

Office of Inspector General

SEMIANNUAL

REPORT

TO THE

CONGRESS



Covering OCTOBER 1, 1996 - MARCH 31, 1997

Fifteenth Semiannual Report

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United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE INSPECTOR GENERAL

Washington, DC 20570-0001

April 30, 1997

Honorable William B. Gould IV, Chairman
National Labor Relations Board
1099 14th Street, NW, Room 11100
Washington, DC 20570

Honorable Frederick L. Feinstein, General Counsel
National Labor Relations Board
1099 14th Street, NW, Room 10100
Washington, DC 20570

Dear Chairman Gould and General Counsel Feinstein:

This is the fifteenth Semiannual Report (SAR) for the Office of Inspector General (OIG). This SAR is prepared in accordance with Section 5 of the Inspector General Act and covers the period October 1, 1996 through March 31, 1997.

The OIG continues to experience a heavy caseload with 34 open investigative cases and 2 audits/reviews underway with 2 more to commence within this fiscal year; in addition there undoubtedly will be unexpected audits/reviews necessitated by unforeseen events. We are appreciative of your authorizing the OIG to staff an additional investigator and are fortunate to have obtained Frank Searle, who has had 25 years of experience with the U.S. Secret Service.

In my last report, I stated that:

“I intend to institute a program of IG ‘preventive medicine.’ In my opinion, it is a far more effective implementation of the IG Act to prevent, through an active educational/informative program, the commission of offenses rather than to have serious problems develop. Of course, no such program will be a hundred percent effective, but I have confidence that it will be significantly productive. In any event, it is worth the effort.”

Unfortunately time has not permitted me to implement this policy. Indeed our case load is so heavy I spend more than 50 percent of my time performing investigations on a sole basis. Hopefully this will change once our new investigator gets up to speed.

Very truly yours,

A handwritten signature in cursive script that reads "Robert E. Allen".

Robert E. Allen
Inspector General

FOREWORD

The National Labor Relations Board (Agency or NLRB), which employs over 1,900 employees and, for Fiscal Year 1997, has funding of \$175,000,000, is an independent agency which was established in 1935 to administer the principal labor relations law of the United States - - the National Labor Relations Act. The provisions of the National Labor Relations Act are generally applied to all enterprises engaged in, or to activities affecting, interstate commerce, including the United States Postal Service, but excluding other Governmental entities, as well as the railroad and airline industries. The Agency protects the public interest: (1) by conducting secret ballot elections to determine if a group of employees wishes to be represented for collective bargaining purposes by a labor organization, and (2) by preventing and/or remedying unfair labor practices committed by employers and unions.

The Chairman, four Board Members and a General Counsel are appointed by the President with the advice and consent of the Senate. The Chairman and Board Members have staggered terms of 5 years each and the General Counsel has a 4-year term. The Agency, headquartered in Washington, DC, has 33 Regional Offices, some of which have Subregional and/or Resident Offices. This far-flung organization has handled unfair labor practice cases affecting hundreds of thousands of persons and has conducted representation elections in which millions of employees have decided whether they wished to be represented by a labor organization for collective bargaining purposes.

The mission of the Office of Inspector General (OIG) is to promote integrity, efficiency, and effectiveness by conducting audits and investigations in an independent manner and objectively reporting to the Chairman, the General Counsel and the Congress. The OIG Table of Organization provides for an Inspector General, a Supervisory Auditor, two Auditors, an Investigator, a Staff Assistant, and a Counsel to the Inspector General.

REPORTING REQUIREMENTS

<u>ACT CITATION AND REQUIREMENT</u>	<u>PAGE</u>	
Section 4(a)(2)	Review of Legislation and Regulations.	None
Section 5(a)(1) and (2)	Significant Problems, Abuses and Deficiencies and Recommendations for Corrective Action.	1
Section 5(a)(3)	Prior Recommendations Not Yet Implemented.	None
Section 5(a)(4)	Matters Referred to Prosecutive Authorities.	6
Section 5(a)(5) and 6(b)(2)	Summary of Instances Where Information Was Unreasonably Refused or Not Provided.	No Instances
Section 5(a)(6)	List of OIG Audit Reports.	8
Section 5(a)(7)	Summary of Each Significant Report.	9
Section 5(a)(8)	Statistical Table on Management Decisions on Questioned Costs.	10
Section 5(a)(9)	Statistical Table on Management Decisions on Recommendations That Funds Be Put to Better Use.	11
Section 5(a)(10)	Summary of Each Audit Over 6 Months Old For Which No Management Decision Has Been Made.	None
Section 5(a)(11)	Significant Revised Management Decisions.	None
Section 5(a)(12)	Significant Management Decisions With Which the Inspector General Disagrees.	None

