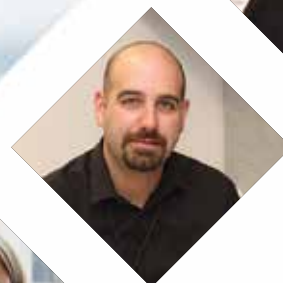


NATIONAL LABOR RELATIONS BOARD

# FY2016

PERFORMANCE AND ACCOUNTABILITY REPORT



Protecting Democracy in  
the Workplace Since 1935

# HOW THIS REPORT IS ORGANIZED

**This Performance and Accountability Report (PAR) consists of the following sections**

---

## **Management's Discussion and Analysis**

The Management's Discussion and Analysis (MD&A) Section provides an overview of our mission, organization, mission-related goals, performance and financial and system highlights as well as the National Labor Relations Board's (NLRB's) operational and casehandling highlights for FY 2016. The MD&A also contains an analysis of financial statements and a discussion of compliance with legal and regulatory requirements, such as the Federal Managers' Financial Integrity Act (FMFIA).

---

## **Performance**

The Performance Section compares the NLRB's performance to its strategic goals as set forth in the FY 2014 to FY 2018 Strategic Plan. The Strategic Plan includes two mission-related goals and two support goals to help achieve the Agency's mission and vision. The performance measures associated with the mission-related goals are outcome-based. The Agency has several outcome-based performance measures for the support goals combined with those that are management strategy driven to ensure alignment with the mission and needs of the customer. This is the third year that the NLRB is reporting its performance under the new goals.

---

## **Financial**

The Financial Section is composed of the NLRB's financial statements, their related footnotes, and the Independent Auditors' Report.

---

## **Other Information**

Other Information provides the performance and management challenges identified by the Inspector General in this fiscal year, and the NLRB's summary of audit and management assurances which details the Agency's review of compliance with the Improper Payments Elimination and Recovery Improvement Act (IPERIA). For an update on the Board's progress in addressing management and performance challenges from FY 2015 please see <https://www.nlrb.gov/reports-guidance/reports/oig-semiannual-reports>

---

## **Appendices**

Appendix A lists the acronyms cited throughout this report, Appendix B is a glossary of terms cited throughout this report, Appendix C presents historical performance data and Appendix D represents the complete strategic goal structure.

An electronic version of the NLRB FY 2016 Performance and Accountability Report is available on the NLRB's website at <https://www.nlrb.gov/>.

The NLRB's Strategic Plan is also available at this website along with graphs and data which reflect the NLRB's work.

---

# CONTENT

Message From The Chairman .....	3
Board Members .....	5
Message From The General Counsel .....	6
2016 Year in Review .....	9
Agency Operations .....	9
Collaborative Efforts .....	10
Public Information Program .....	12
FY 2016 Statistical Highlights .....	13
<b>MANAGEMENT'S DISCUSSION AND ANALYSIS .....</b>	<b>15</b>
<b>About the NLRB .....</b>	<b>16</b>
The National Labor Relations Act .....	16
The National Labor Relations Board .....	16
Statutory Structure .....	17
<b>Organization .....</b>	<b>19</b>
<b>Casehandling Functions .....</b>	<b>20</b>
Unfair Labor Practice Proceedings .....	20
Representation Proceedings .....	21
Compliance Proceedings .....	22
Administrative Functions .....	22
<b>Casehandling Highlights .....</b>	<b>23</b>
<b>Performance Highlights .....</b>	<b>26</b>
<b>Financial and Systems Highlights .....</b>	<b>28</b>
Operational/Performance Highlights .....	28
Systems .....	29
Analysis of Financial Statements .....	31
Limitations of Principal Financial Statements .....	32
<b>Compliance With Laws And Management Assurances .....</b>	<b>33</b>
Antideficiency Act .....	33
Debt Collection Improvement Act .....	33
Digital Accountability and Transparency Act .....	33
Federal Information Security Management Act .....	34
Government Charge Card Abuse Prevention Act .....	34
Improper Payments Information Act .....	34
Prompt Payment Act .....	34

Federal Managers' Financial Integrity Act .....	34
Statement of Assurance .....	37
Keeping Pace With Changes In The Economy.....	40
<b>PERFORMANCE.....</b>	<b>41</b>
Program Performance.....	42
Performance Goals and Objectives.....	42
Measuring Performance .....	42
Factors Affecting Agency Performance.....	54
Case Intake .....	54
Settlements .....	54
Board Member Terms .....	54
Potential Effect of Statutory/Rulemaking Changes .....	54
Reliability Of Performance Data .....	55
Program Evaluation.....	55
<b>FINANCIAL SECTION .....</b>	<b>57</b>
A Message From The Chief Financial Officer .....	58
Independent Auditor's Report.....	60
NLRB Response To Audit Report .....	75
Principal Financial Statements .....	76
Notes To Principal Statements.....	80
<b>OTHER INFORMATION .....</b>	<b>93</b>
Inspector General's Top Management & Performance Challenges .....	94
Summary Of Audit And Management Assurances .....	97
Improper Payments Information Act.....	98
Do Not Pay (DNP) Initiative .....	99
Freeze The Footprint.....	100
<b>APPENDICES.....</b>	<b>101</b>
Appendix A - Acronyms .....	102
Appendix B - Glossary .....	104
Appendix C - Historical Performance Measures .....	107
Appendix D - Goal Structure .....	123

# MESSAGE FROM THE CHAIRMAN

October 13, 2016

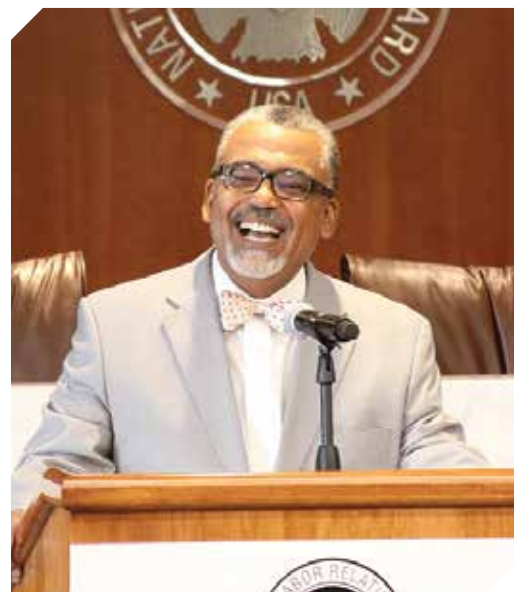


In our fast-paced, ever-changing economy, guaranteeing a seat at the table for all remains critical. The NLRB continues to safeguard this most basic principle of democracy in the workplace. This annual report outlines the Agency's work to protect the rights of workers, promote stability in labor-management relations, and be a good steward of taxpayer funds.

The National Labor Relations Act (NLRA) guarantees the right of private sector workers with or without a union to engage with their employers to improve wages and conditions of employment. The Act affords employers and employees alike with certain protections aimed at encouraging meaningful collective bargaining. It also provides an impartial forum for the resolution of unfair labor practices (ULPs) – the Board.

This Agency takes seriously its duty to effectively enforce the Act and its responsibility to the taxpayers to be careful and efficient in spending public funds.

In FY 2016, the Board issued 335 decisions in contested cases – 295 ULP cases and 40 representation cases.





In the spirit of transparency and open government and in response to requests from the public, the Agency has continued recent efforts to provide timely case information online, making this information more accessible and easier to search. I am pleased with the significant advances the Agency has made in this area.

The Act's protections are meaningful only if workers know their rights and how to assert them. In the same vein, employers and unions must know their obligations and protections. That is why the NLRB continues to expand outreach efforts to worker, labor, and management communities nationwide.

As Chairman, I am pleased to report that management's assessment of risks and review of controls disclosed no material weaknesses and that I have made every effort to verify that the financial and performance data presented in this report is reliable and complete. A more detailed discussion of the Agency's internal controls can be found starting on page 28 of this report.

A handwritten signature in black ink, appearing to read "Mark Gaston Pearce".

**Mark Gaston Pearce**  
Chairman



---

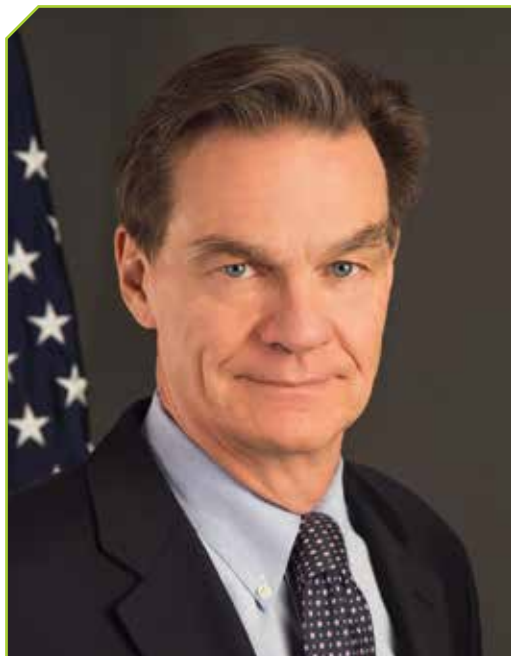
## BOARD MEMBERS



**From Left to Right: Board Member Philip A. Miscimarra, Chairman Mark Gaston Pearce, and Board Member Lauren McFerran**

# MESSAGE FROM THE GENERAL COUNSEL

October 13, 2016



More than 5.7 million employers are covered by the National Labor Relations Act (NLRA), which guarantees private-sector workers the right to seek to address their collective workplace concerns. Specifically, with or without union representation, workers have the right to organize, bargain collectively, and participate in activities with one another to improve their pay and working conditions. Our job at the NLRB is to safeguard that right by (1) preventing and remedying ULPs committed by employers and unions, and (2) conducting secret-ballot elections to determine whether or not employees want union representation.

This FY 2016 report outlines the Agency's casehandling, administrative, financial and outreach accomplishments, demonstrates excellent management of resources, and addresses current and future challenges.

## CASEHANDLING

As General Counsel, my Office oversees the investigation and prosecution of ULP charges, as well as the processing of representation case petitions filed with our 26 Regional and 23 satellite offices across the nation. I also serve as the Agency's chief administrative officer. Now more than ever it is critical to put and keep the right people in place and give them the right tools to do the job that taxpayers expect and deserve.

I take seriously our duty to ensure that each case filed with the Agency is processed fairly and expeditiously. Our network of field offices is staffed by approximately 1,000 dedicated public servants, who perform effective and efficient casehandling work each and every day. In FY 2016, our case intake was in excess of 23,850 cases, which was a significant increase from the prior fiscal year's total.

The NLRB is charged with protecting workers rights in an ever-changing economy, making it incumbent upon the Agency to comprehensively review evolving employer-employee relationships when cases are brought before us. For that reason, the General Counsel regularly identifies priority issues for centralized consideration via submission to the Division of Advice. This fiscal year, these issues included: whether an employer's permanent replacement of economic strikers had an unlawful motive under *Hot Shoppes*, 146 NLRB 802 (1964); the application of *Purple Communications*, 361 NLRB No. 126 (2014) to electronic systems other than email; make-whole remedies for construction industry applicants or employees who sought or obtained employment as part of an organizing effort; "English-only" policies; the employment status of workers in the on-demand economy; and questions about the misclassification of employees as independent contractors. As new legal issues arise, the Agency will continue to investigate and review cases to ensure that the protections of the NLRA keep pace with changes in the economy. Notably, this fiscal year, the Board agreed with our suggested analysis in a number of priority matters, including: *Miller & Anderson*, involving petitioned-for user and supplier employees in one bargaining unit; *King Soopers*, involving compensation for discriminatees' search-for-work and work-related expenses; *United States Postal Service*, involving Administrative Law Judge's (ALJ's) issuance



---

of a consent order upon respondent's agreement to less than a full remedy over the objections of Counsel for the General Counsel and the charging party; and *Columbia University*, involving graduate student teaching and research assistants' status as statutory employees.

I am very proud of our field offices' efforts to assist parties in settling short of litigation. Once again, our settlement rate exceeded 90 percent, thereby promoting industrial peace and saving taxpayer dollars. I am equally proud of the field offices' litigation efforts this fiscal year, including in the high-profile and multi-Regional cases involving McDonald's, Wal-Mart, and Community Health Services. Further, in addition to its usual excellent performance in the courts of appeal, our Division of Enforcement Litigation did an admirable job working with the Solicitor General's office to file two petitions for certiorari with the Supreme Court: *S.W. General*, seeking review of the DC Circuit's decision that my predecessor could not legally perform the duties of the Office after his nomination based on its interpretation of the Federal Vacancies Reform Act, and *Murphy Oil*, seeking to have the Court uphold the Board's decision that an employer cannot, as a condition of employment, maintain mandatory arbitration agreements with individual employees that bar them from pursuing work-related litigation on a class or collective basis in any forum, arbitral or judicial.

### **ADMINISTRATIVE**

As reported last fiscal year, the Agency's Headquarters relocated and reduced its footprint by 30 percent garnering significant savings on rent and security. This fiscal year, the Agency took steps to also reduce its footprint in some Regional Offices and plans to continue that effort in FY 2017. Similarly, as reported last year, the Agency took advantage of the Headquarters' relocation to consolidate existing data, voice, video and wireless into one unified communication system. This fiscal year, the Agency expanded that effort to field offices, allowing for remote access, enhanced real-time collaboration, expeditious and paperless communications, and lowering of overall costs. We have also invested in USA Performance, a new performance management reporting system.

### **FINANCIAL**

The Agency fully understands the importance of using its resources efficiently. This fiscal year, the Office of the Chief Financial Officer engaged in a more in-depth level of program review with the organizational units and was able to construct a more specific line item spend plan for regular consideration by me and the Chairman. This process allows for funding transparency and improved, timely execution of transactions. This significantly more detailed engagement is designed to assure that the Agency's financial and performance data is reliable and complete.

### **OUTREACH**

The issues before the Agency are ones that, for decades, have been debated with passion and engendered enormous differences of opinion. As General Counsel, I have made every effort to speak and, more importantly, to listen to the concerns and interests of all parties. From guidance memoranda to speaking engagements, I have sought to assure that we provide access to ample information about casehandling initiatives and procedures, and about legal developments at the Agency.

Educating the public about our statute and our Agency is a priority for me. That is why, during my tenure, the Agency has continued to expand our outreach program. This fiscal year, our social media presence continued to grow and we revamped the front page of the Agency's website to make it easier for individuals to access, in short order, information of interest to them. Further, website enhancements this fiscal year improved e-filing capabilities and on-line FOIA request forms.

We have also engaged in intra- and inter-agency collaborative efforts to better educate and serve the public, and particularly, vulnerable worker populations. For example, our Agency's Cultural Enhancement Program has continued to assist with recruiting and retaining a culturally diverse workforce, able to identify with the populations we serve. This fiscal year, the Agency also developed training materials and a network of

immigration coordinators nationwide to assist with outreach and casehandling matters dealing specifically with immigrant populations. We have also continued to collaborate with the Department of Labor (DOL), the Equal Employment Opportunity Commission (EEOC) and the Department of Justice (DOJ). One such joint effort – as a part of the White House initiative to reach out to Asian American Pacific Islander (AAPI) communities – has been to engage in listening sessions with AAPI groups and to develop a broad-based worker.gov website that employees can more easily navigate, enabling quick access to agency information specific to their workplace concerns. This fiscal year, the Agency also continued to reach out to foreign embassies/ministries/consulates to promote the education of workers and business owners, and 13 field offices entered into local agreements with Mexican consulates.

## **CONCLUSION**

As General Counsel, I remain committed to an open, fair, and transparent process here at the Agency. I appreciate and encourage constructive relationships with representatives of both management and labor who appear before the Agency. I enjoy working with all of the Agency's extraordinarily able employees to fulfill our mission of protecting workplace rights and providing the highest quality service to the public.

A handwritten signature in dark ink, appearing to read "Richard F. Griffin, Jr.", is shown on a light-colored background.

Richard F. Griffin, Jr.  
General Counsel

---

# 2016 YEAR IN REVIEW

## AGENCY OPERATIONS

### General Counsel Memos

The General Counsel issued three memos; two to the field offices and one to both Headquarters and the field offices to provide policy guidance. The three memos are available to the public at: <https://www.nlrb.gov/reports-guidance/general-counsel-memos>

#### **Memorandum GC 16-01: Mandatory Submission to the Division of Advice**

This memo outlines the types of cases and issues of particular interest that would benefit from centralized consideration. Not all cases need to be processed with guidance from Headquarters. An outline of cases that should be submitted to the Division of Advice in Headquarters include:

- Matters that involve General Counsel initiatives and/or priority areas of the law and labor policy
- Difficult legal issues that are relatively rare in any individual region and issues where there is no governing precedent or the law is in flux
- Casehandling matters that have traditionally been submitted to the Division of Advice.

For more information about this memo, please see page 40.

#### **Memorandum GC 16-02 (Revised)<sup>1</sup>: Report on the Midwinter Meeting of the ABA Practice and Procedure Under the National Labor Relations Act Committee of the Labor and Employment Law Section**

The General Counsel attended the Annual Midwinter meeting of the Practice and Procedure Under the NLRA Committee (P&P Committee) of the American Bar Association (ABA) Labor and Employment Law Section with several senior Agency managers. A primary purpose of the meeting is to discuss Committee concerns and to respond to questions about Agency casehandling processes. At the Midwinter meeting, members of the Committee shared their appreciation for the constructive relationships enjoyed by the local P&P groups with individual Regional Offices. The memo encouraged employees to facilitate exchanges where they do not exist and to continue to broaden relationships where they do.

The memo then presented the questions posed to the Agency and the Agency's responses on the following topics:

- ULP Issues: Statistics, Section 10(j) Injunctions, Deferral, Investigative Subpoenas, Access to Information
- GC Memo 15-04: Report of the General Counsel Concerning Employer Rules <https://www.nlrb.gov/reports-guidance/general-counsel-memos>
- *Noel Canning*
- Time Targets
- General Case Processing Issues: Remedies and Representation Cases, including Statistics, Election Rules, and Joint Employer.

#### **Memorandum GC 16-03: Seeking Board Reconsideration of the Levitz Framework**

This memo outlines the new procedure that Regions should follow after making a determination to issue complaint alleging that an employer has violated Section 8(a)(5) by unlawfully withdrawing recognition from an

---

<sup>1</sup> This memorandum was revised to include an additional *Spruce Up* case that was inadvertently omitted from the list.

incumbent union absent objective evidence that the union actually had lost majority support. The procedure includes pleading an alternative theory of violation in the complaint and incorporating model arguments into briefs submitted to ALJs and the Board.

The model argument asks the Board to require that employers utilize board representation procedures to fairly and efficiently determine where their employees' exclusive bargaining representative has lost majority support. The memo outlines the *Levitz Furniture Co.* case and how the framework the Board created to encourage employer use of RM elections, did not yield the results that the Board anticipated and intended. The memo goes on to list reasons as to why the Board should exercise its discretion to modify its standard to hold that, absent an agreement between the parties, an employer may lawfully withdraw recognition from its employees' Section 9(a) representative based only on the results of an RM or RD election.

### **Compliance Conference**

The Agency hosted, at Headquarters, the FY 2016 Compliance Conference for all supervisors, compliance officers and compliance assistants. The theme was Compliance: Making a Difference. Training sessions highlighted the initiative on consequential economic harm and how to address compliance issues involving the Affordable Care Act, Immigration, financial protocols, and 401K and Pension Benefits, along with practical training on online investigative software searches, using the Agency's backpay and excess tax calculators, and working with financial documents. These are just a few of the topics fully discussed at the conference to assist Regional Compliance Teams in achieving remedial relief agreed to in settlements or ordered by an ALJ or the Board or court.

### **Trial Advocacy Institute**

The Agency conducted a Trial Advocacy Institute, attended by 88 field attorneys and 9 Headquarters attorneys. The program utilized small, instructor-intensive group workshops to develop and refine trial skills, including: pretrial preparation, handling subpoena issues, witness preparation, direct and cross-examination, use of documentary evidence, rebuttal testimony, and application of the Federal Rules of Evidence. There were 10 groups. Each had 4 instructors and around 10 student attorneys. Each student attorney was filmed several times during the week while examining a witness in a hypothetical case. After each examination, the instructors in the workshop provided the student attorney immediate feedback. The student attorney and another instructor then reviewed the recording in another room and discussed the examination in more depth. Throughout the course of the week, the program addressed nearly every critical aspect of trial practice, including: preparation, opening statements, direct and cross-examination, examination of adverse witnesses during one's case-in-chief, and handling exhibits. The instructor-intensive group workshops formed the core of the program, supplemented by large group presentations giving examples of opening statements and adverse witness examination, instructor tips on trial practice and strategy, and presentations regarding subpoenaing and managing electronically stored information, the interplay between administrative trials and federal court preliminary injunction proceedings, and legal ethics issues commonly arising in NLRB trial practice.

## **COLLABORATIVE EFFORTS**

### **The White House Initiative on Asian Americans and Pacific Islanders (WHIAAPI)**

The WHIAAPI Vulnerable Workers Project Interagency Working Group (IWG) has been engaging in listening sessions with AAPI communities around the country. The IWG consists of representatives from the DOJ, DOL, EEOC and the NLRB. The initiative works collaboratively with the White House Office of Public Engagement to increase AAPI participation in many programs related to education, commerce, business, health, housing, environment, labor and employment, transportation, immigration and economic and community development.

---

The Vulnerable Workers Project goals are for federal agencies to: (i) gather information about the specific employment and labor issues that the AAPI workforce encounters in high-risk and low-wage industries; (ii) educate AAPI communities about their federal civil rights and labor protections; and (iii) operationalize the information obtained in the listening sessions into strategic enforcement and policy priorities of the federal agencies.

Agency personnel participated in five White House AAPI-sponsored events at four locations in FY 2016: Glenview IL, Elgin IL, Seattle WA, and San Jose CA. NLRB and other US governmental participants listened to workplace issues that members of the national communities were encountering and provided information about accessing protections under the NLRA and other local, state and federal laws through a panel discussion. Volunteer pro bono attorneys were also present at some of the sessions to provide advice. Many attendees did not speak English, so communications were conducted with simultaneous interpretation.

### **Workers.gov**

In May 2016, the NLRB joined with the DOL, the EEOC, the DOJ, and the Occupational Safety and Health Administration (OSHA) in a partnership to develop a one-stop website to help educate workers on their rights and to put them into contact with the Agency best suited to meet their specific needs. Developed by the Presidential Innovation Fellows (PIF), Workers.gov is a step towards consolidating the labor law knowledge base into a format that is more easily accessible by the public, especially those in vulnerable groups that may be apprehensive about seeking help from agencies or who may have difficulty navigating multiple federal website littered with technical information in order to find information relevant to their issues. The website is centered on the idea that workers do not distinguish between different types of rights they have. Instead they focus on a specific issue that they are having and are seeking answers pertaining to that issue. The website seeks to allow the worker to craft his/her own path by providing information relevant only to the worker's specific field and identified issue. Subsequently, the website provides the worker with access to filing a charge and educates the worker on the process as simply as possible.

The NLRB contributed to the project on an ongoing basis by providing requested data and information and reviewing several iterations of the website. Since the website was to be based around user groups, the Agency provided information regarding customer experiences with the NLRB in addition to violations of the NLRA for





which the workers are seeking guidance. The developers worked with the NLRB's Congressional and Public Affairs Office (CPAO), as well as similar offices at other agencies, to assist with outreach about the website to organizations and individuals who may benefit from its use.

### **Local Agreements**

In FY 2016, 13 NLRB field offices entered into local agreements with area Mexican consulates designed to bolster cooperation and outreach to Mexican communities. The agreements are an outgrowth of the collaboration that has existed for many years between local NLRB offices around the country and the network of Mexican consulates in major American cities. Local agreements have proved helpful as a means by which NLRB agents and consular officials can collaborate to reach out to Mexican workers and business owners to explain their rights and obligations under the Act.

## **PUBLIC INFORMATION PROGRAM**

The Agency's Public Information Program is one of the critical services provided to employers, unions, and employees. Under this program, in addition to the services provided by the CPAO in Headquarters, Board agents in the field offices provide information directly to individuals or entities that contact the Agency seeking assistance. In FY 2016, the Agency's Regional Offices received 61,660 public inquiries regarding workplace 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 may also contact the Agency through a toll-free telephone service (1-866-667-NLRB) designed to provide easy and cost-free access to information. Callers hear messages recorded in English and Spanish that provide a general description of the Agency's mission, contact information for other government agencies, and connections to the Regional Offices in closest geographic proximity. In FY 2016, the toll-free telephone service received 34,997 calls.

Public outreach is encouraged and has been embraced at all levels of the Agency. Over the past few years, the Board Members, General Counsels<sup>2</sup>, Regional Managers, and Board agents participated in numerous speaking engagements at events sponsored by law schools, the American Bar Association, the Chamber of Commerce, and various employer, union and worker advocacy groups. Agency representatives also engaged in outreach events involving other federal agencies, business organizations, workers' rights centers, human resources professional groups, and labor organizations to educate them on the NLRA and the role of the NLRB as an impartial enforcement. Further, Regional Offices publish newsletters and participate in televised or radio public talk shows.

As part of the Agency outreach to communities with limited English proficiency, in addition to the bilingual toll-free telephone service for inquiries, the NLRB employs language assistants and contracts with service providers whose job is to provide interpretation and translation services in various languages to assist our field office casehandling. The public website contains Agency publications about the NLRA and its processes, which are translated into Spanish, Chinese, Creole, Korean, Russian, Somali and Vietnamese. The number of electronic document templates available in Spanish continues to increase and the database of translated representation case notices and ballots has expanded to include 31 languages. Also, an Agency film about representation case processing has been recorded for the benefit of the Spanish-speaking community. Finally, the Agency has teamed up with other federal agencies in conducting listening sessions among the Asian American and Pacific Islander community to educate them about the rights of workers and to listen to their concerns regarding treatment at their workplaces and confusion about our processes.

<sup>2</sup> Including former Acting General Counsel Lafe E. Solomon.

---

# FY 2016 STATISTICAL HIGHLIGHTS

- The Board issued 335 decisions in contested cases<sup>3</sup>, 295 ULP cases and 40 representation cases.
- 99.1 percent of all initial elections were conducted within 56 days of filing of the petition<sup>4</sup>.
- Initial elections in union representation cases were conducted in a median of 23 days from the filing of the petition.
- Regional Offices issued 1,272 complaints.
- 93 percent of meritorious ULP cases were settled.
- Regional Offices prevailed in 89 percent of Board and ALJ decisions, which were won, in whole or in part.
- \$52,718,775 was recovered on behalf of employees as backpay or reimbursement of fees, dues, and fines, and 1,648 employees were offered reinstatement.
- The Agency received 61,660 inquiries through its Public Information Program, and 34,997 calls through its toll-free number.
- The Division of Judges closed 208 hearings, issued 204 decisions, and achieved 500 settlements in cases on its trial docket.

---

<sup>3</sup> When the Regional Director's decision on a question concerning representation is challenged by one of the parties.

<sup>4</sup> The performance measure for Goal 2 found on page 27 measures the number of days the petitions filed were processed, and this statistic focuses on cases where an election was directed, stipulated or consented to.



# MANAGEMENT'S DISCUSSION AND ANALYSIS

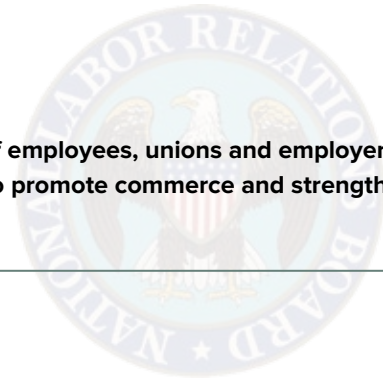


Protecting Democracy in  
the Workplace Since 1935

## ABOUT THE NLRB

### MISSION STATEMENT

Protecting workplace democracy and the rights of employees, unions and employers under the National Labor Relations Act, in order to promote commerce and strengthen the Nation's economy.



### THE NATIONAL LABOR RELATIONS ACT

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

### THE NATIONAL LABOR RELATIONS BOARD

The NLRB is an independent federal agency created in 1935 to administer and enforce the NLRA by conducting secret-ballot elections among employees to determine whether or not the employees wish to be represented by a union; and by preventing and remedying statutorily defined ULPs by employers and unions.

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

In its 81-year history, the NLRB has counted millions of votes, investigated hundreds of thousands of charges, and issued thousands of decisions. These numbers tell an important part of the Agency's story. Specific data on the following components of the Agency's work can be found on the NLRB's web site <https://www.nlrb.gov/>:

- Charges and Complaints – Data related to charges of ULPs received by Regional Offices and their disposition over time, including withdrawals, dismissals, complaints, and settlements
- Petitions and Elections – Data related to petitions for representation, decertification, unit amendment and clarification, and rescission of union security agreements received by Regional Offices, elections held, and outcomes
- Decisions – Data related to decisions by the Board and NLRB ALJs
- Litigation – Data related to litigation by Board attorneys in federal court, including petitions for temporary injunctions, defending Board decisions in court, and pursuing enforcement, contempt and compliance actions
- Remedies – Data related to remedies obtained to resolve ULPs, including backpay and offers of reinstatement



## EMPLOYEE RIGHTS UNDER THE NLRA

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

### Under the NLRA, employees have the right to:

- Form, or attempt to form, a union among the employees of an employer.
- Join a union whether the union is recognized by the employer or not.
- Assist a union in organizing employees.
- Engage in protected concerted activity. Generally, “protected concerted activity” is group activity that seeks to improve wages or working conditions in a particular workplace.
- Refuse to do any or all of these things. However, the union and employer, in a state where such agreements are permitted, may enter into a lawful union-security clause requiring employees to pay union dues and fees.

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

## STATUTORY STRUCTURE

Agency leadership consists of six presidential appointees – five Board Members (including the Chairman) and the General Counsel. Day-to-day management of the Agency is divided by law, delegation, and Agency practice between the Chairman, the Board, and the General Counsel. The Board and the General Counsel maintain a Headquarters in Washington, D.C., and the Agency also maintains a network of Regional<sup>5</sup> (“Field”) offices and two satellite Judges’ offices. 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. A map depicting the Regional Offices can be found at: <https://www.nlr.gov/who-we-are/regional-offices>

<sup>5</sup> Including Subregional and Resident Offices.

## THE FIVE-MEMBER BOARD

The five-member Board primarily acts as a quasi-judicial body, deciding cases on the basis of formal records in administrative proceedings. Board Members are appointed by the President with the advice and consent of the Senate, and serve staggered five-year terms.<sup>6</sup> The President designates one of the Board Members as Chairman. Board Member Mark Gaston Pearce was designated Chairman on August 28, 2011, and again on August 2, 2013.

<sup>6</sup> Even though Board Members have five-year-terms, a new five-year term begins running immediately upon the expiration of the previous Member’s term and the seat remains vacant until an individual is nominated and confirmed by the Senate. Therefore, a significant lapse of time could occur between when a term expires and a new Board Member is confirmed, which means that a new Board Member might serve only a portion of a five-year term.

Since the term of Board Member Hirozawa expired in August, the Agency currently has three Board Members.

### THE GENERAL COUNSEL

Congress created the position of General Counsel in its current form in the Taft-Hartley Act of 1947. The General Counsel is appointed by the President to a four-year term, with Senate consent, and is responsible for the investigation and prosecution of ULP cases and for the general supervision of the NLRB Regional Offices, as well as of the administrative, financial and

human capital operations of the Agency. In performing delegated functions, and in some aspects statutorily assigned functions, the General Counsel acts on behalf of the Board.

