Texas refinery during a maintenance "turnaround." Atlantic Scaffolding employed approximately 250 employees for the "turnaround" and there were also approximately 1,000 other employees employed by other contractors on the project. Shortly before the "turnaround," Atlantic Scaffolding's employees learned they would not receive an expected raise, and they protested by walking off the job. In response, Atlantic Scaffolding terminated more than 70 employees who had engaged in the work stoppage. The NLRB found that the employees' work stoppage was a protected, concerted action in support of their demand for higher wages. In February 2012, following issuance of the Board order, an agreement was reached on the amount of backpay due and owing under the terms of the order. Under the terms of this agreement, Atlantic Scaffolding paid 73 employees the sum of \$323,116.

Sterling Foods, LLC, Cases 16-CA-067781, et al.

These cases concerned the discharge of six employees during an organizing campaign by the United Food and Commercial Workers Local Union No. 455 and which involved an estimated 500 employees at Sterling Foods, LLC, a San Antonio-based baked goods manufacturer. In addition to the six "nip-in-the-bud" discharges, Sterling Foods was alleged to have violated Section 8(a)(1) of the Act by unlawfully threatening to terminate employees who were engaged in union activities; soliciting an employee to observe and report on other employees' union activities; offering an employee a financial benefit if he reported the union activities of employees; engaging in surveillance of employee union activities; calling the police on employees and union organizers engaged in union activity; prohibiting

employees from accepting union literature; and directing employees to throw away union literature.

After a consolidated complaint issued in this matter, pursuant to Board authorization, the Agency filed for 10(j) injunctive relief in the United States District Court for the Western District of Texas, San Antonio Division. The petition alleged that Sterling Foods committed multiple unfair labor practices in an effort to nip the union's organizing campaign in the bud. The petition sought a temporary injunction against the continuation of such unfair labor practices, including an interim order of reinstatement of the six laid off/terminated employees. A Show Cause Hearing was scheduled for July 19, 2012 in U.S. District Court in San Antonio, Texas.

Before the 10(j) hearing commenced, Sterling Foods agreed to settle the matter. Under the terms of the settlement, it paid more than \$58,000 in backpay and interest to the six employees who were laid off/terminated. Three of the six employees accepted offers of reinstatement. Sterling Foods also agreed, among other things, not to discharge employees who engage in union activities; not to solicit employees to report other employees' union activities; not to threaten to terminate any employees who engage in union activities; not to offer employees benefits in order to get them to report other employees' union activities; not to engage in surveillance of employee union activities; not to call the police on employees and union organizers who distribute union literature or participate in union activities, without proper justification; and to not tell employees not to take or throw away union literature.

GCA Services Group, Inc., Cases 28-CA-023513 and 28-CA-062481

In *GCA Services Group, Inc.*, Cases 28-CA-023513 and 28-CA-062481, a "nip-in-the-bud" case involving 300 janitors at Phoenix's Sky Harbor International Airport, the Phoenix Regional Office (Region 28) obtained a Section 10(j) consent injunction. More specifically, based on results of the investigation of charges filed by the United Food and Commercial Workers Union, Local 99, Region 28 issued a 23-page unfair labor practice

complaint against GCA in July 2011 alleging over 100 violations, including threats, interrogation, surveillance, solicitation of grievances, grants and promises of benefits, and the discharge of four leading union proponents. Prior to the unfair labor practice hearing, the Region filed a petition under Section 10(j) seeking a broad cease and desist order and interim reinstatement of the four discharged employees. Days before oral argument on the 10(j) petition was scheduled to take place, GCA agreed to the entry of a consent 10(j) injunction which was issued by the U.S. District Court on October 12, 2011. The consent injunction provided, among other relief, interim reinstatement and the reading of the court's order in several languages. The parties also executed a Formal Settlement Stipulation regarding the underlying unfair labor practice complaint, by which GCA consented to the enforcement of the Board's order, as well as a provision for a consent Section 10(e) injunction to secure employee rights during the pendency of enforcement proceedings. The parties' Formal Settlement Stipulation agreement was approved by the Board on December 16, 2011. The district court's Consent Decree was posted by GCA at Sky Harbor Airport in English and four other languages (Spanish, French, Nepali, and Swahili).

Cactus Bay Apparel, Inc., Cases 28-CA-068006, et al.

Cactus Bay Apparel, Inc., Cases 28-CA-068006, et al., investigated by the Phoenix Regional Office (Region 28), involved a nascent organizing effort among employees of a manufacturer and distributor of apparel in Phoenix, Arizona. Specifically, the employees contacted the Arizona Division of Occupational Safety and Health (ADOSH) regarding workplace safety concerns after the employer refused to address the employees' complaints. The day after the employer was notified by ADOSH of a pending complaint, the employer laid off six employees that it believed to be involved with the filing of the complaint, citing lack of work. Three days later, immediately after the employees met with the United Food and Commercial Workers Union, Local 99, and signed authorization cards, the employer discharged the group of union supporters in the presence of a uniformed off-duty

police officer, asserting performance issues. On the eve of the unfair labor practice hearing, the Region filed a 10(j) petition seeking a broad cease and desist order, interim reinstatement of the discharged employees, a *Gissel* bargaining order, and readings of the court's order. When the parties arrived to open the unfair labor practice hearing, the employer agreed to the entry of a consent 10(j) injunction, including reinstatement of the discharged employees and recognition of the union, which was issued by the U.S. District Court on March 6, 2012. The parties also executed a Formal Settlement Stipulation regarding the unfair labor practice complaint, by which Respondent consented to the enforcement of the Board's order and a provision for a consent 10(e) injunction, which was approved by the Board.

Albertson's LLC, Case 28-CA-023387

In *Albertson's, LLC, Case 28-CA-023387*, Region 28 obtained the first Section 10(j) injunction issued in over 50 years in New Mexico. This case involved the employer's discharge of a leading union adherent, during an ongoing organizing effort among the grocery store's employees, for what was found to be pretextual reasons in violation of Section 8(a)(1) and (3) of the Act. Specifically, the employer denied knowledge of the discriminatee's union activity and asserted that she, a 20+ year employee, was discharged for mishandling a \$10 coupon. The unfair labor practice case was tried before an NLRB ALJ in Albuquerque, New Mexico. The Region filed a petition seeking Section 10(j) relief, including the interim reinstatement of the alleged discriminatee and a cease and desist order, based on the administrative record developed before the ALJ. In May 2012, the U.S. District Court issued its order granting the Section 10(j) injunction, which included interim reinstatement and a cease-and-desist order.

STATISTICAL HIGHLIGHTS

- The Board issued 341 decisions in contested cases in FY 2012, 277 ULP cases and 64 representation cases.
- 93.9 percent of all initial elections were conducted within 56 days of filing of the petition.
- Initial elections in union representation cases were conducted in a median of 38 days from the filing of the petition.
- Acting on the results of professional staff investigations, which produced a reasonable cause to believe unfair labor practices had been committed, Regional Offices of the NLRB issued 1,314 complaints, setting the cases for hearing.
- A 91 percent settlement rate was achieved in the Regional Offices in meritorious ULP cases.
- The Regional Offices won 90.1 percent of Board and ALJ ULP and Compliance decisions in whole or part in FY 2012.
- A total of \$44,316,059 was recovered on behalf of employees as backpay or reimbursement of fees, dues, and fines.
- 1,241 employees were offered reinstatement.
- The Agency received 82,669 inquiries through its Public Information Program.
- The Agency received 37,323 calls through its toll-free number in FY 2012.
- The Division of Judges closed 219 hearings and issued 207 decisions in FY 2012.



2012

PERFORMANCE SECTION



Protecting Democracy in
the Workplace Since 1935

PERFORMANCE GOALS AND OBJECTIVES

This section of the PAR details the NLRB's efforts to meet its strategic and performance goals. The two goals of the NLRB's Strategic Plan represent the core functions of the Agency in enforcing the NLRA, as efficiently as possible, in a manner that gives full effect to the rights afforded to all parties under the Act. These strategic goals, as fully described in this section of the PAR, translate the Agency's mission into major policy directions and are focused on the unique characteristics of the organization.

The Board and the General Counsel share a common goal of ensuring that the NLRA is fully and fairly enforced. Although they have separate statutory functions, the Board and the General Counsel work together in developing one comprehensive Strategic Plan and annual Performance Plan.

STRATEGIC GOAL No. 1

Resolve all questions concerning representation impartially and promptly.

Objectives

The NLRA recognizes and expressly protects the right of employees to freely and democratically determine, through a secret-ballot election, whether they want to be represented for purposes of collective bargaining by a labor organization. The Agency seeks to ensure that the process used to resolve such questions allows employees to express their choice in an open, un-coerced atmosphere. The NLRB strives to give sound and well-supported guidance to all parties and to the public at large with respect to representation issues. Predictable, consistent procedures have been established to better serve our customers and avoid unnecessary delays. The Agency processes representation cases promptly in order to avoid unnecessary disruptions to commerce and to minimize the potential for unlawful or objectionable conduct.

