NATIONAL LABOR RELATIONS BOARD

SEMIANNUAL REPORT

For the Period

October 1, 1991 through March 31, 1992

Office of Inspector General

Fifth Semiannual Report

United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE INSPECTOR GENERAL

Washington, DC 20570-0001

April 24, 1992

Honorable James M. Stephens, Chairman
National Labor Relations Board
1717 Pennsylvania Avenue, NW
Washington, DC 20570

Honorable Jerry M. Hunter, General Counsel
National Labor Relations Board
1717 Pennsylvania Avenue, NW
Washington, DC 20570

Dear Chairman Stephens and General Counsel Hunter:

I am pleased to provide each of you with two copies of the Semiannual Report on the activities of the Office of Inspector General (OIG) for the period October 1, 1991 through March 31, 1992. This is the fifth Semiannual Report to issue since the creation of the OIG.

In late September, 1991, just prior to the commencement of this reporting period, a new Supervisory Auditor entered on duty who then participated in the filling of the two vacant Auditor positions. In mid-January, 1992, we were once again at our full Auditor complement. We had been without a Supervisory Auditor since May, 1991 and we had only had one Auditor since March, 1991. Likewise, we were able to replace the Counsel to the Inspector General in December, 1991, having been without a person in that position since mid-July, 1991.

The one Auditor available until the replacements came on board continued the field work with respect to the budget execution audit and has since been assisted in that endeavor by the two new Auditors. The field work on this audit will be completed and a discussion draft issued prior to the time we issue our next Semiannual Report. We had hoped to issue this audit earlier, but staffing levels did not permit.

Another audit, concerned with the Agency's program for responding to allegations it receives which could result in criminal or administrative action against Agency employees,

had been begun, but temporarily suspended pending an effort to reach a Memorandum of Understanding among us.

In addition, we have continued to investigate those matters which are brought to our attention, as well as those which are self-initiated.

Just as in all preceding reporting periods, I have remained active in the Coordinating Conference of the President's Council on Integrity and Efficiency (PCIE-CC), and have continued to chair the monthly meetings of the Law Enforcement Committee of the PCIE-CC which explores issues law enforcement agencies, such as ours, have in common.

This will also serve as a reminder that, pursuant to Section 5 (b) of the Inspector General Act of 1978, as amended, this report "shall be transmitted by (the head of the establishment) to the appropriate committees or subcommittees of the Congress within thirty days after receipt of the report, together with a report by the head of the establishment . . . ."

With your continuing cooperation, my staff and I look forward to contributing, in whatever way we can, to the integrity, efficiency and effectiveness of the Agency's operations and programs.

Sincerely,

Bernard Levine
Inspector General

SEMIANNUAL REPORT

OF THE

OFFICE OF INSPECTOR GENERAL

NATIONAL LABOR RELATIONS BOARD

FOR THE PERIOD

OCTOBER 1, 1991 THROUGH MARCH 31, 1992

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FOREWORD

The National Labor Relations Board (Agency), which employs about 2,200 employees and, for Fiscal Year 1992, has an annual budget of approximately $162,000,000, is an independent agency which was established in 1935 to administer the principal labor relations law of the United States, the National Labor Relations Act (NLRA). Upon the filing of a petition in a representation matter or an unfair labor practice charge, the provisions of the NLRA are generally applied to all enterprises engaged in, or in activities affecting, interstate commerce, including health care institutions and the United States Postal Service, but excluding railroads and airlines.

The Agency implements national labor policy to protect the public interest by helping to maintain peaceful relations among employers, labor organizations and employees; encouraging collective bargaining; and, by providing a forum for all parties to peacefully resolve representation and unfair labor practice issues. This function is primarily carried out in two ways: (1) by conducting secret ballot elections to determine if a group of employees wishes to be represented for collective bargaining purposes by a labor organization, and (2) by preventing and/or remedying unfair labor practices committed by employers and unions.

The Chairman, four Board Members and a General Counsel are appointed by the President with the advice and consent of the Senate. The Chairman and Board Members have staggered terms of 5 years each and the General Counsel has a 4-year term.

The Agency, headquartered in Washington, has 33 Regional Offices, some of which have Subregional and Resident Offices. This far-flung organization has handled unfair labor practice cases affecting hundreds of thousands of persons and has conducted representation elections in which millions of employees have decided whether they wished to be represented by a labor organization for collective bargaining purposes.

Prior to the creation of the Office of Inspector General (OIG) under the Inspector General Act of 1978, as amended, (the Act), the Agency had a Security and Audit Branch under the Division of Administration. The audit function of that Branch is now contained within the OIG. The OIG Table of Organization provides for an Inspector General (IG); a Supervisory Auditor (the incumbent entered on duty just prior to the commencement of this reporting period, replacing someone who left the OIG in early May, 1991); three Auditors (two of whom entered on duty about 2.5 to 3.5 months after the commencement of this reporting period, having replaced two Auditors who left the OIG in late March, 1991); a Staff Assistant, a position, for all practical purposes, never

occupied in the OIG; a Counsel to the IG who also assists the IG in conducting investigations (who entered on duty two months after the commencement of the reporting period); and, a Secretary to the Inspector General.