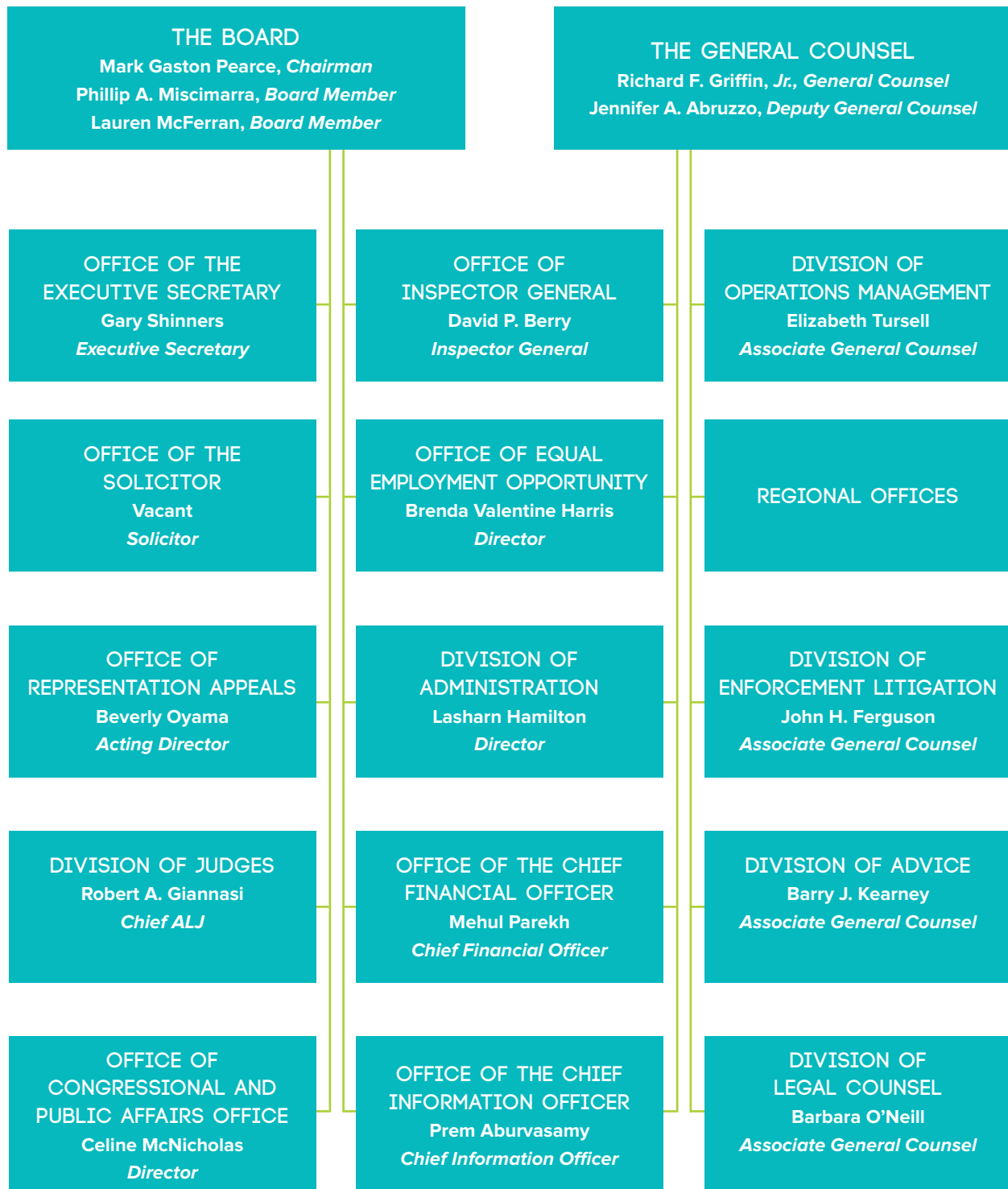
However, with respect to the investigation and prosecution of ULP cases, the General Counsel has sole prosecutorial authority under the statute, independent of the Board. Richard F. Griffin, Jr., was nominated by the President for General Counsel and appointed to a full four-year term on November 1, 2013.

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

	Sworn In	Term to Expire
<b>Mark Gaston Pearce</b> Chairman	4/7/2010	8/27/2018
<b>Philip A. Miscimarra</b> Member	8/7/2013	12/16/2017
<b>Lauren McFerran</b> Member	12/17/2014	12/16/2019
<b>Richard F. Griffin, Jr.</b> General Counsel	11/4/2013	10/31/2017



# ORGANIZATION



## CASEHANDLING FUNCTIONS

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

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

The two mission-related goals of the NLRB are:

- Promptly and fairly investigate, prosecute, and resolve ULPs under the NLRA
- Promptly and fairly resolve all questions concerning representation of employees

### UNFAIR LABOR PRACTICE PROCEEDINGS

The NLRA contains a code of conduct for employers and unions, and regulates that conduct in ULP proceedings which are remedied through adjudicatory procedures under the NLRA.

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

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



of exceptions. The Board decides cases on the basis of the formal trial record, according to the statute and the body of case law that has been developed by the Board and the federal courts.

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

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

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

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

## REPRESENTATION PROCEEDINGS

In contrast to ULP proceedings, representation proceedings conducted pursuant to the Act are not adversarial<sup>7</sup>. Representation proceedings involve investigating questions concerning employee representation. Representation cases are initiated by the filing of a petition—by an employee, a group of employees, a labor organization acting on their behalf, or in some cases by an employer. Typically the petitioner requests an election to determine whether a union has the support of a majority of the employees in an appropriate bargaining unit and therefore should be certified as the employees' bargaining representative. The role of the Agency in such cases is to investigate the petition and conduct a secret-ballot election, if appropriate, addressing challenges and objections to the election subsequently, and thereafter issuing a certification.

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

<sup>7</sup> Unlike ULP hearings where violations of the statute are litigated in an adversarial proceeding, representation case hearings are fact-finding proceedings regarding questions concerning representation.





### COMPLIANCE PROCEEDINGS

In order to obtain compliance with the Board's orders and settlement agreements, the General Counsel's staff must follow up to ensure that the results of the processes discussed above are enforced. NLRB staff deals with employees whose rights have been violated to calculate backpay, and works with respondents regarding notice postings, reinstatement of workers, disciplinary record expungement, backpay, withdrawal of unlawful rules or policies, and other remedies. Since Board orders are not self-enforcing, noncompliance or disputes on findings may require additional hearings or actions in the courts.

### ADMINISTRATIVE FUNCTIONS

Section 3(d) of the Act assigns the General Counsel supervision over all attorneys employed by the Agency, with the exception of the ALJs, the Solicitor, the Executive Secretary and the attorneys who serve as counsel to the Board Members. The Board has also delegated to the General Counsel general supervision over the administrative, financial and personnel functions of the Agency.

## CASEHANDLING HIGHLIGHTS

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

The NLRB acts only on those cases brought before it and does not initiate cases. While charges must be filed with the Agency to begin an investigation, if merit is found to the charge allegations, the Regional Director has delegated authority from the General Counsel to issue complaint, absent settlement.

All proceedings originate with the filing of charges or petitions by employees, labor unions, or private employers engaged in interstate commerce. During fiscal year 2016, the public filed 21,326 ULP charges of which 37.1 percent were found to have merit. Also, in FY 2016, the NLRB received 2,537 representation petitions, including 2,387 petitions to conduct secret-ballot elections in which workers in appropriate units select or reject unions to represent them in collective bargaining with their employers (RC, RD, and RM), as well as 50 petitions for elections in which workers voted on whether to rescind existing union-security agreements (UD). The NLRB didn't receive any petitions seeking amendment (AC), and received 92 petitions seeking clarification of an existing bargaining unit (UC), as well as 8 Wage and Hour (WH) cases.

The NLRB strives to create a positive labor-management environment for the nation's employees, unions, and employers by assuring employees' free choice on union representation and by preventing

and remedying statutorily defined ULPs. The NLRB maintains a citizen-centered and results-oriented philosophy to best serve the needs of the American people.

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

### **King Soopers, Inc., 27-CA-129598**

The issue in this case is how the Board should handle compensation for employees who were unlawfully fired and who incurred expenses in connection with seeking a new job. Under Board precedent, discharged employees have a duty to look for new work, but previously received no compensation for their related expenses if they failed to find a job or if they earned less in their new job than their total search-for-work and interim employment expenses.

The Board majority in *King Soopers* held that this result is inconsistent with the goal of fully compensating unlawfully fired employees for their losses, and revised its standard make-whole remedy. Going forward, fired workers whose search-for-work and interim employment expenses exceed their interim earnings will be able to be fully reimbursed for those expenses.

### **Historical Casehandling Data**

Case Type	2012	2013	2014	2015	2016
Unfair Labor Practices Charges Filed	21,629	21,394	20,415	20,199	21,326
Unfair Labor Practices Merit Factor	36.4%	35.2%	36.5%	37.8%	37.1%
Representation Case Intake	2,646	2,652	2,677	2,882	2,537
RC, RD, and RM	2,484	2,507	2,512	2,666	2,387
UD	79	69	72	57	50
AC	14	6	11	7	0
UC	69	63	74	83	92
WH	9	7	8	9	8

**Columbia University, 02-RC-143012**

A Board majority determined in *Columbia University* that student assistants working at private colleges and universities are statutory employees covered by the NLRA.

The Union filed an election petition seeking to represent both graduate and undergraduate teaching assistants, along with graduate and departmental research assistants at *Columbia University* in December 2014. The Regional Director dismissed the petition based on a 2004 Board decision, *Brown University*, which held that student teaching assistants were not statutory employees.

Overruling *Brown University*, the Board majority found that the Act's definition of "employee" is broad, that the student assistants working at the direction of the University had an employment relationship, and that permitting the student assistants to choose whether they desire union representation furthers the Act's goal of encouraging collective bargaining.

**Miller & Anderson, Inc., 04-RC-079249**

The issue in this case is how to treat a bargaining unit consisting of employees who are solely employed by one employer and employees who are jointly employed by that employer and one or more other employers.

The Union filed a petition to represent employees in a unit consisting of both jointly employed and solely employed employees of a single user employer. The Regional Director dismissed the petition based on the fact that neither the supplier employer nor the user employer consented to the combined unit as required by *Oakwood Care Center*, 343 NLRB 659 (2004).

The Board found merit to the Petitioner's request for review and overruled *Oakwood*, returning to the holding of *M.B. Sturgis, Inc.*, 331 NLRB 1298 (2000), where the Board held that employer consent is not required in units that combine jointly and solely employed employees of a single user and that, in such units, the Board will apply the traditional community of interest factors to decide if such units are appropriate. The majority reasoned that *Sturgis* is consistent with Section 9(b) of the Act, and that it effectuates fundamental policies of the Act that *Oakwood* frustrates.

**Loomis Armored US, Inc., 32-CA-025316 et al.**

This case addresses the circumstances under which an employer can withdraw recognition from a "mixed-guard" union (a union that has both security guards and non-guards as members) after it has voluntarily recognized the union as the unit's bargaining representative. Here, the Employer, relying on the Board's decision in *Wells Fargo Corp.*, 270 NLRB 787 (1984), withdrew recognition from four unions following the expiration of the parties' collective-bargaining agreements without any showing of actual loss of majority support for the unions.

In this case, the Board overruled *Wells Fargo Corp.*, finding that requiring an employer of guards (like other employers covered by the Act) to show loss of majority support before withdrawing the recognition it had previously chosen to give to a mixed-guard union is more in keeping with the Act's goals of promoting stable bargaining relationships and protecting employees' right to their choice of representation while still preserving the employer's right initially to withhold such recognition where the employer perceives a potential conflict of interest between guard and non-guard employees. However, because of decades-old precedent relied on by the employer that permitted withdrawal of recognition, the Board decided not to apply its decision to pending cases and accordingly dismissed the complaint in this case.

**American Baptist Homes of the West, d/b/a Piedmont Gardens, 32-CA-025247 et al.**

A Board majority found in this case that the Employer violated Section 8(a)(3) and (f) of the Act by permanently replacing striking employees. Applying the rule set forth in *Hot Shoppes*, the majority held that the General Counsel is not required to show that an employer was motivated by an unlawful purpose extrinsic to the strike, but only that the hiring of permanent replacements was motivated by a purpose prohibited by the Act. The majority then determined that the Employer's stated reasons for permanently replacing workers, which was to punish the strikers and the Union and to avoid future strikes, both constituted evidence of an "independent unlawful purpose."

**Guardsmark, LLC, 05-RC-143199**

Following a mail-ballot election, the Employer alleged that it was improperly prohibited from holding a mass campaign meeting on the morning ballots

were scheduled to be mailed. The Regional Director recommended that this objection be overruled and a Board majority agreed. In so doing, the Board overruled *Oregon Washington Telephone*, 123 NLRB 339 (1959), which held that the mass-meeting prohibition begins when the ballots are scheduled to be mailed by the Regional Director. The Board majority found instead that prohibiting captive-audience speeches by parties within the 24-hour period prior to the mailing of the ballots more closely aligns the mail-ballot rule with the manual-ballot rule established in *Peerless Plywood Co.*, 107 NLRB 427, 429 (1953), which prohibit such speeches within the 24-hour period prior to the start of a manual election.

**Whole Foods Market, Inc., 01-CA-096965 et al.**

Reversing the administrative law judge, a Board majority found that the Employer violated Section 8(a)(1) by maintaining two rules prohibiting employee recording in the workplace without prior approval by management. The Board found that the rules, which unqualifiedly prohibit all workplace recordings, were overbroad and would reasonably be construed by employees to prohibit activity protected by the Act.

**SolarCity Corp., 32-CA-128085**

This case involves an employer's maintenance and enforcement of an agreement that required its employees to waive their rights to maintain class or collective actions in all forums, arbitral or judicial. Affirming the administrative law judge's application of *D. R. Horton, Inc.*, 357 NLRB No. 184 (2012), and *Murphy Oil USA, Inc.*, 361 NLRB No. 72 (2014), the Board found that both the maintenance and the enforcement of the policy at issue violated Section 8(a)(1) of the Act.

Deciding the issue for the first time, a Board majority rejected the Respondent's argument that the agreements in this case are lawful because, unlike those in *D. R. Horton* and *Murphy Oil*, they contain an exception permitting employees to file employment claims or charges with federal administrative agencies, such as the EEOC, DOL and the NLRB, thereby providing employees an adequate forum to pursue class or collective employment claims. The majority explained that the exception in the Agreements that permits the filing of claims or charges with administrative agencies does not satisfy the requirement of an alternative judicial forum under *D. R. Horton* and *Murphy Oil* because: (1) there is a wide range of employment-related claims

that are not within the purview of any administrative agency; (2) even if the administrative agency has the authority to pursue employees' claims, it typically also has the discretion to decline to do so—thus, access to the agency is not access to a forum for adjudication; and (3) unlike a court, administrative agencies like the EEOC and DOL cannot adjudicate employment-related claims.

**NLRB v. SW General, Inc., dba Southwest Ambulance (S.Ct. No. 15-1251)**

On April 6, 2016, the Board filed with the Supreme Court a petition for certiorari seeking to reverse a ruling of the United States Court of Appeals for the District of Columbia Circuit denying enforcement of the Board's order on the ground that, under the Federal Vacancy Reform Act, the Board's Acting General Counsel could not legally perform the duties of the office at the time the complaint was issued and prosecuted because he had been nominated by the President to fill the office on a permanent basis. The Court has granted the petition and scheduled oral argument for November 7, 2016.

**NLRB v. Murphy Oil USA, Inc., et al. (S.Ct. No. 16-307)**

On September 9, 2016, the Board filed with the Supreme Court a petition for certiorari to review a decision of the United States Court of Appeals for the Fifth Circuit. The Board seeks to have the Court uphold the Board's rule, first announced in *D.R. Horton, Inc.*, 357 N.L.R.B. 2277 (2012), *enforcement denied in part*, 737 F.3d 344 (5th Cir. 2013), that an employer violates Section 8(a)(1) of the Act by maintaining arbitration agreements with individual employees that bar them from pursuing work-related claims on a collective or class basis in any forum, arbitral or judicial, because such agreements limit the employees' right under the Act to engage in concerted litigation. Contrary to the position of the employer and the Fifth Circuit below, the Board has found that such agreements are not shielded from NLRA liability by the Federal Arbitration Act (FAA), because their illegality under the NLRA renders them unenforceable under the saving clause of the FAA. The Second, Fifth, and Eighth Circuits have rejected the Board's position, whereas the Seventh and Ninth Circuits have agreed with the Board. Private-party petitions seeking review of decisions from Second, Seventh, and Ninth Circuits are also pending in the Supreme Court. Although the Board was not a party in any of those cases, it participated as *amicus curiae* (friend of the court) in each.

## PERFORMANCE HIGHLIGHTS

The Board and the General Counsel share a common goal of ensuring that the NLRA is fully and fairly enforced. Although they have separate statutory functions, representatives from the Board and the General Counsel work together in developing the comprehensive Strategic Plan and the Performance and Accountability Report. The NLRB's Strategic Plan was updated in FY 2014 and covers FY 2014 to FY 2018.

The NLRB's Strategic Plan states the Agency's strategic goals, objectives, initiatives, performance measures, and management strategies. There are two mission-related goals, and two support goals. The majority of the support goals are management strategy based and will be discussed at length in the Performance Section of this report.

The NLRB's performance measurement system has been highly regarded for decades and modeled by other agencies to track case processing times. Most of the data collected tracks the time spent at each step of the case processing "pipeline." The Agency does not rely on any outside sources for the data used in its performance management system. Each NLRB office is responsible for collecting and verifying performance measurement data. All of the NLRB's mission-related offices have fully integrated to the NxGen system, which allows for real-time review of all case file materials and for consistent data reporting.

The mission-related goals are compiled using the Agency's NxGen Case Management system. This is an enterprise-wide database used by all divisions of Agency. Each division, including Headquarters and Regions, has data integrity reports which help isolate data errors. The Division of Operations-Management oversees the Regional offices which

compile 75 percent of the case-related statistics. Every quarter, Regions are required to run various data integrity reports in NxGen and report their findings to the Division of Operations- Management for review. For more information on the program evaluation please see page 55.

The NLRB's mission-related goals represent the core functions of the Agency in its enforcement of the NLRA. Rather than focus on the individual segments of the casehandling process, the performance measures for these goals focus on the time it takes to process an entire case, from start to finish. They are outcome-based and align with the mission of the NLRB. The NLRB tracks the total time taken to accomplish the following: the processing of all ULP charges; the resolution of those ULP charges found to have merit; and the resolution of all questions concerning representation.

The Performance Measures for Strategic Goal 1 address the timely resolution of ULP cases, including time spent on the case by Field and Headquarters Offices. On an annual basis, there are typically more than six times as many ULP cases than representation cases. Both types of cases often involve complicated issues for Regions to address.

The Performance measure for Strategic Goal 2 focuses on the time taken to resolve a representation case, from beginning to end, including time spent on the case by Field and Headquarters Offices. In representation cases, elections result from petitions filed by unions, employees, or employers seeking a secret ballot determination as to whether a majority of employees support union representation.



**STRATEGIC GOAL 1 (MISSION)**

Promptly and fairly investigate, prosecute, and resolve unfair labor practices under the National Labor Relations Act.

**Performance Measure**

The percentage of meritorious ULP charges resolved by settlement or compliance with a Board Order or Court judgment within 365 days of the filing of the ULP charge.

**Performance Measure**

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

**STRATEGIC GOAL 2 (MISSION)**

Promptly and fairly resolve all questions concerning representation of employees.

**Performance Measure**

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

**GOAL 1 PERFORMANCE MEASURE:**

The percentage of all meritorious ULP charges resolved by settlement or compliance with a Board Order or Court judgment within 365 days of the filing of the ULP charge.

Year	Annual Goal	Actual Performance
FY 2014	82.5%	83.9%
FY 2015	82.5%	80.4%
FY 2016	82.6%	82.7%
FY 2017	82.7%	
FY 2018	82.8%	

**GOAL 1 PERFORMANCE MEASURE:**

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

Year	Annual Goal	Actual Performance
FY 2014	72.3%	72.3%
FY 2015	72.3%	70.6%
FY 2016	72.4%	70.8%
FY 2017	72.4%	
FY2018	72.5%	

**GOAL 2 PERFORMANCE MEASURE:**

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

Year	Annual Goal	Actual Performance
FY 2014	85.3%	88.1%
FY 2015	85.4%	87.1%
FY 2016	85.5%	87.6%
FY 2017	85.7%	
FY2018	85.8%	

## FINANCIAL AND SYSTEMS HIGHLIGHTS

### OPERATIONAL/PERFORMANCE HIGHLIGHTS

The Office of the Chief Financial Officer (OCFO), comprised of the Budget, Acquisition Management and Finance Branches, reports directly to the Chairman and General Counsel. This structure integrates and enhances Agency financial management. Specifically, the OCFO focuses on effectiveness and efficiency in financial operations, reliability of financial reporting, transparency of financial data, and compliance with applicable laws and regulations.

The OCFO continuously seeks to infuse more discipline, structure, and internal control in the financial management lifecycle and throughout the financial management process. Upon an assessment of the operational needs of the Agency, the NLRB took action to develop initiatives in order to gain operational and financial efficiencies. In FY 2016, the OCFO initiated an effort to review all existing OCFO policies in order to update them to ensure they comply with current laws and regulations.

### POLICY REVIEW PROGRAM

#### Purchase Card Policy

The OCFO revised its purchase card policy to ensure a system of internal controls was in place to minimize the potential for fraud and misuse. The policy provides detailed processes and procedures by which purchase card holders can gain efficiencies when procuring items below the micro-purchase threshold. The result of this action significantly improved the Agency's compliance with the Federal Acquisition Regulation (FAR), OMB Circular A-123: Appendix B, the Government Charge Card Abuse Prevention Act of 2012, and the General Services Administration (GSA) SmartPay Program for purchase card use. The policy was implemented October 1, 2016.

#### Travel Policy

The OCFO has drafted revised travel policies including local, temporary duty, relocations and travel cards. These policies will be published during FY 2017 and will comply with the Federal Travel Regulations (FTR) and the Government Charge Card Abuse Prevention Act of 2012, and will include detailed scenarios to serve as examples for employees with travel questions.

#### Capitalized Property Policy

The OCFO is collaborating with the Agency Office of the Chief Information Officer and Facilities and Property Branch to codify existing informal procedures around capitalized property. The new policy is in the process of being drafted and when published in FY 2017, will include the procedures for disposal of assets and the definition of roles and responsibilities for property custodians.

#### Budget Formulation and Execution

The Agency continues to review and refine policies and procedures established in 2010. The initial preparation of the Agency's budget begins 18 months in advance of the budget year. This process includes the development of a preliminary workload estimate for all program areas. The Board and General Counsel use this estimate as a basis to make policy determinations for program objectives and funding requirements. The Budget Office provides the Chairman and General Counsel with the proposed spending amounts by budget line item, some of which may have changed due to adjustments with changing priorities, inflation, and contracting rates. This process provides internal controls to support the administrative control of funds and allows the orderly execution of funding by quarterly apportionments from the Treasury and OMB. The OCFO is currently documenting budgetary procedures that will outline the formulation and execution of processes to provide clear guidance to the Agency.



Additionally the OCFO implemented the following programs to enhance operational efficiencies:

**Bulk Ordering:** The OCFO initiated the bulk purchasing program for routine paper and toner requirements across the Agency in March of 2016. The program allows for better coordination, distribution and cost-savings of common required items. Bulk orders were placed in April, June and August. On-time ordering and delivery, direct shipment and volume discounts make this program a real success for all parties involved.

**GPO Express:** The OCFO spearheaded a partnership between the NLRB and the Government Publishing Office (GPO) to implement the GPOExpress Program at the Agency. The result of establishing this program provided the NLRB with deep discounts on mission-critical printing, copying, and binding requirements. The Agency benefited with thousands of dollars in savings by utilizing GPOExpress.

## SYSTEMS

The NLRB obtains the majority of its financial systems and services from the Department of the Interior's Interior Business Center (IBC) and has no plans to operate its own financial systems. NLRB is responsible for overseeing IBC and ensuring that financial systems and internal controls are in place to fulfill legislated and regulatory financial management requirements. IBC provides the following systems:

- Oracle Federal Financials – Integrated system of record for all financial transactions.
- Federal Payroll and Personnel System (FPPS) – Personnel system of record, which interfaces with the Oracle system.
- E2Solutions – eTravel system provided by CWTSato (Carlson Wagonlit), the NLRB's Travel Management Service, which also interfaces with the Oracle system.

During FY 2016, the Agency introduced the following modernized systems to improve operational efficiencies:

#### FINANCIAL SYSTEMS MODERNIZATION INITIATIVES

##### **Backpay Management System (BMS)**

The NLRB collects money from charged parties as a standard Board remedy whenever a violation of the NLRA has resulted in the loss of employment or earnings. These funds are held in a fiduciary account and then distributed to discriminatees per a settlement agreement or Board Order. In July 2016, the Agency completed a modernization effort of the BMS, which is used to track funds and create disbursement files that are transmitted to the Department of Treasury for the issuance of checks to discriminatees. The BMS also calculates federal tax withholdings including the employer's share of Social Security and Medicare.

The data gathered within the BMS is used to prepare a quarterly 941 form for the IRS and the annual W-2 and 1099-INT reports mailed to the discriminatees. The newly modernized system is available to the appropriate NLRB employees to upload discriminatee information, track the status of the backpay requests and receive timely information on the progress of the disbursement. The BMS maintains documentation to support each disbursement and has routing capabilities to ensure that all requests are properly approved. What once was a manual process is now more transparent with strengthened internal controls to provide assurance that the correct recipients are paid accurate amounts.

##### **Contract Lifecycle Management (CLM)**

The OCFO implemented Oracle's CLM system which is a fully integrated, procure-to-pay contract writing system. This system provided the OCFO with automated and auditable processes from purchase request generation through solicitation, with an integrated view of budget, acquisition, and finance to facilitate the timely completion and closeout of contract awards. The result of this action enabled the entire OCFO to work smarter, increase efficiency, and reduce back-office costs with standardized processes.



## FUTURE FINANCIAL SYSTEMS MODERNIZATION PLANS

### Oracle Business Intelligence Enterprise Edition (OBIEE)

The NLRB is investing in a new query and reporting tool available from Oracle. The tool will replace Discoverer, which will soon no longer be supported. The Oracle Business Intelligence Application (OBIA) is a business intelligence suite, including ad hoc query and analysis, dashboards, enterprise reporting, mobile analytics, scorecards and predictive analytics, on an architecturally integrated business intelligence foundation. The central component of the suite is Oracle Business Intelligence Enterprise Edition (OBIEE), which features a Common Enterprise Information Model for centralized metadata management, common query request generation and data access. We anticipate that these products will provide us with the information needed to enable our Agency to drive innovation, optimize operations, and deliver more relevant and timely information to decision makers.

### webTA

The OCFO, in partnership with the Agency's Division of Administration (DofA), is working with the IBC to implement the Agency's new Time and Attendance (T&A) system, webTA. For the webTA system, the standard practice follows the standard Federal Government pay period schedule, which is based on a two-week pay period. The core functionality of webTA allows employees to request leave or premium pay, and to edit and submit their timecards to their supervisors for approval through a user-friendly, automated, web-based process. Supervisors will receive notifications by e-mail of pending requests requiring action and, after viewing and approving T&A requests, the data will be sent to the IBC for payroll processing. webTA allows the Agency HR administrators to serve as authoritative sources of information on the webTA system, and assists supervisors, timekeepers and employees in T&A preparation and technical questions.

## ANALYSIS OF FINANCIAL STATEMENTS

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

**Balance Sheet** – The NLRB assets were \$44.8 million as of September 30, 2016. The Fund Balance with Treasury, which was \$33.5 million, represents the NLRB's largest asset at 74.8 percent. The Fund Balance consists of unspent appropriated and unappropriated funds from the past six fiscal years.

Property, Plant, and Equipment, which represents the NLRB's second largest asset at 23.7 percent, was \$10.6 million and was primarily related to leasehold improvements and internal use software development costs. Of the remaining assets, Accounts and Interest Receivable increased by \$514 thousand due to an

increased effort in seeking reimbursement for third party sponsored travel and the potential recovery of funds related to discrepancies in the fiduciary account.

The NLRB liabilities were \$30.7 million as of September 30, 2016. Liabilities consist of amounts owed to vendors, governmental trading partners, and Agency employees. Changes in Accounts Payable with both governmental trading partners – a decrease of 39.4 percent – and vendors – an increase of 85.0 percent – was related to a more stringent contract monitoring, payment, and closeout process. Employee unfunded annual leave was 46.8 percent of liabilities, the NLRB's largest liability. The FECA Actuarial liability increased by \$160 thousand, or 18.5 percent, due to changing case load, and employer contributions increased by \$1.3 million due to payroll costs.

**Statement of Net Cost** – The NLRB's appropriation is used to resolve representation cases or ULP charges filed by employees, employers, unions, and union members. 89 percent of net cost of operations in FY 2016 was used to resolve ULP charges and 11 percent was used for representation case activities.



**Statement of Changes in Net Position** – The NLRB's net position is affected by changes in its two components: Cumulative Results of Operations and Unexpended Appropriations. From FY 2015 to FY 2016, there was a change in net position of \$342 thousand. This was in part due to a \$5.1 million decrease in the beginning balance due to a change in methodology in recording depreciation and amortization in FY 2014, which carried into FY 2015. A correction was also made to the beginning balance for \$599 thousand as well, due to the inaccurate closing of a general ledger account in FY 2015. This action had no impact on the statements which were presented for FY 2015. Thus, a restatement was not issued. The change in the beginning balance was countered by a \$4.5 million increase in imputed financing for employee benefits. Other significant changes to the balance included a transfer of funds to cover discrepancies in the fiduciary account and the liability owed, a decrease in miscellaneous collections received in relation to fines issued by the Board, and the cancellation of annual appropriations.

**Statement of Budgetary Resources** – The Statement of Budgetary Resources shows budgetary resources available and the status at the end of the period. It represents the relationship between budget authority and budget outlays, and reconciles obligations to total outlays. For FY 2016, the NLRB had available budgetary resources of \$281 million, the majority, \$274.2 million, was derived from new budget authority. Obligations were \$275.1 million for FY 2016, and total outlays for FY 2016 were \$271.5 million. Other

changes in the unobligated balance included a \$1.2 million decrease due to the cancellation of annual appropriations. The status of budgetary resources had a \$120 thousand increase in apportioned funds and a \$841 thousand increase in unapportioned funds due to increased monitoring of obligations and payments from expired funds. Actual offsetting collections increased by \$116 thousand, or 188.4 percent, due to a change in accounting methodology, increased collections of accounts receivable, and payroll.

## LIMITATIONS OF PRINCIPAL FINANCIAL STATEMENTS

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

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



## COMPLIANCE WITH LAWS AND MANAGEMENT ASSURANCES

### ANTIDEFICIENCY ACT (ADA)

The Antideficiency Act prohibits federal agencies from:

- making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law;
- involving the government in any obligation to pay money before funds have been appropriated for that purpose, unless otherwise allowed by law;
- accepting voluntary services for the United States, or employing personal services not authorized by law, except in cases of emergency involving the safety of human life or the protection of property; and
- making obligations or expenditures in excess of an apportionment or reappropriation, or in excess of the amount permitted by Agency regulations.

There were no known violations of the Anti-Deficiency Act during FY 2016 at the NLRB.

### DEBT COLLECTION IMPROVEMENT ACT (DCIA)

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIA) requires agencies to periodically

adjust civil penalties for inflation if either the amount of the penalty or the maximum penalty is set by law. In addition, the President is required to report certain information to Congress either annually or every five years. The FCPIA was amended by the Debt Collection Improvement Act of 1996. The DCIA amended the FCPIA to require each Federal agency to review and report annually on their internal standards and policies regarding compromising, writing down, forgiving, or discharging debt. The Agency refers delinquent debts to the Treasury Offset Program (TOP).

### DIGITAL ACCOUNTABILITY AND TRANSPARENCY ACT (DATA ACT)

The DATA Act expands the Federal Funding Accountability and Transparency Act (FFATA) of 2006 to increase accountability and transparency in federal spending, making federal expenditure information more accessible to the public. The goal of the DATA Act is to make federal spending more accessible, searchable, and reliable so taxpayers have the opportunity to understand the impact of Federal funding for Federal programs/ entities.

As required by the Office of Management and Budget (OMB) Memorandum M-15-12, issued on May 8, 2015,



the NLRB drafted a DATA Act of 2014 Implementation Plan in order to increase transparency of federal spending as required the DATA Act and FFATA Act.

The Acquisition Management Branch (AMB) inputs contract and Interagency Agreements (IAAs) directly into the Federal Procurement Data System - Next Generation (FPDS-NG). The number of contracts and IAAs are less than 50, which has made this a manageable workload for the staff.

The NLRB's service provider, IBC, has identified 47 of the required reportable data elements that will be provided for the Agency to report from existing systems. The remaining elements are being analyzed by the NLRB.

