

INSPECTOR GENERAL



NATIONAL LABOR RELATIONS BOARD

WASHINGTON, DC 20570

I hereby submit this Semiannual Report for the period October 1, 2009 – March 31, 2010. This report summarizes the major activities and accomplishments of the Office of Inspector General (OIG) of the National Labor Relations Board and its submission is in accordance with the Inspector General Act of 1978, as amended (IG Act). Section 5 of the IG Act requires that the Chairman transmit this report to the appropriate committees or subcommittees of the Congress within 30 days of its receipt.

In the audit program, the OIG issued two audit reports, three issue alerts, and conducted the annual review required by the Federal Information Security Management Act. In the investigation program, the OIG processed 149 contacts, initiated 5 cases, and closed 10 cases. Our investigative efforts resulted in two separations in lieu of disciplinary action, a suspension with a demotion, a reprimand, and two agreements for the loss of leave in lieu of other disciplinary action. The OIG also referred three matters to the Department of Justice. Details on these accomplishments can be found in the body of this report.

I appreciate the support of all Agency employees in achieving the accomplishments set forth in this report.

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

David Berry
Inspector General
April 30, 2010

AGENCY PROFILE

The National Labor Relations Board (NLRB or Agency) 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. NLRB jurisdiction includes the U.S. Postal Service (other government entities, railroads, and airlines are not within NLRB's jurisdiction).

The NLRB seeks to serve the public interest by reducing interruptions in commerce caused by industrial strife. It 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, the 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, by either employers or unions.

NLRB authority is divided by law and delegation. The five-member Board primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel investigates and prosecutes unfair labor practices 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.

The Board consists of the Chairman and four Members who are appointed by the President with the advice and consent of the Senate. Board Members serve staggered terms of 5 years each. The General Counsel is also appointed by the President with the advice and consent of the Senate and serves a 4-year term.

Chairman Wilma B. Liebman, Member Peter C. Schaumber, and General Counsel Ronald Meisburg continue to serve during this reporting period.

On March 27, 2010, the President announced the recess appointments of Craig Becker and Mark Gaston Pearce to fill two of the three Board Member vacancies.

The NLRB received an appropriation of \$283,400,000 for Fiscal Year (FY) 2010 to fund a ceiling of 1,685 full-time

equivalents. NLRB Headquarters is at 1099 14th Street, NW, Washington, DC.

In addition to the Headquarters building, employees are located in 51 field offices throughout the country. Three satellite offices for the administrative law judges are located in Atlanta, San Francisco, and New York City. Since October 2, 2000, field offices have included 32 Regional Offices, 16 Resident Offices, and 3 Subregional Offices.

Additional information about the NLRB can be found at www.NLRB.gov.

OFFICE OF INSPECTOR GENERAL

NLRB established the Office of Inspector General (OIG) pursuant to the 1988 amendments to the Inspector General Act of 1978 (IG Act).

Resources

The FY 2010 OIG budget is \$1,281,700 for operations, of which \$213,500 is for contract services. In addition to the Inspector General, the OIG consists of a Counsel/Assistant Inspector General for

Investigations, an Assistant Inspector General for Audits, two auditors, and a staff assistant. At this time, the OIG is recruiting to fill the Counsel/Assistant Inspector General for Investigations position and an auditor position.

The Inspector General is to provide policy direction for and is to conduct, supervise, and coordinate audits relating to program operations of the Agency. *OIG issued two audit reports, three issue alerts, and conducted the annual review required by the Federal Information Security Management Act.*

Reports Issued

- We issued Audit Report OIG-F-14-10-01, *Audit of the NLRB Fiscal Year 2009 Financial Statements*, on December 11, 2009. The audit, performed by Carmichael, Brasher, Tuvell & Company (CBTC), an independent public accounting firm, found that the NLRB's FY 2009 Financial Statements were fairly stated, and no material weaknesses in controls over financial reporting were identified. Although no material weaknesses were identified, an issue involving noncompliance with laws and regulations was reported.

The noncompliance with laws and regulations was that the Agency did not adhere to the *bona fide* needs rule (31 U.S.C. § 1502) when the Division of Administration purchased \$250,000 of postage on September 29, 2009. The auditors found that the postage purchase

was not necessary to meet the need of FY 2009, nor was it necessary to avoid a disruption of the NLRB's operations.

