

**JUSTIFICATION  
OF  
PERFORMANCE BUDGET  
FOR  
COMMITTEE ON APPROPRIATIONS**



**FISCAL YEAR 2012**

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## **I. Introduction**

This document combines the National Labor Relations Board's (NLRB) budget estimates and Annual Performance Plan for FY 2012. The Plan sets strategic goals for the fiscal year, and describes a number of initiatives that will help the Agency to use resources efficiently and effectively, and achieve the annual and long-term performance goals under the Government Performance and Results Act (GPRA) of 1993.

The Agency's FY 2012 budget request of \$287.7 million represents an increase of \$4.3 million over the enacted FY 2010 level of \$283.4 million. The request will support 1,730 full-time equivalents (FTE,) which will enable the Agency to handle a projected 5 percent increase in case intake over the projected FY 2011 level, and minimize the potential for a backlog. Additionally, the funding request will cover GSA space rent costs and Federal Protective Service security charges that are projected to increase by \$1.4 million over FY 2010 levels. The request is discussed in detail in Section X.

After operating with two members for 27 months, the Board now has four members: Chairman Wilma B. Liebman, Members Craig Becker and Mark Gaston Pearce who took office in April 2010, and Member Brian Hayes, who took office in June 2010. The term of Member Peter Schaumber expired in August 2010. On January 5, 2011, the President nominated Terence F. Flynn to fill the vacant Board seat, and Lafe Solomon to serve as General Counsel. Solomon has been Acting General Counsel since June 21, 2010.

Historically, Agency case intake has increased when there is a new Board, and that increased intake is expected to be sustained through 2012.

## **II. MISSION STATEMENT**

The mission of the NLRB is to carry out the statutory responsibilities of the National Labor Relations Act (NLRA), the primary federal statute governing labor relations in the private sector, as efficiently as possible, in a manner that gives full weight to the rights of employees, unions, and employers.

## **III. VISION STATEMENT**

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

## **IV. MAJOR GOALS**

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. The two major goals of the NLRB focus on timeliness and effectiveness in addressing caseload. The major goals are to:

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

## **V. AGENCY ROLE AND FUNCTIONS**

The NLRB is an independent federal Agency created by Congress in 1935 to administer and enforce the NLRA, the primary federal statute governing labor relations in the private sector.<sup>1</sup> The purpose of the law is to serve the public interest by reducing interruptions in commerce caused by conflict between employers and employees. It seeks to do this by providing orderly processes for protecting and implementing the rights of employees and regulating the respective relationships between employees, their unions and employers. The Act contains a statement of employees' bill of rights, which establishes freedom of association for the purposes of participating in the practice and procedure of collective bargaining. Under the Act, the NLRB has two primary functions: (1) to conduct secret-ballot elections among employees to determine whether they wish to be represented by a union, and (2) to prevent and remedy statutorily defined unfair labor practices by employers and unions.<sup>2</sup>

The five members of the National Labor Relations Board ("the Board"), as well as the General Counsel, are appointed by the President, subject to confirmation by the Senate.<sup>3</sup> The Board and the General Counsel maintain a headquarters in Washington, D.C., and the Agency also maintains a network of Regional or "Field" offices, each of which is under the direction of a Regional Director<sup>4</sup>, and three satellite Judges' offices.

All NLRB proceedings originate from the filing of charges or petitions by employees, labor unions, or private employers who are engaged in interstate commerce. About 27,000 cases are received by the Board through its Regional, Sub-regional, and Resident Offices each year. Of those, approximately 24,000 are unfair labor practice (ULP) charges and the remaining 3,000 are representation cases, a majority of which are petitions to conduct secret ballot elections.

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<sup>1</sup>Major amendments to the Act were enacted in 1947 (the Taft-Hartley Amendments) and in 1959 (the Landrum-Griffin Amendments).

<sup>2</sup>Exhibit A provides detailed descriptions of the types of cases handled by the Agency.

<sup>3</sup>As of January 1, 2011, the Agency was operating with four members: Chairman Wilma B. Liebman, and Members Craig Becker, Mark G. Pearce, and Brian E. Hayes. NLRB attorney Lafe Solomon was appointed Acting General Counsel in June 2010.

<sup>4</sup>Exhibit B is an organization chart of the Agency.

The NLRA assigns separate and independent responsibilities to the Board and the General Counsel: The General Counsel's role is chiefly prosecutorial and the Board's is adjudicative.

Congress created the position of General Counsel in its current form in the Taft-Hartley amendments of 1947. At that time, it gave the General Counsel sole responsibility -- independent of the Board -- to investigate charges of unfair labor practices, and to decide whether to issue complaints with respect to such charges.<sup>5</sup> The General Counsel's decision to prosecute or not is unreviewable. Typically, Regional Directors, who are delegated the General Counsel's complaint authority, find support for the charges in about one-third of the filings and dismiss the remaining two-thirds.

In the event of a dismissal, the charging party is entitled to an explanation, and if not satisfied, can appeal the decision to the Office of Appeals of the General Counsel's staff in Washington. The Office of Appeals will review the file to determine whether the investigation was complete and the legal conclusion sound. If the dismissal is upheld, the case is closed.

In those ULP cases where merit is found, (viz., worthy of prosecution,) either by a Regional Director or by the Office of Appeals, approximately 95 percent are resolved through the Agency's settlement program without formal litigation. It has long been the NLRB's belief that all parties are better served if disputes are settled without the need for time-consuming and costly litigation. A complaint that is not settled or withdrawn is tried before an administrative law judge, who issues a decision, which may be appealed to the Board through the filing of exceptions. The Board acts in such matters as a quasi-judicial body, deciding cases on the basis of the formal trial record according to the statute and the body of case law that has been developed by the Board and the federal courts.

In those cases in which the Board determines that a violation of the Act has been committed, the role of the General Counsel is to act on behalf of the Board to obtain compliance with the Board's order remedying the violation.<sup>6</sup> 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 aggrieved by a Board decision (other than the General Counsel,) may seek review of the Board's decision in the U.S. Courts 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 Section 10(e) and (f) after the entry of a Board order and pending enforcement or review of proceedings in circuit court.

Further, at times the financial status of the respondent changes during the time the case is being litigated. These changes may require more sophisticated litigation in bankruptcy and federal district courts pursuant to the Federal Debt Collection Procedures Act of 1990. As the Agency has been required to engage in this complex litigation, considerable staff resources have been devoted not only to the actual litigation, but also preparing and training staff to represent the

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<sup>5</sup>Exhibit C is a chart on ULP case processing.

<sup>6</sup>Exhibit D is a chart on NLRB Order Enforcement.

Agency in these forums.

The NLRA also authorizes seeking preliminary injunctive relief. 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 Officer or Regional Attorney is *required*, on behalf of the Board, to seek an injunction from a U.S. District Court to halt the alleged unlawful activity. Section 10(j) of the Act provides that where the General Counsel has issued a complaint alleging that any other type of unfair labor practice has been committed, by a union or by an employer, the Board *may* direct the General Counsel to institute injunction proceedings if it determines that immediate interim relief is necessary to ensure the efficacy of the Board's ultimate order.

In FY 2010, the public filed 23,509 charges alleging that employers or labor organizations committed unfair labor practices prohibited by the Act, adversely affecting employees. The Agency achieved a 95.8 percent settlement rate in those cases found to have merit.

The Agency's other major responsibility is conducting secret-ballot elections for employees to choose whether or not to be represented by a union.<sup>7</sup> 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 a majority of the employees in an appropriate bargaining unit and therefore should be certified as the employees' bargaining representative. The role of the Agency in such cases is to investigate the petition and, if necessary, to conduct a hearing to determine whether the petitioned-for unit of employees constitutes 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 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.

In the processing of representation cases, the General Counsel and the Board 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. As a result, the General Counsel and the Board have historically worked together in developing procedures for the conduct of representation proceedings. Although 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.

During FY 2010, the NLRB received 3,044 representation petitions, including 2,969 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 75 petitions for elections in which workers voted on whether to rescind existing union-security agreements. In 92 percent of those elections, the NLRB was able to negotiate agreements between the parties as to when, where, and who should be involved in the election, thus conserving resources that would

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<sup>7</sup>Exhibit E is a chart on representation case processing.

otherwise be spent on a hearing. Hearings were required in the remaining 8 percent of these cases.

Section 3(d) of the Act assigns to the General Counsel general supervision over all attorneys employed by the Agency (other than the administrative law judges, the Agency solicitor, and the attorneys who serve as counsel to the Board Members) and over the officers and employees in the Regional Offices. 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.

Under the General Counsel, the Division of Operations-Management has responsibility for the administration of the NLRB's Field offices. Approximately 70 percent of the Agency's staff is employed in the field, where all ULP charges and representation petitions are initially filed. Currently, the Field offices include 32 Regional Offices, 3 Subregional Offices, and 16 Resident Offices.

## **VI. STRATEGIC INITIATIVES**

### ***Public Affairs***

In FY 2009 the Chairman announced a public affairs initiative to amplify the Agency's historic outreach efforts. The goal of the initiative is to better communicate to workers and their employers, especially those in the vast number of American workplaces which are not unionized, what the Agency does and what rights the NLRA protects. To do this, the Agency is focusing on new technologies to better align our outreach and education strategies with the contemporary workforce and workplace.

In FY 2010 the Agency began to implement this initiative with the creation of a new Office of Public Affairs, a three-person office that replaced the Agency's Division of Information. The Office of Public Affairs immediately launched an effort to publicize significant work in the regions and at headquarters through news releases, believing that the NLRB's work is its best outreach message. The news releases highlight large settlements, elections, and complaints; federal injunctions issued at the NLRB's request; and important Board decisions. Working with the regions and various offices at headquarters, the Office has more than tripled the Agency's output of news releases from previous years.

The Office also began to make the Board's Weekly Summary of Cases, more accessible to the general public. To improve distribution, the Office began using the services of Govdelivery.com to create an automated email delivery system for subscribers. Since then, more than 6,500 journalists, academics, attorneys and others have signed up to receive press releases, and another 4,000 are receiving Weekly Summaries electronically. In FY 2011, the Office plans to aggressively promote these services, with the goal of tripling the number of subscribers.

The Office of Public Affairs is also deeply involved in the revamping of the Agency's public website, which is scheduled for completion in February 2011, as well as its internal site, to be completed by mid-summer. The Office has created a Web Advisory Committee consisting of



more than a dozen representatives from various parts of the Agency, with a focus on improving the navigation and search capabilities of the site, and taking full advantage of improvements to the Agency's case handling system. The new site will be designed with various audiences in mind, including attorneys, journalists, academics, parties to Board actions, and the general public, whereas the previous site catered primarily to the legal profession. There will also be a focus on highlighting activities and personnel in the Agency's 51 regional offices.

A goal of the Office of Public Affairs is to increase transparency, consistent with the Administration's Open Government Initiative. To that end, the Office coordinated the release of data for the open.gov website, and initiated the creation of a database detailing the status of more than 500 cases potentially affected by the June 17, 2010 Supreme Court ruling that the two-member Board was not authorized to issue decisions. The database is easily searchable and contains direct links to original documents, such as briefs and decisions.

The NLRB also created a Facebook page and Twitter account to expand outreach to new audiences. In addition, the Office of Public Affairs is producing new brochures and other informational materials to replace materials that had not been updated in more than a decade.

The Chairman's initiative built on efforts initiated by the General Counsel in 2006 to expand outreach, independently or in partnership with other organizations such as the Equal Employment Opportunity Commission and Department of Labor, through its Regional Offices. Agents visit schools, community groups, churches, other federal agencies, business organizations, workers rights centers, human resources professional groups, labor organizations, and others to make information about the NLRB available to individual workers. They also are reaching out to employers, unions, workers, and soon-to-be workers to educate them regarding the role of the NLRB as an impartial enforcement agency.

Public outreach has been encouraged, and embraced, at all levels of the Agency. Over the past few years, the Board Members and General Counsel participated in dozens of speaking engagements, including at myriad law schools, American Bar Association events, the Chamber of Commerce, and various employer and union groups.

