

PERFORMANCE AND ACCOUNTABILITY REPORT
FY 2004



PROTECTING WORKPLACE DEMOCRACY

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Message from the Chairman



Robert J. Battista

I am pleased to present the NLRB's Performance and Accountability Report for FY 2004. The report is being submitted for the first time this fiscal year and presents our first audited financial statements, in addition to our performance related to the major objectives we set for our agency.

The NLRB's mission is to carry out the statutory responsibilities of the National Labor Relations Act, the primary federal statute governing labor relations in the private sector, as efficiently as possible, in a manner that gives full effect to the rights afforded to employees, unions, and employers under the Act. The NLRB, an independent Federal agency created in 1935 by Congress, strives to achieve a positive labor-management environment for the nation's employees, unions, and employers by assuring the free determination of union representation and by preventing and remedying statutorily-defined unfair labor practices.

The NLRB's authority is divided by law and by delegation between the five-member Board and the General Counsel, each of whom is appointed by the President, subject to confirmation by the Senate. The General Counsel, through the Regional Offices, investigates unfair labor practice charges filed by individuals, unions, and employers and issues a complaint against the charged party if there is reason to believe that a charge has merit. Complaints not settled or withdrawn are tried before an administrative law judge, whose decision may be appealed to the Board. The Board decides cases based on the trial record, statute and case law. The General Counsel then acts on behalf of the Board to obtain compliance with Board orders remedying any violations. In the processing of representation cases, Regional Offices under the General Counsel process representation petitions and conduct elections on behalf of the Board, which has review authority over the Regional decisions.

During FY 2004, the NLRB continued to make improvements in meeting its performance goals. The percentage of performance goals achieved rose between FY 2003 and FY 2004.

I am pleased to certify that the NLRB's management control and financial systems meet and conform with the requirements of the Federal Managers' Financial Integrity Act (FMFIA). I have made every effort to verify the accuracy and ensure the completeness of the financial and performance data presented in this report.

For almost 70 years, the National Labor Relations Act has protected employees in the workplace in the free exercise of their right to organize and bargain collectively should they so choose. The enduring importance of the nation's seminal labor relations law is evidenced by its role in developing a national labor policy that has fostered industrial peace and contributed to our nation's burgeoning economy.

I am proud of the accomplishments of the NLRB and its employees over the last year, which is in keeping with the history of commitment of the many men and women who have served the public as employees of the Agency throughout its rich history. I believe that those who read this report will agree that U.S. taxpayers received an excellent return on their investment in the NLRB.



Robert J. Battista
Chairman

Board Members



Wilma B. Liebman



Dennis P. Walsh



Peter C. Schaumber



Ronald Meisburg

Message from the General Counsel



Arthur F. Rosenfeld

The General Counsel of the National Labor Relations Board (NLRB) is responsible for the investigation and prosecution of the unfair labor practice cases filed in the NLRB's 51 Regional, Subregional, and Resident Offices. As the General Counsel of the NLRB, I exercise general supervisory authority over this network of field offices.

During FY 2004, approximately 27,000 unfair labor practice charges were filed with the NLRB. Of the charges filed, and which were found to have merit, the NLRB was able to settle 96.1 percent of them prior to them going to a hearing before an administrative law judge. Litigation is costly and the NLRB has always aggressively pursued settlement to ensure conservation of resources, obtain timely and effective remedies, and reduce the costs of litigation for all parties involved in a case. In addition to the unfair labor practice cases, the NLRB conducted 2,537 initial elections in FY 2004 from the 5,000 representation petitions filed in the Agency's field offices. In 89 percent of the elections conducted, the NLRB was able to negotiate settlement agreements between the parties without having to go to a hearing to resolve pre-election issues.

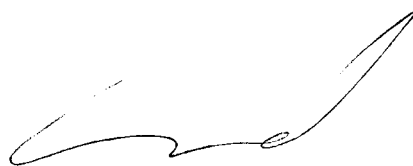
In addition, the NLRB provides an extensive information service to the public through its Information Officer (IO) program. Through this program many potential charges that are not within the jurisdiction of the NLRB are directed to the appropriate federal and state agencies. In FY 2004, the NLRB received 204,855 inquiries from the public, an increase of 8.5 percent over FY 2003. The NLRB also launched this year a new toll free number, making it easier for employers, employees, and

unions to obtain answers to questions, information, and referrals. In the first nine months of operation, the toll free number received over 26,000 calls.

The General Counsel of the NLRB has also been delegated by the Board general supervision over the administrative functions of the Agency, which includes financial management. That is why I am pleased that this first-ever audit of the NLRB's financial statements has resulted in an unqualified opinion from our auditors. The public should have confidence that the Agency's resources are being used efficiently in the accomplishment of its mission.

I am proud to report that the Office of the General Counsel achieved all but two of its Government Performance and Results Act (GPRA) goals. This was not an easy accomplishment. The time goals we set for ourselves in the Office of the General Counsel are stringent and require the best efforts and commitment of the staff and the cooperation of those who practice before us. As noted above, the settlement and election agreement rates exceeded the GPRA goals we set and their accomplishment means that cases move quickly, inexpensively and most important, that the benefits of the National Labor Relations Act are made available to the parties without undue delay. Finally, this record of achievement was not limited to timely case processing. Our GPRA goals include the accomplishment of Quality Reviews, which, together with the views of the Bar about our work, clearly evidences the high quality of the service provided.

Protection of democracy in the workplace is this Agency's mission and the achievement of our performance measures for FY 2004 shows that the employees of the NLRB are committed to this goal. The provision of excellent service to the public is a hallmark of the NLRB, and I am proud that the men and women of this Agency continued that tradition by providing that service to those individuals who sought redress of their workplace problems through the protections offered to them by the National Labor Relations Act.



Arthur F. Rosenfeld
General Counsel

Overview

The National Labor Relations Board's Performance and Accountability Report for FY 2004 provides performance and financial information to enable the Congress, the President, and the public to assess the performance of the NLRB relative to its mission and stewardship of the resources entrusted to it. The report is designed to meet the reporting requirements established by the Office of Management and Budget (OMB). As such, the report consolidates the reporting requirements for the Accountability of Tax Dollars Act of 2002, the Federal Managers' Financial Integrity Act of 1982, the Government Management Reform Act of 1994, the Government Performance and Results Act of 1993, and the Reports Consolidation Act of 2000.

The report describes the NLRB's performance measures, results, and accountability processes for FY 2004. In assessing our performance, we are comparing actual results against targets and goals set out in our annual performance plan submitted to the President and Congress in March 2003. The report contains major sections on Management's Discussion and Analysis (MD&A), Performance Information, Financial Information, and Appendices.

The MD&A is a concise overview of the entire Report. It includes a discussion of the NLRB's mission and major goals, an organizational overview, management challenges and external factors that affect our performance, a summary of the most important performance results and challenges for FY 2004, and a brief analysis of financial performance. The MD&A is supported and supplemented by detailed information contained in the Performance Section, Financial Section, and Appendices.

The Performance Section provides details on our performance by strategic goal and individual performance measure in FY 2004, including how we performed in meeting each individual performance target for the fiscal year and explanation for any variance.

The Financial Information Section provides the details on our finances for FY 2004, including a letter from our Director of Administration, our audited financial statements and notes, and the report from our external auditor. In addition, the Inspector General's Summary of Management Challenges is included in this section of the report.

The Appendices include charts explaining the types of NLRB cases, case flow processes, organizational chart, and performance data.

I. Management's Discussion and Analysis

I. Mission Statement of the NLRB

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

II. Vision Statement

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

III. Major Goals

The primary function of the NLRB is the effective and efficient resolution of charges and petitions filed voluntarily under the NLRA by individuals, employers or unions. The two major goals of the NLRB focus on the timeliness and effectiveness in addressing its caseload. The major goals are to:

- Resolve all questions concerning representation promptly, and
- Investigate, prosecute and remedy cases of unfair labor practices by employers or unions promptly.

IV. Background Information

The NLRB is an independent federal agency created by Congress in 1935 to administer and enforce the NLRA, which is the primary federal statute governing labor relations in the private sector.¹ The purpose of the law is to serve the public interest by reducing interruptions in commerce caused by conflict between employers and employees. It seeks to do this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The Act embodies a statement of employee rights, which establishes freedom of association for the purposes of participating in the practice and procedure of collective bargaining. Under the Act, the NLRB has two primary functions: (1) to prevent and remedy statutorily defined unfair labor practices by employers and unions; and (2) to conduct secret-ballot elections among employees to determine whether the employees wish to be represented by a union. The mission of the Agency is to carry out these statutory responsibilities as efficiently as possible, in a manner that gives full effect to the rights afforded to employees, unions, and employers under the Act.

The NLRB acts only on those cases brought before it, and does not initiate cases. All proceedings originate from the filing of charges or petitions by employees, labor unions, and private employers who are engaged in interstate commerce. Almost 34,000 cases are received by the Board through its Regional, Subregional, and Resident Offices each year. Of those, approxi-

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

mately 29,000 are unfair labor practice cases and the remaining 5,000 are representation cases, which involve petitions to conduct secret ballot elections. Under the Act's procedures, the General Counsel staff investigates the 29,000 unfair labor practice cases, which result in a finding of no merit—no probable cause to support the charge—in about two-thirds of the cases. These decisions are made by the Regional Directors, who have been delegated substantive decision-making authority over these cases. Of those cases in which merit is found, approximately 95 percent (96.1 percent in FY 2004) are settled without formal litigation. It has long been the NLRB's belief that all parties are better served if disputes are settled without the need for time-consuming and costly formal litigation.

The Agency also provides an extensive information service to the public outside the formal case procedures. Under its Information Officer (IO) Program, many potential charges that relate to matters outside the jurisdiction of the NLRB are directed to more appropriate federal or state agencies before extensive resources have been spent. In FY 2004, the total number of inquiries received was 204,855, an increase of 8.5 percent over the number received in FY 2003. Of the inquiries received in FY 2004, only 7,785, or 3.8 percent resulted in charges being filed by an employee, employer, union, or individual alleging that an unfair labor practice has been committed. This is an extraordinarily valuable service to the public, which at the same time conserves Agency resources for cases of greater potential merit. The NLRB launched a new toll free number (1-866-667-NLRB) in January 2004 that makes it easier for employees, employers, and unions to obtain answers to questions, information, and referrals. The toll free number received over 26,000 calls during the first nine months of operation.

In addition to the unfair labor practice cases, the NLRB conducted 2,537 initial elections in FY 2004 from the 5,000 representation cases in which a petition was filed. In 89 percent of elections conducted, the NLRB was able to negotiate agreements between the parties as to when, where, and who should be involved in the election, thus conserving resources that would otherwise be spent on a hearing. Hearings were required to resolve such issues in the remaining 11 percent of the cases.

V. The Statutory Structure of the Agency: Role of the Board and the General Counsel

The NLRB's authority is divided by law and by delegation between the five-member National Labor Relations Board ("the Board") and the General Counsel, all of whom are appointed by the President subject to confirmation by the Senate.² To carry out their respective functions, described below, the Board and the General Counsel maintain a headquarters in Washington, D.C. The Agency also maintains a network of Regional or "field" offices, each of which is under the direction of a Regional Director.³

The National Labor Relations Act assigns separate and independent responsibilities to the Board and the General Counsel, particularly in the prevention and remedying of unfair labor practices. This division of authority between the Board and the General Counsel is reflected in the Agency's operations, thereby affecting the strategic and annual performance plans. An explanation of this division of authority between the Board and the General Counsel will help to provide an understanding of the Agency's operations.

²As of November 2004, there are four permanent Members and one recess appointment on the Board. The General Counsel's position is filled with a confirmed appointee.

³Appendix E is an organizational chart of the Agency.

Unfair Labor Practice Proceedings

Unfair labor practices (ULP)⁴ are remedied through adjudicatory procedures under the NLRA in which the Board and the General Counsel have independent functions. The role of the General Counsel is to investigate unfair labor practice charges filed by individuals and organizations and, if there is reason to believe that a charge has merit, to issue and prosecute a complaint against the charged party unless settlement is reached. With some exceptions, a complaint that is not settled or withdrawn is tried before an administrative law judge (ALJ), who issues a decision which may be appealed by any party to the Board through the filing of exceptions. The Board acts in such matters as a quasi-judicial body, deciding cases on the basis of the formal trial record according to the statute and the body of case law that has been developed by the Board and the federal courts.

Congress created the position of General Counsel in its current form in the Taft-Hartley amendments of 1947. At that time, it gave the General Counsel sole responsibility—independent of the Board—to investigate charges of unfair labor practices, and to decide whether to issue complaints with respect to such charges. The Board, in turn, acts independently of the General Counsel in deciding unfair labor practice cases.

Under Section 10(l) of the Act, when the region's investigation of a charge yields reasonable cause to believe that a union has committed certain specified unfair labor practices such as a work stoppage or picketing with an unlawful secondary objective, the "regional officer or regional attorney" is *required*, on behalf of the Board, to seek an injunction from a U.S. District Court to halt the alleged unlawful activity. Section 10(j) of the Act provides that where the General Counsel has issued a complaint alleging that any other type of unfair labor practice has

been committed, by a union or by an employer, the Board *may* direct the General Counsel to institute injunction proceedings if it determines that immediate interim relief is necessary to ensure the efficacy of the Board's ultimate order.

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

Representation Proceedings

In contrast to ULP proceedings, representation proceedings⁵ conducted pursuant to the Act are not adversarial proceedings. Representation cases are initiated by the filing of a petition—by an employee, a group of employees, an individual or a labor organization acting on their behalf, or in some cases by an employer. The petitioner requests an election to determine whether a union represents a majority of the employees in an appropriate bargaining unit and therefore should be certified as the employees' bargaining representative. The role of the Agency in such cases is to investigate the

⁴Appendix C is a chart on unfair labor practice case processing.

⁵Appendix D is a chart on representation case processing.

petition and, if necessary, to conduct a hearing to determine whether the employees constitute an appropriate bargaining unit under the Act. The NLRB must also determine which employees are properly included in the bargaining unit and therefore eligible to vote, conduct the election if an election is determined to be warranted, hear and decide any post-election objections to the conduct of the election, and, if the election is determined to have been fairly conducted, to certify its results.

In the processing of representation cases, the General Counsel and the Board have shared responsibilities. The Regional Offices, which are under the day-to-day supervision of the General Counsel, process representation petitions and conduct elections on behalf of the Board. As a result, the General Counsel and the Board have historically worked together in developing procedures for the conduct of representation proceedings. Although the Board has

ultimate authority to determine such matters as the appropriateness of the bargaining unit and to rule on any objections to the conduct of an election, the Regional Directors have been delegated authority to render initial decisions in representation matters, which are subject to Board review.

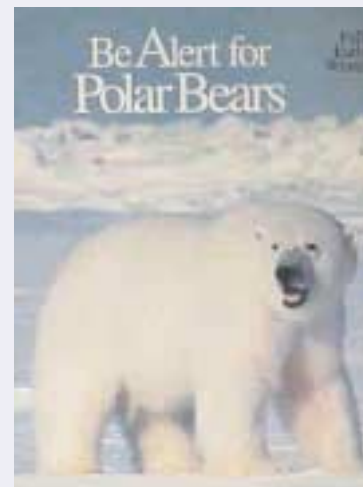
Compliance Cases

In order to obtain compliance with the NLRB's Orders and Settlement Agreements, staff must follow up to ensure that the results of the processes discussed above are enforced. Staff must be prepared to work with employees whose rights have been violated to calculate backpay, work with respondents when terminated employees are entitled to reinstatement or having their records expunged in unlawful disciplinary actions, or monitor the bargaining process when the Board has ordered the parties to bargain. Noncompliance or disputes on findings

An Alaskan Adventure

Part of the mission of the NLRB is to conduct secret-ballot elections among employees to determine if they wish to be represented by a union. One of the more interesting places to conduct elections is in Alaska. The NLRB has a Resident Office located in Anchorage, and the Resident Officer there has run elections from such sites as remote gold mining camps to ships anchored off Kodiak Island. For the Kodiak Island election, the Resident Officer had to charter a float plane to get to the ships.

Not long ago, the Resident Officer ran an election from a remote site at the British Petroleum Company's Endicott Island facility on Alaska's North Slope. Endicott Island is not just a location off of an interstate highway, but is a manmade gravel island offshore in the Beaufort Sea and is connected to the mainland by just a gravel causeway. Moreover, the election was held in December and the area was covered in snow. Prominently displayed in BP's facility is a poster warning employees to be aware of the polar bears, because the buildings on Endicott Island are elevated so that the snow can blow underneath. The polar bears like to take refuge under the steps and buildings, and any large white mound might just be a napping polar bear. Despite the dangers, the remoteness of the location, and the odd shift hours of the 30 employees involved in the election, which required the Resident Officer to be at the facility for almost five working days, the election was conducted without incident and is an example of the NLRB's commitment to protecting democracy in the workplace, polar bears notwithstanding.



may require additional hearings or actions by the judicial system.

Administrative Functions

Section 3(d) of the Act assigns to the General Counsel general supervision over all attorneys employed by the Agency, with the exception of the administrative law judges, who are under the general supervision of the Board, and the attorneys who serve as counsel to the Board members. The Board has also delegated to the General Counsel general supervision over the administrative functions of the Agency and over the officers and employees in the Regional Offices.

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

Effect of Division of Authority on Agency Performance

Although the General Counsel and the Board share a common goal of ensuring that the Act is fully and fairly enforced on behalf of all those who are afforded rights under the Act, the division of authority mandated by the Act necessarily means that the two branches of the Agency will have separate objectives, and separate strategies for achieving objectives relating to those aspects of their statutory functions which are uniquely their own. The statutory framework in the processing of unfair labor practices cases separates the prosecutorial functions of the General Counsel from the adjudicatory functions of the Board. The Board and the General Counsel, however, have worked together in developing

one comprehensive strategic plan and annual performance plan.