The objectives are to:

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

Strategies

- 1. Give priority in timing and resource allocation to the processing of representation cases that implicate the core objectives of the Act and are expected to have the greatest impact on the public. A core objective of the Act is to conduct secret ballot elections among employees to determine whether the employees wish to be represented by a union.
- 2. Evaluate the quality of representation casework regularly to provide the best possible service to the public.
- 3. Give sound and well-supported guidance to the parties, and to the public at large, on all representation issues.
- 4. Share best practices in representation case processing to assist Regional Offices in resolving representation case issues promptly and fairly.
- 5. Identify and utilize alternative decision-making procedures to expedite Board decisions in representation cases.



6. Assure that due process is accorded in representation cases by careful review of Requests for Review, Special Appeal and Hearing Officer Reports, and, where appropriate, the records in the cases.
7. Analyze and prioritize the critical skill needs and address these skills needs using a cost effective instructional delivery system that ensures timely access to the needed training in a work environment that encourages employees to effectively utilize their diverse talents in achieving Agency goals.
8. Provide an information technology environment that is mainstream with other federal agencies and the public, and will provide NLRB employees with technology tools and access to research and professional information comparable to that of their private-sector counterparts.

STRATEGIC GOAL No. 2

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

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

Objectives

- A. Conduct thorough ULP investigations and issue all ULP decisions in a timely manner.
 - B. Give special priority to disputes with the greatest impact on the public and the core objectives of the Act.
 - C. Conduct effective settlement programs.
 - D. Provide prompt and appropriate remedial relief when violations are found.
 - E. Afford due process under the law to all parties involved in ULP disputes.
- 6. Utilize injunctive proceedings to provide interim relief where there is a threat of remedial failure.
 - 7. Emphasize and encourage settlements as a means of promptly resolving ULP disputes at all stages of the casehandling process.
 - 8. Identify and utilize alternative decision-making procedures to expedite Board decisions in ULP cases.
 - 9. Analyze and prioritize the critical skill needs and address these skills needs using a cost effective instructional delivery system that ensures timely access to the needed training in a work environment that encourages employees to effectively utilize their diverse talents in achieving Agency goals.

Strategies

- 1. Take proactive steps to disseminate information and provide easily accessible facts and information to the public about the Board's jurisdiction in ULP matters and the rights and obligations of employers, employees, unions, and the Board under the Act.
- 2. Evaluate the quality of ULP casework regularly in order to provide the best possible service to the public.
- 3. Utilize impact analysis to provide an analytical framework for classifying ULP cases in terms of their impact on the public so as to differentiate among them in deciding both the resources and urgency to be assigned to each case.
- 4. Share best practices in the processing of ULP cases to assist Regional Offices in resolving ULP issues promptly and fairly.
- 5. Emphasize the early identification of remedial and compliance issues and potential compliance problems in merit cases; conduct all phases of litigation, including settlement, so as to maximize the likelihood of obtaining a prompt and effective remedy.
- 10. Provide an information technology environment that is mainstream with other federal agencies and the public, and will provide NLRB employees with technology tools and access to research and professional information comparable to that of their private-sector counterparts.



MEASURING PERFORMANCE



One of the NLRB's human capital goals is to create a results-oriented performance culture that clearly links employee performance and pay to the attainment of the NLRB's strategic goals. When the Strategic Plan was last updated in FY 2007, the performance measures were modified to make them more robust and customer-focused to better serve the NLRB's constituents. The end result was the establishment of the three overarching measures that support the Agency's two strategic goals and annual targets that support the NLRB's long-term goals.

In accordance with the Government Performance and Results Modernization Act (GPRAMA), the NLRB in FY 2012 issued an addendum to its Strategic Plan (2007 – 2012). While the strategic goals and associated measures remain unchanged, the addendum provided the Agency's performance targets for FY 2013 and 2014, updates on its initiatives, and changes to its structure. As per GPRAMA requirements, a new plan will be issued in February 2014. Any new goals and measures identified as a result of the new plan will be integrated with the budget to ensure that resources are allocated appropriately and effectively.

The NLRB is an agency with a long history of performance measurement that dates back to the inception of the Agency, and before Congress passed

GPRAMA in 1993. Traditionally, the NLRB's performance measurement approach was to emphasize individual segments of case processing to promote timely, efficient, and well-managed casehandling. These measures are still used by the NLRB as internal guides in assessing performance. The three overarching performance measures introduced in FY 2007 emphasize outcomes, and best serve to answer the question most important to the public:

What is the Agency's overall success in bringing effective resolution to labor disputes in a timely manner?

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

The same difficulty is inherent in any attempt to define "outcomes" in the prevention of unfair labor practice conduct. The aim of the Agency is to prevent industrial strife and unrest that burdens the free flow of commerce. An indicator of success in the achievement of this aim is labor peace. In the absence of a mechanism to accurately gauge "labor peace" or the impact of Agency activities among a range of variables influencing that goal, the NLRB established

PERFORMANCE SECTION

two performance measures. In particular, the timeliness and quality of case processing, from the filing of an ULP charge to the closing of a case upon compliance with a litigated or agreed-to remedy, are the focus of those performance measures.

The tables in this section show the proposed annual targets for the three overarching measures for the five-year period covered by the current Strategic Plan (2007-2012), and the actual results achieved for FYs 2007, 2008, 2009, 2010, 2011, and 2012.

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

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

Implemented in FY 2007, this is an overarching, outcome-based performance measure that focuses on the time taken to resolve a representation case, including time spent on both the General Counsel and the Board sides.

An employer, labor organization, or group of employees may file a petition in an NLRB Regional Office requesting an election to determine whether a majority of employees in an appropriate bargaining unit wish to be represented by a labor organization. When a petition is filed, the Agency works with parties toward a goal of reaching a voluntary agreement regarding conducting an election. If a voluntary agreement is not reached, the Director of the Regional Office, after a hearing is conducted, will determine whether to conduct an election and the details of the election. The parties have a right to appeal to the Board the Director's decision. This measure reflects the percentage of representation cases closed within 100 days. When a case has been finally processed with no further rights of appeal or administrative action required, the question as to whether or not a labor organization will represent employees has been finally resolved.

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



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

As reflected in Table 1, the NLRB was below its goal for FY 2012 of 85.2 percent for Measure No. 1, which seeks to close all representation cases within 100 days from the filing of the petition. During FY 2012, the Agency closed 84.5 percent of representation cases within 100 days of filing—0.7 percent below the stated goal. In FY 2012, the learning curve associated with the transition to the newly-deployed case management system, NxGen, in our Regional Offices, and a number of retirements among senior regional leadership, had an impact on operational efficiency in the short-term and resulted in the Agency not meeting its target goal for Measure No. 1.

In order to meet its FY 2013 goal, the Agency conducted NxGen training, much of which focused on the processing of representation cases. It is the Agency’s plan to continue this training to each of its field offices over the next year. Consistent with operating needs, those executive managerial positions left vacant by retiring senior leadership have been filled, and it is expected that improved efficiencies will result. In addition, as the sum total of representation cases is small, the processing of a few cases can greatly affect our percentages. In fact, the Agency failed to meet its goal by only 0.7 percent, which amounted to 18 cases.

GOAL NO. 1, TABLE 1
 Percentage of Representation Cases Resolved Within 100 Days

Year	TARGET	ACTUAL
FY 2007	79.0%	79.0%
FY 2008	80.0%	83.5%
FY 2009	81.0%	84.4%
FY 2010	85.0%	86.3%
FY 2011	85.0%	84.7%
FY 2012	85.2%	84.5%
FY 2013	85.2%	
FY 2014	85.3%	

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

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

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

Implemented in FY 2007, this is an overarching, outcome-based performance measure that focuses on the time taken to resolve a ULP charge, including time spent on both the General Counsel and the Board sides.

After an individual, employer, or union files a ULP charge, a Regional Director evaluates it for merit and decides whether to issue a complaint. Complaints not settled or withdrawn, or dismissed, are litigated before an ALJ, whose decision may be appealed to the Board.

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

In FY 2012, the NLRB closed 72.7 percent of all ULP cases within 120 days of the docketing of the charge. The Agency exceeded the FY 2012 goal of 72 percent by 0.3 percent and its FY 2011 target by 0.2 percent.



GOAL NO. 2, TABLE 2

Percentage of ULP Charges Resolved Within 120 Days

Year	TARGET	ACTUAL
FY 2007	67.5%	66.0%
FY 2008	68.0%	68.0%
FY 2009	68.5%	71.0%
FY 2010	71.2%	73.3%
FY 2011	71.2%	72.5%
FY 2012	72.0%	72.7%
FY 2013	72.0%	
FY 2014	72.3%	

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

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

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

Once a Regional Director has determined an ULP charge has merit, it is scheduled for a hearing date before an ALJ. However, efforts to obtain voluntary compliance or appropriate settlements begin immediately and continue throughout the course of any necessary litigation. Most settlements are achieved before trial. Once the ALJ issues a decision, the decision can then be appealed to the Board. The Board, in turn, will consider the case and issue a final order resolving the ULP case. Ordinarily, the Regional Office will attempt to secure compliance in the 30-day period following the Board’s order. If compliance cannot be obtained, the Region will refer the case to the Appellate and Supreme Court Litigation Branch of the

Division of Enforcement Litigation, which, if it is unable to secure voluntary compliance or a settlement meeting established standards, will proceed to seek a judgment from an appropriate U.S. Court of Appeals enforcing the Board’s order.