Similarly, other Agency representatives participate in more than 500 outreach events annually, including the Government on Display at the Mall of America in Minneapolis, the Black Expo in Indianapolis, the Teen Leadership Summit, the Cincinnati Latino Festival, the National Lesbian, Gay, Bisexual, Transgender Bar Association Lavender Law Conference, the Plaza Las Americas Mall joint outreach activity in Puerto Rico, and a Webcast to all of Alcoa's U.S. facilities. In addition, many Regional Offices publish newsletters, participate on radio talk shows, and make presentations in their local communities.

The Agency is also reaching out to Spanish-speaking constituents, and recently completed filming an English/Spanish video about NLRB representation case processing for nationwide distribution to the public. The video is posted on the Agency's website at [http://www.nlr.gov/Workplace\\_Rights/Conducting\\_an\\_Election.aspx](http://www.nlr.gov/Workplace_Rights/Conducting_an_Election.aspx).

## ***Public Information Program***

In addition to both the traditional and expanded outreach programs, one of the critical services provided to employers, unions, and employees is the Agency's Public Information Program. Under this program, officers in the field provide information directly to individuals or entities that contact the Agency seeking assistance. In FY 2010, the Agency's 51 Field Offices received 116,223 public inquiries regarding work place issues. In responding to these inquiries, Board agents spend a considerable amount of time explaining the coverage of the NLRA, accepting charges, or referring parties to other federal or state agencies.

The public can also contact the Agency through a toll-free telephone service 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 to Information Officers located in the Agency's Regional Offices. In FY 2010, the toll-free telephone service received 27,129 calls. Also, the Agency's website, [www.nlrb.gov](http://www.nlrb.gov), attracted 2.3 million visitors, with 9.3 million page views.

The public also may request a presentation by Agency representatives through the website's Speakers Bureau section. Our agents respond to these requests and speakers are assigned, as appropriate. In FY 2010, the Agency received 41 requests for speakers through this feature.

In addition, the public can easily access information about pending cases through the Agency's Electronic Case Information System (ECIS). (See Technology Advances, Section VII.)

## ***10(j) REMEDIES FOR UNLAWFUL DISCHARGES***

One of the core employee rights under the NLRA is the right to engage in union organizing activities in the workplace. Discharging employees for exercising their right to self-organization can send a message to other employees that they too risk retaliation by exercising their rights.

Over the years, the NLRB has developed a variety of effective strategies for minimizing the consequences of this unfair labor practice. First, the Agency focuses on prompt investigation of and settlement of meritorious charges. Such settlements are timely and effective. In addition, where settlement is not obtained, the General Counsel will consider whether to seek Board authorization to initiate Section 10(j) proceedings in federal district court to obtain an injunction, requiring employers to offer interim reinstatement to unlawfully discharged employees pending the Board's order.

To ensure that all unlawful discharges in organizing cases are given priority and that a speedy remedy is sought, the Acting General Counsel has initiated a streamlined process for handling these ULP cases. The program covers all stages of processing – from identification of cases as potential 10(j) cases by Regional Offices, through Board authorization and litigation of Section 10(j) cases, to trial and decisions of the merits of the case.

The NLRB has been committed to a vigorous Section 10(j) injunction program for years and has

found it to be a highly effective tool for achieving meaningful remedies. This streamlined process for identifying and processing potential 10(j) cases ensures that discharged employees are provided relief in “real time.”

### ***First Contract Bargaining***

Initial contract bargaining constitutes a critical stage of the negotiation process because it forms the foundation for the parties’ future labor-management relationship. Additionally, when employees are bargaining for their first collective bargaining agreement, they are highly susceptible to unfair labor practices intended to undermine support for their freely chosen bargaining representative.

In order to ensure that bargaining rights secured by the free choice of employees through NLRB elections are meaningful, the General Counsel has required that the investigation of unfair labor practice charges dealing with first contract bargaining are accorded high priority in the Regional Offices. He also has required the consideration of additional special remedies if those charges are found to have merit. The appropriateness of these remedies is considered based upon the facts of each case.

As a result of this initiative, over 300 first contract cases have been reviewed to determine whether additional remedies or injunctive relief was warranted. In selected meritorious cases, the General Counsel authorized settlements or litigation to extend the certification year for certified bargaining representatives and required parties to adhere to bargaining schedules in cases involving refusals to meet at reasonable times. In other cases, Regional Offices obtained settlements requiring multi-facility notice postings, the e-mail distribution of notices, union access to bulletin boards, the payment of negotiation expenses, and bargaining reports.

## **VII. MANAGEMENT INITIATIVES**

This section describes initiatives to improve management and internal functions and thereby enhance the Agency’s ability to meet its performance goals.

### ***Technology 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 three major IT initiatives are described more fully below.

### **Next Generation Case Management (NxGen)**

The development of the Agency's enterprise case management system is in a critical phase, one which addresses the outstanding business processes of the Board and Field Offices. Known as the Next Generation Case Management System (NxGen), this system will replace 11 separate legacy systems and will integrate into a single unified system multiple technologies, including five distinct software solutions for customer relationship management, document management, collaboration, business analytics and web-based services for external constituents. This is the most comprehensive technology project undertaken at the NLRB, and its success is essential to the Agency's mission.

The NxGen project was launched in late 2006 with the goal of building an enterprise-wide case management system. The tools selected to accomplish this goal are: Siebel Public Sector for customer relationship management and analytics; EMC's Documentum for enterprise content and collaboration management; and the Oracle/BEA portal solution for managing external relationships and data. The NxGen project is enabling the NLRB to replace manual paper-based processes and "stovepipe" legacy systems with a standards-based solution.

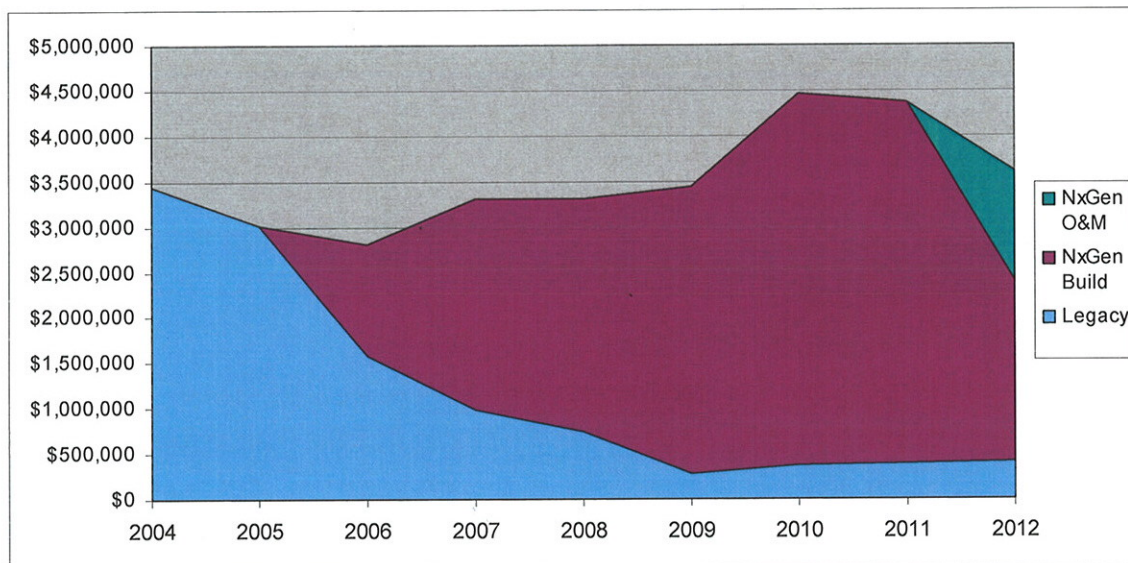
Presently, the NxGen system is in use for:

- General Counsel's Office of Appeals – whose Appeals Case Tracking (ACTS) legacy system has been retired.
- Pilot Field Offices in Cincinnati, Atlanta, and Birmingham.
- All Field Offices for processing appeals and preparing representation case decisions and dismissal letters for publication on nlr.gov.
- All Offices for processing incoming electronically-filed documents, including hearing transcripts and exhibits.
- Integration with the Board's collaborative Judicial Case Management System (JCMS); the Board is in the final stages of retiring its legacy Pending Case List (PCL) system.
- Integration with the Division of Judges' Case Tracking System (TIGER).
- Electronic issuance of Board and Division of Judges Decisions.

In FY 2011, the Agency plans to retire its largest legacy case tracking system – the Field Offices' Case Activity Tracking System (CATS). Afterwards, the Agency's efforts will focus on replacing the remaining headquarters case tracking applications and modernizing its records management system.



As is illustrated below, the Agency funded the NxGen modernization efforts in significant measure by reducing expenditures on the 11 remaining legacy systems. The notable spikes in the FY 2010 and FY 2011 expenditures are due to the Agency’s efforts to complete development and deployment of NxGen to the Field Offices prior to the end of FY 2011.



**Agency expenditures on case management development and support FY 2004-2012**

In 2010, the White House and OMB issued a memorandum to agencies that reforms the way the Federal Government manages IT projects. The memorandum lists “principles and best practices that have been proven to reduce project risk and increase success rates” for IT projects. These principles and best practices, along with the OCIO’s implementation actions, are listed below:

- Split projects into smaller, simpler segments with clear deliverables.* In late 2009, the OCIO and the NxGen Integrated Project Team (IPT) determined that NxGen would be more successful with an increased number of smaller development efforts, commonly known as an agile process. The prior efforts essentially involved long requirements gathering exercises followed by longer builds. To paraphrase an IPT member after a particularly long development cycle, “the process was perfect and we don’t like the end product.” Agency management and staff, the OCIO, and contractors are working together on clear and manageable deliverables. Since December 2009, the OCIO has transitioned from one-to-two major NxGen releases per year to between six and eight more focused releases.
- Focus on most critical business needs first.* Along with the change in operating method, the OCIO and IPT modified the program’s focus. Whereas it previously appeared that the team was attempting to “boil the ocean,” deeper business involvement and shorter timeframes have focused efforts on that which is achievable and adds value. As a practical example, the OCIO now delivers the necessary tools to support a process rather than attempting to automate the process from the outset.

- *Ongoing, transparent project oversight.* The IPT is the true success story of the NxGen program. The group has been and is enthusiastic, involved and supportive. OMB suggests that often senior agency managers do not adequately monitor projects on an ongoing basis once they are underway. With NxGen, the Board and General Counsel have been well served in this capacity by a dedicated group.

## **Website and Portal**

The NLRB places a high priority on offering timely and relevant information to case participants, citizens, and employees. To that end, the Agency maintains a citizen-centric website and portal that provides access to these groups, so that they can obtain, maintain and share information. The website and portal also provide access to FOIA-able data and documents online.

In FY 2010, the Agency complied with President Obama's Open Government Directive by creating an "Open Government Page" that features relevant data and documents and by supplying and regularly updating raw data sets to [data.gov](http://data.gov) for researchers and interested parties.

The Agency launched its first mobile application in FY 2010, delivering recent cases, decisions, news, updates, case search and other information about the NLRB to mobile devices. A key component of the mobile service is its direct link to NxGen. This "app" furthers the Agency's commitment to transparency and makes it even easier for those interested in the Agency's work to find the information they're looking for as efficiently as possible.

Following a Supreme Court ruling that the Board was not authorized to decide cases when it had only two members, the Agency made public a database of all contested cases that were decided by the two-member Board. The list of cases, with data from NxGen, includes links to original documents and case status updates that are refreshed in real-time. A full data set of all the cases is also provided in XML format for download.

Lastly, the Agency successfully executed an ambitious plan to link its constituent self-service, E-Filing, and E-Issuance efforts to the NxGen program. This effort provided a solid foundation for the Agency's unified case management vision: to provide better services, more efficient case handling, and greater transparency, while continuing to improve quality.

Moving forward, the Agency plans to debut a new public website and portal in February 2011 and release complementary internal sites the following August. To manage the process, the Agency developed a formal web management structure to give all parts of the NLRB a voice regarding web content and infrastructure while still enabling fast and efficient decision-making.

The Agency's existing website and portal are award-winning and were ahead of their time when launched. However, their look and technology have become dated and limiting. As the Agency moves into a new era of streamlined case management, electronic filing and proactive outreach, the NLRB is seeking to modernize its web presence in form and function. An enhanced website will also be a key ingredient in fostering improved communication throughout the Agency.