VI. Highlights of FY 2004 Performance

Due to the NLRB's unique legislative mandate, the performance goals and measures relate primarily to the effectiveness and efficiencies of dealing with the Agency's caseload. FY 2004 results were very favorable, with the percentage increase over the performance goal greater than in FY 2003. In the area of representation cases, the NLRB's Regional Offices exceeded performance goals for holding 90 percent of representation elections within 56 days of petitions being filed and all elections within 42 median days of the filing. The goal of obtaining voluntary election agreements in at least 85 percent of the petitions filed was exceeded, with a performance of 89 percent, which also surpassed the FY 2003 level of 88.5 percent. The NLRB encourages employers and unions to enter voluntary agreements to hold elections in order to avoid the time and cost involved in a formal hearing.

For unfair labor cases in FY 2004, informal resolution of cases were completed well within the established performance goals and the resolution of cases exceeded performance levels of established time targets. For example, Regional Offices resolved well over 90 percent of cases within established time line goals. The NLRB also exceeded its goal of settling 95 percent of its cases prior to formal litigation. The settlement rate for unfair labor practice cases rose to 96.1 percent in FY 2004, compared to 92.8 percent in FY 2003.

Litigation is a costly process for the parties and the Agency has consistently focused on settlements to ensure efficient use of its resources, obtain timely and effective remedies, and reduce the cost of litigation for the parties.

VII. Factors That Affect Agency Performance

Various factors can affect each goal, objective, and performance measure contained in the NLRB's strategic and annual performance plans. These factors include the following:

Budget

Our short term performance goals assume the level of funding set forth in the President's budget request of \$248.785 million for FY 2005, which is \$6.2 million more than the FY 2004 appropriation of \$242.633 million.⁶ Requested resources will be targeted to achieve the results described in the FY 2005 performance budget and in this report. Funding for FY 2005 would continue to support the processing of the Agency's caseload. Longer term, the uncertainty over funding makes it difficult to set future performance goals. With approximately 76 percent of the Agency's budget devoted to personnel related costs, slight changes in the resources available to the Agency are likely to impact the ability to meet performance goals.

Case Intake

The Agency does not control the number of cases filed. Public perceptions about unionization and the role of the Agency, employment trends, stakeholder strategies, the globalization of the economy, industrial economic trends, corporate reorganizations and the level of labor-management cooperation efforts can all have an impact on our intake and the complexity of our work. Difficult issues affecting our ability to achieve full compliance can arise when companies relocate or close, dissipate or hide assets, file for bankruptcy or reorganize or operate through a different corporate entity. An unexpected large increase in our intake or in the complexity of

issues we handle may delay investigation or resolution of cases.

Case intake can fluctuate from year to year. Any major economic changes, as well as an increase in the activity of unions, could cause an increase in case intake estimates. During FY 2003, intake for unfair labor practice cases decreased by 4.8 percent, from 30,177 in FY 2002 to 28,794 in FY 2003. Intake for representation cases in FY 2003 decreased by 13.2 percent from the FY 2002 level, decreasing from 5,695 to 4,944. The FY 2003 intake levels were similar to those in FY 2001 and FY 2000, which may indicate that the higher level in FY 2002 (7.7 percent greater than in FY 2001) was a temporary deviation from the trend. Thus, the FY 2003 level appears to be consistent with the longer-term pattern.

Figures for FY 2004 show that intake for unfair labor practice cases fell by 6.6 percent from FY 2003, dropping to 26,892 cases from 28,794 a year earlier. Representation cases fell by less than 1 percent in FY 2004, decreasing from 4,945 to 4,897 cases.

The following chart on page 7 compares total actual case intake for FY 1999 through FY 2004, with an estimate for FY 2005.

Settlements

While the Agency has experienced outstanding success in achieving the voluntary resolution of representation and unfair labor practice cases, we cannot control entirely the likelihood of these agreements. Disputes cannot always be resolved informally or in an expeditious manner. Parties may conclude that litigation serves their legitimate or tactical interests. The Agency's procedures provide for administrative hearings, briefs and appeals. When the process becomes formal and litigation takes over, Agency costs increase. Therefore, maintaining high settlement rates in a range over 90 percent promotes performance efficiency and cost sav-

⁶ This figure reflects rescission amount of \$1,440,031 pursuant to Public Law 108-199.

Actual Case Intake and Estimate for FY 2005

	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005 (est)
ULP Cases	29,317	27,021	28,808	30,177	28,794	26,892	29,000
Representation Cases	6,005	5,936	5,413	5,695	4,945	4,897	5,000
TOTAL	35,322	32,957	33,284	35,872	33,739	31,789	34,000

ings, and most importantly, removes burdens on commerce by resolving labor disputes quickly.

Presidential Appointees

Another factor outside the control of the Agency is the timely confirmation of Presidential appointees. The assigned caseload of individual Board members rises and decisions in difficult or controversial cases may be delayed due to vacancies on the five-member Board. As the General Accounting Office pointed out in a 1991 analysis of Board production, Board member vacancies and turnover are the primary reason for delays in issuance of Board decisions. For example, from August 22, 2003 through January 12, 2004, a period that included more than three

months of FY 2004, the Board had four Members, which affected the ability of the Board to achieve caseload reduction goals during the year.

These factors—lack of a full-Board complement, and new recess appointees—have an effect on performance goals. The chart (left) shows the appointment and term expiration dates of the current Board members and General Counsel.

Human Resources

A well-trained professional and support staff is essential to the effective and efficient achievement of the Agency's mission and the meeting of its performance goals. The need to make the most efficient use of existing human resources and to attract qualified staff will become more critical in the next few years as a high percentage of the existing staff will be eligible to retire. The NLRB had 1,946 actual FTE (full time equivalent) in FY 2002, with 1,875 FTE in FY 2003, and 1,875 FTE for FY 2004. For FY 2005, the NLRB's goal is to maintain 1,875 FTE. In FY 2004, 41 percent of the workforce are attorneys, 19 percent field examiners, 16 percent other administrative and professional staff, and 23 percent support and technical staff. The Washington, D.C. headquarters has approximately 600 employees, with the remaining staff located in 32 Regional Offices, 3 Subregional Offices, and 16 Resident Offices located throughout the country. Through its Regional Office field structure, the Agency has provided the public with easy access to and direct contact with case-handlers and decision-makers. By September 30, 2007, 44 percent of GS 13-15

Board Members and General Counsel

	Appointed	Term Expiration
Robert J. Battista Chairman	12/17/02	12/16/07
Wilma B. Liebman Member	12/17/02	8/27/06
Peter C. Schaumber Member	12/17/02	8/27/05
Dennis P. Walsh Member	12/17/02	12/16/04
Ronald Meisburg Member	1/12/04	Recess Appointment
Arthur F. Rosenfeld General Counsel	6/04/01	6/04/05

Female Field Examiner, 1939

Women have been an integral part of the NLRB workforce since the early, formative, years. Here, an NLRB field examiner interviews prospective witnesses in an unfair labor practice case in Cairo, Illinois. Christmas 1939.



supervisors and 78 percent of Senior Executive Service (SES) members in the Agency are eligible to retire.

Recently, the NLRB completed an agency-wide workforce assessment, which resulted in a Workforce Plan for the next five years. The objective of this Plan, in line with the President's Management Agenda, is to use workforce planning and restructuring to make the NLRB more citizen-centered and ensure that the Agency has the diverse workforce with the right people, with the right skills, in the right places to effectively accomplish its mission.

VIII. Reliability and Completeness of Performance Data

The NLRB's performance measurement system to track case processing times has been highly regarded for decades and modeled by other federal agencies. Most data collected indicates how much time is spent in each step of the case processing "pipeline." The Agency does not rely on

any outside sources for the data it uses in its performance measurement system.

This system has been incorporated into an electronic database called the Case Activity Tracking System (CATS). The CATS system is a critical part of the Agency's effort to modernize its case-handling information processing system and case tracking systems. The CATS system provides case activity and status information to all NLRB offices on approximately 34,000 new cases per year, as well as providing support for the functional and work requirements of the NLRB's attorneys, field examiners, managers, and support staff. CATS has become a key tool for managing caseload and staff.

Each NLRB office is responsible for collecting performance measurement data and verifying it. Most of the performance information for the Government Performance and Results Act (GPRA) measures is obtained through CATS data generated to assess the status of the case-handling process initiated in the Regional Offices. Data about each case is collected and reported in all offices daily. Data and reports are available on-line to users at the Regional and National levels. Verification of the accuracy of the data collected occurs regularly in all Regional Offices, as most resource allocation decisions are made on the basis of these data. Several other automated and manual systems exist in headquarters offices that furnish data for several of the performance measures and for purposes of managing caseload and staff. Systemic verification occurs monthly during management reviews and during various phases of the budget and GPRA reporting cycles. Performance data also are reviewed annually by management during the preparation of the Annual Performance Report. Databases are crosschecked and compared to historical trends to assure the validation and reliability of performance data.

Additionally, the Inspector General selectively verifies and validates performance measurement

data each year. When pertinent to the conduct of ongoing audit activities, the Inspector General will also review performance measures to consider their appropriateness.

IX. Program Evaluation

The Agency has had an evaluation program in place for many years to assess the performance of its Regional operations. The Quality Review program of the Division of Operations-Management reviews unfair labor practice and representation case files on an annual basis to ensure that they are processed in accordance with substantive and procedural requirements and that the General Counsel's policies are appropriately implemented. Those reviews have assessed, among other things, the quality and completeness of the investigative file, the implementation of the General Counsel's priorities in the areas of representation cases, Impact Analysis prioritization of cases, and compliance with Agency decisions. The results of the reviews are set forth in a written report and are incorporated into each Regional Director's annual performance appraisal. Additionally, personnel from the Division of Operations-Management conduct site visits during which they evaluate Regional casehandling and administrative procedures. The quality and timeliness of Regional work, and the Region's effectiveness in implementing the General Counsel's priorities are evaluated as part of the annual Regional Director's performance appraisal system.

In addition to the evaluation of Regional Office activities discussed above, the Office of the General Counsel monitors the litigation success rate before the Board and before district courts with regard to injunction litigation. The success rate before the Board has been approximately 80 percent and before the district courts it has been 85–90 percent. The Division of Operations-Management regularly reviews case decisions in order to determine the quality of litigation. Simi-

larly, the Agency keeps abreast of its success rate before circuit courts of appeals and analyzes case decisions in order to ensure quality in its litigation. Other branches and offices, such as the Office of Appeals, Division of Advice, Contempt Litigation and Compliance Branch, and Office of Representation Appeals, provide valuable insight and constructive feedback on the performance and contributions of Field Offices. Although these ongoing evaluation activities took place, no new formal evaluations were completed during FY 2004. Moreover, top Agency management consults regularly with relevant committees of the American Bar Association regarding their members' experiences practicing before the NLRB.

X. Financial Statement Highlights

The NLRB's financial statements summarize the financial activity and financial position of the Agency. The financial statements, footnotes, and the balance of the required supplementary information appear in Part III of this Performance and Accountability Report.

The Accountability of Tax Dollars Act of 2002, which required that Federal agencies prepare audited financial statements, was passed by Congress and signed into law during the first quarter of FY 2003. However, because the law did not go into effect until after the beginning of FY 2003, the Director of the Office of Management and Budget (OMB) granted waivers for FY 2002 to agencies that had not previously been required to submit audited financial statements and allowed agencies to request a waiver for FY 2003. The NLRB requested and received a waiver from OMB for FY 2003. Therefore, the financial statements shown in Part III indicate that FY 2003 financial statements are unaudited.

In FY 2003, the NLRB began the process of replacing the Agency's Federal Financial System (FFS) with Momentum as its accounting system. FFS was no longer a Joint Financial Manage-

ment Improvement Program (JFMIP) certified system and Momentum had received its re-certification in June 2003. The NLRB implemented Momentum in June 2004. The financial statements in this document are based upon the financial transactions from Momentum.

There are five financial statements and associated footnotes, which were audited for FY 2004. They are:

- (1) Consolidated Balance Sheet—The NLRB assets were approximately \$28 million as of September 30, 2004. The Fund Balance with Treasury, which was \$23 million, represents the NLRB's largest asset. The Fund Balance consists of unspent appropriated and unappropriated funds from the past six FYs and includes back pay settlement funds. The NLRB has one unusual account, Backpay Settlements Due to Others. These are backpay funds that are owed to discriminatees by employers due to the filing of unfair labor practice charges with the NLRB. The source of these funds is either the original employer or through a bankruptcy court disposition. During the time it takes the Agency to locate discriminatees, these funds are sometimes invested in U.S. Treasury market-based securities.
- (2) Consolidated Statement of Net Cost—The NLRB's appropriation is used to resolve Representation Cases or Unfair Labor Practice Charges filed by employees, employers, unions, and union members. Of the \$262 million cost of operations in FY 2004, 15 percent was used to resolve Representation Cases and 85 percent was used to resolve Unfair Labor Practice Charges. Of the \$249 million cost of operations in FY 2003, 16 percent was used to resolve Representation Cases and 84 percent was used to resolve Unfair Labor Charges.

- (3) Consolidated Statement of Changes in Net Position—The Consolidated Statement of Changes in Net Position reports the change in net position during the reporting period. Net position is affected by changes in its two components: Cumulative Results of Operations and Unexpended Appropriations. The change in Net Position from FY 2003 to FY 2004 represents the net change in Unexpended Appropriations.

- (4) Combined Statement of Budgetary Resources—The Combined Statement of Budgetary Resources shows budgetary resources available and the status at the end of the period. It represents the relationship between budget authority and budget outlays, and reconciles obligations to total outlays. For FY 2004, the NLRB had available budgetary resources of \$248 million, the majority of which were derived from new budget authority. This represents a 2 percent increase over FY 2003 of available budgetary resources of \$242 million.

For FY 2004, the status of budgetary resources showed obligations of \$243 million, or 98 percent of funds available. This is comparable to FY 2003's obligations, which was \$238 million, or 98 percent of funds available. Total outlays for FY 2004 were \$242 million, which is an \$11 million increase from FY 2003's total outlays of \$231 million.

(5) Consolidated Statement of Financing—The Consolidated Statement of Financing is designed to provide the bridge between accrual-based (financial accounting) information in the Consolidated Statement of Net Cost and obligation-based (budgetary accounting) information in the Combined Statement of Budgetary Resources by reporting the differences and reconciling the two statements. This reconciliation ensures that the proprietary and budgetary accounts in the financial management system are in balance. The Consolidated Statement of Financing takes budgetary obligations of \$243 million and reconciles to the net cost of operations of \$262 million.

The outlays of funds shown on the statements is for the following: Of the budget appropriation received by the NLRB, approximately 90 percent of the payments are to employees for salaries and benefits, and for space rent. Much of the remaining 10 percent is utilized for expenses integral to the Agency's casehandling mission, such as information technology; transcripts in cases requiring a hearing; interpreter services, reflective of a growing community of non-English speaking workers; travel; and witness fees.

XI. Results of FY 2004 FMFIA Review

The Federal Managers' Financial Integrity Act (FMFIA) requires an agency's management controls and financial systems be periodically evaluated and for an agency to report annually on the status of these systems to the President through OMB. However, because of the requirements of the Accountability of Tax Dollars Act of 2002, with which the NLRB must comply, the Agency's FMFIA review was conducted earlier than in years past and the results have been incorporated into this document. The accelerated reporting schedule of the PAR required the

Agency's FMFIA review to be conducted in June and July this year and this schedule will be followed in subsequent years.

Management control systems reviewed under FMFIA are intended to provide reasonable assurance that:

- Obligations and costs are in compliance with applicable law;
- Funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation;
- Programs are efficiently and effectively carried out in accordance with applicable law and management policy; and
- Revenues and expenditures applicable to Agency operations are properly recorded and accounted for to permit preparation of accounts, reliable financial statistical reports, and to maintain accountability of assets.

During FY 2004, there were no material weaknesses or material nonconformances identified. Therefore, the results of the FMFIA assessment process, based primarily on the written assurances of the 16 designated managers who responded to an extensive survey indicated that the management control systems taken as a whole provide reasonable assurance that the management control objectives were achieved.

In addition, the annual statement by the Chief, Finance Branch, on compliance with OMB Circular A-127 indicates that our financial systems, taken as a whole, conforms to the principles and standards developed by the Comptroller General.

Financial Planning Committee

The NLRB has a long-established Financial Planning Committee that meets on an annual basis to review and update the Agency's five-year strategic Financial Management Plan. Each year

the committee assesses the Agency's accomplishment of the plan's goals and, as necessary, revises the plan to identify the goals that will assist the Agency in managing its financial resources both in the short and long term. For FY 2004, the financial management goals for the NLRB included improving financial accountability, improving financial management systems, development of human resources, improving management of receivables, and use of electronic commerce to improve financial management. The Committee was satisfied with the Agency's overall performance in these areas.

Consistent with the NLRB's Financial Management Plan, the NLRB in FY 2004 upgraded its

accounting system. The Agency replaced the Federal Financial System (FFS), which it had been using since 2002, with the Momentum system. Momentum is an upgrade of FFS and last year became available to the NLRB at a reduced cost. It was determined that it would be cost-beneficial to the NLRB to proceed with the upgrade in FY 2004. Momentum offers better web-based functionality and its integrated functionality includes accounting, budget execution, acquisitions, and various reporting mechanisms. Momentum is a Joint Financial Management Improvement Program (JFMIP) certified financial system and complies with the Chief Financial Officer (CFO) Act requirements.

II. Performance Information

Goals, Objectives, Strategies and Performance Measures

Below is a description of the existing goals, objectives and strategies for the NLRB, followed by an examination of each measure, including background information and performance targets, as well as analysis of FY 2004 performance.⁷

GOAL NO. 1: Resolve questions concerning representation promptly.

Objectives

The Act recognizes and expressly protects the right of employees to freely and democratically determine, through a secret ballot election, whether they want to be represented for purposes of collective bargaining by a labor organization. In enforcing the Act, the Agency does not have a stake in the results of that election. It merely seeks to ensure that the process used to resolve such questions allows employees to express their choice in an open, uncoerced atmosphere. The NLRB strives to give sound and well-supported guidance to all parties and to the public at large with respect to representation issues. Predictable, consistent procedures and goals have been established to better serve our customers and avoid unnecessary delays. The Agency will process representation cases promptly in order to avoid unnecessary disruptions to commerce and minimize the potential for unlawful or objectionable conduct.