During this reporting period, the OIG re-established its audit universe, prioritized the elements of that universe and has begun implementing those priorities. In addition, the OIG has continued to investigate those complaints which have been brought to its attention, as well as those matters which have been self-initiated.

This Semiannual Report is the fifth issued by the OIG since the appointment of the IG. [1] Due to staffing limitations and the magnitude of the budget execution audit undertaken in this reporting period by the one, trained Auditor available, no audit reports issued in final form during this reporting period.

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[1] The initial Semiannual Report issued prior to the advent of the IG.

INSPECTOR GENERAL SUMMARY

During the current reporting period, the OIG:

- - Initiated 7 investigations (exclusive of those referred to the General Counsel on the basis that they concerned purely programmatic matters), 6 of which remain pending in the OIG;

- - Completed 2 investigations which were referred to the Chairman and General Counsel for administrative action;

- - Referred 4 matters to the General Counsel which were purely programmatic in nature and fell under the aegis of the General Counsel, 2 of which are still pending;

- - Maintained in a pending status the 1 matter referred to the General Counsel's Office of Equal Employment Opportunity during the October 1, 1989 through March 31, 1990 reporting period;

- - Maintained in a pending status 1 of the recommendations and/or suggestions made during the reporting period April 1 through September 30, 1989;

- - Maintained in a pending status 1 of the recommendations and/or suggestions made during the reporting period October 1, 1989 through March 31, 1990;

- - Maintained in a pending status 3 of the recommendations and/or suggestions made during the reporting period April 1 through September 30, 1991; and,

- - Maintained in a pending status 3 of the recommendations and/or suggestions made during the reporting period October 1, 1991 through March 31, 1992.

A summary of the matters pending before the OIG at the end of the reporting period is as follows:

- - 2 audits in progress, one of which has been temporarily suspended;

- - 11 investigations in progress, excluding the 2 referred to the General Counsel as programmatic matters;

- - 2 programmatic matters referred to the General Counsel;

- - 1 matter referred to the General Counsel's Office of Equal Employment Opportunity;

- - 3 matters referred for administrative action, 2 of which were referred to both the Chairman and General Counsel during this reporting period and 1 of which was referred to the General Counsel during the April 1 through September 30, 1991 reporting period;

- - 8 recommendations and/or suggestions pending action by the Chairman and/or General Counsel, 3 of which were made during the reporting period and 5 of which were made during prior reporting periods. Of the 5 pending since prior reporting periods, 4 have been agreed to, but not implemented or fully implemented.

SECTION 1

DESCRIPTION OF SIGNIFICANT PROBLEMS, ABUSES AND DEFICIENCIES RELATING TO ADMINISTRATION OF PROGRAMS AND OPERATIONS AND DESCRIPTION OF RECOMMENDATIONS FOR CORRECTIVE ACTION (MANDATED BY SECTION 5 (a) (1) AND (2) OF THE ACT)

AUDITS

As noted above, no Audit Reports issued during this reporting period.

INVESTIGATIONS

Aborted Field Office Investigation

The OIG received an anonymous allegation of potentially criminal wrongdoing in a Resident Office (a sub-office of a Regional Office) and, not wishing to travel a substantial distance only to find that key witnesses were on leave or otherwise unavailable, asked the Regional Director (RD) if anyone would be absent from the office during the time of the proposed investigation. When the RD supplied the information and asked the purpose of the investigation, he was told the information would not be provided. A number of reasons existed for withholding that information, including:

> (1) the OIG never apprises the head of an office of an impending investigation and only reports investigative results to the "heads" of the Agency if there has been a referral to prosecutive authority or, in the absence of a prosecution, the Agency heads should consider taking some administrative action as a result of the investigation; [2]
>
> (2) the IG has a statutory obligation to protect the identity of employees and, despite the fact that this informant was anonymous, the IG did not want to risk someone identifying the informant based on the nature of the allegations made and then taking action against the informant, even for a legitimate reason, because there is enough concern in the IG community at large about the treatment accorded informants;

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[2] It goes without saying that once an investigation is undertaken, that fact often becomes generally known, but precisely what is being investigated is known only to the witnesses.

(3) The President's Council on Integrity and Efficiency, in a document entitled, "Quality Standards for Investigations," noted at page 5 that the second general standard for investigative organizations is, "[i]n all matters relating to investigative work, the investigative organization must be free, both in fact and appearance, from impairments to independence; must be organizationally independent; and must maintain an independent attitude;" and,

(4) it would be unwise to tell the RD or any other non-witness what the allegations were, because if the investigation ultimately produced no results, no valid assertion could then be made that the reason it produced no results was that the allegations had been shared in advance with the person or persons who had the responsibility for supervising the office in question and who might, therefore, have a motive to engage in a cover-up.