A Management Letter by CBTC, as part of the financial statement audit process, also addressed this noncompliance with the *bona fide* needs rule. Management disagreed with the conclusion that the postage purchase violated the *bona fide* needs rule and the recommendation to de-obligate \$250,000 of postage advance from FY 2009 and re-obligate the postage advance using FY 2010 funds. Management stated the purchase of this postage was prudent and consistent with Agency history and sound business practice. Management agreed with the recommendation to develop and implement procedures to monitor postage that would ensure that purchases and distribution to field offices would only be made when needed.

- We issued Audit Report OIG-AMR-62-10-01, *Official Time for Union Activities*, on December 11, 2009. This audit was conducted to evaluate the management and use of official time for representational activities by employees in the NLRB's bargaining units.

The Office of Personnel Management's (OPM) yearly reports of official time by union officials for both FY 2007 and FY 2008 listed the NLRB as having the highest per capita use of official time for union activities. For FY 2008, 13,447 hours of official time were reported to OPM as being used by the NLRB's two employee unions. The reported cost of those hours was \$772,632.

We found that the majority of the official time, 8,004 hours, was used by seven NLRB employees who were union officers. For six of these employees, their collective bargaining agreements authorized the official time in advance without any requirement to show a need for the time. The other employee only engaged in representational activities

and did not request or receive approval from a supervisor or manager for the use of official time.

The amount of official time used by these seven officers represents 7.25 hours per bargaining unit employee at an estimated cost of \$459,910. Given the cost of the official time, the lack of oversight, and the disparity with the Governmentwide average, we questioned whether the amount of time used by these officials meets the statutory test of reasonableness, necessity, and public interest.

We also identified internal control issues for employees other than the seven officers. A significant control issue that we identified was that the request and approval documentation was generally not maintained. We also found that the Agency could, but does not, record the use of official time by bargaining unit employees in its payroll system.

Management commented that they agree that there are numerous issues involving

the use and recording of official time for union activities and they expect the audit report to be useful as they work with the employee unions to address those matters. Nevertheless, because of the collective bargaining agreements and litigation involving the consolidation of the bargaining units, action on the recommendations may be delayed pending the resolution of those matters.

- We released Issue Alert OIG-IA-10-01, *Top Management and Performance Challenges*, on October 14, 2009. The OIG developed a list of what it considers to be the most serious management and performance challenges currently facing the NLRB. The first two are newly identified challenges, and the remainder are continuing challenges. They are:

1. Implementation of the Next Generation Case Management System;
2. Seize opportunities to create more productive and efficient procedures and organizations;

3. Engage in a meaningful deliberative process while issuing Board decisions in a timely manner so as to ensure the effective enforcement of the National Labor Relations Act;
4. Maintain the Agency's institutional knowledge;
5. Manage the Agency during periods of time that are covered by continuing resolutions and appropriations that are expected to be flat or provide only nominal increases;
6. Manage the Agency's procurement process to ensure compliance with the Federal Acquisition Regulation;
7. Strengthen controls over employees' use of Agency information technology assets, to include internet access;
8. Implement e-government initiatives to effectively communicate with parties and the public; and
9. Implement audit findings in a timely manner.

- We released Issue Alert OIG-IA-10-02, *Employee*

Representative, on March 5, 2010. We became aware that an Agency manager was representing another Agency employee in mediation proceedings in a matter involving the Agency.

An employee of an agency of the United States may not act as an agent or attorney for anyone before any agency in connection with any covered matter in which the United States is a party or has a direct and substantial interest. There is an exception to this prohibition in certain circumstances only when the employee's representation is "not inconsistent with the faithful performance of that officer's or employee's duties."

Based on a review of the facts, we concluded that the manager did not receive proper authorization for the representation and, therefore, there was no consideration of whether the manager's representation was inconsistent with the faithful performance of official duties. We recommended that the Chairman and General Counsel consider the manager's

continued representation in the mediation sessions and identified factors that should be considered. Thereafter, the manager was removed from the representation.

- We released Issue Alert OIG-IA-10-03, *Office of Equal Employment Opportunity Purchase of Food*, on March 19, 2010. The Office of Equal Employment Opportunity (OEEO) purchased and served food as part of its 2010 National African American History Month program.

