

INSPECTOR GENERAL



NATIONAL LABOR RELATIONS BOARD

WASHINGTON, DC 20570

I hereby submit this Semiannual Report: October 1, 2005 – March 31, 2006, which summarizes the major activities and accomplishments of the Office of Inspector General (OIG) of the National Labor Relations Board (NLRB or Agency). The submission of this report is in accordance with the Inspector General Act of 1978, as amended (IG Act). Section 5 of the IG Act requires that the Chairman transmit this report to the appropriate committees or subcommittees of the Congress within 30 days of its receipt.

In the audit program, OIG issued two audit reports and one inspection report. In the investigations program, OIG processed 81 contacts, initiated 9 cases, and closed 6 cases. The investigations resulted in one suspension and \$36,739 in investigative recoveries. We reviewed four pieces of legislation. Details on these accomplishments can be found in the body of this report.

The OIG is charged with preventing and detecting fraud and abuse as well as conducting investigations. In the past year, we spent considerable resources on detecting and conducting investigations of misuse of government computers, primarily to view sexually graphic material. This period, we increased our efforts to prevent such abuse. The Counsel to the Inspector General spoke to multiple groups of Agency managers and employees on the OIG's forensic capabilities to investigate Internet misuse. We hope that these efforts, plus management's support in addressing substantiated cases, will result in less misuse of the Internet and a better working environment for all employees.

External quality control reviews were conducted of OIG audit operations for a 3-year period and OIG investigative operations for a 1-year period. The reports stated that systems of internal controls were in place and operating effectively, and the audits and investigations were performed in accordance with standards.

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

Jane E. Altenhofen
April 28, 2006

AGENCY PROFILE

The National Labor Relations Board (NLRB or Agency) is an independent Federal agency established in 1935 to administer the National Labor Relations Act (NLRA). The NLRA is the principal labor relations law of the United States, and its provisions generally apply to private sector enterprises engaged in, or to activities affecting, interstate commerce. NLRB jurisdiction includes the U.S. Postal Service (other government entities, railroads, and airlines are not within NLRB's jurisdiction).

The NLRB seeks to serve the public interest by reducing interruptions in commerce caused by industrial strife. It does this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The NLRB has two principal functions: (1) to determine and implement, through secret ballot elections, the free democratic choice by employees as to whether they wish to be

represented by a union in dealing with their employers and, if so, by which union; and (2) to prevent and remedy unlawful acts, called unfair labor practices, by either employers or unions.

NLRB authority is divided by law and delegation. The five-member Board primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel investigates and prosecutes unfair labor practices before administrative law judges, whose decisions may be appealed to the Board; and, on behalf of the Board, conducts secret ballot elections to determine whether employees wish to be represented by a union.

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

On January 4, 2006, President Bush made two recess appointments. Ronald E. Meisburg is to serve as General Counsel of the NLRB. Peter N. Kirsanow is to serve as a Board Member for the remainder of a term that expires on August 27, 2008. On January 17, 2006, President Bush made the recess appointment of Dennis P. Walsh to serve as a NLRB Board Member for the remainder of a term expiring December 16, 2009. Each recess appointee serves until the sine die adjournment of Congress unless the Senate confirms his pending nominations.

Once again, the NLRB has a full complement of five members that includes, in addition to the above, Chairman Robert J. Battista and Board Members, Wilma B. Liebman and Peter C. Schaumber.

The NLRB received an appropriation of \$252,268,000 for Fiscal Year (FY) 2006, less an across-the-board rescission of 1 percent, leaving a net spending ceiling of \$249,745,320 to fund a ceiling of 1,840 full-time equivalents. NLRB Headquarters is at 1099 14th Street, NW, Washington, DC.

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

Additional information about the NLRB can be found on the Web site www.NLRB.gov.

OFFICE OF INSPECTOR GENERAL

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

Resources

The FY 2006 OIG budget is \$1,130,100 for operations, of which \$170,974.38 is for contract services. In addition to the Inspector General, the OIG consists of a Counsel/Assistant Inspector General for Investigations, Assistant Inspector General for Audits, an investigator

(position currently vacant), three auditors, and a staff assistant.

Deborah A. Micsky, an OIG investigator, accepted a position with the Office of Personnel Management that was effective on October 30, 2005.

AUDIT PROGRAM

The Inspector General is to provide policy direction for and is to conduct, supervise, and coordinate audits relating to program operations of the Agency. *OIG issued two audit reports and one inspection report.*

Reports Issued

- We issued Audit Report
OIG-F-10-06-01, ***Audit of the NLRB
Fiscal Year 2005 Financial Statements***,
on December 16, 2005.