The objectives are to:

- A. Encourage voluntary election agreements by conducting an effective stipulation program.

- B. Conduct elections promptly.
- C. Issue all representation decisions in a timely manner.
- D. Afford due process under the law to all parties involved in questions concerning union representation.

Strategies

1. Give priority in timing and resource allocation to the processing of cases that implicate the core objectives of the Act and are expected to have the greatest impact on the public.
2. Evaluate the quality of representation casework regularly to provide the best possible service to the public.
3. Give sound and well-supported guidance to the parties, and to the public at large, on all representation issues.
4. Share best practices in representation case processing to assist regions in resolving representation case issues promptly and fairly.
5. Identify and utilize alternative decision-making procedures to expedite Board decisions in representation cases, e.g., superpanels.
6. Ensure that due process is accorded in representation cases by careful review of Requests for Review, Special Appeals and Hearing Officer Reports, and where appropriate, the records in the cases.

⁷ Performance targets for FY 2006 and beyond will be reassessed with the FY 2006 budget submission to Congress.

7. Analyze and prioritize the critical workforce skill needs of the Agency and address these needs through training and effective recruitment in order to achieve Agency goals.
 8. Provide an information technology environment that will provide NLRB employees with technology tools and access to research and professional information comparable to that available to their private sector counterparts.
- C. Conduct effective settlement programs.
 - D. Provide prompt and appropriate remedial relief when violations are found.
 - E. Afford due process under the law to all parties involved in unfair labor practice disputes.

GOAL NO. 2: Investigate, prosecute and remedy cases of unfair labor practices by employers or unions promptly.

Objectives

Certain conduct by employers and labor organizations leading to workplace conflict has been determined by Congress to burden interstate commerce and has been declared an unfair labor practice under Section 8 of the National Labor Relations Act. This goal communicates the Agency's resolve to investigate charges of unfair labor practice conduct fairly and expeditiously. Where violations are found, the Agency will provide such remedial relief as would effectuate the policies of the Act, including, but not limited to, ordering reinstatement of employees; making employees whole, with interest; bargaining in good faith; and ordering a respondent to cease and desist from the unlawful conduct. The Agency will give special priority to resolving disputes with the greatest impact on the public and the core objectives of the Act.

The objectives are to:

- A. Conduct thorough unfair labor practice investigations and issue all unfair labor practice decisions in a timely manner.
- B. Give special priority to disputes with the greatest impact on the public and the core objectives of the Act.

Strategies

1. Take proactive steps to disseminate information and provide easily accessible facts and information to the public about the Board's jurisdiction in unfair labor practice matters and the rights and obligations of employers, employees, unions, and the Board under the Act.
2. Evaluate the quality of unfair labor practice casework regularly to provide the best possible service to the public.
3. Utilize impact analysis to provide an analytical framework for classifying unfair labor practice cases in terms of their impact on the public so as to differentiate among them in deciding both the resources and urgency to be assigned to each case.
4. Share best practices in the processing of unfair labor practice cases to assist regions in resolving unfair labor practice issues promptly and fairly.
5. Emphasize the early identification of remedy and compliance issues and potential compliance problems in merit cases; conduct all phases of litigation, including settlement, so as to maximize the likelihood of obtaining a prompt and effective remedy.
6. Utilize injunctive proceedings to provide interim relief where there is a threat of remedial failure.

7. Emphasize and encourage settlements as a means of promptly resolving unfair labor practice disputes at all stages of the case-handling process.
8. Identify and utilize alternative decision-making procedures to expedite Board decisions in unfair labor practice cases.
9. Analyze and prioritize the critical workforce skill needs of the Agency and address these needs through training and effective recruitment in order to achieve Agency goals.
10. Provide an information technology environment that will provide NLRB employees with technology tools and access to research and professional information comparable to that available to their private sector counterparts.

Performance Measures and FY 2004 Results

GOAL NO. 1: Resolve All Questions Concerning Representation Promptly.

1. Issue certifications in representation cases within 60 median days of filing of petition. (Table 1)

Analysis

This was a new measure for FY 2003. It is an effort to look at the overall representation process in order to incorporate the functions of the entire Agency. An employer, labor organization, or a group of employees may file a petition in a NLRB Regional Office requesting an election to determine whether a majority of employees in an appropriate bargaining unit wish to be represented by a labor organization. When a petition is filed, the Agency works with the parties toward a goal of reaching a voluntary agreement regarding the conduct of an election. If a voluntary agreement is not possible, the parties present their positions and evidence at a formal

hearing. The NLRB Regional Director issues a decision after review of the transcript of the hearing and the parties' legal argument, either dismissing the case, or directing an election. If the parties in the case disagree with the Regional Director's decision, they may appeal that decision to the Board for review. Prompt elections are desirable because an expeditious determination affords employers, employees, and unions a more stable environment and promotes the adjustment of industrial disputes. This measure reflects the number of median days from the filing of a petition to the date of certification. Certification is the issuance of a document by the NLRB certifying the results of the election. This measure includes approximately 300 post-election cases that are appealed to the Board.

The Agency exceeded the standard 60 day median in FY 2004 with a result of 53 median days. (Table 1) The success in exceeding the planned level can be attributed, in part, to the Agency's success in obtaining voluntary election agreements, where the parties mutually agree to an election date. Voluntary election agreements typically provide for the election to be held within six weeks after the filing of the petition. Also, the Agency has focused on resolving post-election matters as expeditiously as possible, thereby reducing further the time necessary to reach a final determination on issues affecting the election and expediting the certification process.

2. Hold 90 percent of all representation elections within 56 days of filing of petition. (Table 2)

Analysis

Prompt elections are desirable because an expeditious determination affords both employers and unions a more stable environment and promotes the adjustment of industrial disputes. This measure looks at the timeliness of Agency performance in holding most representation elections.

Goal 1, Table 1: Issuance of Certification in Representation Cases

Actual (with FY 2004 Plan)

FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
N/A	w/in 54 median days	w/in 53 median days	w/in 52 median days	w/in 60 median days	w/in 53 median days

Projected

FY 2005	FY 2006	FY 2007	FY 2008
w/in 60 median days	w/in 60 median days	w/in 60 median days	w/in 60 median days

The Agency exceeded this goal in FY 2004 due to the efforts of Regional Directors to convince the parties to enter election agreements and to direct elections very soon after the close of representation case hearings in the absence of an agreement. In addition, performance was improved through the ongoing efforts of Regional Offices efficiencies in processing cases through to election or hearing without delay.

3. Hold elections within 42 median days of filing petition. (Table 3)

Analysis

This measure is very similar to the previous one, but utilizes median days as its basis. It has been

the traditional Agency measure for performance in this part of the casehandling process.

The Agency in FY 2004 again exceeded the goal for holding elections within 42 median days (Table 3) after the filing of the petition due to the success of Regional Directors in securing election agreements and directing elections shortly after the close of hearings. The Agency has continued to implement successful management initiatives that have reduced the median by three days over the past five years. As a result, the holding of elections as soon as possible after the filing of the petition provided employees, employers, and unions the prompt resolution of questions concerning representation.

Goal 1, Table 2: Representation Elections Held (Days)

Actual (with FY 2004 Plan)

FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
86% of elections held w/in 56 days	86.7% of elections held w/in 56 days	90.7% of elections held w/in 56 days	92.5% of elections held w/in 56 days	90% of elections held w/in 56 days	93% of elections held w/in 56 days

Projected

FY 2005	FY 2006	FY 2007	FY 2008
90% of elections held w/in 56 days	90% of elections held w/in 56 days	90% of elections held w/in 56 days	90% of elections held w/in 56 days

Goal 1, Table 3: Representation Elections Held (Median Days)

Actual (with FY 2004 Plan)

FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
42 median days	41 median days	41 median days	40 median days	42 median days	39 median days

Projected

FY 2005	FY 2006	FY 2007	FY 2008
42 median days	42 median days	42 median days	42 median days

4. Issue 85 percent of all post-election reports within 100 days from the date of the election, or in the case of objections, from the date they are filed. (Table 4)

Analysis

After the NLRB conducts an election to resolve a representation case, a union may be certified if it receives a majority of the votes cast, or the results may be certified if no union received a majority of the ballots. In elections where a party objects to the outcome of the election or challenges are posed to the eligibility of a determinate number of voters, the Board’s post-election procedures offer the parties an opportunity to present their evidence and arguments. If a party files objections to the election, and there is merit to the objections, a second election is ordered. Post-election determinations by the Regional Director or a hear-

ing officer about election results can be appealed to the Board, thus lengthening the time to determination. This performance measure establishes a goal for the Regions to issue 85 percent of post-election reports within 100 days of the election in cases involving challenged ballots and within 100 days of the filing of objections to the election. (Table 4)

The Agency was successful in exceeding the performance goal in this area in FY 2004. Post-election issues typically involve sophisticated and difficult issues, and are often accompanied by filing of related unfair labor practice cases that must be investigated before the post-election matter can be resolved. Although every effort is directed toward minimizing the effect of such filings, disposition of each case is determined by the particular factual circumstances.

Goal 1, Table 4: Issuance of Post-Election Reports

Actual (with FY 2004 Plan)

FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
N/A	80.7% w/in 100 days	82% w/in 100 days	85.7% w/in 100 days	85% w/in 100 days	92.1% w/in 100 days

Projected

FY 2005	FY 2006	FY 2007	FY 2008
85% w/in 100 days	85% w/in 100 days	85% w/in 100 days	85% w/in 100 days

Goal 1, Table 5: Voluntary Election Agreement Rate**Actual (with FY 2004 Plan)**

FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
89%	87.7%	87.2%	88.5%	86%	89%

Projected

FY 2005	FY 2006	FY 2007	FY 2008
85%	85%	85%	85%

5. Achieve voluntary representation election agreements for 85 percent of the petitions filed. (Table 5)**Analysis**

The NLRB encourages employers and unions to enter voluntary agreements to hold elections in order to avoid the time and cost involved in a formal hearing. It is the NLRB's goal to obtain voluntary election agreements in not less than 85 percent of the petitions filed. (Table 5)

The Agency exceeded its goal for obtaining voluntary election agreements in FY 2004. Success in this area normally ensures the timely resolution of questions concerning representation without litigation, with lower expenditure of resources. The Agency continues to support initiatives such as the Consent Election project to improve performance under this goal.

6. Issue ruling on requests for review of Regional Director decisions within a 14-day median. (Table 6)**Analysis**

Before a representation election is held, parties may file with the Board a request for review of the Regional Director's decision to hold an election. If the Board has not ruled on a request for review by the date of the election, the election is conducted, but the ballots are impounded. It is the Board's policy to rule on all requests for review, to the maximum extent possible, before the election date in order to allow the ballots to be counted in all cases in which the Board denies review.

Review decisions were issued by the Board within the 14-day median, and therefore met the goal established in the plan. (Table 6) This has been dropped as a GPRA measure for FY 2005 and beyond, but will continue to be used as an internal management goal.

Goal 1, Table 6: Review of Regional Director Election Decisions**Actual (with FY 2004 Plan)**

FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
12 day median	13 day median	13 day median	14 day median	14 day median	14 day median

Projected

FY 2005	FY 2006	FY 2007	FY 2008
N/A	N/A	N/A	N/A

Goal 1, Table 7: Issuance of Test-of-Certification Decisions

Actual (with FY 2004 Plan)

FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
97 day median	101 day median	135 day median	114 day median	90 day median	83 day median

Projected

FY 2005	FY 2006	FY 2007	FY 2008
90 day median	90 day median	90 day median	80 day median

7. Issue all test-of-certification decisions in an 80-day median from filing of charge by FY 2008. (Table 7)

Analysis

If after an election is held, and an employer refuses to bargain with the union certified by the election process and the union files an unfair labor practice charge over the refusal to bargain, the Board must render what is called a test-of-certification decision. This procedure is the only statutorily approved method by which an employer can appeal a Board decision in an election case. Because all relevant legal issues should have been litigated during the phase of the case leading to the election itself, this test-of-certification decision can be rendered without a hearing and in a summary proceeding brought by the General Counsel before the Board.

Performance was substantially improved over FY 2003 due to the Board having a full complement for most of FY 2004. Frequent member turnover and vacancies over the last several years have had a substantial impact on the processing of cases requiring Board action. The ability to meet this performance goal in the future will depend to a large degree on the stability of Board membership.

8. Decide 90 percent of representation cases pending at the Board for more than 12 months. (Table 8)

Analysis

Once a representation election has been held and the Regional Director has determined the results of the election, any of the parties involved may appeal the Regional Director's decision to the

Goal 1, Table 8: Issuance of Decisions in Representation Cases Pending at the Board

Actual (with FY 2004 Plan)

FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
100% of cases pending over 20 months	100% of cases pending over 18 months	90% of cases pending over 12 months	67% of cases pending over 12 months	100% of cases pending over 12 months	65% of cases pending over 12 months

Projected

FY 2005	FY 2006	FY 2007	FY 2008
90% of cases pending over 12 months	90% of cases pending over 12 months	90% of cases pending over 12 months	90% of cases pending over 12 months

Goal 1, Table 9: Quality Reviews of Representation Case Files

Actual (with FY 2004 Plan)

FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
100% of regions	100% of regions	100% of regions	100% of regions	100% of regions	100% of regions

Projected

FY 2005	FY 2006	FY 2007	FY 2008
100% of regions	100% of regions	100% of regions	100% of regions

Board. If the decision of the Regional Director is appealed, the Board reviews the election and certification occurs after the Board decision. The Board’s projected goal for FY 2005 is to dispose of 90 percent of all representation cases that have been pending before it for more than 12 months. The projected goal for FY 2005 and beyond slightly modifies the FY 2004 goal of 100 percent to more realistically reflect potential performance.

The Board issued 119 of 183 representation cases that were over 12 months old during FY 2004, resulting in a 65 percent performance rate. (Table 8) The FY 2004 goal of 100 percent was not met due to the significant number of representation cases waiting decisions for lead cases reconsidering precedent and legal differences.

9. Conduct quality reviews in 100 percent of the Regional Offices each year. (Table 9)

Analysis

The NLRB is not only concerned about how quickly cases move through its pipeline but also the quality of the case handling. This issue of quality control is critical to the Agency and its

stakeholders, and its importance is emphasized and reaffirmed by this performance goal. The General Counsel’s Division of Operations-Management randomly selects Regional unfair labor practice and representation case files for quality review. The quality review process referred to in this performance measure is conducted in all 32 of the NLRB’s Regional Offices and involves the review of representation case files that would not otherwise be seen by headquarters managers.

The goal for FY 2004 was achieved. (Table 9) Agency managers recognize that measures describing the timeliness of actions must be considered in conjunction with quality measures to assess the Agency’s effectiveness in achieving its mission. The annual quality review procedure is only part of a quality control system that affords managers an opportunity to address trends and areas of concern relating to case handling and to balance the need for expeditious action with quality decision-making. Representation Case files from all Regional offices were reviewed during the fiscal year.

GOAL NO. 2: Investigate, Prosecute and Remedy Cases of Unfair Labor Practices by Employers or Unions Promptly.

1. Achieve informal resolution of unfair labor practice cases within a median time of 70 days by FY 2008. (Table 1)

Analysis

This is an overarching measure that is designed to cover a larger segment of the casehandling pipeline and all of the NLRB divisions and offices that are involved in the casehandling process. Current performance measures primarily look at the impact that individual Agency branches have on casehandling timeframes. After an individual, employer, or union files an unfair labor practice charge, a Regional Director evaluates it for merit and decides whether or not to issue a complaint. Complaints not settled or withdrawn are litigated before an administrative law judge, whose decision may be appealed to the Board. This measure covers the time from the filing of the charge through informal resolution, which disposes of 90 percent of all cases, but does not include any cases litigated before administrative law judges and appeals to the Board.

This performance goal was exceeded in FY 2004 and the goal has been met faster than anticipated (Table 1). The performance goal may require a

reexamination of the planned performance measure next year.

2. Resolve 90 percent of unfair labor practice cases within established Impact Analysis time frames. (Table 2)

Analysis

NLRB has created a system, Impact Analysis, to prioritize the processing of unfair labor practice cases based on their public impact and how closely they relate to the Agency’s core mission. This Impact Analysis system has been used to classify cases into three categories, with Category III assigned the highest priority. Usually, Category III cases involve significant issues, large-scale labor unrest, or high economic impact. NLRB has set goals for the number of days within which a disposition should be reached for each category, beginning on the day a ULP charge is filed. If a disposition on the case has not been reached within that timeframe it is considered “overage”—for Category III the standard is 49 days (7 weeks), for Category II, 63 days (9 weeks) and for Category I, 84 days (12 weeks). NLRB’s goal is to reduce the percentage of overage cases in each category to the lowest possible percentage, and reach and maintain a 90 percent level for all categories. Cases which cannot be processed within the time lines established under the Impact Analysis program for reasons that are outside

Goal 2, Table 1: Resolution of Unfair Labor Practice Cases

Actual (with FY 2004 Plan)

FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
N/A	w/in 94 median days	w/in 82 median days	w/in 68 median days	w/in 80 median days	w/in 61 median days

Projected

FY 2005	FY 2006	FY 2007	FY 2008
w/in 80 median days	w/in 70 median days	w/in 70 median days	w/in 70 median days

Goal 2, Table 2: Resolve Cases Within Impact Analysis Time Frames**Actual (with FY 2004 Plan)**

	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
Cat. III	88.5%	91.2%	92.9%	95.7%	90%	96.8%
Cat. II	85.1%	88.7%	93.3%	97.3%	88%	98.4%
Cat. I	87.8%	92.7%	94.0%	99.3%	87%	99.5%

Projected

	FY 2005	FY 2006	FY 2007	FY 2008
Cat. III	90%	90%	90%	90%
Cat. II	89%	90%	90%	90%
Cat. I	88%	90%	90%	90%

the control of the Regional Office are not considered to be overage.

The goal for each category of unfair labor practice cases in FY 2004 was exceeded. (Table 2) If staffing resources can be maintained, continued success in achieving these performance levels may require a reexamination of the planned performance goals.