As a general rule, the Agency may not use appropriated funds to purchase food for its employees. This principle of appropriation law is based on the premise that food and entertainment are personal expenses that employees are expected to bear.

There are a number of narrow exceptions to this general rule. One of the exceptions allows for the purchase of food that is provided to employees as a sampling of ethnic food that is prepared

and served as an integral part of a celebration intended to further OEEO objectives by increasing an employee's appreciation for the cultural heritage of an ethnic group.

Under the Government Accountability Office's (GAO) guidance, we determined that the food served by the OEEO was a meal rather than a sample.

The food cost \$1,100. Also, \$30 was spent for iced tea and ginger ale and approximately \$70 was spent for flowers. In addition to the 2010 National African American History month program, we identified similar expenditures of appropriated funds for food, soft drinks, or flowers made since February 2006 that totaled \$9,586.62.

We also stated our opinion that when appropriated funds are applied to a prohibited or unauthorized purpose, an Antideficiency Act violation occurs because the obligation of funds are viewed as being in excess of the amount (zero) available for that purpose.

- ***The Federal Information Security Management Act of 2002*** requires Inspectors General to conduct annual reviews of information security programs. The OIG review was primarily accomplished as part of the audit of the FY 2009 financial statements. On November 17, 2009, the Chairman submitted reports from the Inspector General and the Chief Information Officer to the Office of Management and Budget.

Audit Follow-up

Agreed upon actions were not completed within 1 year on six audit reports.

- ***Audit of the NLRB Fiscal Year 2006 Financial Statements***, OIG-F-11-07-01, was issued on December 14, 2006, and we reached agreement with management on June 14, 2007. We continue to monitor the Agency's progress towards implementing the final open recommendation.

- ***Continuity of Operations***, OIG-AMR-55-07-03, was issued on

September 18, 2007, and we reached agreement with management on that date. Action has been completed on one of the three recommendations. The Agency is actively working to implement the other two recommendations.

- ***Audit of the NLRB Fiscal Year 2007 Financial Statements***, OIG-F-12-08-01, was issued on December 17, 2007, and we reached agreement with management on that date. Action has been completed on two of the three recommendations. The Agency is actively working to implement the final recommendation.

- ***Office of the Chief Information Officer Procurement Functions***, OIG-AMR-57-08-01, was issued on March 14, 2008, and we reached agreement with management on that date. Action

has been completed on five of the seven recommendations. The Agency is actively working to implement the other two recommendations.

- ***Budget Submission Case Processing Data***, OIG-AMR-58-08-02, was issued on September 3, 2008, and we reached agreement with management on that date. We closed the audit report on April 27, 2010.

- ***Laptop Computer Accountability and Security***, OIG-AMR-59-09-01, was issued on February 27, 2009, and we reached agreement with management on that date. None of the six recommendations made in the report have been fully implemented. We will continue to monitor management's progress in implementing these recommendations.

INVESTIGATIONS PROGRAM

The Inspector General is to provide policy direction for and is to conduct, supervise, and coordinate investigations relating to the programs and operations of the Agency. *OIG processed 149 contacts, initiated 5 cases, and closed 10 cases. The investigations resulted in two separations in lieu of disciplinary action, a suspension with a demotion, a reprimand, and two agreements for the loss of leave in lieu of other disciplinary action. The OIG also referred three matters to the Department of Justice.*

Case Workload		Contacts Processed	
Open (4/1/2009)	13	Received	149
Initiated	5	Initiated Investigation	0
Closed	10	Opened Case -- Referred to Agency	0
Open (9/30/2009)	8	Non-Investigative Disposition	149

- Loss of Property.** As previously reported, we initiated this investigation after learning that certain inventoried property was missing. We found that two employees were involved in the taking of the property and that they took action to conceal the misconduct from Agency management. One of the employees also provided misleading information to the OIG. We recovered the property. During this reporting period, the employee who provided misleading information to the OIG agreed to separate in lieu of disciplinary action. The second employee received a letter of reprimand. (OIG-I-431)

- False Employment Application.** This investigation was initiated after we received a report that the subject, an Agency employee, submitted a false application for a higher graded position. Our investigation substantiated the allegation. The subject separated in lieu of disciplinary action. (OIG-I-444)