INSPECTOR GENERAL SUMMARY

We continued to work on the “Financial Audit of the NLRB’s Fiscal Year 1996 Appropriation.” The objectives of this audit are to determine if:

- financial reports and statements were accurate and in accordance with appropriate accounting principles;
- transactions were in conformance with applicable laws and regulations, including those pertaining to procurement, travel, and personnel;
- there is Agency accountability over assets; and
- internal controls, including time and attendance procedures, are effective.

We issued a draft report regarding the Agency’s computer maintenance contract for Fiscal Year 1996.

The OIG was provided documentary materials which asserted that the Agency paid over a million dollars to a contractor for services which were not performed satisfactorily or were not performed at all. A draft audit report has been completed and management’s comments setting forth certain new procedures have been received. Our final review will not issue until the completion of several companion investigations.

During this reporting period the OIG participated in a Review of Government Credit Card Programs. The Review was coordinated by the President’s Council on Integrity & Efficiency.

The Inspector General has continued to place a major emphasis upon joint investigations with other law enforcement agencies. Among the activities of the OIG were:

- ◆ Seven cases were opened and continue under active investigation.
- ◆ Seven cases were opened and investigated to closure.
- ◆ Three cases previously opened were investigated to closure during this reporting period.
- ◆ Several cases were referred to United States Attorneys.
- ◆ Several joint investigations with the FBI and other law enforcement agencies continued.

- ◆ Settlement negotiations are underway by a U.S. Attorney and the OIG for over a half-million dollars in an OIG False Claims Act case.
- ◆ Three joint investigations continued with state bar agencies.
- ◆ Thirty-one “*HOTLINE*” calls were received and screened. A large number of these calls related to Agency operations and appropriate followup and referrals were made.
- ◆ Several investigative subpoenas were issued and compliance therewith was obtained.

A summary of the matters pending in the OIG at the end of the reporting period includes:

- ◆ The OIG has continued a self initiated extensive review of potential fraudulent Federal Employees Compensation Act claims against the Agency.
- ◆ Three joint investigations are being conducted by the OIG with Regional Inspectors General of the Department of Labor Inspector General.
- ◆ Twenty-seven cases previously initiated remain open and under active investigation by the OIG.
- ◆ Seven new cases are under active investigation by the OIG.
- ◆ Over 50% of open cases are being investigated on a joint basis with other investigative agencies.
- ◆ A major joint investigation being conducted with the FBI and other Inspector General and law enforcement organizations is continuing.

SECTION 1

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

INVESTIGATIONS

The following investigations were completed during this reporting period:

False Claims -- False Statements

An OIG Investigation Disclosed That a field attorney had submitted false statements and false claims to the Agency.

Action Taken As a result of the receipt of a report of a false claim by a field attorney an investigation determined that the attorney had submitted a claim for \$372.00 for reimbursement for the purchase of an airline ticket. It was determined that prior permission for the travel as required by the Regional Office had not been obtained and the ticket had already been charged to the Agency. When approached by Agency staff, the field attorney made false statements as to the reason for requesting reimbursement. The travel voucher was revised by the field attorney and re-submitted without the airline ticket.

Investigation by the IG revealed that the field attorney had also submitted claims for reimbursement for tickets purchased by the government while assigned to another office of the Agency.

It was determined that in one of those cases, the attorney had received \$196.00 which was returned to the Agency when required. An earlier instance was also discovered in which the attorney had sought and received \$95.50 from the Agency for a ticket purchased by the government.

Further investigation revealed that the subject had made a material false statement in the SF-171 submitted to the Agency at the time of hiring.

The attorney was interviewed by OIG staff and made additional false statements.

The case was referred to DOJ which declined prosecution on the false statements/false claims on the travel vouchers because of the dollar amount, and on the false statement on the SF-171 because of a statute of limitations issue.

Misuse of Position and Government Credit Card

An OIG Investigation Disclosed That. a field attorney had utilized government credit cards to charge \$36,000 in personal expenses, and utilized the government position to receive special benefits.