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

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

In FY 2012, the NLRB closed 83.8 percent of all prosecutable ULP cases in 365 days from the docketing of the charge. Thus, the Agency exceeded the FY 2012 goal of 80.3 percent by 3.5 percent and exceeded the FY 2011 goal by 0.6 percent.

GOAL NO. 2, TABLE 3

Percentage of ULP Cases Closed on Compliance Within 365 Days

Year	TARGET	ACTUAL
FY 2007	74.0%	73.5%
FY 2008	75.0%	76.0%
FY 2009	75.5%	79.7%
FY 2010	80.0%	84.6%
FY 2011	80.2%	83.2%
FY 2012	80.3%	83.8%
FY 2013	82.0%	
FY 2014	82.5%	

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

FACTORS AFFECTING AGENCY PERFORMANCE

Various factors can affect each goal, objective, and performance measure contained in the NLRB's strategic and annual performance plans. These factors can also affect Agency performance as a whole. These factors include budget, case intake, settlements, board member vacancies, and the potential effect of statutory changes.

BUDGET

In FY 2012, the NLRB's budget was \$278.3 million, approximately \$4.5 million below its FY 2011 funding level and \$9.4 million below the President's budget request. During FY 2012, the NLRB, like most federal agencies, operated under five continuing resolutions, and did not receive its full appropriation until late December 2011, three months into the fiscal year. Since approximately 80 percent of the Agency's total budget is devoted to personnel costs, budget shortfalls and delays in receiving full funding (beginning each fiscal year operating under a Continuing Resolution), directly influence staffing resources and limit the Agency's ability to facilitate casehandling.

The requested funding for FY 2013, if enacted by Congress, will provide the resources necessary to cover staffing, training, space requirements, information technology, and other activities critical to handling the Agency's caseload, and ensuring continued integration and tracking of budget and performance. Our goals assume the level of funding set forth in the President's Budget request.

CASE INTAKE

During FY 2012, 21,629 ULP cases were filed with the NLRB, of which 36.4 percent were found to have merit, and 2,646 representation cases were filed, of which the merit factor rate was 78 percent. In FY 2012, the Agency's representation case intake decreased by 6.5 percent and ULP case intake decreased by 2.5 percent, with overall case intake decreasing by 2.8 percent.¹ Several factors affect case intake, thus impacting the

Agency's effectiveness in accomplishing its strategic goals. As noted, the Agency does not control the number of cases filed. However, any event or issue that affects labor can spur potential union organizing, possibly resulting in an increase in caseload. Factors such as immigration reform or focused organizing drives in particular communities or industries could affect Agency caseload levels. Recent increases in union organizing among the service industries shows no sign of diminishing as organizing activities continue in the health care, hotel, janitorial, and casino sectors.

Additional factors that could affect the NLRB's intake and the complexity of its work include: employment trends, stakeholder strategies, economic globalization, industrial economic trends, corporate reorganizations and bankruptcies, the overall health of the nation's economy, the level of labor-management cooperation efforts, and statutory changes.

SETTLEMENTS

Over the past few years, those cases in which merit is found, approximately 90 to 96 percent (91 percent in FY 2012) are settled without formal litigation. Cases are settled through the Agency's settlement program, by which the parties agree to a remedy and thereby avoid time-consuming and costly litigation. While the Agency has experienced outstanding success in achieving the voluntary resolution of ULP and representation cases, the settlement rate is, of course, not entirely subject to the Agency's control.

Disputes cannot always be resolved informally or in an expeditious manner. Parties may conclude that litigation serves their legitimate and/or tactical interests. The Agency's procedures provide for administrative hearings, briefs, and appeals. When the process becomes formal and litigation takes over, Agency costs increase. The Agency calculates that every one-percent drop in the settlement rate costs the Agency more than

¹ The NLRB reported in its FY 2011 PAR that 22,188 ULP and 2,834 representation cases were filed with the Agency in 2011. Subsequent to the issuance of the PAR, those numbers were adjusted. In FY 2011, 22,175 ULP and 2,829 representation cases were filed with the NLRB. The percentage decreases reported in this section reflect those adjusted numbers.

\$2 million. Therefore, maintaining high settlement rates promotes performance, efficiency, and cost savings.

BOARD MEMBER VACANCIES

Another factor outside the control of the Agency that impacts case production is the failure to fill vacancies in Board Member positions, thus causing prolonged vacancies on the Board. The assigned caseload of individual Board Members rises and decisions can be delayed because of vacancies on the Board. Board Member vacancies are the primary reason for delays in issuance of Board decisions. The lack of a full-Board complement impairs Board productivity.

As noted earlier, during the first quarter of FY 2012, the Board operated with three members, Chairman Pearce and Board Members Craig Becker and Brian E. Hayes. Board Member Becker's recess appointment expired on January 3, 2012. Absent the confirmation or recess appointment of at least one other Board Member, the remaining two members would have been unable to issue decisions in Board cases.

On January 4, 2012, President Obama recess appointed three new Board Members – Sharon Block, Terrance F. Flynn, and Richard F. Griffin, Jr., which gave the Board a full complement of members. However, various court challenges have been filed as to the constitutionality of the appointments. Most maintain that the Senate was still technically in session when the recess appointments were made, and that any subsequent decisions issued by the Board are invalid because it did not have a lawful quorum. All three were nominated on February 13, 2012.

Board Member Flynn resigned effective July 24, 2012, and his nomination withdrawn from consideration, leaving the Board to operate with four members. Board Member Hayes' term expires on December 16, 2012, and Chairman Pearce's on August 27, 2013. Because they are serving on recess appointments, Board Members Block and Griffin's terms will expire at the end of the next session of the Senate.

POTENTIAL EFFECT OF STATUTORY/RULEMAKING CHANGES

As a general matter, changes in the law affect NLRB operations and could have consequences on the Agency's caseload. Rulemaking and statutory changes, for example, could lead to an increase in ULP charges and/or election petitions filed with the Agency, with resulting increases in investigations and proceedings conducted by Agency personnel, especially if the settlement rate declines. Statutory changes may also directly mandate additional litigation by the Agency, e.g., seeking injunctive relief in federal district court. However, the overall impact of any pending labor law amendments is purely speculative.



RELIABILITY OF PERFORMANCE DATA

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

From FY 2000 to FY 2010, the agency's performance measurement system was incorporated into an electronic database called the Case Activity Tracking System (CATS). CATS provided case activity and status information to all NLRB offices and supported the functions and work requirements of the NLRB's attorneys, field examiners, managers, and support staff. In FY 2010, the Agency began transitioning to a new Agency-wide case management system called NxGen. NxGen is designed to 1) transform the way the NLRB does business with the public, making its cases transparent and more available to its customers

in a timely manner, 2) optimize internal NLRB case processing so Agency employees can work smarter and faster, and 3) provide Agency-wide electronic case records and case document management to improve internal case flow. NxGen has been deployed on a limited extent to NLRB Headquarters offices and to the Board, which also continues to maintain its own case management system called Judicial Case Management System (JCMS) to track its internal case processes. In April 2011, the Agency began to deploy NxGen to its field offices. The deployment process to all field offices was completed in September 2011.

Headquarters offices that have not transitioned to NxGen continue to maintain other automated systems that manage caseload and furnish data for the performance measures of the Headquarters offices. Offices conduct systematic verification through monthly and quarterly management reviews. Data is cross-checked and compared to historical trends to ensure the validity and reliability of the performance data.



PROGRAM EVALUATION



The NLRB uses various techniques and mechanisms to evaluate whether programs are achieving their GPRA goals and other performance targets. The Board regularly tracks the status of all of its cases to determine performance against yearly targets that support the Agency's overarching measures and strategic goals. A standing committee composed of senior management officials, including, among others, the deputy chief counsels of each of the Board Members, meets at the beginning of each month to review the status of cases, to prioritize 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 report back to the Board Members on performance data and staff workload, among other issues. The Board has an electronic casehandling management system that captures all case events in a database from which case production reports are generated. The Board Members also regularly meet and communicate with each other to discuss cases.

The NLRB also tracks how the various circuit courts have treated the Board's cases on appeal. Over the past several years the Agency's enforcement rate has been among the highest in its history. This trend continued in FY 2012. In FY 2012, the United States Courts of Appeals ruled on Board decisions in 73 enforcement and review cases. Of those cases, 95 percent were enforced or affirmed in whole or in part, 85 percent were won in full, 4 percent were remanded in part, 4 percent were remanded entirely, and 1 percent were lost in full.

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

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

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



In addition to the evaluation of Regional Office activities, the Office of the General Counsel monitors the litigation success rate before the Board and before district courts with regard to injunction litigation. In FY 2012, the Injunction Litigation Branch received 169 cases from Regional Offices to consider for discretionary injunctive relief under Section 10(j) of the Act, as compared to 154 cases received in FY 2011. The Board authorized 58 cases during FY 2012, compared to 59 that it authorized in FY 2011. Regional Offices filed 10(j) petitions in 37 cases in FY 2012 and filed 45 petitions in FY 2011. The "success rate", i.e., the percentage of authorized Section 10(j) cases in which the Agency achieved either a satisfactory settlement or substantial victory in litigation was 97 percent at the end of FY 2012, compared to 93 percent at the end of FY 2011.



