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National Labor Relations Board
Office of Inspector General



Compliance With Unfair Labor Practice Procedures

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Memorandum from the Associate General Counsel, Division of Operations-Management, Response to Draft Report “Compliance With Unfair Labor Practice Procedures” (OIG-AMR-68), dated June 19, 2013

EXECUTIVE SUMMARY

The Regional Offices are managed from Headquarters by the Division of Operations-Management. To assess the Regions' compliance with the Casehandling Manual, the Division of Operations-Management has a Quality Review Program that involves a managerial review of selected unfair labor practice cases. Our prior audit of the Financial Remedies and Other Settlement Terms, OIG-AMR-63-10-02, found in part that the Quality Review Program did not appear to be working with regard to financial remedies. In light of that finding, we were concerned with the effectiveness of the Quality Review Program and the Regions' overall compliance with the Casehandling Manual when processing unfair labor practice cases.

To conduct this review, we randomly selected a statistical sample of cases from seven Regional Offices. We stratified the sample based on whether a complaint was issued to achieve a sample that had an equal number of cases with and without a complaint issued. These procedures ensured that the sample of cases would allow us to test attributes related to the issuance of a complaint. The selected case files were then tested against procedural requirements of the Casehandling Manual that spanned from the receipt of the charge through the filing of exceptions with the Board.

In general, we identified several policies that were not being followed. Those policies included recording the correct filing date, following the procedural requirements for affidavits, meeting the time requirements for lead affidavits, and documenting significant steps in processing unfair labor practice cases. Overall we found that the Quality Review Program lacked effectiveness in ensuring the Regions' compliance with the Casehandling Manual's procedural requirements related to processing unfair labor practice cases. Based on our findings, we made several recommendations that we believe will improve management controls over the unfair labor practice casehandling process.

The Division of Operations-Management reviewed the draft report and commented that while its Quality Review program does include a review of the Regions' compliance with the Casehandling Manual's procedural requirements, the focus of the Quality Review program is to evaluate the substantive quality of Regional casehandling and decisionmaking at all aspects of casehandling and their compliance with General Counsel initiatives. The Division of Operations-Management noted that procedural missteps, unless repeatedly made, are often addressed with the Region orally rather than in a written report. Although the Division of Operations-Management stated that it agrees that it is important for the Regions to follow the casehandling procedures and that it also agrees with many of the recommendations set forth in the report, it

stated that it is important to keep in perspective the differences in approach and emphasis of its Quality Review program and the audit. The Division of Operations-Management also noted that the audit was conducted during the transition to the Next Generation Case Management System and that the transition may have contributed to the audit findings related to data entry. The comments are provided as an appendix to the report.

BACKGROUND

The National Labor Relations Board (NLRB) Casehandling Manual Part I, Unfair Labor Practice Proceedings (Casehandling Manual) provides procedural and operational guidance for the Agency's Regional Office processing of unfair labor practice (ULP) cases. The Casehandling Manual is one of the Agency's primary internal controls to ensure that ULP cases are processed in a uniform manner by the 51 Field Offices.

The Regional Offices are managed from Headquarters by the Division of Operations-Management. To assess the Regions' compliance with the Casehandling Manual, the Division of Operations-Management has a Quality Review Program that involves a managerial review of the ULP cases. The Agency's Performance and Accountability Report discusses the Quality Review Program.

Our prior audit of the Financial Remedies and Other Settlement Terms, OIG-AMR-63-10-02, found in part that the Quality Review Program by the Division of Operations-Management did not appear to be working. In light of that finding, we were concerned with the overall effectiveness of the Quality Review Program and the Regions' overall compliance with the Casehandling Manual when processing ULP cases.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of this audit was to determine whether Regional Offices were processing ULP cases in compliance with the Agency's processes and procedures as outlined in the Casehandling Manual. Our scope was ULP cases that closed between August 15, 2010 and August 15, 2011. We conducted this audit at NLRB Headquarters in Washington, DC and at seven Regional Offices. To identify the Regions in this report, we assigned each Region a letter.

We reviewed the Casehandling Manual to identify policies and procedures for the processing of ULP cases. We tested case processing from the time a charge is received through issuance of a complaint, withdrawal, dismissal, or deferral. We also reviewed Regional Office actions regarding following

up on deferred cases and the filing of exceptions to Administrative Law Judge decisions. For these tests, we used documents and information from individual case files. Also, because changes to the Casehandling Manual have occurred from time to time, we tested the requirement that was applicable to the case if there had been a change.

In each Region that was included in the audit, we selected cases to test based upon a statistical sample. We chose to use a statistical sample because of the large number of cases processed and closed by the Regions (i.e. the size of the universe of cases). To be consistent with Government Accountability Office (GAO) guidance and our expected deviation rate, we used a sample size for each Region that would achieve a 90 percent confidence level in our results. The individual sample size for each Region is shown in the table below.

Region	Universe of Closed Cases	Sample Size
A	779	76
B	823	76
C	1,012	76
D	483	74
E	615	75
F	658	76
G	405	74

We then stratified the sample based on whether a complaint issued. Stratification was used because the majority of cases processed by the Agency are closed pre-complaint and we wanted to ensure that the sample would allow us to test attributes related to the issuance of a complaint. Our intent was to have a sample from each of the Regions that was evenly divided between cases with a complaint and those that were closed pre-complaint. Because of our sampling method, the results of our testing can be projected to the population.

In addition to our testing of the case files, we also tested 5 data elements from the appropriate electronic case processing system against the information in the hard-copy case files. The data elements were either key processing points in a case or were used to select the sample of cases to test. During the period that we were testing, the Regions were converting from the Case Activity Tracking System

(CATS) to the Next Generation Case Management System (NxGen). As of August 15, 2011, six of the seven Regional Offices tested had fully converted to NxGen, so the data tested for those Regions was from NxGen. Region G had not yet converted to NxGen, so the data tested for that Region was from CATS.

Each case selected was individually tested; however, if there was a related case we reviewed the related case for any documentation that was necessary for the testing if the documentation was not in the selected case file. We note that not all case processing tests were applicable to every case that we tested.

We conducted this performance audit in accordance with generally accepted government auditing standards during the period August 2011 through May 2013. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

FINDINGS

The GAO's Standards for Internal Control in the Federal Government states that internal control activities help ensure that management's directives are carried out. Control activities are the policies, procedures, techniques, and mechanisms that enforce management's directives. They include a wide range of diverse activities such as approvals, authorizations, verifications, performance reviews, and the creation and maintenance of related records that provide evidence of execution of these activities. The Standards also note that internal control is not one event, but a series of actions and activities that occur throughout an entity's operations and on an ongoing basis.