The audit, performed by Carmichael, Brasher, Tuvell & Company (CBTC), an independent public accounting firm, found that NLRB's FY 2005 Financial Statements were fairly stated. No material weaknesses in controls over financial reporting were identified. In addition, no instances of non-compliance with laws and regulations required to be reported by Government Auditing Standards or the Office of Management and Budget (OMB) were identified.

CBTC's Report on Internal Control identified one reportable condition. The Agency has not implemented a disaster recovery plan. In case of an information

technology disaster, a plan is needed to be able to accumulate, process, and report information critical to the NLRB's mission and programs.

A management letter identified two other areas in which management could improve controls or operating effectiveness. These included ensuring that Agency controls for accounting system service center processing were properly implemented and that the Finance Branch be provided documentation to support all Intragovernmental Payment and Collection System transactions. The management letter also reported that actions remain to be completed on five prior year recommendations.

Management agreed with the Report's findings and recommendations.

- We issued Audit Report OIG-AMR-50-06-01, *Regional Office Casehandling Efficiency*, on March 16, 2006. We conducted this audit to evaluate the efficiency of Regional Office casehandling processes in unfair labor practice and representation cases. This included evaluating timeliness.

We did not identify inefficiencies in the processes used by the four Regional Offices visited. Cases were processed in compliance with Agency policy and the Regional Offices followed best practices identified in Agency guidance. Our analysis of mean processing times did not identify bottlenecks or a systemic problem.

Unfair labor practice cases were generally processed in a timely manner. Procedures varied some between the Regional Offices because they adapted Agency-wide guidance to their particular operating environment.

Representation cases were generally processed in a timely manner. Most cases that took longer to process were the result of the case being blocked by a related unfair labor practice case.

In two Regional Offices, the initial contact with the parties was not documented in a significant number of cases. We did not include a recommendation related to this finding because the issue was already addressed by an internal report based on the internal quality control review process.

Most of the 11 unfair labor practice and 16 representation case data elements tested were generally accurate. Some data elements had an error rate we consider significant. We did not include a recommendation related to this finding because the criteria regarding proper data input is clear and the Agency recently implemented improvements to its data integrity program.

- We issued Inspection Report OIG-INS-40-06-01, *Transit Subsidy*, on January 6, 2006. We initiated this inspection to evaluate controls over the distribution of transit subsidies.

Controls appeared to be adequate for transit passes distributed by the Department of Transportation (DOT) to NLRB employees. The NLRB spent a total of \$880,786 in FY 2005 for transit passes and services provided by DOT. We did not find indications of significant abuse by employees. Agency policies, nevertheless, need improvement because they do not clearly address what current workers should do with transit passes that they received but did not use within the allotted time.

Employees leaving the Agency did not always return the correct amount of unused transit passes. With projected increases in retirements, strengthening controls in this area may provide the Agency with additional funds that could be spent to accomplish its mission.

- *The Federal Information Security Management Act of 2002* requires inspectors general to conduct **annual reviews of information security programs**. The OIG review was primarily accomplished as part of the audit of the FY 2005 financial statements. A reportable condition on information security was identified in that audit. On October 7, 2005, the Chairman submitted reports from the Inspector General and Chief Information Officer (CIO) to OMB.

Audit Follow-up

Agreed upon actions were not completed within 1 year on four audit reports. Two of these reports are now closed.

- *Information Security Review of New Automated Systems*, OIG-AMR-40-03-03, was issued on September 22, 2003, and we reached agreement with management on actions needed to implement the eleven recommendations on that date. Action was completed on the final open recommendation in January 2006.

- ***Review of Data Accuracy in the FY 2001 Annual Report***, OIG-AMR-39-03-04, was issued on September 30, 2003. We reached agreement with management on actions needed to implement the recommendation on December 1, 2003. The agreed upon actions included having the Agency conduct a study to determine whether the Agency will produce an annual report and, if so, in what form.

In January 2006, the Deputy Executive Secretary informed us that the political leadership had made no decision regarding how it will proceed with the Annual Report but he, nevertheless, considered the recommendation closed. No changes were made to the FY 2004 or FY 2005 Annual Reports and no changes were planned for FY 2006. We concluded that the Agency had decided to continue producing the Annual Report in its current form.