2012

FINANCIAL SECTION



Protecting Democracy in
the Workplace Since 1935

LETTER FROM THE CHIEF FINANCIAL OFFICER



I am pleased to present the National Labor Relations Board (NLRB) consolidated financial statements for the Fiscal Year 2012 Performance and Accountability Report. For the ninth consecutive year

an independent auditor has rendered an unqualified opinion on the NLRB financial statements and identified no material weaknesses in our financial reporting.

Fiscal Year 2012 was a transformational year in which the Agency established the Office of the Chief Financial Officer (OCFO). This new organization consolidates the budget, finance, and acquisition functions thereby integrating and enhancing the agency's financial management and further strengthens internal controls. Additional advances in policies, procedures, and protocols in all three Branches of the OCFO will be realized now that they are incorporated into the OCFO.

Also during this fiscal year we met an aggressive eight-month timeline to implement a new financial management system which went operational at the beginning of October for the new fiscal year. In addition, we continued to improve our financial reporting processes by implementing new controls.

This coming year will provide an opportunity for us to address other management challenges that are before us and to continue to strengthen and implement programs and processes that improve internal controls.

I wish to acknowledge our OCFO staff for their dedication to NLRB's mission and their diligent efforts in maintaining an unqualified opinion on our financial statements and especially during the implementation of our new financial system.

As financial oversight and fiscal accountability requirements grow more complex and challenging, NLRB is committed to continuous improvement in financial management and is committed to the production of timely, accurate, reliable, and transparent financial information.

A handwritten signature in black ink that reads "Ronald E. Crupi".

Ronald E. Crupi
Acting Deputy Chief Financial Officer
National Labor Relations Board

INDEPENDENT AUDITOR'S REPORT

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

November 7, 2012

To: Mark Gaston Pearce
Chairman

Lafe E. Solomon
Acting General Counsel

From: David P. Berry 
Inspector General

Subject: Audit of the National Labor Relations Board Fiscal Year 2012 Financial Statements
(OIG-F-17-13-01)

This memorandum transmits Carmichael, Brasher, Tuvell & Company's (CBTC) audit report on the National Labor Relations Board (NLRB) Fiscal Year (FY) 2012 Financial Statements.

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

Results of Independent Audit

CBTC issued an unqualified opinion on the NLRB FY 2012 financial statements. CBTC previously issued an unqualified audit opinion on the FY 2011 information included with the consolidated statements. The objective of the audit did not include providing assurances on internal control or on the effectiveness of NLRB's internal control over financial reporting. Consequently, CBTC did not provide an opinion on the effectiveness of NLRB's internal control over financial reporting. In its audit report, CBTC reported that the significant deficiency reported in previous fiscal years was remediated during the current fiscal year. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

As part of obtaining reasonable assurance about whether the Agency's financial statements are free of material misstatement, CBTC performed tests of the Agency's compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts, and certain other laws and regulations. CBTC states that their testing of compliance with laws and regulations included a review of the Office of Inspector General (OIG) audit report titled End-of-the-Year Spending (OIG-AMR-70-12-02). That report identified several transactions related to procurement activity that were not processed in compliance with the *bona fide* needs rule and the Federal Acquisition Regulation.

Management Comments on the Report

Management may, but is not required to, submit comments on CBTC's report. If you intend to submit comments, we request that they be provided to the OIG by close of business on Friday, November 9, 2012.

Evaluation of CBTC's Audit Performance

In connection with the contract, we reviewed CBTC's report and related documentation and inquired of its representatives. Our review, as differentiated from an audit in accordance with generally accepted government auditing standards, was not intended to enable us to express, and we do not express, opinions on the NLRB's financial statements or internal control or conclusions on compliance with laws and regulations. CBTC is responsible for the attached auditor's report dated November 7, 2012, and the conclusions expressed in the report. However, our review disclosed no instances where CBTC did not comply, in all material respects, with generally accepted government auditing standards.

We appreciate the courtesies and cooperation extended to CBTC and our staff during the audit. If you have any questions, please contact me or Robert Brennan, Acting Assistant Inspector General for Audits.



INDEPENDENT AUDITORS' REPORT

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

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

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

We have audited the balance sheets of NLRB as of September 30, 2012 and 2011, and the related consolidated statements of net cost, changes in net position, and budgetary resources for the years then ended.

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

Our responsibility is to express an opinion on the Fiscal Year (FY) 2012 and 2011 financial statements of NLRB based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 07-04, *Audit Requirements for Federal Financial Statements*. These standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatements. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

OPINION ON FINANCIAL STATEMENTS

In our opinion, the financial statements referred to above present fairly, in all material respects, the assets, liabilities, and net position of NLRB, as of September 30, 2012 and 2011; and the net cost, changes in net position, and budgetary resources for the years then ended in conformity with accounting principles generally accepted in the United States of America.

REPORT ON INTERNAL CONTROL

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

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the organization's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies, or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above. A significant deficiency was previously communicated to management and those charged with governance on November 9, 2010 in our Report on Internal Control for the fiscal year ending September 30, 2010. For the Report of Internal Control for the fiscal Year ending September 30, 2011, we stated that the significant deficiency continued during that fiscal year. During the current fiscal year, the significant deficiency was remediated by management and those charged with governance.

We also identified other matters in internal control that came to our attention during our audit that we communicated in writing to the management of NLRB and those charged with governance.

We considered NLRB's internal control over Required Supplementary Information (RSI) by obtaining an understanding of the Agency's internal control, determining whether these internal controls had been placed in operation, assessing control risk, and performing tests of controls as

required by OMB Bulletin No. 07-04. The objective of our audit was not to provide assurance on these internal controls. Accordingly, we do not provide an opinion on such controls.

REPORT ON COMPLIANCE WITH LAWS AND REGULATIONS

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

Our testing with compliance with laws and regulations included a review of NLRB OIG issued reports. The NLRB OIG issued a report entitled *End-of-the-Year Spending (Report No. OIG-AMR-70-12-02)* dated September 2012 covering the period June 2011 through September 2011. This report identified several transactions related to procurement activity that were not properly processed by NLRB in compliance with the *bona fide* needs rule and the Federal Acquisition Regulation.

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

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

OTHER ACCOMPANYING INFORMATION

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

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

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

CARMICHAEL, BRASHER, TUVELL & COMPANY, P.C.

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

Atlanta, Georgia
November 7, 2012

NLRB'S RESPONSE TO AUDITOR'S REPORT

UNITED STATES GOVERNMENT
National Labor Relations Board
Memorandum



TO: David P. Berry
Inspector General

FROM: Mark Gaston Pearce, Chairman
Lafe E. Solomon, Acting General Counsel

DATE: November 15, 2012

SUBJECT: Response to Audit of the National Labor Relations Board Fiscal Year 2012 Financial Statements (OIG-F-17-13-01)

We have reviewed the Audit Report submitted by Carmichael, Brasher, Tuvell & Company and are pleased that the FY 2012 audit of the NLRB's financial statements has resulted in an unqualified opinion with no recommendations or corrective actions. We agree with the findings of the report and have no further comments on the subject.

Handwritten signature of Mark Gaston Pearce in black ink.

Mark Gaston Pearce
Chairman

Handwritten signature of Lafe E. Solomon in black ink.

Lafe E. Solomon
Acting General Counsel

PRINCIPAL FINANCIAL STATEMENTS

AUDITOR'S REPORTS AND PRINCIPAL FINANCIAL STATEMENTS PRINCIPAL STATEMENTS

National Labor Relations Board		
Balance Sheet		
As of September 30, 2012 and 2011 (in dollars)		
	FY 2012	FY 2011
Assets:		
Intragovernmental:		
Fund balance with Treasury (Note 2)	\$ 26,829,675	\$ 26,485,035
Advances (Note 4)	186,019	77,635
Total Intragovernmental	27,015,694	26,562,670
Accounts receivable, net (Note 5)	76,961	53,951
General property, plant and equipment, net (Notes 6 and 10)	13,527,547	12,703,848
Total Assets	\$ 40,620,202	\$ 39,320,469
Liabilities:		
Intragovernmental:		
Accounts payable (Note 7)	\$ 3,890,755	\$ 3,690,963
Employer contributions and payroll taxes	827,258	822,930
FECA liability (Notes 8 and 10)	765,165	582,946
Other	209,407	83,867
Total Intragovernmental	\$ 5,692,585	\$ 5,180,706
Accounts payable:	8,876,275	9,207,859
Estimated future FECA liability (Notes 8 and 10)	1,630,611	1,278,528
Accrued payroll and benefits	3,153,276	3,269,476
Accrued annual leave (Notes 8 and 10)	14,163,509	15,145,566
Total Liabilities	\$ 33,516,256	\$ 34,082,135
Net position:		
Unexpended appropriations	\$ 10,058,724	\$ 9,487,574
Cumulative results of operations (Note 10)	(2,954,778)	(4,249,240)
Total Net Position	7,103,946	5,238,334
Total Liabilities and Net Position	\$ 40,620,202	\$ 39,320,469

The accompanying notes are an integral part of these statements.