The FY 2017 Congressional Justification has restructured the five major Program Activities and established the unique award ID as the Oracle Financial system generated Purchase Order number. The NLRB also already submits object class and program activity data from the Oracle Financial system to OMB and has done this since FY 2013.

### FEDERAL INFORMATION SECURITY MANAGEMENT ACT (FISMA)

The Federal Information Security Management Act of 2002, as amended by the Federal Information Security Modernization Act of 2014, requires Federal agencies to ensure adequate security protections for Federal information systems and information. Under this Act, Federal agencies must submit annual FISMA reports to OMB.

Both the Office of the Chief Information Officer (OCIO) and the Inspector General submit FISMA annual reports to DHS and OMB using a tool called CyberScope. The Agency also submits an annual letter to Congress, as required by FISMA.

### GOVERNMENT CHARGE CARD ABUSE PREVENTION ACT

On October 17, 2014 the President signed an Executive Order (EO) directing the Federal government to establish and maintain safeguards and internal controls for the charge card program. The NLRB

evaluated the charge card program as directed by the guidance provided in OMB Circular A-123 Appendix B, OMB Memorandum M-12-12 *Promoting Efficient Spending to Support Agency Operations*, and OMB Memorandum M-13-21 *Implementation of the Government Charge Card Abuse Prevention Act of 2012*. The effectiveness of the Agency's purchase card and travel card program was assessed through enhanced monitoring procedures to detect fraud, waste and abuse.

### IMPROPER PAYMENTS INFORMATION ACT (IPIA)

The Improper Payments Information Act of 2002, as amended by the Improper Payments Elimination and Recovery Act (IPERA) of 2010 and IPERIA of 2012, requires agencies to review all programs and activities they administer and identify those which may be susceptible to significant erroneous payments. For all programs and activities in which the risk of erroneous payments is significant, agencies are to estimate the annual amount of erroneous payments made in those programs. The NLRB's risk assessment indicated that the salaries and expenses program was not susceptible to significant improper payments. A detailed report of the NLRB's improper payments activities is presented in the Other Information section on page 98.

### PROMPT PAYMENT ACT

The Prompt Payment Act was enacted in 1982 to ensure the federal government makes timely payments. Bills are to be paid within 30 days after receipt and acceptance of material and/or services - or after receipt of a proper invoice whichever is later. When payments are not made timely, interest is paid. The Agency made late payments resulting in interest penalties of \$372 in FY 2016.

### FEDERAL MANAGERS' FINANCIAL INTEGRITY ACT (FMFIA)

The Federal Managers' Financial Integrity Act requires federal agencies to develop and implement appropriate and cost-effective internal controls for results-oriented management, assess the adequacy of those internal controls, identify needed areas of

## Internal Control Elements

<b>CONTROL ENVIRONMENT</b>	Creating and maintaining an organizational structure that promotes a high level of integrity and personal and professional standards, and sets a positive and supportive attitude toward internal controls through conscientious management
<b>RISK ASSESSMENT</b>	Identification and analysis of risks that could impede the achievement of Agency goals and objectives
<b>CONTROL ACTIVITIES</b>	Policies, procedures, techniques, and mechanisms to ensure proper stewardship and accountability for government resources and for achieving effective and efficient program results
<b>INFORMATION AND COMMUNICATIONS</b>	Ensures the Agency's control environment, risks, control activities, and performance results are communicated throughout the Agency
<b>MONITORING</b>	Assessing quality of performance over time to ensure that internal control processes are appropriate and effective

improvement, take corresponding corrective action, and provide an annual statement of assurance regarding internal controls and financial systems. The annual statement of assurance and management control over financial application controls and financial reporting submitted by the NLRB's service provider follows this section.

NLRB management is responsible for establishing and maintaining an environment throughout the Agency that is positive and supportive of internal controls and conscientious management. The NLRB is committed to management excellence and recognizes the importance of strong financial systems and an internal control system that promotes integrity, accountability, and reliability.

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

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

In assessing whether these objectives are being achieved, the NLRB used the standards outlined above in accordance with OMB Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, dated July 15, 2016.

The NLRB's approach to assessing its internal controls included the identification and assessment of risks by 31 designated managers on an Agency-wide basis. In completing this annual review, the designated managers, in conjunction with subordinate staff as needed, used personal judgment as well as other sources of information. These sources included: knowledge gained from day-to-day operations; Inspector General Audits and investigations; program evaluations; reviews of financial systems; annual performance plans; and previous management reviews. The designated managers were responsible for conducting reviews of program operations, assisting program offices in identifying risks and conducting internal control reviews, issuing reports of findings, and making recommendations to improve internal controls and risk management.



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

The Statement of Assurance provided on page 37 is required by the Federal Managers' Financial Integrity Act (FMFIA) and OMB Circular A-123, *Management's Responsibility for Internal Control*.

#### **FMFIA Section 2, Management Control**

Section 2 of the FMFIA requires federal agencies to report, on the basis of annual assessments, any material weaknesses that have been identified in connection with their internal and administrative controls. The reviews that took place in FY 2016 provide reasonable assurance that NLRB systems and internal controls comply with the requirements of FMFIA.

#### **FMFIA Section 4, Financial Management Systems**

Section 4 of the FMFIA requires that agencies' financial management systems controls be evaluated annually. The NLRB evaluated its financial management systems for the year ending September 30, 2016 in accordance with the FMFIA and OMB Circular A-127, *Financial Management Systems*, Section 7 guidance. The NLRB's financial systems, taken as a whole, conform to the principles and standards developed by the Comptroller General, OMB, and the Department of Treasury.





UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, DC

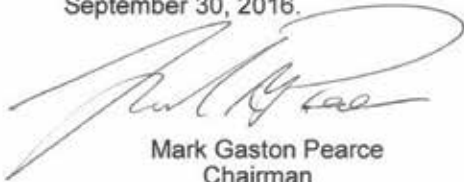
October 5, 2016

## ANNUAL STATEMENT OF ASSURANCE

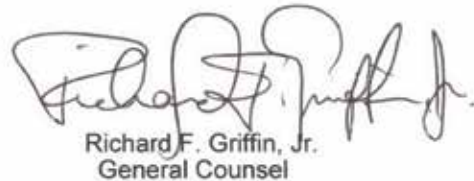
Management is responsible for establishing and maintaining effective internal control and financial management systems that meet the objectives of the Federal Managers' Financial Integrity Act (FMFIA). The NLRB assessed the effectiveness of internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations in accordance with Office of Management and Budget (OMB) Circular A-123, Management's Responsibility for Internal Control. Based on the results of this evaluation, the NLRB can provide reasonable assurance that its internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations as of September 30, 2016 was operating effectively, and no material weaknesses were found in the design or operation of the internal controls.

In accordance with the requirements of OMB Circular No. A-123, Appendix A, the NLRB assessed the effectiveness of internal control over financial reporting, which includes internal control related to the preparation of the annual financial statements, safeguarding of assets, and compliance with applicable laws and regulations governing the use of budget authority and other laws and regulations that could have a direct and material effect on the financial statements. The result of this evaluation provides reasonable assurance that the NLRB's internal control over financial reporting was operating effectively as of September 30, 2016.

The NLRB also conducted reviews of financial management systems. Based on the results of these reviews, the NLRB can provide reasonable assurance that the financial management systems comply with the applicable provisions of the FMFIA as of September 30, 2016.



Mark Gaston Pearce  
Chairman



Richard F. Griffin, Jr.  
General Counsel



United States Department of the Interior  
Office of the Secretary



October 3, 2016

Dear Valued Customer:

The purpose of this letter is to provide assurance that the Oracle Federal financial application controls remained unchanged for the period July 1, 2016, through September 30, 2016.

You were previously notified that KPMG LLP examined the description of the Oracle financial application controls at the Department of the Interior (DOI), Interior Business Center (IBC). The results of their review and analysis were provided in a Service Organization Control Report (SSAE16) covering the period July 1, 2015, through June 30, 2016. A softcopy version of the report was provided to you mid-July 2016.

The SSAE 16 review was conducted for the purpose of expressing an opinion as to whether (1) IBC's description of the Oracle application controls presents fairly in all material respects the aspects of the IBC controls that may be relevant to a user organization's internal control; (2) the controls included in the description were suitably designed to achieve the control objectives specified in the description if those controls were complied with satisfactorily; and (3) such controls had been placed in operation as of June 30, 2016. KPMG also performed testing procedures designed to determine the effectiveness of the specified controls in meeting control objectives specified by the IBC.

This letter provides representations and assurances related to Oracle financial application controls at the IBC for the period July 1, 2016, through September 30, 2016. This time period was not covered by the SSAE 16 examination report previously provided. To the best of our knowledge and belief, there have been no subsequent events that would have a significant effect on user organizations that have not been disclosed to you. The controls that have been placed in operation as of June 30, 2016, did not change for the period of July 1, 2016, through September 30, 2016. The description of controls in the FY 2016 SSAE 16 examination report presents fairly the aspects of IBC controls that were in place as of September 30, 2016.



Page 2 of 2

October 3, 2016

The IBC also conducted an assessment of the effectiveness of internal control over financial reporting for customers where the IBC processes your financial transactions, which includes safeguarding of assets and compliance with applicable laws and regulations in accordance with the requirements of Appendix A of OMB Circular A-123 and the CFO Council's Implementation Guide dated July 31, 2005, as implemented by the Department. The assessment focused on the specific IBC financial business processes such as financial reporting, revenue management, funds management, and procurement in place as of June 30, 2016. As of that date, the IBC noted no material or significant deficiencies verified through A-123 Appendix A financial transaction testing. Thus, the IBC asserted internal controls over financial reporting were suitably designed and operating effectively. The procedures and management controls for processing financial transactions have not changed since June 30, 2016. As a result, the IBC continues to assert substantial compliance with financial accounting and reporting controls in place from July 1, 2016, through September 30, 2016.

If you have any questions on this assurance statement, please contact Dean N. Martin, Chief Enterprise Risk Manager, [Dean\\_N\\_Martin@ibc.doi.gov](mailto:Dean_N_Martin@ibc.doi.gov) or 303-969-5195.

Sincerely,



Donna L. Edsall, CPA  
Associate Director  
Financial Management Directorate  
Interior Business Center

## KEEPING PACE WITH CHANGES IN THE ECONOMY

The NLRB is charged with protecting workers' rights in an ever-changing economy. As employer-employee relationships continue to adapt and shift, some cases benefit from centralized consideration at Headquarters. For that reason, each year the General Counsel identifies priority issues and initiatives that are to be submitted to the Division of Advice.

In March 2016, the General Counsel announced that among others, the following types of cases are to be submitted to the Division of Advice for review and guidance.

- Cases involving an allegation that the employer's permanent replacement of economic strikers had an unlawful motive under *Hot Shoppes*, 146 NLRB 802 (1964).
- Cases that involve the application of *Purple Communications*, 361 NLRB No. 126 (2014), to electronic systems other than email; cases where the employer has provided specific evidence of special circumstances privileging a denial of access to its email system; and cases presenting the question of whether the employer engaged in unlawful surveillance of employee emails.
- Cases involving make-whole remedies for construction industry applicants or employees who sought or obtained employment as part of an organizing effort as enunciated in *Oil Capitol Sheet Metal, Inc.*, 349 NLRB 1348 (2007).
- Cases involving plant closure threats where there is little evidence of dissemination to other employees, but where an argument could be made that such dissemination should be presumed. See *Springs Industries*, 332 NLRB 40 (2000), overturned by *Crown Bolt*, 343 NLRB 776 (2004).
- Cases involving allegations that "English-only" policies violate Section 8(a)(1).
- Cases involving the employment status of workers in the on-demand economy.
- Cases involving the question of whether the misclassification of employees as independent contractors violates Section 8(a)(1).

The above list is not exhaustive as unanticipated cases that raise novel issues arise from time to time. As new issues arise, the Agency will continue to investigate and review cases to ensure that the protections of the Act keep pace with the economy.

## PERFORMANCE



Protecting Democracy in  
the Workplace Since 1935

## PROGRAM PERFORMANCE

### PERFORMANCE GOALS AND OBJECTIVES

This section of the PAR details the NLRB's efforts to meet its strategic and performance goals. The two mission-related goals of the NLRB's Strategic Plan represent the core functions of the Agency in enforcing the NLRA as efficiently as possible and in a manner that gives full effect to the rights afforded to all parties under the Act. The two support goals further enable the Agency to accomplish its mission. Please

see Appendix D for diagrams of the complete structure of the four Agency goals.

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

## MEASURING PERFORMANCE

One of the NLRB's human capital goals is to create a results-oriented performance culture that clearly links employee performance and pay to the attainment of the NLRB's strategic goals. While creating the updated Strategic Plan for FY 2014 to FY 2018, the Agency used the two mission-related goals from the previous Strategic Plan as the foundation to build upon the traditional performance measurement approach that emphasizes individual segments of case processing to promote timely, efficient, and well-managed casehandling. The Agency then established two support goals that give a broader picture of how the Agency achieves its mission.

As to Agency success in bringing effective resolution to labor disputes in a timely manner, it should be noted that it is difficult for an agency such as the NLRB to measure "outcomes" in the sense intended

by the authors of the Government Performance and Results Act (GPRA) and the GPRA Modernization Act (GPRAMA). In the representation case area, for instance, the Agency does not control or seek to influence the results of elections, but strives instead to ensure the rights of employees to freely and democratically determine, through a secret ballot election, whether they wish to be represented by a labor organization. If the Agency concludes that all of the necessary requirements for conducting an election have been met, it will either direct an election or approve the parties' agreement to have an election. The performance measure that the Agency has established for the conducting of elections is objective and is not dependent on the results of the election. The true outcome of properly conducted elections is employees freely exercising their statutory rights as set out in the NLRA.

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. While it is difficult to quantify by the number of ULPs, the Agency can quantify our commitment to resolve all disputes that are brought before us, and to provide a remedy and ensure that labor peace is restored. Noting that the Agency cannot sua sponte investigate actions of an employer or labor union without a charge being filed, the NLRB established two performance measures. The timeliness and quality of case processing, from the filing of an ULP charge to the closing of a case, are the focus of those performance measures.

The tables and narratives in this section show the proposed annual targets for performance measures and management strategies for the five-year period covered by the current Strategic Plan effective from 2014 through 2018 for the two mission-related goals. The actual results achieved for the mission-related goals for FYs 2011 through FY 2013 can be found in Appendix C.

This section also documents the performance regarding the support goals which are management strategy driven and presented in a summary format. The results achieved for the support goals in FY 2014 and 2015, can be found in Appendix C. These goals originated in FY 2014, thus there is no historical data prior to that year.

### STRATEGIC GOAL 1 (MISSION)

Promptly and fairly investigate, prosecute, and resolve ULP charges under the National Labor Relations Act.

#### Objectives:

1. Achieve established performance measures for the resolution of ULP charges.
2. Ensure that all matters before the Agency are handled in a fair and consistent manner.

**Measure:** The percentage of all meritorious ULP charges resolved by settlement or compliance with a Board Order or Court judgment within 365 days of the filing of the ULP charge.

This measure focuses on meritorious (prosecutable) ULP cases, and the time taken to close them on compliance, including time spent on both the General Counsel and Board sides of the Agency. 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 reinstatement and the payment of backpay, to make whole those injured by the ULP.

Once a Regional Director has determined a ULP charge has merit, a complaint issues and, absent settlement, the case is scheduled for a hearing before an ALJ. Settlement efforts continue throughout the course of the litigation. The vast majority of

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 it. Ordinarily, the Regional Office will attempt to secure compliance in the 30-day period following the Board's order. If compliance cannot be obtained, the Region will refer the case to the Appellate and Supreme Court Litigation Branch of the Division of Enforcement Litigation, which typically proceeds 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 or a reviewing court, or in extreme cases, in contempt proceedings.



ULP cases are closed on compliance when the remedial actions are complete. This measure includes all litigated cases, including those appealed to the U.S. Courts of Appeal or the Supreme Court.

In FY 2016, the NLRB exceeded its goal of 82.6 percent, by 0.1 percentage point, to close all prosecutable ULP cases in 365 days from the docketing of the charge.

#### GOAL NO. 1, TABLE 1

Percentage of ULP Cases Closed on Compliance Within 365 Days

YEAR	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
TARGET	82.5%	82.5%	82.6%	82.7%	82.8%
ACTUAL	83.9%	80.4%	82.7%		

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

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

This measure focuses on the time taken to resolve a ULP charge, including time spent on both the General Counsel and the Board sides of the Agency.

After an individual, employer, or union files a ULP charge, a Regional Director evaluates it for merit and decides whether to issue a complaint. If a charge is found to have no merit, which occurs in about 2/3 of the cases, it is dismissed if the charging party does not withdraw it. A dismissal can be appealed to the General Counsel. If a charge is found to have merit, a complaint issues, unless a settlement agreement is reached. If a case is not settled but instead is fully litigated before an ALJ, the Board will issue an order, which may be enforced or appealed to the US Court of Appeals.

A ULP case is resolved and closed when it has been completely processed, such that the charge allegations are investigated, and, where appropriate, remedied and there is no further action to be taken by the Agency.

In FY 2016, the NLRB did not meet its goal of 72.4 percent, by 1.6 percentage points, to close ULP cases within 120 days from the docketing of the charge.

Out of the 21,326 ULP cases reviewed in FY 2016, 1,737 cases were deferred to the parties' grievance-arbitration procedures, all of which took over 120 days. The grievance-arbitration procedures are outlined in the collective bargaining agreements of the parties. The Agency must wait for the arbitration proceedings to conclude. Once the arbitrator renders a decision, the Agency reviews the decision.

The Agency also cleared 387 cases in compliance which had been held up as a result of two-member Board decisions.

Regional Offices took on a substantial task to process grievance-arbitration deferrals and the two-member Board backlog. While it effected the overall processing days reported in FY 2016, Regions cleared out over 2,000 backlog cases.

#### GOAL NO. 1, TABLE 2

Percentage of ULP Charges Resolved Within 120 Days

YEAR	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
TARGET	72.3%	72.3%	72.4%	72.4%	72.5%
ACTUAL	72.3%	70.6%	70.8%		

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

**Management Strategies:** In addition to the Quality Review Program of the Division of Operations-Management, which is highlighted in the Program Evaluation section on page 55, and which ensures that all matters before the Agency are handled in a fair and consistent manner, the following additional steps are undertaken to assist with compliance:

- The Division of Operations-Management and the Division of Enforcement Litigation actively work with the Regions to identify cases pending before the Board that are suitable for resolution through the Board's Alternative Dispute Resolution (ADR) program.
- The Compliance Unit conducts ongoing review of compliance case inventory and promptly reviews ALJ decisions, Board decisions and pending Board



## STRATEGIC GOAL NO. 2 (MISSION):

Promptly and fairly resolve all questions concerning representation of employees.

### Objectives:

1. Achieve established performance measures for the resolution of all questions concerning representation of employees.
2. Ensure that all matters before the Agency are handled in a fair and consistent manner.

ADR and court mediation proceedings to ensure that the Regions have the resources necessary to deal with difficult or challenging compliance issues. The assistance may range from assigning a person to be available for consultation to having a person or team, either in Headquarters or in another Region, perform all of the work or a particular task in the case.

- The Board tracks, on an ongoing basis, which Regions have cases in the ADR program, and which parties requested that the cases be placed in the ADR program.

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

This measure focuses on the time taken to resolve a representation case, including time spent on both the General Counsel and the Board sides of the Agency.

An employer, labor organization, employee, or group of employees may file a petition in an NLRB Regional Office requesting an election to determine whether a majority of employees in an appropriate bargaining unit wish to be represented by a labor organization. When a petition is filed, the Agency works with parties toward a goal of reaching a voluntary agreement regarding conducting an election, as opposed to a Regional Director directing an election, if appropriate. This measure reflects the percentage of representation cases closed within 100 days. A case is closed when the question as to whether or not a labor organization will represent employees has been finally resolved.

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

- Cases may be dismissed before an election is scheduled or conducted. Dismissals at an early stage in processing may be based on a variety of reasons, including: the employer does not meet the Agency's jurisdictional standards; the petitioner fails to provide an adequate showing of interest to support the petition; and/or the petition was filed in an untimely manner.
- Cases may also be withdrawn by the petitioner for a variety of reasons, such as lack of sufficient support among the bargaining unit.
- The majority of cases are resolved upon issuance of 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. The case is not closed until the challenges and/or objections have been resolved.

In FY 2016, the NLRB exceeded its goal of 85.5 percent by 2.1 percentage points to close all representation cases within 100 days from the filing of the petition.

### GOAL NO. 2, TABLE 1

Percentage of Representation Cases Resolved Within 100 Days

YEAR	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
TARGET	85.3%	85.4%	85.5%	85.7%	85.8%
ACTUAL	88.1%	87.1%	87.6%		

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

**Management Strategies:** The following memos outline the steps taken to assist with compliance.

**GC 15-06: Guidance Memorandum on Representation Case Procedure Changes Effective April 14, 2015** <https://www.nlrb.gov/reports-guidance/general-counsel-memos>

This memo outlines the final rule that the Board adopted on December 15, 2014 that modifies the procedures applicable to the processing of representation cases. The changes went into effect on April 14, 2015 and apply to all representation cases filed on or after that date. The Board adopted these amendments to provide targeted solutions to enable the Board to better fulfill its duty to protect employees' rights by removing unnecessary barriers to the fair and expeditious resolution of representation matters, simplifying representation-case procedures, codifying best practices, and making them more transparent and uniform across regions. The memo details the following: Initial processing of the petition; election agreements; hearing preparation; hearings and pre-election decisions; election preparations and election; post-election procedure and decisions; blocking charges; election certifications; and use of voter list.

**OM 16-16 (revised): Dates for Hearings and Statement of Position Due Dates** <https://www.nlrb.gov/reports-guidance/operations-management-memos>

This memo was sent to all Regional Directors, Officers-in-Charge and Resident Officers from the

Division of Operations-Management regarding the changes to the procedures applicable to processing representation cases with a focus on specifying the date for scheduling a pre-election hearing in RC, RD, and RM cases and for the Statement of Position due date. A chart setting forth such dates through April 28, 2017 is attached to the memorandum.

**GC 15-08 (Revised): Guidance Memorandum on Electronic Signatures to Support a Showing of Interest** <https://www.nlrb.gov/reports-guidance/general-counsel-memos>

This memo was sent to all Regional Directors, Officers-in-Charge and Resident Officers from the General Counsel regarding the changes to the procedures applicable to processing representation cases with a focus on the question of whether the proposed regulations should permit or prohibit the use of electronic signatures to support a showing of interest. The Board determined that its regulations as currently written are sufficient to permit the use of electronic signatures. The Board then charged the General Counsel with the responsibility to determine whether and when and how electronic signatures can practically be accepted and to issue guidance on the matter. The General Counsel determined that the evidentiary standards that the Board has traditionally applied to handwritten signatures apply equally to electronic signatures and that it is practicable to accept electronic signatures in support of a showing of interest if the Board's traditional standards are satisfied.

**STRATEGIC GOAL 3 (SUPPORT):****Achieve Organizational Excellence****Objectives:**

1. Recruit, develop, and retain a highly motivated, talented, and diverse workforce to accomplish our mission.
2. Promote a culture of professionalism, mutual respect, and organizational pride.

Strategic Goal 3 is a management strategy based goal. There are two objectives that have their own set of initiatives. Each initiative has a set of management strategies that were created in order to show the different offices of the Agency that are involved in achieving the goal. For the full outline of the goal please see Appendix D-3 on page 125.

Organizational Excellence ensures that all organizational systems are aligned and functioning cohesively. Continuous commitment to assessing and addressing organizational excellence enables the Agency to proactively enhance the organization's service. Accomplishments in FY 2016 include:

**Employee Development**

- The Office of Human Resources (OHR) continued its partnership with the Office of Personnel Management (OPM) on the implementation of USA Performance, a new performance management reporting system.
  - OHR issued a memorandum titled *Performance Management Validation Cycle* to all Agency employees to inform that all management officials had to complete a Performance Management Validation Spreadsheet certifying that they had issued properly executed performance plans to all of their employees.
  - OHR completed a data validation, which showed that more than 86 percent of employees were issued properly executed performance plans. OHR's goal of 100 percent execution of performance plans will be achieved with the full implementation of USA Performance in June 2017.
- The Office of Employee Development (OED) developed online content for legal writing and provided legal writing coaching for Headquarters employees.

- OED is updating the Management Development Program curriculum to align with the Federal Supervisory and Managerial Frameworks and Guidance released by OPM on September 28, 2015.
- The Security Branch worked with OED to release the 2016 Continuity of Operations Training for Agency personnel via Skillport, and also hosted an Active Shooter Training Event at NLRB Headquarters, which was internally posted for access by all employees.
- In compliance with OPM's hiring reform efforts, OHR implemented a Standard Operating Procedure to provide a detailed explanation and overview of the processes to be followed when a vacancy has been identified and when positions are filled internally.

**Workforce Management**

- OHR continued to utilize the Workforce Recruitment Program for College Students with Disabilities as a hiring flexibility for managers to recruit qualified postsecondary students and recent graduates with disabilities who are interested in summer internships or permanent jobs.
- OHR leveraged its relationship with U.S. Department of Veterans Affairs through the Feds for Vets Program, which allows for the recruitment of veterans under various special hiring appointing authorities, such as veterans who are 30 percent or more disabled. Under the program, approximately five special hiring appointments were completed and one appointment was converted to a career-conditional appointment.
- The Human Capital Planning Office (HCPO) implemented a communication plan to encourage employees to take the Employee Viewpoint Survey (EVS), which included guidance on monitoring the participation rates, talking points, and FAQs.

- OHR made enhancements to the New Employee Orientation that includes more information about the Agency to help new employees transition successfully.
- The Office of Equal Employment Opportunity (OEEO) developed and implemented a training program mandatory for all supervisors' managers and senior executive leaders on whistleblower rights and protections for all Agency employees.
- OEEO recommended that supervisors' and managers' appraisals contain more specific language to measure their efforts to maintain an inclusive work environment, as an action item from the MD715 report submitted to the EEOC.
- OEEO, OED, and the Division of Operations-Management collaborated in the Agency workgroup on the Culture Enhancement Program and rolled out training podcasts and interviews from a diverse array of Agency employees in segments throughout the fiscal year.
- OEEO sponsored the Agency's network of Asian American and Pacific Islander employees in its request for support from Agency leadership. OEEO conducted a briefing with Agency leadership on the topic of Employee Resource Groups (ERGs).
  - There was a briefing by OPM diversity and inclusion experts for Agency leadership to address questions about ERGs.
  - Consultations with the unions representing Agency employees will assist OEEO when drafting final recommendations to Agency leadership.
- OEEO and OHR briefed leadership on the Strategic Recruitment Plan and received critical feedback for the plan. OEEO and OHR are working to implement the plan in early fiscal year 2017.
- OEEO develops and hosts special emphasis observances at Headquarters, some of which have been made available to field offices through simultaneous broadcast and/or digital recording.

#### Motivation

- HCPO conducted 16 EVS organizational assessments with senior executives on the 2015 EVS results focusing on: identifying Agency trends/barriers behind low survey scores; reviewing and prioritizing targeted areas of change; identifying outcomes that enable the organization to transition to higher EVS scores; identifying best practices for managing staff to higher levels of engagement; and action planning efforts.
  - During the organizational assessments, results were provided and the two EVS Agency-wide strategic areas of focus, effective leadership and communication, were discussed.
  - Agency leadership will be implementing action plans/best practices designed to drive higher levels of employee satisfaction and engagement within their respective organizations, with a particular focus on improving effective leadership and communication.
  - The HCPO also developed an EVS Action Planning Toolkit for organizations to utilize in developing action strategies to effect change.

**STRATEGIC GOAL NO. 4 (SUPPORT):****Manage Agency resources in a manner that instills public trust.****Objectives:**

1. Use information and technology to monitor, evaluate, and improve programs and processes in order to accomplish the Agency's mission and increase transparency.
2. Evaluate and improve the Agency's outreach program.
3. Conduct all internal and external Agency business in an ethical and timely manner.

Strategic Goal 4 has both measures and management strategies. There are three objectives that have their own set of initiatives. Each initiative has a set of measures and/or management strategies that show the different offices of the Agency that are involved in achieving the goal. For the full outline of the goal please see Appendix D-4 on page 126.

Federal employees are charged with managing programs and federal funds in an efficient and effective manner. As stewards of these federal funds, the Agency is making every effort to instill public trust. Accomplishments in FY 2016 include:

**Information and Technology:**

The Agency uses a legacy case tracking solution called NxGen, which is an enterprise case management system.

**The NxGen System presently manages:**

Internal users	1,368
Cases	309,700
Case Actions of the Agency	1,001,206
Documents, images, and videos (each linked to its Action and Case)	7,543,929

The Agency expanded electronic distribution of United States Postal Service (USPS) case documents in FY 2016 for 15 document types, resulting in 626 documents being sent to the USPS electronically, which created savings for the NLRB.

The Agency uses an electronic filing program (E-File) to allow constituents to electronically file documents with the Agency.

Number of E-Filings Received	51,229
Number of Documents Received	79,011
Number of cases filed thru E-Filing Charges and Petitions	9,958
Number of Board and ALJ Decisions E-Served	803
Total Number of parties E-Served Decisions	54,262
Number of E-Deliveries of Case Documents	3,546

The total number of case documents available for public access in FY 2016 was 984,663.

In FY 2016, the Agency expanded the use and capabilities for electronic filing to enable parties to E-File charges and petitions using an online forms wizard on the NLRB website that automatically creates the charge or petition form.

Number of cases filed through Charge and Petition Wizard in FY 2016 was 805.

Please see <http://www.nlr.gov/open/public-documents> for a complete list of the 564 document types available to the public.

- The Administrative Systems team continued its effort to migrate all content from the current intranet platform, which was mostly static, to a new intranet platform office by office.
- The team automated and launched the process of authoring, editing, approving and publishing of Division of Operations-Management memoranda.
- The team completed the automation of the training request and approval process by developing a web-

based form with routing, approval, data storage for advanced reporting, and records management.

- The Agency awarded its Unified Communications Contract (UCC) on September 24, 2014. Through FY 2016, 48 field offices, the two existing datacenters, two new voice datacenters, and the Agency's Headquarters were upgraded to the new network, and 47 field offices were migrated fully migrated to Skype for Business.
- In FY 2016, the OCIO deployed over 1,020 iPhone 6s and 6-Pluses to the Field.

### Financial Management:

- To enhance internal controls of the purchase card program, Acquisition Management Branch (AMB), in coordination with the Budget Office, implemented a process by which quarterly target amounts for purchase card spending are sent to each of the Headquarters and Regional Offices.
  - For the field, these amounts are disseminated at the beginning of each quarter to the Division of Operations-Management, which is responsible for communicating specific dollar amounts to the respective Regional Offices and for tracking the overall expenditures from the Regional Offices.
  - For Headquarters, in addition to quarterly target amounts sent to the Headquarters Offices, all Headquarters purchase card holders submit a Form 13 (Requisition/Procurement Request Form) for certification and approval of appropriated funds prior to making any purchase via their Government issued purchase card. This process helps certify that appropriated funds are approved and available for purchase.
  - AMB provided monthly and quarterly reports to the Budget Office, which offered greater insight and transparency on purchasing habits and spending. By spending hours analyzing what was being purchased on the purchase
- card and working with the Budget Office, senior leadership had more visibility into that budget line item on the Spend Plan. Analysis of this data also identified purchases that should be on a contract and led to the initiative of quarterly bulk purchasing of office supplies.
- In the Agency's continuing effort to increase its financial integrity, financial statement crosswalks were established in order to accurately and efficiently integrate general ledger account balances to the NLRB financial statements. This reduces the timeframe it takes to produce the statements.
- Updated and submitted the NLRB Travel Card Management Plan, as well as travel charge card metrics, to OMB per the A-123 Appendix B guidance.
- Developed and disseminated procedure guides for witness payment processes to allow for more timely payments.
- Developed and disseminated travel reimbursement processes internally with accounting technicians and externally with office managers and travel arrangers to increase accuracy in travel reimbursements.
- Successfully implemented the Undelivered Orders (UDO) review process, performed on a quarterly basis, that assists in liquidating obligations timely and accurately.
- As demonstrated in the chart below, the NLRB has far exceeded the statutory goals established by the Small Business Administration (SBA) in all categories except one, namely the service-disabled veteran-owned small businesses, where it fell below the goal by 0.58 percentage points. AMB continues to focus on small businesses as the supplier of choice, and particularly on increasing the number of awards to service-disabled veteran-owned small businesses.
- During FY 2016, the Agency reported a total of \$20.26 million and 372 contract actions in the

### Fiscal Year SBA Goaling Report

Category	Goal	2016	2015	2014	2013
Small Business	23%	36.51%	39.75%	31.65%	34.13%
Women Owned Small Business	5%	11.19%	12.46%	13.5%	17.81%
Small Disadvantaged Business	5%	8.02%	10.71%	11.05%	7.36%
Service-Disabled Veteran Owned Small Business	3%	2.42%	0.31%	0.97%	0.32%
HUBZone	3%	3.43%	2.13%	2.27%	0.84%



FPDS-NG. Of this amount, \$7.4 million and 181 actions went to small businesses.