3. Settle 95 percent of meritorious unfair labor practice charges consistent with established standards. (Table 3)

Analysis

Once a Regional Director has determined an unfair labor practice charge has merit, it is scheduled for a hearing date before an admin-

istrative law judge. However, the pursuit of a settlement by the NLRB begins immediately. Litigation is a costly process for the parties and the Agency has consistently focused on settlements to ensure efficient use of its own resources, obtain timely and effective remedies, and reduce the cost of litigation for the parties. Successive General Counsels have pursued an aggressive settlement program to ensure that the Agency is utilizing its resources in the most efficient manner possible. For every 1 percent increase in the settlement rate, the NLRB estimates an approximate \$2 million in cost avoidance to the Agency per year. The NLRB attributes this high settlement rate to several activities at the Regional level—a careful charge acceptance procedure, thorough

Goal 2, Table 3: Settlement Rate for Unfair Labor Practice Cases**Actual (with FY 2004 Plan)**

FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
95%	96.5%	93.7%	92.8%	95%	96.1%

Projected

FY 2005	FY 2006	FY 2007	FY 2008
95%	95%	95%	95%

investigations, careful merit determinations, and an active settlement program. The settlement rate is also attributable to a high success rate for the General Counsel during litigation.

For FY 2004, the Agency exceeded the 95 percent planned level with an actual rate of 96.1 percent, a notable improvement over FY 2003 performance. (Table 3) The NLRB's emphasis on obtaining voluntary settlements is key to the achievement of the Agency's mission. Such settlements ensure the parties' commitment to the resolution of their issues and conserve Agency resources. Settlements typically provide remedies to aggrieved parties earlier and more effectively than formal litigation.

4. Open hearings within 120 median days from the issuance of complaint. (Table 4)

Analysis

When an unfair labor practice complaint is found to have merit by a Regional Director, a date for a hearing before an administrative law judge (ALJ) is scheduled. As part of its mission to provide decisions promptly, the Agency aims to shorten the median number of days between the setting of a hearing date when a formal complaint is filed and the opening of a

hearing. Delays mean witnesses may be harder to locate, and their memories and thus their testimony may become less reliable. In addition, delays may result in parties becoming more intransigent in their positions and less likely to settle.

The wording of this measure reflects an adjustment that has been made to this measure beginning in FY 2002. Through FY 2001, this measure focused on the time elapsed from the issuance of a complaint to the close of a hearing. The end point of the measure has been changed to the opening of the hearing in order to be consistent with existing NLRB data collection and performance management systems. It also focuses the goal on performance within the Agency's control. Once a hearing is opened, many intervening factors can affect the closing date of a hearing.

The performance for FY 2004 well exceeded the planned level and the long-term goal of opening hearings within 120 median days from the issuance of a complaint (Table 4). If staffing remains constant, the Agency's continued success in achieving these goals suggests a reexamination of the goals to determine whether they should be lowered.

Goal 2, Table 4: Opening of Hearings from Issuance of Complaint

Actual (with FY 2004 Plan)

FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
132 median days to close of hearing	140 median days to close of hearing	121 median days to open of hearing	104 median days to open of hearing	120 median days to open of hearing	101 median days to open of hearing

Projected

FY 2005	FY 2006	FY 2007	FY 2008
120 median days to open of hearing	120 median days to open of hearing	120 median days to open of hearing	120 median days to open of hearing

5. Issue 60 percent of sustained appeals decisions within 90 days of receipt of the appeal of the Regional Directors' dismissal of the charge. (Table 5)

Analysis

If a Regional Director dismisses an unfair labor practice charge, it can be appealed to the Office of Appeals, which could reverse the Regional Director's decision with the instruction to issue a complaint, absent settlement. Of the 3,000 cases per year that are appealed, about 2 to 5 percent are reversed by the Office of Appeals. The performance result for FY 2004, 36 percent, (Table 5) was significantly short of expectations. This resulted from two events: The first is that the goal was significantly reduced from the previous years' goal of 110 days in order to stretch the expectations of the Office. By coincidence, during the first year of the new, stretched goal, the Office was met with an influx of controversial and legally complex cases that required extended consideration due to their importance to the public. If these cases, which amounted to about one-quarter of the FY 2004 sustained cases, are excluded from the calculation, 63 percent were closed within 110 days (exceeding last year's goal) and 46 percent were closed within 90 days (the new stretched goal). In FY 2005, a 90-day median for sustaining appeals will replace the current performance goal.

6. Achieve a 25 median day case processing time, excluding deferral time, for closing those Advice cases where the General Counsel recommended Section 10(j) injunction proceedings. Additionally, close 90 percent of these cases within 30 actual days, excluding deferral time, by FY 2008. (Table 6)

Analysis

In certain unfair labor practice cases, the NLRB Regional Director may request authorization to file a petition for injunctive relief in U. S. District Court to prevent what the Director views as conduct that will do irreparable harm while the merits of the case are being litigated. Regional Directors submit a request for authorization to the Division of Advice. If the General Counsel agrees injunctive relief is warranted, he asks the Board for authorization to institute injunction proceedings. If the Board approves, the Region files for an injunction in the relevant U.S. District Court. This measure excludes deferral time (time waiting) for Regional Offices to provide additional information about the cases to the Division of Advice that may be needed to present the case to the Board.

This measure was slightly revised for FY 2003. The original measure had a goal of closing 95 percent of Advice cases within 25 days of receipt from Regional Offices. The revised measure focuses on closing all cases, but uses median days as the time factor. Therefore, the

Goal 2, Table 5: Issuance of Sustained Appeals Decisions

Actual (with FY 2004 Plan)

FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
54.5% w/in 120 days	68% w/in 120 days	72% w/in 120 days	63% w/in 110 days	60% w/in 90 days	36% w/in 90 days

Projected

FY 2005	FY 2006	FY 2007	FY 2008
Within 90 median days	Within 90 median days	Within 90 median days	Within 90 median days

Goal 2, Table 6: Closing of Advice Cases in Section 10(j) Injunction Proceedings

Actual (with FY 2004 Plan)

FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
61.1% closed w/in 25 days	67.4% closed w/in 25 days	46.2% closed w/in 25 days	Closed all cases w/in 30.5 median days	Close all cases w/in 25 median days	Closed all cases w/in 25 median days
88.3% closed w/in 30 days	88.4% closed w/in 30 days	53.9% closed w/in 30 days	50% closed w/in 30 days	88% closed w/in 30 days	77.3% closed w/in 30 days

Projected

FY 2005	FY 2006	FY 2007	FY 2008
Close all cases w/in 25 median days	Close all cases w/in 25 median days	Close all cases w/in 25 median days	Close all cases w/in 25 median days
89% closed w/in 30 days	90% closed w/in 30 days	90% closed w/in 30 days	90% closed w/in 30 days

data between FY 2002 and FY 2003 in Table 6 above changes significantly. The second part of the measure (30 days) focuses on actual days as the time factor.

The cases included in this measure for FY 2004 closed in a median of 25 days, meeting the goal of 25 median days (Table 6). Additionally, 77.3 percent of the 10(j) cases were closed within 30 actual days. Although this performance was short of the goal of closing 88 percent within 30 actual days, performance on both aspects of the measure showed a substantial improvement over FY 2003.

7. Issue administrative law judge decisions within 62 median days from the receipt of briefs or submissions after the close of a hearing. (Table 7)

Analysis

After a Regional Director determines action should be taken on a case, the Regional Director issues a formal complaint and schedules a hearing before an ALJ. After presiding over a full-scale hearing, which lasts an average of about three days, the judge usually provides for the subsequent filing of briefs. In a small number of cases, oral argument may be substituted for the filing of briefs. The judge then issues a decision.

Goal 2, Table 7: Issuance of ALJ Decisions After Close of Hearings

Actual (with FY 2004 Plan)

FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
56 median days	42 median days	27 median days	33 median days	62 median days	27 median days

Projected

FY 2005	FY 2006	FY 2007	FY 2008
62 median days	62 median days	62 median days	62 median days

This measure begins from the date of receipt of the briefs or submissions after the close of the hearing to the issuance of the ALJ decision. Although the goal of issuing decisions within 62 median days has been substantially exceeded in recent years, the goal represents a historical standard that is a good indicator of performance without compromising the quality of judges' decisions.

In FY 2004, the Division of Judges issued its decisions in a median time of 27 days from the receipt of briefs or submissions. (Table 7) This was slightly better than last year, and well within the GPRRA goal.

8. File applications for enforcement within 30 median days from referral by the Regional Director. (Table 8)

Analysis

After an ALJ's decision is appealed to the Board, the Board considers the case and issues a final order resolving a ULP case. Board orders are not self-enforcing, and therefore, absent voluntary compliance, the Board must secure enforcement of its order by an appropriate U.S. Court of Appeals. The Appellate Court Branch handles all litigation in the courts of appeals seeking review or enforcement of final Board orders. Cases come to the Branch in two ways. A party aggrieved by the Board's final order may file a petition for review in an appropriate

court of appeals. A majority of cases handled in the Branch are initiated by parties seeking review of Board orders. No goal has been set for review cases because the courts control the filing deadlines for the Agency's submission in those cases. The second avenue is referral of the case from the Regional Office, if the Region cannot secure compliance in the period immediately following the Board's order. Upon referral to the Branch, a determination is made whether to continue to pursue compliance or to initiate court proceedings by filing an application for enforcement.

Applications for enforcement in FY 2004 were filed within 28 median days, exceeding the performance goal of 35 median days. (Table 8) A total of 48 applications for enforcement were filed.

9. Reduce the number of unfair labor practice cases pending decision at the Board to 300 by FY 2007. (Table 9)

Analysis

The vast majority of the Board's ULP cases arise after an ALJ rules on a complaint. Any party in the case can appeal the ALJ's decision to the Board. The Board's goal is to reduce the number of ULP cases pending at the Board level from 650 cases in FY 1999. This performance measure will be deleted after FY 2004. It was felt that that this measure was duplicative of the percentage measure which follows.

Goal 2, Table 8: Filing of Applications for Enforcement					
Actual (with FY 2004 Plan)					
FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
N/A	65.5% w/in 50 days	88 median days	21 median days	35 median days	28 median days
Projected					
FY 2005	FY 2006	FY 2007	FY 2008		
30 median days	30 median days	30 median days	30 median days		

Goal 2, Table 9: Reduce Cases Pending Decision at the Board

Actual (with FY 2004 Plan)

FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
518 cases	408 cases	471 cases	459 cases	375 cases	441 cases

Projected

FY 2005	FY 2006	FY 2007	FY 2008
N/A	N/A	N/A	N/A

The number of unfair labor practice cases pending before the Board in FY 2004 decreased from 459 cases at the beginning of FY 2004 to 441 at the end of the fiscal year. (Table 9) Although the goal of reducing the pending cases to 375 was not met, the Chairman and his four colleagues took steps to focus on overage cases, facilitated processing of new cases, and increased emphasis on case streamlining procedures. The number of pending cases would have been reduced significantly had several difficult key cases been decided that affect the outcome of related cases. In recent years, a number of vacancies on the Board has affected the ability to meet this performance goal. For example, from August 22, 2003 until January 12, 2004, a period that included more than three months of FY 2004, the Board had four members, which affected the Board’s ability to reduce the number of pending cases.

10. Decide 90 percent of unfair labor practice cases pending at the Board for over 16 months by FY 2008. (Table 10)

Analysis

The amount of time unfair labor practice (ULP) cases wait for a Board decision impacts the interests of the parties, and the public. The Board’s projected goal for FY 2005 is to dispose of 90 percent of all ULP cases that have been pending before it for more than 17 months. The projected goal for FY 2005 and beyond is a slight modification of the FY 2004 100 percent goal to more realistically reflect potential performance.

The Board issued decisions in 381 contested unfair labor practice cases during FY 2004. The Board disposed of 127 cases of 334 that

Goal 2, Table 10: Decide 90 Percent of Older Cases Pending at the Board

Actual (with FY 2004 Plan)

FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
78% reduction of pending cases over 30 months	100% reduction of pending cases over 24 months	53.8% reduction of pending cases over 20 months	46% reduction of pending cases over 18 months	100% reduction of pending cases over 18 months	38% reduction of pending cases over 18 months

Projected

FY 2005	FY 2006	FY 2007	FY 2008
90% reduction of pending cases over 17 months	90% reduction of pending cases over 17 months	90% reduction of pending cases over 17 months	90% reduction of pending cases over 16 months

were pending for more than 18 months, resulting in a 38 percent reduction of the target group of cases. (Table 10) The FY 2004 100 percent reduction target was not met due to the same reasons noted for the previous measure. This includes several pending complex cases that affect a number of related cases.

11. Resolve compliance cases within established Impact Analysis guidelines. (Table 11)

Analysis

After an administrative law judge’s decision is appealed to the Board, the Board considers the case and issues a final order resolving an unfair labor practice (ULP) case. If the respondent refuses to voluntarily comply with the Board’s order, the Board must seek enforcement of its order in an appropriate U.S. Court of Appeals. Ordinarily the Regional Office will attempt to secure compliance in the 30-day period following the Board’s order. If compliance cannot be

obtained, the Region will refer the case to the Appellate Court Branch of the Division of Enforcement Litigation.

Regional Directors are responsible for effectuating compliance with administrative law judge’s decisions, Board orders, and court judgments resulting from cases filed in their Regions. The Agency has set goals to ensure the orders that result from its litigation or Board directives are implemented promptly, since the passage of time can reduce the effectiveness of its remedies. The time is measured beginning on the date a decision, order, or judgment is received. Cases which cannot be processed within the timelines established under the Impact Analysis program for reasons that are outside the control of the Regional Office, such as bankruptcy proceedings or other related litigation, are not considered to be overage. The following are the current

Goal 2, Table 11: Resolve Compliance Cases Within Impact Analysis Guidelines

Actual (with FY 2004 Plan)

	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
Cat. III	89.6% @ 91 days	95.3% @ 91 days	95.2% @ 91 days	96.1% @ 91 days	95% @ 91 days	98.1% @ 91 days
Cat. II	87.1% @ 119 days	96.9% @ 119 days	95.1% @ 119 days	95.4% @ 119 days	95% @ 119 days	95.7% @ 119 days
Cat. I	92.0% @ 147 days	98.5% @ 147 days	98.0% @ 147 days	97.3% @ 147 days	98% @ 147 days	97.8% @ 147 days

Projected

	FY 2005	FY 2006	FY 2007	FY 2008
Cat. III	95% @ 91 days	95% @ 91 days	95% @ 91 days	95% @ 91 days
Cat. II	95% @ 119 days	95% @ 119 days	95% @ 119 days	95% @ 119 days
Cat. I	98% @ 147 days	98% @ 147 days	98% @ 147 days	98% @ 147 days

processing time targets: Category III—91 days, Category II—119 days, Category I—147 days.

For FY 2004, the Agency exceeded the goal for Category III and met the goal for Category II compliance cases. The Agency came close to meeting the goal for Category I. These positive results in Category II and II, the most significant cases, are attributed to ongoing efforts to monitor the status of cases at the highest level and the redirection of resources to Regions experiencing extremely heavy case loads. The training of Regional personnel on compliance best practices was not accomplished because it was necessary to reallocate those funds to direct case handling activities. This resulted in the achievement of the goals for Category II and II cases, but limited progress on Category I cases. (Table 11)

12. Conduct quality reviews in 100 percent of the Regional Offices each year. (Table 12)

Analysis

As with representation cases, the National Labor Relations Board emphasizes quality as well as timeliness in the handling of ULP cases. Accordingly, along with its review of the quality of representation cases, the General Counsel's Division of Operations-Management randomly selects ULP case files at the Regional Offices for quality review. The goal is to conduct quality reviews in all Regional Offices each year.

The goal for FY 2004 was achieved. Quality reviews were conducted in 100 percent of the Regional Offices (Table 12) and quality review reports were provided to the General Counsel summarizing an evaluation of randomly selected ULP case files for all 32 Regions.

Goal 2, Table 12: Quality Reviews of ULP Case Files

Actual (with FY 2004 Plan)

FY 2000	FY 2001	FY 2002	FY 2003	FY 2004 Plan	FY 2004
100% of regions	100% of regions	100% of regions	100% of regions	100% of regions	100% of regions

Projected

FY 2005	FY 2006	FY 2007	FY 2008
100% of regions	100% of regions	100% of regions	100% of regions

III. Financial Section

Letter from the Director of Administration

The Director of Administration for the National Labor Relations Board (NLRB) is responsible for the overall administrative management of the NLRB, including financial management.

As the NLRB's Director of Administration, I am pleased to present the NLRB's Performance and Accountability Report for FY 2004. This is the first time that the NLRB has prepared this report and it incorporates other reports that had been previously prepared separately, such as the annual program performance report required by the Government Performance and Results Act (GPRA) and the annual report required by the Federal Managers' Financial Integrity Act (FMFIA), wherein Federal agencies report on the effectiveness of their internal management controls. In addition, as required by the Accountability of Tax Dollars Act of 2002, the report includes the first audited financial statements prepared by the NLRB, thus presenting a fair and accurate picture of the Agency's financial position.

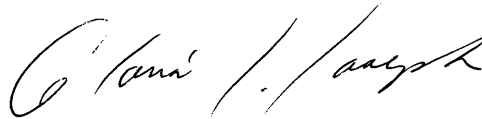
The NLRB is committed to providing high quality financial management and financial reporting and to ensuring that its resources are used efficiently in the accomplishment of the NLRB's mission. During 2004, the NLRB received an unqualified opinion from its auditors on its financial statements. This was particularly important since this was the Agency's first full-scale audit and these statements represent a clean bill of financial health.

Consistent with the NLRB's five-year Financial Management Plan, the Agency in FY 2004 upgraded its accounting system. Since 2002, the NLRB had been using as its accounting system the Department of Interior's National Business Center's Federal Financial System (FFS). However, an upgrade to FFS called Momentum became available at a reduced cost, and the NLRB decided to implement the upgrade to Momentum during FY 2004. Momentum offered better web-based functionality and improved integration with other systems. The upgrade to Momentum allowed the NLRB to meet the needs of management to have immediate use of financial data and substantially advanced the NLRB's efforts to comply with the President's Management Agenda. By having a Joint Financial Management Improvement Program (JFMIP) compliant accounting system, the NLRB was in a better position to meet the requirements of the Accountability of Tax Dollars Act of 2002.