The Casehandling Manual sets forth management's policies and procedures for the processing of ULP cases. The Casehandling Manual states that while Regional Directors and their staffs are expected to follow the Manual's guidelines in the handling of cases, it is also expected that in their exercise of professional judgment and discretion, there

will be situations in which they will adapt these guidelines to circumstances. The Casehandling Manual also states that the case file should reflect all action taken in the investigation and must be sufficiently complete and current to permit appropriate supervisory review on an ongoing basis and, if necessary, to allow another agent to continue the investigation with a minimum of duplication.

We identified several policies that were not being complied with, including recording the correct filing date, following the procedural requirements for affidavits, meeting the time requirements for lead affidavits, and documenting significant decisional steps in processing ULP cases. In general, we found that the Quality Review Program lacked effectiveness in ensuring the Regions' overall compliance with the Casehandling Manual when processing ULP cases. The results of our testing are detailed below.

FILING THE INITIAL CHARGE

The NLRB can initiate an investigation of a ULP allegation only upon the filing of an appropriate charge. A charge may be filed in person, by mail, or by facsimile at a Field Office in the Region in which the ULP is alleged to have occurred. The Casehandling Manual does not provide guidance to Field Offices regarding when a charge is considered to be filed. That guidance, however, is provided in the Regional Office Support Staff Manual. A charge is considered to be filed on the date it is received. If the charge is received after the close of business, the correct filing date is the following business day. The correct filing date must appear on all copies of the charge and must be the same on all Agency records, since this date may control future action on the case within the time limitations of the Act. According to the Casehandling Manual, once a charge is filed, the Regional Office will docket the case, categorize the case under Impact Analysis, and assign a Board agent. The charge sheet itself has a box to record the filing date that is identified as "date filed" and is directly to the right of the case number box. The filing date is recorded by handwriting or typing the information in a box directly to the right of the charge number. There is no corresponding box to record the docketing date.

For our testing, the date a charge was received was based on whether the charge had either a date stamp or a facsimile date, and the date filed was the date entered by the Regional Office on the charge. We identified initial charges in six Regions with different filed and received dates. This is shown on the table below.

Region	Received and Filed Dates Match or Following Business Day is Appropriate	Received and Filed Date do not Match	No Facsimile or Date Stamp to Document Receipt	Total
A	67	4	5	76
B	57	1	17	75
C	13	10	53	76
D	64	5	4	73
E	71	1	2	74
F	72	0	2	74
G	63	3	7	73

Although each Region had cases with initial charges that were not date-stamped, either by a date-stamp or facsimile machine, in Region C we found that nearly 70 percent of the cases tested had a charge with no indication of when it was received. For 20 of the 23 charges in Region C that had an indication of when it was received, they did so because the charge was received by facsimile. The three remaining charges had a date stamp from a date-stamp machine. One of the cases that had a date stamp from a date-stamp machine was a charge that was filed beyond the National Labor Relations Act’s 10(b) period – the statute of limitation. This demonstrates that Region C personnel have access to a date-stamp machine and understand the importance of documenting the receipt of the initial charge, but have no practice of doing so. The two remaining charges had a date stamp that was after the date written in the “date filed” box.

Because of the disparity between Region C and the other Regions, we compared the initial charge signed date and filed date that is written on the charge by Region C personnel just to the right of the case number. By doing so, we noticed gaps between the date signed and the date filed that ranged from a few days to 5 months. In 14 cases, the difference between the signed date and the filed date resulted in a due date under Impact Analysis that moved into the following

month. This effectively gave the Region an extra month to investigate the charge without having to report the case as “overage.” When we reviewed the other Regions, we did not observe the same disparity between the signed date and the filed date.

Recommendation

1. We recommend that the Division of Operations-Management establish uniform procedures for documenting the receipt of a charge and recording the filing date in NxGen.

SERVICE OF AMENDED CHARGES

Once filed, a charge may be amended at any time prior to the Regional Office’s disposition action. The Casehandling Manual states that copies of amended charges must be served on the charged party. Service may be by regular mail and proof of service should be placed in the file.

We identified cases in three Regions where the affidavits of service of the amended charges were not in the case file. The results are summarized by Region in the table below showing the number of affidavits of service found as compared to the number of amended charges.

Region	1 st Amendment	2 nd Amendment	3 rd Amendment	4 th Amendment
A	29 of 30	5 of 5	2 of 2	1 of 1
D	18 of 21	7 of 7	2 of 2	NA
G	25 of 27	6 of 6	1 of 2	NA

INITIAL NOTICE TO THE PARTIES UPON FILING A CHARGE

The Casehandling Manual states that immediately upon docketing of a charge, the Regional Office sends initial letters by regular mail to the charging party and to the charged party. We were unable to test this requirement because the docketing date is not recorded in any casehandling system. We also observed, as indicated above, that the date written in the “date filed” box on the charge sheet is not always the date that the charge was filed. As stated above, the date the charge was filed is either the date the charge was received in

the Regional Office or the following business day if the charge was received after normal working hours. Based on our observation that the charge number and “date filed” are written or typed in by Regional personnel, we speculate that the docketing date is at times recorded in the “date filed” box on the charge.

Days to Issue Initial Letter to Parties

To determine whether recording the docketing date is a necessary internal control, we calculated the number of workdays between the date recorded in the box labeled “date filed” on the charge sheet and the date of the initial letter. This information would show any delay between what could be either the filing or the docketing of the charge and the issuance of the letter. The results are summarized by Region in the table below.

Charging Party Initial Letter							
Region	Number of Workdays to Issue the Letter						No letter
	Same Day	1	2	3	4	5	
A	10	32	20	5	6	2	1
B	13	43	5	0	0	0	14
C	6	35	21	11	2	0	0
D	28	32	10	1	1	0	1
E	No letters found						74
F	4	25	27	5	3	0	10
G	10	40	22	1	0	0	0

Charged Party Initial Letter							
Region	Number of Workdays to Issue the Letter						No letter
	Same Day	1	2	3	4	5	
A	10	32	19	4	6	2	3
B	18	52	5	0	0	0	0
C	6	36	20	11	2	0	0
D	29	32	10	1	0	0	1
E	10	46	16	2	0	0	0
F	5	28	32	5	3	1	0
G	10	36	19	1	0	0	7

Initial Letter to Charging Party

The initial letter to the charging party provides notice and acknowledgment of the filed charge and the name of the assigned Board agent. The initial letters should encourage E-Filing and refer the parties to the Agency's Web site for customer service standards.

The Regional Office's initial letter to the charging party should also request prompt submission of a complete written account of all the facts and circumstances on which the charge is based, copies of all relevant contracts and/or other documents and the names and addresses of witnesses.

We found that Regions are using form letters. We reviewed the case file to determine if it contained documentation of the letter and whether the letter met the content requirements. The results are summarized in the table below.