National Labor Relations Board		
Statement of Net Cost		
For the Periods Ended September 30, 2012 and 2011		
<i>(in dollars)</i>		
	FY 2012	FY 2011
Program Costs:		
Resolve Representation Cases		
Net Cost	\$ 48,024,590	\$ 49,822,208
Resolve Unfair Labor Practices		
Net Cost	\$ 244,755,968	\$ 254,192,871
Other:		
Costs	\$ 10,971	\$ 17,814
Less: Earned Revenue	10,971	17,814
Net Cost	—	—
Total:		
Costs	\$ 292,791,529	\$ 304,032,893
Less: Earned Revenue	10,971	17,814
Net Cost of Operations (Note 11)	\$ 292,780,558	\$ 304,015,079

The accompanying notes are an integral part of these statements.

National Labor Relations Board
Statement of Changes In Net Position
For the Periods Ended September 30, 2012 and 2011
(in dollars)

	FY 2012	FY 2011
Cumulative Results of Operations:		
Beginning Balance	\$ (4,249,240)	\$ (5,010,839)
Budgetary Financing Sources:		
Appropriations-used	277,129,011	285,269,455
Other Financing Sources (Non-Exchange):		
Imputed financing costs (Note 13)	16,946,009	19,509,446
Loss on Disposal of Assets	0	(2,223)
Total Financing Sources	\$ 294,075,020	\$ 304,776,678
Net Cost of Operations	(292,780,558)	(304,015,079)
Net Change	\$ 1,294,462	\$ 761,599
Cumulative Results of Operations (Note 10)	\$ (2,954,778)	\$ (4,249,240)
Unexpended Appropriations:		
Beginning Balance	\$ 9,487,574	\$ 12,994,255
Budgetary Financing Sources:		
Appropriations-received	278,833,000	283,400,000
Appropriations-used	(277,129,011)	(285,269,455)
Recissions & cancelled appropriations	(1,132,839)	(1,637,226)
Total Budgetary Financing Sources	\$ 571,150	\$ (3,506,681)
Total Unexpended Appropriations	\$ 10,058,724	\$ 9,487,574
Net Position	\$ 7,103,946	\$ 5,238,334

The accompanying notes are an integral part of these statements.

FINANCIAL SECTION

National Labor Relations Board Statement of Budgetary Resources For the Periods Ended September 30, 2012 and 2011 *(in dollars)*

	FY 2012	FY 2011
Budgetary Resources:		
Unobligated balance brought forward, October 1	\$ 4,295,300	\$ 4,475,599
Recoveries of prior year unpaid obligations	1,616,889	1,798,665
Other changes in unobligated balance (+ or -)	(605,845)	(1,070,426)
Unobligated balance from prior year budget authority, net	5,306,344	5,203,838
Appropriations (discretionary)	278,306,006	282,833,200
Spending authority from offsetting collections (discretionary)	97,564	411,043
Total Budgetary Resources	\$ 283,709,914	\$ 288,448,081
Status of Budgetary Resources:		
Obligations incurred	\$ 277,930,709	\$ 284,152,781
Unobligated balance, end of year:		
Apportioned	801,263	619,446
Unapportioned	4,977,942	3,675,854
Total unobligated balance, end of year	5,779,205	4,295,300
Total Budgetary Resources	\$ 283,709,914	\$ 288,448,081
Change in Obligated Balance:		
Unpaid obligations, brought forward, October 1 (gross)	\$ 22,105,868	\$ 32,060,824
Obligations incurred	277,930,709	284,152,781
Outlays (gross) (-)	(277,578,626)	(292,309,072)
Recoveries of prior year unpaid obligations (-)	(1,616,889)	(1,798,665)
Obligated balance, end of year		
Unpaid obligations, end of year (gross)	20,841,062	22,105,868
Obligated balance, end of year (net)	\$ 20,841,062	\$ 22,105,868
Budget Authority and Outlays, Net:		
Budget authority, gross (discretionary)	\$ 278,403,570	\$ 283,244,243
Actual offsetting collections (discretionary) (-)	(97,564)	(411,043)
Budget authority, net (discretionary)	\$278,306,006	\$282,833,200
Outlays, gross (discretionary)	\$ 277,578,626	\$ 292,309,072
Actual offsetting collections (discretionary) (-)	(97,564)	(411,043)
Agency outlays, net (discretionary)	\$ 277,481,062	\$ 291,898,029

The accompanying notes are an integral part of these statements.

NOTES TO PRINCIPAL STATEMENTS

Note 1. Summary of Significant Accounting Policies

A. Reporting Entity

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

B. Basis of Accounting and Presentation

These financial statements have been prepared to report the financial position, net cost, changes in net position, and budgetary resources of the NLRB as required by the Accountability of Tax Dollars Act of

2002. These financial statements have been prepared from the books and records of the NLRB in accordance with accounting principles generally accepted in the United States of America (GAAP), and the form and content requirements of the Office of Management and Budget (OMB) Circular No. A-136, *Financial Reporting Requirements, revised as of August 3, 2012*. GAAP for federal entities are the standards prescribed by the Federal Accounting Standards Advisory Board (FASAB), which is the official standard-setting body for the federal government. While the statements have been prepared from the books and records of the NLRB in accordance with GAAP for federal entities and the formats prescribed by OMB, the statements are in addition to the financial reports used to monitor and control budgetary resources which are prepared from the same books and records. These financial statements present proprietary and budgetary information.

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

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

FINANCIAL SECTION

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

The Statement of Budgetary Resources provides information about how budgetary resources were made available as well as their status at the end of the period. Recognition and measurement of budgetary information reported on this statement is based on budget terminology, definitions, and guidance in OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, dated August 2011.

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

The FY 2014 Budget of the United States (also known as the President's Budget) with actual numbers for FY 2012 was not published at the time that these financial statements were issued. The President's Budget is expected to be published in February 2013 and will be available from the United States Government Printing Office. There are no differences in the actual amounts for FY 2011 that have been reported in the FY 2013 Budget of the United States and the actual numbers that appear in the FY 2011 Statement of Budgetary Resources.

OMB financial statement reporting guidelines for FY 2012 require the presentation of comparative financial statements for all of the principal financial statements. The NLRB is presenting comparative FY 2012 financial statements for the Balance Sheet, Statement of Net Cost, Statement of Changes in Net

Position, and Statement of Budgetary Resources, and these statements have been prepared in accordance with generally accepted accounting principles.

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

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

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

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

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

post-election objections to the conduct of the election and, if the election is determined to have been fairly conducted, to certify its results.

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

C. Budgets and Budgetary Accounting

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

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

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

D. Financing Sources

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

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

E. Fund Balance with the Treasury

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

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

F. Fiduciary Activities

Fiduciary activities are the collection or receipt, and the management, protection, accounting, and investment, and disposition by the Federal Government of cash or other assets in which non-Federal individuals or entities have an ownership interest that the Federal Government must uphold. Fiduciary cash and other assets are not assets of the Federal Government.

Fiduciary activities are not recognized on the proprietary financial statements, but are reported on schedules in the notes to the financial statements. (See SFFAS No. 31, Accounting for Fiduciary Activities).

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

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

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

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

See Note 3 for additional information on Fiduciary Activities.

G. Advances

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

See Note 4 for additional information on the Advances.

H. Accounts Receivable, Net of Allowance for Doubtful Accounts

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

See Note 5 for additional information on Accounts Receivable.

I. General Property, Plant and Equipment

General property, plant and equipment consist primarily of telephone systems, computer hardware and software.

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

Internal Use Software. Internal use software (IUS) includes purchased commercial off-the-shelf software (COTS), contractor-developed software, and software that was internally developed by Agency employees. IUS is capitalized at cost if the acquisition cost is \$100,000 or more. For COTS software, the capitalized costs include the amount paid to the vendor for the software; for contractor-developed software it includes the amount paid to a contractor to design, program, install, and implement the software. Capitalized costs

for internally developed software include the full cost (direct and indirect) incurred during the software development stage. The estimated useful life is two to five years for calculating amortization of software using the straight-line method.

Internal Use Software in Development. Internal use software in development is software that is being developed, but not yet put into production. At the time the software is moved into production the costs will be moved into the IUS account described above. The NLRB is currently undertaking a major software development project called the Next Generation Case Management System (NXGen) that will replace a number of case tracking systems with one enterprise-wide system. NXGen will support the President's Management Agenda, such as for e-Gov, E-Filing, e-FOIA, and public Web-based access to NLRB data. This project has been a multiple year undertaking in which a large portion of the system was rolled out in FY 2011. The overall cost of this project is expected to exceed \$14 million.

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

J. Non-Entity Assets

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

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

K. Liabilities

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

L. Liabilities Not Covered by Budgetary Resources

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

Intragovernmental

The U.S. Department of Labor (DOL) paid Federal Employees Compensation Act (FECA) benefits on behalf of the NLRB which had not been billed or paid by the NLRB as of September 30, 2012 and 2011, respectively.

See Notes 8 and 10 for additional information on intragovernmental liabilities not covered by budgetary resources.

Federal Employees Workers' Compensation Program.

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

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

and reimbursement by the NLRB. As a result, the NLRB recognizes a liability for the actual claims paid by DOL and to be reimbursed by the NLRB.

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

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

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

Accrued Annual Leave

Accrued annual leave represents the amount of annual leave earned by the NLRB employees but not yet taken. See Notes 8 and 10 for additional information on Accrued Annual Leave.

M. Contingencies

The criteria for recognizing contingencies for claims are:

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

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

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

See Note 16 for additional information on Contingencies.