The broad vision is of a website that is inviting to the public as well as to labor professionals and employees of the Agency. Key objectives include making the website easy to navigate, easy to search, and easy to update. Also, the intranet and public internet sites will be closely integrated to eliminate inequities between those sites and ensure that updated information need only be posted once.

By updating the infrastructure and integrating new technologies, better tools, and robust search, the Agency's web presence, both internal and external, will become a far more useful resource than it is today.

### **Infrastructure Modernization and Consolidation**

In FY 2006, the NLRB developed and began implementation of an ambitious plan to modernize and consolidate its IT infrastructure. The Infrastructure Modernization and Consolidation program:

- Is foundational to the aforementioned projects and all IT investments planned by the Agency;
- Is a core component of the Agency's contingency plan for the continuity of operations (COOP);
- Allows employees in eligible positions to telecommute on a consistently-available system, enhancing workplace flexibility;
- Improves the Agency's capability to integrate IT security into our enterprise architecture processes; and
- Enables the OCIO to benchmark its organization against other agencies' programs and evaluate potential service providers.

Historically, each of the Agency's 51 Field Offices, located throughout the continental United States, Puerto Rico and Hawaii, used local file servers to support mission-critical applications. Additionally, 17 Field Offices housed shared CATS servers and six Field Offices accommodated distributed email servers.

In FY 2006, the Agency awarded a contract for hosted data center services and began deploying resources to its first data center in Virginia. Among the first resources consolidated in the data center were those supporting E-Government initiatives.

In FY 2009, the OCIO completed consolidating the Field Office file servers into the Virginia data center.

In FY 2010, the OCIO added a second hosted data center in Massachusetts, thereby providing disaster recovery and load balancing functionality. The build-out of this facility also marked the first time that the OCIO and its contractors had access to a test environment that mirrored its production environment.

Also in 2010, the OCIO finished consolidating its two Headquarters and six Field Office email

servers into a single clustered platform at the Virginia center. A similar configuration in the Massachusetts center is provisioned for replacement email services in a disaster recovery scenario.

Taken together, these consolidation efforts significantly strengthen the Agency's continuity of operations plans, provide greater storage capacity and manageability, and afford staff improved access, at work and remotely.

With consolidation, network access to data becomes paramount. The Agency transitioned to services provided by the GSA Network contract in FY 2010, taking advantage of lower data-communications rates and upgrading bandwidth at the Field Offices to support NxGen and other applications that operate across the NLRB's wide area network.

The NxGen program will be fully deployed to Field Offices in FY 2011, thereby removing the requirement to have database servers located in the Field Offices. Consolidation of these servers to the NxGen system and data centers will leave no application-provisioning equipment in the Field Offices and will meet the core objectives first proposed in 2006.

By modernizing and consolidating its IT infrastructure in such a manner, the NLRB is able to provide 7x24x365 service and support, disaster recovery, consolidated storage and robust interconnection within the NLRB and to the public.

### ***Workforce Planning***

The NLRB has always sought to efficiently manage its human resources. The need to attract qualified staff is especially critical to the Agency at this time as, at the end of FY 2010, 43 percent of GS 13-15 supervisors and 81 percent of Senior Executive Service (SES) members in the Agency were eligible to retire.

The NLRB workforce is spread throughout the country, with about 550 employees located in the Washington, D.C. Headquarters, and the remaining 1,180 staff located in 32 Regional Offices, 3 Subregional Offices, 16 Resident Offices, and 3 satellite Judges' offices nationwide. Through its Regional Office field structure, the Agency provides the public with easy access to and direct contact with case-handlers and decision-makers.

To ensure that staff members have the skills needed to accomplish the Agency's mission, with the benefit of the funding provided over the past few years the Agency has enhanced training opportunities and materials for both supervisory and non-supervisory staff. The focus has involved initiatives aimed at developing the following key skill areas:

Technical Training: Development of instructor guides regarding specifics on how to effectuate provisions of the NLRA. Over thirty-five of these are currently being used to provide the introductory and refresher training throughout the Agency. These are complemented by technical training conferences addressing topics such as implementing provisions of the NLRA for new employees, trial advocacy training for attorneys, and refresher training for experienced employees. Legal experts are also brought in to address introductory and advanced Legal



Writing topics.

Supervisory, Managerial, and Executive Training: As part of an Agency-wide management program, managers at all levels annually assess their management skills and training needs. The Agency offers a variety of ways managers can do this, including: a 360 degree assessment/executive coaching program; training for new supervisors; attendance at external private vendor and OPM's Management Development Center and Federal Executive Institute seminars; and on-line training from Harvard and Ninth House. These offerings are supplemented by conferences that address managerial concerns unique to the Agency and details to other offices to acquire experience in dealing with new functional areas and managerial challenges.

Support Staff: On-line training in business skills and development of training designed to enhance grammar. Also, training conferences that include Agency-specific topics such as proper data transfer techniques for the new automated case management system.

General: Training is being presented to address common needs such as e-mail etiquette, mentoring for new employees, EEO/Diversity, and retirement planning. In addition, videoconferencing and on-line technology is being used so training can be delivered nationwide to all employees. Headquarters presentations by special emphasis speakers, experts from academia and short "how to" seminars by internal and external experts can now be shared with Field employees.

Finally, the Agency will be revising its Strategic Plan in FY 2012. 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 Plan was last revised in FY 2007, the performance measures were modified to make them more robust and customer-focused, to better serve our constituents. The end result was the creation of three overarching measures that support the Agency's two strategic goals, and annual targets that support the Agency's long-term goals. In updating the Strategic Plan, the goals and measures will be reviewed to ensure that they remain ambitious, facilitate improved performance, and promote only the most efficient and effective strategies to achieve them.

Any changes to the goals and measures will also be incorporated into the SES Pay for Performance System to show a clear linkage between executive performance and pay, and attainment of our goals. See Section XII for further details regarding Agency goals and performance measures.

## ***Workplace Enhancement***

### *2010 Federal Employee Viewpoint Survey*

The Agency continues to develop innovative approaches to address the concerns reflected in the 2010 Federal Employee Viewpoint Survey and the 2008 Federal Human Capital Survey. In the 2010 survey, the Agency achieved its highest rating in employee willingness to put in the extra effort to get the job done when needed. Employees also rated the Agency highly on knowledge of how work relates to the NLRB's goals and priorities, and belief that the work they do is

important. The latter two areas were rated highly in the 2008 survey, as well. The Agency was also cited as one of the agencies with the most improved job satisfaction rating, improving from 64 percent in 2008 to 70 percent in 2010. On the low end, results from both years show that employees were not satisfied with the Agency's child and elder care programs, and did not believe that creativity and innovation were rewarded.

To address some of these issues, the Agency included the survey results as a featured topic at two separate conferences attended by all levels of management, from first-line supervisor to senior executive. Other key employee viewpoint issues identified include communication problems throughout the Agency -- particularly between senior level managers and the rest of the workforce -- resulting in the perception by employees that their contribution is undervalued and a consensus that creativity is not sufficiently encouraged and rewarded.

Feedback from the conferences was collected and will be used as a basis for proposed employee town hall meetings. The meetings will be an offshoot of efforts started in 2010 to enhance employee viewpoint satisfaction and reinvent the NLRB human capital plan.

### *Wellness Plan*

In assessing the Bottom Ten Responses in the 2010 Federal Employee Viewpoint Survey, satisfaction with the Agency's child care subsidy program was rated significantly lower than the government average. To address this rating, the Agency will be exploring the reasons for the low satisfaction rate and alternatives for how the program can be made more attractive for employees.

Over the next five years, the Agency also plans to address other areas in which it trails other agencies, such as elder care and aging. While the Agency does not have a defined program in these areas, it does plan to implement more outreach and informational seminars by identifying the necessary subject matter experts, and arranging for them to speak to interested employees. In conjunction with these efforts, Agency officials will establish base measurements for participation in order to achieve OPM-recommended guidelines.

In balancing Work and Life, the Agency will be considering making available courses in Effective Parenting, Enriching Relationships, and Elder Care. Participation will be measured by Agency-wide enrollment, and as baselines are established, benchmarks relevant to the OPM percentage requirements will be assessed.

### ***Improved Financial Reporting***

The Agency uses the Department of Interior's National Business Center's Momentum Financial System for its accounting needs, as it provides Web-based functionality and interface capabilities with other systems. The system has allowed the Agency to integrate its accounting, payroll and travel systems to facilitate smoother, more efficient payroll and travel processing. Additionally, the acquisitions module in Momentum has enabled more coordinated, seamless contracting and vendor payments. The integration of these systems and processes has provided the Agency with

consistent and reliable financial data and reporting, and enabled the Agency to continue to meet government financial reporting standards. An upgrade to Momentum scheduled for completion in FY 2011 will further enhance these reporting capabilities.

### *Improper Payment Reductions*

To eliminate improper payments, the Agency is in the process of evaluating third party software that would identify vendors that are on the Do Not Pay list. Currently, this is accomplished through regular, comprehensive review and audit of financial reports.

### *Acquisitions*

The Agency strengthened its acquisition workforce during fiscal years 2009 and 2010, elevating the unit from a section to a branch, hiring an experienced chief, and filling longstanding vacancies with experienced staff. These actions will enable the Agency to identify the acquisition strategies best aligned with specified requirements, negotiate more cost-effective contracts, and minimize competitions resulting in bids that do not meet requirements.

### *Linking Budget and Performance*

The NLRB's annual GPRA Performance Plan is integrated into the budget request to form the basis of the Agency's Performance Budget. Budget priorities are linked to Agency goals and measures to maximize performance and efficiency. As the Agency updates its Strategic Plan in FY 2012, any new goals/measures will continue to be integrated with the budget, to ensure that resources are allocated appropriately and effectively. Section XII of this document provides further details regarding these measures, as well as a discussion of the relationship between GPRA goals and measures, and the amount of resources, both FTE and dollars, that are devoted to them.

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, goals 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. In updating the Strategic Plan in 2012, the Agency will continue these linkages between budget and performance, and performance plans will be revised as necessary to incorporate any new goals/measures.

## **VIII. EXTERNAL FACTORS AND AGENCY GOALS**

Various external factors can affect each goal, objective, and performance measure contained in the NLRB's Strategic and Annual Performance Plans. These factors include the following:

### ***Budget***

The FY 2012 request of \$287.7 million will enable the Agency to support the 1,730 FTE, and associated space, information technology, training, and other activities critical to handling a projected 5 percent increase in case intake in FY 2012. Budget shortfalls have a direct impact on staffing resources, casehandling, and Agency performance. The goals, measures and targets detailed in Section XII assume the \$287.7 million set forth in this request.

### ***Case Intake***

During FY 2010, 23,509 unfair labor practice (ULP) cases were filed with the NLRB, of which 35.6 percent were found to have merit, and 3,044 representation cases were filed, of which the merit factor rate was 68.1 percent. Overall, case intake rose by about 4 percent, driven by a spike in representation cases of 9 percent, along with an increase in ULP cases of 3 percent. Based on projected trends and current law, it is estimated that total ULP and representation case intake will rise 5 percent in each of the next two years, increasing to 27,900 in FY 2011, and again to 29,300 in FY 2012. Of the 29,300 cases, ULPs are estimated to increase to 26,000, while representation cases are expected to total about 3,300.

Several factors could affect case intake, however, thereby impacting the Agency's ability to accomplish 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. For instance, public perception about unionization and the role of the Agency, employment trends, stakeholder strategies, globalization of the economy, industrial economic trends, corporate reorganizations and bankruptcies, the overall health of the nation's economy, and the level of labor-management cooperation efforts, are all factors that could have an impact on the NLRB's intake and the complexity of its work.

Many factors can have an impact on the NLRB's intake and the complexity of its work including

Further, in prior periods, there has been an increase in case intake when there is a new Board. After 27 months of a two-member Board and relatively flat intake, three new Members were seated in 2010, and case intake increased by 4 percent through September 2010. It is anticipated that this trend of increased intake will be sustained through FY 2012.