	Region						
	A	B	C	D	E	F	G
Letter Not in the File	1	14	0	1	74	10	0
Acknowledgement of Filed Charge	Yes	Yes	Yes	Yes		Yes	Yes
Name of Agent	Yes	Yes	Yes	Yes		Yes	Yes
Encourage E-Filing	Yes	Yes	Yes	Yes		Yes*	Yes
Refer to Web Site	No	Yes	Yes	Yes		Yes*	No
Requests Submission of Facts and Circumstances	No	No	Yes	Yes		No	No
Request Copies of Relevant Documents	No	No	Yes	Yes		No	No
Request Names and Addresses of Witnesses	Yes	No	Yes	Yes*		No	No*

* In Region D we found one letter in the case files that did not match the form letter and did not meet the noted requirement. In Region F we found three letters in the case files that did not match the form letter and did not meet one or more of the noted requirements. In Region G we found a letter that passed, but the form letter that was used in 72 cases failed the noted requirement.

Initial Letter to Charged Party

As with the letter to the charging party, the initial letter to the charged party provides notice and acknowledgment of the filed charge and the name of the assigned Board agent. The letter should also encourage E-Filing and refer the parties to the Agency's Web site for customer service standards. The Regional Office's initial letter to the charged party should advise the charged party of the right to counsel, invite full and complete cooperation, and specifically request that the charged party submit a statement regarding the facts and circumstances that form the basis of the charge. The letter should also advise that the Regional Office will accept no limitation on the use of any statement of position submitted by the charged party in response to the charge, specifically that the evidence and statements of position submitted by the parties will be used without qualification or condition. The letter should also assure the charged party that no organization or person seeking to represent them has any "inside knowledge" or favored relationship with the Agency.

We found issues in all seven of the Regions. The results are summarized by Region in the table below.

[TABLE ON FOLLOWING PAGE]

	Region						
	A	B	C	D	E	F	G
Letter Not in the File	3	0	0	1	0	0	7
Notice of Filed Charge	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Name of Agent	Yes	Yes	Yes	Yes	Yes*	Yes	Yes
Encourage E-Filing	Yes	Yes	Yes	Yes	Yes	Yes*	Yes
Refer to Web Site	No	No	Yes	Yes	Yes*	No	No
Advise of Right to Counsel	Yes	Yes	Yes	Yes	Yes*	Yes	Yes
Invite Full and Complete Cooperation	Yes	Yes	Yes	Yes	Yes*	Yes	Yes
Request Charged Party Statement	Yes	Yes	No	Yes*	Yes*	No*	Yes*
Inform that Evidence and Position Statements Will Be Used Without Qualification or Condition	Yes*	Yes	Yes	Yes	Yes*	Yes*	Yes
Assure that No Inside Knowledge or Favored Relationship	Yes	Yes	Yes	Yes	Yes*	Yes	Yes

* In Regions A, D, and G we found one letter in the case files that did not match the form letter and did not meet the noted requirement. In Region E we found 11 letters in the case files that did not match the form letter and did not meet one or more of the noted requirements. In Region F we found three letters in the case files that did not match the form letter and did not meet one or more noted requirements. In Region F we also found one letter that passed, but the form letter that was used in 73 cases failed the noted requirement.

Initial Letters and NxGen

We observed that, after the Regional Offices migrated to NxGen, the initial letters appeared to follow NxGen’s initial letter templates. With the exception of enclosing the Agency’s policies and procedures for electronic communications and Forms NLRB-4541 and 4701, as discussed below, the templates follow the Casehandling Manual’s initial letter requirements. Our findings for initial letters, however, demonstrate that, even when using a form letter, Regional personnel appear to deviate from the Region’s standard language and miss one or more of the Casehandling Manual requirements. We are not aware of anything in NxGen that requires the use of the templates for preparation of the initial letters or that prevents Regional personnel from altering the standard language found in the

templates. We therefore believe that our findings with regard to the initial letters remain relevant with respect to the processing of cases in NxGen.

Recommendation

2. We recommend that the Division of Operations-Management amend the Casehandling Manual to require the use of NxGen templates.

Enclosures in Initial Letters

The Casehandling Manual states that the Agency’s policies and procedures for electronic communications and Forms NLRB-4541 and 4701 should be attached to the initial letters to the charging party and charged parties. We observed that the initial letters sent subsequent to the conversion to NxGen do not attach these documents, but refer the parties to the NLRB’s Web site or to the Regional Office to obtain those documents. There has not been a corresponding change in the procedures in the Casehandling Manual.

Recommendation

3. We recommend that the Casehandling Manual be updated to reflect the current procedures regarding the E-Filing Policy and Forms NLRB-4541 and 4701.

Service of Initial Letter

The Casehandling Manual states that Regional Office’s initial letter to the charged party serves a copy of the charge with an affidavit of service retained in the file. In three Regions, we identified case files that were missing the affidavit of service. The results of our testing are summarized by Region in the table below.

Region	Missing the Affidavit of Service
A	2
D	3
F	3

IMPACT ANALYSIS

The Agency developed a method of categorizing and prioritizing cases based upon the impact of the resolution of the charge. The Casehandling Manual states that since cases in a higher category should receive greater resources and have shorter time goals than cases in a lower category, the Impact Analysis categorization should be made as soon as possible, not later than 1 week from filing, and the assignment of the Impact Analysis category should be revised as warranted. We reviewed the case files to determine whether the Impact Analysis was performed within 1 week from the charge filing date.

We found that, in all seven Regions, the case file did not contain documentation of when the Impact Analysis categorization was made. We therefore could not determine whether the categorization was done within 1 week of the filing date as required in the Casehandling Manual.

We did find, however, in three Regions that some case files were missing documentation of an initial Impact Analysis categorization altogether. These results are summarized in the table below.

Region	No Documentation of Impact Analysis
A	24
B	2
F	4

We observed that Region A did not use a form to document the Impact Analysis determination, but instead placed a “sticky note” on the charge designating the Impact Analysis category. It is possible that the failures were because the “sticky note” got lost. We also identified cases in six Regions in which the Impact Analysis category had changed in the casehandling system without the change being documented in the case file.

Recommendation

4. We recommend that, in any action for which the Casehandling Manual has a time requirement, the Regions be instructed to document the date of the action in NxGen.

AFFIDAVITS

Time Requirements for Lead Affidavits

The 2009 Quality Committee’s Comprehensive Report on Quality Casehandling, issued by the General Counsel, recommended that the lead evidence, or at least the lead affidavit, be taken within 7 days from the filing of the charge in Category III cases, 14 days in Category II cases, and 21 days in Category I cases.

We did not identify any guidance for what is considered the lead evidence or lead affidavit in the Casehandling Manual. We considered the “lead affidavits” to be those affidavits taken from the charging party and any discriminatees named in the charge, and we tested the lead affidavits to determine if they met the time requirements. The results are summarized by Region in the table below.