It became clear as the NLRB was going through the audit process that some significant changes in how the NLRB conducts its FMFIA review would be required. Due to the accelerated reporting schedule of the PAR, the Agency conducted its FMFIA review in June and July rather than in November as it had done in years past. As in previous years, a committee of the Agency's top executives conducted a review of the internal controls posture of each Agency component, and determined that there were no reportable material weaknesses. This year, certain systems were scrutinized particularly closely, as were open IG audit recommendations.

The ability of the NLRB to meet its performance goals and to implement other government and Agency-wide management initiatives is dependent on the availability of resources. The Agency's new workforce plan, for instance, recommends a restructuring that includes a new mix of grade levels coupled with succession planning and transition. These efforts, as well as implementation of management and development programs to help meet the needs of tomorrow's workforce, need adequate resources in order to be successful.

The NLRB has protected workplace democracy and ensured employees' rights to bargain collectively for almost 70 years. Proper management of the resources entrusted to the NLRB, as outlined in its five-year Financial Management Plan, is an important part of this history and the NLRB's continued accomplishment of its mission. There are challenges ahead for the Agency in implementing various mandated initiatives, such as e-Government and the strategic management of human capital, but the NLRB is committed to implementing strategies to improve the financial management of its resources and providing timely and accurate financial information.

A handwritten signature in cursive script, appearing to read "Gloria J. Joseph".

Gloria Joseph
Director of Administration

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

November 8, 2004

To: Robert J. Battista
Chairman

From: Jane E. Altenhofen
Inspector General

A handwritten signature in cursive script, reading "Jane E. Altenhofen".

Subject: Audit of the National Labor Relations Board's FY 2004 Financial Statements
(OIG-F-9-05-01)

This memorandum transmits Carmichael, Brasher, Tuvell & Co.'s (CBTC) audit report on the National Labor Relations Board's (NLRB) Fiscal Year 2004 Financial Statements.

The Accountability of Tax Dollars Act of 2002 requires NLRB's Inspector General or an independent external auditor, as determined by the Inspector General, to audit NLRB's financial statements. We contracted CBTC, an independent public accounting firm, to audit the financial statements. The contract required that the audit be performed in accordance with the Government Auditing Standards issued by the Comptroller General of the United States, and Bulletin 01-02, *Audit Requirements for Federal Financial Statements*, issued by the United States Office of Management and Budget.

Results of Independent Audit

CBTC issued an unqualified opinion on the NLRB's Fiscal Year 2004 financial statements. CBTC did not audit or provide any opinion on the Fiscal Year 2003 information included with the consolidated and combined statements. CBTC also did not provide an opinion on internal control. In its audit report, CBTC identified one reportable condition relating to NLRB's information technology controls. A reportable condition is a significant deficiency in the design or operation of internal control that could adversely affect the Agency's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements.

CBTC also reported that they did not identify noncompliance with laws and regulations tested. In addition, CBTC reported that tests of compliance with the Federal Financial Management Improvement Act (FFMIA) disclosed no instances in which the NLRB's financial management systems did not substantially comply with the requirements of the Act.

NLRB management concurs with the findings regarding the reportable condition. Management's response, dated October 29, 2004, follows CBTC's report.

Evaluation of CBTC's Audit Performance

To fulfill our responsibilities under the Accountability of Tax Dollars Act, the Office of Inspector General reviewed CBTC's report and related documentation and inquired of its representatives. Our review, as differentiated from an audit in accordance with the United States generally accepted government auditing standards, was not intended to enable us to express, and we do not express, opinions on the NLRB's financial statements or internal control or whether NLRB's financial management systems substantially complied with FFMIA, or conclusions on compliance with laws and regulations. CBTC is responsible for the attached auditor's report dated November 1, 2004, and the conclusions expressed in the report. However, our review disclosed no instances where CBTC did not comply, in all material respects, with generally accepted government auditing standards.

The Office of Inspector General appreciates the courtesies and cooperation extended to CBTC and our staff during the audit. If you have any questions, please contact me or Emil T. George, Assistant Inspector General for Audits.

Attachment

cc: General Counsel

INDEPENDENT AUDITORS' REPORT

To Jane E. Altenhofen, Inspector General
National Labor Relations Board

The Accountability of Tax Dollars Act of 2002 made the National Labor Relations Board (NLRB) subject to the annual financial statement reporting requirements of the Chief Financial Officers Act of 1990 which requires agencies to report annually to Congress on their financial status and any other information needed to fairly present the agencies' financial position and results of operations.

The objectives of the audit are to express an opinion on the fair presentation of NLRB's principal financial statements, obtain an understanding of the Agency's internal control, and test compliance with laws and regulations that could have a direct and material effect on the financial statements.

We have audited the consolidated balance sheet of the NLRB as of September 30, 2004, and the related consolidated statements of net cost, changes in net position, statement of financing, and the combined statement of budgetary resources for the year then ended. These financial statements are the responsibility of NLRB's management. Our responsibility is to express an opinion on these financial statements based on our audit. The financial statements of NLRB as of and for the year ending September 30, 2003 were prepared by NLRB's management. Management has restated the September 30, 2003 financial statements to be in conformity with accounting principles generally accepted in the United States of America. We have not audited the September 30, 2003 financial statements and, accordingly, do not express an opinion or any other form of assurance on them.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 01-02, *Audit Requirements for Federal Financial Statements*. These standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatements. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

OPINION ON FINANCIAL STATEMENTS

In our opinion, the financial statements referred to above present fairly, in all material respects, the assets, liabilities, and net position of the NLRB, as of September 30, 2004, and the net cost, changes in net position, budgetary resources, reconciliation of net cost to budgetary resources and financing for the year then ended in conformity with accounting principles generally accepted in the United States of America.

REPORT ON INTERNAL CONTROL

In planning and performing our audit, we considered the NLRB's internal control over financial reporting by obtaining an understanding of the Agency's internal controls, determined whether internal controls had been placed in operation, assessed control risk, and performed tests of controls in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements. We limited our internal control testing to those controls necessary to achieve the objectives described in OMB Bulletin No. 01-02. We did not test all internal controls relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982 (FMFIA), such as those controls relevant to ensuring efficient operations. The objective of our audit was not to provide assurance on internal control. Consequently, we do not provide an opinion on internal control.

Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be reportable conditions. Under standards issued by the American Institute of Certified Public Accountants, reportable conditions are matters coming to our attention relating to significant deficiencies in the design or operation of the internal control that, in our judgment, could adversely affect the agency's ability to record, process, summarize, and report financial data consistent with the assertions by management in the financial statements. Material weaknesses are reportable conditions in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that material misstatements in relation to the audited financial statements may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. Because of inherent limitations in internal controls, misstatements, losses, or noncompliance may nevertheless occur and not be detected. We noted no matters involving the internal control and its operation that we considered to be material weaknesses as defined above. However, we noted a matter involving the internal control and its operation that we consider to be a reportable condition included as Exhibit A.

We considered the NLRB's internal control over Required Supplementary Information (RSI) by obtaining an understanding of the agency's internal control, determining whether these internal controls had been placed in operation, assessing control risk, and performing tests of controls as required by OMB Bulletin No. 01-02. The objective of our audit was not to provide assurance on these internal controls. Accordingly, we do not provide an opinion on such controls. With respect to internal control related to performance measures reported in the Management Discussion and Analysis (MD&A) section of the Performance and Accountability Report, we obtained an understanding of the design of significant internal controls relating to the existence and completeness assertions, and determined whether these internal controls had been placed in operation as required by OMB Bulletin No. 01-02. Our procedures were not designed to provide assurance on internal control over reported performance measures, and, accordingly, we do not provide an opinion on such controls.

We noted certain other matters involving internal control and its operations that came to our attention, which we will report to management of NLRB in a separate letter.

REPORT ON COMPLIANCE WITH LAWS AND REGULATIONS

The management of the NLRB is responsible for complying with laws and regulations applicable to the agency. As part of obtaining reasonable assurance about whether the agency's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts, and certain other laws and regulations specified in OMB Bulletin No. 01-02, including the requirements referred to in the Federal Financial Management Improvement Act of 1996 (FFMIA). We limited our tests of compliance to these provisions and we did not test compliance with all laws and regulations applicable to the NLRB.

The results of our tests of compliance with the laws and regulations discussed in the preceding paragraph disclosed no instances of non-compliance with laws and regulations that are required to be reported under *Government Auditing Standards* or OMB Bulletin No.01-02.

Providing an opinion on compliance with laws and regulations was not an objective of our audit and, accordingly, we do not express such an opinion.

REPORT ON COMPLIANCE WITH THE FEDERAL FINANCIAL MANAGEMENT IMPROVEMENT ACT OF 1996 (FFMIA)

We have examined the NLRB's compliance with the requirements of FFMIA as of September 30, 2004. These requirements include implementing and maintaining financial management systems that substantially comply with the Federal financial management systems requirements, applicable Federal accounting standards, and the United States Government Standard General Ledger at the transaction level. Management is responsible for the NLRB's compliance with these requirements. Our responsibility is to report whether the Agency's financial management systems substantially comply with these requirements.

Our examination was conducted in accordance with the attestation standards established by the American Institute of Certified Public Accountants; *Government Auditing Standards*, issued by the Comptroller General of the United States; and the *Audit Requirements for Federal Financial Statements* contained in OMB Bulletin No. 01-02. These standards include examining on a test basis, evidence about the NLRB's compliance with those requirements, including FFMIA Section 803(a) requirements, and performing such other procedures as we considered necessary in the circumstances. Our examination does not provide a legal determination on the NLRB's compliance with specified requirements. The results of our tests of compliance with FFMIA disclosed no instances in which NLRB's financial management systems did not substantially comply with Federal financial management system requirements, applicable Federal accounting standards, or the United States Government Standard General Ledger at the transaction level.

OTHER ACCOMPANYING INFORMATION

Our audit was conducted for the purpose of forming an opinion on the financial statements of NLRB taken as a whole. The accompanying financial information is not a required part of the financial statements.

The other accompanying information included in the MD&A and RSI sections of the Performance and Accountability Report are required by the Federal Accounting Standards Advisory Board and OMB Bulletin No. 01-09, *Form and Content of Agency Financial Statements*. We have applied limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the information. We did not audit the other accompanying information and, accordingly, do not express an opinion or any other form of assurance on it.

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

CARMICHAEL, BRASHER, TUVELL & COMPANY, P.C.

Carmichael, Brasher, Tuvell + Co., P.C.

Atlanta, Georgia
November 1, 2004

Exhibit A

CURRENT YEAR REPORTABLE CONDITION

Information Technology

Federal information systems are required to conform to standards set forth by both the Office of Management and Budget and the National Institutes of Science and Technology (NIST). NIST Special Publication 800 establishes many of the minimum information systems requirements for Federal agencies. Certain conditions related to NLRB's information technology function were identified that could adversely impact the agency's ability to accumulate, process and report information critical to NLRB's mission and programs. The following general conditions were noted:

1. Lack of a completed intrusion-detection and response program
2. Disaster recovery plan has not yet been implemented
3. Library for internally-developed software related to Backpay is not maintained
4. A systematic policy has not been implemented relating to the storage, retrievability, retention, and disposal of Privacy Act information

The specifics of the findings have been presented to management. NLRB is actively working to remediate these conditions.

Recommendation

We recommend that the Acting Chief Information Officer implement the following controls to assure compliance with NIST standards:

1. An intrusion-detection and response program
2. A disaster recovery plan
3. A library for internally-developed software related to Backpay
4. A systematic policy for the storage, retrievability, retention, and disposal of Privacy Act information

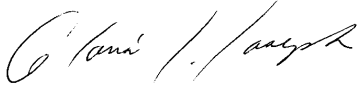
Management's Response

We are in agreement with these recommendations. The NLRB's Office of Information Technology has submitted to the Office of Management and Budget (OMB) reports which reflect the Agency's plan to complete in Fiscal Year 2005 the installation of an intrusion-detection and response program; implementation of a disaster recovery plan for the Agency's local area networks and wide area network (LAN/WAN); development of a documentation library for the NLRB's internally-developed software that handles the processing of backpay funds; and development of the appropriate policies to store, retrieve, retain, and dispose of Privacy Act information. The Agency's progress in implementing these items will be tracked and reported on a quarterly basis to OMB as required by the Federal Information Security Management Act. The Inspector General will be provided reports as well.

UNITED STATES GOVERNMENT
National Labor Relations Board
Division of Administration
Memorandum



TO: Jane E. Altenhofen
Inspector General

FROM: Gloria Joseph 
Director of Administration

DATE: October 29, 2004

SUBJECT: Response to Draft Audit Report – NLRB Fiscal Year 2004 Financial Statements

We have reviewed the Audit Report submitted by Carmichael Brasher Tuvell & Company and are pleased that this audit of the NLRB's financial statements has resulted in an unqualified opinion. We are in agreement with the findings of the report.

In Appendix A, the auditors identified four reportable conditions related to the Agency's information technology function that could adversely impact the Agency's ability to accumulate, process, and report information critical to the NLRB's mission and programs. The four conditions were:

1. Lack of a completed intrusion-detection and response program.
2. A disaster recovery plan that had not been implemented.
3. A library for internally-developed software related to Backpay is not maintained.
4. A systemic policy has not been implemented relating to the storage, retrievability, retention, and disposal of Privacy Act information.

With respect to the four above-identified conditions, the auditors recommended that the Acting Chief Information Officer implement the following controls that would comply with standards issued by the National Institutes of Science and Technology (NIST):

1. An intrusion-detection system.
2. A disaster recovery plan.
3. A library for internally-developed software related to Backpay.
4. A systemic policy for the storage, retrievability, retention, and disposal of Privacy Act information.

We are in agreement with these recommendations. The NLRB's Office of Information Technology has submitted to the Office of Management and Budget (OMB) reports which reflect the Agency's plan to complete in Fiscal Year 2005 the installation of an intrusion-detection and response program; implementation of a disaster recovery plan for the Agency's local area networks and wide area network (LAN/WAN); development of a

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Jane E. Altenhofen

documentation library for the NLRB's internally-developed software that handles the processing of backpay funds; and development of the appropriate policies to store, retrieve, retain, and dispose of Privacy Act information. The Agency's progress in implementing these items will be tracked and reported on a quarterly basis to OMB as required by the Federal Information Security Management Act. The Inspector General will be provided reports as well.

cc: The Board
General Counsel

Agency Financial Statements and Related Auditor's Report

National Labor Relations Board

Consolidated Balance Sheet

As of September 30, 2004 and September 30, 2003 (In Dollars)

	2004	2003 (Unaudited)
Assets		
Intragovernmental		
Fund Balance with Treasury (Note 2)	\$ 22,835,385	\$ 23,635,413
Investments, Net (Note 4)	4,987,094	15,390,038
Advances To Others (Note 5)	2,952	—
Total Intragovernmental	27,825,431	39,025,451
Accounts Receivable, Net (Note 3)	46,508	79,118
Advances To Others (Note 5)	4,773	—
General Property, Plant and Equipment, Net (Note 6,11)	77,519	95,135
Total Assets	\$ 27,954,231	\$ 39,199,704
Liabilities		
Intragovernmental		
Accounts Payable	\$ —	\$ 15,615
Employee Contributions and Payroll Taxes	1,007,545	618,631
FECA Liability—Unfunded (Note 8,11)	1,016,372	1,107,926
Custodial Liability	489	394
Total Intragovernmental	2,024,406	1,742,566
Accounts Payable	6,237,086	4,147,328
Estimated Future FECA Liability (Note 8,11)	1,889,307	2,116,632
Accrued Payroll and Benefits—Funded	5,418,496	4,189,688
Accrued Annual Leave (Note 8,11)	12,425,309	11,972,840
Back Pay Settlement Due to Others (Note 7,8)	7,027,695	17,767,427
Custodial Liability	163,164	294,101
Total Liabilities	35,185,463	42,230,582
Net Position		
Unexpended Appropriations	7,855,359	11,764,532
Cumulative Results of Operations (Note 11)	(15,086,591)	(14,795,410)
Total Net Position	\$ (7,231,232)	\$ (3,030,878)
Total Liabilities and Net Position	\$ 27,954,231	\$ 39,199,704

The accompanying notes are an integral part of these statements.