### ***Settlements***

Currently, of those cases in which merit is found, approximately 95 percent (95.8 percent in FY

2010) are settled without formal litigation. Cases are settled through the Agency's settlement program under which the respondent parties agree to provide a remedy and thereby avoid time-consuming and costly litigation. While the Agency has experienced outstanding success in achieving the voluntary resolution of ULP cases, the settlement rate is not subject to the Agency's control. Disputes cannot always be resolved informally or in an expeditious manner no matter how determined and expert settlement efforts may be. Parties may conclude that litigation serves legitimate or tactical interests. The Agency's procedures provide for administrative hearings, briefs and appeals. When the process becomes formal and litigation ensues, costs increase. The Agency calculates that every 1 percent drop in the settlement rate costs more than \$2 million. Therefore, maintaining high settlement rates promotes performance, efficiency, and cost savings.

### ***Presidential Appointments and Vacancies***

Another factor outside the control of the Agency is prolonged vacancies on the Board. The Board currently has four members, Chairman Wilma B. Liebman, and three members who were seated during the spring/summer of 2010, Board Members Craig Becker, Mark G. Pearce, and Brian E. Hayes. A fifth member, Peter C. Schaumber, departed in late August 2010. Chairman Liebman's term expires in August 2011, while the recess appointment of Member Becker is due to expire at the end of 2011. On January 5, 2011, the President nominated Terence F. Flynn to fill the vacant Board seat, and Lafe Solomon to serve as General Counsel. Solomon has been Acting General Counsel since June 21, 2010.

The chart below shows the appointment and term expiration dates of the current Board members and General Counsel.

**BOARD MEMBERS AND GENERAL COUNSEL**

	<u>Appointed</u>	<u>Term Expiration</u>
Wilma B. Liebman Chairman	8/14/06 <sup>8</sup>	8/27/11
Craig Becker Member	4/5/10	Recess Appointment <sup>9</sup>
Mark G. Pearce Member	4/7/10	8/27/13 <sup>10</sup>
Brian E. Hayes Member	6/30/10	12/16/12
Member (Vacant since 8/27/10)		8/27/15
Lafe E. Solomon Acting General Counsel	6/21/10	

<sup>8</sup> Appointed Chairman on January 20, 2009. Date represents most recent of several appointments.

<sup>9</sup> Member Becker's recess appointment will last until adjournment of Congress in late 2011. On January 26, 2011, the President renominated him for a term that would extend into 2014.

<sup>10</sup> Member Pearce served a recess appointment from 4/7/10 until confirmed by the Senate on 6/22/10.

### *Two-Member Board*

Prior to the appointment of the new members, the Board operated with two members, Chairman Liebman and Board Member Schaumber, for a period of 27 months. During this time, the two members issued nearly 600 decisions. In June, however, the Supreme Court ruled that the two-member Board was not authorized to issue decisions. Since then, dozens of the two-member decisions that had been challenged in federal appellate courts have been returned to the Board for new consideration. Hundreds of others were closed, or are in some stage of litigation or compliance stemming from the original decision. It is unclear how many of those rulings can or will be contested.

### *Potential Effect of Statutory Changes*

This budget submission is based on an assumption that the statute administered by the Agency will remain essentially unchanged and that the Board's mission and operations will continue as before. As a general matter, of course, changes in the law will affect the Agency's operations and could have an effect on case load.

## **IX. PROGRAM EVALUATION**

The Board evaluates whether programs are achieving their GPRA and other performance targets through different techniques and mechanisms. The Board tracks the status of all of its cases on a regular basis to gauge performance against yearly targets that support the Agency's performance measures and strategic goals. A standing committee (Triage Committee) of senior management officials meets weekly to review the status of cases that have entered the issuance process, plus other cases that are likely to require special handling. Triage representatives report back to the Board Members on performance data and staff workload, among other issues. The Board has an electronic case management system that captures all case events in a database from which reports are generated. The Board Members also meet and communicate with each other on a regular basis 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 2010. During that period, the United States Courts of Appeals ruled on Board decisions in 16 enforcement and review cases. In 100% of those cases, the Board's order was enforced or affirmed in full.

The number of cases ruled on by the courts of appeals in FY 2010 was relatively low because most of the cases before the courts of appeals were decided by a two-member Board. As a result of the June 2010 Supreme Court ruling that held that two members were not authorized to issue decisions, in FY 2010 the courts of appeals dismissed or remanded 72 enforcement or review cases for consideration by the Board. The Board, which had four members as of January 2011, has since decided almost all of the returned cases, and those cases are now back before the courts of appeal. Of the two-member cases returned by the courts, including cases returned in both FY

2010 and FY 2011, 92 have been decided by the Board. Of those 92 cases, 80 have gone to court, 69 of which remain pending. Courts have granted summary enforcement in three cases and default judgments in three others, and have dismissed five cases at the request of the parties where the respondent has complied. The remaining 12 cases have not been brought to court.

In a more typical year, the United States Courts of Appeals decide 60-70 enforcement and review cases involving the Board. In FY 2009, they decided 61 such cases, of which 88.5 percent of Board decisions were enforced in full or in part, and 78.7 percent were enforced in full. Another 6.6 percent of enforcement and review cases were remanded entirely.

Further, the General Counsel has had an evaluation program in place for many years to assess the performance of its Regional operations. The Quality Review Program of the Division of Operations-Management reviews ULP, representation, and compliance case files annually to ensure that they are processed in accordance with substantive and procedural requirements, and that the General Counsel's policies are implemented appropriately. Those reviews have assessed, among other things, the quality and completeness of the investigative file, the implementation of the General Counsel's priorities in the areas of representation cases, Impact Analysis prioritization of cases, and compliance with Agency decisions.

Additionally, personnel from the Division of Operations-Management review all complaints issued in the Regions to ensure that pleadings are correct and supported. They also conduct site visits during which they evaluate Regional casehandling and administrative procedures. To assess the quality of litigation, a field and Operations-Management Committee reviews all ALJ and Board decisions that constitute a significant loss to the Agency. 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 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 discussed above, the Office of the General Counsel monitors the litigation success rate before the Board and before district courts with regard to injunction litigation. The success rate before the Board has been approximately 88 percent and before the district courts has been 85 to 90 percent, in whole or in part.

## **X. FISCAL YEAR 2012 PERFORMANCE BUDGET**

The \$287.7 million requested will fund essential staffing, space requirements, long-term investments in IT, casehandling costs, employee development needs, and other operational costs needed to achieve the Agency's mission and goals.

### *Assumptions*

The request is based on the following assumptions:

- Increased case intake will be sustained through FY 2012.
- The statute administered by the Agency remains unchanged.
- Pay freeze in FY 2011 and FY 2012
- Planned performance goals and measures will be met.
- Efforts will continue to minimize backlog.

### *Requirements*

The NLRB's mission – the resolution of labor disputes through investigation, settlement, advocacy and adjudication – relies primarily on skilled and experienced professional employees; accordingly, most of the Agency's budget, about 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 balance 10 percent is allocated among all other operating costs and activities, including IT development, acquisition and maintenance; telecommunications, including leased lines for all field offices; court reporting; case-related travel; witness fees; interpreters; maintenance of current legal research collections; training; and compliance with government-wide statutory and regulatory mandates.



The following table places the FY 2012 performance budget request in the context of resources received or anticipated over the FY 2010 through FY 2012 timeframe:

	FY 2010 Enacted Appropriation	FY 2011 Annualized CR Level	FY 2012 Performance Budget
<b>Funding Level (000s)</b>	\$283,400	\$283,400	\$287,700
<b>Agency FTE</b>	1,685	1,715	1,730

The requested funding of \$287.7 million will enable the Agency to support the 1,730 FTE needed to handle an expected increase in intake in FY 2012 of 10 percent over FY 2010 levels, and 5 percent over the projected FY 2011 level. At 1,730 FTE, the Agency will be at FY 2007 staffing levels, when case intake was 25,600, about 3,700 cases below the 29,300 cases anticipated in FY 2012. Increases in efficiency and performance resulting from the NxGen case management system will enable the Agency to handle more cases with fewer staff, while continuing to provide the high level of service to the public for which the NLRB is known.

The funding will also cover GSA space rent costs and Federal Protective Service security charges that are projected to increase by \$1.4 million over FY 2010 levels, and inflationary costs associated with information technology, court reporting, case-related travel, telecommunications, databases, and other operational requirements. The request includes \$170,000 to cover one FTE and training materials, travel, supplies and other miscellaneous services associated with the Agency's Continuity of Operations Planning (COOP). This will support the required annual COOP exercises, as well as associated training materials and supplies.

### ***Program Activities***

The following table illustrates obligations by program activity. Administrative support costs and FTE are included in the totals for each activity.

	FY 2010 Actual Obligations		FY 2011 Annualized CR Level		FY 2012 Performance Budget	
	\$ Millions	FTE	\$ Millions	FTE	\$ Millions	FTE
<b>Field investigation</b>	\$230	1,295	\$231	1,364	\$234	1,376
<b>ALJ hearing</b>	12	103	12	105	13	106
<b>Board adjudication</b>	24	148	24	155	25	156
<b>Securing compliance with Board orders</b>	15	80	15	84	15	85
<b>Internal review</b>	1	6	1	7	1	7
<b>Total</b>	\$282	1,632	\$283	1,715	\$288	1,730

### *Field Investigation*

The FY 2012 budget request of \$287.7 million would support an increase of 98 FTE and 2,750 cases over FY 2010 levels. Of the 98 FTE, 81 FTE, including trial attorneys, field examiners, and support staff, would be devoted to the additional field investigations resulting from the added caseload. This staffing level would enable the Agency to manage caseload effectively, while minimizing backlogs.

The initial processing and disposition of new case filings in the Field drives the intake for other stages of the casehandling pipeline. Historically, approximately one-third of the cases dismissed by the Regional Directors based on a lack of merit are appealed to the Office of Appeals. The meritorious charges, if not settled, go onto the administrative law judges' trial calendar, and from there a portion are appealed to the Board for final decision. Some cases proceed to the Enforcement Division for Appellate Court review, and some of those may proceed to contempt or other post-enforcement proceedings. While cases are winnowed out at every stage of the pipeline, the rates tend to be constant over time. The primary indicator of overall caseload throughout the process is the rate at which the Field processes new filings.

### *Administrative Law Judges Hearing*

The requested funding anticipates that the number of hearings and judicial decisions issued in the Judges Division will increase in fiscal years 2011 and 2012, so the Agency would add about 3 FTE to the FY 2010 level to accommodate the increased workload.

### *Board Adjudication*

As previously stated, historical trends indicate that case intake will increase when the Board is operating with a full or close-to-full complement of Members. Commensurate with this expectation, by FY 2012, the Agency plans to increase the staff devoted to Board adjudication by 8 FTE over FY 2010 levels.

### *Securing Compliance with Board Orders*

Once the Board has decided a case, the next step in the process is to secure full compliance with Board Decisions and orders. The decisions and orders of the Board require either voluntary compliance or enforcement in the courts. A substantial portion of the Field FTE will be devoted to seeking voluntary compliance, while at Headquarters resources will be allocated to the Division of Enforcement Litigation to continue to seek enforcement of Board orders in the courts. The Agency estimates that the number of cases pending compliance and court litigation will increase slightly between FY 2011 and FY 2012, as the Board deals with a number of "lead" cases currently pending decision. When those decisions are released, other cases involving similar or related issues will be released soon thereafter, resulting in a spike in Board decisional output, in Appellate Court enforcement work, and in compliance work in the regions. To handle

this expected caseload increase, staffing in the compliance and enforcement area would be increased by 5 FTE over FY 2010 levels.

### ***Budget Oversight***

The NLRB prides itself on being a responsible steward of taxpayer dollars. As such, we have conserved funds and maximized our spending flexibility over the years, by imposing strict hiring controls; restructuring and streamlining our workforce to either eliminate positions or fill them at lower grades; consolidating space to reduce rental costs; and monitoring closely IT, travel, and other casehandling and support costs. These practices have enabled us to cover our normal operational requirements, serve our constituents at a high level, maintain labor peace, and achieve our GPRA goals.