Region	Category I		Category II		Category III	
	Pass	Fail	Pass	Fail	Pass	Fail
A	1	0	8	26	20	11
B	0	0	21	12	17	37
C	0	0	16	24*	15	32
D	1	2	11	24	5	26
E	0	1	19	22	7	24
F	0	0	7	18	12	20
G	0	0	17	20	5	18

* We found an affidavit that was not dated that we considered a failure.

To determine how close the Regions were coming to meeting the recommended time for taking the lead affidavits, we calculated the number of days that passed from the recommended time to the actual date of each lead affidavit in Category II and Category III cases. We found that for the 313 lead affidavits that were taken beyond the recommended time, 193 (62 percent) were taken more than a week after the time requirement. We also found that of the 313 lead affidavits, 59 (19 percent) were taken more than 4 weeks after the time requirement. Our results are shown on the table below.

Region	Impact Analysis Category	The Number of Days, in Increments, Beyond the 14-day and 7-day Benchmark, for Category II and III Cases, Respectively, to Take Lead Affidavits						
		7 Days	14 Days	21 Days	28 Days	35 Days	60 Days	>60 Days
A	Category II	5	7	1	4	4	2	3
	Category III	8	2	0	0	0	1	0
B	Category II	6	2	1	1	0	2	0
	Category III	15	6	2	3	0	8	3
C	Category II	6	4	2	0	2	7	2
	Category III	8	9	8	4	0	3	0
D	Category II	6	6	6	1	3	1	1
	Category III	14	5	2	1	1	2	1
E	Category II	16	4	1	0	0	1	0
	Category III	10	7	3	0	4	0	0
F	Category II	5	3	6	1	0	3	0
	Category III	9	8	1	2	0	0	0
G	Category II	3	11	1	2	0	2	1
	Category III	9	5	2	0	1	0	1

Recommendation

5. We recommend that the Division of Operations-Management provide additional guidance on what is a lead affidavit and timelines. Such guidance should be incorporated into the Casehandling Manual.

Content Requirements of Affidavits

The Casehandling Manual provides detailed requirements regarding the content of affidavits. Those requirements include information related to the identity of the affiant, employer and union, job information, background information, a chronological account of the events, and providing a confidentiality assurance. The affidavits should also use certain language in the opening and conclusion. To protect privacy rights, Social Security numbers should be omitted from the affidavits, and only the last four digits of the Social Security number may be used if necessary to identify an individual.

Upon completion of the affidavit, the witness should read, initial each page and any corrections, and sign the affidavit. After the witness has read and if necessary corrected the affidavit, the Board agent should administer the oath and upon receiving an affirmative answer, the Board agent should complete and sign the jurat.

If an affidavit has been taken and sworn by telephone, the Casehandling Manual requires the use of a jurat that is different from the jurat language used in face-to-face affidavits. If an affidavit is taken in a foreign language and the Regional Office has it translated into English, a translator certification should be added at the end of the affidavit.

When the affidavit is complete, the Board agent is required to give a copy of the signed affidavit to the witness and obtain written acknowledgement of receipt.

Lead Affidavits

Because the lead affidavits form the basis for a *prima facie* case, we tested those affidavits against 16 of the factual and procedural requirements found in the Casehandling Manual. For six of those requirements, we found that all the lead affidavits for each Region met the requirements. Those items were:

Requirement
Information related to the identity of the affiant, the employer and the union if appropriate
Background information
Chronological account of the events
Confidentiality assurance
Affidavits must omit SSN or can only include last 4 digits
Does the affidavit open with "I [name] being first duly sworn upon my oath..."

For the remaining 10 requirements, the total number of lead affidavits tested and the results of our testing are shown in the table below.

	Number of Lead Affidavits that Failed to Meet Requirement						
	R-A	R-B	R-C	R-D	R-E	R-F	R-G
Total number of lead affidavits tested	66	87	87	69	73	57	60
Job information	8	4	0	1	4	1	4
Witness initialed each page	3	3	10	4	1	7	10
Witness initialed each correction	5	16	13	2	17	8	12
Does the affidavit conclude with language from the Casehandling Manual, "I am being provided..."	13	1	0	1	2	3	1
Board agent signs the jurat	6	13	4	1	2	4	1
If a face-to-face affidavit was taken, does it contain the jurat language in the Casehandling Manual?	1	2	2	0	0	3	1
Do affidavits taken in foreign language contain a translator certification?	4	1	3	0	1	0	0
If a telephone affidavit was taken, does it contain the jurat language in the Casehandling Manual?	5	10	1	4	2	3	0
Copy of signed affidavit provided to the affiant	8	1	0	0	1	0	0
Written acknowledgement of receipt provided by affiant	11	1	0	0	1	0	0

Additional Affidavits

For the affidavits that we considered to be non-lead affidavits, we tested the affidavits against 11 of the procedural requirements found in the Casehandling Manual that would be applicable to every affidavit regardless of who the affiant was. The requirements that we found all seven Regions met for non-lead affidavits are listed below.

Requirement
Information related to the identity of the affiant, the employer and the union if appropriate
Confidentiality assurance
Affidavits must omit SSN or can only include last 4 digits
Does the affidavit open with "I [name] being first duly sworn upon my oath...."

For the remaining 7 requirements, the total number of non-lead affidavits tested and the results of our testing are shown in the table below.

	Number of Non-Lead Affidavits that Failed to Meet Requirement						
	R-A	R-B	R-C	R-D	R-E	R-F	R-G
Total number of non-lead affidavits tested	134	40	83	83	61	115	89
Witness initialed each page	15	1	10	15	1	12	17
Witness initialed each correction	11	6	16	9	6	19	17
Does the affidavit conclude with language from the Casehandling Manual, "I am being provided..."	26	1	0	0	1	4	0
Board agent signs the jurat	9	10	2	4	1	8	3
If a face-to-face affidavit was taken does it contain the jurat language in the Casehandling Manual?	5	1	0	0	0	8	2
Do affidavits taken in foreign language contain a translator certification?	3	0	3	0	0	0	2
If a telephone affidavit was taken, does it contain the jurat language in the Casehandling Manual?	4	9	1	16	1	9	1

Authorization for Telephone Affidavits

The Casehandling Manual states that in Category I cases, telephone affidavits are generally appropriate. In Category II and III cases, face-to-face interviews are the preferred method for obtaining affidavits; however, a Board agent may take telephone affidavits only with supervisory authorization and the Board agent should prepare a file memorandum

setting forth the justification for taking the affidavit by telephone.

We tested the lead affidavits to determine if they were taken in person and, if they were not, whether there was appropriate supervisory authorization for taking the affidavit by telephone. The results are summarized by Region in the table below.