National Labor Relations Board

Consolidated Statement of Net Cost

For the Years Ended September 30, 2004 and September 30, 2003 (In Dollars)

	2004	2003 (Unaudited)
Resolve Representation Cases		
Intragovernmental Costs	\$ 13,303,374	\$ 10,954,554
Costs with the Public	<u>26,559,064</u>	<u>27,622,268</u>
Total Net Cost—Resolve Representation Cases	<u>\$ 39,862,438</u>	<u>\$ 38,576,822</u>
Resolve Unfair Labor Practices		
Intragovernmental Costs	\$ 73,842,907	\$ 55,530,501
Costs with the Public	<u>148,037,264</u>	<u>154,738,923</u>
Total Net Cost—Resolve Unfair Labor Practices	<u>\$ 221,880,171</u>	<u>\$ 210,269,424</u>
Other		
Intragovernmental Costs	\$ 123,860	\$ 238,483
Less: Intragovernmental Earned Revenue	<u>123,860</u>	<u>238,483</u>
Net Intragovernmental Cost	<u>—</u>	<u>—</u>
Total Net Cost—Other	<u>—</u>	<u>—</u>
Net Cost of Operations	<u>\$ 261,742,609</u>	<u>\$ 248,846,246</u>

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

National Labor Relations Board

Consolidated Statement of Changes in Net Position

For the Years Ended September 30, 2004 and September 30, 2003 *(In Dollars)*

	2004	2004	2003	2003
	Cumulative Results of Operations	Unexpended Appropriations	(Unaudited) Cumulative Results of Operations	(Unaudited) Unexpended Appropriations
Beginning Balances	\$ (14,795,410)	\$ 11,764,532	\$ (14,602,100)	\$ 10,473,389
Budgetary Financing Sources:				
Appropriations—Received	—	244,073,000	—	238,982,000
Appropriations—Used	245,787,989	(245,787,989)	235,556,112	(235,556,112)
Other Adjustments	—	(2,194,184)	—	(2,134,745)
Other Financing Sources:				
Imputed Financing Costs	15,663,439	—	13,162,476	—
Transfers Out without Reimbursement	—	—	(65,652)	—
Total Financing Sources	261,451,428	(3,909,173)	248,652,936	1,291,143
Net Cost of Operations	261,742,609	—	248,846,246	—
Ending Balances	\$ (15,086,591)	\$ 7,855,359	\$ (14,795,410)	\$ 11,764,532

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

National Labor Relations Board

Combined Statement of Budgetary Resources

For the Years Ended September 30, 2004 and September 30, 2003 (In Dollars)

	2004	2003 (Unaudited)
Budgetary Resources:		
Budget Authority:		
Appropriations Received	\$ 244,073,000	\$ 238,982,000
Unobligated Balance:		
Beginning of Fiscal Year	3,861,883	3,468,496
Spending Authority from Offsetting Collections:		
Earned		
Collected	123,860	263,142
Recoveries of Prior Year Obligations	1,953,564	935,927
Permanently Not Available	(2,194,184)	(2,134,745)
Total Budgetary Resources	<u>\$ 247,818,123</u>	<u>\$ 241,514,820</u>
Status of Budgetary Resources:		
Obligations Incurred:		
Direct	\$ 242,853,105	\$ 237,414,454
Reimbursable	123,860	238,483
Total Obligations Incurred	242,976,965	237,652,937
Unobligated Balance:		
Apportioned	392,805	435,844
Exempt From Apportionment	9,503	8,626
Unobligated Balance not Available	4,438,850	3,417,413
Total Status of Budgetary Resources	<u>\$ 247,818,123</u>	<u>\$ 241,514,820</u>
Relationship of Obligations to Outlays:		
Obligated Balance, Net, Beginning of Fiscal Year	\$ 17,094,345	\$ 11,363,867
Obligated Balance, Net, End of Fiscal Year:		
Undelivered Orders	3,130,337	8,141,132
Accounts Payable	12,663,126	8,953,213
Outlays:		
Disbursements	242,324,282	230,986,533
Collections	(123,860)	(263,142)
Net Outlays	<u>\$ 242,200,422</u>	<u>\$ 230,723,391</u>

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

National Labor Relations Board

Consolidated Statement of Financing

For the Years Ended September 30, 2004 and September 30, 2003 (In Dollars)

	2004	2003 (Unaudited)
Resources Used to Finance Activities:		
Budgetary Resources Obligated:		
Obligations Incurred	\$ 242,976,965	\$ 237,652,937
Less: Spending Authority from Offsetting Collections/Adjustments	2,077,424	1,199,069
Net Obligations	<u>\$ 240,899,541</u>	<u>\$ 236,453,868</u>
Other Resources:		
Transfers Out without Reimbursement (+/-)	—	(65,652)
Imputed Financing From Costs Absorbed by Others	15,663,439	13,162,476
Net Other Resources Used to Finance Activities	15,663,439	13,096,824
Total Resources Used to Finance Activities	<u>\$ 256,562,980</u>	<u>\$ 249,550,692</u>
Resources Used to Finance Items Not Part of the Net Cost of Operations		
Change in Budgetary Resources Obligated for Goods, Services, and Benefits Ordered but Not Yet Provided	\$ 5,003,070	\$ (1,138,016)
Resources That Finance the Acquisition of Assets	(58,369)	105,722
Total Resources Used to Finance Items Not Part of the Net Cost of Operations	<u>4,944,701</u>	<u>(1,032,294)</u>
Total Resources Used to Finance the Net Cost of Operations	<u>\$ 261,507,681</u>	<u>\$ 248,518,398</u>
Components of Net Cost of Operations That Will Not Require or Generate Resources in the Current Period		
Components Requiring or Generating Resources in Future Periods:		
Increase in Annual Leave Liability	\$ 452,465	\$ (97,690)
Increase in Exchange Revenue Receivable from the Public	25,355	(16,498)
Other (+/-)	<u>(318,878)</u>	<u>210,406</u>
Total Components of Net Cost of Operations That Will Require or Generate Resources in Future Periods	<u>158,942</u>	<u>96,218</u>
Components Not Requiring or Generating Resources:		
Depreciation and Amortization	75,986	231,630
Total Components of Net Cost of Operations That Will Not Require or Generate Resources	<u>75,986</u>	<u>231,630</u>
Total Components of Net Cost of Operations That Will Not Require or Generate Resources in the Current Period	234,928	327,848
Net Cost of Operations	<u>\$ 261,742,609</u>	<u>\$ 248,846,246</u>

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

Notes to Principal Statements

Note 1. Summary of Significant Accounting Policies

A. Reporting Entity

The National Labor Relations Board (NLRB) is an independent Federal agency established in 1935 to administer the National Labor Relations Act (NLRA). The NLRA is the principal labor relations law of the United States, and its provisions generally apply to private sector enterprises engaged in, or to activities affecting, interstate commerce. NLRB's 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, and 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, unions, or both. The NLRB's authority is divided both by law and delegation. The five-member Board (Board) primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel investigates and prosecutes 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.

B. Basis of Accounting and Presentation

These financial statements have been prepared to report the financial position, net cost, changes in net position, budgetary resources and reconciliation of net cost to budgetary obligations of the NLRB as required by the Accountability of Tax Dollars Act of 2002. These financial statements have been prepared from the books and records of NLRB in accordance with accounting principles generally accepted in the United States of America (GAAP), and the form and content requirements of the Office of Management and Budget (OMB) Bulletin No. 01-09. GAAP for Federal entities are the standards prescribed by the Federal Accounting Standards Advisory Board (FASAB), which is the official standard-setting body for the Federal government. These financial statements present proprietary and budgetary information.

OMB financial statement reporting guidelines for FY 2004 require the presentation of comparative financial statements for all of the principal financial statements. NLRB is presenting comparative FY 2004 financial statements for the Consolidated Balance Sheet, Consolidated Statement of Net Cost, Consolidated Statement of Changes in Net Position, the Combined Statement of Budgetary Resources, and Consolidated Statement of Financing.

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

The accounting structure of Federal agencies is designed to reflect both accrual and budgetary accounting transactions. Under the accrual method of accounting, revenues are recognized when earned, and expenditures are recognized when incurred, without regard to receipt or payment of cash.

The budgetary accounting principles, on the other hand, are designed to recognize the obligation of funds according to legal requirements, which in many cases is prior to the occurrence of an accrual-based transaction. The recognition of budgetary accounting transactions is essential for compliance with legal constraints and controls over the use of Federal funds.

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

Representation Cases are initiated by the filing of a petition—by an employee, a group of employees, an individual or labor organization acting on their behalf, or in some cases by an employer. The petitioner requests an election to determine whether a union represents, or in some cases continues to represent, a majority of the employees in an appropriate bargaining unit and therefore should be certified as the employees' bargaining representative. The role of the agency is to investigate the petition and, if necessary, conduct a hearing to determine whether the employees constitute an appropriate bargaining unit under the Act. The NLRB must also determine which employees are properly included in the bargaining unit, conduct the election if an election is determined to be warranted, hear and decide any post-election objections to the conduct of the election and, if the election is determined to have been fairly conducted, to certify its results.

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

C. Budgets and Budgetary Accounting

Budgetary accounting measures appropriation and consumption of budget/spending authority or other budgetary resources and facilitates compliance with legal constraints and controls over the use of Federal funds. Under budgetary reporting principles, budgetary resources are consumed at the time of purchase. Assets and liabilities, which do not consume current budgetary resources, are not reported, and only those liabilities for which valid obligations have been established are considered to consume budgetary resources.

D. Financing Sources

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

E. Fund with the U.S. Treasury

The NLRB's cash receipts and disbursements are processed by the U.S. Treasury (Treasury). The fund balances with the Treasury are primarily appropriated funds that are available to pay current liabilities and to finance authorized purchases. Funds with Treasury represent NLRB's right to draw

on the Treasury for allowable expenditures. In addition, funds held with Treasury also include escrow funds that are not appropriated but are backpay funds that are the standard Board remedy whenever a violation of the Act has resulted in a loss of employment or earnings.

See Note 2 for additional information on Fund Balance with Treasury.

F. Accounts Receivable, Net of Allowance for Doubtful Accounts

Accounts Receivable primarily consist of health benefits due the NLRB from employees. Accounts receivable are stated net of allowance for doubtful accounts. The allowance is estimated based on an aging of account balances, past collection experience, and an analysis of outstanding accounts at year end.

See Note 3 for additional information on Accounts Receivable.

G. Investments, Net

NLRB invests funds in Federal government securities for backpay that are held in the escrow account at Treasury. These funds held in Treasury are not appropriated funds. Backpay is the standard Board remedy whenever a violation of the Act has resulted in a loss of employment or earnings.

The Federal government securities include marketable Treasury market-based securities issued by the Federal Investment Branch of the Bureau of the Public Debt. Market-based securities are Treasury securities that are not traded on any securities exchange, but mirror the prices of marketable securities with similar terms.

It is expected that Investments will be held until maturity; therefore they are valued at cost and adjusted for amortization of discounts, if applicable. The discounts are recognized as adjustments to interest income, utilizing the straight-line method of amortization for short-term securities (i.e., bills).

The market value is estimated as the sales price of the security multiplied by the bid price as of September 30, 2004.

There is currently a draft Memorandum of Understanding (MOU) between the NLRB and the Treasury establishing the policies and procedures that the NLRB and the Treasury agree to follow for investing moneys in, and redeeming investments held by, the deposit fund account in Treasury. This MOU has been reviewed by both the NLRB and the Treasury and will become effective when signed.

See Note 4 for additional information on Investments, Net.

H. Advances

Advances consist of amounts advanced by NLRB for the transit subsidy program and for commercial payment system for postage.

See Note 5 for additional information on the Advances.

I. Non-Entity Assets

Assets held by NLRB that are not available to NLRB for obligation are considered non-entity assets. NLRB holds non-entity assets for Backpay.

See Note 7 for additional information on Non-Entity Assets

J. General Property, Plant and Equipment

General property, plant and equipment consist primarily of copy machines, telephone systems, and computer hardware and software. The agency has no real property.

General property, plant and equipment with a cost of \$15,000 or more per unit is capitalized at cost and depreciated using the straight-line method over the useful life. Other property items are expensed when purchased. Normal repairs and maintenance are charged to expense as incurred. The useful life for this category is five to twelve years. There are no restrictions on the use or convertibility of general property, plant and equipment.

Internal Use Software. Internal use software includes purchased commercial off-the-shelf software (COTS), contractor-developed software, and software that was internally developed by agency employees. Internal use software is capitalized at cost if the acquisition cost is \$100,000 or more. For COTS software, the capitalized costs include the amount paid to the vendor for the software; for contractor-developed software it includes the amount paid to a contractor to design, program, install, and implement the software. Capitalized costs for internally developed software include the full cost (direct and indirect) incurred during the software development stage. The estimated useful life is two to five years for calculating amortization of software using the straight-line method.

See Note 6 for additional information on General Property, Plant and Equipment, Net.

K. Liabilities Not Covered by Budgetary Resources

Liabilities represent the amount of monies or other resources that are likely to be paid by NLRB as the result of a transaction or event that has already occurred. No liability can be paid by NLRB absent an appropriation. Liabilities for which an appropriation has not been enacted and for which there is no certainty that an appropriation will be enacted are classified as Liabilities Not Covered by Budgetary Resources.

Intragovernmental

The U.S. Department of Labor (DOL) paid Federal Employees Compensation Act (FECA) benefits on behalf of NLRB which had not been billed or paid by NLRB as of September 30, 2004 and 2003, respectively.

Federal Employees Workers' Compensation Program.

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

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

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

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

See Note 8 for additional information on the FECA liability.

Other

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

L. Contingencies

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

M. Unexpended Appropriations

Unexpended appropriations represent the amount of NLRB's unexpended appropriated spending authority as of the fiscal year-end that is unliquidated or is unobligated and has not lapsed, been rescinded, or withdrawn.

N. Annual, Sick, and Other Leave

Annual and Sick Leave Program.

Annual leave is accrued as it is earned by employees and is included in personnel compensation and benefit costs. An unfunded liability is recognized for earned but unused annual leave.

O. Life Insurance and Retirement Plans

Federal Employees Group Life Insurance (FEGLI) Program.

Most NLRB employees are entitled to participate in the FEGLI Program. Participating employees can obtain "basic life" term life insurance, with the employee paying two-thirds of the cost and the NLRB paying one-third. Additional coverage is optional, to be paid fully by the employee. The basic life coverage may be continued into retirement if certain requirements are met. The Office of Personnel Management (OPM) administers this program and is responsible for the reporting of liabilities. For

each fiscal year, OPM calculates the U.S. Government's service cost for the post-retirement portion of the basic life coverage. Because the NLRB's contributions to the basic life coverage are fully allocated by OPM to the pre-retirement portion of coverage, the NLRB has recognized the entire service cost of the post-retirement portion of basic life coverage as an imputed cost and imputed financing source.

Retirement Programs. NLRB employees participate in one of two retirement programs, either the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS), which became effective on January 1, 1987. Most NLRB employees hired after December 31, 1983, are automatically covered by FERS and Social Security. Employees hired prior to January 1, 1984, could elect to either join FERS and Social Security or remain in CSRS. Employees covered by CSRS are not subject to Social Security taxes, nor are they entitled to accrue Social Security benefits for wages subject to CSRS.

For FERS employees, NLRB contributes an amount equal to one percent of the employee's basic pay to the tax deferred Thrift Savings Plan and matches employee contributions up to an additional four percent of pay. FERS employees can contribute 14 percent of their gross earnings to the plan. CSRS employees are limited to a contribution of 9 percent of their gross earnings and receive no matching contribution from NLRB.

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

The NLRB does not report on its financial statements FERS and CSRS assets, accumulated plan benefits, or unfunded liabilities, if any, applicable to its employees. Reporting such amounts is the responsibility of OPM. The portion of the current and estimated future outlays for CSRS not paid by NLRB is, in accordance with Statement of Federal Financial Accounting Standards No. 5, Accounting for Liabilities of the Federal Government, included in NLRB's financial statements as an imputed financing source.

Liabilities for future pension payments and other future payments for retired employees who participate in the Federal Employees Health Benefits Program (FEHBP) and the Federal Employees Group Life Insurance Program (FEGLI) are reported by OPM rather than NLRB.

P. Operating Leases

The NLRB has no capital lease liability or capital leases. Operating leases consist of real property leases with GSA. The leases are for NLRB's headquarters and regional offices. The GSA charges NLRB lease rates that approximate commercial rates for comparable space.

See Note 9 for additional information on Operating Leases.

Q. Net Position

The NLRB's net position consists of unexpended appropriations and cumulative results of operations. Unexpended appropriations represent appropriated spending authority that is unobligated and has not

been withdrawn by Treasury, and obligations that have not been paid. Cumulative results of operations represent the excess of financing sources over expenses since inception.

R. Use of Management Estimates

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

Note 2. Fund Balance With Treasury

Treasury performs cash management activities for all Federal agencies. The net activity represents Fund Balance with Treasury. The Fund Balance with Treasury represents the right of the NLRB to draw down funds from Treasury for expenses and liabilities. Fund Balance with Treasury by fund type as of September 30, 2004 and September 30, 2003 consists of the following:

Fund Balance with Treasury by Fund Type:

(Dollars in thousands)				(Unaudited)		
	FY 2004 Entity Assets	Non-Entity Assets	Total	FY 2003— Entity Assets	Non-Entity Assets	Total
General Funds	\$20,794	—	\$20,794	\$21,240	—	\$21,240
Escrow Funds	2,041	2,041	—		2,377	2,377
Other Fund Types	—	—	—	0	18	18
Total Fund Balance with Treasury	\$20,794	\$2,041	\$22,835	\$21,240	\$2,395	\$23,635

The status of the fund balance may be classified as unobligated available, unobligated unavailable, and obligated. Unobligated funds, depending on budget authority, are generally available for new obligations in current operations. The unavailable balance includes amounts appropriated in prior fiscal years, which are not available to fund new obligations. The obligated but not yet disbursed balance represents amounts designated for payment of goods and services ordered but not yet received or goods and services received but for which payment has not yet been made.

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

Status of Fund Balance with Treasury as of September 30, 2004 and September 30, 2003 consists of the following:

Fund Balance with Treasury by Availability:

(Dollars in thousands)	FY 2004	(Unaudited) FY 2003
Unobligated Balance:		
Available	\$ 403	\$ 445
Unavailable	6,639	6,096
Obligated balance not yet disbursed	15,793	17,094
Totals	\$ 22,835	\$ 23,635

Note 3. Accounts Receivable, Net

Accounts receivable at each fiscal year end consisted of the following

(Dollars in thousands)	FY 2004	(Unaudited) FY 2003
With the Public:		
Accounts receivable	\$ 48	\$ 89
Allowance for doubtful accounts	(1)	(10)
Accounts receivable—net	\$ 47	\$ 79

Note 4. Investments, Net

Investments in Treasury Securities:

The NLRB invests backpay funds that are authorized by the Regional Compliance Officers and other management officials in market-based Treasury securities issued by the Federal Investment Branch of the Bureau of Public Debt.

In FY 2003, the maturity value of the investment was \$15 million as compared to FY 2004 of \$5 million. In FY 2003, the Alaska Pulp investment amounted to \$14 million, of which about \$10 million was disbursed in FY 2004.

There is currently a draft Memorandum of Understanding (MOU) between the NLRB and the U.S. Treasury (Treasury) establishing the policies and procedures that the NLRB and the Treasury agree to follow for investing moneys in, and redeeming investments held by, the deposit fund

account in Treasury. This MOU has been reviewed by both the NLRB and the Treasury and will become effective when signed.

Investments as of September 30, 2004 and September 30, 2003 consist of the following:

(Dollars in thousands)	Investment Type	Value at Maturity	Investment Net	Market Value Disclosure
FY 2004				
U.S. Treasury Securities	Marketable	\$ 4,995	\$ 4,987	\$ 4,987
FY 2003 (Unaudited)				
U.S. Treasury Securities	Marketable	\$ 15,424	\$ 15,390	\$ 15,390

For FY 2004 and 2003, the discount on the marketable securities amounted to \$8 and \$34, respectively (Dollars in thousands).