Accordingly, the RD was informed that he was being provided with complete deniability should such an assertion ever be made and he could always testify that "they (the OIG) would not tell me anything." The RD asked if there were any objections to his telling Operations (the General Counsel's Division of Operations-Management which oversees the entire field operation) about the investigation and he was informed the OIG would never put him in a position of not being able to communicate with his superior.

Presumably, the RD communicated the fact that an investigation was about to commence to Operations, because the OIG next received a phone call from the Associate General Counsel, Division of Operations-Management, and was asked the nature of the investigation. He was given the same response. The IG was next called into a meeting with the General Counsel, the Acting Deputy General Counsel and the Assistant General Counsel in the immediate Office of the General Counsel. When asked the same question, the same response was given.

On the day prior to the scheduled commencement of the investigative trip, the IG received a call from the then Deputy Associate General Counsel, Division of Operations-Management (the Associate General Counsel had retired in the meantime), who asked if the OIG still intended going to the Resident Office the next day to investigate the case. When given an affirmative response, he responded that they (Operations) had been investigating a case in the same office for two weeks and they wanted the OIG to know that.

The IG asked to see their entire investigative file and learned from reading it that they had granted immunity from criminal prosecution to everyone in the Resident Office,

including the alleged wrongdoer. In fact, a written memorandum to the target of the investigation noted, among other things, "[h]owever, neither your answers nor any information or evidence gained by reason of your answers can be used against you in any criminal proceeding." While another portion of the memorandum noted that administrative action might be taken for failing to reply fully and truthfully, the above-quoted language, arguably, may have granted immunity from a criminal prosecution even for perjury. [3] When asked on whose authority they had granted such immunity, the then Deputy Associate General Counsel said that one of the Special Counsels to the General Counsel had been instructed to contact the U.S. Attorney in the city of the Resident Office and had secured such permission.

That Special Counsel, when interviewed by the OIG, stated that: (1) based on instructions received, an Assistant U.S. Attorney (AUSA) in the city of the Resident Office was contacted and asked if he "had any problems with them (Operations) investigating the case;" (2) the AUSA asked if the Agency had an IG; (3) he was told the Agency did have an IG, but he (the IG) had "not been brought into the loop;" (4) the AUSA said he would check and call back; (5) when he did, he said they could follow their usual operating procedures; and, (6) the Special Counsel specifically apprised the Associate General Counsel that this is the kind of matter which should be discussed with the IG. The IG, however, was never timely apprised of the fact that another complaint had been received involving the same office or that the Division of Operations wanted to undertake an investigation into matters in which the the OIG might have an interest.

Contact with the AUSA established that, with the exception of the last numbered item to which he was not privy, there was complete agreement with the above recitation. Of greater significance is the fact that both the AUSA and the Special Counsel are also in agreement that the AUSA was not asked if he was declining to prosecute or if he was authorizing the Agency to grant immunity from criminal prosecution to anyone. Contact with the person at the Department of Justice (DOJ) who is responsible for granting such immunity established that: (1) only the DOJ can grant immunity; (2) even when "unofficial" immunity is granted, certain procedures must be followed, one of which is to secure a proffer of what the

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[3] The form used in the OIG for giving warnings and assurances to prospective witnesses who are required to provide answers, as was the target of the investigation, provides, in pertinent part, "[h]owever, neither your answers nor any information or evidence gained by reason of your answers can be used against you in any criminal proceedings, except that if you knowingly and willfully provide false statements or information in your answers, you may be criminally prosecuted for that action."

witness will testify to as the quid pro quo for the granting of immunity (this was not done in this case even if a grant of immunity had been authorized); and, (3) an agency can only grant immunity from that which the agency has authority to mete out, that is, administrative action. Granting immunity from prosecution is reserved to the prosecutor.

The OIG decided to abort its investigation based on the grant of immunity by the General Counsel's agents. Although there is some question about the legal efficacy of the grant of immunity, the IG thought it unconscionable for the OIG to investigate and then make a referral to prosecutive authority when the Agency had already granted immunity, even if improperly so. The Operations investigation is still proceeding and, pursuant to OIG request, the OIG is presumably being supplied copies of all investigative material.

Having concluded that no OIG investigation should go forward, but being of the view that the matter had to be addressed in some fashion, the OIG decided to conduct an audit of the Agency's program for responding to allegations it receives which could result in criminal or administrative action against employees. That fact was announced to the Chairman and General Counsel and an entrance interview was conducted with the two of them. At the entrance conference, a discussion ensued about the propriety of the Agency's actions and, based upon a comment that it was unfortunate that the OIG had to spend its time in conducting such an audit, the IG proposed that since it was too late to rectify the damage done in granting immunity from criminal prosecution, and that what the OIG hoped to accomplish from the audit was a series of recommendations as to how the Agency's referral of investigative matters should be handled, that the OIG would prepare a Memorandum of Understanding (MOU) outlining those proposed procedures, submit it to them for consideration and, if we were unable to reach agreement, we would go forward with the audit.