### Agency Outreach:

- Designated Immigration Coordinators in each Regional Office act as a liaison between the Office and Headquarters staff regarding casehandling issues that may affect the immigrant worker community.
- The Agency prepared outreach materials for immigrant communities for use during outreach events, including a letter that outreach coordinators may use to introduce themselves to organizations that serve immigrant communities for outreach purposes. The outreach coordinators have been provided with a “collaboration packet” with contact information for other agency counterparts at the EEOC, DOL’s Wage and Hour Division (WHD), and OSHA.
- During FY 2016, the Agency provided direct outreach to immigrant populations by:
  - Speaking in Spanish and other languages at events organized by consulates and other community groups, such as the Workplace Justice Project, to educate the public about the NLRA.
  - Participating in interviews on Spanish-language radio stations.
  - Speaking at naturalization ceremonies to new citizens.
  - Participating in Asian American and Pacific Islander Public Interest and Public Service Panels.
  - Meeting with foreign labor and business representatives to provide information about employee rights under the NLRA and NLRB processes.
- Activities directed at the youth population include:
  - Leading discussions for high school and middle school classes concerning the development of the NLRA and the New Deal, as well as workers’ statutory rights and Board processes.
  - Holding mock trials for schools to demonstrate how an unfair labor practice trial is conducted.
  - Engaging in the Workplace Street Law Project in Washington, DC, which educates high school students about their rights as workers.
  - Participating in a union-sponsored youth-to-youth apprentice training.

- The Agency is Partnering with the Department of Homeland Security (DHS), WHD, OSHA, Office of Labor Management Standards (OLMS), and Office of Federal Contract Compliance Programs (OFCCP), DOJ’s Office of Special Counsel (OSC), and EEOC in an IWG for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws. The work group seeks to:
  - Ensure agencies’ immigration enforcement and worker protection policies allow for workers’ cooperation with labor and employment law enforcement authorities without fear of retaliation;
  - Ensure federal enforcement authorities are not used by parties seeking to undermine worker protection laws by improperly enmeshing immigration authorities in labor disputes; and,
  - Ensure the consistent enforcement of federal labor, employment, and immigration laws.

- Ensure agencies’ immigration enforcement and worker protection policies allow for workers’ cooperation with labor and employment law enforcement authorities without fear of retaliation;
- Ensure federal enforcement authorities are not used by parties seeking to undermine worker protection laws by improperly enmeshing immigration authorities in labor disputes; and,
- Ensure the consistent enforcement of federal labor, employment, and immigration laws.

- The Agency has produced a new informational pamphlet, available on the NLRB website in both English and Spanish, titled “Protecting Employee Rights,” which contains an expanded discussion of an employee’s right to engage in concerted activity and other rights under the NLRA.

- The Agency maintains an interactive smart phone app, which provides information about rights under the NLRA with Agency contact information.

### Ethics:

- The NLRB requires all Public Financial Disclosure filers, who are the leadership of the Agency (SES and PAS), to complete an annual ethics briefing. Scenarios were provided that demonstrated how well-meaning federal employees could violate government ethics laws and regulations when participating in outside activities, fundraising, and speaking engagements.
- The Ethics Office developed and delivered a Job Aid that covered participation as a member of a board of directors for a non-federal organization. All employees are required to request permission from their approving official prior to accepting a position on a board. Approving Officials are directed to consult with the Ethics Office prior to granting approval. A list of information that employees must give to their approving officials was also provided.

- The Ethics Office developed an addendum that is used by all NLRB employees and Presidential Appointees to affirm that, by consenting to the recording of a presentation, the NLRB employee or official is not permitting the sponsor to use their official title or likeness to advertise or endorse the final product. This addendum is consistent with the requirement, reinforced by the Office of Government Ethics (OGE) at its latest symposium, that Executive Branch employees take reasonable steps to ensure that a third party does not misuse a government employee's position to promote their products or events.

The Ethics Staff continued to seek out opportunities to educate all Agency employees about their ethical obligations. Throughout FY 2016, the Ethics Office:

- Distributed a Speaking Engagements guidance memo to all Agency employees which provided employees with general guidance regarding speaking engagements, and explained how to distinguish between speaking in an official versus a personal capacity.
- Provided OHR with government ethics information for use in the OHR New Hire Orientation presentation, and ensured that new hires completed the Ethics Orientation module within 90 days of hire.
- Provided guidance to the General Counsel and Board Members regarding speaking events where certain topics may create an appearance issue for the Agency or lead to discussion that could put the speaker at risk of making comments that could be construed as "prejudging" a case, and lead to requests for recusal.
- Briefed various employee groups, such as Honors Attorneys, members of the Professional Exchange Program, and summer interns.
- Developed training products, such as memos, newsletter articles and Job Aids, that covered topics including outside employment, HATCH Act, Combined Federal Campaign participation, and gift regulations.

#### Guidance Provided

Measure:	Goal	2016	2015	2014
Percentage of inquiries resolved within 5 business days	85%	83%	87.7%	87%
Percentage of submitted financial disclosure reports reviewed within 60-days	100%	100%	100%	100%

- During FY 2016, the Ethics Office received 844 inquiries. 737 (83 percent) were resolved within 5 business days, which is slightly below the goal of 85 percent.
  - The increase in the number of days to provide guidance is directly related to the number of cases involving board of director positions.
  - The Ethics Office identified and responded immediately to more routine matters within the targeted time frame.
  - In order to respond more quickly to more complex situations templates were developed to assist with providing consistent guidance and checklists were created to help inform about ethics obligations and to expedite responses.
- During FY 2016, the Ethics Office ensured that Public and Confidential Financial Disclosures filers completed their required reports in a timely manner, and that filers were recused from matters that caused a real or potential conflict of interest.
- All financial disclosure reports filed in FY 2016 were reviewed by the Ethics Office within 60 days. During this review, the Office confirmed that all filers had been provided appropriate ethics guidance relating to their reportable assets, outside arrangements, and outside employment activities.

*Note: Review and approval of New Entrant and Annual filings (Confidential and Public) resulted in 126 memos that remind and educate filers about their reporting obligations, potential conflicts, and recusal obligations.*

**FOIA:****Processing Times**

Measure:	2016	2015	2014
Respond to initial FOIA requests within 20 working days	32.7 days; 36.6%	14 days; 78.34%	7 days; 91.81%
Seek a statutory extension for less than 15 percent of requests	25.4%	20%	7.08%
Respond to statutory appeals within 20 working days	32 working days	24 working days	20 working days

- Based on the information in the FOIA Tracking System, the Agency responded to initial FOIA requests on an average of 32.7 working days for requests received from October 1, 2015 to June 30, 2016. The Agency received 2,682 requests for this period and responded to 982 of those requests in 1-20 days. Thus, 36.6 percent of the FOIA requests were processed within the 20-day statutory time period.
- The Agency sought an extension of time to process a request beyond the 20-day period in about 25.4 percent of the FOIA requests received during the fiscal year.
- The Agency received 23 FOIA Appeals from October 1, 2015 to June 30, 2016. The average elapsed days to process the appeal was 32.35 business days.

The increase in processing times correlates to the centralization. In 2014, FOIA duties were handled by Headquarters and each Regional Office by their respective FOIA Points of Contact. For uniformity and consistency in FOIA handling, it was decided to centralize FOIA processing in Headquarters, which began at the end of FY 2014. By June 2015, all FOIA requests were handled in Headquarters. The consolidation resulted in a significant increase in the amount of requests previously handled by

Headquarters. In addition, the Branch received new staff members, who required necessary training to become proficient in handling requests. There were also difficulties associated with the technology that was available to the Branch. However, the technology has been upgraded and the Branch is currently working with OCIO on making additional improvements to the technology. With the staffing and technology issues well in hand, the Agency anticipates significant improvements in processing times in FY 2017.

**Internal and External Audit Responses:**

Responses to internal auditors have been prepared and all deadlines have been successfully coordinated regarding the OIG audit recommendations. The OCIO and the OCFO responded completely and timely to external information requests including:

- Juniper ScreenOS and Firewall and VPN Server Data Call in Q1
- CISCO vulnerability Data Call in Q2
- Independent Financial Statement Audit

## FACTORS AFFECTING AGENCY PERFORMANCE

Various factors can affect Agency performance as a whole, in addition to each goal, objective, and performance measure contained in the NLRB's strategic and annual performance plans. These factors include case intake, settlements, board member vacancies, the potential effect of case precedent and statutory changes, nationwide work-related activities by external entities, technological advances, and economic fluctuations.

### CASE INTAKE

The Agency's FY 2016 case intake totals 23,863 and includes 21,326 ULP cases and 2,537 representation cases. Our Board agents effectively and efficiently process all cases that are brought to the Agency by the general public. Comprehensive and complex matters that come before the Agency are often attributable to external factors, such as: ongoing nationwide efforts to improve the wages and working conditions of workers in the retail and fast food industries; the increased prevalence and evolving tools and usage by employees of technology and social media in and outside of the workplace to discuss terms and conditions of employment with one another, and the related handbook provisions and workplace rules generated therefrom; expanded use of mandatory arbitration clauses in employment matters; bankruptcies; jurisdiction over enterprises; increased understanding of statutory application in non-union workplaces; and difficult questions concerning single, joint, and successor employer relationships, and supervisory status, as well as defining employees covered under the NLRA.

### SETTLEMENTS

The initial processing and disposition of new case filings in the Regional Offices drives the intake for other stages of the casehandling pipeline. Over the past few years, more than 90 percent of those cases in which merit is found are settled without formal litigation. While the Agency has experienced outstanding success in achieving the voluntary resolution of ULP and representation cases, the settlement rate is, of course, not entirely subject to the Agency's control. When the process becomes formal and litigation occurs, Agency costs increase. The Agency calculates that every one-percentage point drop in the settlement rate costs the Agency more than \$2 million.

### BOARD MEMBER TERMS

The staggering of Board member terms and the filling of a vacant seat by an individual who will not be a Board member for a full-term impairs Board productivity, as successive Board members often have to get up to speed on the same case matter. Currently, the Board is not at full composition since two vacancies caused by the expiration of Board Members' terms have not been filled.

### POTENTIAL EFFECT OF STATUTORY/ RULEMAKING CHANGES

As a general matter, changes in the law affect NLRB operations and could have consequences on the Agency's case load. Rulemaking and statutory changes, for example, could lead to an increase in ULP charges and/or election petitions filed with the Agency, with corresponding increases in investigations and proceedings conducted by Agency personnel, including additional potential litigation by the Agency in the courts.

## RELIABILITY OF PERFORMANCE DATA



### PROGRAM EVALUATION

The NLRB uses various techniques and mechanisms to evaluate whether programs are achieving their GPRA goals and other performance targets. The Board regularly tracks the status of all of its cases to determine performance against yearly targets that support the Agency's strategic goals and measures. A standing committee composed of senior management officials, including, among others, the Deputy Chief Counsels of each of the Board Members and the Executive Secretary, meets periodically to review the status of cases, to prioritize cases, and to develop lists of cases that the Board Members will jointly focus on in order to facilitate the issuance of decisions in those cases. These representatives also report back to the Board Members on performance data and staff workload, among other issues. The Board has an electronic casehandling management system that captures all case events in a database from which case production reports are generated. The Board Members also regularly meet and communicate with each other to discuss case priorities and the overall processing of cases.

The NLRB regularly monitors settlement and litigation success rates of ULP cases. In FY 2016, Regional Offices settled 93 percent of meritorious ULP cases and won 89 percent of ULP and Compliance matters in whole or in part. A total of over \$52 million was recovered in backpay, fines, dues and fees and over 1,600 employees were offered reinstatement. The

Division of Judges closed 208 hearings, issued 204 decisions and achieved 500 settlements. The NLRB also tracks how the various circuit courts have treated the Board's cases on appeal. In FY 2016, the United States Courts of Appeals ruled on Board decisions in 121 enforcement and review cases. Of those cases, 78.5 percent were enforced or affirmed in whole or in part. As to monitoring representation cases, in FY 2016, 99.1 percent of all initial elections were conducted within 56 days of filing.

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 initiatives and priorities, 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. In addition, to assess



the quality of litigation Committee reviews all ALJ and Board decisions that constitute a significant loss. Moreover, the Regional Offices' performance with regard to quality, timeliness, and effectiveness in implementing the General Counsel's priorities is incorporated into the Regional Directors' annual performance appraisals.

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

In addition to the evaluation of Regional Office activities, the Office of the General Counsel monitors the litigation success rate before district courts with regard to injunction litigation. In FY 2016, the Injunction Litigation Branch received 118 cases from Regional Offices to consider for discretionary injunctive relief under Section 10(j) of the Act. The Board authorized 29 cases and Regional Offices filed 10(j) petitions in 21 cases. The "success rate", i.e., the percentage of authorized Section 10(j) cases in which the Agency achieved either a satisfactory settlement or substantial victory in litigation was 78 percent. The Office of the General Counsel continues to focus its attention on "nip-in-the-bud cases", where a nascent

organizing campaign is being unlawfully squelched, and on first outreach bargaining and successor cases, where the relationship between the employer and the union is most fragile.

As previously mentioned, while there are a few outcome-based performance measures associated with the two support goals, the majority of them are management strategy driven. The Office of Strategy and Performance Management, within the OCFO, collects quarterly performance metrics and strategies on the two Agency support goals, as well as the NxGen reports for the mission-related goals. The metrics and strategies are tracked and monitored throughout the year. On a quarterly basis the Office of Strategy and Management Performance will follow up with the points of contact that collect and submit the support goal data if any questions arise that need further clarification. The compiled data is then presented in this document.

The numbers reported for the OCIO comes from NxGen. FOIA pulls their data from the FOIA Tracking System which is a tracking, reporting and file retention system that uses Microsoft SQL server. The Ethics Office uses a spreadsheet to track when an employee reaches out to their office with an ethics inquiry. They log the question into a spreadsheet and collect several pieces of data about the inquiry to include the date that the inquiry was made and the date that guidance was provided. The spreadsheet calculates for us the number of days between the two dates.



## FINANCIAL SECTION



Protecting Democracy in  
the Workplace Since 1935

## A MESSAGE FROM THE CHIEF FINANCIAL OFFICER

October 13, 2016



In my first year as the Chief Financial Officer of the NLRB, I am honored to forward the Fiscal Year 2016 Performance and Accountability Report. We take great pride in announcing that in FY 2016, we received an unmodified audit opinion on our financial statements. Two significant deficiencies were noted by our independent auditors in the areas of financial reporting and accounting discrepancies resulting from insufficient resources and inadequate controls over undelivered orders, accounts payable and expenditures. The NLRB concurs with this finding and my Office is developing corrective action plans to address these deficiencies.

To meet our fiscal responsibilities, NLRB dedicates itself to meeting the highest standards of reporting and transparency. This PAR provides a comprehensive review of the public funds entrusted to the agency.

In the midst of my transition to the NLRB, my focus has been on continuing the outstanding efforts of the OCFO to establish processes and controls to ensure sound financial management and leadership. From developing and updating policies for purchase card, local travel, temporary duty travel, budget formulation and execution to building an agile financial framework for providing a timely review of program execution and allocation of resources, this has truly been a year of transformation for the OCFO. The OCFO has implemented many projects and activities to gain efficiencies in a variety of functional areas, which have been discussed throughout the PAR.

The NLRB understands the importance of utilizing its resources effectively. As a result, the Agency developed a prioritized line item budget and spend plan, as well as program review mechanisms, to ensure the highest priority projects and functions are funded. All of our programs worked collaboratively to achieve significant results for the Agency. An example of this is when the OCIO worked closely with my Office, the Division of Operations-Management, Facilities and Property Branch (FPB) and Agency leadership to facilitate the transition to a Voice Over Internet Provider (VOIP) solution to save the Agency a significant amount of funds.

As we look forward into FY 2017, we face a number of short and long-term challenges. Specifically, the Independent Auditors raised concerns about the Agency's ability to establish financial and budgetary controls and processes necessary to meet its mission. In the last two years, the Agency has made progress in addressing the audit findings and establishing corrective actions plans to implement processes, procedures, and controls. Year after year, the Agency has made improvements in financial statement preparation, the reporting of internal use software, and the development of internal controls. Considering the issues raised in the recent audit, the OCFO will redouble its efforts to drive process improvement, transparency, and implementation of sound strategies to address the significant deficiencies issued to the NLRB.

The biggest challenge for the Agency will continue to be its funding levels. The NLRB's budget authority has been flat-lined at \$274.2 million for several years while Federal pay raises have been approved by Congress. Payroll has steadily increased as a result, leaving a significantly reduced level of funding for other organizational priorities and functions. Continued budget constraints and uncertainty will impact our ability to address increasing costs of operations, specifically in the area of information technology and essential services used by the field to meet mission requirements. We recognize that not every item can be funded at the same time. We will continue to improve upon our processes and strategies to ensure that the most critical programs, projects, and activities are addressed appropriately.

I look forward to continuing my efforts of collaboration and coordination with NLRB programs to provide sound advice and to develop and implement strategies to ensure ongoing refinement of organizational priorities, requirements, and controls. My efforts in the coming year will also focus on managing and addressing risks as the Agency prepares to address the challenges of today.



Mehul Parekh  
Chief Financial Officer



# INDEPENDENT AUDITOR'S REPORT

**UNITED STATES GOVERNMENT**  
**National Labor Relations Board**  
**Office of Inspector General**



## Memorandum

November 3, 2016

To: Mark Gaston Pearce  
Chairman

Richard F. Griffin, Jr.  
General Counsel

From: David P. Berry   
Inspector General

Subject: Audit of the National Labor Relations Board Fiscal Year 2016 Financial Statements  
(OIG-F-21-17-01)

This memorandum transmits the audit report on the National Labor Relations Board (NLRB) Fiscal Year 2016 Financial Statements with management's comments.

The Accountability of Tax Dollars Act of 2002 requires the NLRB to prepare and submit to Congress and the Director of the Office of Management and Budget (OMB) annual audited financial statements. We contracted with Castro & Company, an independent public accounting firm, to audit the financial statements. The contract required that the audit be done in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States and Bulletin 15-02, *Audit Requirements for Federal Financial Statements*, issued by OMB.

In connection with the contract, we reviewed Castro & Company's report and related documentation and inquired of its representatives. Our review, as differentiated from an audit in accordance with generally accepted government auditing standards, was not intended to enable us to express, and we do not express, opinions on the NLRB's financial statements or internal control or conclusions on compliance with laws and regulations. Castro & Company is responsible for the attached auditor's report dated November 3, 2016, and the conclusions expressed in the report. However, our review disclosed no instances where Castro & Company did not comply, in all material respects, with generally accepted government auditing standards.

We appreciate the courtesies and cooperation extended to Castro & Company and our staff during the audit.





1711 King Street  
Suite C  
Alexandria, VA 22314  
Phone: 703.229.4440  
Fax: 703.859.7603  
www.castroco.com

## Independent Auditor's Report

Inspector General  
National Labor Relations Board

We have audited the accompanying balance sheets of the National Labor Relations Board (NLRB) as of September 30, 2016 and 2015 and the related statements of net cost, changes in net position, and budgetary resources for the fiscal years then ended.

### *Management's Responsibility for the Financial Statements*

Management is responsible for the preparation and fair presentation of these financial statements in accordance with U.S. generally accepted accounting principles; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### *Auditor's Responsibility*

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with the auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and, Office of Management and Budget (OMB) Bulletin No. 15-02, *Audit Requirements for Federal Financial Statements*. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the audit considers internal control relevant to the agency's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the agency's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant estimates made by management, as well as evaluating the overall financial statements presentation. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

### *Opinion*

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the NLRB as of September 30, 2016 and 2015, and the related statements of net cost, changes in net position, and budgetary resources for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Independent Auditor's Report  
Page 2

***Required Supplementary and Other Information***

U.S. generally accepted accounting principles require that the information in the *Required Supplementary Information*, including *Management's Discussion and Analysis*, be presented to supplement the basic financial statements. Such information, although not part of the basic financial statements, is required by the Federal Accounting Standards Advisory Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. The supplementary information is the responsibility of management and was derived from, and relates directly to, the underlying accounting and other records used to prepare the basic financial statements. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

The information presented in the Messages from the Chairman, General Counsel, and Chief Financial Officer, list of Board Members, Other Accompanying Information, and Appendices is presented for purposes of additional analysis and are not required as part of the basic financial statements. Such information has not been subjected to auditing procedures applied by us in the audit of the basic financial statements, and accordingly, we do not express an opinion or provide any assurance on it.

***Other Reporting Required by Government Auditing Standards***

In accordance with U.S. *Government Auditing Standards* and OMB Bulletin No. 15-02, we have also issued our reports dated November 3, 2016, on our consideration of NLRB's internal control over financial reporting and the results of our tests of its compliance with certain provisions of laws, regulations, and other matters that are required to be reported under *Government Auditing Standards*. The purpose of those reports is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing and not to provide an opinion on the internal control over financial reporting or on compliance. Those reports are an integral part of an audit performed in accordance with U.S. *Government Auditing Standards* and OMB Bulletin 15-02 in considering the NLRB's internal control and compliance, and should be read in conjunction with this report in considering the results of our audit.

This report is intended solely for the information and use of management and the NLRB Office of Inspector General, OMB, Government Accountability Office, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.



November 3, 2016  
Alexandria, VA





1711 King Street  
Suite C  
Alexandria, VA 22314  
Phone: 703.229.4440  
Fax: 703.859.7603  
www.castroco.com

## Independent Auditor's Report on Internal Control

Inspector General  
National Labor Relations Board

We have audited the financial statements of the National Labor Relations Board (NLRB) as of and for the year ended September 30, 2016, and have issued our report thereon dated November 3, 2016. We conducted our audit in accordance with the auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 15-02, *Audit Requirements for Federal Financial Statements*.

In planning and performing our work, we considered the NLRB's internal control over financial reporting by obtaining an understanding of the design effectiveness of the NLRB's internal control, determining whether controls had been placed in operation, assessing control risk, and performing tests of the NLRB's controls as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not to express an opinion on the effectiveness of the NLRB's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the NLRB's internal control over financial reporting. We limited our internal control testing to those controls necessary to achieve the objectives described in the Office of Management and Budget (OMB) Bulletin No. 15-02, *Audit Requirements for Federal Financial Statements*. We did not test all internal controls relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982 (FMFIA), such as those controls relevant to ensuring efficient operations.

Our consideration of internal control over financial reporting was for the limited purposes described in the preceding paragraph and would not necessarily identify all deficiencies in internal control over financial reporting that might be material weaknesses or significant deficiencies.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the financial statements will not be prevented, or detected and corrected, on a timely basis. During our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

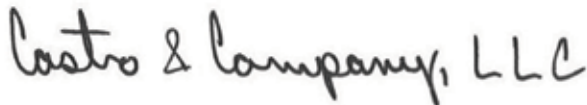
A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the deficiencies described below to be significant deficiencies.

Independent Auditor's Report on Internal Control  
Page 2

The NLRB's response to the findings identified in our audit is described in the accompanying Audit Response Letter. The NLRB's response was not subject to auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on it.

We noted less significant matters involving internal control and its operations which we have reported to NLRB management in a separate letter dated November 3, 2016.

This report is intended solely for the information and use of the management and the NLRB Office of Inspector General, OMB, the Government Accountability Office, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

A handwritten signature in black ink that reads "Castro & Company, LLC". The signature is written in a cursive, flowing style.

November 3, 2016  
Alexandria, VA

Independent Auditor's Report on Internal Control  
Page 3

## SIGNIFICANT DEFICIENCIES

### **I. Insufficient Finance Resources and/or Personnel with Appropriate Skill Sets and Quality Control Procedures Caused Financial Reporting and Accounting Discrepancies**

The Accountability of Tax Dollars Act of 2002 requires that the NLRB submit audited financial statements to Congress and the Director of OMB on an annual basis. OMB Circular No. A-136, *Financial Reporting Requirements*, defines the form and content of financial statements to be prepared by the NLRB that must also comply with Federal Accounting Standards. The statements must be prepared from an integrated financial management system containing sufficient structure, effective internal control, and reliable data. The financial reports must also be supported by comprehensive policies, with strong internal controls, that prescribe the procedures for processing and summarizing accounting entries, and preparing the financial statements.

During our testing of the NLRB's financial statement preparation and the supporting accounting transactions, we noted that improvement is needed to ensure that the NLRB can accurately produce its quarterly financial statements and perform related analyses. The errors we noted related to incorrect accumulation of account balances and incorrect postings to the accounting system. These errors occurred because of ineffective and/or inconsistent management reviews and approvals to provide assurance that transactions and adjustments were accurate and properly supported. NLRB management made the necessary adjustments to the final issued financial statements to correct the effect of these errors.

During our review of the NLRB's financial statement preparation process, we identified certain issues that impact the NLRB's ability to effectively accumulate, assemble, and analyze information presented in its financial statements in accordance with applicable guidance. The Finance Branch did not have sufficient adequate resources and personnel with appropriate skill sets and expertise to perform financial management accounting and reporting. During the course of our audit, it was not apparent that the NLRB had a process in place to cross-train personnel to perform day-to-day financial accounting, reporting, and analysis tasks, and to ensure adequate backup existed. Additionally, the Finance Branch did not have sufficient quality control procedures in place to detect certain financial reporting and accounting errors until brought to their attention by the auditors. Examples of the financial reporting and accounting errors noted include the following:

#### **Financial Reporting**

NLRB does not have sufficient resources to implement financial statement reporting requirements and sufficient controls in place to ensure that the financial statements are thoroughly prepared, reviewed, and presented in accordance with applicable OMB and Federal Accounting Standards requirements, including the following:

- The Finance Branch recorded an approximately \$400,000 journal voucher in October 2016 related to deobligating Fiscal Year (FY) 2016 obligations that: had a voucher processed for the expense, but the entire travel obligation was not liquidated; the travel obligation was approved prior to June 30, 2016, but no disbursements related to the travel obligation were processed; and funds for that were obligated for expenses related to the NLRB's fleet



## Independent Auditor's Report on Internal Control

### Page 4

vehicles that had not been expensed. If NLRB had been performing on-going monitoring and quarterly deobligation reviews throughout the fiscal year, those funds could have been made available earlier in the fiscal year for other critical agency needs prior to their expiration.

- Incorrect amounts were reported in the financial statements. For example, on the June 30th Statement of Changes in Net Position, the total for Net Cost of Operations for FY 2015 should have been (\$207,650,952) and not positive \$207,650,952.
- Amounts on the financial statements did not match amounts in the notes to the financial statements.
- Beginning balance amounts on the financial statements did not match ending balances from the prior year.
- Incorrect names were used for line items on the financial statements, including not incorporating changes from the October 7, 2016 update of OMB Circular A-136.

### **Property, Plant & Equipment**

During our interim testing of the Property, Plant, and Equipment (PP&E) balances as of June 30, 2016, we noted issues related to incorrectly recorded capitalized equipment and improper review and authorization of equipment disposals, including the following:

- The NLRB incorrectly overstated furniture assets by approximately \$430,000. These assets were previously capitalized as part of the GSA Headquarters building construction contract in FY 2015. The Finance Branch recorded the assets in the accounting records a second time with a Journal Voucher, rather than simply adding the individual asset items to Oracle Fixed Asset Module. Recording the assets a second time overstated the equipment, depreciation, and accumulated depreciation balances as of June 30, 2016.
- The NLRB incorrectly retired an asset with a book value of approximately \$22,000. The Facilities and Property Branch conducted an inventory in April 2016 and determined that the asset, with an original cost of approximately \$108,000, could not be found. The lost asset was reported to the Finance Branch, which then retired the asset in May 2016. The loss of the asset was not reported to the Office of Inspector General or senior level management officials. After receiving follow-up questions from the auditor, the asset was located at an off-site warehouse.

The NLRB does not have a properly implemented process for recording the acquisition and retirement of capitalized assets, or documented procedures over its process for reporting "lost" or "not found" capitalized equipment. Finance Branch personnel are approving and recording PP&E transactions in the financial system without properly reviewing or analyzing the provided supporting documentation.

By not performing detailed management reviews to ensure that PP&E assets are properly recorded, capitalized and disposed of, the NLRB increases the risk that the PP&E balance on the financial statements can present inaccurate, misleading and/or inconsistent information. Additionally, because

Independent Auditor's Report on Internal Control  
Page 5

the NLRB does not have documented procedures for the proper disposal and reporting of lost capitalized assets, NLRB management is unable to properly safeguard its assets to prevent, detect, and correct unauthorized acquisitions and disposals of the NLRB's assets. All the PP&E errors that we brought to management's attention were subsequently corrected; however, appropriate supporting procedures still need to be developed and disseminated.

### **Backpay**

During our interim testing of the Backpay balance as of June 30, 2016, we performed a review of the Other Liabilities General Ledger account used to record fiduciary funds collected by the NLRB and held in escrow accounts with the Treasury. Backpay funds administered by the NLRB are used to provide a remedy to a discriminatee(s) when a violation of the National Labor Relations Act results in a monetary loss to a discriminatee(s) due to an unfair labor practice. The Backpay funds that are held by the NLRB are received from a charged party/respondent. The Finance Branch disburses the Backpay funds when directed to do so by a Regional Office.

As part of the Backpay interim testing, we obtained the detail listing of Backpay disbursements and selected a sample of 45 payments made during the period of October 1, 2015 through June 30, 2016. The purpose of our testing was to assess management controls and compliance with NLRB policies and procedures as well as applicable laws and regulations relative to Backpay disbursement transactions. We noted the following conditions:

- NLRB did not consistently follow its policies and procedures to evidence proper review and approval of Backpay disbursement requests: Specifically, we noted that:
  - For five (5) sample disbursements, the signed Case Settlement Agreement was not maintained on file and the Finance Branch, instead, processed the payments using the published Board Order as evidence of approval.
  - For four (4) sample disbursements, the Disbursement Request Forms were missing the appropriate approval signatures and the Finance Branch, instead, processed payment using an email as evidence of review.
  - For one (1) sample disbursement, the Recipient Information Form was missing the approval signature from the Compliance Officer.
- For each of the ten (10) Backpay cases tested, we observed that the final settlement documents were not executed in a manner that would prevent alterations.

The NLRB did not consistently follow its policies and procedures to maintain files for Backpay disbursement requests and settlement agreement documentation that were complete and properly approved. Additionally, the NLRB did not have policies and procedures to ensure the integrity and authenticity of final case settlement documents. The establishment of written, formal policies and procedures are critical to provide assurance that a system of internal controls is followed. The lack of monitoring compliance with established procedures can increase the risk of fraud, waste, and abuse occurring in processing Backpay transactions.

Independent Auditor's Report on Internal Control  
Page 6

The Government Accountability Office's *Standards for Internal Control in the Federal Government* states:

People are what make internal control work. The responsibility for good internal controls rests with all managers. Management sets the objectives, puts the control mechanisms and activities in place, and monitors and evaluates the control. However, all personnel in the organization play important roles in making it happen. All personnel need to possess and maintain a level of competence that allows them to accomplish their assigned duties, as well as understand the importance of developing and implementing good internal control. Management needs to identify appropriate knowledge and skills needed for various jobs and provide needed training, as well as candid and constructive counseling, and performance appraisals.

Internal control and all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination. The documentation should appear in management directives, administrative policies, or operating manuals and may be in paper or electronic form. All documentation and records should be properly managed and maintained.