Region	Category II		Category III	
	Affidavits by Telephone	Documentation of Supervisory Authorization or Memorandum	Affidavits by Telephone	Documentation of Supervisory Authorization or Memorandum
A	8	0	1	0
B	4	3	9	6
C	8	3	3	1
D	3	0	1	0
E	1	0	2	1
F	7	1	3	0
G	1	0	1	0

Recommendations

6. We recommend that the Division of Operations-Management develop a means to assist Regional supervisors in reviewing affidavits for compliance with the requirements of the Casehandling Manual.
7. We recommend that the Division of Operations-Management randomly select affidavits to be reviewed for compliance with the Casehandling Manual as part of the Quality Review process.

CONFIDENTIAL WITNESS QUESTIONNAIRES

The Casehandling Manual states that Confidential Witness Questionnaires may be used as an initial screening device. The following should be incorporated in all Confidential Witness Questionnaires:

- the questionnaire should state explicitly that it is confidential;

- if anything else is remembered that is relevant or if the witness desires to make any changes, the Board agent will be immediately notified; and
- if a copy is retained for the witness' records and shared with others it could reduce the Agency's ability to protect the document from compelled disclosure.

Only two of the Regions used Confidential Witness Questionnaires and both Regions had cases where the questionnaires did not meet the requirements of the Casehandling Manual. In Region E, we found that one of the four questionnaires did not meet any of the requirements listed above. In Region F, we found that 9 of the 10 questionnaires did not meet the following two requirements:

- if anything else is remembered that is relevant or if the witness desires to make any changes, the Board agent will be immediately notified; and
- if a copy is retained for the witness' records and shared with others it could reduce the Agency's ability to protect the document from compelled disclosure.

COMMERCE INFORMATION

The Casehandling Manual states if the charged party is an employer, the initial letter should also request appropriate commerce information. As stated above, we found that the Regions were using a form letter for the initial letter to the charged party. We found that, except for Region B, the form letters used as an initial letter to the charged party requested appropriate commerce information. We also found, however, that in five of the seven Regions the same form letters were used as an initial letter to the U.S. Postal Service. Because the NLRB's jurisdiction over the U.S. Postal Service as an employer is established by statute rather than commerce, it would appear to be inappropriate to request commerce information from the U.S. Postal Service. The results of our testing are summarized in the table below.

Region	Initial Letter Requested Commerce Information	U.S. Postal Service Initial Letter Requested Commerce Information	
		Yes	No
A	Yes	5	8
B	No	N/A	N/A
C	Yes	8	0
D	Yes	0	4
E	Yes	1	0
F	Yes	2	0
G	Yes	2	0

We also reviewed the templates in NxGen for the initial letter to the charged party. We observed that there are several initial letter templates that have been tailored to address a variety of charges, including charges involving the U.S. Postal Service. We believe that our recommendation above regarding the use of NxGen templates would address the situation involving requests for commerce information from the U.S. Postal Service.

The Casehandling Manual also requires that in any formal proceeding, commerce facts sufficient to determine whether the Board has jurisdiction over the dispute must be established either through factual stipulation or by record of evidence. We reviewed the case files, except for the U.S. Postal Service cases, to determine if there was evidence that the Region made a jurisdictional determination. We generally found that Regions were using a document titled “Final Investigative Report” (FIR) to document the determination that the employer met the jurisdictional commerce requirement. If the determination was not documented on the FIR, we then reviewed the case file and any related case file for any documentation that the employer met the jurisdictional commerce requirement. We found that in six Regions complaints were issued when the case file contained no documentation of commerce information and no evidence of the Region’s jurisdictional determination. The results are summarized in the table below.

Region	Complaint Issued With Documentation of Commerce Information or the Region's Jurisdictional Determination	
	Yes	No
A	23	2
B	27	5
C	21	11
D	12	4
E	18	0
F	13	2
G	26	2

SUBSEQUENT CHARGED PARTY CONTACT

Issuance of a complaint is the beginning of the ULP formal proceeding and clearly indicates that the Region has concluded that the evidence establishes a *prima facie* case. The Casehandling Manual states that if consideration of the charging party's evidence and the preliminary information from the charged party suggests a *prima facie* case, the appropriate charged party representative should be contacted to provide additional and more complete evidence. The arrangements for the presentation of the charged party's evidence and position should be documented in a letter from the Board agent to the charged party's representative setting forth the due date for the presentation of the information. We tested this requirement and found that in five Regions the case file did not contain a copy of the required letter. The results of our testing are listed below.

Region	Complaints Issued	Complaint Issued and No Letter in Case File
A	31	11
C	39	5
D	20	6
E	21	1
G	30	12

Recommendation

8. We recommend that the Division of Operations-Management provide guidance to the Regions regarding this requirement.

REGIONAL OFFICE DETERMINATION

The Casehandling Manual states that cases may be presented for Regional Office determination at the conclusion of an investigation either by written or oral report to the Regional Director or other Regional Office official. The formats for written reports or oral agenda require a recitation of the allegations of the charge, the facts of the case, identification of the issues in dispute, an analysis of the facts and law and a recommended disposition. In both situations the Regional Office determination should be memorialized in writing.

In six Regions, we identified cases where there was no determination that was memorialized in writing. When testing this requirement, we first looked at whether the determination was made in a written report or oral agenda. If it was a written report, we reviewed the report to determine if it met the Casehandling Manual's requirements. If oral, we reviewed the case file for any written documentation that memorialized the Region's determination. The results are summarized in the table below.

Region	Regional Office Determination Documented in Writing		
	Pass	Fail	Total Applicable
A	52	5	57
B	54	4	58
C	54	6	60
D	49	1	50
E	59	1	60
F	48	2	50

MERIT DETERMINATION

If the charge is determined to have merit, the Board agent must notify the parties and solicit settlement of the charge before a complaint issues.

In each Region, we found cases involving charges that were determined to have merit, but there was no documentation that the parties were notified or that a settlement was solicited before a complaint issued. The results are summarized in the table below.

Region	Charging Party Contacted		Charged Party Contacted		Solicited Settlement	
	Pass	Fail	Pass	Fail	Pass	Fail
A	9	21	18	12	17	13
B	19	18	23	14	25	12
C	18	21	22	17	19	20
D	7	13	13	7	17	3
E	9	14	17	6	20	3
F	11	6	12	5	13	4
G	8	20	14	14	15	13

Recommendation

- We recommend that the Division of Operations-Management provide guidance to the Regions regarding these requirements.

NON-MERIT DETERMINATION

The Casehandling Manual states that if no merit is found to the charge, the Board agent informs only the charging party of the determination and the basis for it. The Board agent also provides the charging party with an opportunity to withdraw the charge. If the charging party declines to withdraw, the charge should be dismissed promptly. All dismissal letters must provide instructions for filing an appeal with the General Counsel.