During the entrance conference, the IG noted that since the nature of the allegations in the Resident Office had not been revealed earlier by the IG, that when the Office of General Counsel or the Division of Operations-Management received an allegation concerning the same location, the IG expected them, at a minimum, to call and say: (1) they knew the OIG had an allegation which it did not disclose; (2) that they now had one which the OIG should look at to see if it was the same as theirs; and, (3) that we should then coordinate the investigation. The IG also noted that, in his preliminary view, an agency should not be investigating itself, and that was one of the reasons for the creation of IGs in the first place.

An MOU was forwarded on November 21, 1991. Just prior to the issuance of this Semiannual Report, the OIG was informed of a meeting on April 29 to discuss management's response to the MOU.

Use of Agency Vehicles

During the reporting period, the OIG completed an investigation into an allegation raised by an employee who asserted that, in attempting to obtain an Agency vehicle to transport a group of attorneys to another Government agency, the employee was told that no vehicles were available as both were being used to take two high ranking executives to lunch. The principal issue raised by the allegation was whether Government property was being improperly used.

Investigation disclosed that both Agency vehicles were dispatched on the same day to take two high ranking executives to lunch along with other, non-Agency (but Government) personnel and that the usage of the vehicles was for "official purposes" as defined in statute, governmentwide regulation and an Office of Government Ethics advisory letter. However, the investigation likewise disclosed that the Agency practices with respect to documenting the use of the vehicles were inadequate as they did not permit an assessment of whether the vehicle usage was for official purposes. [4] The Daily Vehicle Usage/Inspection Reports (DVUIR) did not specify the purpose of the trip even though there was a column headed "Purpose of Trip (Include Name(s), Addresse(s))." More often than not, that column was completed by noting the location to which the person was taken, e.g., a street intersection or address, or that other, unnamed persons were picked up or dropped off.

In response to the investigative report, the Chairman and General Counsel noted, shortly prior to the end of the reporting period, that in order to respond to the issues raised by the instant investigation a new policy statement would issue which would require that passengers either inform the Mail and Transportation Section of the purpose of the trip or maintain contemporaneous records of the purpose of the trip.

Shortly after the end of the reporting period, the OIG was advised that passengers would not be required to inform the

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[4] 44 U.S.C. Sec. 3101 requires, among other things, that the agency head "make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government . . . ."

Mail and Transportation Section of the purpose of the trip or maintain contemporaneous records of the purpose of the trip, but rather it would be recommended that they do so.

Inasmuch as the substitution of "recommend" for "require" in the proposed policy statement would raise issues concerning compliance with 44 U.S.C. Sec. 3101, discussions between the OIG and management continue as of the date of issuance of this Semiannual Report.

Potential Increase to Agency for Transcript Costs

Various court reporting firms are awarded contracts for the purpose of recording testimony obtained at Agency-conducted hearings in both unfair labor practice and representation hearings. In bidding on the contract, court reporting firms take into consideration, among other things, the fact that they may readily anticipate selling copies of the transcript to the parties to the proceeding, in addition to the one the Agency contracts to purchase. In this way, the court reporting firms are able to contract to sell the transcripts to the Agency for a lower per page cost than they would have to charge if they sold no other copies.

One such court reporting firm complained that a law firm which had a substantial labor practice was no longer ordering copies of the transcript at a per page cost of about $1.16, but rather requesting copies of the transcript from the Regional Office pursuant to the Freedom of Information Act at a substantially lower cost. The law firm allegedly was advising other law firms to do the same and indicated that it would advertise in a labor law publication urging other practitioners to do likewise.

While the investigation disclosed nothing improper in the law firm's conduct, this practice, if widely adopted, would result in a substantial increase to the Agency for court reporting costs. As a result, the matter was referred to the Chairman and General Counsel. It remains pending.

GENERAL MATTERS

FTS2000

The following is a matter which is being brought to the attention of Congress for consideration, because of the breadth of its application.

As part of what will become an essentially governmentwide operation, the FTS2000 telephone system has already been installed in a number of Agency field offices. The remaining offices will have the system installed later. FTS2000

provides a periodic printout of all toll calls made from an office to any other location, whether it be Government or not. While other arrangements are currently being utilized, it is the Agency's ultimate intention that those printouts be sent by FTS2000 to the head of the office from which the calls originated for the purpose of certifying that they were made in the course of official business.