Action Taken. As the result of an investigation into false claims and false statements by a field attorney, it was discovered that the government credit card had been used for personal purposes. Investigation determined that government credit cards had been used to charge over \$36,000 in personal expenses, including personal travel for the attorney and others, sports events, and entertainment. It was also determined that the card and the attorney's official position had been utilized to secure benefits from travel vendors made available only for official travel. The attorney failed to pay the cards as agreed, carrying past due balances of up to \$4,000 in a month.

Note: The above two cases were referred to the General Counsel on a joint basis for administrative action. The Agency has given notice of a proposed two-week suspension and has canceled the attorney's government credit card.

Misuse of Agency Resources

An OIG Investigation Disclosed That. an administrative employee of a Regional Office had utilized government time and resources to make numerous toll calls for non-government business.

Following a complaint from a Regional Director, investigation disclosed that nearly 200 toll calls had been placed on the telephone of an administrative employee. This subject was interviewed by OIG staff and fully cooperated in the investigation. It was confirmed that over \$500.00 in toll calls had been made by the subject on behalf of a civic fraternal organization.

Based upon the full cooperation of the subject and the evidence in the case, the case has been submitted to the General Counsel for administrative action.

Theft of Government Property

An OIG-FPS Investigation Disclosed That. a former employee had stolen government property after being notified of termination.

Action Taken. After a complaint was received from a Regional Director, an investigation was conducted to determine if the former employee was responsible for the theft of approximately twenty (20) Agency case files after being notified of termination.

An OIG investigation conducted at the Region with the Federal Protective Service produced evidence that the subject had taken the files.

The case was referred to the U.S. Attorney and declined for prosecution. The case was then referred to the State's Attorney who authorized an arrest warrant for the theft of other government property (not including the files).

The subject (former employee) was arrested, entered a plea and was sentenced to probation.

False Statements -- Subornation of Perjury

An OIG Investigation Disclosed That . there was evidence that false statements had been made and obtained by an employer's officials in an Agency matter that was heard before an ALJ.

Action Taken . After receipt of a complaint of false statements being obtained and submitted to the Agency, and false statements made at the hearing before an Administrative Law Judge, a full review of the case transcript and exhibits was conducted by the OIG.

A review of the transcript in the matter provided evidence that false statements had been made in affidavits provided to the Agency and that there was probable cause to believe that perjury had been committed during the hearing.

An initial investigative report was prepared, and the report and relevant evidence were reviewed by the FBI on a joint basis and then referred to a U.S. Attorney for potential criminal prosecution.

After review of the evidence, the U.S. Attorney declined to prosecute on evidentiary and policy grounds.

Rape and Sexual Misconduct

An OIG Investigation Disclosed That . there was no evidence to support anonymous allegations that an administrative employee had committed acts of sexual assault and rape upon a non-Agency person during off-duty time and off government property.

Action Taken . After reviewing multiple allegations of sexual misconduct and rape, an investigation was conducted by the OIG, in cooperation with the non-federal law enforcement agency with primary jurisdiction.

Investigation, including an interview with the subject employee, indicated that the employee had been involved with a non-Agency person in an affair, to whom follow-up calls had been made from an Agency phone subsequent to a break-up. Agency officials had acted at that time to impose corrective action on the employee.

The subject denied any further misconduct, and the non-federal law enforcement agency with primary jurisdiction (which had been receiving similar anonymous allegations) concluded their investigation and found no evidence of an offense having been committed.

Subornation of Perjury

An OIG Investigation Disclosed That. there was no evidence that Agency managers were utilizing potential disciplinary action against an administrative employee for purposes of eliciting false statements.

Action Taken. An investigation was conducted after a complaint was received that administrative employees drank openly on duty, and that Agency managers were utilizing that information and potential disciplinary action to require one employee to furnish false statements against another employee.

Investigation determined that there was no basis upon which to conclude that open drinking was permitted or had occurred, or that employees had been threatened on any basis to furnish false statements.

Gratuities, Honorariums, Unnecessary Travel

An OIG Investigation Disclosed That. there was no merit to allegations that a Presidential Appointee had accepted gratuities or honorariums or that the travel was not related to Government activity.

Action Taken. An investigation was conducted after receipt of allegations that a Presidential Appointee had accepted gratuities from parties with issues and matters of interest pending before the Agency, had illegally accepted a substantial gratuity from a foreign source, and had utilized government travel for the primary purpose of travel to sporting events.