### ***Savings Initiatives***

Consistent with past efforts, the Agency is undertaking the following initiatives that will save money, increase efficiency, enhance performance, and enable the NLRB to continue to provide high quality service to the public:

- 1) Data Hosting: In FY 2011, the Agency's data centers contract will be re-competed. As a result, beginning in FY 2012, the Agency will save an estimated \$50,000 per year.
- 2) NxGen Training: With the FY 2011 retirement of the Agency's largest legacy case tracking system – the Regional Offices' Case Activity Tracking System (CATS), NxGen training will be reduced by nearly \$200,000 in FY 2012.
- 3) E-Service and E-Delivery: In FY 2009, the Agency formally launched a project for the electronic issuance and service of final decisions of the Board and its Administrative Law Judges. In FY 2010, the Agency electronically served and delivered 466 decisions to over 31,000 parties who would have otherwise received printed and mailed copies. The estimated printing and postage savings in FY 2010 is \$10,750. These savings are expected to increase significantly when the Regional Offices begin E-Delivery in FY 2011.

## **XI. OFFICE OF THE INSPECTOR GENERAL**

The amount of \$1,177,900 for the Office of Inspector General (OIG) operations was submitted by the Inspector General and was included in this request without change. That amount includes \$15,000 for training of OIG personnel and \$2,820 for support of the Council of the Inspectors General on Integrity and Efficiency (CIGIE). The Inspector General certified to the Chairman that the budget estimate and request would satisfy the training requirements for the Inspector General's office for FY 2012, and any resources necessary to support the CIGIE.

## **XII. STRATEGIC PLAN GOALS AND THEIR RELATIONSHIP TO THE PERFORMANCE BUDGET**

In its Strategic Plan for FY 2007, the Agency changed its measurements of performance to be more outcome-based, better aligned with the mission of the NLRB, and more meaningful to the public. Rather than measure individual segments of the casehandling process, the new approach measures the time taken to process an entire case, from start to finish.

The Agency tracks the total time taken to accomplish three outcomes: To resolve all questions concerning representation; to investigate and process all Unfair Labor Practice (ULP) charges; and to investigate, prosecute, arrange for settlement, or otherwise resolve ULP charges found to have merit. The goal has been to resolve representation matters within 100 days, resolve all ULPs within 120 days, and resolve meritorious ULPs within 365 days.

The Agency exceeded the interim targets for all three performance measures in FY 2010. In recognition of this, the Agency plans to review the annual targets for FY 2011 and FY 2012, assuming funding at the FY 2011 President's request level or above.

There are external factors, however, that could affect the Board's ability to meet its performance measures or the need to revise the Agency's goals. As mentioned, we expect an increase in case intake with a newly constituted Board. As of January 2011, the Board had four members. On January 5, 2011, the President nominated Terence F. Flynn to fill the vacant seat, as well as Lafe Solomon to be the Agency's General Counsel. Solomon is currently serving as the Acting General Counsel. Chairman Liebman's term expires on August 27, 2011.

Described below are the Agency's two major strategic goals and associated objectives, strategies and performance measures.

### **GOAL NO. 1: Promptly resolve questions concerning representation**

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 and goals have been established to better serve our customers and avoid unnecessary delays. The Agency will process representation cases promptly in order to avoid unnecessary disruptions to commerce and 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 cases that involve the core objectives of the Act and are expected to have the greatest impact on the public.
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 regions in resolving representation case issues promptly and fairly.
5. Identify and utilize alternative decision-making procedures to expedite Board decisions in representation cases, e.g., super-panels.
6. Ensure 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 critical workforce skill gaps and address these needs through training and effective recruitment in order to achieve Agency goals.
8. Provide an information technology environment that will equip employees with technology tools and access to research and professional information comparable to that available to their private sector counterparts.

*The success of this goal will be measured by the percentage of representation cases resolved within 100 days of filing the election petition.*

**GOAL #2: Promptly investigate, prosecute and remedy cases of unfair labor practices by employers or unions promptly**

**OBJECTIVES:**

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 fairly and expeditiously investigate charges of unfair labor practice. 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 the 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.

These objectives are to:

- A. Conduct thorough unfair labor practice investigations and issue all unfair labor practice 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 unfair labor practice disputes.

**STRATEGIES:**

- 1. Take proactive steps to disseminate information and provide easily accessible facts and information to the public about the Board's jurisdiction in unfair labor practice matters and the rights and obligations of employers, employees, unions, and the Board under the Act.
- 2. Evaluate the quality of unfair labor practice casework regularly to provide the best possible service to the public.

3. Utilize impact analysis to provide an analytical framework for classifying unfair labor practice 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 unfair labor practice cases to assist regions in resolving unfair labor practice issues promptly and fairly.
5. Emphasize the early identification of remedy and compliance issues and potential compliance problems in merit cases; conduct all phases of litigation, including settlement, so as to maximize the likelihood of obtaining a prompt and effective remedy.
6. Utilize injunctive proceedings to provide interim relief where there is a threat of remedial failure.
7. Emphasize and encourage settlements as a means of promptly resolving unfair labor practice disputes at all stages of the case-handling process.
8. Identify and utilize alternative decision-making procedures to expedite Board decisions in unfair labor practice cases.
9. Analyze and prioritize the critical workforce skill gaps of the Agency and address these needs through training and effective recruitment in order to achieve Agency goals.
10. Provide an information technology environment that will provide NLRB employees with technology tools and access to research and professional information comparable to that available to their private sector counterparts.

***The success of this goal will be measured in two ways: The percentage of unfair labor practice (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; and the percentage of meritorious (prosecutable) ULP cases closed on compliance within 365 days of the filing of the ULP charge.***

## **Relationship of Budget to GPRA Goals**

The charts below show the relationship between the budget, GPRA goals and the related performance measures for each goal. Agency overhead costs, including administrative support costs, were distributed by the percentage of direct costs attributed to that goal and measure. The discussion below the charts reviews the Strategic Plan's goals, objectives, and strategies, and explains their relationship to the performance measures contained in the Annual Performance Plan. In addition, each current performance measure in the Annual Performance Plan, including background information and performance targets, is discussed.

Measure 1, the performance measure associated with Goal 1, focuses on the total time taken to resolve a representation case, from beginning to end, including both the General Counsel and Board sides. Elections result from petitions filed by unions, employees or employers seeking a secret ballot determination as to whether a majority of employees desire union representation. Included in this measure are withdrawals, dismissals, settlements, hearings, and elections, which occur in the Field. Additionally, aggrieved parties may also request a review of Regional decisions by the Board in Washington, DC.

Goal 2 relates to Measures 2 and 3, which address the timely resolution of ULP cases, including time spent by both the General Counsel and Board sides. 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.

**Goal 1—Promptly resolve questions concerning representation**

	FY 2010 Actual		FY 2011 Annualized CR Level		FY 2012 Performance Budget	
	FTE	\$ (mill)	FTE	\$ (mill)	FTE	\$ (mill)
<b>Measure #1: Representation Cases</b>	275	\$47.6	289	\$47.8	292	\$49.0
<b>Subtotal, Goal 1</b>	275	\$47.6	289	\$47.8	292	\$49.0

**Goal 2—Promptly investigate, prosecute and remedy cases of unfair labor practices by employers or unions**

	FY 2010 Actual		FY 2011 Annualized CR Level		FY 2012 Performance Budget	
	FTE	\$ (mill)	FTE	\$ (mill)	FTE	\$ (mill)
<b>Measure #2: ULP charges resolved by withdrawal, by dismissal, or by closing on compliance with a settlement or Board order of Court judgment</b>	904	\$156.3	950	\$157.1	959	\$159.4
<b>Measure #3: Meritorious ULP cases closed on compliance</b>	453	\$78.2	476	\$78.5	479	\$79.3
<b>Subtotal, Goal 2</b>	1,357	\$234.5	1,426	\$235.6	1,438	\$238.7
<b>Total, Goals 1 &amp; 2:</b>	1,632	\$282.1	1,715	\$283.4	1,730	\$287.7

As the measures are discussed, it should be noted that it is difficult for an Agency such as the NLRB to measure “outcomes” in the sense intended by the authors of the Government Performance and Results Act. In the representation case area, for instance, the Agency does not control or seek to influence the results of elections, but strives instead to ensure the rights of employees to freely and democratically determine, through a secret ballot election, whether they wish to be represented by a labor organization. If the Agency concludes that all of the necessary requirements for the conduct of an election have been met, it will either direct an election or approve the parties’ agreement to have an election. The performance measure the Agency has



established for the conduct of elections is objective and is not dependent on the results of the election. The true outcome of properly conducted elections is employees, employers and unions voluntarily and freely exercising their statutory rights as set out in the NLRA.

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

As discussed in Section VII, the Agency plans to revise its Strategic Plan in FY 2012. The new Plan will continue to maintain the strong linkages between performance and budget detailed above.

### **XIII. PERFORMANCE MEASURES EXPLAINED**

#### **Measure #1: The percentage of representation cases resolved within 100 days of filing the election petition**

##### **Background:**

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

An employer, labor organization, or a 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 the parties toward a goal of reaching a voluntary agreement regarding the conduct of an election. If a voluntary agreement is not possible, the parties present their positions and evidence at a formal hearing. The NLRB Regional Director issues a decision after review of the transcript of the hearing and the parties’ legal argument, either dismissing the case or directing an election. If the parties in the case disagree with the Regional Director’s decision, they may appeal that decision to the Board for review. Prompt elections are desirable because an expeditious determination affords employers, employees, and unions a more stable environment and promotes the resolution of industrial disputes.

##### **Definitions:**

*Resolve* -- When a case has been finally processed with no further rights of appeal or administrative action required, the question as to whether or not the labor organization will represent the employees has been finally resolved. Representation cases are resolved in a

number of ways:

- Cases may be dismissed before an election is scheduled or conducted. Dismissals at an early stage in the processing may be based on a variety of reasons, for example, the employer not meeting our jurisdictional standards, the petitioner’s failure to provide an adequate showing of interest to support the petition, and/or the petition being filed in an untimely manner.
- Cases may also be withdrawn by the petitioner for a variety of reasons including lack of support among the bargaining unit and/or failure to provide 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 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.

*Counting of Days* -- The Agency starts counting the 100 days on the date that the petition is formally docketed.

**Performance:**

**Goal 1/Measure 1** – In FY 2010, the Agency closed 86.3 percent of its representation cases within 100 days of the filing of a petition, a 1.9 percent increase over FY 2009’s results.

**Table 1: Goal 1/Measure 1**

<b>Targets for FY 2011 - 2012</b>			
<b>Assumes Continuation of Current Labor Law</b>			
<b>Goal 1: Promptly resolve questions concerning representation</b>			
<b>Measure 1: The percentage of representation cases resolved within 100 days of filing the election petition</b>			
<b>Baseline: 78.0%</b>			
<b>Fiscal Year</b>	<b>Previous Target</b>	<b>Revised Target</b>	<b>Actual</b>
<b>FY 2007</b>	<b>79.0%</b>	<b>--</b>	<b>79.0%</b>
<b>FY 2008</b>	<b>80.0%</b>	<b>--</b>	<b>83.5%</b>
<b>FY 2009</b>	<b>81.0%</b>	<b>--</b>	<b>84.4%</b>
<b>FY 2010</b>	<b>82.0%</b>	<b>85.0%</b>	<b>86.3%</b>
<b>FY 2011</b>	<b>83.5%</b>	<b>85.0%</b>	
<b>FY 2012</b>	<b>85.0%</b>	<b>85.2%</b>	

**The percentage of unfair labor practice (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**

**Background:**

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

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

**Definitions:**

*Resolve* -- The ULP case has been finally processed. The issues raised by the charging party have been answered and, where appropriate, remedied. There is no further Agency action to be taken.

*Counting of Days* -- The 120 days is calculated from the date that the charge is docketed.

**Performance:**

**Goal 2/Measure 2** -- In FY 2010, the NLRB closed 73.3 percent of all ULP cases within 120 days of the docketing of the charge, an increase of 2.3 percent over FY 2009's results.