Therefore, if the same practice is followed in other Government entities, all calls made to an OIG or to an OIG Hotline will appear on a list of calls forwarded to the head of the office from which the calls originated, showing the called number, the calling number, the date and time of the call, as well as its duration. [5]

Section 7 (b) of the Act, as amended, provides that the IG shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the employee's consent, unless the IG determines such disclosure is unavoidable during the course of the investigation.

In the spirit of Section 7 (b), the IG informed each of the employees in the affected offices about the way in which FTS2000 works so they could, if they wished, keep confidential the fact of a call to this office. The IG suggested that until the problem is eliminated, the employees write or telephone from a non-FTS line if they wished to keep the fact of the phone call confidential.

The IG also requested that an 800 telephone number be acquired for the OIG Hotline, and that arrangements be made to have the call detail records (the listing of calls made under FTS2000) for that number sent directly to the OIG and only the OIG. Since calls to the 800 number would be billed to the OIG, rather than to the originating number, only the OIG would be aware of the telephone number from which a call was made to the OIG Hotline using an 800 number.

There would remain for consideration the problem of an employee who wishes to remain totally anonymous, even from the OIG. In that instance, it would be necessary for the caller to telephone the Hotline from a pay phone in order to preserve his or her anonymity.

Although a request for the acquisition of an 800 number for the OIG Hotline was made on January 31, 1992, no decision regarding this request has been communicated to the OIG.

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[5] The identity of the caller will not be known, but given the other information, it may be possible to ascertain that.

SECTION 2

IDENTIFICATION OF EACH SIGNIFICANT RECOMMENDATION DESCRIBED IN PREVIOUS SEMIANNUAL REPORTS ON WHICH CORRECTIVE ACTION NOT COMPLETED (MANDATED BY SECTION 5 (a) (3) OF THE ACT)

Prior Semiannual Reports described several recommendations and/or suggestions for corrective action, most of which have been acted upon to completion. Those on which action remains to be taken or completed are treated separately below.

FOLLOWUP MANAGER

Prior to the creation of the OIG, it had been the responsibility of the Agency's Audit Staff to conduct followups of audit findings. Upon the creation of the OIG, it absorbed the one remaining Auditor, leaving no one to conduct followups of audit findings. Therefore, consistent with Office of Management and Budget Circular A-50, revised, it was recommended in all previous Semiannual Reports that management assign this responsibility to other personnel.

The Agency, in its response to the April - September, 1990 Semiannual Report, noted that the appointment of a followup manager had been delayed because of budgetary constraints. In responding to the October, 1990 - March, 1991 Semiannual Report, the Agency commented that budgetary considerations still precluded the appointment of a followup manager, but stated that, in the meantime, supervisors and managers would perform the function. The same was noted in the Agency's response to the Semiannual Report for the period April - September, 1991.

As of the end of this reporting period, the OIG had not been apprised of the appointment of a followup manager consistent with OMB Circular A-50, nor does the OIG understand the Agency's rationale. It would appear that the Agency is of the view that a followup manager would do nothing else but perform that function and that it cannot spare the funds, for budgetary considerations, to appoint such a person. In an agency the size of this one, it would not appear unreasonable to delegate the followup manager responsibilities to a person who fills some other function provided the person who was selected met the OMB Circular A-50 criteria. In fact, in an agency the size of this one, the OIG might question the wisdom of appointing a full-time followup manager on grounds of economy and efficiency.

AMENDMENT OF EMPLOYEE CODE OF CONDUCT (COOPERATION WITH OIG)

On January 4, 1990, more than two years ago, it was suggested by the OIG that the Agency's code of "Employee

Responsibilities and Conduct" be amended to require employee cooperation with the OIG. On March 30, 1990, **likewise more than two years ago**, the Agency advised that the suggestion was agreed to and that the amendment would be published in the Code of Federal Regulations (CFR) in July 1991.

In response to the April - September, 1990 Semiannual Report, the Agency specified that employees would be notified of the requirement prior to the CFR publication and that, on May 7, 1990, the General Counsel had issued a memorandum to employees in the Division of Administration with respect to continued cooperation with the OIG.

In its response to the October, 1990 - March, 1991 Semiannual Report, the Agency remarked that the text to amend Agency regulations at 29 CFR with respect to this issue had been prepared for transmittal to the Federal Register and was then being discussed with the collective bargaining representatives of the involved employees in accordance with the Federal Labor Relations Act and contractual agreements.

The Agency, in its response to the Semiannual Report for the April - September, 1991 period, noted that the matter was being actively pursued, it was still under discussion with the collective bargaining representatives, the end of the discussions appeared to be within sight and that, as soon as feasible, the text would be forwarded for inclusion in the next publication of the CFR.

By the end of this reporting period, the Agency had not informed the OIG that it had notified any employees of the cooperation requirement beyond the one Division already notified. As of the end of the reporting period, the matter was still under discussion with the collective bargaining representatives of the involved employees and nothing has been published in the CFR on the subject matter.