Management designs control activities in response to the entity's objectives and risks to achieve an effective internal control system. Control activities are the policies, procedures, techniques, and mechanisms that enforce management's directives to achieve the entity's objectives and address related risks. As part of the control environment component, management defines responsibilities, assigns them to key roles, and delegates authority to achieve the entity's objectives...Control activities are an integral part of an entity's planning, implementing, reviewing, and accountability for stewardship of government resources and achieving effective results...They include a wide range of diverse activities such as approvals, authorizations, verifications, reconciliations, performance reviews, maintenance of security, and the creation and maintenance of related records which provide evidence of execution of the activities as well as appropriate documentation.

Internal control comprises the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity. Internal control serves as the first line of defense in safeguarding assets. In short, internal control helps managers achieve desired results through effective stewardship of public resources.

Management establishes physical control to secure and safeguard vulnerable assets. Examples include security for and limited access to assets such as cash, securities, inventories, and equipment that might be vulnerable to risk of loss or unauthorized use. Management periodically counts and compares such assets to control records.

Section I.A. of Office of Management and Budget Circular No. A-123, *Management's Responsibility for Internal Control*, states:

Independent Auditor's Report on Internal Control  
Page 7

The control environment is the organizational structure and culture created by management and employees to sustain organizational support for effective internal control. When designing, evaluating or modifying the organizational structure, management must clearly demonstrate its commitment to competence in the workplace. Within the organizational structure, management must clearly: define areas of authority and responsibility; appropriately delegate the authority and responsibility throughout the agency; establish a suitable hierarchy for reporting; support appropriate human capital policies for hiring, training, evaluating, counseling, advancing, compensating and disciplining personnel; and uphold the need for personnel to possess and maintain the proper knowledge and skills to perform their assigned duties as well as understand the importance of maintaining effective internal control within the organization.

NLRB's *Casehandling Manual, Part Three, Compliance Proceedings*, Sections 10582.1 and 10582.2, states:

The Region should request disbursement of money held in an escrow account by submitting a Finance Branch Request to Disbursement Form with appropriate confirmations, a completed OCFO Recipient Information Form (or documentation with the same information) for each discriminatee and an Excel spreadsheet.

No backpay disbursements will be processed unless the requirements in Section 10582.1 are met.

Without adequate staffing levels, the proper skill sets, and cross-training, the Finance Branch will continue to encounter challenges in its accounting and financial reporting processes. By not adequately performing management functions specific to monitoring, analysis, and oversight, discrepancies may exist but go undetected and uncorrected, thereby causing the financial information to be misstated. Effective management oversight greatly increases the NLRB's ability to proactively identify and resolve issues that could result in misstatements in financial accounting and reporting records.

**Recommendations:**

We recommend that NLRB management:

1. Perform an assessment of its organizational structure to ensure that the Office of the Chief Financial Officer is adequately staffed with individuals that possess adequate experience compiling Federal financial statements and recording Federal accounting transactions, to enhance the NLRB's ability to comply with accounting and financial reporting standards. Once the assessment is completed, corrective action should be taken to address any deficiencies identified in current staffing levels or competencies.
2. Develop and provide on-going training and cross-training to NLRB staff on Federal accounting and reporting requirements to enhance NLRB's ability to compile financial

Independent Auditor's Report on Internal Control  
Page 8

statements and the Performance and Accountability Report in accordance with applicable standards.

3. Develop a process for in-depth and detailed management quality control reviews of the financial statements and notes, journal vouchers, and accounting transactions to ensure they are properly and timely reported and recorded.
4. Ensure deobligation reviews are performed and documented throughout the fiscal year for all classes of transactions, including those related to travel obligations.
5. Ensure that all assets are properly recorded in the subsidiary ledger and related accounting records and depreciated in a manner that properly reflects asset, contra-asset, and expense balances.
6. Develop and implement a process to enter and track all property equipment in the Oracle Fixed Asset Module.
7. Develop and implement standardized policies and procedures to ensure accountability, monitoring, and oversight of the PP&E disposals and lost capitalized equipment, including notification to the Office of Inspector General for lost equipment.
8. Define authorities and responsible parties for managing all capitalized assets to maintain physical control in securing and safeguarding NLRB assets.
9. Review, implement, and monitor control activities related to processing Backpay transactions to ensure that policies and procedures are consistently followed.
10. Review the Casehandling Manual and establish and implement procedures to ensure accuracy and authenticity of case agreement documents.



Independent Auditor's Report on Internal Control  
Page 9

## II. Inadequate Controls over Undelivered Orders, Accounts Payable, and Expenditures

We continued to note issues related to the validity of Undelivered Orders (UDO) balances, primarily due to the recording of incorrect accruals. During our testing, we noted several issues surrounding the accounting for UDOs, Accounts Payable (AP), and expenditures, as summarized below:

- The results of our interim testing identified exceptions in 8 of the 26 transactions tested. We noted the following conditions:
  - Five (5) under-accruals were recorded, which understated the AP balance and overstated the UDO balance as of June 30, 2016 by approximately \$578,000. For three (3) transactions, the NLRB did not properly recognize an accrual for the entire period for which services were received. For one (1) other transaction, an incorrect formula was used to calculate the accrual amount. For one (1) additional transaction, the NLRB did not recognize an accrual for relocation services received for the Chicago Regional Office even though relocation was 100 percent complete as of June 30, 2016.
  - Three (3) over-accruals were recorded, which overstated the AP balance and understated the UDO balance as of June 30, 2016 by approximately \$337,000. For two (2) transactions, the NLRB recorded an accrual for services where invoices were received subsequent to the accrual calculation and recognized in the general ledger but were not adjusted. For one (1) other transactions, the NLRB recorded an accrual for estimated travel expenses not yet incurred when travel dates were estimated for July 2016.
- We noted instances where improvements are needed in contract administration. During FY 2016, the NLRB operated under a series of Continuing Resolutions until an Omnibus Appropriations Act was approved to provide funding from December 22, 2015, through the end of the fiscal year. We noted two instances where FY 2016 obligations incurred during the period covered by a Continuing Resolution were recorded in increments, rather than being recorded for the full amount of the obligation that was incurred. We also observed that the NLRB contracting officers created obligations of the appropriated funds without full budgetary authority and then recorded the obligations as funds were apportioned. As a result, the NLRB did not record obligations in a timely manner, and the NLRB's accounts did not accurately state the amount of available funds, nor did the accounts accurately record the amount of UDOs. Without an accurate record of the funds that have been obligated, the NLRB is at risk of exceeding the funds that have been appropriated and apportioned.

The Government Accountability Office's *Standards for Internal Control in the Federal Government* states,

Internal control comprises the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity. Internal control serves as the first line of defense in safeguarding assets. In short, internal control helps managers achieve desired results through effective stewardship of public resources.

Independent Auditor's Report on Internal Control  
Page 10

Management performs ongoing monitoring of the design and operating effectiveness of the internal control system as part of the normal course of operations. Ongoing monitoring includes regular management and supervisory activities, comparisons, reconciliations, and other routine actions. Ongoing monitoring may include automated tools, which can increase objectivity and efficiency by electronically compiling evaluations of controls and transactions.

Management should remediate identified internal control deficiencies on a timely basis.

Transactions are promptly recorded to maintain their relevance and value to management in controlling operations and making decisions. This applies to the entire process or life cycle of a transaction or event from its initiation and authorization through its final classification in summary records. In addition, management designs control activities so that all transactions are completely and accurately recorded.

Management clearly documents internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination. The documentation may appear in management directives, administrative policies, or operating manuals, in either paper or electronic form. Documentation and records are properly managed and maintained.

Statement of Federal Financial Accounting Standards (SFFAS) No. 1, *Accounting for Selected Assets and Liabilities*, states,

Accounts payable are amounts owed by a Federal entity for goods and services received from, progress in contract performance made by, and rents due to other entities...When an entity accepts title to goods, whether the goods are delivered or in transit, the entity should recognize a liability for the unpaid amount of the goods. If invoices for those goods are not available when financial statements are prepared, the amounts owed should be estimated.

31 U.S.C. § 1341 states, in part, that employee of the United States Government may not make or authorize an obligation exceeding an amount available in an appropriation for the obligation.

31 U.S.C. § 1507 states, in part, that an employee of the United States Government may not make or authorize an obligation exceeding an apportionment.

31 U.S.C. § 1501 (a)(1) states, in part, that an amount shall be recorded as an obligation of the United States Government only when supported by documentary evidence of a binding agreement between the agency and another person, including an agency, that is in writing and executed before the end of the period of availability of the funds.

The NLRB did not perform a detailed review of open obligations throughout the majority of the fiscal year to ensure accrual estimates were accurate and complete, including going back after initial accruals were calculated to verify if the amount was still correct. Not performing an accurate review

Independent Auditor's Report on Internal Control  
Page 11

of open obligations, expenditures, and accounts payable resulted in an under/overstatement in AP and under/overstatement in the obligations. Additionally, the financial data used to generate management and financial reports required by applicable laws and regulations was not accurate. As a result, those charged with governance did not have reliable financial information to manage Agency operations.

**Recommendations:**

11. Our testing results confirmed that not all of our FY 2014 audit recommendations have been properly implemented; therefore, new recommendations are not deemed necessary at this time for those matters included in the prior reports.
12. Additionally, for the issue involving recording obligations incrementally, instead of as they are incurred, we recommend that the Chief Financial Officer develop a process and guidelines to ensure that:
  - The procurement documents accurately state the obligation that is created; and
  - The entire amount of an obligation is recorded in the financial system when it is incurred.



1711 King Street  
Suite C  
Alexandria, VA 22314  
Phone: 703.229.4440  
Fax: 703.859.7603  
www.castroco.com

### **Independent Auditor's Report on Compliance with Laws and Regulations**

Inspector General  
National Labor Relations Board

We have audited the financial statements of the National Labor Relations Board (NLRB) as of and for the year ended September 30, 2016, and have issued our report thereon dated November 3, 2016. We conducted our audit in accordance with the auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 15-02, *Audit Requirements for Federal Financial Statements*.

The management of NLRB is responsible for complying with laws and regulations applicable to NLRB. We performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts, and certain other laws and regulations specified in the Office of Management and Budget (OMB) Bulletin No. 15-02, *Audit Requirements for Federal Financial Statements*, including the requirements referred to in the Federal Managers' Financial Integrity Act of 1982 (FMFIA). We limited our tests of compliance to these provisions, and we did not test compliance with all laws and regulations applicable to NLRB.

The results of our tests of compliance with applicable laws and regulations, and government-wide policies, described in the preceding paragraph identified no instances of noncompliance that are required to be reported under *Government Auditing Standards* or OMB guidance.

Providing an opinion on compliance with certain provisions of laws and regulations and government-wide policies was not an objective of our audit, and accordingly, we do not express such an opinion.

This report is intended solely for the information and use of management and the NLRB Office of Inspector General, OMB, Government Accountability Office, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

A handwritten signature in dark ink that reads "Castro &amp; Company, LLC".

November 3, 2016  
Alexandria, VA

# NLRB RESPONSE TO AUDIT REPORT

UNITED STATES GOVERNMENT  
*National Labor Relations Board*  
*Office of the Chief Financial Officer*  
Memorandum



November 2, 2016

**TO:** David P. Berry, Inspector General

**FROM:** Mehul Parekh, Chief Financial Officer

**SUBJECT:** Response to the Audit of the National Labor Relations Board Fiscal Year 2016 Financial Statements

We have reviewed the subject report and concur with the factual findings and recommendations. We appreciate the auditor's unmodified opinion and determination that our financial statements present fairly, in all material respects, the financial position of the National Labor Relations Board as of September 30, 2016.

The Office of the Chief Financial Officer (OCFO) continues to document processes and is implementing strategies to measure, manage, and mitigate risk by improving internal controls. Below is our response to the auditor's specific recommendations. A management action plan will be developed to track the progress on these recommendations.

- The OCFO will conduct an assessment of its organizational structure to ensure we have adequate resources and training to record accurate financial transactions and prepare and review financial reports, in order to enhance the NLRB's ability to comply with financial accounting and reporting standards.
- The OCFO has established a quarterly accrual methodology, and will continue to document processes and improve accuracy and timeliness of reporting obligation and accounts payable balances.
- The OCFO will collaborate with Agency stakeholders and identify responsible parties to develop, document, implement and monitor procedures for tracking, recording in the system of record, and disposing of property and equipment.
- The OCFO will review and clarify existing procedures for the Backpay disbursement process to ensure monitoring and control protocols are effective, and documentation is accurate and secured.
- The OCFO will develop a policy to ensure that contracts contain adequate terms related to funding amounts and will obligate contracts accordingly.

A handwritten signature in black ink, reading "Mehul Parekh".

Mehul Parekh, Chief Financial Officer



# PRINCIPAL FINANCIAL STATEMENTS

## AUDITOR'S REPORTS AND PRINCIPAL FINANCIAL STATEMENTS

### National Labor Relations Board

#### Balance Sheets

As of September 30, 2016 and 2015 (in dollars)

	FY 2016	FY 2015
<b>Assets:</b>		
<b>Intragovernmental:</b>		
Fund Balance with Treasury	\$ 33,481,817	\$ 32,608,920
Advances and Prepayments	54,966	62,105
<b>Total Intragovernmental Assets</b>	33,536,783	32,671,025
<b>Assets with the Public</b>		
Accounts and Interest Receivable (Note 5)	580,644	66,435
Advances and Prepayments (Note 4)	39,704	36,082
General Property, Plant, and Equipment (Note 6)	10,599,628	10,653,716
<b>Total Assets</b>	<b>\$ 44,756,759</b>	<b>\$ 43,427,258</b>

<b>Liabilities:</b>		
<b>Intragovernmental:</b>		
Accounts Payable	\$ 3,137,289	\$ 5,177,074
Employer Contributions & Payroll Taxes Payable	4,981,491	4,617,546
FECA Liabilities	360,287	402,892
<b>Total Intragovernmental</b>	8,479,067	10,197,512
<b>Liabilities with the Public</b>		
Accounts Payable	3,558,843	1,923,396
Fed Employee Benefits - FECA Actuarial Liability	1,023,443	863,428
Unfunded Annual Leave	14,373,772	13,997,114
Employer Contributions and Payroll Taxes Payable	3,288,248	2,006,748
Contingent Liabilities	0	63,947
<b>Total Liabilities</b>	<b>30,723,373</b>	<b>29,052,145</b>

<b>Net Position:</b>		
Unexpended Appropriations	18,677,832	18,951,372
Cumulative Results of Operations	(4,644,446)	(4,576,259)
<b>Total Net Position</b>	<b>14,033,386</b>	<b>14,375,113</b>
<b>Total Liabilities and Net Position</b>	<b>\$ 44,756,759</b>	<b>\$ 43,427,258</b>

The accompanying notes are an integral part of these financial statements.

## National Labor Relations Board

## Statements of Net Cost

For the Years Ended September 30, 2016 and 2015 *(in dollars)*

	FY 2016	FY 2015
<b>Program Costs:</b>		
<b>Resolve Unfair Labor Practices</b>		
Net Cost	\$ 261,267,855	\$ 247,564,985
<b>Resolve Representation Cases</b>		
Net Cost	31,076,170	33,375,761
<b>Total:</b>		
Costs	\$ 292,344,025	\$ 280,940,746
<b>Net Cost of Operations</b>	<b>\$ 292,344,025</b>	<b>\$ 280,940,746</b>

The accompanying notes are an integral part of these financial statements.

**National Labor Relations Board**  
**Statements of Changes in Net Position**  
For the Years Ended September 30, 2016 and 2015 *(in dollars)*

	FY 2016	FY 2015
<b>Cumulative Results of Operations:</b>		
Beginning Balances	\$ (5,175,108)	\$ (10,341,523)
Adjustments:		
Correction of Errors	598,849	2,622
Beginning Balance, as Adjusted	(4,576,259)	(10,338,901)
<b>Budgetary Financing Sources:</b>		
Appropriations Used	272,495,326	271,251,582
Non-Exchange Revenue	(52,838)	(336,287)
Transfers In/Out without Reimbursement	(438,099)	0
<b>Other Financing Sources (Non-Exchange):</b>		
Imputed Financing	20,271,449	15,788,093
<b>Total Financing Sources</b>	<b>292,275,838</b>	<b>286,703,388</b>
Net Cost of Operations	(292,344,025)	(280,940,746)
<b>Net Change</b>	<b>(68,187)</b>	<b>5,762,642</b>
<b>Cumulative Results of Operations</b>	<b>(4,644,446)</b>	<b>(4,576,259)</b>

<b>Unexpended Appropriations</b>		
Beginning Balance	19,552,843	19,220,299
Adjustments:		
Correction of Errors	(601,471)	(2,622)
Beginning Balance, as Adjusted	18,951,372	19,217,677
<b>Budgetary Financing Resources:</b>		
Appropriations Received	274,224,000	274,224,000
Appropriations Used	(272,495,326)	(271,251,582)
Other Adjustments	(2,002,214)	(3,238,723)
Total Budgetary Financing Sources	(273,540)	(266,305)
<b>Total Unexpended Appropriations</b>	<b>18,677,832</b>	<b>18,951,372</b>
<b>Net Position</b>	<b>\$ 14,033,386</b>	<b>\$ 14,375,113</b>

The accompanying notes are an integral part of these financial statements.

**National Labor Relations Board**  
**Statements of Budgetary Resources**  
For the Years Ended September 30, 2016 and 2015 *(in dollars)*

	FY 2016	FY 2015
<b>Budgetary Resources:</b>		
Unobligated Balance, Brought Forward, Oct 1:	\$ 4,861,067	\$ 4,428,811
Recoveries of Prior Year Unpaid Obligations	3,705,771	3,861,517
Other Changes in Unobligated Balance	(1,823,942)	(3,238,723)
Unobligated balance from Prior Year Budget Authority, Net	6,742,896	5,051,605
Appropriations	274,224,000	274,224,000
Spending Authority from Offsetting Collections	0	61,815
<b>Total Budgetary Resources (Note 14)</b>	<b>\$ 280,966,896</b>	<b>\$ 279,337,420</b>

<b>Status of Budgetary Resources:</b>		
New Obligations and Upward Adjustments	\$ 275,144,463	\$ 274,476,353
Unobligated Balance, End of Year:		
Apportioned	602,325	481,752
Unapportioned	5,220,108	4,379,315
Total Unobligated Balance, End of Year	5,822,433	4,861,067
<b>Total Budgetary Resources (Note 14)</b>	<b>\$ 280,966,896</b>	<b>\$ 279,337,420</b>

<b>Change in Obligated Balance</b>		
<b>Unpaid obligations:</b>		
Unpaid Obligations, Brought Forward, Oct 1 (Gross)	\$ 27,746,693	\$ 28,465,715
New Obligations and Upward Adjustments	275,144,463	274,476,353
Outlays (Gross)	(271,526,544)	(271,333,858)
Recoveries of Prior Year Unpaid Obligations	(3,705,771)	(3,861,517)
<b>Unpaid Obligations, End of Year (Gross)</b>	<b>27,658,841</b>	<b>27,746,693</b>

Obligated Balance, Start of Year (Net)	\$ 27,746,693	\$ 28,465,715
Obligated Balance, End of Year (Net)	\$ 27,658,841	\$ 27,746,693

<b>Budget Authority and Outlays, Net</b>		
Budget Authority, Gross	\$ 274,224,000	\$ 274,285,815
Actual Offsetting Collections	(178,272)	(61,815)
Budget Authority, Net	\$ 274,045,728	\$ 274,224,000
Outlays, Gross	\$ 271,526,544	\$ 271,333,858
Actual Offsetting Collections	(178,272)	(61,815)
Outlays, Net	271,348,272	271,272,043
<b>Agency Outlays, Net</b>	<b>\$ 271,348,272</b>	<b>\$ 271,272,043</b>

The accompanying notes are an integral part of these financial statements.

# NOTES TO PRINCIPAL STATEMENTS

## NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

### A. Reporting Entity

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

### B. Basis of Accounting and Presentation

These financial statements have been prepared to report the financial position, net cost, changes in net position, and budgetary resources of the NLRB as required by the Accountability of Tax Dollars Act of 2002. These financial statements have been prepared from the records of the NLRB in accordance with generally accepted accounting principles (GAAP), and the form and content requirements of the Office

of Management and Budget (OMB) Circular No. A-136, *Financial Reporting Requirements*, revised as of October 7, 2016. GAAP for federal entities are the standards prescribed by the Federal Accounting Standards Advisory Board (FASAB), which is the official standard-setting body for the Federal government. These financial statements present proprietary and budgetary information.

The Balance Sheet presents agency assets and liabilities, and the difference between the two, which is the agency's net position. Agency assets include both entity assets — those which are available for use by the agency — and non-entity assets — those which are managed by the agency but not available for use in its operations. Agency liabilities include both those covered by budgetary resources (funded) and those not covered by budgetary resources (unfunded). A note disclosure is required to provide information about its fiduciary activities.

The Statement of Net Cost presents the gross costs of programs, reported by program and for the Agency as a whole.

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

The Statement of Budgetary Resources provides information about how budgetary resources were made available as well as their status at the end of the period. Recognition and measurement of budgetary information reported on this statement is based on budget terminology, definitions, and guidance in OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, dated July 1, 2016.

The Agency is required to be in substantial compliance with all applicable accounting principles and standards established, issued, and implemented by the FASAB, which is recognized by the American Institute of Certified Public Accountants (AICPA)



as the entity to establish GAAP for the Federal government. The Federal Financial Management Integrity Act (FFMIA) of 1996 requires the Agency to comply substantially with (1) federal financial management systems requirements, (2) applicable federal accounting standards, and (3) the United States Standard General Ledger (USSGL) at the transaction level. Since the Agency is not a CFO Act agency, it is not subject to FFMIA. The Agency uses the Department of Interior's financial management system and that system is FFMIA compliant. Thus, the Agency's financial management system complied with the requirements of FFMIA and produced records in accordance with USSGL at the transaction level.

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

The accounting structure of federal agencies is designed to reflect both accrual and budgetary accounting transactions. Under the accrual method of accounting, revenues are recognized when earned, and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash. The budgetary accounting principles, on the other hand, are designed to recognize the obligation of funds according to legal requirements, which in many cases is prior to the occurrence of an accrual based transaction. The recognition of budgetary accounting transactions is essential for compliance with legal constraints and controls over the use of federal funds.

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

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

law that has been developed by the Board and the federal courts.

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

All cases are assigned unique tracking numbers, with the letter "C" designating Unfair Labor Practices cases, and the letter "R" designating Representation cases. The percentage of new cases filed for each type of case drives the program breakout for financial reporting purposes. Please see chart below with the calculations for FY 2016 and FY 2015, through September 30.

	FY 2016	FY 2015
	Percentage	Percentage
C Cases (Unfair Labor Practices)	89%	88%
R Cases (Representation)	11%	12%
	100%	100%

### C. Budgets and Budgetary Accounting

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

Budgetary accounting measures appropriation and consumption of budget/spending authority

and facilitates compliance with legal constraints and controls over the use of federal funds. Under budgetary reporting principles, budgetary resources are consumed at the time an obligation to pay is made. Only those liabilities for which valid obligations have been established are considered to consume budgetary resources.

#### **D. Financing Sources**

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

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

#### **E. Fund Balance with the Treasury**

The NLRB does not maintain cash in commercial bank accounts. Cash receipts and disbursements are processed by Treasury, and the agency's records are reconciled with those of Treasury. Funds with Treasury represent the NLRB's right to draw on the Treasury for allowable expenditures.

In addition, funds held with Treasury also include escrow funds that are not appropriated but are fiduciary in nature. The fiduciary funds are not recognized on the Balance Sheet.

#### **F. Fiduciary Activities**

Fiduciary activities are the collection or receipt, and the management, protection, accounting, and investment, and disposition by the Federal government of cash or other assets in which non-Federal individuals or entities have an ownership interest that the Federal government must uphold. Fiduciary cash and other assets are not assets of the Federal government, and are therefore not recognized on the proprietary financial statements, but are reported on schedules in the notes to the financial statements. See Statement of Federal Financial Accounting Standards (SFFAS) No. 31, Accounting for Fiduciary Activities.

The fiduciary funds collected by NLRB and held in escrow represent funds that were collected as part of the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings. The NLRB collects the funds, and then distributes them to employees, unions, pension funds, or other discriminatees in the settlement. The NLRB has the option to invest funds in Federal government securities, if the funds will remain in escrow for a lengthy period of time. During FY 2016, no fiduciary funds were invested.

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

#### **G. Accounts Receivable, Net of Allowance for Doubtful Accounts**

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

#### **H. General Property, Plant and Equipment**

General property, plant and equipment consist primarily of telephone systems, bulk purchases, computer hardware and software, and leasehold improvements.

*Personal Property.* Personal property costing \$15,000 or more per unit is capitalized at cost and depreciated using the straight-line method over the useful life. Bulk purchases of large quantities of property that would otherwise fall under the individual capitalization threshold are capitalized if the total purchase is \$100,000 or more. Other property items are expensed when purchased. Expenditures for repairs and maintenance are charged to operating expenses as incurred. The useful life for this category is three to twelve years. There are no restrictions on the use or convertibility of general property, plant and equipment.

*Real Property.* Real property consists of leasehold improvements on GSA leased space which cost \$100,000 or more. Leasehold improvements are recorded as construction in progress until the Agency has beneficial occupancy of the space, and then the costs are moved to the Leasehold Improvements account for amortization over the remaining life of the lease.

*Internal Use Software.* Internal use software (IUS) includes purchased commercial off-the-shelf software (COTS), contractor-developed software, and software that was internally developed by Agency employees. IUS is capitalized at cost if the development cost is \$100,000 or more. For COTS software, the capitalized costs include the amount paid to the vendor for the software; for contractor-developed software it includes the amount paid to a contractor to design, program, install, and implement the software. Capitalized costs for internally developed software include the full cost (direct and indirect) incurred during the software development stage. The standard useful life for IUS has been established as three years, in order to most accurately match expenses with the time period in which the benefits are received from the software. The NLRB uses the straight-line method of amortization.

*Internal Use Software in Development.* Internal use software in development is software that is being developed, but not yet put into production. At the time the software is moved into production the costs will be moved into the IUS account and amortized accordingly, as described above. The NLRB continues to enhance a major software development project called the Next Generation Case Management System (NXGen) that replaced a number of legacy case tracking systems with one enterprise-wide system. NXGen supports the President's Management Agenda, such as for e-Gov, E-Filing, and provides the public with web-based access to NLRB data. This project has been a multiple year undertaking in which a large portion of the system was rolled out in FY 2011.

### **I. Non-Entity Assets**

Assets held by the NLRB that are not available to the NLRB for obligation are considered non-entity assets. Non-Entity assets, restricted by nature, consist of miscellaneous receipt accounts. The miscellaneous receipts represent court fines and fees collected for Freedom of Information Act

requests that must be transferred to the Treasury at the end of each fiscal year.

### **J. Liabilities**

Liabilities represent the amount of monies or other resources that are likely to be paid by the NLRB as the result of a transaction or event that has already occurred. However, no liability can be paid by the NLRB absent an appropriation. Liabilities of the NLRB arising from other than contracts can be abrogated by the government, acting in its sovereign capacity.

### **K. Liabilities Not Covered by Budgetary Resources**

Liabilities not covered by budgetary resources result from the receipts of goods or services in the current or prior periods, or the occurrence of eligible events in the current or prior periods for which appropriations, revenues, or other financing sources of funds necessary to pay the liabilities have not been made available through Congressional appropriations or current earnings of the reporting entity.

#### *Intragovernmental*

The U.S. Department of Labor (DOL) paid Federal Employees Compensation Act (FECA) benefits on behalf of the NLRB which had not been billed or paid by the NLRB as of September 30, 2016 and 2015, respectively.

#### *Federal Employees Workers' Compensation Program*

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

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

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

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

#### *Accrued Annual Leave*

Accrued annual leave represents the amount of annual leave earned by NLRB employees but not yet taken.

### **L. Contingencies**

The criteria for recognizing contingencies for claims are:

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

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

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

### **M. Unexpended Appropriations**

Unexpended appropriations represent the amount of the NLRB's unexpended appropriated spending

authority as of the fiscal year-end that is unliquidated or is unobligated and has not lapsed, been rescinded, or withdrawn.

### **N. Annual, Sick, and Other Leave**

#### *Annual and Sick Leave Program.*

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

### **O. Life Insurance and Retirement Plans**

#### *Federal Employees Group Life Insurance (FEGLI) Program.*

Most NLRB employees are entitled to participate in the FEGLI Program. Participating employees can obtain "basic life" term life insurance, with the employee paying two-thirds of the cost and the NLRB paying one-third. Additional coverage is optional, to be paid fully by the employee. The basic life coverage may be continued into retirement if certain requirements are met. The Office of Personnel Management (OPM) administers this program and is responsible for the reporting of liabilities. For each fiscal year, OPM calculates the U.S. Government's service cost for the post-retirement portion of the basic life coverage. Because the NLRB's contributions to the basic life coverage are fully allocated by OPM to the pre-retirement portion of coverage, the NLRB has recognized the entire service cost of the post-retirement portion of basic life coverage as an imputed cost and imputed financing source.

#### *Retirement Programs.*

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

are they entitled to accrue Social Security benefits for wages subject to CSRS. The NLRB contributes a matching contribution equal to 7 percent of pay for CSRS employees.

FERS consists of Social Security, a basic annuity plan, and the Thrift Savings Plan. The Agency and the employee contribute to Social Security and the basic annuity plan at rates prescribed by law. In addition, the Agency is required to contribute to the Thrift Savings Plan a minimum of 1 percent per year of the basic pay of employees covered by this system and to match voluntary employee contributions up to 3 percent of the employee's basic pay, and one-half of contributions between 3 percent and 5 percent of basic pay. For FERS employees, the Agency also contributes the employer's share of Medicare. The maximum amount of base pay that an employee participating in FERS may contribute is \$18,000 in calendar year (CY) 2016 to this plan. Employees belonging to CSRS may also contribute up to \$18,000 of their salary in CY 2016 and receive no matching contribution from the NLRB. The maximum for catch-up contributions for CY 2016 is \$6,000. For CY 2016, the regular and catch-up contributions may not exceed \$24,000. The sum of the employees' and the NLRB's contributions are transferred to the Federal Retirement Thrift Investment Board.

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

The NLRB does not report on its financial statements FERS and CSRS assets, accumulated plan benefits, or unfunded liabilities, if any, applicable to its employees. Reporting such amounts is the responsibility of OPM. The portion of the current and estimated future outlays for CSRS not paid by the NLRB is, in accordance with SFFAS No.4, Managerial Cost Accounting Concepts and Standards for the Federal Government, included in the NLRB's financial statements as an imputed financing source.

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

SFFAS No. 4, Managerial Cost Accounting Concepts and Standards for the Federal government, requires employing agencies to recognize the cost of pensions and other retirement benefits during their employees' active years of service. OPM actuaries determine pension cost factors by calculating the value of pension benefits expected to be paid in the future, and provide these factors to the agency for current period expense reporting. Information was also provided by OPM regarding the full cost of health and life insurance benefits.

As of year ended September 30, 2016, the NLRB, utilizing OPM provided cost factors, recognized \$7,008,181 of pension expenses, \$13,235,881 of post-retirement health benefits expenses, and \$27,387 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$20,271,449 as an imputed financing source to the extent that these intragovernmental expenses will be paid by OPM. In comparison, in FY 2015, the NLRB recognized \$7,490,172 of pension expenses, \$8,270,495 of post-retirement health benefits expenses, and \$27,426 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$15,788,093 as an imputed financing source from OPM.

## P. Operating Leases

The NLRB has no capital lease liability or capital leases. Operating leases consist of real and personal property leases with the General Services Administration (GSA) and commercial copier leases. NLRB leases all buildings through GSA. The NLRB pays GSA a standard level users charge for the annual leases, which approximates the commercial rental rates for similar properties. The NLRB is not legally a party to any building lease agreements, and it does not record GSA-owned properties as assets. The real property leases are for NLRB's Headquarters and Regional Offices, and the personal property leases are for Fleet vehicles and copiers.



**Q. Net Position**

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

**R. Use of Management Estimates**

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

**S. Tax Status**

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

**T. Subsequent Events**

Subsequent events and transactions occurring after September 30, 2016 through the date of the auditor's opinion have been evaluated for potential recognition or disclosure in the financial statements. The date of the auditors' opinion also represents the date that the financial statements were available to be issued.