**Table 2: Goal 2/Measure 2**

<b>Targets for FY 2010 - 2012</b>			
<b>Assumes Continuation of Current Labor Law</b>			
<b>Goal 2: Promptly investigate, prosecute and remedy cases of unfair labor practices by employers or unions</b>			
<b>Measure 2: The percentage of unfair labor practice 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</b>			
<b>Baseline: 66.7%</b>			
<b>Fiscal Year</b>	<b>Previous Target</b>	<b>Revised Target</b>	<b>Actual</b>
<b>FY 2007</b>	<b>67.5%</b>	<b>--</b>	<b>66.0%</b>
<b>FY 2008</b>	<b>68.0%</b>	<b>--</b>	<b>68.0%</b>
<b>FY 2009</b>	<b>68.5%</b>	<b>--</b>	<b>71.0%</b>
<b>FY 2010</b>	<b>69.5%</b>	<b>71.2%</b>	<b>73.3%</b>
<b>FY 2011</b>	<b>70.0%</b>	<b>71.2%</b>	
<b>FY 2012</b>	<b>71.0%</b>	<b>72.0%</b>	

## **The percentage of meritorious (prosecutable) unfair labor cases closed on compliance within 365 days of the filing of the ULP charge**

### **Background:**

This is an overarching, outcome-based performance measure first implemented in FY 2007. The 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 unfair labor practice charge has merit, it is scheduled for a hearing date before an administrative law judge (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 Court 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 or, in extreme cases, in contempt of court proceedings.

### **Definitions:**

*Resolve* -- Cases are closed on compliance when the remedial actions ordered by the Board or agreed to by the party charged with the violation are complete.

*Counting of Days* -- The 365 days is calculated from the date the charge is docketed.

### **Performance:**

**Goal 2/Measure 3** -- In FY 2010, the NLRB closed 84.6 percent of all prosecutable ULP cases in 365 days from the docketing of the charge, an increase of 4.9 percent over FY 2009's results.

**Table 3: Goal 2/Measure 3**

<b>Targets for FY 2010 - 2012</b>			
<b>Assumes Continuation of Current Labor Law</b>			
<b>Goal 2: Promptly investigate, prosecute and remedy cases of unfair labor practices by employers or unions</b>			
<b>Measure 3: The percentage of meritorious (prosecutable) unfair labor cases closed on compliance within 365 days of the filing of the ULP charge</b>			
<b>Baseline: 73.6%</b>			
<b>Fiscal Year</b>	<b>Previous Target</b>	<b>Revised Target</b>	<b>Actual</b>
<b>FY 2007</b>	<b>74.0%</b>	<b>--</b>	<b>73.5%</b>
<b>FY 2008</b>	<b>75.0%</b>	<b>--</b>	<b>76.0%</b>
<b>FY 2009</b>	<b>75.5%</b>	<b>--</b>	<b>79.7%</b>
<b>FY 2010</b>	<b>76.0%</b>	<b>80.0%</b>	<b>84.6%</b>
<b>FY 2011</b>	<b>76.5%</b>	<b>80.2%</b>	
<b>FY 2012</b>	<b>77.0%</b>	<b>80.3%</b>	

The following chart summarizes the features of the performance plan since its implementation:

**2012 ANNUAL PERFORMANCE PLAN  
ASSUMING CONTINUATION OF CURRENT LABOR LAW**

<b>Goal #1:</b>							
<b>Resolve all questions concerning representations promptly</b>	<b>Baseline</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
<b>Measure 1</b>							
The percentage of representation cases resolved within 100 days of filing the election petition	78.0%	Target 79.0%	Target 80.0%	Target 81.0%	Target 85.0%	Target 85.0%	Target 85.2%
		Actual 79.0%	Actual 83.5%	Actual 84.4%	Actual 86.3%		
<b>Goal #2:</b>							
<b>Investigate, prosecute and remedy cases of unfair labor practices by employers or unions promptly</b>	<b>Baseline</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
<b>Measure 2</b>							
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	66.7%	Target 67.5%	Target 68.0%	Target 68.5%	Target 71.2%	Target 71.2%	Target 72.0%
		Actual 66.0%	Actual 68.0%	Actual 71.0%	Actual 73.3%		

<b>Goal #2:</b> <b>Investigate, prosecute and remedy cases of unfair labor practices by employers or unions promptly</b>	<b>Baseline</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
<b>Measure 3</b>  The percentage of meritorious (prosecutable) ULP cases closed on compliance within 365 days of the filing of the ULP charge	73.6%	Target 74.0%  Actual 73.5%	Target 75.0%  Actual 76.0%	Target 75.5%  Actual 79.7%	Target 80.0%  Actual 84.6%	Target 80.2%	Target 80.3%

## **XIV. BOARD MEMBERS AND GENERAL COUNSEL**

Below is information about the terms of the current Presidential appointees of the NLRB.

	<u>Appointed</u>	<u>Term to Expire</u>
Wilma B. Liebman Chairman	8/14/06*	8/27/11
Craig Becker Member	4/5/10	Recess Appointment**
Mark G. Pearce Member	4/7/10	8/27/13
Brian E. Hayes Member	6/30/10	12/16/12
Member (Vacant since 8/27/10)		8/27/15
Lafe E. Solomon Acting General Counsel	6/21/10	Nominated to be General Counsel on 1/5/11

\* Appointed Chairman on January 20, 2009.

\*\*Recess appointment will last until adjournment of Congress in late 2011.  
Renominated on January 26, 2011.



## **XV. BUDGET MATERIALS**

**Appropriations Language**  
**Amounts Available for Obligation**  
**Budget Authority by Object Class**  
**Detail of FTE Employment**  
**Appropriations History**  
**Staffing History**  
**Major Workload and Output Data**

**FY 2012**  
**Proposed Changes in Appropriation Language**

NATIONAL LABOR RELATIONS BOARD

SALARIES AND EXPENSES

For expenses necessary for the National Labor Relations Board to carry out the functions vested in it by the Labor-Management Relations Act, 1947, and other laws, [~~\$283,400,000~~] \$287,699,000: Provided, that no part of this appropriation shall be available to organize or assist in organizing agricultural laborers or used in connection with investigations, hearings, directives, or orders concerning bargaining units composed of agricultural laborers as referred to in section 2(3) of the Act of July 5, 1935, and as amended by the Labor-Management Relations Act, 1947, and as defined in section 3(f) of the Act of June 25, 1938, and including in said definition employees engaged in the maintenance and operation of ditches, canals, reservoirs, and waterways when maintained or operated on a mutual, nonprofit basis and at least 95 percent of the water stored or supplied thereby is used for farming purposes.

Amounts Available for Obligation  
(Dollars in Thousands)

	FY 2010 ACTUALS	FY 2011 ANNUALIZED CR LEVEL	FY 2012 ESTIMATE
Appropriation	\$283,400	\$283,400	\$287,699
Spending authority from offsetting collections 1/	59	60	60
Lapsed Balance in Prior Year	0	0	0
<b>Total Estimated Obligations</b>	<b>\$283,459</b>	<b>\$283,460</b>	<b>\$287,759</b>

1/ Offsetting collections are from federal sources for the Fitness Center Program in Washington and the Judges' Reimbursable Detail Program.

FY 2010 actuals offsetting collections totals \$59,371 which include the following:

Fitness Center Program in Washington - \$10,620

Judges' Reimbursable Detail Program - \$48,751

Budget Authority by Object Class  
(Dollars in Millions)

	2010 ACTUAL	2011 ANNUALIZED CR LEVEL	2012 ESTIMATE
Personnel Compensation:			
Full-time Permanent	169	173	174
Other Than Full-time Permanent	1	1	1
Other Personnel Compensation	0	0	0
<b>Subtotal Personnel Compensation</b>	<b>170</b>	<b>174</b>	<b>175</b>
Civilian Personnel Benefits	42	43	44
Travel and Transportation of Persons	4	4	4
Rental Payments to GSA and Security Payments to DHS	28	31	33
Rent, Communications, and Utilities	6	5	5
Other Services	26	22	22
Supplies and Materials	1	1	2
Furniture and Equipment	5	3	3
<b>Subtotal, Direct Budget Authority</b>	<b>282</b>	<b>283</b>	<b>288</b>
Reimbursables	0	0	0
<b>Total Budget Authority</b>	<b>282</b>	<b>283</b>	<b>288</b>

Detail of Full-Time Equivalent Employment

	FY 2010	FY 2011	FY 2012
	<u>ACTUAL</u>	<u>ANNUALIZED</u> <u>CR LEVEL</u>	<u>ESTIMATE</u>
Executive Level I	0	0	0
Executive Level II	0	0	0
Executive Level III	1	1	1
Executive Level IV	3	4	4
Executive Level V	<u>0</u>	<u>0</u>	<u>0</u>
Subtotal	<u>4</u>	<u>5</u>	<u>5</u>
ES	<u>63</u>	<u>64</u>	<u>64</u>
Subtotal	<u>63</u>	<u>64</u>	<u>64</u>
AL-1	1	1	1
AL-2	4	3	3
AL-3	34	36	36
Subtotal	<u>39</u>	<u>40</u>	<u>40</u>
GS/GM-15	203	207	207
GS/GM-14	494	500	502
GS/GM-13	256	266	269
GS-12	53	57	59
GS-11	80	87	93
GS-10	1	1	1
GS-9	75	85	85
GS-8	53	51	51
GS-7	176	190	192
GS-6	57	58	58
GS-5	69	75	75
GS-4	6	11	11
GS-3	2	11	11
GS-2	0	6	6
GS-1	<u>1</u>	<u>1</u>	<u>1</u>
Subtotal	<u>1,526</u>	<u>1,606</u>	<u>1,621</u>
Full-time Equivalent Usage	<u>1,632</u>	<u>1,715</u>	<u>1,730</u>
Average ES Salary	\$174,093	\$175,834	\$175,834
Average AL Salary	\$164,300	\$164,965	\$164,965
Average GM/ GS Salary	\$94,100	\$96,136	\$96,699