- Alteration of Records.** We initiated an investigation of an employee who altered Agency records for the benefit of a fellow employee. We determined that the allegation was substantiated. With regard to the employee who received the benefit, we

determined that he was unaware of the nature of the wrongdoing. The U.S. Attorney's Office declined prosecution. During this reporting period, the employee who made the alteration received a suspension and change in duties as disciplinary action. (OIG-I-426)

- **Internet Misuse.** After reviewing the Agency's Internet logs during an audit, we determined that more likely than not an employee was using the Agency's Internet access and laptop computer to view sexually graphic material. A forensic examination of the hard drive from the subject's Government computer substantiated the allegation. When interviewed by the OIG, the subject admitted to engaging in the misconduct. After we issued an investigative report, the Agency and employee agreed that the employee would donate leave to the Agency's leave donor program in lieu of other disciplinary action. (OIG-I-436)

- **Internet Misuse.** After reviewing the Agency's Internet logs to determine if the subject in OIG-I-436 stopped misusing the Agency's Internet access and laptop computer to view sexually graphic material, we determined that more likely than not a second employee was using the Agency's Internet access and laptop computer to view sexually graphic material. A forensic examination of the hard drive from the second employee's Government computer substantiated the allegation and provided additional evidence that the employee used Agency equipment for outside business activity. When interviewed by the OIG, the employee admitted to engaging in the misconduct. After we issued an investigative report, the Agency and employee agreed that the employee would donate leave to the Agency's leave donor program in lieu of other disciplinary action. (OIG-I-442)

- **Failure to Pay Travel Card Balance.** We initiated this investigation

after a review of the monthly travel card reports disclosed that an employee failed to pay the balance due. Our investigative efforts disclosed that charges on the travel card were proper in that they were related to official travel. Because we found that the employee had not misused the travel card for improper purchases, we referred this matter to the employee's managers to ensure that the balance was paid. (OIG-I-439)

Hotline

Employees and members of the public with information on fraud, waste, and abuse are encouraged to contact OIG. A log of calls to a nationwide toll-free number or the office numbers and a log of mail, e-mail, and facsimile messages are maintained. All information

received, regardless of the method used, is referred to as Hotline contacts.

The information received over the Hotline is the basis for the initial review for potential investigations. The information is analyzed to determine if further inquiry is warranted. Most Hotline contacts are calls from members of the public seeking help on an employment-related problem or issues outside OIG and/or Agency jurisdiction.

As appropriate, OIG refers these callers to the Regional Office; local, state, or Federal agency; or private resources to provide assistance. During this reporting period, OIG received 149 Hotline contacts, of which 46 were telephone calls or walk-ins and 103 were in writing.

LEGISLATION, REGULATIONS, AND POLICY

The responsibilities and duties of an OIG include reviewing existing and proposed legislation and regulations relating to the programs and operations of its agency and making recommendations in the semiannual reports concerning the impact of such legislation or regulations on the economy and efficiency in the administration of programs and operations administered or financed by the agency or the prevention and detection of fraud and abuse in such programs and operations.

Legislation

During this reporting period, there were no new legislative proposals that would significantly impact the programs and operations of the Agency. There are two existing legislative proposals that were reported in prior semiannual reports that remain before Congress. The impact of these proposals on the NLRB and its programs has been the subject of extensive debate.

H.R. 1409 and S. 560, Employee Free Choice Act of 2009. This legislation would amend the NLRA to allow employees to form a union either through majority sign-up or an NLRB election. The legislation would also increase the penalties against employers that illegally fire or discriminate against workers for their union activity during an organizing or first contract drive, including requiring employers to pay

treble backpay to workers whom they are found to have illegally fired; and allow employers and newly formed unions to refer bargaining to mediation and, if necessary, binding arbitration if they are not able to agree on a first contract.

H.R. 1176 and S. 478, Secret Ballot Protection Act. This legislation would amend the NLRA to make it an unfair labor practice for an employer to recognize or bargain collectively with a labor organization that has not been selected by a majority of the employees in a secret ballot election conducted by the NLRB. The legislation would also make it an unfair labor practice for a labor organization to cause or attempt to cause an employer to recognize or bargain collectively with a representative that has not been selected in such a manner.