Note 5. Advances to Others

Intragovernmental

Intragovernmental Advances of \$2,952, represent advances to the Department of Transportation for the transit subsidy as of September 30, 2004 and \$0 for September 30, 2003.

Commercial

Advances to Others of \$4,773 as of September 30, 2004 and \$0 for September 30, 2003, represent advances to a commercial vendor for postage.

Note 6. General Property, Plant and Equipment, Net

General property, plant and equipment consist of that property which is used in operations and consumed over time. The following tables summarize cost and accumulated depreciation of general property, plant and equipment.

Depreciation expenses for September 30, 2004 were \$75,986 and \$231,630 for September 30, 2003.

(Dollars in thousands)	FY 2004 General Property Plant & Equipment	FY 2003 General Property Plant & Equipment (Unaudited)
Cost	\$ 1,694	\$ 1,703
Accumulated Depreciation	1,616	1,608
Net Book Value	\$ 78	\$ 95

Note 7. Non-entity Assets

Non-entity assets, restricted by nature, consist of miscellaneous receipt accounts. These amounts represent cash collected and accounts receivable (net of allowance for doubtful accounts) that are due to the U.S. Treasury. The amounts are of September 30, 2004 and September 30, 2003, respectively.

Intragovernmental (Dollars in thousands)	FY 2004	(Unaudited) FY 2003
Fund Balance with Treasury	\$ 160	\$ 284
Accounts Receivable—Net	0	11
Total intragovernmental	0	295
Total non-entity assets—Intragovernmental	\$ 160	\$ 295
Backpay Settlement Due to Others	7,028	17,767
Total entity assets	20,766	21,138
Total Assets	\$ 27,954	\$ 39,200

Note 8. Liabilities Not Covered by Budgetary Resources

Liabilities not covered by budgetary resources represent amounts owed in excess of available congressionally appropriated funds or other amounts. Liabilities not covered by budgetary resources as of September 30, 2004 and September 30, 2003, are shown in the following table:

Intragovernmental (Dollars in thousands)	FY 2004	(Unaudited) FY 2003
FECA—Unfunded	\$ 1,016	\$ 1,108
Total intragovernmental	1,016	1,108
Estimated Future—FECA	1,889	2,117
Accrued Annual Leave	12,425	11,973
Back Pay Settlement Due to Others	7,028	17,767
Other	163	294
Total Liabilities not covered by budgetary resources	\$ 22,521	\$ 33,259
Total Liabilities covered by budgetary resources	12,664	8,972
Total Liabilities	\$ 35,185	\$ 42,231

Note 9. Operating Leases

GSA Real Property. Most of the NLRB's facilities are rented from the General Services Administration (GSA), which charges rent that is intended to approximate commercial rental rates. The terms of

the NLRB's rental agreements with GSA will vary according to whether the underlying assets are owned by GSA (or another Federal agency) or rented by GSA from the private sector. For federally owned property, the NLRB generally does not execute an agreement with GSA nor is there a formal lease expiration date. Although the NLRB may normally vacate these properties after giving 120 to 180 days notice of its intent to vacate, in actuality, NLRB normally occupies these properties for an extended period of time with little variation from year to year. For purposes of disclosing future operating lease payments in the table below, federally owned leases are included in years 2005 through 2009.

Rental expenses for operating leases as of September 30, 2004 and 2003 were \$28,287,726 and \$25,382,702, respectively.

Personal Property. The NLRB leases personal property from GSA. The terms for GSA leases frequently exceed one year, although a definite lease period is not always specified. For purposes of disclosing future operating lease payments in the table below, GSA personal property leases are included in years 2005 through 2009. The estimated future operating lease payments for GSA and private personal property leases are based on a 3 percent increase over the 2004 actual personal property rental expense.

Rental expenses for operating leases as of September 30, 2004 and 2003 were \$111,948 and \$134,664, respectively.

The aggregate of the NLRB's estimated real and personal property future lease payments to GSA are presented in the table below. The NLRB does not have any commitment for future lease payments after five years.

(Dollars in thousands) Fiscal Year	GSA Real Property	Personal Property	Total
2005	\$ 30,060	\$ 115	\$ 30,175
2006	31,380	118	31,498
2007	32,478	122	32,600
2008	33,615	126	33,741
2009	34,791	130	34,921
After 5 Years	—	—	—
Total Future Lease Costs	\$ 162,324	\$ 611	\$ 162,935

Note 10. Appropriations Received

The NLRB received \$242,632,969 and \$237,428,617 in warrants for the fiscal years ended September 30, 2004 and 2003, respectively.

Note 11. Cumulative Results of Operations

(Dollars in thousands)	FY 2004	(Unaudited) FY 2003
FECA paid by DOL	\$ (495)	\$ (606)
FECA—Unfunded	(1,016)	(1,108)
Estimated Future—FECA	(1,889)	(2,117)
Accrued Annual Leave	(12,425)	(11,973)
General Property Plant & Equipment, Net	78	95
Other	660	914
Cumulative Results of Operations	\$ (15,087)	\$ (14,795)

Note 12. Statement of Budgetary Resources

The Combined Statement of Budgetary Resources provides information about how budgetary resources were made available as well as their status at the end of the period. It is the only financial statement exclusively derived from the entity's budgetary general ledger in accordance with budgetary accounting rules that are incorporated into generally accepted accounting principles for the Federal government. The total Budgetary Resources of \$247,818,123 as of September 30, 2004 and \$241,514,820 as of September 30, 2003, includes new budget authority, unobligated balances at the beginning of the year, spending authority from offsetting collections, recoveries of prior year obligations and permanently not available. NLRB's unobligated balance available at September 30, 2004, was \$392,805 and at September 30, 2003 was \$435,844.

Apportionment Categories of Obligations Incurred. The NLRB's obligations incurred as of September 30, 2004 and September 30, 2003 by apportionment Category A and B is shown in the following table. Category A apportionments distribute budgetary resources by fiscal quarters and Category B apportionments typically distribute budgetary resources by activities, projects, objects or a combination of these categories.

(Dollars in thousands) FY 2004	Category A	Apportioned Category B	Not Subject to Apportionment	Total
Obligations Incurred:				
Direct	\$ 231,773	\$ 11,090	\$ (10)	\$ 242,853
Reimbursable	124	0		124
Total Obligations Incurred	\$ 231,897	\$ 11,090	\$ (10)	\$ 242,977

(Dollars in thousands) FY 2003 (Unaudited)	Category A	Apportioned Category B	Not Subject to Apportionment	Total
Obligations Incurred:				
Direct	\$ 223,459	\$ 13,534	\$ 422	\$ 237,415
Reimbursable	238	0		238
Total Obligations Incurred	\$ 223,697	\$ 13,534	\$ 422	\$ 237,653

Note 13. Imputed Financing

OPM pays pension and other future retirement benefits on behalf of Federal agencies for Federal employees. OPM provides rates for recording the estimated cost of pension and other future retirement benefits paid by OPM on behalf of Federal agencies. The costs of these benefits are reflected as imputed financing in the consolidated financial statements. Expenses of the NLRB paid or to be paid by other Federal agencies at September 30, 2004 and 2003 consisted of:

(Dollars in thousands)	FY 2004	(Unaudited) FY 2003
Office of Personnel Management:		
Pension expenses	\$ 7,786	\$ 6,867
Federal employees health benefits	7,849	6,268
Federal employees group life insurance program	28	27
Total Imputed Financing	\$ 15,663	\$ 13,162

Note 14. Backpay Checks Held in NLRB Regional Offices

The NLRB may use Backpay as a remedy to settle an unfair labor practice. The Backpay may be disbursed by three different methods: (1) the respondent prepares the Backpay and disburses it directly to the discriminatee(s); (2) the respondent prepares the Backpay and gives the check(s) to a NLRB Regional Office to deliver to the discriminatee(s); and (3) the respondent makes the Backpay payable to the NLRB, who deposits the check and then issues U.S. Treasury checks to the discriminatee(s).

This footnote identifies the number and dollar value of checks that are received in the Regional Offices that are made payable to discriminatees. The NLRB has a fiduciary type of responsibility to safeguard these checks until they are delivered to the discriminatee(s). It should be noted that it might take months to successfully deliver the Backpay, due to the length of time it may take to settle a case and then obtain a current address for the discriminatee.

(Dollars in thousands—unaudited)	FY 2003		FY 2004	
	Number	Amount	Number	Amount
Checks on Hand, Beginning of Period	**	**	102	\$ 323
Checks Received	**	**	7,560	17,374
Checks Distributed	**	**	6,741	16,942
Net Change in Checks on Hand	**	**	819	432
Checks on Hand at End of Period	102	\$ 323	921	\$ 755

** Data not available prior to start of FY 2004

Note 15. Contingent Liability

The NLRB is a party to several threatened or pending litigation claims. NLRB management has estimated that between \$400 to \$600 thousand of claims have a reasonable possibility of loss (the chance of loss is less than probable, but more than remote). The agency has and will continue to vigorously contest these claims. In the opinion of NLRB's management, the ultimate resolution of pending litigation will not have a material effect on the NLRB's financial statements.

Inspector General Summary of Management Challenges

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

October 14, 2004

To: Robert J. Battista
Chairman

Arthur F. Rosenfeld
General Counsel

From: Jane E. Altenhofen
Inspector General

A handwritten signature in cursive script that reads "Jane E. Altenhofen".

Subject: Issue Alert No. OIG-IA-05-01: Top Management and Performance Challenges

With the passage of the Accountability of Tax Dollars Act of 2002, Public Law 107-289, the Agency is required to produce audited financial statements. The Office of Management and Budget (OMB) granted a general waiver to all Federal agencies covered by the Act for Fiscal Year (FY) 2002, and granted the Agency an additional waiver for FY 2003. The Agency's first audited financial statement will be required for FY 2004. Along with the audited financial statement, the Agency is required to prepare a Performance and Accountability Report. As part of that report, the Office of Inspector General is required by section 351 of title 31 to summarize what the Inspector General considers to be the most serious management and performance challenges facing the Agency and briefly assess its progress in addressing those challenges.

In December 2003, we identified 10 management and performance challenges. Since that time, three have been met and we have identified a new challenge. Below are the top management challenges with brief summaries of the Agency's progress in addressing the previously identified challenges as well as a brief summary of the completed challenges:

Current Challenges

1. Reduce the Board's pending caseload to meet performance goals.

In FY 2003 and 2004, the performance goals for the Board are to have no representation cases older than 12 months and no unfair labor practice cases older than 18 months. The Board began the year with 62 representation cases older than 12 months. As of September

30, 2004, 64 representation cases were over 12 months old. The Board began the year with 180 unfair labor practice cases that were more than 18 months old. As of September 30, 2004, 207 unfair labor practice cases were over 18 months old.

We were told that the Board was hampered in regard to meeting its goals by the fact that one of its Members left the Agency in August 2003, and his replacement did not join the Board until January 2004. Thus, the Board had only four members for a period of 4 months. Of course, many of the older cases were extremely difficult and controversial, and the tentative votes were split 2-2. Thus, these cases had to await the fifth member, and it took some time for him to get "up to speed."

At the same time, the Board was successful in getting its other cases out. In FY 2004, it issued 576 cases, more than the 543 cases issued in FY 2003; and the FY 2003 case issuance exceeded the 445 cases issued in FY 2002.

2. Comply with the Privacy Act system notice requirement for the Agency's information systems.

On July 13, 2004, the Rules Revision Committee received and considered a draft Privacy Act Notice for the General Counsel's Case Activity Tracking System (CATS). On September 21, 2004, the Rules Revision Committee was provided a draft Privacy Act Notice that included the Committee's recommended revisions. On September 23, 2004, the General Counsel forwarded the CATS Privacy Act System Notice to the Board with a recommendation that a similar notice be created for the Board's case management system. The Board, through its Executive Secretary, is responsible for sending such notices to the Office of Management and Budget for publication in the Federal Register.

3. Implement an information security intrusion detection program.

During FY 2004, management studied options and selected an approach to protecting NLRB's key information support system against intrusions. The acquisition and implementation of the selected intrusion detection system is planned for FY 2005.

4. Develop, implement, and test an IT contingency plan in accordance with guidance promulgated by the National Institute of Standards and Technology.

The Agency developed a contingency plan in FY 2004, but implementation and testing remain to be achieved. In light of the well-publicized threats of terrorism against the United States, readiness to avoid a potential serious interruption of operations in the event of a disaster is clearly warranted.

5. Implement internal controls needed to obtain an unqualified opinion on financial statements to be audited.

At this point in the process of auditing the Agency's financial statements, no material

weaknesses have been identified. Agency financial managers have been working closely with the OIG staff and the auditing firm to ensure that issues are addressed as they arise and to minimize the possibility of surprises as the Agency approaches the latter stages of the audit process.

6. Meet regulatory and statutory reporting due dates for government-wide reporting requirements.

The E-Government Act of 2002 requires the Agency to submit to OMB by October 3, 2003, a Privacy Impact Assessment (PIA) for each electronic information system and collection that it maintains. On December 15, 2003, the Agency was required to submit its first annual report to OMB on its compliance with the E-Government Act of 2002. According to the Agency, at that time it was informed by OMB that it could wait until the following year to submit the first report. Although the Agency has not complied with the PIA reporting requirement, it identified 17 systems that require a PIA. Of those systems, 14 have PIAs that are in the final review process. The Agency expects to report to OMB on its compliance with the E-Government Act of 2002 in December 2004.

The FY 2003 Annual Performance Report was required to be transmitted no later than February 27, 2004. The Agency's report was not transmitted until April 6, 2004. The Agency explained that the delay in the report was due in part to the process of refining the performance measures. The Agency expects to meet the November 15, 2004, due date for the Performance and Accountability Report.

7. Implement e-government initiatives to effectively communicate with parties and the public.

The Board made significant progress on its e-government initiatives. The Board is now accepting electronic submission of all documents for cases that are pending in the Office of Representation Appeals. The Board has also developed a system for the submission of all documents by parties involved in appeals to the Board and plans to have the system on-line in early FY 2005.

The General Counsel continues to focus attention on the primary forms used by the public to initiate cases. The Division of Operations-Management completed the development of the specifications for the E-Filing of electronic charges and petitions, and the Systems Requirement Specification Document is now in its final review. Once final, work will begin on developing the requirements and design for the new E-filing system. The Agency expects that the system will offer employers, unions, and individuals to file an unfair labor practice charge or representation petition electronically and to track the progress of such filings. Agency managers believe that the capability to initiate the Board's process electronically will substantially reduce manual data entry that is required when a case is docketed in the Agency Case Activity Tracking System. Subject to the availability of budgetary funds, management's best estimate is that a pilot program in the Regions will begin in FY 2006.

The ability to submit electronic Freedom of Information Act (FOIA) requests through the Agency's Web site remains limited to the Headquarters. According to Operations-Management, electronic FOIA requests have not been implemented in the Regions because limited budgetary resources have prevented the Agency from developing a database to support the electronic process. The Agency does expect, however, to have the Electronic Case Information System (ECIS) on-line in early FY 2005. ECIS will allow the public to access information in the Case Activity Tracking System that has been determined to be public information.

The Agency's electronic Extension of Time System for the Office of Appeals that was released for public use in June 2002 continues to be operational. In FY 2006, the Agency expects to integrate this system into the Case Activity Tracking System and the Office of Appeals Case Tracking System in order to eliminate redundant data entry.

8. Strengthen internal controls over backpay funds deposited with and paid through the U.S. Department of Treasury.

This is a recently identified challenge that will be addressed next year.

Challenges Met

When we provided the management and performance challenges in December 2003, we included as a challenge "[d]evelop and implement a methodology to collect information related to backpay funds sufficient to support the financial statement audit." The Agency met this challenge and will be providing the necessary information for the footnote. We also included as a challenge "[f]inish implementing access controls to the Agency's information systems to be consistent with Federal guidance and Agency policy." The Agency completed implementing access controls in May 2004 that require users to change passwords periodically. Also listed as a challenge was "[i]dentify changes in statutes and regulations and correctly address their relevance upon the Agency." In a response from the General Counsel, he stated that based upon prior experience the Agency determined that it is sufficient to rely on the library staff of the Division of Administration to report on regulatory changes that impact the Agency. We believe the Agency's actions address these challenges.

cc: Board

Appendix A

Summary of Performance Measures

2004 Annual Performance Report and 2005 Plan

Goal #1: Resolve all questions concerning representation promptly.	Indicators	Indicators	Indicators	Indicators
Performance Indicators	FY 2002 Actual	FY 2003 Actual	FY 2004 Actual	FY 2005 Projected
Measure 1 Issue certifications in representation cases within 60 median days of filing of petition.	53 median days	52 median days	53 median days	60 median days
Measure 2 Hold 90% of all representation elections within 56 days of filing of petition.	90.7% within 56 days	92.5% within 56 days	93% within 56 days	90% within 56 days
Measure 3 Hold elections within 42 median days of filing petition.	41 median days	40 median days	39 median days	42 median days
Measure 4 Issue 85% of all post-election reports within 100 days from the date of the election, or in the case of objections, from the date they are filed.	82% within 100 days	85.7% within 100 days	92.1% within 100 days	85% within 100 days
Measure 5 Achieve voluntary election agreements for 85% of the petitions filed.	87.2%	88.5%	89%	85%
Measure 6 Issue rulings on requests for review of Regional Director decisions within a 14-day median. This measure eliminated in FY 2005.	13 day median	14 day median	14 day median	N/A
Measure 7 Issue all test of certification* decisions in a 80-day median from filing of charge by FY 2008.	135 day median	114 day median	83 day median	90 day median

2004 Annual Performance Report and 2005 Plan

Goal #1: Resolve all questions concerning representation promptly.	Indicators	Indicators	Indicators	Indicators
Performance Indicators	FY 2002 Actual	FY 2003 Actual	FY 2004 Actual	FY 2005 Projected
<p>Measure 8 Decide 90% of representation cases pending at the Board for more than 12 months.</p> <p>Note: The measure for FY 2005 and beyond was slightly modified to reflect a 90% goal, which had been 100% in previous years.</p>	90% reduction of pending cases over 12 months	67% reduction of pending cases over 12 months	65% reduction of pending cases over 12 months	90% reduction of pending cases over 12 months
<p>Measure 9 Conduct quality reviews in 100% of the Regional Offices each year.</p>	100% of regions	100% of regions	100% of regions	100% of regions

* A case that presents the issue of whether an employer has unlawfully refused to bargain with a newly certified union following a representation case.