In five Regions, we found cases where the Region made a non-merit determination and we found no documentation that the Region notified the charging party or provided the charging party with the opportunity to withdraw. We also identified one dismissal letter that did not notify the charging party of the right to appeal the dismissal. Our results are summarized in the table below.

Region	Charging Party Contacted		Provided Opportunity to Withdraw		Dismissal Letter Notifies of Right to Appeal	
	Pass	Fail	Pass	Fail	Pass	Fail
A	21	2	21	2	16	0
C	26	6	17	15	18	1
D	17	4	16	5	14	0
F	38	1	38	1	22	0
G	26	1	25	2	9	0

Recommendation

10. We recommend that the Division of Operations-Management provide guidance to the Regions regarding these requirements.

WITHDRAWALS

The Casehandling Manual states that upon receipt of a withdrawal request, the Board agent, with appropriate supervision, should submit to the Regional Director a recommendation regarding approval of the withdrawal. When the charging party makes an unsolicited request to withdraw the charge or a portion of it, the Board agent should ascertain the reasons for withdrawal, which should be included in the Board agent's recommendation to the Regional Director. On approval of a withdrawal request, the Regional Office must notify all parties by letter that the charge, or a portion thereof, with the Regional Director's approval, has been withdrawn. Our results are summarized in the table below.

Region	Solicited	Unsolicited	Did Board Agent Submit Recommendation Regarding Approval		If Unsolicited, Did Board Agent Ascertain the Reasons and Include in the Recommendation to the RD	Was there Documentation of Appropriate Supervisory Review of Recommendation		Parties Notified of Approval	
			Pass	Fail		Pass	Fail	Pass	Fail
A	16	26	17	25	0	17	0	40	2
B*	16	31	47	0	0	46	1	47	0
C	16	26	19	23	2	18	1	40	2
D	7	43	50	0	0	49	1	49	1
E	22	21	18	25	4	16	2	42	1
F	22	30	52	0	18	46	6	52	0
G	17	24	41	0	0	34	7	41	0

** One case in Region B was not included in our audit testing because a withdrawal was approved, but the case file contained no documentation of whether the withdrawal was solicited or unsolicited and no recommendation regarding approval of the withdrawal.*

Recommendation

11. We recommend that the Division of Operations-Management provide guidance to the Regions regarding these requirements.

CLEARANCE FROM APPEALS/ADVICE FOR WITHDRAWAL APPROVAL

The Casehandling Manual states when a complaint has been authorized by the Office of Appeals or the Division of Advice, clearance for the approval of a withdrawal of the charge should be obtained from the appropriate office.

Five of the seven Regions had cases that required clearance from either Appeals or Advice prior to withdrawal. Our results are summarized in the table below.

Region	Total Applicable	Clearance Obtained	No Clearance Obtained
A	1	0	1
B	2	0	2
C	2	0	2
D	1	0	1
F	2	1	1

COMPLAINT

The Casehandling Manual states that critical variances between the allegations of the charge and the allegations of the complaint will require appropriate amendments. Normally, the complaint should conform to all allegations of the last amended charge that have not been disposed of by other means. Although occasionally the complaint may have to be broader than the charge, the Regional Office should normally seek an amended charge to cover all complaint allegations. The charge must be broad enough, as a matter of law, to support the allegations of the complaint. The answer requirement and Notice of Hearing are set forth at the end of the complaint.

We found that all the complaints in the case files contained the answer requirement and Notice of Hearing. In two Regions we found cases where the complaint did not conform to all allegations of the last amended charge. We also identified cases in two of the Regions where a complaint was

issued but was not in the case file. The results are summarized by Region in the table below.

Region	Complaints Issued	Did Not Conform to Last Amended Charge	Complaint Not Found
B	38	1	1
C	39	0	8
G	30	1	0

TEST OF CERTIFICATION SUMMARY JUDGMENT CASES

The Casehandling Manual states that Regions must be alert to recognize test of certification cases that may lead to summary judgment proceedings. Such cases involve an employer’s general refusal to recognize and bargain with a union that has been certified by the Region or the Board after an election is conducted pursuant to Section 9 of the Act.

Once a summary judgment case is identified and the investigation establishes that the respondent is refusing to recognize and bargain with the charging party union in order to test the certification, a complaint should be issued promptly. Absent extenuating circumstances, such complaints should issue within 14 days from the filing of the charge. Normally, a Regional Office should file its Motion for Summary Judgment within 7 days after the respondent files its answer.

Three Regions had applicable test of certification cases. In two of those Regions we identified cases where the complaint was not issued within 14 days from the filing of the charge and no extenuating circumstance was documented. We also identified cases in two of the Regions where the Motion for Summary Judgment was not filed within 7 days of the respondent’s answer. The results are summarized in the table below.

Region	Number of Test of Certification Cases	Complaint Issued within 14 Days	Motion for Summary Judgment Filed within 7 Days after Answer
B	1	0	0
E	1	0	1
G	3	3	1*

** This failure was due to the case file not containing the Answer to the Complaint.*

DEFERRALS

The Casehandling Manual states that if the Regional Office determines that the charge should be deferred, the Board agent should inform the parties and notify them of the basis for the decision. In order to determine that a deferral remains appropriate, the Regional Office should, on a quarterly basis, ascertain from the parties the status of the proceedings to which the Regional Office has deferred. According to the 2009 Quality Committee's Comprehensive Report on Quality Casehandling, if no response is received by the deadline date, the Region should call the parties and send a second letter advising the charging party that a failure to respond by the deadline date will result in the case being dismissed. This requirement was not incorporated into the Casehandling Manual. The results of our testing are in the table below.

Region	Deferrals	Parties Informed of Deferral Determination	Quarterly Contact Documented	Followed Up if Non-responsive
A	9	Yes	No	No
B	5	Yes	No	No
C	1	Yes	Yes	Yes
D	4	Yes	No	Yes
E	2	Yes	Yes	Yes
F	5	Yes	No	No
G	3	Yes	No	No

REVIEW OF ARBITRATION AWARDS

The Casehandling Manual states that following the issuance of an arbitration award in a case that has been deferred

under *Collyer*, the Region should conduct a review and take certain action based on the results of that review. The requirements of this review are dependent upon the type of charge. In January 2011, the Casehandling Manual was updated and now states that for certain charges, the case should be submitted to the Division of Advice with a recommendation as to whether to defer to the arbitration award.

The 2009 Quality Committee’s Comprehensive Report on Quality Casehandling states that Regions should establish a deadline of 35 days for completion and reporting of a review with final action to be taken within 14 days of the determination. This requirement was not incorporated to the 2011 update to the Casehandling Manual.