**NOTE 2. FUND BALANCE WITH TREASURY**

Treasury performs cash management activities for all federal agencies. NLRB's Fund Balance with Treasury represents the right of the NLRB to draw down funds from Treasury for expenses and liabilities. Fund Balance with Treasury by fund type as of September 30, 2016 and September 30, 2015 consists of the following:

<i>(in whole dollars)</i>	<b>FY 2016</b>	<b>FY 2015</b>
Entity Fund Balance with Treasury	\$ 33,481,817	\$ 32,608,920
Non-Entity Fund Balance with Treasury	52,838	336,287
Total	\$ 33,534,655	\$ 32,945,207

**Fund Balance with Treasury by Fund Type:**

The status of the fund balance may be classified as unobligated available, unobligated unavailable, and obligated. Unobligated funds, depending on budget authority, are generally available for new obligations in current operations. The unavailable balance includes amounts appropriated in prior fiscal years, which are not available to fund new obligations.

The obligated but not yet disbursed balance represents amounts designated for payment of goods and services ordered but not yet received or goods and services received but for which payment has not yet been made.

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

Status of Fund Balance with Treasury as of September 30, 2016 and September 30, 2015 consists of the following:

**Fund Balance with Treasury by Availability:**

<i>(in whole dollars)</i>	<b>FY 2016</b>	<b>FY 2015</b>
Unobligated Balance		
Available	\$ 602,325	\$ 481,752
Unavailable	5,220,108	4,379,315
Obligated balance not yet disbursed	27,659,384	27,747,853
Non-budgetary fund balance with Treasury	52,838	336,287
Total	\$ 33,534,655	\$ 32,945,207

**NOTE 3. FIDUCIARY ACTIVITIES**

Backpay funds are the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings. NLRB holds these funds in an escrow account with Treasury and may invest the funds in market-based Treasury securities issued by the Federal Investment Branch of the Bureau of the Fiscal Service.

**Schedule of Fiduciary Activity**  
**As of September 30, 2016 and 2015**

<i>(in whole dollars)</i>	<b>FY 2016</b>	<b>FY 2015</b>
Fiduciary net assets, beginning of the year	\$ 4,542,870	\$ 6,552,050
Fiduciary revenues	10,115,627	2,608,964
Investment earnings	0	0
Disbursements to and on the behalf of beneficiaries	(12,586,624)	(4,618,144)
Increase (Decrease) in fiduciary net assets	\$ (2,470,997)	\$ (2,009,180)
Fiduciary net assets, end of year	\$ 2,071,873	\$ 4,542,870

**NOTE 4. ADVANCES****Intragovernmental**

Intragovernmental Advances were paid to the Department of Transportation for the employee transit subsidy program.

**Non-Federal**

Non-Federal Advances were paid for postage meter funding.

**NOTE 5. ACCOUNTS RECEIVABLE, NET OF ALLOWANCES FOR DOUBTFUL ACCOUNTS**

The FY 2016 intragovernmental accounts receivable is zero and the FY 2015 amount was zero.

The FY 2016 accounts receivable increased significantly due to the potential recovery of funds related to discrepancies in the fiduciary account, totaling \$438,099.

<i>(in whole dollars)</i>	<b>FY 2016</b>	<b>FY 2015</b>
With the public		
Accounts receivable	\$ 616,016	\$ 92,838
Allowance doubtful accounts	(35,372)	(26,403)
Accounts receivable, net	\$ 580,644	\$ 66,435

## NOTE 6. GENERAL PROPERTY, PLANT AND EQUIPMENT

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

<i>FY 2016 (in whole dollars)</i>	<b>Asset Cost</b>	<b>Accumulated Depreciation / Amortization</b>	<b>Net Asset Value</b>
Equipment	\$ 3,165,758	\$ 2,184,791	\$ 980,967
Construction in Progress	115,164	0	115,164
Leasehold Improvements	5,551,554	676,084	4,875,470
Internal Use Software (IUS)	34,094,533	29,493,399	4,601,134
IUS in Development	26,893	0	26,893
Totals	\$ 42,953,902	\$ 32,354,274	\$ 10,599,628
<i>FY 2015 (in whole dollars)</i>	<b>Asset Cost</b>	<b>Accumulated Depreciation / Amortization</b>	<b>Net Asset Value</b>
Equipment	\$ 2,774,993	\$ 1,943,110	\$ 831,883
Construction in Progress	14,605	0	14,605
Leasehold Improvements	5,347,329	134,543	5,212,786
Internal Use Software (IUS)	31,050,780	26,485,296	4,565,484
IUS in Development	28,958	0	28,958
Totals	\$ 39,216,665	\$ 28,562,949	\$ 10,653,716

## NOTE 7. LIABILITIES NOT COVERED BY BUDGETARY RESOURCES

Liabilities not covered by budgetary resources represent amounts owed in excess of available congressionally appropriated funds or other amounts. The custodial liability represents court fines and fees collected for Freedom of Information Act requests that must be transferred to the Treasury at the end of each fiscal year.

The composition of liabilities not covered by budgetary resources as of September 30, 2016 and September 30, 2015, is as follows:

<i>(in whole dollars)</i>	<b>FY 2016</b>	<b>FY 2015</b>
Intragovernmental:		
FECA – Unfunded	\$ 360,287	\$ 402,892
Total Intragovernmental	360,287	402,892
Estimated Future FECA	1,023,443	863,428
Accrued Annual Leave	14,373,772	13,997,114
Total Liabilities not covered by budgetary resources	15,757,502	15,263,434
Total Liabilities covered by budgetary resources	14,965,871	13,788,711
Total Liabilities	\$ 30,723,373	\$ 29,052,145

**NOTE 8. NON-ENTITY ASSETS**

Non-Entity assets represent miscellaneous receipts collected and accounts receivable (net of allowance for doubtful accounts). The miscellaneous receipts represent court fines and fees collected for Freedom of Information Act requests that must be transferred to the Treasury at the end of each fiscal year.

The composition of non-entity assets as of September 30, 2016 and September 30, 2015, is as follows:

<i>(in whole dollars)</i>	<b>FY 2016</b>	<b>FY 2015</b>
Non-Entity Assets		
Fund Balance with Treasury	\$ 52,838	\$ 336,287
Accounts Receivable	0	0
Entity assets	44,756,759	43,427,258
Total Assets	\$ 44,809,597	\$ 43,763,545

Additionally, NLRB received a remainder interest in Florida real estate valued at approximately \$46,000 as part of a ULP case settlement. This asset is not included in the table above.

**NOTE 9. CUMULATIVE RESULTS OF OPERATIONS**

<i>(in whole dollars)</i>	<b>FY 2016</b>	<b>FY 2015</b>
FECA paid by DOL	\$ (139,608)	\$ (178,288)
FECA – Unfunded	(360,287)	(402,892)
Estimated Future FECA	(1,023,443)	(863,428)
Accrued Annual Leave	(14,373,772)	(13,997,114)
General Property, Plant & Equipment, Net	10,599,628	10,653,716
Other	653,036	211,747
Cumulative Results of Operations	\$ (4,644,446)	\$ (4,576,259)

**NOTE 10. INTRAGOVERNMENTAL COSTS AND EXCHANGE REVENUE**

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

<i>(in whole dollars)</i>	<b>FY 2016</b>	<b>FY 2015</b>
Resolve Unfair Labor Practices		
Intragovernmental Costs	\$ 63,752,796	\$ 62,285,597
Costs with the Public	197,515,059	185,279,388
<b>Total Net Cost – Resolve Unfair Labor Practices</b>	\$ 261,267,855	\$ 247,564,985
Resolve Representation Cases		
Intragovernmental Costs	\$ 7,582,995	\$ 8,397,105
Costs with the Public	23,493,175	24,978,656
<b>Total Net Cost – Resolve Representation Cases</b>	\$ 31,076,170	\$ 33,375,761
<b>Net Cost of Operations</b>	\$ 292,344,025	\$ 280,940,746

## NOTE 11. OPERATING LEASES

GSA Real Property. NLRB's facilities are rented from the GSA, which charges rent that is intended to approximate commercial rental rates. The terms of NLRB's occupancy agreements (OA) with GSA will vary according to whether the underlying assets are owned by GSA or rented by GSA from the private sector. The NLRB has OAs with GSA, which sets forth terms and conditions for the space the Agency will occupy for an extended period of time. Included within the OAs are 120 to 180 day notification requirements for the Agency to release space. For purposes of disclosing future operating lease payments in the table below, federally-owned leases are included in years FY 2017 through FY 2021.

Rental expenses for operating leases for the year ended September 30, 2016 were \$17,647,789 for Agency lease space and \$2,872,233 for Agency building security. For FY 2015 the operating lease costs were \$23,906,475 and the Agency building security portion was \$3,227,167. NLRB Headquarters moved to a new location in FY 2015, resulting in a reduction in rent costs. The rent credits realized in FY 2016 were used to offset furniture and equipment costs.

### Future Space Lease Payments

<i>(in whole dollars)</i> Fiscal Year	<b>GSA Real Property Cost</b>
2017	\$ 23,572,526
2018	24,141,976
2019	24,728,509
2020	25,332,637
2021	25,839,290

### Future Fleet Lease Payments

The future fleet payments reflect the expense for 36 vehicles used for official NLRB business throughout the United States. Expenses for the fleet vehicles for the year ended September 30, 2016 were \$117,910; for FY 2015 the costs were \$112,014.

<i>(in whole dollars)</i> Fiscal Year	<b>GSA Fleet Cost</b>
2017	\$ 124,230
2018	125,472
2019	126,727
2020	127,994
2021	129,273

### Future Copier Lease Payments

The commercial copier rental expense reflects lease contracts for copy machines located at the NLRB Headquarters and Field Offices. For FY 2016 the commercial copier yearly contract cost is \$451,940.

<i>(in whole dollars)</i> Fiscal Year	<b>Copier Lease Cost</b>
2017	\$ 464,115
2018	471,094
2019	485,227
2020	499,784
2021	514,777



**NOTE 12. IMPUTED FINANCING COSTS**

OPM pays pension and other future retirement benefits on behalf of federal agencies for federal employees. OPM provides rates for recording the estimated cost of pension and other future retirement benefits paid by OPM on behalf of federal agencies. The costs of these benefits are reflected as imputed financing in the consolidated financial statements. Expenses of the NLRB paid or to be paid by other federal agencies at September 30, 2016 and 2015 consisted of:

<i>(in whole dollars)</i>	<b>FY 2016</b>	<b>FY 2015</b>
Office of Personnel Management:		
Pension expenses	\$ 7,008,181	\$ 7,490,172
Federal employees health benefits	13,235,881	8,270,495
Federal employees group life insurance program	27,387	27,426
Total Imputed Financing	\$ 20,271,449	\$ 15,788,093

**NOTE 13. APPROPRIATIONS RECEIVED**

The NLRB received \$274,224,000 in warrants for both fiscal years ended September 30, 2016 and 2015.

**NOTE 14. STATEMENT OF BUDGETARY RESOURCES**

The Statement of Budgetary Resources provides information about how budgetary resources were made available as well as their status at the end of the period. It is the only financial statement exclusively derived from the entity's budgetary general ledger in accordance with budgetary accounting rules that are incorporated into GAAP for the Federal government. The total Budgetary Resources of \$280,966,896 as of September 30, 2016 and \$279,337,420 as of September 30, 2015, includes new budget authority, unobligated balances at the beginning of the year, spending authority from offsetting collections, recoveries of prior year obligations and permanently not available. The amount of budgetary resources obligated for unpaid delivered and undelivered orders was \$27,658,841 for FY 2016 and \$27,746,693 for FY 2015. The NLRB's apportioned unobligated balance available at September 30, 2016 was \$602,325 and at September 30, 2015 was \$481,752.

**Apportionment Categories of New Obligations and Upward Adjustments.**

NLRB's new obligations and upward adjustments as of September 30, 2016 and September 30, 2015 by apportionment Category A and B are shown in the following table. Category A apportionments distribute budgetary resources by fiscal quarters and Category B apportionments typically distribute budgetary resources by activities, projects, objects or a combination of these categories. OMB does not require the Agency to separate its funding and therefore all obligations incurred were from one funding category.

<i>(in whole dollars)</i>	<b>FY 2016</b>	<b>FY 2015</b>
New Obligations and Upward Adjustments:		
Direct	\$ 275,144,463	\$ 274,476,353
Reimbursable	-	-
Total New Obligations and Upward Adjustments:	\$ 275,144,463	\$ 274,476,353

**NOTE 15. RECONCILIATION OF NET COST OF OPERATIONS TO BUDGET**

<b>For the Month Ended September 30, 2016 and 2015</b>		
<i>(in whole dollars)</i>	<b>FY 2016</b>	<b>FY 2015</b>
Resources Used to Finance Activities		
Current Year Gross Obligations	\$ 275,144,463	\$ 274,476,353
<b>Budgetary Resources from Offsetting Collections</b>		
Spending Authority from Offsetting Collections		
Earned		
Collected	(178,272)	(61,815)
Recoveries of Prior Year Unpaid Obligations	(3,705,771)	(3,862,167)
<b>Other Financing Resources</b>		
Imputed Financing Sources	20,271,449	15,788,093
<b>Total Resources Used to Finance Activity</b>	<b>\$ 291,531,869</b>	<b>\$ 286,340,464</b>
<b>Resources Used to Finance Items Not Part of the Net Cost of Operations</b>		
<b>Budgetary Obligations and Resources not in the Net Cost of Operations</b>		
Change in Undelivered Orders	(2,288,343)	(7,967,572)
Current Year Capitalized Purchases	(694,317)	(529,708)
<b>Components of the Net Cost of Operations which do not Generate or Use Resources in the Reporting Period</b>		
<b>Revenues without Current Year Budgetary Effect</b>		
Other Financing Sources Not in the Budget	(20,271,449)	(15,788,093)
<b>Costs without Current Year Budgetary Effect</b>		
Depreciation and Amortization	4,038,919	3,213,836
Disposition of Assets	0	4,051
Future Funded Expenses	270,105	(110,060)
Imputed costs	20,271,449	15,788,093
Bad Debt Expense	8,970	9,184
Other Expenses Not Requiring Budgetary Resources	(523,178)	(19,449)
<b>Net Cost of Operations</b>	<b>\$ 292,344,025</b>	<b>\$ 280,940,746</b>

## OTHER INFORMATION



Protecting Democracy in  
the Workplace Since 1935

# INSPECTOR GENERAL'S TOP PERFORMANCE & MANAGEMENT CHALLENGES

**UNITED STATES GOVERNMENT**  
**National Labor Relations Board**  
**Office of Inspector General**



## **Memorandum**

October 14, 2016

To: Board and General Counsel

From: David Berry   
Inspector General

Subject: Top Management and Performance Challenges

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

For the purpose of this report, an item can be noted as a management or performance challenge even though it is not a deficiency or within the control of the Agency. In our prior year's memorandum, we identified seven management and performance challenges. We are retiring the challenges related to managing in the current political environment and reorganization. We are adding a new challenge related to general management.

## **CHALLENGES**

### ***Manage the Agency***

Each year, I categorized the challenges into specific items and provided a brief explanation of the specific issues. Although this reporting method meets the statutory requirement, I am not sure that it is actually capturing an overarching management challenge.

With the exception of a few managers at Headquarters, the NLRB is generally managed by attorneys and examiners. They are generally very smart and well-intentioned public servants who time and again demonstrate a true commitment to enforcing the National Labor Relations Act. While the best of the NLRB's attorneys and examiners are often selected for key management positions, those individuals are not always effective managers or leaders.



Our audit reports and investigative activity over the last several years draw into focus a significant management challenge. In order for the Board or General Counsel, the NLRB's governance structure, to ensure that the Agency is properly managed, there must be sufficient internal controls and processes to ensure that the controls are implemented and that they are operating as intended. Our audits and investigations, however, have shown far too many instances of failures in the internal control processes at the NLRB that result from either the lack of a control, disregard for the implementation of established controls, or the failure to properly supervise employees. This lack of effective management puts at risk NLRB's ability to meet its basic mission.

### ***Manage the Agency's Financial Resources***

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

In July 2012, the Board created the Office of the Chief Financial Officer (OCFO), implementing the final recommendation of the FY 2010 audit of the financial statements. That office now oversees the budget, procurement, and payment processes.

The *Audit of the NLRB Fiscal Year 2014 Financial Statements* found both a material weakness and significant deficiencies in internal controls and the *Audit of the NLRB Fiscal Year 2015 Financial Statements* found the matter identified as a material weakness was not fully remediated and continued as a significant deficiency in internal controls.

At the end of FY 2016's first quarter, the NLRB's first Chief Financial Officer (CFO) retired. A new CFO came on board at the end of the second quarter. During the FY 2016 audit fieldwork, the matter identified as a significant deficiency was again identified as continuing to require remedial action. Also, the recommendations made in the Management Letters for the both the FY 2014 and FY 2015 audits are not yet fully implemented. Although the OCFO is working to resolve audit findings, it is apparent that significant work remains.

### ***Manage the NLRB's Human Capital and Maintain the Agency's Institutional Knowledge***

These two challenges are interrelated. The need to maintain a stable and productive workforce is key to the NLRB's ability to fulfill its statutory mission. Factors outside the NLRB's control that may directly affect its ability to maintain a stable and productive workforce include, but are not limited to reduced or flat appropriations and the loss of key personnel through retirements.

In our audit work we have, over an extended period of time, observed the loss of institutional knowledge in management practices as new personnel take over key positions. In some circumstances when information about historical practices is available, the context regarding why the practice was developed has been lost with personnel changes. The challenge is to



recruit qualified personnel who can improve management practices while understanding the NLRB's past practices.

### ***Manage the Agency's Information Technology Security***

Each year, the Office of the Chief Information Officer (OCIO) continues to devote significant resources to improving and upgrading information technology equipment and capability. In the last 2 fiscal years, the OCIO completed its migration of mission-related offices to the NxGen case processing system and began to implement a unified communications system.

The OCIO also devoted significant resources to securing and improving information technology networks. Likewise, the OIG also devotes resources to auditing, inspecting, and investigating information technology control and security issues. Despite these efforts, the Agency's information technology infrastructure and the information contained in it remain at risk because of the rapid evolution of information technology threats. Given this environment and the move to "Cloud" service providers, ensuring the security of the Agency's information in its information technology systems continues to be, and will likely remain, a long-term challenge.

### ***Implement Audit Recommendations***

In last year's Top Management and Performance Challenges memorandum, we reported that the Agency had 42 open audit recommendations. Since that time, we consolidated 12 recommendations into 1 recommendation that remains open, and we closed 15 other recommendations. To the group of 16 open prior year recommendations, we added 21 new recommendations. Of the 21 new recommendations, 4 have been closed.

At this time, there are a total of 33 open recommendations. The oldest of the open recommendations is from an audit report issued in FY 2013. A recommendation is not closed until we verify that the implementing action appropriately addressed the issue that necessitated the recommendation.

# SUMMARY OF AUDIT AND MANAGEMENT ASSURANCES

## I. SUMMARY OF FINANCIAL STATEMENT AUDIT

Audit Opinion: Unmodified					
Restatement: No					
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Ending Balance
	0	0	0	0	0

## II. SUMMARY OF MANAGEMENT ASSURANCES

### EFFECTIVENESS OF INTERNAL CONTROL OVER OPERATIONS (FMFIA §2)

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

### COMPLIANCE WITH FINANCIAL SYSTEMS REQUIREMENTS (FMFIA §4)

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

## IMPROPER PAYMENTS INFORMATION ACT

Pursuant to the Improper Payments Information Act (IPIA) of 2002 (Public Law No. 107-300), dated November 26, 2002, and amended on July 22, 2010 by the Improper Payments Elimination and Recovery Act (IPERA) of 2010 (Public Law No. 111-204), and again in 2012 with the Improper Payments Elimination and Recovery Improvement Act (IPERIA) of 2012 (Public Law No. 112-248), under the Office of Management and Budget's (OMB) Circular A-123; Appendix C guidance, all agencies under the executive branch of the United States are required to comply with IPERIA.

The NLRB has only one program for budget purposes. For FY 2016, \$271,526,544 in disbursements were made, of which payroll, benefits and travel accounted for \$218,475,393, and \$31,118,130 was disbursed in the form of intragovernmental and miscellaneous payments. The NLRB paid \$21,933,021 to vendors, or about 8 percent of the total disbursements. Based on the agency's current controls, systems and continuous monitoring efforts, the NLRB concluded that the

Salaries and Expenses program is at low risk for improper payments

The NLRB is committed to minimizing the risk of improper payments and we use a variety of system controls, separation of duties, and other procedures to reduce that risk and to promptly identify any improper payments that might occur. These controls are tested as part of the SSAE 16, A-123, and financial statement audit processes; they are also considered during the annual FMFIA process.

Given these controls, we estimate the improper payments rate to be at most 1.5 percent and the improper payments amount to be no more than \$4,072,898. This level is below the threshold established by the OMB and therefore does not represent significant improper payments. The NLRB has reasonable assurance that controls over financial and non-financial operations are sufficient. No additional reporting requirements are necessary.



## DO NOT PAY (DNP) INITIATIVE

The mission of the Treasury Do Not Pay (DNP) initiative is to “protect the integrity of the government’s payment process by assisting agencies in mitigating and eliminating improper payments in a cost-effective manner while safeguarding the privacy of individuals.” The NLRB echoes that sentiment and has made eliminating improper payments one of the agency’s financial management priorities. The DNP portal is a multifaceted system that embraces resources from several agency subsystems i.e. Social Security Administration’s Death Master File, GSA’s System for Award Management (SAM) Exclusion Records as well as Treasury’s Treasury Offset Program (TOP). DNP uses this network of systems in order to disseminate to agencies whom should or should not receive public funds in order to reduce or prevent the likelihood of improper payments.

In FY 2016, the DNP portal vetted 16,261 NLRB payments for authenticity and validity. The number of payments made amounted to \$33,186,414 in disbursements that passed through DNP’s network of red flag indicating systems. As a result, DNP identified 15 payments totaling \$9,039 that required further review because of a death record match. After further review, the Agency adjudicated all 15 payments and noted that the individuals who received Federal funds are deceased, but the payments were proper and paid to the decedents’ estates. DNP also identified (2) payments totaling \$203 which matched a vendor name on the Excluded Parties List (EPL). The payment was adjudicated because it was determined not to be a true match, only a matched name.

October 2015 – August 2016						
	Number (#) of payments reviewed for improper payments	Dollars (\$) of payments reviewed for improper payments	Number (#) of payments stopped	Dollars (\$) of payments stopped	Number (#) of improper payments reviewed and not stopped	Dollars (\$) of improper payments reviewed and not stopped
Reviews with DMF Public	16,261	\$33,186,414	N/A	N/A	15	\$9,039
Reviews with SAM Exclusions Public	16,261	\$33,186,414	N/A	N/A	2	\$203

- Payments reviewed for improper payments includes the total number of payments disbursed by the Agency through the PACER payment system minus any payments that were excluded from matching due to (1) a missing or unmatchable TIN (DMF only) or (2) a missing name.
- Payments stopped is currently not applicable since the Do Not Pay matching and adjudication process is based on post payment results.
- Improper payments reviewed and not stopped includes the total number of matches identified by the Do Not Pay Initiative that were adjudicated as proper by the Agency.

## FREEZE THE FOOTPRINT

The Agency leases all buildings under OAs with the GSA, and as such does not provide square footage to the Federal Real Property Profile (FRPP).





## APPENDICES



Protecting Democracy in  
the Workplace Since 1935

## APPENDIX A – ACRONYMS

<b>AAPI</b>	Asian American and Pacific Islander	<b>FAA</b>	Federal Arbitration Act
<b>ABA</b>	American Bar Association	<b>FAR</b>	Federal Acquisition Regulation
<b>ADA</b>	Antideficiency Act	<b>FASAB</b>	Federal Accounting Standards Advisory Board
<b>ADR</b>	Alternate Dispute Resolution	<b>FCPIA</b>	Federal Civil Penalties Inflation Adjustment Act
<b>ALJ</b>	Administrative Law Judge	<b>FFATA</b>	Federal Funding Accountability and Transparency Act
<b>AMB</b>	Acquisitions Management Branch	<b>FISMA</b>	Federal Information Security Management Act
<b>AS</b>	Administrative Systems	<b>FMFIA</b>	Federal Managers' Financial Integrity Act
<b>BMS</b>	Backpay Management System	<b>FPB</b>	Facilities and Property Branch
<b>CATS</b>	Case Activity Tracking System	<b>FPDS-NG</b>	Federal Procurement Data System - Next Generation
<b>CCSLB</b>	Contempt, Compliance and Special Litigation Branch	<b>FPPS</b>	Federal Payroll and Personnel System
<b>CEP</b>	Cultural Enhancement Program	<b>FRPP</b>	Federal Real Property Profile
<b>CFO</b>	Chief Financial Officer	<b>FTR</b>	Federal Travel Regulations
<b>CLM</b>	Contract Lifecycle Management	<b>FY</b>	Fiscal Year
<b>COOP</b>	Continuity of Operations	<b>GAAP</b>	Generally Accepted Accounting Principles
<b>COR</b>	Contracting Officer Representative	<b>GPO</b>	Government Publishing Office
<b>CPAO</b>	Congressional and Public Affairs Office	<b>GPRA</b>	Government Performance and Results Act
<b>CR</b>	Continuing Resolution	<b>GPRAMA</b>	Government Performance and Results Modernization Act
<b>CWTSato</b>	(Carlson Wagonlit) NLRB's Travel Management Service	<b>GSA</b>	General Services Administration
<b>DATA Act</b>	Digital Accountability and Transparency Act	<b>HCPO</b>	Human Capital Planning Officer
<b>DCIA</b>	Debt Collection Improvement Act	<b>IAA</b>	Interagency Agreement
<b>DHS</b>	Department of Homeland Security	<b>IBC</b>	Interior Business Center
<b>DMF</b>	Death Master File	<b>INT</b>	Interest Income
<b>DNP</b>	"Do Not Pay" List	<b>IOC</b>	Indicator of Compromise
<b>DOJ</b>	Department of Justice		
<b>DOL</b>	Department of Labor		
<b>EEO</b>	Equal Employment Opportunity		
<b>EEOC</b>	Equal Employment Opportunity Commission		
<b>EVS</b>	Employee Viewpoint Survey		

<b>IPERA</b>	Improper Payments Elimination and Recovery Act	<b>OLMS</b>	Office of Labor Management Standards
<b>IPERIA</b>	Improper Payments Elimination and Recovery Improvement Act	<b>OMB</b>	Office of Management and Budget
<b>IPIA</b>	Improper Payments Information Act	<b>OPA</b>	Office of Public Affairs
<b>ITSM</b>	Information Technology Services Management	<b>OSC</b>	Office of Special Counsel
<b>IUS</b>	Internal Use Software	<b>OSHA</b>	Occupational Safety and Health Administration
<b>IWG</b>	Interagency Working Group	<b>PACER</b>	Payments, Claims and Enhanced Reconciliation
<b>LOA</b>	Letters of Agreement	<b>PAR</b>	Performance and Accountability Report
<b>LVER</b>	Local Veterans Employment Representative Program	<b>PAS</b>	Presidential Appointees with Senate Confirmation
<b>MD&amp;A</b>	Management's Discussion and Analysis	<b>PD</b>	Position Description
<b>MOU</b>	Memorandum of Understanding	<b>PIF</b>	Presidential Innovation Fellows
<b>NLRA</b>	National Labor Relations Act	<b>QR</b>	Quick Response
<b>NLRB</b>	National Labor Relations Board	<b>SAM</b>	System for Award Management
<b>NxGen</b>	Next Generation Case Management System	<b>SBA</b>	Small Business Administration
<b>OA</b>	Occupancy Agreement	<b>SEPM</b>	Special Emphasis Program Manager
<b>OBIA</b>	Oracle Business Intelligence Application	<b>SES</b>	Senior Executive Service
<b>OBIEE</b>	Oracle Business Intelligence Enterprise Edition	<b>T&amp;A</b>	Time and Attendance
<b>OCFO</b>	Office of the Chief Financial Officer	<b>TIC</b>	Trusted Internet Connection
<b>OCIO</b>	Office of the Chief Information Officer	<b>TIN</b>	Taxpayer Identification Number
<b>OED</b>	Office of Employee Development	<b>TOP</b>	Treasury Offset Program
<b>OEE0</b>	Office of Equal Employment Opportunity	<b>UCC</b>	Unified Communications Contract
<b>OFCCP</b>	Office of Federal Contract Compliance Programs	<b>ULP</b>	Unfair Labor Practice
<b>OGE</b>	Office of Government Ethics	<b>USPS</b>	United States Postal Service
<b>OHR</b>	Office of Human Resources	<b>VRA</b>	Veteran's Recruitment Appointment
<b>OIG</b>	Office of Inspector General	<b>WH</b>	Wage and Hour
		<b>WHD</b>	Wage and Hour Division
		<b>WHIAAPI</b>	White House Initiative on Asian Americans and Pacific Islanders

## APPENDIX B – GLOSSARY

**Adjudicate:** The actions of a NLRB Administrative Law Judge and the Board in making a formal judgment about a disputed matter.

**Adversarial:** Of a trial or legal procedure in which the parties in a dispute have the responsibility for finding and presenting evidence.

**Amicus Curiae:** Friend of the court.

**Arbitrator:** An independent person or body officially appointed to settle a dispute.

**Backpay:** A remedial payment made to workers for past uncompensated work performed or for work that could have been performed had the worker not been unlawfully prevented from doing so.

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

**Certiorari:** A writ or order by which a higher court reviews a decision of a lower court.

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

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

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

The complaint contains a notice of hearing, specifying the time and place of the hearing.

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

**Consented Election:** A Regional Director will hold a prehearing conference to attempt to resolve bargaining unit issues and questions of voter eligibility without having to resort to a full hearing. This type of election eliminates the need for a formal hearing if all parties voluntarily reach an agreement.

**Decisions:** Formal judgments made by the Board and NLRB ALJs.

**Deferral:** Under certain circumstances, it may be appropriate for a Regional Director to hold up making a determination on the merits of a charge pending the outcome of proceedings on related matters. Such matters may be pending in the parties’ contractual grievance procedure or before the Agency or other Federal, State, or local agencies or courts.

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

**Directed Election:** An election which the Regional Director directs after evidence is presented at a hearing regarding the existence of questions concerning representation and the appropriateness of the bargaining unit sought by the petitioning party.

**Expungement:** A remedial action requiring that employee records of unlawful adverse actions be eliminated from all employment files.

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

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

**Grievance Arbitration Procedures:** The grievance and arbitration procedures are designed to provide a formal mechanism for the resolution of disputes that arise between the parties during the term of the collective bargaining agreement.

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

**Injunctive Relief:** A temporary remedy sought in cases of egregious violations of the Act pending final action by the Board in which Counsel for the General Counsel asks a district court judge to issue an order requiring the charged party to cease and desist from engaging in violations of the Act and may also seek certain affirmative actions in order to return to status quo.

**Injunctive Proceedings:** The adjudicatory process by which Counsel for the General Counsel seeks injunctive relief, as described directly above, from a district court judge.

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

**Investigative Subpoena:** Use of a subpoena during a case investigation to ascertain facts on which to base an initial administrative decision regarding the merits of charge allegations or jurisdictional issues.

**Litigation:** Trial work handled by Board attorneys in administrative proceedings and in federal court, including petitions for temporary injunctions, defending Board decisions in court, and pursuing enforcement, contempt and compliance actions.

**“Make-Whole” Remedy:** Providing full relief for workers adversely impacted by NLRA violations.

**Meritorious Unfair Labor Practice Charge:** Charge allegations evidencing statutory violations.

**“Mixed-Guard” Union:** A union that has both security guards and non-guards as members.

**“Nip-in-the Bud” Cases:** Cases arising from allegations of ULPs committed during union organizing campaigns.

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

**P&P Committee:** Practice and Procedure Under the NLRA Committee.



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

**Petitioner:** The party who files a representation case petition with the Board.

**Prosecutorial:** Acts related to the process of litigating against a charged party when meritorious charge allegations are found.

**Protected Concerted Activity:** Group activity engaged in to attempt to improve working conditions, such as wages and benefits, which is protected under the NLRA.

**Remedies:** Cease and desist and affirmative relief, such as reinstatement and backpay, sought to resolve ULPs and to return to the status quo before violations occurred.

**Reinstatement:** To return an employee, who was unlawfully discharged, back to work in his or her former position.

**Representation Cases:** A case initiated by the filing of a petition—by an employee, a group of employees, a labor organization acting on their behalf, or in some cases by an employer.