We found \$57,000 that could be put to better use by eliminating or changing the Annual Report. This amount must be listed as the dollar value of

recommendations that management has subsequently concluded should not be implemented or completed in the report to Congress by the Chairman and General Counsel.

- ***Audit of Archiving Case Files***, OIG-AMR-43-04-03, was issued on September 20, 2004, and we reached agreement with management on actions needed to implement the 10 recommendations on that date. Actions have been completed on 7 of the 10 recommendations.

Management is working to implement the remaining recommendations. The original estimated completion date was July 2005. When reviewing a draft policy in March 2006, we found that two recommendations had not been addressed. The latest estimate for completion is May 16, 2006. We have contacted the Audit Follow-up Official to focus attention on efforts needed to complete these actions.

- ***Audit of the NLRB Fiscal Year***

2004 Financial Statements,

OIG-F-9-05-01, was issued on December 22, 2004, and we reached agreement with management on that date. Recommendations were made to the CIO and the Director of Administration.

The CIO originally agreed to implement four recommendations by December 2005. Action on two recommendations has not been completed. In fact, action on one recommendation related to a reportable condition repeated in the Audit of the FY 2005 Financial Statements was just recently initiated. The estimated completion date has been revised to September 2006.

The Director of Administration agreed to implement four recommendations made in the management letter. Action on two recommendations has not been completed.

One recommendation was to develop debt collection regulations, a suggestion that we originally made in a 2002 inspection report. Draft regulations were developed in 2004 and approved by the Rules Committee in 2005. On Tuesday, April 18, 2006, the Chairman approved the regulations for publication. The Acting Solicitor is currently coordinating with new Board Members for approval and will then coordinate publication with the Executive Secretary, the Agency's *Federal Register* liaison. The estimated completion date is May 2006.

The other recommendation is to integrate the Regional Office budget data into the Agency's accounting system. The estimated completion date has been revised to September 2006.

INVESTIGATIONS PROGRAM

The Inspector General is to provide policy direction for and is to conduct, supervise, and coordinate investigations relating to the programs and operations of the Agency. *OIG processed 81 contacts, initiated 9 cases, and closed 6 cases. The investigations resulted in one suspension and \$36,739 in investigative recoveries. The Department of Justice declined prosecution of one matter.*

Case Workload		Contacts Processed	
Open (10/1/2005)	9	Received	81
Initiated	9	Initiated Investigation	1
Closed	6	Opened Case -- Referred to Agency	0
Open (3/31/2006)	12	Non-Investigative Disposition	80

- Internet Misuse.** The OIG initiated an investigation of contract personnel for misusing the Agency's Internet access. During a routine review of the Agency's Internet firewall logs, we found that the Agency was charged for time when certain contract employees were using the Agency's Internet access for activity unrelated to the contract.

The Agency and the contractor resolved the allegation by entering into a settlement agreement that provided a \$35,605 refund to the Agency. (OIG-I-381)

- Travel Benefits.** As previously reported, OIG initiated this case after an audit disclosed that the Agency was providing tour-renewal benefits to two employees that were transferred to offices outside the continental United States (CONUS). During our investigation, it came to our attention that the employees in question are not on successive renewable tours, but rather were permanently reassigned to their respective duty stations.

We provided a memorandum to the Agency expressing our belief that tour-

renewal travel was not intended or authorized for employees permanently reassigned to a duty station outside of CONUS and that the Comptroller General has stated that tour-renewal agreement travel is ordinarily performed between tours.

During this reporting period, Agency managers approved tour-renewal travel for one of the employees to travel to Boulder, CO. After the OIG notified the Agency that it intended to request a Comptroller General opinion, the Agency sought and received reimbursement for a portion of the travel expenses, \$1,134, that exceeded the cost of travel to the employee's last CONUS duty station – Newark, NJ. Because of the difference in opinion between the OIG and the Agency, we requested a Comptroller General opinion. (OIG-I-370)

- **Sexually Explicit Internet Material.** OIG initiated three cases following a referral of an allegation from Agency management that the subjects were using their Government computer

to view sexually explicit material on the Internet. Using commercially available forensic software, we substantiated the allegation in two of the cases. One of the two employees received a 3-day suspension. Agency managers are considering disciplinary action for the remaining case. (OIG-I-385, OIG-I-386, and OIG-I-387)

- **Outside Business Activity and Sexually Explicit Material.** OIG initiated this case following a review of the Internet firewall records that showed the subject having an unusual pattern of Internet use involving a Web site called "marketwatch.com." This site appeared to offer prizes for allowing it to track a user's Internet activity.