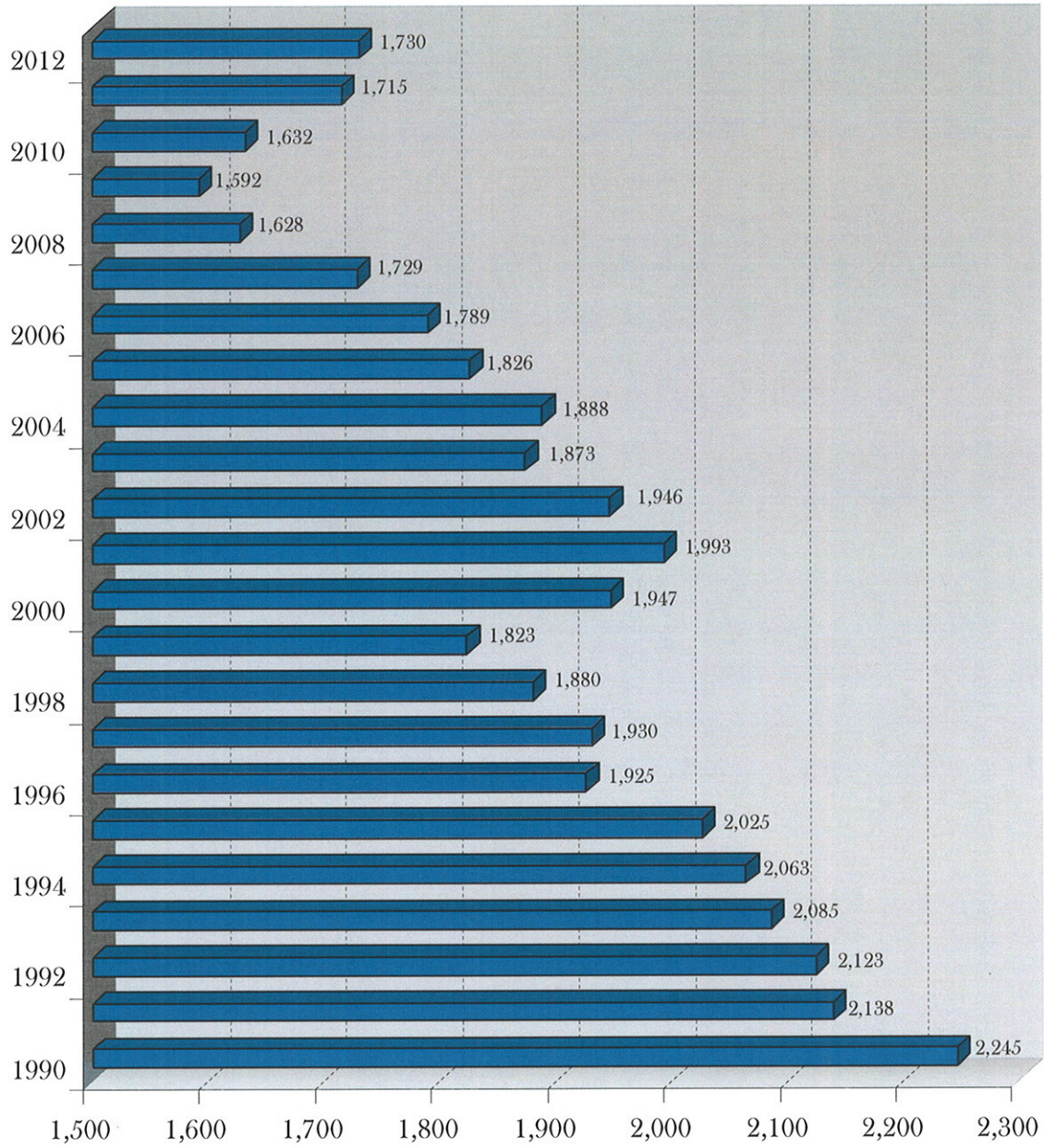
## Appropriations History

Year	Estimate to Congress	House Allowance	Senate Allowance	Appropriation or Continuing Resolution
1979	\$103,012,000	\$102,762,000	\$102,762,000	\$102,762,000
1980	\$113,873,000	\$112,261,000	\$112,261,000	\$112,261,000
1981	\$119,548,000	\$119,548,000	\$119,548,000	\$118,488,000
1982	\$128,336,000	\$125,959,000	\$120,000,000	\$117,600,000
1983	\$133,000,000	\$126,045,000	\$126,045,000	\$126,045,000
1984	\$134,158,000	\$133,594,000	\$134,158,000	\$133,594,000
1985	\$137,964,000	\$137,964,000	\$137,964,000	\$137,964,000
1986	\$130,895,000	\$134,854,000	\$134,854,000	\$129,055,000
1987	\$130,865,000	\$132,247,000	\$132,247,000	\$132,247,000
1988	\$141,580,000	\$139,019,000	\$139,019,000	\$133,097,000
1989	\$138,647,000	\$138,647,000	\$138,647,000	\$136,983,000
1990	\$140,111,000	\$140,111,000	\$140,111,000	\$140,111,000
1991	\$151,103,000	\$151,103,000	\$151,103,000	\$147,461,000
1992	\$162,000,000	\$162,000,000	\$162,000,000	\$162,000,000
1993	\$172,905,000	\$171,176,000	\$171,176,000	\$169,807,000
1994	\$171,274,000	\$171,274,000	\$171,274,000	\$171,274,000
1995	\$174,700,000	\$173,388,000	\$176,047,000	\$175,721,000
1996	\$181,134,000	\$123,233,000		\$170,266,000
1997	\$181,134,000	\$144,692,000		\$174,661,000
1998	\$186,434,000	\$174,661,000	\$174,661,000	\$174,661,000
1999	\$184,451,000	\$174,661,000	\$184,451,000	\$184,230,000
2000	\$210,193,000		\$205,717,000	\$205,717,000
2001	\$216,438,000	\$205,717,000	\$216,438,000	\$216,438,000
2002	\$221,438,000	\$221,438,000	\$226,438,000	\$226,450,000
2003	\$233,223,000		\$231,314,533	\$237,428,592
2004	\$243,073,000	\$239,429,000	\$246,073,000	\$242,632,969
2005	\$248,785,000	\$248,785,000	\$250,000,000	\$249,860,000
2006	\$252,268,000	\$252,268,000	\$252,268,000	\$249,745,000
2007	\$249,789,000	\$249,789,000	\$249,789,000	\$251,507,470
2008	\$256,238,000	\$256,988,000	\$256,988,000	\$251,761,522
2009	\$262,595,207	\$262,595,000	\$262,595,000	\$262,595,000
2010	\$283,400,000	\$283,400,000	\$283,400,000	\$283,400,000
2011	\$287,100,000			\$283,400,000
2012	\$287,699,000			

## Appropriations History -- Footnotes

- 1/ Net \$356,000 rescinded for purchase of furniture, per P.L. 96-304.
- 2/ Reflects rescission of \$1,060,000, per P.L. 97-12.
- 3/ Total amount available under Continuing Resolutions.
- 4/ Reflects reduction of \$3,959,000 for 5% cut in Federal employee pay.
- 5/ Reflects \$5,799,000 reduction, per P.L. 99-177
- 6/ This amount was subsequently reduced by \$641,000 for an across-the-board appropriation travel reduction.
- 7/ Reflects a reduction of 1.2% applied to all discretionary programs, per P.L. 100-436.
- 8/ Reflects reduction of 2.41% applied to all discretionary programs, per P.L. 101-517.
- 9/ Reflects .8 percent across-the-board reduction applied during conference.
- 10/ Reflects government-wide rescission of \$326,000, per P.L. 104-19.
- 11/ The Senate Appropriations Committee recommended \$176,047,000. However, the full Senate never voted on the Labor/HHS Appropriations bill. Funding was provided through the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 104-134).
- 12/ Reflects reduction of \$477,000 per two rescissions in the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 104-134).
- 13/ The Senate Appropriations Committee recommended \$170,266,000. However, the full Senate never voted on the Labor/HHS Appropriations bill. Funding was provided through the Omnibus Consolidated Appropriations Act of 1997, (P.L. 104-208).
- 14/ Reflects reduction of \$339,000 due to across-the-board reductions in conference per Section 519, P.L. 104-208.
- 15/ Reflects reduction of \$221,000, per government-wide rescission (P.L. 106-5).
- 16/ The House Appropriations Committee recommended \$174,661,000. However, the full House never voted on the Labor/HHS Appropriations bill. Funding was provided through the Consolidated Appropriations Act for 2000 (P.L.106-113)
- 17/ Reflects reduction of \$783,000 due to across-the-board reductions in conference, per P.L. 106-113.
- 18/ This total includes a one-time transfer of \$180,000 from the Emergency Response Fund and reflects a rescission amount of \$168,000 as provided under P.L.s 107-117 and 107-206, respectively.
- 19/ The Senate bill initially provided for \$238,223,000 and two amendments reduced all discretionary programs by 2.9%.
- 20/ This total includes a rescission amount of \$1,440,031 as provided under P.L. 108-199.
- 21/ Reflects a .8 percent across-the-board rescission, per P.L. 108-477.
- 22/ Reflects a 1 percent across-the-board rescission, per P.L. 109-148.
- 23/ Reflects an additional \$1,762,150 to cover 50% of the pay increase, as per P.L. 110-5.
- 24/ The Labor/HHS bill was passed by Congress but vetoed by the President. The total reflects the President's Request less a 1.747% rescission, per H.R 2764. Reflects annualized continuing resolution level. No enacted appropriation as of Jan. 2011.
- 25/

# STAFFING HISTORY





## Major Workload and Output Data

	FY 2010 ACTUAL	FY 2011 ESTIMATE	FY 2012 ESTIMATE
<b>1) Regional Offices:</b>			
Unfair Labor Practice (ULP) Cases			
Situations Pending Preliminary Investigation at Start of Year	4,115	4,043	4,093
Case Intake During Year	23,509	24,750	26,000
Consolidation of Dispositions	1,035	1,200	1,300
Total ULP Proceedings	22,546	23,500	24,500
Situations Pending Preliminary Investigation at End of Year	4,043	4,093	4,293
Representation Cases			
Case Intake During Year	3,044	3,150	3,300
Dispositions	3,590	3,698	3,846
Regional Directors Decisions	256	264	274
<b>2) Administrative Law Judges:</b>			
Hearings Pending at Start of Year	251	265	220
Hearings Closed	187	200	215
Hearings Pending at End of Year	265	272	280
Adjustments After Hearings Closed	9	10	10
Decisions Pending at Start of Year	65	49	55
Decisions Issued	204	220	234
Decisions Pending at End of Year	49	51	53
<b>3) Board Adjudication:</b>			
Contested Board ULP Decisions Issued	263	276	290
Contested Representation Election Decisions Issued	53	56	59
<b>4) General Counsel - Washington:</b>			
Advice Pending at Start of Year	73	69	76
Advice Cases Received During Year	604	642	674
Advice Disposed	608	635	674
Advice Pending at End of Year	69	76	76
Appeals Pending at Start of Year	344	456	567
Appeals Received During Year	2,148	2,250	2,363
Appeals Disposed	2,037	2,138	2,245
Appeals Pending at End of Year	456	567	685
Enforcement Cases Received During Year	164	150	155
Enforcement Briefs Filed	22	65	75
Enforcement Cases Dropped or Settled	101	45	46
Enforcement Consent/Summary	38	40	41

## **XVI. PROGRAM MATERIALS**

**Exhibit A: Types of NLRB Cases**

**Exhibit B: Organization Chart**

**Exhibit C: Basic Procedures in Cases Involving Charges of Unfair Labor Practices**

**Exhibit D: NLRB Order Enforcement**

**Exhibit E: Outline of Representation Procedures Under Section 9c**

TYPES OF NLRB CASES

1. CHARGES OF UNFAIR LABOR PRACTICES (C CASES)

Charges Against Labor Organization

Charge Against Labor Organization and Employer

Section of the Act	Section of the Act	Section of the Act	Section of the Act	Section of the Act	Section of the Act	Section of the Act	Section of the Act
CA	CB	CC	CD	CE	CF	CG	CH
8(a)(1) To interfere with, restrain, or coerce employees in exercise of their rights under Section 7 (to join or assist a labor organization or to refrain).	8(b)(1)(A) To restrain or coerce employees in exercise of their rights under Section 7 (to join or assist a labor organization or to refrain).	8(b)(4)(i) To engage in, or induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce, to engage in a strike, work stoppage, or boycott, or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object is: (A) To force or require any employer or self-employed person to join any labor organization or to enter into any agreement prohibited by Section 8 (e). (B) To force or require any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or force or require any other employer to recognize or bargain with a labor organization as the representative of its employees. (C) To force or require any person to pay or attempt to pay or agree to pay money or other things of value for services which are not performed or not to be performed.	(C) To force or require any employer to recognize or bargain with a particular labor organization as the representative of its employees if another labor organization has been certified as the representative. (D) To force or require any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another trade, craft, or class, unless such employer is failing to conform to an appropriate Board order or certification.	8(g) To strike, picket, or otherwise concertedly refuse to work at any health care institution without notifying the institution and the Federal Mediation and Conciliation Service in writing 10 days prior to such action.	8(b)(7) To picket, cause, or threaten the picketing of any employer where an object is to force or require an employer to recognize or bargain with a labor organization as the representative of its employees, or to force or require the employees of an employer to select such labor organization as their collective-bargaining representative, unless such labor organization is currently certified as the representative of such employees. (A) where the employer has lawfully recognized any other labor organization and a question concerning representation may not appropriately be raised under Section 9(c). (B) where within the preceding 12 months a valid election under Section 9(c) has been conducted, or (C) where picketing has been conducted without a petition under Section 9(c) being filed within a reasonable period of time not to exceed 30 days from the commencement of the picketing; except where the picketing is for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, and it does not have an effect of interference with deliveries or services.	8(e) To enter into any contract or agreement (any labor organization and any employer) whereby such employer ceases or refrains or agrees to cease or refrain from handling or dealing in any product of any other employer, or to cease doing business with any other person.	CE