Assuming, for the sake of argument, that the discussions with the collective bargaining representatives have been exceptionally prolonged, but nevertheless assiduously pursued, the OIG has received no word that those employees who are unrepresented by unions have been advised of the requirement to cooperate with the OIG.

RECONCILIATION OF TRAVEL ADVANCES

During the April - September, 1991 reporting period, the OIG issued an Audit Report concerning Travel Advances in Case No. OIG-AMR-4, in which it was recommended that the Agency perform interim and year-end reconciliations of the Travel Advance subsidiary ledger to documentation. The Agency agreed with the recommendation, but in a memorandum, dated March 31, 1992, noted that the reconciliation form had been submitted to the collective bargaining representative and, if

approved, it would be used first with headquarters employees, then field employees and, finally, former employees. A self-imposed target date of September 30, 1992 was set for full implementation.

REPAYMENT OF TRAVEL ADVANCES BY FORMER EMPLOYEES

In the same Audit Report, the OIG recommended that all former employees with outstanding travel advance balances be asked to repay them. The Agency agreed with the recommendation, and in its memorandum of March 31, 1992, noted that it had identified 89 former employees with outstanding travel advances totalling $31,800.77 who would be contacted pursuant to the above-noted sequence. [6] The target date is the same.

INVESTIGATION OF INVESTIGATION CONDUCTED BY DIRECTOR OF EQUAL EMPLOYMENT OPPORTUNITY

In the OIG Semiannual Report for the April - September, 1991 period, reference was made to an investigation conducted by the Director of Equal Employment Opportunity (DEEO) in which it was alleged the DEEO, while conducting an inquiry into legitimate concerns of the Office of Equal Employment Opportunity, had gone beyond those bounds and had inquired into an area unrelated to the mission of the EEO Office, that is, criticism of the General Counsel for delay in case processing.

In the Agency response, it was noted that the General Counsel had met with the collective bargaining agent of the employees involved and assured it there would be no retaliation against employees for having given information during the investigation. Unsaid was whether there had been any assurances against retaliation for employees who had engaged in constitutionally protected speech whether they had given information during the investigation or not.

The Agency response further noted that, in view of pending litigation before the Federal Labor Relations Authority regarding other aspects of the DEEO investigation, no action had been taken regarding the Final Investigative Report issued by the OIG. To date, the OIG has received no further word on this subject matter.

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[6] If one were seeking to recoup travel advances from former employees, one might conclude that those advances should be recouped first, rather than last, as the passage of time might make recoupment less likely in the case of a former employee. In addition, there is probably no longer a bargaining obligation with respect to those employees.

SECTION 3

SUMMARY OF MATTERS REFERRED TO PROSECUTIVE AUTHORITIES AND RESULTANT PROSECUTIONS AND CONVICTIONS (MANDATED BY SECTION 5 (a) (4) OF THE ACT)

No matters were referred to prosecutive authorities during this reporting period, nor were there any prosecutions or convictions.

SECTION 4

SUMMARY OF EACH REPORT TO ESTABLISHMENT HEAD CONCERNING INFORMATION OR ASSISTANCE UNREASONABLY REFUSED OR NOT PROVIDED (MANDATED BY SECTION 5 (a) (5) OF THE ACT)

Section 5 (a) (5) of the Act requires the OIG to include in a semiannual report a summary of each report made to the head of the establishment under Section 6 (b) (2) during the reporting period. Section 6 (b) (2), in turn, authorizes an IG to report to the head of the establishment whenever information or assistance requested under subsection (a) (1) or (3) is, in the judgement of an IG, unreasonably refused or not provided. The subsections referred to authorize an IG to have access to, in effect, all documentation or other material available to the establishment which relate to programs and operations with respect to which the IG has responsibilities under the Act, and authorize an IG to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by the Act from any Federal, State, or local governmental agency or unit.

During the reporting period, no such reports were made to the head of the establishment by the OIG.

SECTION 5

LIST OF EACH AUDIT REPORT ISSUED (MANDATED BY SECTION 5(a)(6) OF THE ACT)

None issued.

SECTION 6

SUMMARY OF EACH SIGNIFICANT AUDIT REPORT IN SECTION 5 (MANDATED BY SECTION 5 (a) (7) OF THE ACT)

None issued.