A forensic review of the hard drive from the subject's Government computer found that "marketwatch.com" activity was the result of "spyware" that was downloaded without the subject's knowledge. Evidence collected during that process substantiated that the subject sent and received sexually

explicit material through the Agency's e-mail system, that the subject engaged in outside business activity during official duty hours, and that the subject downloaded instant messaging software and then used it to communicate sexually graphic messages for a period of several months. Agency managers are currently considering appropriate disciplinary action. (OIG-I-380)

- **False Statement.** The OIG referred one matter involving a false statement to the Department of Justice. Prosecution of the subject was declined. The matter involving the statement and the underlying allegation that initiated the investigation are currently being reviewed. (OIG-I-383)

Hotline

Employees and members of the public with information on fraud, waste, and abuse are encouraged to contact OIG. A log of calls to a nationwide toll free

number or the office numbers and a log of mail, e-mail, and facsimile messages are maintained. All information received, regardless of the method used, is referred to as ***HOTLINE*** contacts.

The information received over the hotline is the basis for the initial review for potential investigations. The information is analyzed to determine if further inquiry is warranted. Most ***HOTLINE*** contacts are calls from members of the public seeking help on an employment related problem or issues outside OIG and/or Agency jurisdiction. As appropriate, OIG refers these callers to the Regional Office; local, state, or Federal agency; or private resource to provide assistance.

During this reporting period, OIG received 81 hotline contacts, of which 43 were telephone calls and 38 were in writing. One contact resulted in an OIG investigative case.

LEGISLATION, REGULATIONS, AND POLICY

The Inspector General is to review existing and proposed legislation and regulations relating to programs and operations of the Agency and is to make recommendations concerning the impact of such legislation or regulations. Similarly, we review Agency and OIG policy. *We reviewed four pieces of legislation.*

Legislation

We reviewed the following legislation and provided input when appropriate.

H.R. 4925, Paul Revere Freedom to Warn Act. This legislation is intended to improve whistleblower protection by providing for make whole remedies and criminal penalties in cases of adverse actions or discrimination against employees who provide information or assist in investigations conducted by law enforcement offices including the OIG. The types of investigations covered by the legislation include fraud, abuse of authority, waste, and mismanagement of public funds.

S. 2285, Whistleblower Empowerment, Security, and Taxpayer Protection Act of 2006. This legislation would amend two criminal statutes that address witness tampering and retaliation by including witness

protection for assisting an Inspector General. The legislation contains provision intended to enhance the independence of Inspectors General by providing for 7-year terms of office, removal for cause, and a prohibition on reprogramming of funds appropriated to an OIG. The legislation would allow an Inspector General to create a directorate to act upon whistleblower complaints and allows for a whistleblower to request the appointment of a special prosecutor.

H.R. 773, Fairness in Labor Litigation Act. This legislation would amend the NLRA to make it an unfair labor practice for an employer or a labor organization to bring or cause to be brought any civil or adversarial adjudicatory action against a labor organization or an employer, if, irrespective of the outcome, such action is determined by a competent fact finder

to be frivolous, vexatious, or objectively baseless and not brought in good faith.

S. 2017, Equal Access to Justice Reform Act of 2005. This legislation would eliminate the Equal Access to Justice Act's substantial justification standard whereby the Government can deny attorney's fees to prevailing parties if the agency's position was substantially justified. The rate cap on expert witness and attorney's fees would also be eliminated. The legislation also sets forth provisions regarding settlement offers, declarations of intent to seek a fee award, payments from agency

appropriations, and taxpayer eligibility for fee awards.

Regulations

The Counsel to the Inspector General is an advisory member of the Agency's Rules Revision Committee that develops changes to the Agency's procedural regulations. During this reporting period, the committee reviewed a proposal to establish an alternative dispute resolution program for cases pending before the Board.

LIAISON ACTIVITIES

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

Inspector General Community

The Inspector General is a member of the Executive Council on Integrity and Efficiency (ECIE), which consists primarily of the inspectors general at the designated Federal entities in the IG Act. She participated in activities sponsored by the President's Council on Integrity and Efficiency (PCIE), which consists primarily of the Presidentially-appointed inspectors general. She joined the Audit Committee in May 2001.

The Assistant Inspector General for Audits, or designated auditors, participated in the Federal Audit Executives Council, Financial Statement Audit Network, and the PCIE Information Technology Roundtable.