**Secret-ballot Elections:** A voting method in which voter's choices in an election are anonymous.

**Settlements:** A resolution between disputing parties about a case, reached either before or after court action begins.

**Sua Sponte:** A Latin phrase describing an act taken on a party's own initiative without formal prompting from another party.

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

**Status Quo:** A Latin phrase meaning the existing state of affairs.

**Statutory:** Required, permitted, or enacted by statute.

**Stipulated Election:** The parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent.

**Taft-Hartley Act:** The Labor Management Relations Act, better known as the Taft–Hartley Act (enacted June 23, 1947) is a United States federal law that restricts the activities and power of labor unions. The Taft–Hartley Act amended the NLRA, informally the Wagner Act, which Congress passed in 1935.

**Temporary Injunction:** A court order prohibiting an action by a party to a lawsuit until there has been a trial or other court action, the purpose of which is to maintain the status quo and preserve the subject matter of the litigation until the trial is over.

**Unfair Labor Practice:** A ULP is conduct by either a labor organization or an employer that violates the NLRA.

**Union:** A labor organization formed with stated goals of protecting the rights and interests of workers.

**Withdrawals:** Case resolution resulting from a charging party or petitioner deciding to withdraw the filing of an ULP charge or a representation case petition.

## APPENDIX C – HISTORICAL PERFORMANCE MEASURES

### HISTORICAL PERFORMANCE MEASURES FOR GOALS 1 AND 2

Close meritorious (prosecutable) ULPs on compliance within 365 days of the filing of the ULP charge.

Year	Interim Goal	Actual Performance
FY 2011	80.2%	83.2%
FY 2012	80.3%	83.8%
FY 2013	82.0%	82.4%

Resolve all charges of ULP cases by withdrawal, by dismissal, or by closing upon compliance with a settlement or Board order or court judgment within 120 days of the filing of the charge.

Year	Interim Goal	Actual Performance
FY 2011	71.2%	72.5%
FY 2012	72.0%	72.7%
FY2013	72.0%	73.3%

Resolve questions concerning representation in all representation cases within 100 days from the filing of the representation case petition.

Year	Interim Goal	Actual Performance
FY 2011	85.0%	84.7%
FY 2012	85.2%	84.5%
FY2013	85.2%	87.4%

### HISTORICAL PERFORMANCE MEASURES FOR GOALS 3 AND 4

#### FY 2014 Strategic Goal 3 (Support): Achieve Organizational Excellence

##### Management Strategies

##### Objective 1: Initiative 1

- The Division of Administration (DofA) established a Human Capital Planning Section (HCPS) to administer the Agency's human capital management program.
- Office of Human Resources (OHR) partnered with OPM's Human Resources Solutions to pilot "USA Performance", a newly developed automated web-based performance appraisal system tool. It is designed to streamline the manual performance management process and increase visibility and transparency in performance management process. The use of USA Performance aligns performance plans with strategic goals, and ensures compliance with Federal performance management regulations.
- OHR meets regularly with Headquarters and field managers to assist in collaborative efforts with employees and the unions on a variety of workplace issues such as maxiflex, telework, and performance management programs.
- DofA's Security branch was successful in reducing the reinvestigation backlog to approximately 750 from 1,018. The Agency expects the office to remain on target to complete the 20 percent goal, listed in the management strategies, next year.
- The DofA's Office of Employee Development (OED) expanded Skillport training software; electronically organized its developmental resources for Field Agents, including instructor modules, videos narrative resources; developed prototypes and piloted user-friendly online training for board agents; provided teambuilding to consolidated regions; and presented a 12-hour course on the "Seven Habits of Highly Effective People" to new Regional directors and a 90 minute workshop on "Promoting a Culture of Personal Accountability" that dealt with how to motivate people to take ownership of their work, an important skill for managing teleworkers.

**Objective 1: Initiative 2**

- OHR began developing a Quality Assurance and Quality Control Unit to assess and improve the accountability process. The following action steps will be taken as a result of OPM's hiring reform:
  - Evaluate current designated examining authority and merit promotion hiring timeframes;
  - Identify the impact of negotiated agreements on hiring timelines;
  - Analyze and recommend methods for measuring improvement in timeliness;
  - Develop a schedule to meet hiring timeliness;
  - Identify actions needed to address barriers;
  - Prioritize occupations within respective divisions;
  - Train OHR staff on all tools available through USA staffing.
- OHR has begun working with stakeholders to standardize over 1,300 of the Agency's position descriptions.
- The Agency's Office of Equal Employment Opportunity (OEEO) timely submitted the Agency's annual MD715 report for Fiscal Year 2013 to the EEOC, which provides a demographic analysis of the Agency workforce by gender, race, national origin, and disability, in all stages of employee life (e.g., hiring, grade level distribution, training, promotions, separations).
- OEEO also provided a State of the Agency report to senior leadership to assist with strategies and enhance the diversity of its workforce.
- OEEO and OHR initiated a collaborative work group to develop a Strategic Recruitment Plan for the Agency. As part of the plan, OEEO posted to its web page recruitment resources for reaching out to diverse student populations of African American, Hispanic, Asian American and Pacific Islander, and Native American populations. It also sent out email communications to these resource organizations promoting recruitment through the Agency's Honors Attorneys program. OEEO is also developing the Special Emphasis Program Manager role for each of these populations, as well as for disabled employees and veterans, to enhance the Agency's outreach initiatives to these communities.
- The Agency hired a new Disability Coordinator, who maintains applications for applicants that have contacted the Agency to be considered for employment under the "Schedule A" Hiring Authority, and OHR plans to host a number of

training presentations for managers and supervisors on "Schedule A" Hiring, as well as on the Selective Placement Program.

**Objective 2: Initiative 1**

- DoFA's Security Branch made improvements to its web pages, such that employees can find a host of information on physical security, personnel security, continuity of operations, classes offered by Department of Homeland Security, and policies from the Interagency Security Committee, and OPM Federal Investigative Service. Further, an Administrative Policies and Procedures Manual (APPM) on Personnel Security was updated and published and one on Physical Security is in draft form.
- DoFA's FPB developed an extensive Communication Plan that continues to inform employees about the Headquarters relocation, including managing expectations related to the cultural transition to a reduced-space work environment, and it provided physical tours. The project, which is dubbed, "Total Workplace Solutions," also includes a web page devoted to all aspects of the new relocation including timing, neighborhood businesses, furniture, technology and other requirements.
- In addition, the FPB established a Headquarters Space Advisory Committee, which includes representatives from all Divisions and both employee Unions, to communicate updates on the new Headquarter Space Initiative and keep employees throughout the workforce informed on the latest project information.
- HCPS launched a Human Capital web page in order to provide a platform to distribute a wealth of information and guidance about NLRB's human capital planning efforts.
- HCPS received and analyzed the 2013 Federal Employee Viewpoint Survey results and provided an executive level briefing to Senior Management and is in the process of doing the same with the recently published FY 2014 FEVS results.
- OHR developed the Honorary Awards program, where a number of employees were acknowledged during an awards ceremony, and it implemented a regular schedule for providing service awards.

**Objective 2: Initiative 2**

- OHR benchmarked other agencies to identify ways to improve the on boarding program, and, along

with Senior Managers, revamped the Agency's on-boarding process.

- OHR provided one-on-one and group instructions to managers to assist them in providing guidance in understanding their role in communicating expectations to Agency employees on performance management.
- The former Director of Administration produced a quarterly Significant Happenings Report to report the work of the employees within the Division to senior management, and planned a Division-wide Recognition Day to celebrate the work of the Division and foster camaraderie, which was attended by the General Counsel, Deputy General Counsel, Assistant General Counsel, and Board Members.

### Objective 2: Initiative 3

- The following policy statements were released to Board agents in 2014: Equal Employment Opportunity Policy Statement; Policy Statement on the Prevention of Unlawful Harassment, Including Sexual Harassment; Alternative Dispute Resolution (ADR) Policy Statement; and the Diversity and Inclusion Policy Statement.
- The MD-715 was timely submitted electronically in first quarter of 2014 calendar year to the EEOC providing FY 13 information.
- The NLRB offered Agency-wide diversity training, which was mandatory for managers and supervisors, on Transgender in the Workplace in 2012, made the sessions available on the OED website, and issued a related Agency-wide memo.
- With encouragement from senior leadership, the OEEEO, OHR, and OED have partnered to develop a more robust diversity and inclusion training program. In furtherance, of this goal, senior leaders and representatives from various divisions have attended and accessed external programs.
- In 2003, the Agency established a mentoring program on the General Counsel-side for newly-hired and newly-transferred professionals and support staff in order to support the mandate that the Agency have workforce that reflects the diversity of our Nation. In FY 2014, the General Counsel asked that the program be revamped and the Mentoring Committee is working on doing so, including exploring best practices in mentoring at other federal agencies.
- The OEEEO relies on the Agency's cadre of collateral duty Special Emphasis Program Coordinators

(SEPCs) to assist the Agency in its efforts to build and maintain an inclusive work environment. OEEEO conducted four-one hour videoconference training sessions in 2013 and 2014. The training supports the SEPCs in carrying out their responsibilities and duties and also provides a forum to share ideas and best practices.

- OHR has educated and encouraged management to utilize the Local Veterans Employment Representative Program to recruit for various positions. As a result, the Agency has hired at least eight veterans through the program.

### FY 2014 Strategic Goal 4 (Support): Manage Agency Resources in a Manner That Instills Public Trust

#### Objective 1: Initiative 1

##### Measure:

- The Agency's enterprise case management system, Next Generation Case Management System (NxGen), was made to replace 11 separate legacy systems and integrate into a single unified solution that leverages multiple technologies.

#### NxGen presently manages:

Internal users	1,350
Cases	263,355 (+10%*)
Case Actions of the Agency	766,343 (+27%*)
Documents, images, and videos,	
each linked to its Action and Case	4,678,794 (+47%*)

\* All percentages are year-over-year calculations

##### Measure:

- The Agency soon will complete the consolidation of its separate legacy case tracking systems into an enterprise case management solution, a success that is rare within the Federal government. The last remaining Agency Office, the Contempt, Compliance, and Special Litigation Branch (CCSLB), will be migrated into NxGen beginning in the first quarter of FY 2015.

**Measure:**

- In FY 2014, the Agency expanded its electronic distribution of case documents with an E-Delivery pilot involving six Regions, one party (USPS) and new 10 document types. The pilot recently has been expanded to two document types for all Regions. To date, 2,101 documents have been sent to the USPS electronically, resulting in notable savings to the NLRB and a great convenience to the USPS.

[10/1/2013 – 9/30/2014]

Number of E-Filings Received	29,127 (+15%*)
Number of Documents Received	43,031 (+13%*)
Number of Board and ALJ Decisions E-Served	737
Total Number of parties E-Served Decisions	55,191 (+3%*)
Number of E-Deliveries of Case Documents	2,101 (new process)

\* All percentages are year-over-year calculations

**Measure:**

- The NLRB is committed to achieving the goals set forth in the President's Open Government Directive. The three principles of transparency, participation, and collaboration inform current and future plans for the Agency's information systems. With the near complete implementation of the NxGen, the Agency is able to provide improved information regarding its cases and significantly increase the number and type of case documents made available to the public. In FY 2014, the Agency also made substantial progress towards a new external search interface and public data warehouse that will continue to deliver on the goals of Open Government.

Number of NLRB Document Types Available for Public Access	197
Total Number of Case Documents Available for Public Access	346,109

Please see <http://www.nlr.gov/open/public-documents> for a list of the document types available to the public.

**Objective 1: Initiative 2****Measure:**

- In FY 2013, the Agency made the decision to expand the capabilities of the Office 365 Suite and utilize the cloud-based SharePoint offering. The Office 365 SharePoint solution provides all of the necessary components of a technology service catalog and complements the existing Intranet. In FY 2014, the Agency's governance and development teams focused on streamlining business processes through forms automation with workflow and routing.
  - As an example of these efforts, and to support the Agency's new Collective Bargaining Agreement, the Administrative Systems team recently completed the development of and is piloting a comprehensive solution to automate the processes for requesting, routing and approval, and reporting for the following schedules: Telework, Alternate Work (e.g., Gliding Flex, Maxi Flex and 5-4-9), and Leave.

**Measure:**

- Currently, the Agency utilizes disparate networks for its data and video conferencing services and manages 52 legacy phone systems from different voice service providers in the Field and Headquarters. The segregation of data, voice, and video services results in an inefficient use of Agency resources and creates communication and collaboration silos within critical business processes. Additionally, the Agency's present communications infrastructure provisions remote access for certain business processes only to Agency laptops, with limited support for mobile and tablet devices.



- The objectives of the Agency's Unified Communication and Collaboration (UCC) effort are to provide enhanced functionality to Agency staff while achieving cost savings through such strategies as consolidating networks and taking advantage of lower cost technical alternatives and contract vehicles. Specifically, the Agency is trying to create a modern single unified communications platform and network to empower Agency personnel to communicate with voice, video and data from all locations including the office, at home and on the road. The Agency awarded a UCC contract on September 24 and the Agency expects the implementation to take between eight and 12 months. After the initial investments in the UCC build-out and end-user equipment, the Agency expects total network services costs to be in line with the current separate allocations for data, voice and video networks, and anticipates the enhanced services to demonstrably improve administrative efficiencies.

**Measure:**

- With the increasing requests for collaboration, the Agency embarked upon efforts to implement SharePoint team sites to manage the need for document collaboration, discussion forums, wiki pages, and site mailboxes. Team sites are being created for all departments and divisions so that each office will have a secure place to store documents, create conversations, receive email alerts when changes occur, and collaborate on work products. Additionally, individual team sites are being created to support the various needs of the Agency. For example, to assist with the reduction of printed materials for conferences, team sites were created to review/edit presentations and conference materials and then store all materials to be made available to the participants. Furthermore, the Agency is addressing the need for document collaboration by geographically dispersed employees by providing access to the Office Online applications. This allows multiple employees the ability to simultaneously work on Word, Excel and PowerPoint documents, which provides increased collaboration and avoids confusion with managing multiple versions of documents that then need to be merged together.

**Objective 1: Initiative 2**

**Measure:**

- All required reports to external regulatory bodies were prepared in accordance with established time lines.

**Measure:**

- OCFO has developed a formalized annual training plan for all allowance holders. During FY 2014, finance-related training was held as part of the Office Managers and Field Managers trainings. Topics included Oracle Federal Financial processes, eTravel processes, and Federal Travel Regulations.

**Measure:**

- The OCFO Budget office has worked closely with the program offices and NLRB Senior Leadership to develop a detailed budget spend plan which serves to inform NLRB management for decision making.

**Measure:**

- During FY 2015 OCFO Finance Office plans to communicate obligation status reports to program offices through an automated monthly email. The development of the report has been completed within FY 2014 and the automated email generation will begin in FY 2015. This report will help program managers to monitor their budgets at a more detailed level.

**Measure:**

- The Contracting Officers as well as the purchase card holders utilize the General Services Administration's (GSA), Federal Strategic Sourcing Initiative (FSSI) in the ordering of supplies and services. By doing so, the NLRB has increased its utilization of strategic sourcing from a savings rate of 14.47 percent in FY 2013 to 18 percent. In FY 2014, the NLRB increased its utilization of strategic sourcing higher with a savings rate of 34 percent; yielding a savings of \$106,168.

**Measure:**

- As demonstrated in the chart below, the NLRB increased the percentage of contract awards to small, disadvantaged owned businesses from FY 2012 to FY 2013 in all categories. During FY 2014, the NLRB awarded the Unified Communications contract almost \$2M to a large business which impacted the small business categories. The Acquisition Management Branch will focus on making small businesses the supplier of choice in FY 2015.

FISCAL YEAR	TOTAL SMALL BUSINESS	WOMAN OWNED	SMALL DISADVANTAGED	VETERAN OWNED
FY 2012	31.3%	7.9%	12.3	3.9%
FY 2013	34.2%	17.9%	7.4%	4.9%
FY 2014	29.1798%	12.4208%	10.1716%	4.4219%

**Objective 2: Initiative 1****Management Strategies:**

- The Agency formed an outreach committee, comprised of board agents from divisions, branches and offices throughout the Agency. The committee continues to explore new modes and methods to educate the public, particularly those, such as youth and immigrant populations, that may be unfamiliar with the Agency and the Act and may be more vulnerable to exploitation due to their lack of knowledge of workplace rights.
- In order to educate more audiences through non-traditional outreach, particularly those prone to exploitation, the Agency is trumpeting successes and recent cases of interest, as well as including human interest stories, so that the public can more easily relate to the information being shared. The CPAO is issuing news releases of recent cases, such as Board and court decisions, settlement agreements, and cases involving injunctive relief or compliance.
- The Agency is invigorating local relationships for joint outreach and local working group forums where there are regular meetings with board agents from other agencies to work on various joint projects/materials. These federal, state and

local agencies include, but are not limited to, EEOC, local Human Rights Commissions, Wage and Hour, OSHA, Whistleblower, Unemployment Compensation, and Office of Special Counsel.

- As to Letters of Agreement (LOA), the Agency is continuing efforts to reach out to foreign embassies/ministries/consulates and finalize letters of agreement for education of workers and business owners. In FY 2013, the Agency executed a LOA with the Mexican embassy and selective consulates, and in FY 2014, with the Ministry of Ecuador. Efforts to parlay those national agreements into local agreements between Regions and consulates, and to provide materials to Regions for assistance with education per the LOA are ongoing.
- The Agency is culling and editing current outreach materials so that Board Agents have presentations with a uniform brand for Powerpoints and other formats in a central repository for use nationwide.

**Objective 3: Initiative 1****Measure:**

- Over the past year, the Chairman and General Counsel have jointly promoted several ethics program initiatives to all employees and visibly participated in the values-based training program presented in FY 2014. The training engaged employees in discussions of ethical decision making principles and considered how ethical decisions are made within the context of our own personal core values and those of the Agency. The training also stressed personal responsibility in the ethical decision making process.
- The General Counsel and Chairman also increased the staff of the Ethics Branch to ensure that sufficient resources are devoted to the program to facilitate effective program management and outreach to all employees.
- The NLRB Ethics Staff have met with the Board Members and the General Counsel collectively and separately to discuss a range of government and legal ethics issues.

- The NLRB's Designated Agency Ethics Official has full access to Agency leadership and can approach them for assistance when the need arises.
- In addition, the combining of the NLRB's Legal Ethics Program with the Government Ethics Program has provided NLRB employees with a cohesive, comprehensive program, thus raising the visibility of the program among employees. Employees now know that they have one office where they can go with ethics questions and issues, where their questions will be addressed from the perspective of the government's ethics rules and, for attorneys, within the parameters of their bar rules.

#### Measure:

- The ethics staff was proactive in expanding the number of training products available to all NLRB employees. They developed a number of one-page, easy-to-read Job Aids designed to help employees identify potential government ethics issues and provide additional guidance where informational gaps might exist. The Job Aids focused on conflicts of interest, including both financial conflicts and appearance issues; the acceptance of gifts from outside sources; the acceptance from and the giving of gifts to coworkers; the Hatch Act; outside employment; the outside practice of law; and the government's 14 Principles of Ethical Conduct. The Chairman and General Counsel promoted the usefulness of the Job Aids and identified them as a valuable tool for promoting an ethical culture at the NLRB in a memo to all NLRB employees. Job Aids on legal ethics topics have been prepared as well.
- The Ethics web page on the NLRB's Intranet was revamped and rebranded as the "Ethical Highway." Thru the web page, ethics guidance materials are readily available to all NLRB employees. Articles on ethics appear monthly in the NLRB's employee newsletter, the All Aboard, alternating between legal ethics topics and subjects involving the government's rules and regulations. Monthly tips on legal ethics ("On the Road with the Ethics Code") are issued to the NLRB's Field Offices, and each Region has an ethics coordinator who assists in promoting them.
- The New Employees Ethics Orientation has been converted to an online module in the Agency's learning management system and is assigned to new employees as part of the on-boarding process. Completion of the module can be tracked within the system. This ensures that all new employees receive an orientation to the government's ethics rules and regulations and provides a brief overview of the screening wall that separates the adjudicatory and prosecutorial sides of the Agency. Forty-seven new employees were trained in FY 2014. The module has also been packaged as a refresher course for incumbent employees, which they can access anytime through the same system.
- The Ethics Staff provided in-person briefings on both government and legal ethics to the Agency's summer student interns, student volunteers, and detailees, and will continue to provide briefings at Agency conferences where they can reach large, diverse audiences. In August 2014, an ethics presentation was provided at the NLRB Regional Management Conference in Washington, DC. During the latter portion of FY 2014, the Ethics Staff introduced two ethics training initiatives. In June, they began a new legal ethics training program for attorneys and field examiners in the NLRB's Field Offices that covers skip counsel issues and attorney-client privilege. During the course, Agency employees complete a "Testing Your Knowledge" quiz to test their knowledge in these areas.
- In September, the Ethics Staff launched a training campaign for all Agency employees on the benefits and pitfalls of using email in the NLRB's casehandling process. This training is being presented in weekly broadcasts and uses a variety of delivery methods, such as webcasts, podcasts, and job aids, to convey information. The Chairman and General Counsel promoted the program to employees prior to the launch of the campaign which helped to raise awareness of the importance of the training. The training campaign began in September and will conclude in December 2014. In addition, each weekly segment will be posted on the "Ethical Highway" page of the NLRB Insider after its initial broadcast.

#### Measure:

- As of September 30, 2014, 87 percent of ethics inquiries were resolved within 5 business days. Of the 557 inquiries received from November 14, 2013 through September 30, 2014, 447 required guidance memos that addressed the inquiry from

the perspective of the government's ethics rules and, for attorneys, within the parameters of their bar rules.

**Measure:**

- As of September 30, 2014, 100 percent of the financial disclosure reports received were reviewed and certified within the 60-day regulatory time period. Where a reviewer identified either a potential or actual conflict of interest, a memo was prepared and sent to the filer providing ethics advice and guidance.

**Measure:**

- The NLRB uses an electronic financial disclosure system, FDOOnline, for the filing and review of the Confidential Financial Disclosure Reports which are filed by designated employees within the Agency.
- While FDOOnline contains a component for filing Public Financial Disclosure Reports (OGE Form 278), the NLRB's Designated Agency Ethics Official decided to wait to require the electronic filing of public reports until after the Office of Government Ethics unveils the new electronic system it is currently testing. Until such time as that system is made available for use, Public Financial Disclosure Reports are still filed in paper copy, even though filers are encouraged to use the online, fillable version of the OGE Form 278 developed by the Office of Government Ethics.

**Objective 3: Initiative 2**

**Measure**

- Responses to internal auditors have been prepared and all deadlines have been successfully coordinated with auditors. There are no outstanding requests that need an agency response. The OCIO responded completely and timely to internal audits and information requests, including:
  - Audit of the NLRB Fiscal Year Financial Statements
  - Audit of FY 2013 Sequestration – Preparation, Implementation, and Impact
  - Cloud Computing Audit
  - Federal Managers' Financial Integrity Act (FMFIA)

**Objective 3: Initiative 3**

- Responses to external auditors have been prepared and all deadlines have been successfully coordinated with auditors. There are no outstanding requests that need an agency response.
- The CFO participated in the GAO's Regulatory Cost Benefit Analysis (GAO 451043).
- The OCIO responded completely and timely to external information requests, including:
  - Questions posed in the Office of Management and Budget Memorandum M-14-04, Fiscal Year 2013 Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management
  - The quarterly requirements for FISMA, Trusted Internet Connection (TIC), and Senior Agency Official for Privacy (SAOP) reporting
  - Exhibit 53 and the corresponding Information Technology section for the Congressional Budget Justification
  - NARA's Annual Records Assessment and the OMB Records Directive (M-12-18) Report
- The OCIO responded appropriately to external technology mandates, including:
- Having successfully consolidated its infrastructure, the Agency is taking full advantage of cloud computing's benefits (Cloud First, Federal Cloud Computing Strategy) to maximize capacity utilization, improve IT flexibility and responsiveness, and minimize cost. Current efforts include utilizing:
- Microsoft's cloud-based, software and platform as services solutions, Office 365 and Azure for:
  - Email repositories and services; the Agency repurposed the nearly one million dollar investment in its email infrastructure to extend the lifespan of its NxGen on-premises infrastructure
  - Replacing its end-of-life collaboration platform with Microsoft's SharePoint solution
  - Supplanting its near end-of-life network attached storage and desktop backup with Microsoft's Office 365 One Drive for Business solution

- Amazon's Elastic Compute Cloud to:
  - Host its NxGen case management development environment
  - Save approximately \$500,000 over the next 6 years by hosting its legacy Momentum financial data rather than accepting the proposal of the Department of the Interior's (DOI) Interior Business Center (IBC)
- The ServiceNow cloud Information Technology Services Management (ITSM) platform, which the OCIO uses to be more transparent, provides Agency staff with multiple ways to get quality support, and as the technology enabler of its internal effectiveness initiatives
- GovDelivery cloud services to deliver all case participant communications, including for its electronic services initiative.
- The Agency was acknowledged for having achieved compliance with OMB's TIC Initiative, version 2.0. As such, it is one of a few small civilian agencies that have complied with this mandate

#### Objective 3: Initiative 4

##### Measure:

- Based on the information in the FOIA Tracking System, the Agency responded to initial FOIA requests on an average of seven days for requests received from October 1, 2013 to September 30, 2014. The Agency received 4,458 requests for this period and responded to 4,093 of those requests in 1-20 days. Thus, 91.81 percent of the FOIA requests were processed within the 20- day statutory time period.

##### Measure:

- The Agency sought an extension of time to process a request beyond the 20-day period in 7.08 percent of the FOIA requests received during this time period.

##### Measure:

- The Agency received 20 FOIA Appeals from October 1, 2013 to September 30, 2014. The average elapsed days to process the appeal was 22 working days. In 9 of the 20 FOIA appeals, a final determination was made within 20 working days. Two of the appeals received during this period were pending as of September 30, 2014.

FOIA centralization is underway and will be expanding in the coming months. Centralization of FOIA processing will ensure greater consistency and efficiencies in FOIA handling. In August, the NLRB's FOIA Branch hired a new Branch Chief, who has provided assistance towards full centralization of the processing of Regional FOIA requests.

### FY 2015 Strategic Goal 3 (Support): Achieve Organizational Excellence

#### Management Strategies:

##### Objective 1: Initiative 1:

- The Office of Human Resources (OHR) collaborated with executive officials to refine and expand its performance management program. It held training sessions for Executive staff, Regional staff and Headquarters managers and supervisors on relevant areas of the performance management system. The training focused on the significance of establishing performance plans, providing timely mid-year progress reviews, ensuring that all employees are given appraisals, aligning performance plans with the Agency's strategic goals, and ensuring that performance plans hold employees accountable for achieving results appropriate to their level of responsibility.
- A comprehensive Strategic Human Capital Plan is being developed.
- OHR and the Division of Legal Counsel collaborate regularly to ensure adherence to Agency policies and collective bargaining agreements.
- Management and union representatives successfully work on a Reasonable Accommodations Policy, which was approved by the EEOC.
- OHR issued guidance that expounded on workplace flexibilities for childbirth, adoption, foster care and elder care.
- OHR, on behalf of various NLRB organizational units, issued many recognition awards to employees during FY 2015, including length of service, project and retirement awards.
- OHR held its annual Administrative Professional Day Recognition Ceremony on April 23, 2015 to honor the Agency's outstanding administrative professionals.



- The Agency held its second annual Honorary Awards Program, which recognized eleven employees in a number of different categories.
- The Agency developed and implemented an Agency-wide Cultural Enhancement Program, which will enhance the ability of our increasingly diverse workforce to better work together, and to better understand the cultural differences among the public we serve. The program was launched with holding an “all hands” meeting which featured internal and external speakers who addressed the importance of inclusion and civility to a productive workplace. This was followed by online interactive module and podcasts in which a diverse group of employees shared their life and work experiences, as well as videos and online forums for employees to continue to discuss these topics.
- The Office of Employee Development (OED) also developed and rolled out online training materials, enabling Headquarters employees to better utilize Outlook 2013, Lync and Word 2010, and produced scenario-based videos on ethics topics.
- OED updated the Agency’s Management Training Program by developing components such as: enhanced individual development planning and mentoring; obtaining the skills needed for the next level of management; and a pre-supervisory program.
- The General Counsel and the Deputy General Counsel addressed Regional and Headquarters staff in Divisions/Branches/Offices acknowledging and congratulating them on their achievements, and seeking suggestions for Agency improvements.

#### Objective 1: Initiative 2:

- OHR and the Office of Equal Employment Opportunity (OEEEO) worked together on the Strategic Recruitment Committee and are developing a Strategic Recruitment Plan.
- OHR routinely partnered with the Local Veterans Employment Representative Program (LVER) to recruit for commonly filled positions, and placed at least five veterans through this program this fiscal year.
- The Agency regularly uses the Veteran’s Recruitment Appointment (VRA) Special Hiring Authority to place disabled veterans.
- OHR worked to bolster the integrity of its recruitment process and adherence to OPM regulations. It created a series of internal procedures and manuals that are used to correctly navigate the process. It worked diligently with OPM to redraft its Excepted Service and Pathways policies to ensure that adequate consideration is provided to viable candidates. Furthermore, in direct correlation to OPM’s Hiring Reform and the 80-Day Hiring Model, OHR attained an average 74-day hiring rate from the beginning of the process to the on-boarding of the employee for FY 2015.
- OHR implemented a process for applicants with disabilities (Schedule A) which includes a specific mailbox for these applications, retention for 30 days, and focused review when a new vacancy arises in the Agency. If an applicant’s qualifications prove to be a match for the job, that information will be forwarded to the hiring manager for further consideration. Presently, applicants are made aware of the program through Agency vacancy announcements on USAJobs and OPM’s website.
- The Agency continued to utilize USAJobs in announcing vacancies to a broad category of applicants, including veterans and persons with disabilities.
- OHR entered into a Memorandum of Understanding with the Department of Veteran Affairs to participate in the “VA for Vets Program,” in order to process non-competitive hiring actions for veterans and to take part in the in “Feds for Vets” initiative.

#### Objective 2: Initiative 1:

- FPB continued its extensive Communication Plan to keep Headquarters staff informed on matters related to the relocation of the Headquarters facility.
- Following the move, FPB implemented a practice requiring FPB employees to courtesy copy all branch employees on building related requests to ensure that multiple staff are not working on the same task. This practice of sharing information has also resulted in staff feeling more included and aware of work matters transpiring within the branch.
- The Security Branch continued to issue its customer feedback questionnaire, soliciting information to ensure that customer assistance is timely and professional.
- OHR improved communications by distributing numerous documents and notifications via its Ask HR Program.
- The Agency analyzed the 2014 Federal Employee Viewpoint Survey results and is implementing best practices and strategies for strengthening employee engagement and organizational performance

through focused leadership and increased communication.

- In response to the Federal Employee Viewpoint Survey results from FY 2014, Agency managers developed action plans that included: greater transparency, sharing of information, and solicitation of employee input.
- Guidance information on Employee Viewpoint Survey (EVS) action planning, and best practices involving effective leadership, communication, and engagement, was posted to the Human Capital Planning internal web page.
- The Human Capital Planning Officer (HCPO) developed a structured communication plan to increase employees' awareness of the EVS. The response rate to the 2015 EVS increased by 15 percent and there was a 4 percent increase employee engagement scores and a 5 percent increase in global satisfaction scores.

#### **Objective 2: Initiative 2:**

- OHR met with incoming Honors Attorneys to seek their feedback on the onboarding process, and how it could be enhanced and improved.
- Training was provided to managers/supervisors on the appraisal process, including how to write performance appraisals, performance management requirements, and their role in communicating expectations to Agency employees on performance management protocols and processes. The training highlighted the importance of getting employees involved in creating their performance plans and having regular feedback discussions with employees.
- The Congressional and Public Affairs Office issued news releases on case successes.
- The General Counsel and the Deputy General Counsel addressed Headquarters staff in Divisions/Branches/Offices acknowledging and congratulating them in their achievements, and seeking suggestions for Agency improvements.
- Significant organizational accomplishments are also regularly highlighted to all staff in the Agency newsletter.