Given the subjective nature of the required review, we tested only the procedural time requirements and the submission to the Division of Advice. The results of our testing are in the table below.

Region	Number of Awards Reviewed	Failed to Perform Review Within 35 Days	Failed to Take Final Action Within 14 Days of Determination	Failed to Submit to Advice
A	3	2	3	1
B	2	2	1	NA
D	1	1	1	NA
G	1	1	1	1

Recommendation

12. We recommend that the Division of Operations-Management provide guidance to the Regions regarding these requirements.

APPEALS

The Casehandling Manual states that upon receipt of an appeal, the Regional Office should review the appeal and determine whether reconsideration of the dismissal or further investigation is warranted. We tested whether that review and determination was documented by the Region as required in the Manual.

The Regional Office should submit the case file to the Office of Appeals within 14 days of the Regional Office’s receipt of the appeal; otherwise they should forward a memo to Appeals explaining the reason for the delay and the estimated date of submission. The transmittal memo should set forth the Impact Analysis category of the case and whether there are any related pending cases. In such circumstances, the case number, filing date and current status of such cases should be noted.

If the appeal or further investigation leads the Region to conclude that allegations in the charge warrant complaint, it should notify the Office of Appeals, prior to revocation, of its intention to revoke the dismissal. The results of our testing are in the table below.

Region	Documentation of Review by Region		Memorandum Transmitting Case File to Office of Appeals		Transmittal Memorandum Dated within 14 Days of Receipt of Appeal		Transmittal Memorandum Included Required Information		Appeals Notified of Revocation of Dismissal	
	Pass	Fail	Pass	Fail	Pass	Fail	Pass	Fail	Pass	Fail
A	9	0	9	0	5	4*	1	8*	1	0
B	11	3	9	4	8	5*	0	13*	0	1
C	9	1	0	10	0	10*	0	10*	0	1
D	6	0	6	0	5	1	3	3	NA	NA
E	8	0	7	0	5	2*	4	3	NA	NA
F	5	0	5	0	4	1*	5	0	NA	NA
G	3	0	3	0	0	3*	0	3	NA	NA

** Some failures were due to the Region not documenting the receipt of the appeal or the transmittal of the case file or comment on appeal.*

EXCEPTIONS

The Casehandling Manual states that exceptions must be filed within 28 days of service of the order transferring the case to the Board, unless an extension of time is granted. Only two of the seven Regions had applicable cases where exceptions were filed. We identified a case in Region A where the extension of time and approval were not documented in the case file.

DATA ACCURACY

The GAO's Standards for Internal Control in the Federal Government states that information should be recorded and communicated to management and others within the entity who need it and in a form and within a time frame that enables them to carry out their internal control and other responsibilities. The Standards also note that for an entity to run and control its operations, the data must be relevant, reliable, and timely.

We compared the casehandling data in NxGen or CATS, as appropriate, with the case file. The number of data errors is shown in the table below.

	R-A	R-B	R-C	R-D	R-E	R-F	R-G
Number of Cases Tested	76	76	76	74	75	76	74
Date Filed	4	3	64	10	2	0	8
Closed Reason	8	3	6	1	5	2	2
Date Closed	9	15	7	0	34	5	2
Complaint Issued	4	0	1	1	0	0	0

For Region C and Region E, we identified systemic issues with documentation that account for the high frequency of errors.

- As noted above, Region C was not documenting the date of receipt for filed charges.
- When a charge is withdrawn, the closing date is determined by the date the Regional Director approves the withdrawal of the charge. Region E did not document the Regional Director's approval of the withdrawal request in 32 of the 38 withdrawals. Therefore we could not determine the closing date for those cases.

APPENDIX

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of the General Counsel
Memorandum



DATE: June 19, 2013

TO: David Berry, Inspector General

FROM: Anne Purcell, Associate General Counsel

SUBJECT: Response to Draft Report "Compliance With Unfair Labor Practice Procedures" (OIG-AMR-68)

We appreciate the opportunity to respond to the above-referenced draft report dated May 23, 2013. In your letter forwarding the draft report, you have asked the Division of Operations-Management to state whether it agrees or disagrees with the recommendations contained in the report. You have also noted that if Operations-Management disagrees with a recommendation, we should state the reason for the disagreement and, when applicable, the legal or regulatory basis for the disagreement.

Initially, it is noted that your review focused on the Regions' compliance with various procedural provisions of the Casehandling Manual. While the quality review program does include a review of the Regions' compliance with those procedural provisions, that is only one aspect of the quality review program. The focus of the quality review program is to evaluate the substantive quality of Regional casehandling and decision making at all stages of case processing, and their compliance with General Counsel initiatives. Often procedural missteps, unless repeatedly made, are noted orally in the closeout of the review, but are not included in the written report. In addition, the quality review program encompasses representation and compliance cases, types of cases that were not reviewed in this study. Accordingly, while we agree with the importance of Regions following established casehandling procedures and with many of the recommendations set forth in your report, we also believe that it is important to keep in perspective these differences in approach and emphasis. We believe that the Division's quality review program is an effective tool for ensuring that the Regions' work is of high quality and consistent with the General Counsel's initiatives.

The draft report has identified a number of procedural issues. Initially, we will advise all Regional Directors to review your report with an eye towards evaluating the practices followed in their Regions. We will issue a memo emphasizing the need for Regions to follow all procedural requirements and highlighting the procedural deficiencies that were most frequently identified by your review. For instance, we will re-emphasize (1) the importance of having affiants consistently initial every page and

each change in their affidavits; (2) the requirement that the basis for asserting jurisdiction should be in the file. We will also modify several casehandling procedures in response to the draft report. Where a particular Region was identified by your review as having frequently not followed a required procedure we have discussed the issue with that Region and emphasized the need for the Region to comply with established casehandling guidelines. By these measures the Regions will achieve compliance with the procedures contained in the casehandling manual.

I also note that your office conducted its review during a period when the field was transitioning from CATS to NxGen. This transitional period impacted some of the findings contained in your report. During this period Regions were learning the requirements of NxGen, including the data entry requirements. Some of the data entry errors identified in your report resulted from the Regions' involvement in this transition process. In addition, during this period Operations-Management, in conjunction with representatives from the field, was at an early stage of developing NxGen templates for use throughout the field. Considerable progress has been achieved in that area.

Turning to the recommendations contained in your report:

1) Recommendation that Operations-Management establish uniform procedures for documenting the receipt of a charge and recording the filing in NxGen.

Answer: The Regional Office Support Staff Procedures Manual sets forth the procedures for documenting and recording the receipt of a charge and for recording that information in NxGen. Section 12002.7 of the Manual states that the date a charge is filed is the date it is received by a Region (unless it is received after the close of business in which case the filing date is the next business day) and that date must be the same on all Agency records. We are in the process of revising the Manual, which will include a provision that the filing date must be recorded in NxGen. We will emphasize this point in the memo that will be issued discussing the findings of your report. In addition, we will add a provision to the Support Staff Procedures Manual stating that Regions should date stamp a charge, as well as a petition, form on the date it is received.