SECTION 7

STATISTICAL TABLES SHOWING TOTAL NUMBER OF AUDIT REPORTS AND TOTAL DOLLAR VALUE OF QUESTIONED AND UNSUPPORTED COSTS (MANDATED BY SECTION 5 (a) (8) OF THE ACT)

		Number	Dollar Value (in thousand $)	
			Questioned Costs	Unsupported Costs
A	Reports for which no management decision had been made by the beginning of the reporting period	0	0	0
B	Findings in reports issued during the reporting period	0	0	0
Subtotal (A + B)		0	0	0
C	For which a management decision was made during the reporting period	0		
	(i) Disallowed costs	0	0	0
	(ii) Costs not disallowed	0	0	0
D	For which no management decision has been made by the end of the reporting period	0	0	0

SECTION 8

STATISTICAL TABLES SHOWING TOTAL NUMBER OF AUDIT REPORTS AND DOLLAR VALUE OF RECOMMENDATIONS THAT FUNDS BE PUT TO BETTER USE (MANDATED BY SECTION 5 (a) (9) OF THE ACT)

		Number	Dollar Value (in thousand $)
			Recommendations That Funds Be Put To Better Use
A.	Reports for which no management decision had been made by the beginning of the reporting period	0	0
B	Findings in reports issued during the reporting period	0	0
Subtotal (A + B)		0	0
C.	For which a management decision was made during the reporting period	0	0
	(i) Recommendations agreed to by management	0	0
	(ii) Recommendations not agreed to by management	0	0
D	For which no management decision has been made by the end of the reporting period	0	0

SECTION 9

SUMMARY OF EACH AUDIT REPORT ISSUED BEFORE REPORTING PERIOD FOR WHICH NO MANAGEMENT DECISION MADE BY END OF REPORTING PERIOD (MANDATED BY SECTION 5 (a) (10) OF THE ACT)

Not applicable.

SECTION 10

DESCRIPTION AND EXPLANATION OF REASONS FOR ANY SIGNIFICANT REVISED MANAGEMENT DECISION MADE DURING THE REPORTING PERIOD (MANDATED BY SECTION 5 (a) (11) OF THE ACT)

During the reporting period, no significant revised management decisions were made.

SECTION 11

INFORMATION CONCERNING ANY SIGNIFICANT MANAGEMENT DECISIONS WITH WHICH INSPECTOR GENERAL IS IN DISAGREEMENT (MANDATED BY SECTION 5 (a) (12) OF THE ACT

During the reporting period, significant management decisions were made to: (1) conduct a criminal investigation in an area of the Agency subject to the supervision of the General Counsel (see Section 1) without coordinating that effort with the OIG, at a time when the General Counsel knew that the OIG was going to conduct a criminal investigation in the same office; and, (2) grant immunity from criminal prosecution to everyone in the field office, including the target of the investigation (who may also have been granted immunity from prosecution for perjury), without receiving authority to do so from the Department of Justice.

The IG is in disagreement with both of those decisions.

SECTION 12

REVIEW OF EXISTING AND PROPOSED LEGISLATION AND REGULATIONS RELATING TO PROGRAMS AND OPERATIONS AND RECOMMENDATIONS CONCERNING THEIR IMPACT ON ECONOMY AND EFFICIENCY IN THE ADMINISTRATION OF PROGRAMS AND OPERATIONS ADMINISTERED OR FINANCED BY DESIGNATED ENTITY OR THE PREVENTION AND DETECTION OF FRAUD AND ABUSE (MANDATED BY SECTION 4 (a) (2) OF THE ACT)

Section 4 (a) of the Act requires the IG to review existing or proposed legislation and regulations and to make recommendations in the semiannual report concerning their impact on the economy and efficiency of the administration of the Agency's programs and operations and on the prevention and detection of fraud and abuse. Among those items reviewed during this reporting period were the following which fall within the mandate of the above-cited section of the Act.

PROPOSED LEGISLATION AND REGULATIONS

Legislation

Bills

Several bills which would extend the jurisdiction of the the Agency and thereby increase its work, were introduced or further considered by the Congress. H.R. 3671, introduced by Representative Mink on October 30, 1991, would amend the NLRA to require the Agency to assert jurisdiction in a labor dispute which occurs on Johnston Atoll, an unincorporated territory of the United States. H.R. 1126, which was introduced on February 27, 1991, by Representative Clay for himself and others, would extend coverage of the NLRA to foreign flagships. The House Education and Labor Subcommittee on Labor Standards held hearings on H.R. 1126 on February 26, 1992, approved it as amended, and voted to report the measure to the full Education and Labor Committee. In addition, a number of bills were introduced which would make the NLRA applicable to the Congress. These include H.R. 3734, introduced by Representative Dannemeyer for himself and others; H.R. 4294, introduced by Representative Nussle for himself and others; and S. 2366, introduced by Senator Coats for himself and Senator Seymour.

Any measure extending the jurisdiction of the Agency would have an impact on its economy and efficiency, as it would necessitate one of the following. Either the Agency would need additional funding, more efficient use of current resources would have to be made, or, in the absence of either of those two alternatives, the Agency would have to

balance competing needs with the ultimate diminution of services in one or more areas in order to accommodate those in other areas. However, that impact on the Agency would appear to be primarily in terms of budget. As to the OIG, none of the above bills would affect its ability to detect and prevent waste, fraud and abuse, unless the OIG lost resources in order to accommodate another program or operation.