N. Unexpended Appropriations

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

O. Annual, Sick, and Other Leave

Annual and Sick Leave Program.

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

See Note 10 for additional information on Annual Leave.

P. Life Insurance and Retirement Plans

Federal Employees Group Life Insurance (FEGLI) Program.

Most NLRB employees are entitled to participate in the FEGLI Program. Participating employees can obtain "basic life" term life insurance, with the employee paying two-thirds of the cost and the NLRB paying one-third. Additional coverage is optional, to be paid fully by the employee. The basic life coverage may be continued into retirement if certain requirements are met. The Office of Personnel Management (OPM) administers this program and is responsible for the reporting of liabilities. For each fiscal year,

OPM calculates the U.S. Government's service cost for the post-retirement portion of the basic life coverage. Because the NLRB's contributions to the basic life coverage are fully allocated by OPM to the pre-retirement portion of coverage, the NLRB has recognized the entire service cost of the post-retirement portion of basic life coverage as an imputed cost and imputed financing source.

Retirement Programs.

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

FERS consists of Social Security, a basic annuity plan, and the Thrift Savings Plan. The Agency and the employee contribute to Social Security and the basic annuity plan at rates prescribed by law. In addition, the Agency is required to contribute to the Thrift Savings Plan a minimum of 1 percent per year of the basic pay of employees covered by this system and to match voluntary employee contributions up to 3 percent of the employee's basic pay, and one-half of contributions between 3 percent and 5 percent of basic pay. For FERS employees, the Agency also contributes the employer's share of Medicare. The maximum amount of base pay that an employee participating in FERS may contribute is \$17,500 in calendar year (CY) 2013 to this plan. Employees belonging to CSRS may also contribute up to \$17,500 of their salary in CY 2013 and receive no matching contribution from the NLRB. The maximum for catch-up contributions for CY 2013 is \$5,500. For CY 2013,

the regular and catch-up contributions may not exceed \$22,500. The sum of the employees' and the NLRB's contributions are transferred to the Federal Retirement Thrift Investment Board.

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

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

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

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

In FY 2012, the NLRB, utilizing OPM provided cost factors, recognized \$7,135,213 of pension expenses, \$9,782,740 of post-retirement health benefits expenses, and \$28,056 of post-retirement life insurance

expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$16,946,009 as an imputed financing source to the extent that these intragovernmental expenses will be paid by OPM. In comparison, in FY 2011, the NLRB, recognized \$9,014,600 of pension expenses, \$10,465,886 of post-retirement health benefits expenses, and \$28,960 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$19,509,446 as an imputed financing source from OPM

See Note 13 for additional information.

Q. Operating Leases

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

See Note 12 for additional information on Operating Leases.

R. Net Position

Net position is the residual difference between assets and liabilities and is composed of unexpended appropriations and cumulative results of operations. Unexpended appropriations represent the amount of unobligated and unexpended budget authority. Unobligated balances are the amount of appropriations or other authority remaining after deducting the cumulative obligations from the amount available for obligation. The cumulative results of operations are the net result of the NLRB's operations since inception.

S. Use of Management Estimates

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

T. Tax Status

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

U. Comparative Data

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

V. Subsequent Events

Subsequent events and transactions occurring after September 30, 2012 through the date of the auditor's opinion have been evaluated for potential recognition or disclosure in the financial statements. The date of the auditors' opinion also represents the date that the financial statements were available to be issued.



Note 2. Fund Balance with Treasury

Treasury performs cash management activities for all federal agencies. The net activity represents Fund Balance with Treasury. The Fund Balance with Treasury represents the right of the NLRB to draw down funds from Treasury for expenses and liabilities. Fund Balance with Treasury by fund type as of September 30, 2012 and September 30, 2011 consists of the following:

Fund Balance with Treasury by Fund Type:

(in thousands)	General Funds	Escrow Funds	Total Fund Balance with Treasury
FY 2012 Entity Assests	\$ 26,620		\$ 26,620
Non-Entity Assets		210	210
Total	\$ 26,620	\$ 210	\$ 26,830
FY 2011 Entity Assests	\$ 26,401		\$ 26,401
Non-Entity Assets		84	84
Total	\$ 26,401	\$ 84	\$ 26,485

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

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

Status of Fund Balance with Treasury as of September 30, 2012 and September 30, 2011 consists of the following:

Fund Balance with Treasury by Availability:

(in thousands)	FY 2012	FY 2011
Unobligated Balance		
Available	\$ 801	\$ 619
Unavailable	4,978	3,676
Obligated balance not yet disbursed	20,841	22,106
Non-budgetary fund balance with Treasury	210	84
Totals	\$ 26,830	\$ 26,485

Note 3. Fiduciary Activities

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

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

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

Schedule of Fiduciary Activity

As of September 30, 2012 and 2011

(in thousands)	FY 2012	FY 2011
Fiduciary net assets, beginning of the year	\$ 3,356	\$ 2,779
Fiduciary revenues	7,572	6,685
Investment earnings	0	0
Disbursements to and on the behalf of beneficiaries	(5,725)	(6,108)
Increase (Decrease) in fiduciary net assets	\$ 1,847	\$ 577
Fiduciary net assets, end of year	\$ 5,203	\$ 3,356

Fiduciary Net Assets

As of September 30, 2012 and 2011

(in thousands)	FY 2012	FY 2011
Fiduciary Assets		
Cash and cash equivalents	\$ 5,203	\$ 3,131
Investments	0	225
Fiduciary Liabilities		
Less: Liabilities	0	0
Total Fiduciary net assets	\$ 5,203	\$ 3,356

Note 4. Advances

Intragovernmental

Intragovernmental Advances to the United States Postal Service (USPS) for September 30, 2012 were \$7,983 and \$12,513 for September 30, 2011. The remainder of the balance for FY 2012 and FY 2011 was with the Department of Transportation for the transit subsidy.

Note 5. Accounts Receivable, Net of Allowances for Doubtful Accounts

The FY 2012 intragovernmental accounts receivable is zero and the FY 2011 amount was also zero:

(in thousands)	FY 2012	FY 2011
With the public		
Accounts receivable	\$ 80	\$ 56
Allowance doubtful accounts	(3)	(2)
Accounts receivable-net	\$ 77	\$ 54

Note 6. General Property, Plant and Equipment, Net

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

Depreciation expense for the years ended September 30, 2012 and September 30, 2011 was \$3,921,165 and \$3,783,870 (in dollars), respectively.

(in thousands) FY 2012	Asset Cost	Accumulated Depreciation/ Amortization	Net Asset Value
Equipment	\$ 2,667	\$ 2,384	\$ 283
Internal Use Software	21,859	13,323	8,536
Internal Use Software in Development	4,709	–	4,709
Totals	\$ 29,235	\$ 15,707	\$ 13,528

(in thousands) FY 2011	Asset Cost	Accumulated Depreciation/ Amortization	Net Asset Value
Equipment	\$ 2,438	\$ 2,104	\$ 334
Internal Use Software	19,664	9,682	9,982
Internal Use Software in Development	2,388	0	2,388
Totals	\$ 24,490	\$ 11,786	\$ 12,704

Note 7. Intragovernmental Accounts Payable

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

Note 8. Liabilities Not Covered by Budgetary Resources

Liabilities not covered by budgetary resources represent amounts owed in excess of available congressionally appropriated funds or other amounts. The custodial liability represents amounts collected from the public for court costs, freedom of information requests and other miscellaneous amounts that must be transferred to the Treasury.

The composition of liabilities not covered by budgetary resources as of September 30, 2012 and September 30, 2011, is as follows:

(in thousands)	FY 2012	FY 2011
Intragovernmental:		
FECA-Unfunded	\$ 765	\$ 583
Total Intragovernmental	765	583
Estimated Future – FECA	1,631	1,278
Accrued Annual Leave	14,164	15,146
Total Liabilities not covered by budgetary resources	16,560	17,007
Total Liabilities covered by budgetary resources	16,957	17,075
Total Liabilities	\$ 33,517	\$ 34,082

Note 9. Non-Entity Assets

Non-Entity assets, restricted by nature, consist of miscellaneous receipt accounts. These amounts represent cash collected and accounts receivable (net of allowance for doubtful accounts). The miscellaneous receipts represent court costs and freedom of information requests that must be transferred to the Treasury.