2. PETITIONS FOR CERTIFICATION OR DECERTIFICATION OF REPRESENTATIVES (R CASES)

By an Employer

By or in Behalf of Employees

By or in Behalf of Employees

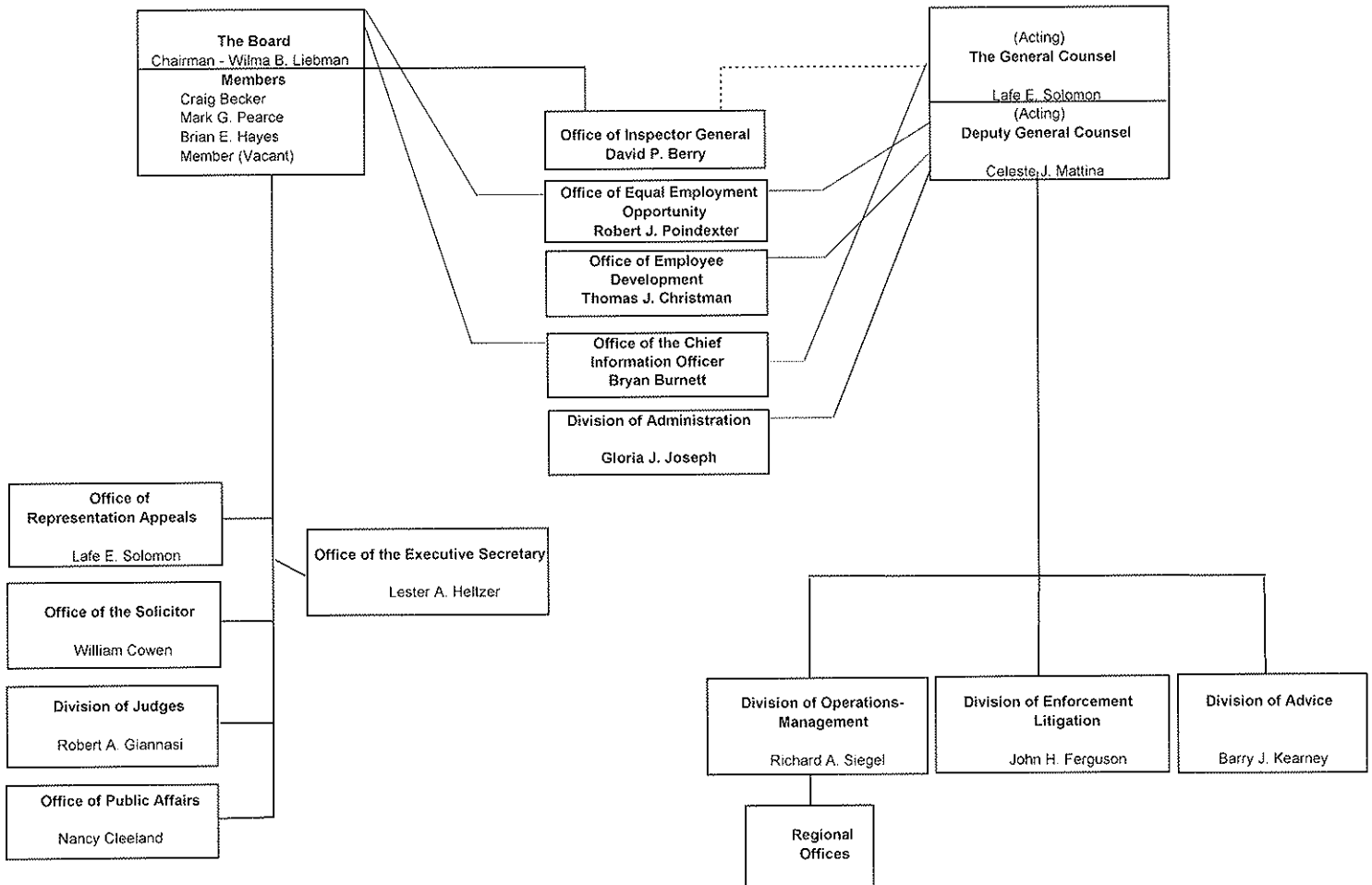
By a Labor Organization or an Employer

Section of the Act	Section of the Act	Section of the Act	Section of the Act	Section of the Act	Section of the Act	Section of the Act	Section of the Act
RC	RD	RE	RF	RG	RH	RI	RJ
9(c)(1)(A)(i) Alleging that a substantial number of employees wish to be represented for collective bargaining and their employer declines to recognize their representative.	9(c)(1)(A)(ii) Alleging that a substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.	9(c)(1)(B) Alleging that one or more claims for recognition as exclusive bargaining representative have been received by the employer.	9(e)(1) Alleging that employees (30 percent or more of an appropriate unit) wish to rescind an existing union-security agreement.	Subpart C Seeking clarification of an existing bargaining unit.	Subpart C Seeking amendment of an outstanding certification of bargaining representative.	AC	AC

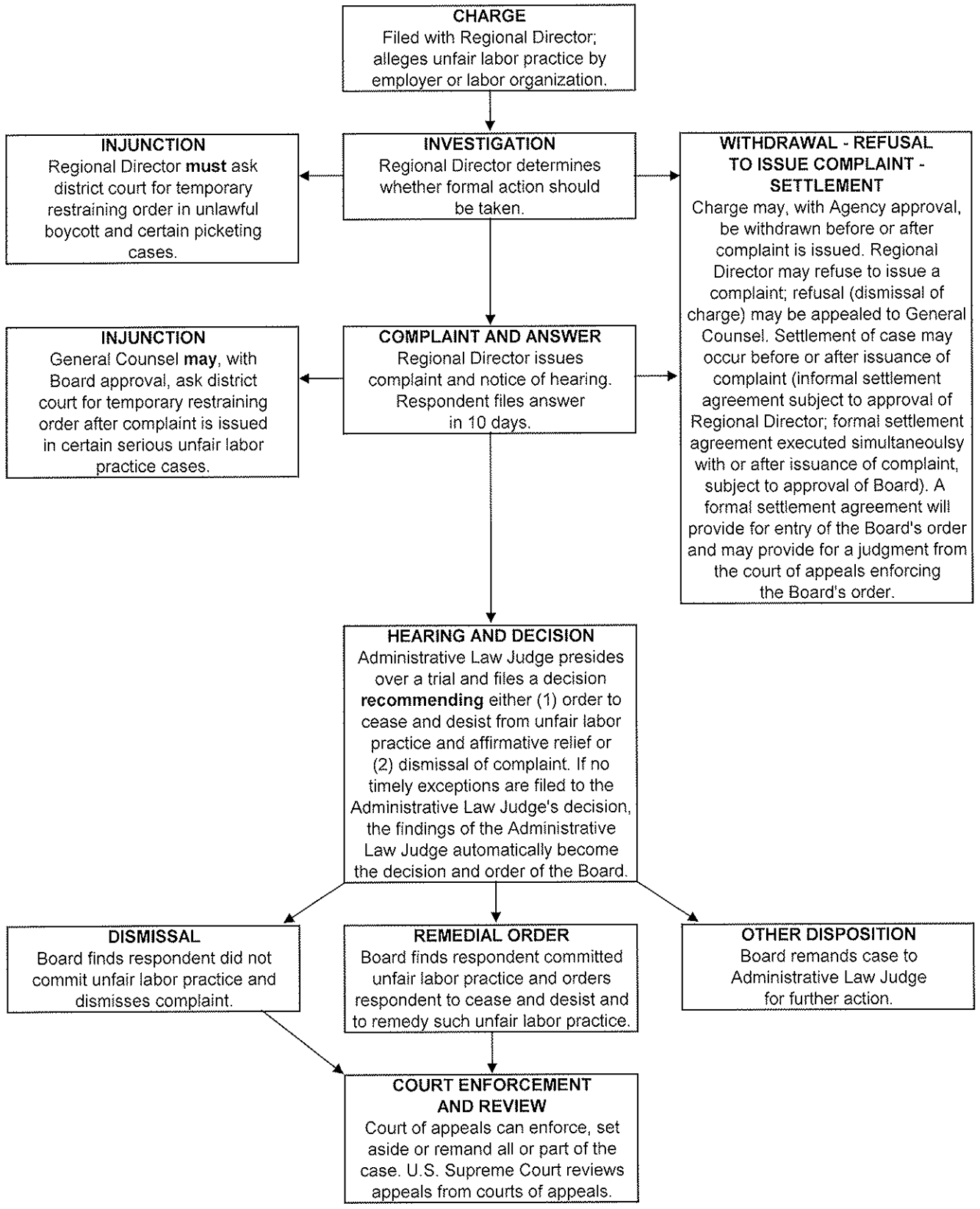
\* If an 8(b)(1) charge has been filed involving the same employer, these statements in RC, RD, and RE petitions are not required.  
Charges filed with the National Labor Relations Board are letter-coded and numbered. Unfair labor practice charges are classified as "C" cases and petitions for certification or decertification of representatives as "R" cases. This chart indicates the letter codes used for "C" cases and "R" cases, and also presents a summary of each section involved.

# NATIONAL LABOR RELATIONS BOARD

## ORGANIZATION CHART

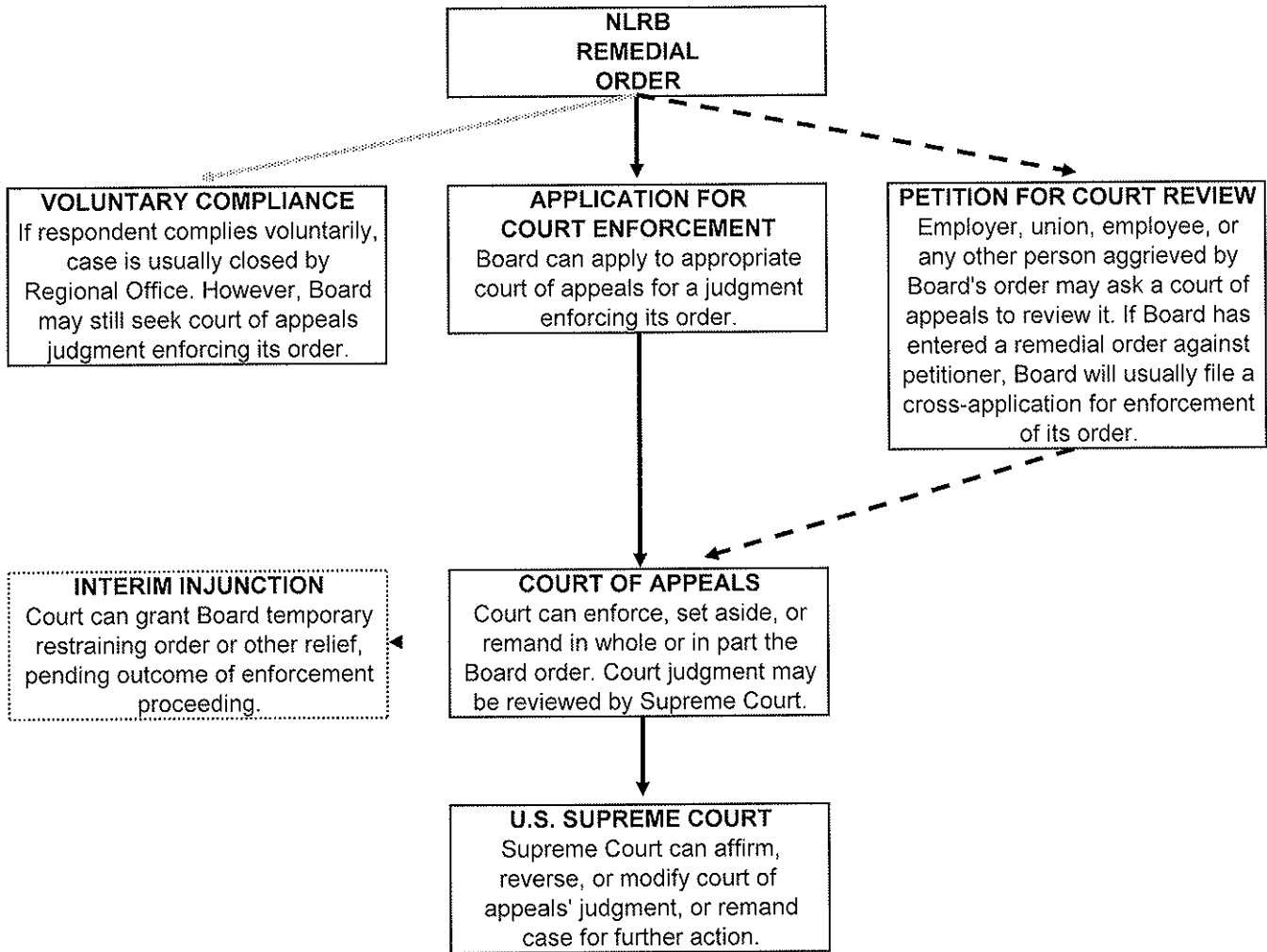


**NATIONAL LABOR RELATIONS BOARD**                      **EXHIBIT C**  
**BASIC PROCEDURES IN CASES INVOLVING CHARGES OF UNFAIR LABOR PRACTICES**



# NLRB ORDER ENFORCEMENT CHART

EXHIBIT D



OUTLINE OF REPRESENTATION PROCEDURES UNDER SECTION 9(c)