The Counsel participated in the Council of Counsels to Inspectors General (CCIG). The Counsel is also participating as a member of a CCIG working group that is reviewing investigative manuals to determine if common areas exist in which a set of "best practices" could be established.

OIG Outreach

During this reporting period, the Counsel provided training sessions to groups of employees and managers on the OIG's methods of investigating Internet misuse cases. The training provided information about the type of misconduct that can result in an OIG investigation and a demonstration of the OIG's forensic capabilities for reviewing and recovering information from computer hard drives. The training

sessions were designed to be a proactive step in preventing misconduct involving the Internet.

Government Accountability Office

The IG Act states that each inspector general shall give particular regard to the

activities of the Comptroller General of the United States, as head of the Government Accountability Office, with a view toward avoiding duplication and ensuring effective coordination and cooperation. No reviews of NLRB are currently ongoing.

Audit

The IG Act provides that each Inspector General shall comply with standards established by the Comptroller General of the United States. One of the standards states that organizations conducting government audits should have an external quality control review at least once every 3 years.

The Inspector General arranged for the Inspector General of the Farm Credit Administration (FCA) to conduct an external quality review of the OIG. The FCA Inspector General completed the review in accordance with the bylaws for peer review evaluations adopted by the inspectors general of the designated agencies of the ECIE. In his report, issued on March 1, 2006, the FCA Inspector General concluded that a system of internal controls was in place and operating effectively, and that audits performed by the OIG and by contractors were being carried out in accordance with *Government Auditing Standards*.

Similarly, at the request of the Inspector General of the Smithsonian Institution, we conducted an external quality review of the OIG. Our report was issued on May 13, 2005.

Investigations

The Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority require such offices to undergo a periodic review by another OIG to ascertain whether internal safeguards and management procedures exist to ensure that the office is properly carrying out its investigative functions. For OIGs, such as this office, without statutory law enforcement authority, this quality assessment review of the investigative operations is voluntary.

The Inspector General arranged for the Inspector General of the Board of Governors of the Federal Reserve System (FRB) to conduct the quality assessment review of the OIG

investigative operations. The FRB Inspector General completed the review in accordance with the PCIE/ECIE Quality Standards for Investigations and the Quality Assessment Review Guidelines established by the PCIE.

In his report, issued on January 9, 2006, the FRB Inspector General concluded

that internal safeguards and management procedures for the investigation function of the OIG were in full compliance with the quality standards established by the PCIE.

During this reporting period, the OIG completed a quality assessment review of the investigative operations of the OIG for the Federal Trade Commission.

INFORMATION REQUIRED BY THE ACT

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

Section 5(a)

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

- (3) Corrective action has not been completed on all significant recommendations that were described in the previous semiannual reports.

- (4) One case was referred to prosecutorial authorities. There were no prosecutions or convictions.

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

- (6) A listing by subject matter is located on page 19.

- (8), (9) No audit reports issued during this period had a recommendation on questioned costs. No audit reports issued during this period identified funds that could be put to better use. See Tables 1 and 2.

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

- (11) No significant revised management decisions were made during the reporting period. On page 7 of this report, we discuss a revised management decision with which we disagree.

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

AUDIT REPORTS BY SUBJECT MATTER

<u>Report Title and Number</u>	<u>Questioned Costs</u>	<u>Unsupported Costs</u>	<u>Ineligible Costs</u>	<u>Funds To Be Put To Better Use</u>
ADMINISTRATION				
Audit of the NLRB Fiscal Year 2005 Financial Statements OIG-F-10-06-01	0	0	0	0
FIELD INVESTIGATIONS				
Regional Office Casehandling Efficiency OIG-AMR-50-06-01	0	0	0	0

Table 1**REPORTS WITH QUESTIONED COSTS**

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

REPORTS WITH RECOMMENDATIONS THAT FUNDS BE PUT TO BETTER USE

Table 2

	<u>Number of Reports</u>	<u>Funds Be Put To Better Use</u>
A. For which no management decision has been made by the commencement of the period	0	0
B. Which were issued during the reporting period	0	0
Subtotals (A+B)	0	0
C. For which a management decision was made during the reporting period	0	0
(i) Dollar value of recommendations that were agreed to by management	0	0
(ii) Dollar value of recommendations that were not agreed to by management	0	0
D. For which no management decision has been made by the end of the reporting period	0	0
Reports for which no management decision was made within six months of issuance	0	0

*Every employee is the
guardian of integrity.*



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