The composition of non-entity assets as of September 30, 2012 and September 30, 2011, is as follows:

(in thousands)	FY 2012	FY 2011
Non-entity assets		
Fund Balance with Treasury	\$ 210	\$ 84
Entity assets	\$ 40,410	\$ 39,236
Total Assets	\$ 40,620	\$ 39,320



Note 11. Intragovernmental Costs and Exchange Revenue

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

Note 10. Cumulative Results of Operations

(in thousands)	FY 2012	FY 2011
FECA paid by DOL	\$ (262)	\$ (269)
FECA – Unfunded	(765)	(583)
Estimated Future FECA	(1,631)	(1,279)
Accrued Annual Leave	(14,164)	(15,146)
General Property, Plant & Equipment, Net	13,528	12,704
Other	339	324
Cumulative Results of Operations	\$ (2,955)	\$ (4,249)

(in thousands)	FY 2012	FY 2011
Resolve Representation Cases		
Intragovernmental Costs	\$ 9,285	\$ 9,953
Costs with the Public	38,740	39,869
Total Net Cost - Resolve Representation Cases	\$ 48,025	\$ 49,822
Resolve Unfair Labor Practices		
Intragovernmental Costs	\$ 46,973	\$ 50,356
Costs with the Public	197,783	203,837
Total Net Cost - Resolve Unfair Labor Practices	\$ 244,756	\$ 254,193
Other		
Intragovernmental Costs	\$ 11	\$ 18
Less: Intragovernmental Earned Revenue	11	18
Total Net Cost - Other	\$ 0	\$ 0
Net Cost of Operations	\$ 292,781	\$ 304,015

Note 12. Operating Leases

GSA Real Property. Most of NLRB's facilities are rented from the GSA, which charges rent that is intended to approximate commercial rental rates. The terms of NLRB's occupancy agreements (OA) with GSA will vary according to whether the underlying assets are owned by GSA or another federal agency or rented by GSA from the private sector. The NLRB has OAs with GSA, which sets forth terms and conditions for the space the Agency will occupy for an extended period of time. Included within the OAs are 120 to 180 day notification requirements for the Agency to release space. For purposes of disclosing future operating lease payments in the table below, federally-owned leases are included in years FY 2013 through FY 2017.

Rental expenses for operating leases for the year ended September 30, 2012 were \$25,608,420 for Agency lease space and \$2,545,861 for Agency building security. For FY2011 the operating lease costs were \$26,741,352 and the Agency building security portion was \$2,697,132.

Fiscal Year (in thousands)	GSA Real Property
2013	\$ 26,249
2014	26,905
2015	27,577
2016	28,267
2017	28,974
Total Future Lease Costs	\$ 137,972

Note 13. Imputed Financing Costs

OPM pays pension and other future retirement benefits on behalf of federal agencies for federal employees. OPM provides rates for recording the estimated cost of pension and other future retirement benefits paid by OPM on behalf of federal agencies. The costs of these benefits are reflected as imputed financing in the consolidated financial statements. Expenses of the NLRB paid or to be paid by other federal agencies at September 30, 2012 and 2011 consisted of:

(in thousands)	FY 2012	FY 2011
Office of Personnel Management:		
Pension expenses	\$ 7,135	\$ 9,015
Federal employees health benefits	9,783	10,465
Federal employees group life insurance program	28	29
Total Imputed Financing	\$16,946	\$19,509

Note 14. Appropriations Received

The NLRB received \$278,833,000 and \$283,400,000 in warrants for the fiscal years ended September 30, 2012 and 2011, respectively. The amount shown on the Statement of Budgetary Resources under caption "Permanently not available" for FY 2012 was the cancelled appropriation for FY 2007 for the amount of \$ 605,845 and the rescission amount of \$526,994 for fiscal year FY2012. For FY2011, the total amount was \$1,070,426 for the cancelled appropriation for FY 2006 and rescission amount was \$566,800 for FY2011.

Note 15. Statement of Budgetary Resources

The Statement of Budgetary Resources provides information about how budgetary resources were made available as well as their status at the end of the period. It is the only financial statement exclusively derived from the entity's budgetary general ledger in accordance with budgetary accounting rules that are incorporated into GAAP for the Federal Government. The total Budgetary Resources of \$283,709,914 as of September 30, 2012 and \$288,448,081 as of September 30, 2011, includes new budget authority, unobligated balances at the beginning of the year, spending authority from offsetting collections, recoveries of prior year obligations and permanently not available. The NLRB's unobligated balance available at September 30, 2012 was \$801,263 and at September 30, 2011 was \$619,446.

Apportionment Categories of Obligations Incurred. NLRB's obligations incurred as of September 30, 2012 and September 30, 2011 by apportionment Category A and B is shown in the following table. Category A apportionments distribute budgetary resources by fiscal quarters and Category B apportionments typically distribute budgetary resources by activities, projects, objects or a combination of these categories. Beginning in FY 2010, OMB agreed that it was not necessary for NLRB to separate its information technology funding and therefore all obligations incurred were from one funding category.

(in thousands)	Apportioned		Not Subject to Apportionment	Total
FY 2012	Category A	Category B		
Obligations Incurred:				
Direct	\$ 277,920	-	-	\$ 277,920
Reimbursable	11	-	-	11
Total Obligations Incurred	\$ 277,931	-	-	\$ 277,931

(in thousands)	Apportioned		Not Subject to Apportionment	Total
FY 2011	Category A	Category B		
Obligations Incurred:				
Direct	\$ 284,135	-	-	\$ 284,135
Reimbursable	18	-	-	18
Total Obligations Incurred	\$ 284,153	-	-	\$ 284,153

Note 16. Contingencies

The NLRB is involved in various lawsuits incidental to its operations. There are 2 cases involving NLRB employees, that have a reasonable possibility of an unfavorable outcome and fees may be in excess of \$100,000 but not more than \$200,000. While the ultimate outcome of these matters is not presently determinable, it is the opinion of management that the resolution of outstanding claims will not have a materially adverse effect on the financial position of NLRB.

Note 17. Reconciliation of Net Cost of Operations to Budget

For the Month Ended September 30, 2012 and 2011

(in thousands)	FY 2012	FY 2011
Resources Used to Finance Activities		
Current Year Gross Obligations	\$ 277,931	\$ 284,153
Budgetary Resources from Offsetting Collections:		
Spending Authority from Offsetting Collections		
Earned		
Collected	(98)	(411)
Recoveries of Prior Year Unpaid Obligations	(1,617)	(1,799)
Other Financing Resources:		
Imputed Financing Sources	16,946	19,509
Other	-	(2)
Total Resources Used to Finance Activity	\$ 293,162	\$ 301,450
Resources Used to Finance Items Not Part of the Net Cost of Operations		
Budgetary Obligations and Resources not in the Net Cost of Operations:		
Change in Undelivered Orders	913	3,326
Current Year Capitalized Purchases	(4,745)	(4,141)
Components of the Net Cost of Operations which do not Generate or Use Resources in the Reporting Period Revenues without Current Year Budgetary Effect:		
Other Financing Sources Not in the Budget	(16,946)	(19,509)
Costs without Current Year Budgetary Effect:		
Depreciation and Amortization	3,921	3,784
Disposition of Assets	0	2
Future Funded Expenses	(800)	22
Imputed costs	16,946	19,509
Bad Debt Expense	8	6
Other Expenses Not Requiring Budgetary Resources	322	(434)
Net Cost of Operations	\$ 292,781	\$ 304,015

2012

OTHER ACCOMPANYING INFORMATION



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INSPECTOR GENERAL'S TOP MANAGEMENT AND PERFORMANCE CHALLENGES

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

October 11, 2012

To: Mark Gaston Pearce
Chairman

Lafe Solomon
Acting General Counsel

From: David Berry 
Inspector General

Subject: Top Management and Performance Challenges

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

Fiscal Year (FY) 2012 was an extraordinary year of change for the Agency. Major reorganizational and consolidation efforts were initiated by the Chairman and Acting General Counsel. The Chairman and Acting General Counsel, and their staffs, expended tremendous effort to resolve the administrative and organizational issues that had long been put off. Nevertheless, a number of the challenges below represent the equally daunting tasks that lay ahead to improve the culture of how the Agency manages its business and ensures proper internal controls.

Although we observed significant efforts at improving the management and performance of the Agency, the eight challenges that we identified at the end of beginning of FY 2011 continued through FY 2012. We have also added one challenge to address the reorganization and consolidation of operations. It is important to note that, in our view, something can be a management or performance challenge even though it is not a deficiency or within the control of the Agency.

CHALLENGES

Mission Centered

Manage in the current political environment.

Without commenting on the merits of the issues, we believe it is appropriate to highlight the politically charged debate regarding labor relations and the NLRB specifically, as well as the Government-wide issues related to Federal spending. Functioning in this environment is a challenge for both the political appointees that govern and the career personnel who manage. The obvious challenge is that there is a diversion of resources and attention away from the Agency's mission to defend its actions and decisions or to respond to repeated demands for information both for oversight and litigation discovery. There is also a level of uncertainty that is created by the recess appointments of Board Members and operating for an extended period of time with an Acting General Counsel. The repeated threats of Government shutdowns, and now the "fiscal cliff," create anxiety in the Agency's workforce and divert attention and resources away from mission related functions.

Reorganize and consolidate operations.

In FY 2011, the Acting General Counsel initiated working groups to study the case processing of Regional Offices and certain Headquarters operations. In April 2011, we issued an audit report that compared case processing activity with the associated expenses of Regional Office operations and made recommendations to consider the consolidation of certain Regional Offices that have a low case load. Soon thereafter, the Acting General Counsel began a pilot program involving the consolidation of Regional Offices, and he is now in the process of making recommendations to the Board. At the same time, the Chairman and Acting General Counsel began to reorganize the financial management of the Agency and certain other Headquarters operations.

To describe these efforts simply as a challenge is somewhat of an understatement. The scope of these efforts is significant and requires a high degree of attention and a certain aptitude at change management. While we view the efforts of the Chairman and Acting General Counsel to be commendable, much work for the career managers lies ahead to achieve full implementation of these efforts.

Implement the Next Generation Case Management System and seize opportunities to create more productive and efficient procedures and organizations.