Another bill, H.R. 3684, has the potential for substantial impact on the Agency's economy and efficiency, as well as on the OIG's ability to perform its function. Section 1 provides for the Office of Management and Budget's (OMB) promulgation of regulations requiring each department and agency to establish a performance and goals plan containing specific objectives for each major expenditure category of its budget. The plan is subject to review and adjustment by OMB.

Under Section 2, Congress would not consider any bill which provides for the authorization of appropriations or the appropriation of funds unless that bill specifies performance standards and goals.

Section 3 would amend the Inspector General Act (Act) to require that each audit determine whether any material weakness exists.

Section 4 of this bill would further amend the Act to require an IG to investigate any allegation which gives the IG reason to believe that fraud or misrepresentation occurred relating to any report or statement required by the Federal Managers' Financial Integrity Act (FMFIA), and, within 60 days after receiving the allegation in writing, submit an investigative report to the Congress and the head of the establishment.

Finally, Section 5 would amend the seven-day letter provision of the Act to make an agency's failure to meet established policy objectives and performance standards fall within the definition of a particularly serious or flagrant problem, abuse or deficiency.

If properly administered, this bill should enhance the economy and efficiency of an agency's programs and operations. That enhancement would, however, be offset to some degree by the increased burden placed on an agency in meeting the bill's mandates. While it is not possible to assess the degree of increased economy and efficiency which an agency wold experience, the bill should at least force agencies to focus on their goals and an assessment of the extent to which they have been met.

With respect to the impact on OIGs, the following should be noted:

(1) Assuming, for the sake of discussion, that an average audit takes 300 hours to perform and that a designated entity OIG with a staff of 3 Auditors and one Supervisory Auditor is capable of producing 5 audits a year, and further assuming that the mandate of Section 3 adds 15 to 20 percent to the work of each audit, there may be a net reduction of 1 audit each year as a result of this legislation. If those figures are correct, Congress will have to determine whether the net reduction in audits produced is warranted or whether there is some other way of accomplishing the objective.

(2) With respect to Section 4, inasmuch as it is the head of an agency who signs the FMFIA report, the following scenario should be considered. An FMFIA report issues and an allegation is made falling under the provisions of Section 4. A timely investigation is completed and a submission made to the Attorney General. While that submission is pending, Section 4 would mandate a second submission to Congress and the head of the establishment who may either be the target of the investigation or directly supervise the target of the investigation. Suppose further in this scenario that, since Section 4 mandates the submission of an investigative report within 60 days, but not the completion of the investigation, an OIG is incapable of completing the investigation in 60 days. It would appear that, in such circumstances, the submission of a report on a partially completed investigation might jeopardize the successful completion of the investigation.

Reports

House of Representatives Report 102-356 on H.R. 2263, a bill to amend title 5, United States Code, with respect to certain programs under which awards may be made to Federal employees for superior accomplishments or cost savings disclosures, was also reviewed. The Committee on Post Office and Civil Service reported favorably on H.R. 2263 and recommended that the bill as amended pass. The IG believes this legislation would assist in the performance of the functions of the OIG by making available funds for cash awards to Federal employees, former Federal employees, and Government contract employees who disclose waste, fraud or mismanagement in the Government.

Regulations

The Agency, on March 5, 1992, proposed to amend its rules to incorporate certain remedial provisions frequently appearing in its decisions. Those provisions relate to offers of reinstatement, make-whole remedies, computation of interest, and the posting of notices. By merely citing these rules in

future decisions, the Agency stated, Board opinions will be shortened considerably.

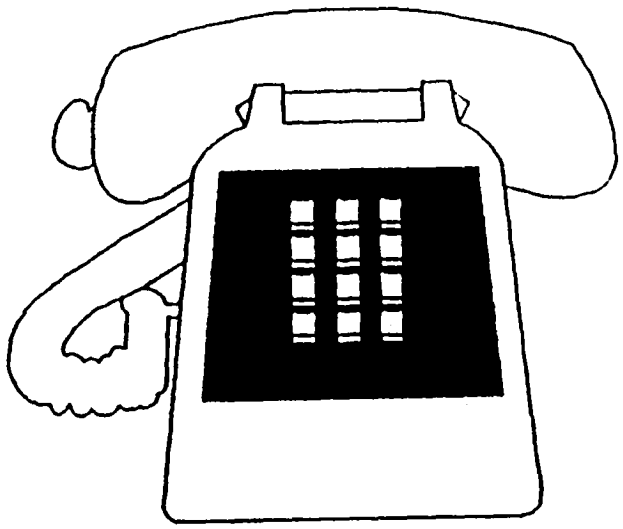
The IG believes the Agency's proposed amendment of its rules would add to its economy and efficiency and in no way impact on the OIG's ability to detect and prevent waste, fraud and abuse.

REPORT

WASTE, FRAUD AND ABUSE

NATIONAL LABOR RELATIONS BOARD

OFFICE OF INSPECTOR GENERAL



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