The investigation developed evidence that, while the official attended baseball games during travel status, the travel was directly related to the performance of official duties. Evidence confirmed that the tickets and a few other items of value (e.g., a baseball jacket, a union necktie) received by the official had been paid for by him or were obtained by use of his press credentials, the latter of which had been approved by the Agency's Ethics Office.

Investigation also concluded that while an honorarium had been offered by a foreign source to the official, it had been promptly declined.

The allegations in this case came to the OIG under circumstances, from which apprehensions arose that an attempt was being made to use the OIG for political purposes. If such were in fact the situation and in order to quash any such present or future endeavors, the IG in a meeting requested by non agency persons pointedly explained that political battles would have to be fought in arenas other than the Office of Inspector General because the IG at the NLRB would not tolerate the OIG here being utilized in that process. Notwithstanding this, the IG decided, based upon a document showing that a foreign honorarium was offered, that the best course of action was to proceed with a normal investigation which included advising the official of his rights, interrogation and the obtaining of documents and sworn testimony.

Abusive Interview by OIG and Management's Instigation of an OIG Investigation

An Investigation by the Inspector General Disclosed That a complaint of abusive conduct by an OIG investigator during an interview of an Agency employee, who was the subject of travel voucher fraud and other allegations, was without merit and the investigation was not improperly instituted by management.

Action Taken After receipt of several letters from the employee setting forth in detail his complaints of the investigator's conduct at the interview and a letter from another source summarizing those complaints and alleging that the manager who reported the employee had an "agenda" with the subject employee, a review of the complaints was conducted by the current Inspector General who entered on duty after the institution of the case by the OIG and the interview in question.

The Inspector General determined that substantial animosity did exist between the manager, whose report of voucher fraud led to opening of an OIG case, and the subject employee. The report, however, was factually specific and included documentary evidence. Agency personnel, particularly senior managers, have a responsibility to refer activity that is potentially criminal to the Inspector General who, in turn, is statutorily required to determine whether reasonable grounds exist to believe that a criminal act has occurred. Applying these standards, the IG concluded that the manager's referral here was warranted and indeed required. However, in part, because of the animosity factor the OIG investigation was coordinated through another manager and no testimony or evidence was obtained from the referring manager other than the documents supplied with his referral, all of which were independently verified.

The interview of the employee was conducted by an OIG investigator with another investigator on detail to the OIG. Prior to the interview with the employee the investigator had already obtained substantial evidence reflecting misconduct by the employee. While the accounts of the interview by the employee and the investigators have significantly different tones, the substance of the accounts are not significantly different. The investigators used direct and pointed language in advising the employee of the offenses involved and of consequences that could be imposed. This putting the employee on clear notice that he was at serious risk was an appropriate exercise allowing the employee to make an informed decision as to whether he wanted to waive his rights, of which he was then informed. The IG has no doubts that the employee, as he states, felt threatened. There is, however, no assertion of threats other than being confronted with accusations of criminal conduct and of consequences that could follow. To feel threatened under such circumstances is only a natural reaction inherent in criminal investigations. Investigators, particularly when dealing with possible criminal activity, must have the latitude to exercise discretion as to the most effective way to conduct interviews in different situations and to switch from one mode to another even in a single interview. This discretion, of course, must be kept within acceptable standards. The IG concluded that while the investigator might have used a softer approach, and accepting the employee's account of a hard line interview, the investigator did not abuse his discretion, particularly since he had already amassed more than substantial evidence to warrant further action.

SECTION 2

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

The following matters were: (1) referred for prosecution during earlier reporting periods and remain pending, (2) referred for prosecution during this reporting period, (3) acted upon by prosecutive authorities during the reporting period with the noted results, and/or (4) had administrative action taken after a declination of prosecution:

A multiple case referral is pending with the Department of Justice on violations of 18 U.S.C. 201, 203, 209, and 371.

Two cases previously referred to the Department of Justice for violations of 18 U.S.C. 208, 287, 641 and 1001, are pending.

A case referred to a United States Attorney involving multiple violations of 18 U.S.C. 1001 was declined on policy and evidentiary grounds.

A case referred to the Department of Justice involving violations of 18 U.S.C. 287, 641 and 1001 was declined on policy and statute of limitations grounds.