#### **Objective 2: Initiative 3:**

- OEEEO collaborated with OED and the Division of Operations-Management to design and implement a foundational and ongoing diversity and inclusion training program for all Agency employees in alignment with Executive Order 13583.
- OHR continues to provide training to Agency hiring managers on special hiring authorities, including Schedule A, in alignment with Executive Order 13548.
- The Management Directive "MD715" is an affirmative EEO program by which federal agencies can assess, identify deficiencies and conduct barrier analysis of obstacles to equal employment opportunity and develop ongoing action plans to correct the self-identified deficiencies and work collaboratively to remove identified barriers. The NLRB submitted its report in March 2015 to the EEOC.
- Agency SES Leadership participated in external diversity and inclusion training.
- OEEEO prepared four policy statements that were adopted and issued by Agency leadership on 1) Agency EEO Policy; 2) Statement on the Prevention of Unlawful Harassment; 3) Agency Statement Promoting Alternative Dispute Resolution; and 4) Diversity and Inclusion Policy Statement.
- OEEEO partnered with OHR to incorporate language describing specific standards for inclusion in supervisors' and managers' performance appraisals to measure management accountability on building and maintaining an inclusive work environment.
- The General Counsel's Mentoring Workgroup analyzed the Agency's existing mentoring program and made recommendations on how mentoring can be further developed as a tool to maintain a diverse workforce. In response to the General Counsel's request, the workgroup investigated mentoring models at other federal agencies and their best practices for implantation.
- OEEEO designated staff as Special Emphasis Program Managers (SEPMs) responsible for developing program initiatives that enhance employment opportunities for specific demographic populations and tools to support employee affinity groups.
- OEEEO supports programming initiatives for the Agency's cadre of collateral duty Special Emphasis Program coordinators.

## **FY 2015 Strategic Goal 4 (Support): Manage Agency Resources in a Manner That Instills Public Trust**

### **Objective 1: Initiative 1:**

#### **Measure:**

- The Agency completed the consolidation of its separate legacy case tracking systems into an enterprise case management solution, a success that is rare within the Federal government. The last remaining Agency Office, the Contempt, Compliance, and Special Litigation Branch, was migrated successfully into NxGen in September. NxGen was designed and implemented to replace 11 separate legacy systems and integrate them into a single unified solution that leverages multiple technologies. This was the most comprehensive technology project undertaken at the NLRB, and its success has been essential to the Agency's mission.

#### **NxGen presently manages:**

<b>Internal users</b>	1,350
<b>Cases</b>	286,117
<b>Case Actions of the Agency</b>	876,076
<b>Documents, images, and videos, each linked to its Action and Case</b>	6,050,259

#### **Measure:**

- In FY 2014, the Agency expanded its electronic distribution of case documents with an E-Delivery pilot involving six Regions, one party (USPS) and new 10 document types. In FY 2015, 781 documents were sent to the USPS electronically, resulting in notable savings to the NLRB and a great convenience to the USPS.
- On April 14, 2015, the Agency expanding its electronic filing program to enable constituents to E-File charges and petitions, the two initiating documents for the Agency's cases. The Agency has received 3,098 electronically filed charge and petitions from the launch of the new service through the end of the fiscal year. Over the course of the fiscal year, the Agency received 58,662 documents of all types through its E-filing program and electronically delivered 3,422 documents to nearly sixty-thousand parties.

#### **Measure:**

- The NLRB has counted millions of votes, investigated hundreds of thousands of ULP charges, and issued thousands of decisions. The numbers tell an important part of the Agency's story. Making what we do accessible to the public is an important part of the NLRB's mission. For example, the total number of case documents available for public access was 692,456, including Tally of Ballot information. This data is downloadable for analysis at <https://www.nlr.gov/news-outreach/graphs-data>.

Please see <http://www.nlr.gov/open/public-documents> for a complete list of the document types available to the public.

### **Objective 1: Initiative 2:**

#### **Measure:**

- Through FY 2015, the Administrative Systems (AS) team actively sought to develop automated solutions to streamline Agency processes.
- The AS team completed a development effort to streamline the enrollment and management processes for the Voluntary Leave Bank. Dynamic reporting was also delivered to the managers and committee to provide aggregate statistics on many aspects of the system.
- The AS team also developed a workflow process for authoring, routing and editing, approving and publishing of documents. This repeatable process will allow groups of users to store documents centrally in a secure authoring library, allowing documents to be finalized and then published to a separate location for consumption by a larger audience.
- The AS team completed a development effort for OHR involving organizing and categorizing all positions and position descriptions (PDs) within the Agency, modifying the PD library, assisting the OHR team with the creation of a set of standardized PD, and developing a streamlined process for OHR and Agency supervisors / managers to update all PDs every three years.
- The AS team completed a development effort and migration of content and documents into a SharePoint site for all continuity of operations (COOP) members. Authors can now create, edit, route and receive approval for yearly COOP plans,

and all COOP documents are now available at any time and may be accessed remotely.

**Measure:**

- The Agency awarded its Unified Communications (UC) contract on September 24, 2014, and now expects the implementation to take up to 20 months. After the initial investments in the UC build-out and end-user equipment, the Agency expects total network services costs to be in line with the current separate allocations for data, voice and video networks, and anticipates the enhanced services to demonstrably improve administrative efficiencies.
- The first priorities were to upgrade networks in the Agency's Field Offices and two existing datacenters, and to add network connections to its two new voice datacenters and new Headquarters. These changes add significant bandwidth to the Field Offices, are based on a new, more modern networking technology, and provide greater redundancy to our critical infrastructure. Forty Field Offices are now live on the new network, as are the two existing datacenters, one of the new voice datacenters, and the Agency's Headquarters.
- All employees in Headquarters now use Skype for Business (SfB) for voice calls, voicemail and instant messaging, as the OCIO deployed the necessary Microsoft Office software and delivered over 775 new unified communications devices.
- OCIO and Operations Management are in the process of planning the SfB deployment to the Field Offices.

**Measure:**

- The AS team continued to build team sites, on request, for geographically dispersed employees to collaborate using Office Online applications, SharePoint lists and discussion forums. Enhanced capabilities continue to be added to allow for user-based filtering of content and more granular management of permissions for documents.
- The AS team completed a development effort for OHR, creating an "Ask HR" knowledge base, which consists of answers to common questions, and if no information is present, a workflow capability will allow a new question to be submitted, routed, and ultimately, become part of the knowledge base.

- The AS team also completed a development effort for the Office of the Chief Financial Officer (OCFO), creating an "Ask the CFO" knowledgebase, which consists of information related to the Acquisitions Management, Finance and Budget branches.

**Objective 1: Initiative 3:**

**Measure:**

- Required reports to external regulatory bodies were prepared in accordance with established time lines.

**Measure:**

- OCFO held monthly meetings with Contracting Officers and Contracting Officer Representatives (COR's) to discuss unliquidated obligation amounts, monitor burn rates, and request funding increases and deobligations.

**Measure:**

- OCFO continued to develop a formalized annual training plan for all allowance holders. During FY 2015, finance-related training was incorporated during the monthly obligation monitoring meetings, to include COR's who recently on-boarded with the Agency.

**Measure:**

- The Finance Branch hosted a training session for CORs and provided a tracking tool to enable increased accuracy and timeliness of reporting burn rates, unliquidated obligation amounts, request for increased funding, and request for de-obligation of funding.
- The Budget Branch worked closely with the program offices and senior leadership to develop a detailed budget spend plan, which is a living document of estimates and actual amounts and is updated monthly on the prior months execution.
- The Budget Branch has developed several tools for various budget execution line items to monitor timely obligation and liquidation of funds, such as monitoring GSA rent charges, individual training requests, and mass transit benefit funding levels. Some budget lines have demonstrated variable spending cycles during the year, which requires additional training to program managers on the importance of monitoring those cycles to ensure funding requests cover the requirements.

**Measure:**

- The Acquisitions Management Branch (AMB) provided training to Purchase Card Holders regarding electronic submission of monthly statements, and provided guidance on purchase card user registration via the Citibank portal.
- AMB also provided monthly and quarterly reports to the Associate General Counsel of Operations-Management, which provided greater insight and transparency on purchasing habits of field offices that it oversees.

**Measure:**

- The NLRB has increased the percentage of contracts awarded woman-owned and small disadvantaged business categories. With AMB's focus on small businesses as the suppliers of choice, continuing to increase the number of awards to small businesses is achievable.

**Objective 2: Initiative 1:**  
**Management Strategies:**
**Immigration Population**

- The Agency met with local consulates of various countries to educate consular officials about the NLRB's protections and processes.
- The Agency provided direct outreach to immigrant populations by:
  - Participating in Labor Rights Week activities
  - Speaking in Spanish and other languages at events organized by the consulates or other community groups to educate the public about the rights afforded under the NLRA
  - Holding news conferences to disseminate information helpful to immigrant communities
  - Participating in interviews on Spanish-language radio stations
  - Staffing phone banks to respond to inquiries from immigrant populations
  - Staffing booths at informational fairs
  - Responding to inquiries from individuals who seek consular services
- The Agency has joined with other federal agencies to educate the public by:
  - participating in the Vulnerable Workers Project
  - participating in numerous "listening sessions" with those from the Asian American and Pacific Islanders Community

## ■ Other Agency activities include:

- meeting with foreign labor and business representatives to provide information about employee rights under the NLRA and NLRB processes
- meeting with members of the Commission on Human Relations to provide an overview of NLRA rights
- making presentations about the NLRA to officials of the French, Colombian, Spanish, and German embassies
- speaking at naturalization ceremonies to new citizens from approximately 35 countries about rights they have under U.S. labor laws

**Youth**

- The Agency led discussions for high school and middle school classes in English and Spanish concerning the development of the NLRA and the New Deal, as well as the workers' statutory rights and the Board processes.
- The Agency held mock trials for schools to demonstrate how an ULP trial is conducted.
- The Agency engaged in the Workplace Street Law Project in Washington, DC, which educates high school students about their rights as workers.
- The Agency signed an MOU with the Ministry of Foreign Affairs of the Republic of Colombia. Various Regional Offices also held local signing ceremonies with local Colombian consulates, with follow-up outreach sessions.
- The Agency partnered with DHS, DOL (WHD, OSHA and OFCCP), OSC, DOJ and EEOC in an Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws.
- The Agency presented at the national EEOC EXCEL Conference in Washington, DC, on concerted activity in social media
- DOJ's Office of Special Counsel hosted two webinars for NLRB field personnel to covering the intersection of the NLRA and immigration law.
- Internal Agency deliberations occurred concerning effective outreach methods, including targeting specific audiences through the use of twitter, You Tube, Facebook, and news aggregators.
  - Since its release in August 2013, the NLRB app has been downloaded 19,296 times



- The Agency implemented a Sharepoint site available to all of its outreach officers. This site includes a centralized area for collecting outreach presentation materials and a discussion board for addressing outreach inquiries
  - The Agency maintains a link on its public website for outreach requests, which are routed to the appropriate Region
  - The Agency has inserted QR codes in its correspondence to direct the public to our website.
  - More Regional Offices are considering producing newsletters in electronic format for delivery through GovDelivery
- Outreach sessions for veterans and employee advocate organizations were held explaining Protective Concerted Activity, in particular.

### Objective 3: Initiative 1:

#### Measure:

- The NLRB requires all Public Financial Disclosure filers, who are the leadership of the Agency (SES and PAS), to complete our annual ethics briefing. This year's briefing served as a reminder to our leadership of all the available ethics training products.
- The "Braking Bad Email Habits" training series emphasized that Agency employees should use their government email in a way that complies with government and legal ethics rules, and avoids the disclosure of confidential case-related information. A related memo was sent to all field professionals to encourage those that had not yet reviewed the material to do so as it was an effective learning tool.
- The Ethics Office provided general ethics guidance to Board Members regarding the use of private social media accounts while serving as a Member of the Board, and met with the Deputy General Counsel, the Chief of Staff to the Chairman, and others to offer guidance in identifying potential conflicts of interest in an administrative program.
- At the request of the General Counsel, the Ethics Office developed and delivered a training session on Civility during the Attorney Trial Training and presented a similar session to Headquarters staff.
- The Ethics Office helped establish a reporting process that would ensure that newly hired and newly promoted employees receive required ethics training and complete required financial disclosure reports (as appropriate) in a timely manner.

#### Measure:

The Ethics Office continued to seek out opportunities to educate Agency employees about their ethical obligations.

#### During FY 2015 the following was provided:

- A conclusion to the "Braking Bad Email Habits" series that covered the ethical use of government email.
- A Skip Counsel and Attorney-Client Privilege training program was presented to nine Regional Offices.
- Monthly distribution of the "On the Road with the Ethics Code" Job Aids that provide timely legal ethics information to all board agents.
- Monthly Agency newsletter articles. These articles covered, where to find government and legal ethics information on the Agency website, how to navigate gift giving during the holiday season, and provided real-life examples of the consequences of violating criminal conflict of interest statutes.
- Ethics social media guidance for distribution to the Presidential Appointees.
- The redistribution of a Hatch Act job aid to serve as a reminder about partisan political activity.
- Presented legal ethics topics at two attorney conferences co-sponsored by the NLRB and assisted in planning the ethics programming for a conference.
- Provided ethics briefings to newly appointed Regional Directors.
- Distributed one-page Job Aid covering Seeking Other Employment.
- Partnered with the OED to begin development of two legal ethics training programs for online/on-demand distribution to all legal professionals.
- Developed and presented a training session on Civility. This program was offered to attendees at the Trial Training in August and to professionals in Enforcement Litigation, CCSLB, and the Washington Resident Office.
- Provided guidance to the General Counsel and Board Members regarding speaking events where certain topics may create an appearance issue for the Agency or lead to discussion that could put the speaker at risk of making comments that could be construed as "prejudging" a case, and lead to requests for recusal.

**Measure:**

- As of September 30, 2015, the Ethics staff received 622 inquiries and 87.7 percent were resolved within 5 business days.

**Measure:**

- As of September 30, 2015, 100 percent of the financial disclosure reports submitted were reviewed within the 60-day regulatory time period. Where a reviewer identified either a potential or actual conflict of interest, a memo was prepared and sent to the filer providing ethics advice and guidance.

**Measure:**

- Ethics staff rolled out the Office of Government Ethics (OGE) electronic filing system to all filers of the OGE 278. This included:
  - Meeting with OGE project managers
  - Attending user and administrator training sessions
  - Completing systems and user testing to ensure that NLRB employees would be able to use the system via the NLRB network and agency provided laptops
  - Finalization of NLRB Filer training materials to include: job aids, user guide, demonstration videos, and online training module
  - Creation of 278e Integrity web page on the NLRB Insider where all training materials are archived
  - Live training sessions on how to file your 278e in Integrity for the first time

**Objective 3: Initiative 2:**

- The OCIO responded timely to internal audits and information requests including:
  - Audit of the NLRB Fiscal Year Financial Statements
  - Fiscal Year 2014 Review of Internal Controls (FMFIA Survey)
- The OCFO submitted timely Corrective Action Plans as required in response to the Fiscal Year 2014 Financial Statement Audit and also timely prepared a corrective action plan for OIG Travel Audit OIG-AMR-75-15-02. The actions that were taken and submitted to remediate recommendations found in Audit OIG-AMR-65-11-03 "Purchase Cards" were reviewed by the OIG.

**Objective 3: Initiative 3:**

The OCIO responded timely to external information requests including:

- Questions posed in the Office of Management and Budget Memorandum M-15-01, Fiscal Year 2014-2015 Guidance on Improving Federal Information Security and Privacy Management Practices
- Exhibit 53 and the corresponding Information Technology section for the Congressional Budget Justification
- NARA's 2014 Records Management Self-Assessment
- FY 15 Q1 Federal Information Security Management Act (FISMA) Data Call
- Trusted Internet Connection (TIC) POA&M February 2014 Data Call
- FY 15 Q2 Federal Information Security Management Act (FISMA) Data Call
- Multiple security- and privacy-related ad hoc data calls, including for MS15-011 software "bug" and Indicators of Compromise (IOCs) related to OPM's personnel systems data breach.

**Objective 3: Initiative 4:****Measure:**

- Based on the information in the FOIA Tracking System, the Agency responded to initial FOIA requests on an average of fourteen days for requests received from October 1, 2014 to September 30, 2015. The Agency received 4,644 requests for this period and responded to 3,543 of those requests in 1-20 days. Thus, 78.34 percent of the FOIA requests were processed within the 20-day statutory time period.

**Measure:**

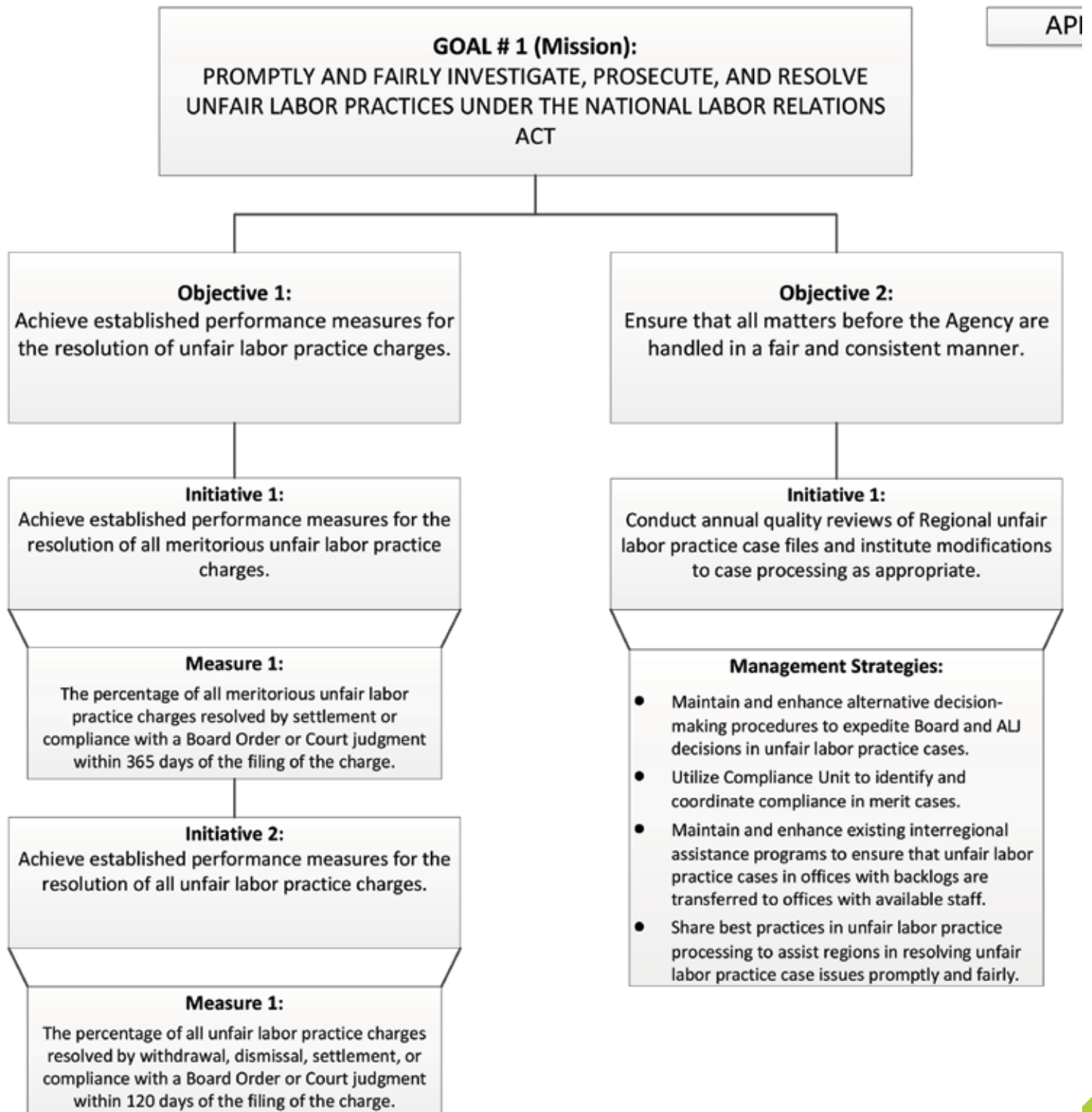
- The Agency sought an extension of time to process a request beyond the 20-day period in about 20 percent of the FOIA requests received during the fiscal year.

**Measure:**

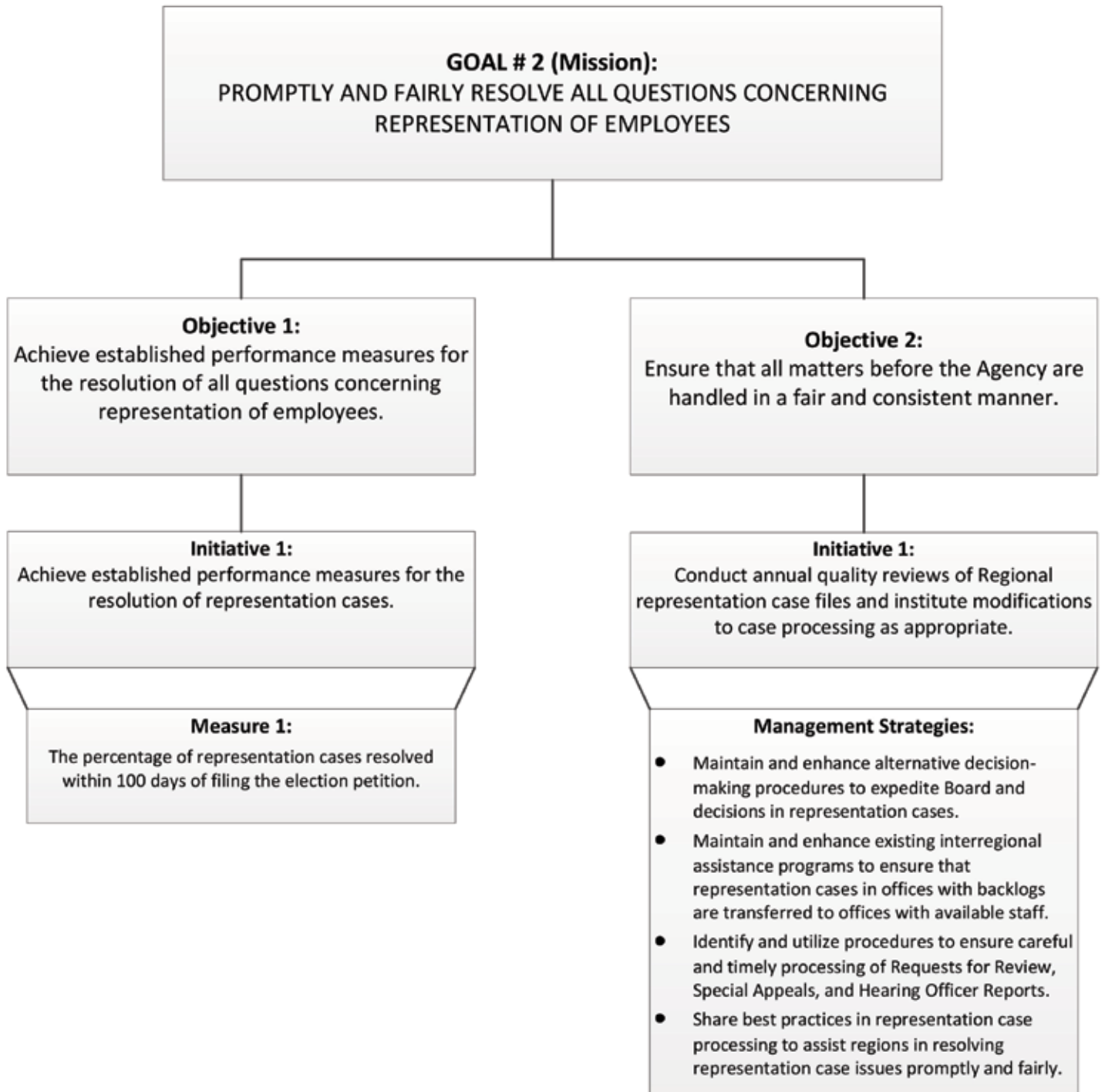
- The Agency received 24 FOIA Appeals from October 1, 2014 to September 30, 2015. The average elapsed days to process the appeal was 24 business days.

## APPENDIX D – GOAL STRUCTURE

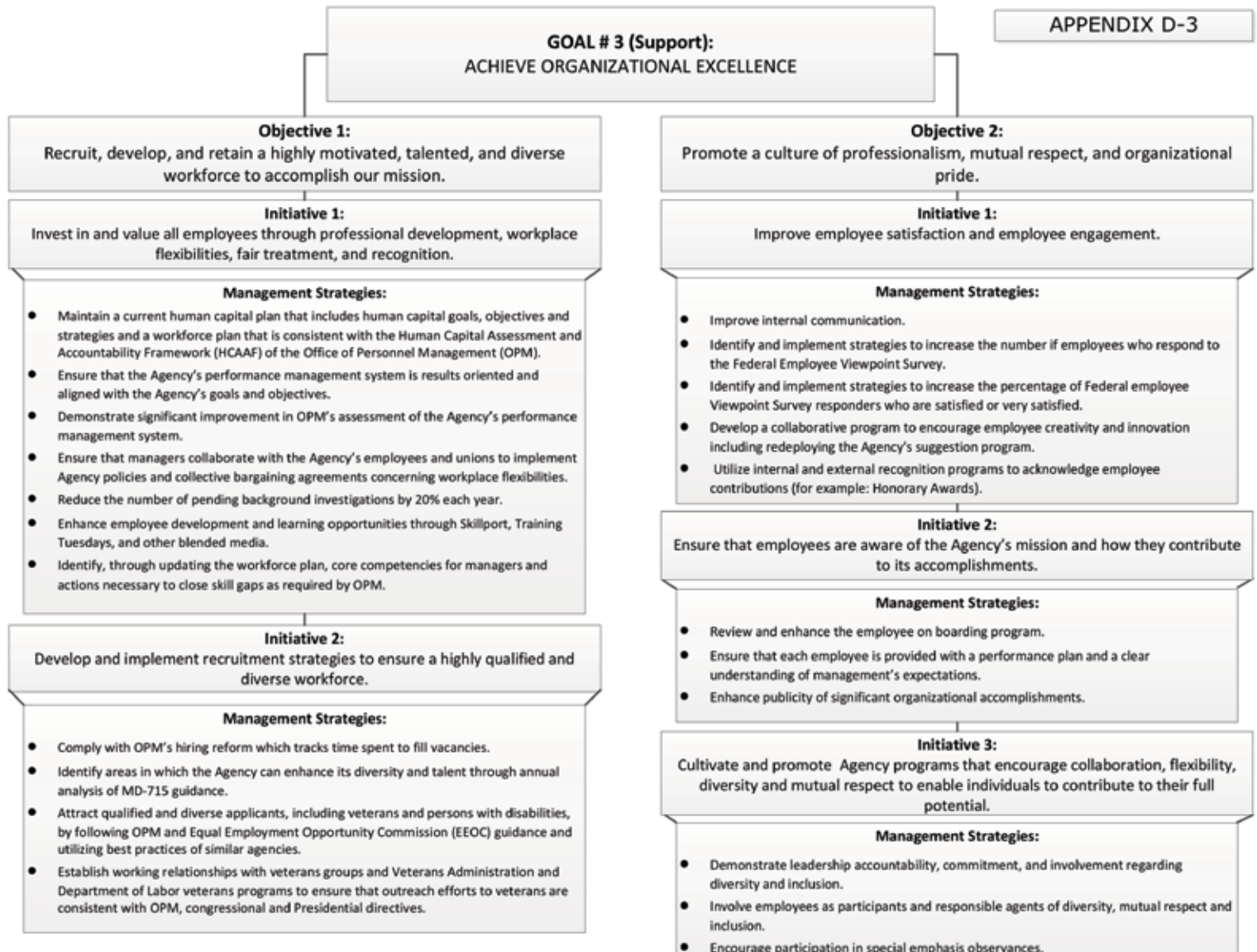
### APPENDIX D-1



## APPENDIX D-2



## APPENDIX D-3





## APPENDIX D-4

**GOAL # 4 (Support):**  
**MANAGE AGENCY RESOURCES IN A MANNER THAT INSTILLS PUBLIC TRUST**

## APPENDIX D-4

**Objective 1:**

Use information and technology to monitor, evaluate, and improve programs and processes in order to accomplish the Agency's mission and increase transparency.

**Initiative 1:**

Improve the productivity of the Agency's case management by standardizing business processes in a single unified case management system.

**Measures:**

- Complete the deployment of the Next Generation Case Management System (NxGen), replacing 11 separate legacy systems, to all Agency mission offices during FY 2015.
- Increase the rates of electronic service, delivery, and filings, thereby reducing the paperwork burden on constituents, including individuals, labor unions, businesses, government entities and other organizations.
- Increase the information shared electronically with the public, making the Agency's case processes more transparent.

**Management Strategies:**

- Focus on critical business needs first.
- Split projects into smaller, simpler segments with clear deliverables.
- Ongoing, transparent project oversight from the NxGen Integrated Project Team.

**Initiative 2:**

Achieve more effective and efficient program operations in the NLRB administrative functions by automating and improving processes and information sharing within the Agency.

**Measures:**

- Streamline the Agency transactional processes by providing employees ready access to the tools, data and documents they require from anywhere, at any time.
- Create a modern single unified communications platform and network to empower Agency personnel to communicate with voice, video and data from all locations including the office, at home and on the road by FY 2016.
- Create a dynamic social collaborative environment for employee engagement.

**Management Strategies:**

- Focus on critical business needs first.
- Split projects into smaller, simpler segments with clear deliverables.
- Increase information sharing within the Agency through mechanism that are easy for employees to contribute to and access.
- Employ ongoing, transparent project oversight from the NxGen Integrated Project Team.

**Objective 2:**

Evaluate and improve the Agency's Outreach Program.

**Initiative 1:**

Enhance the Agency's outreach program.

**Management Strategies:**

- Employ further non-traditional outreach to the following populations:
  - Immigration Population
  - Youth
- Engage with organizations, such as those listed below, to better educate workers and employers:
  - Letter of Agreement (LOA) with embassies
  - Joint outreach with sister agencies
  - Memorandums of Understanding (MOU) with other Agencies related to co-extensive investigations
- Focus on Protected Concerted Activity vs. Union Activity
  - Expanded usage of the NLRB's social network
  - Additional information on NLRB public website
  - Broader use of NLRB Smartphone app and other technology
  - Use of internet technology, such as YouTube
  - Development and internal posting of more informational materials for use by board agents at recruitment and outreach events

**Initiative 3:**

Effective management of fiscal resources.

**Measures:**

- Produce financial reports as required by OMB, Treasury, and Congress.
- Conduct annual training of allowance holders.
- Conduct training for new allowance holders within 90 days of on boarding.
- Increase transparency in enterprise financial reporting.
- Increase use of strategic sourcing, purchase card program, and in sourcing to minimize waste and abuse.
- Increase number of awards given to minority business enterprises.

**Objective 3:**

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

**Initiative 1:**

Promote an ethical culture within the NLRB through leadership, awareness, resources, and oversight.

**Measures:**

- Involve Agency leadership promoting visibility of NLRB ethics program.
- Increase employee awareness of ethics responsibilities by maintaining an education program that reaches all NLRB employees at all levels.
- Respond to 85% of ethics inquiries within 5 days of receipt.
- Review and certify financial disclosure reports within 60 days of receipt and notify filers of real or potential conflicts.
- Use technology to improve financial disclosure reporting and review process.

**Initiative 2:**

Respond to internal audits in a timely manner.

**Measure 1:**

Prepare responses to internal audit reports as required by the auditor, meeting the deadlines specified in the reports.

**Initiative 3:**

Respond to external audits in a timely manner.

**Measure 1:**

Prepare responses to external audit reports as required by the auditor, meeting the deadlines specified in the reports.

**Initiative 4:**

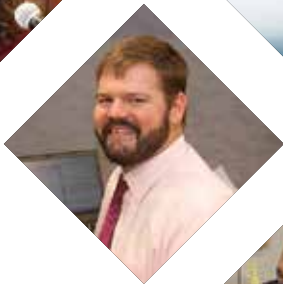
Respond to FOIA and other public inquiries in a timely manner.

**Measures:**

- Respond to initial FOIA requests within 20 working days.
- Seek a statutory extension for less than 15% of requests.
- Respond to statutory appeals within 20 working days.



[www.nlrb.gov](http://www.nlrb.gov)



National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001