2) Recommendation that Operations-Management amend the Casehandling Manual to require the use of NxGen templates.

Answer: This recommendation resulted from your review of the extent to which the reviewed files contained appropriate docketing letters and whether those letters contained the appropriate content. Since your review NxGen templates have been developed and provided to the Regions to utilize in sending these letters. The template for the initial docketing letter is now used by all of our offices. Thus, to the extent you recommend that NxGen templates be used for initial letter to the parties, this has been accomplished.

- 3) **Recommendation that the Casehandling Manual be updated to reflect the current procedures regarding E-Filing Policy and Form-4541 and 4701.**

Answer: We will modify the Casehandling Manual Committee to update the manual to reflect the current practice of referring the recipient to the Regional Office or the Agency's website where the forms can be downloaded.

- 4) **Recommendation that, in any action for which the Casehandling Manual has a time requirement, the Regions be instructed to document the date of the action in NxGen.**

Answer: This recommendation resulted from your observation that we do not require Regions to enter in NxGen the date when a case is assigned an Impact Analysis category. The requirement for assigning an Impact Analysis category to a case within a specific period after the filing date was adopted when Impact Analysis was initially implemented. At that time there was a concern that the lack of familiarity with the Impact Analysis program might result in undue delays in categorizing a case under Impact Analysis. To avoid those delays the program adopted a time requirement for the categorization of a case. Well over a decade has passed since the implementation of Impact Analysis. In the numerous quality reviews conducted since that time, we have not identified any issue regarding the timeliness of Regions categorizing cases under NxGen. Our observation is that Regions uniformly categorize a case very shortly after a case is received, almost always in far less than the 7-day period specified when the Impact Analysis program was implemented. More importantly, the Regions are surpassing the Agency's time goals for processing cases. Accordingly, the actual date of categorization is not important to our understanding of the case and we do not believe that recording this information in NxGen would be time well spent. .

In response to the principle incorporated in your report that where a specific time period for performing an action is required by the Casehandling Manual, the date that action is performed should be documented in NxGen, we will revise the Casehandling Manual to state that a case should be categorized promptly, rather than 7 days after filing. While we are not prepared to say we share your view that this principle should be followed in every instance, specific time periods set forth in the Manual should be updated, as necessary.

- 5) **Recommendation that Operations-Management provide additional guidance on what constitutes a lead affidavit and timelines and incorporate that guidance into the Casehandling Manual**

Answer: Based on our review of the Regions' overall performance in meeting Agency timeliness standards for the processing of charges, we do not believe that there is a problem with the timeliness of obtaining lead affidavits. Nor does there appear to be any confusion among the Regions about what constitutes a lead affidavit or the need to obtain lead affidavits in an expeditious fashion. Despite compliance with this

guidance, defining a lead affidavit is not always easy to articulate for all cases as the definition may vary depending on the nature and number of allegations contained in a charge.

As noted in your report, the timeliness standard is not contained in the Casehandling Manual but rather was contained in the 2009 Quality Committee Comprehensive Report on Quality Casehandling. While we agree with the recommendations contained in that report, it is also recognized that a myriad of factors impact how quickly a lead affidavit can be obtained, including the availability of witnesses, the travel required to meet with witnesses, constraints on travel due to budgetary concerns, the staffing that exists within a particular Region at any one time and the work assignments of the agent to which a case is assigned. For these reasons we view the recommended timeliness guidelines contained in the Comprehensive Report as guidelines to be pursued rather than strict procedures that must be achieved to meet Agency standards and, as noted above, Regions are surpassing the Agency's goals for the timely processing of cases.

However, the Casehandling Manual is used not only by the Regions but also by the public. In recognition of the public's need to have an understanding of Agency procedures, we will attempt to define "lead affidavit" and incorporate that definition as well as a discussion of the timeliness guidelines for obtaining such into the Casehandling Manual.

- 6) **Recommendation that Operations-Management develop a means to assist Regional supervisors in reviewing affidavits for compliance with the requirements of the Casehandling Manual.**

Answer: We will work with the field to develop a checklist of the requirements that affidavits should satisfy and when that checklist has been developed we will distribute it to the field for use by Board agents and supervisors.

- 7) **Recommendation that Operations-Management randomly select affidavits to be reviewed for compliance with the Casehandling Manual as part of the Quality Review process.**

Answer: As noted above, the quality review process does include a review of the procedural requirements of the Casehandling Manual. We will continue to include this as a component of the quality review process.

- 8) **Recommendation that Operations-Management provide guidance to the Regions regarding the requirement that the charging party's evidence suggests the evidence of a *prima facie* case, in a request-for-evidence letter, the charged party's representative should be contacted to provide additional and more complete evidence.**

Answer: While it has been our experience that Regions consistently issue request-for-evidence letters, we have and will continue to emphasize the importance of meeting this casehandling requirement.

9) **Recommendation that Operations-Management provide guidance to the Regions regarding the requirement of notifying all parties after a merit determination and soliciting settlement from the charged party.**

Answer: We believe this notification is occurring, but there may be problems with consistent documentation of these discussions. We will reaffirm with the Regions the need to comply with this requirement and to document compliance in the case file.

10.) **Recommendation that Operations-Management provide guidance to the Regions regarding the requirement that, after a no-merit determination, that the Charging party be contacted and provided with the choice of withdrawing the charge or having it dismissed, and that the file should contain documentation of this contact.**

Answer: We believe the Regions are complying with this requirement, but may not always be documenting these contacts. We will remind the Regions of the need to comply with this requirement and to document compliance in the file.

11.) **Recommendation that Operations-Management provide Regions with guidance on the requirement in processing withdrawal requests that the file should contain: 1) a recommendation from the Board agent; 2) if the withdrawal was unsolicited, documentation of the Board agent's effort to ascertain the reasons for the withdrawal request; 3) documentation of supervisory review of the Board agent's recommendation; and 4) a copy of the letter notifying the parties of the Director's approval of the withdrawal request.**

Answer: While we note that most Regions performed well in meeting these requirements, we agree that they should be followed and we will remind Regions of the need to comply with these procedures.

12.) **Recommendation that Operations-Management provide guidance the Regions with regard to the time period for completing a review of the arbitration awards and guidelines for submitting to Advice certain cases raising the issue of a deferral to an arbitration award.**

Answer: We will remind Regions of these requirements.

Conclusion

We believe that the foregoing addresses your concerns. We further note that your report does not detract from the fact that the overall quality of the Region's investigations and decision making is excellent and done well within Agency time goals.

/s/A.P.