The Agency implemented an enterprise-wide electronic case management and processing system. The system replaced 13 separate legacy systems by integrating them into a single unified system using multiple technologies, including 5 distinct software solutions for customer relationship management, document management, collaboration, business

analytics, and Web-based services for external constituents. This is the most comprehensive information technology project undertaken in the history of the NLRB. Its success is critical to the Agency's mission and presents a unique opportunity to create more productive and efficient procedures and organizations. The success of this effort will ultimately be judged not by how well it was developed, but how the system is actually used to process the cases.

Business Centered

Manage the Agency's financial resources.

Over the last several years, we noted improvements that we believe were due to greater transparency in the allocation and spending of fiscal resources. We noted that part of that success came from greater participation in the fiscal management by the Agency's senior management officials, who had previously been more focused on the mission of the Agency, and part was due to the responsiveness of the staff involved in the daily financial management of the Agency. We believed that this cooperative effort netted better management and stewardship of the Agency's resources. In hindsight, we may have been too optimistic.

Both the FY 2010 and FY 2011 audits of the financial statements contained a finding by the independent auditing firm that there was a significant deficiency in internal control. Although the findings were largely related to problems in the procurement process, our recent audit of end-of-the-year spending demonstrated that there was a lack of sound budgeting and planning processes that are essential to proper fiscal management.

In July 2012, the Board created the Office of the Chief Financial Officer (OCFO), implementing the final recommendation of the FY 2010 Audit of the Financial Statements. That office oversees the budget, procurement, and payment processes. The OCFO must now create a new system of controls that will effectively manage the Agency appropriation. The OCFO faces a herculean task of not only creating the structure and procedures for a new office, but also changing the culture of the Agency so that the managers will accept and understand fundamental changes in the fiscal management of the Agency.

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

In prior years, the OIG conducted audits involving the Agency's procurement function. These audits found numerous problems that could generally be attributed to some breakdown in the internal control process. Additional issues have been found during the course of the annual audits of the financial statements.

Adequate staffing, competence, and communication are critical to maintaining a well-managed procurement process. The prior years' convergence of budgetary issues and a

shortage of competent candidates to fill vacant positions in a highly competitive field resulted in an understaffed procurement office. That lack of staffing created delays in processing procurement actions and greatly increased the opportunity for mistakes.

Over the course of several years, we observed improvement in staffing the procurement office and the procurement process itself. Nevertheless, we continued to observe a lack of internal control in the procurement process. In fact, the FY 2011 Audit of the Financial Statements repeated the finding of a significant deficiency in internal control and our FY 2012 audit of the end-of-the-year spending found a lack of regard for internal controls by the former head of the procurement office. Together, those two audits found almost \$400,000 in improper procurement actions at the end of FY 2011.

We are encouraged that the new OCFO took immediate steps to remedy those procurement actions, but the daunting task of building a well-controlled procurement process remains.

Manage the NLRB's human capital.

A significant challenge facing the NLRB is managing its human capital. The need to maintain a stable and productive workforce is key to the NLRB's ability to fulfill its statutory mission. Factors outside the NLRB's control that may directly affect its ability to maintain a stable and productive workforce include the prospect of Government-wide hiring restrictions, reduced or flat appropriations, and the loss of key personnel through retirements. Coupled with those issues are matters directly within the control of management, including a healthy and productive relationship with the two employee unions; a fair and equitable means to address allegations of discrimination and grievances; and maintaining an environment throughout the NLRB that fosters collaboration along with effective and efficient processes.

During the past year, we observed that the Chairman and Acting General Counsel have been proactive in resolving workforce issues and attempting to remedy issues. We also issued a report on the Agency's equal employment opportunity activities with recommendations that should improve the processing and resolution of complaints. We are encouraged by the focus of the Director, Office of Equal Employment Opportunity, and the Chairman and Acting General Counsel to the NLRB's workforce needs.

Maintain the Agency's institutional knowledge.

There have been many changes in technology, laws and regulations, and management systems that have altered the manner in which employees perform their official duties. As change occurs, the policies and procedures are not always updated on a timely basis, and individual offices come to rely upon the collective institutional knowledge of the staff. While this may be a short-term solution, it puts far too much reliance on the skills of individual employees while lacking the safeguards of well-documented processes. This problem is compounded by the fact that at an Agency of this size, specialized tasks are often performed by a limited number of employees. As more key personnel reach the point of

retirement, the challenge of formalizing institutional knowledge and succession planning becomes even greater. The consolidation and reorganization efforts, along with the retirement of several senior managers in FY 2012, create additional hurdles to this challenge and demonstrate the need for well-drafted policies and procedures.

Manage the Agency's information technology resources in a manner that achieves efficiency and security.

Each year the Agency continues to devote significant resources to improving and upgrading information technology equipment and capability. The OIG also devotes its resources to auditing, inspecting, and investigating information technology control and security issues. Despite these efforts, the Agency's information technology infrastructure and the information contained in it remain at risk because of the rapid evolution of information technology threats. Given this environment, ensuring the security of the Agency information in its information technology systems remains a long-term challenge.

Implement audit findings in a timely manner.

We added this challenge in FY 2008 because we observed that the Agency was not implementing audit recommendations in a timely manner, there was a recurrence of audit findings, and the Agency managers failed to state an adequate basis when disagreeing with an audit recommendation – including recommendations that would have resulted in cost savings. Also, since 2007, we have received yearly requests from the Committee on Oversight and Government Reform for detailed information on audit recommendations. This year, we reported that as of April 2012, we had 27 unimplemented recommendations. After we reported that figure, we added two recommendations and closed nine.

SUMMARY OF AUDIT AND MANAGEMENT ASSURANCES

I. SUMMARY OF FINANCIAL STATEMENT AUDIT

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

II. SUMMARY OF MANAGEMENT ASSURANCES

EFFECTIVENESS OF INTERNAL CONTROL OVER OPERATIONS (FMFIA §2)

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

SUMMARY OF MANAGEMENT ASSURANCES

COMPLIANCE WITH FINANCIAL SYSTEMS REQUIREMENTS (FMFIA §4)

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

IMPROPER PAYMENTS INFORMATION ACT

The Improper Payments Information Act (IPIA) (as amended by the Improper Payments and Elimination Recovery Act of 2010) defined requirements to reduce improper/erroneous payments made by the federal government. OMB has also established specific reporting requirements for agencies with programs that possess a significant risk of erroneous payments and for reporting on results of recovery auditing activities. A significant erroneous payment is an annual erroneous payment in a program that exceeds both 2.5 percent of the program outlays and \$10 million or \$100,000,000.

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

In April 2012, OMB directed agencies (M-12-11) to develop plans for using a network of data bases known collectively as the "Do Not Pay List" (DNP) before determining eligibility for a benefit, the award of a grant or contract, or other federal funding. The NLRB will use the DNP solution that its shared service provider, NBC, hosts to confirm that the right recipient is receiving the right payment for the right reason at the right time.

2012

APPENDICES



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APPENDIX A

ACRONYMS

ALJ	Administrative Law Judge	NBC	National Business Center
CATS	Case Activity Tracking System	NxGen	Next Generation Case Management System
CFO	Chief Financial Officer	NLRA	National Labor Relations Act
CR	Continuing Resolution	NLRB	National Labor Relations Board
DNP	“Do Not Pay” List	OCFO	Office of the Chief Financial Officer
FASAB	Federal Accounting Standards Advisory Board	OCIO	Office of the Chief Information Officer
FMFIA	Federal Managers’ Financial Integrity Act	OIG	Office of Inspector General
FPPS	Federal Payroll and Personnel System	OMB	Office of Management and Budget
FY	Fiscal Year	PAR	Performance and Accountability Report
GAAP	Generally Accepted Accounting Principles	ULP	Unfair Labor Practice
GPRA	Government Performance and Results Act		
GPRAMA	Government Performance and Results Modernization Act		
IUS	Internal Use Software		
IPIA	Improper Payments Information Act		
MDA	Management Discussion and Analysis		

APPENDIX B

DEFINITIONS

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

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

Collective Bargaining: Negotiation between organized workers and their employer or employers to determine wages, hours, rules, and working conditions.

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

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

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

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

Gissel Bargaining Order: *Gissel* bargaining orders are orders to bargain with a union that may no longer have majority support because of serious employer ULPs that have poisoned the possibility of a fair election.

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

Interstate Commerce: In the U.S., any commercial transaction or traffic that crosses state boundaries or that involves more than one state. Government regulation of interstate commerce is founded on the commerce clause of the Constitution (Article I, section 8), which authorizes Congress “To regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes.”

“Nip-in-the Bud” Cases: Cases arising from allegations of unfair labor practices committed during union organizing campaigns.

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

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

Protected Concerted Activity: The National Labor Relations Act (NLRA) protects employees’ rights to engage in protected concerted activities with or without a union, which are usually group activities (two or more employees acting together) attempting to improve working conditions, such as wages and benefits.

Social Media: Various online technology tools that enable people to communicate easily via the Internet to share information and resources. These tools can encompass text, audio, video, images, podcasts, and other multimedia communications.

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

Unfair Labor Practice (ULP): An unfair labor practice is illegal conduct by either a labor organization or an employer that violates the National Labor Relations Act.

National Labor Relations Board
1099 14th Street NW
Washington, DC 20570-0001
www.nlr.gov