SECTION 3

SUMMARY OF RESTITUTION MADE OR FINES PAID
AS A RESULT OF CIVIL OR CRIMINAL INVESTIGATIONS
AND/OR AUDITS
(NOT MANDATED BY THE ACT)

Although not mandated by any provision of the Act, this section serves as a statistical summary of all amounts restituted or fines paid to the government as a result of investigations, both criminal and civil, or audits.

AMOUNTS RESTITUTED DURING REPORTING PERIOD

Audit Based Restitutions:

None

Investigation Based Restitutions and/or fines - Civil:

FY 1995: Initial forfeiture order of \$186,000; matter currently on appeal.

FY 1996: In the same case, a formal demand for payment of \$542,000 was made by a United States Attorney under the False Claims Act.

FY 1997: In the same case, settlement discussions are being held by the United States Attorney.

SECTION 4

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

Dollar Value (in thousands of \$)

<u>REPORT TITLE AND NUMBER</u>	<u>QUESTIONED COSTS</u>	<u>UNSUPPORTED COSTS</u>	<u>RECOMMENDATIONS THAT FUNDS BE PUT TO BETTER USE</u>
None	- 0 -	- 0 -	- 0 -

SECTION 5

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

None.

SECTION 6

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

		<u>Dollar Value</u>	
	<u>NUMBER</u>	<u>QUESTIONED COSTS</u>	<u>UNSUPPORTED COSTS</u>
A. Reports for which no management decision had been made by the beginning of the reporting period	- 0 -	- 0 -	- 0 -
B. Reports issued during the reporting period	- 0 -	- 0 -	- 0 -
Subtotal (A + B)	- 0 -	- 0 -	- 0 -
C. Reports for which a management decision was made during the reporting period:			
(i) Disallowed costs	- 0 -	- 0 -	- 0 -
(ii) Costs not disallowed	- 0 -	- 0 -	- 0 -
D. Reports for which no management decision has been made by the end of the reporting period	- 0 -	- 0 -	- 0 -

SECTION 7

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

	<u>NUMBER</u>	<u>Dollar Value</u> <u>RECOMMENDATIONS THAT</u> <u>FUNDS BE PUT TO BETTER USE</u>
A. Reports for which no management decision had been made by the beginning of the reporting period	- 0 -	- 0 -
B. Reports issued during the reporting period	- 0 -	- 0 -
Subtotal (A + B)	- 0 -	- 0 -
C. Reports for which a management decision was made during the reporting period:		
(i) Recommendations agreed to by management	- 0 -	- 0 -
(ii) Recommendations not agreed to by management	- 0 -	- 0 -
D. Reports for which no management decision has been made by the end of the reporting period	- 0 -	- 0 -

HELP ELIMINATE

WASTE

FRAUD

ABUSE

AT THE NATIONAL LABOR RELATIONS BOARD



PLEASE NOTIFY THE OFFICE OF INSPECTOR GENERAL (OIG) IF YOU ARE AWARE OF OR SUSPECT ANY SUCH ACTIVITY. YOU MAY CONTACT THE OIG IN ONE OF SEVERAL WAYS: (1) IN WRITING OR IN PERSON - OFFICE OF INSPECTOR GENERAL, 1099 14th Street, NW, ROOM 9820, WASHINGTON, DC 20570; (2) BY TELEPHONE - DURING NORMAL BUSINESS HOURS, CALL (202) 273 1960; 24 HOURS A DAY, USE THE NATIONAL TOLL FREE HOTLINE AT 1 800 736 2983 (SEE IG MEMORANDUM DATED MAY 15, 1992). THE HOTLINE IS A SECURE LINE AND CAN ONLY BE ACCESSED BY THE OIG STAFF FROM INSIDE THE OIG OFFICE. THE DEVICE WHICH WOULD PERMIT ANYONE, INCLUDING THE OIG STAFF, TO ACCESS THE HOTLINE FROM OUTSIDE THE OIG HAS BEEN DEACTIVATED SO IT CAN ONLY BE ACCESSED BY MEMBERS OF THE OIG STAFF FROM INSIDE THE OFFICE.

REMEMBER - THE OIG HOTLINE IS OPEN 24 HOURS A DAY, 7 DAYS A WEEK.

YOUR CALL OR LETTER MAY BE MADE ANONYMOUSLY

IF YOU WISH