Regulations

The Counsel to the Inspector General is an advisory member of the Agency's

Rules Revision Committee that develops changes to the Agency's procedural regulations.

LIAISON ACTIVITIES

The Inspector General is to recommend policies for, and is to conduct, supervise, or coordinate relationships between the Agency and other Federal agencies, state and local governmental agencies, and non-governmental entities. The Inspector General is to give particular regard to the activities of the Comptroller General of the United States. Similarly, we encourage OIG staff members to participate in Agency programs and activities. *OIG staff are active in the inspector general community and Agency functions.*

Inspector General Community

The Inspector General is a member of the Council of the Inspectors General on Integrity and Efficiency. This organization consists of Inspectors General at the Federal Government's departments and agencies.

The Assistant Inspector General for Audits, or designated auditors, participated in the Federal Audit Executives Council, Financial Statement Audit Network, and the Interagency Investigative Data Mining Working Group.

The Counsel participated in the Council of Counsels to Inspectors General.

Government Accountability Office

The IG Act states that each Inspector General shall give particular regard to the activities of the Comptroller General of the United States, as head of the GAO, with a view toward avoiding duplication and ensuring effective coordination and cooperation. We had no activity during this reporting period that required coordination with GAO.

INFORMATION REQUIRED BY THE ACT

Certain information and statistics based on the activities accomplished during this period are required by section 5(a) of the IG Act to be included in the semiannual reports. These are set forth below:

Section 5(a)

- (1), (2), (7) OIG did not identify significant problems, abuses or deficiencies relating to the administration of programs. For the purpose of this section, we used the definition of significant as set forth in the Federal Managers' Financial Integrity Act.

- (3) Corrective action has been completed on all significant recommendations that were described in the previous semiannual reports.

- (4) Three cases were referred to prosecutorial authorities.

- (5) No reports were made to the Chairman that information or assistance requested by the Inspector General was unreasonably refused or not provided.

- (6) A listing by subject matter is located on page 17.

- (8), (9) Two audit reports issued during this period had questioned costs or recommendations that funds could be put to better use. See Table 1 and 2.

- (10) There are no audit reports issued before the commencement of the reporting period for which no management decision has been made by the end of the reporting period.

- (11) No significant revised management decisions were made during the reporting period.

- (12) There were no significant management decisions with which I am in disagreement.

AUDIT REPORTS BY SUBJECT MATTER

<u>Report Title and Number</u>	<u>Questioned Costs</u>	<u>Unsupported Costs</u>	<u>Ineligible Costs</u>	<u>Funds To Be Put To Better Use</u>
ADMINISTRATION				
NLRB Fiscal Year 2009 Financial Statements OIG-F-14-10-01	\$250,000	0	0	0
Official Time for Union Activities OIG-AMR-62-10-01	\$459,910	0	0	0

Table 1**REPORTS WITH QUESTIONED COSTS**

	<u>Number of Reports</u>	<u>Dollar Value</u>	
		<u>Questioned Costs</u>	<u>Unsupported Costs</u>
A. For which no management decision has been made by the commencement of the period	0	0	0
B. Which were issued during the reporting period	2	\$709,910	0
Subtotals (A+B)	2	\$709,910	0
C. For which a management decision was made during the reporting period	0	0	0
(i) Dollar value of disallowed costs	0	0	0
(ii) Dollar value of costs not disallowed	0	\$709,910	0
D. For which no management decision has been made by the end of the reporting period	0	0	0
Reports for which no management decision was made within six months of issuance	0	0	0

REPORTS WITH RECOMMENDATIONS THAT FUNDS BE PUT TO BETTER USE

Table 2

	<u>Number of Reports</u>	<u>Funds Be Put To Better Use</u>
A. For which no management decision has been made by the commencement of the period	0	0
B. Which were issued during the reporting period	0	0
Subtotals (A+B)	0	0
C. For which a management decision was made during the reporting period	0	0
(i) Dollar value of recommendations that were agreed to by management	0	0
(ii) Dollar value of recommendations that were 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
Reports for which no management decision was made within six months of issuance	0	0

*Every employee is the
guardian of integrity.*

**OIG Hotline
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