2004 Annual Performance Report and 2005 Plan

Goal #2: Investigate, Prosecute and Remedy Cases of Unfair Labor Practices by Employers or Unions Promptly.	Indicators	Indicators	Indicators	Indicators
Performance Indicators	FY 2002 Actual	FY 2003 Actual	FY 2004 Actual	FY 2005 Projected
Measure 1 Achieve informal resolution of unfair labor practice cases within a median time of 70 days by FY 2008.	82 median days	68 median days	61 median days	80 median days
Measure 2 Resolve 90% of unfair labor practice cases within established Impact Analysis timeframes. Cases from these targets: Category III = 49 days Category II = 63 days Category I = 84 days	Cat. III: 92.9% Cat. II: 93.3% Cat. I: 94.0%	Cat. III: 95.7% Cat. II: 97.3% Cat. I: 99.3%	Cat. III: 96.8% Cat. II: 98.4% Cat. I: 99.5%	Cat. III: 90% Cat. II: 89% Cat. I: 88%
Measure 3 Settle 95% of meritorious unfair labor practice charges consistent with established standards.	93.7%	92.8%	96.1%	95%
Measure 4 Open hearings within 120 median days from the issuance of a complaint.	121 day median from complaint to open of hearing	104 day median from complaint to open of hearing	101 day median from complaint to open of hearing	120 day median from complaint to open of hearing

2004 Annual Performance Report and 2005 Plan

Goal #2: Investigate, Prosecute and Remedy Cases of Unfair Labor Practices by Employers or Unions Promptly.	Indicators	Indicators	Indicators	Indicators
Performance Indicators	FY 2002 Actual	FY 2003 Actual	FY 2004 Actual	FY 2005 Projected
<p>Measure 5 Issue 60% of sustained appeals decisions within 90 days of receipt of the appeal of the Regional Directors' dismissal of the charge.</p> <p>Note: This measure was modified for FY 2005 to: "Issue sustained appeals decisions within 90 median days of receipt of the appeal of the Regional Directors' dismissal of the charge."</p>	72% within 120 days	63% within 110 days	36% within 90 days	100% within 90 median days
<p>Measure 6 Achieve a 25 median day case processing time, excluding deferral time, for closing those Advice cases where the General Counsel recommended Section 10(j) injunction proceedings.</p> <p>Note: This was changed to a median (from actual) of 25 days starting in FY 2003. Additionally, close 90% of these cases within 30 actual days, excluding deferral time, by FY 2008.</p>	46.2% closed within 25 actual days 53.9% closed within 30 days	Closed all cases within 30.5 median days 50% closed within 30 days	Closed all cases within 25 median days 77.3% closed within 30 days	Close all cases within 25 median days Close 89% within 30 days
<p>Measure 7 Issue administrative law judge decisions within 62 median days from the receipt of briefs or submissions after the close of a hearing.</p>	27 median days	33 median days	27 median days	62 median days

2004 Annual Performance Report and 2005 Plan

Goal #2: Investigate, Prosecute and Remedy Cases of Unfair Labor Practices by Employers or Unions Promptly.	Indicators	Indicators	Indicators	Indicators
	Performance Indicators	FY 2002 Actual	FY 2003 Actual	FY 2004 Actual
<p>Measure 8 File applications for enforcement within 30 median days from referral by the Regional Director.</p>	88 median days	21 median days	28 median days	30 median days
<p>Measure 9 Reduce the number of Unfair Labor Practice cases pending at the Board to 300 by FY 2007. This measure deleted for FY 2005.</p>	471 cases	459 cases	441 cases	N/A
<p>Measure 10 Issue all Unfair Labor Practice decisions pending at the Board within 12 months by FY 2007. This measure modified for FY 2005 to: Decide 90% of Unfair Labor Practice decisions pending at the Board for over 16 months by FY 2008.</p>	53.8% reduction of pending cases over 20 months	46% reduction of pending cases over 18 months	38% reduction of pending cases over 18 months	90% reduction of pending cases over 17 months
<p>Measure 11 Resolve compliance cases within established Impact Analysis guidelines. Category III: 91 days Category II: 119 days Category I: 147 days</p>	Cat. III: 95.2% Cat. II: 95.1% Cat. I: 98.0%	Cat. III: 96.1% Cat. II: 95.4% Cat. I: 97.3%	Cat. III: 98.1% Cat. II: 95.7% Cat. I: 97.8%	Cat. III: 95% Cat. II: 95% Cat. I: 98%
<p>Measure 12 Conduct quality reviews in 100% of the Regional Offices each year.</p>	100% of regions	100% of regions	100% of regions	100% of regions

Appendix B

Definitions

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

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

Complaint: A document which initiates “formal” proceedings in an unfair labor practice case. It is issued by the Regional Director when he or she concludes on the basis of a completed investigation that any of the allegations contained in the charge have merit and the parties have not achieved settlement. The complaint sets forth all allegations and information necessary to bring a case to hearing before an administrative law judge pursuant to due process of law. The complaint contains a notice of hearing, specifying the time and place of the hearing.

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

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

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

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

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

Petition: A petition is the official NLRB form filed by a labor organization, employee or employer. Petitions are filed primarily for the

purpose of having the Board conduct an election among certain employees of an employer to determine whether they wish to be represented by a particular labor organization for the purposes of collective bargaining with the employer concerning wages, hours, and other terms and conditions of employment.

Quality: Complete assignments and investigations in a full and thorough manner consistent with high standards of excellence and performance expectations, as well as the National Labor Relations Act and controlling decisions of the Board and the courts.

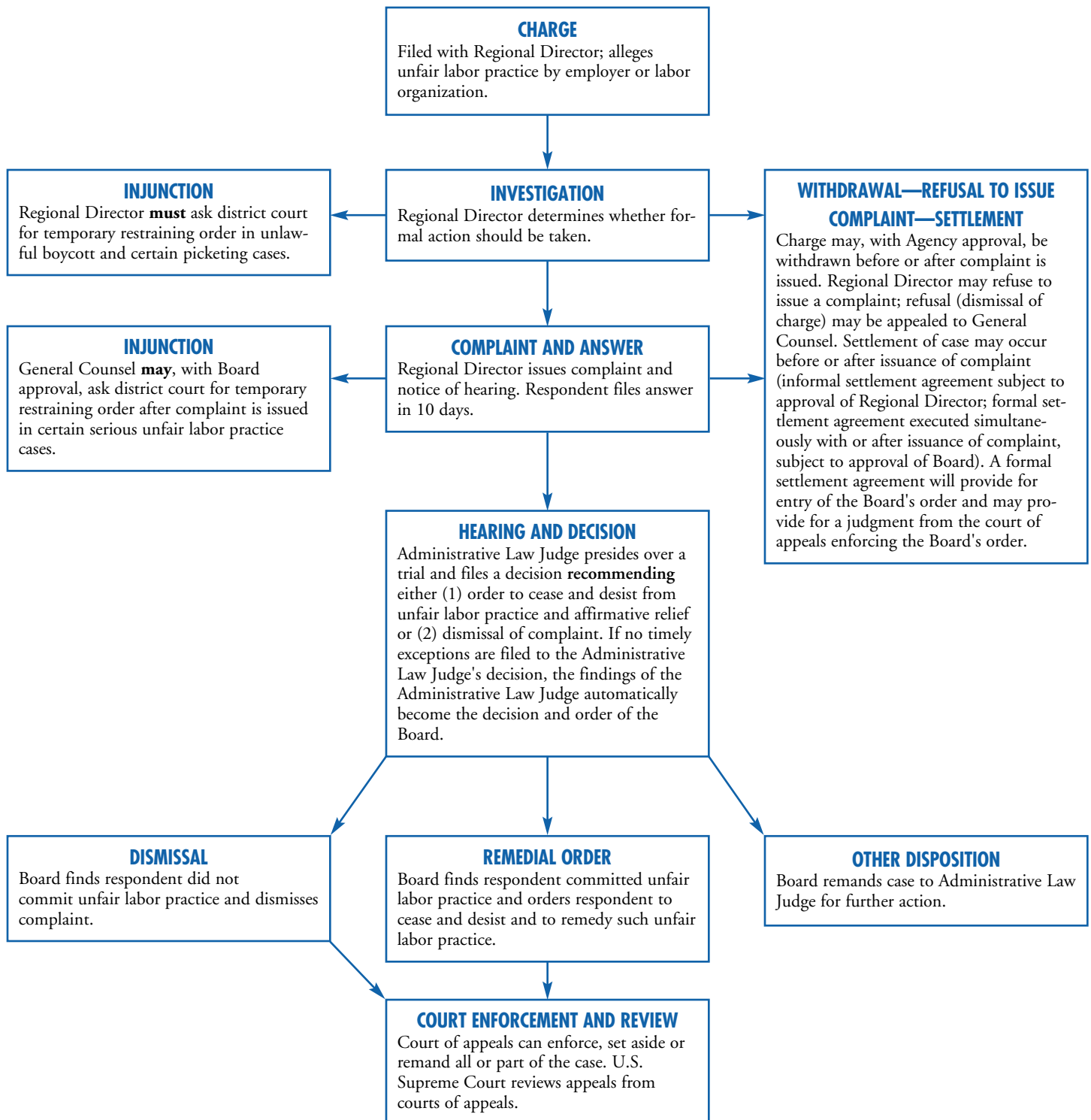
Quality Review Process: Quality of unfair labor practices and representation case processing assessed through review of a randomly selected sample of Regional Office case files; review all administrative law judge and Board decisions; quality review also involved in Divisions of Advice, Office of Representation Appeals, and Enforcement Litigation's processing of cases arising in the Regional Offices.

Test of Certification: A "test of certification" presents the issue of whether an employer has unlawfully refused to bargain with a newly-certified union. Because the Act does not permit direct judicial review of representation case decisions, the only way to challenge a certification is a refusal to bargain followed by a Board finding. However, because all relevant legal issues were or should have been litigated in the R (Representation) case, the related unfair labor practice case is a no-issue proceeding that can be resolved without a hearing or extensive consideration by the Board.

Appendix C

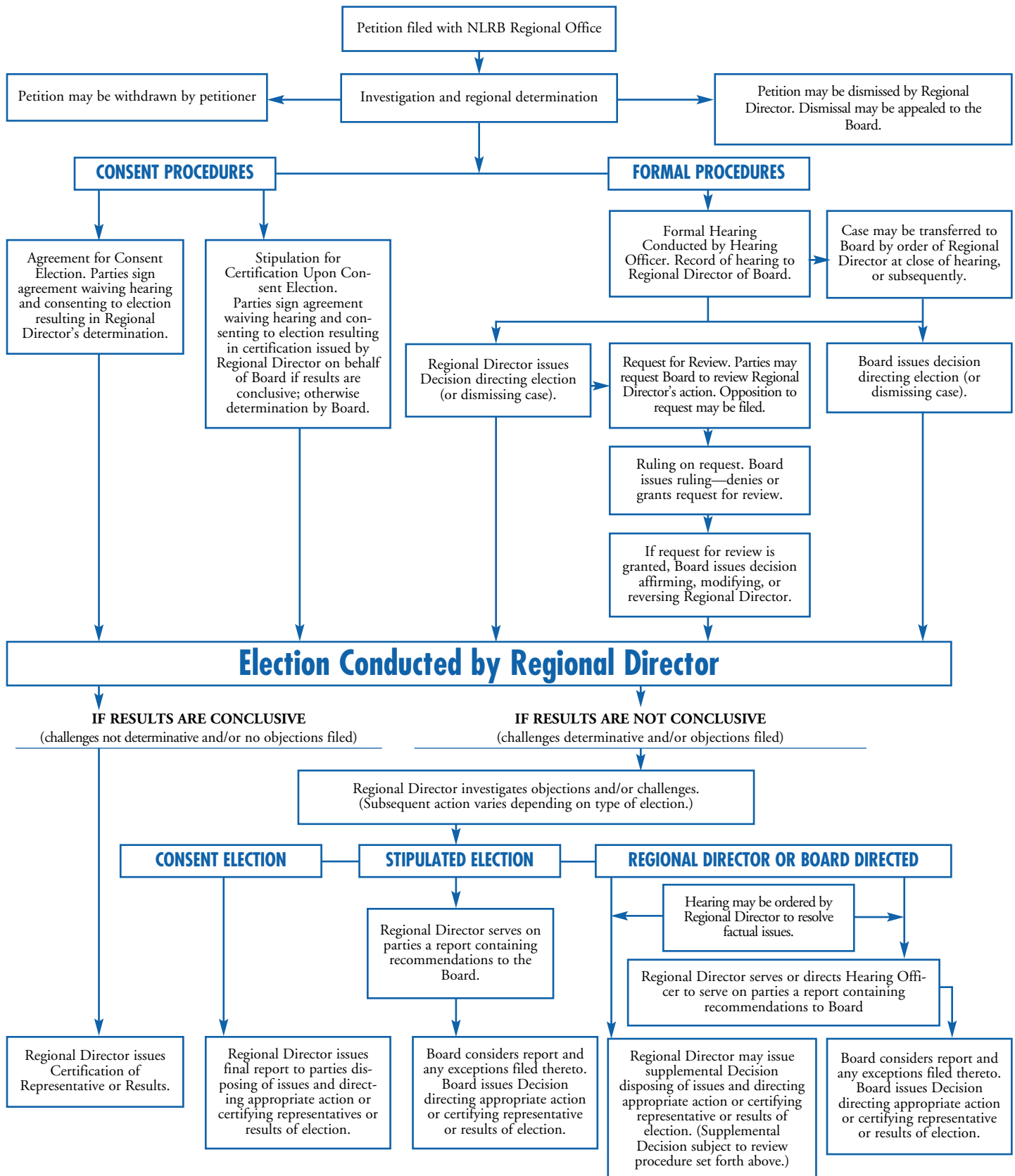
Unfair Labor Practice Procedures

Basic Procedures in Cases Involving Charges of Unfair Labor Practices



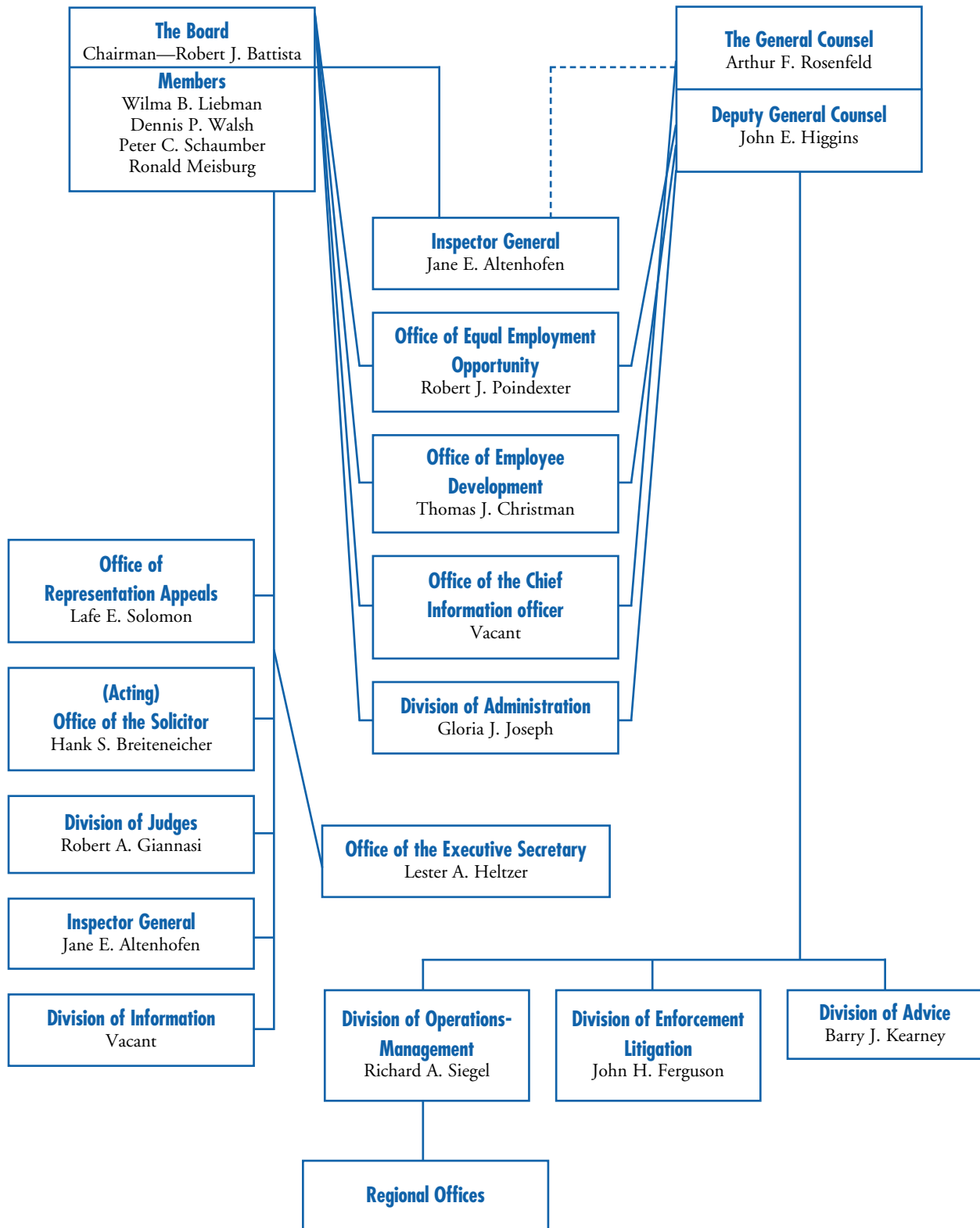
Appendix D

Outline of Representation Procedures Under Section 9(c)



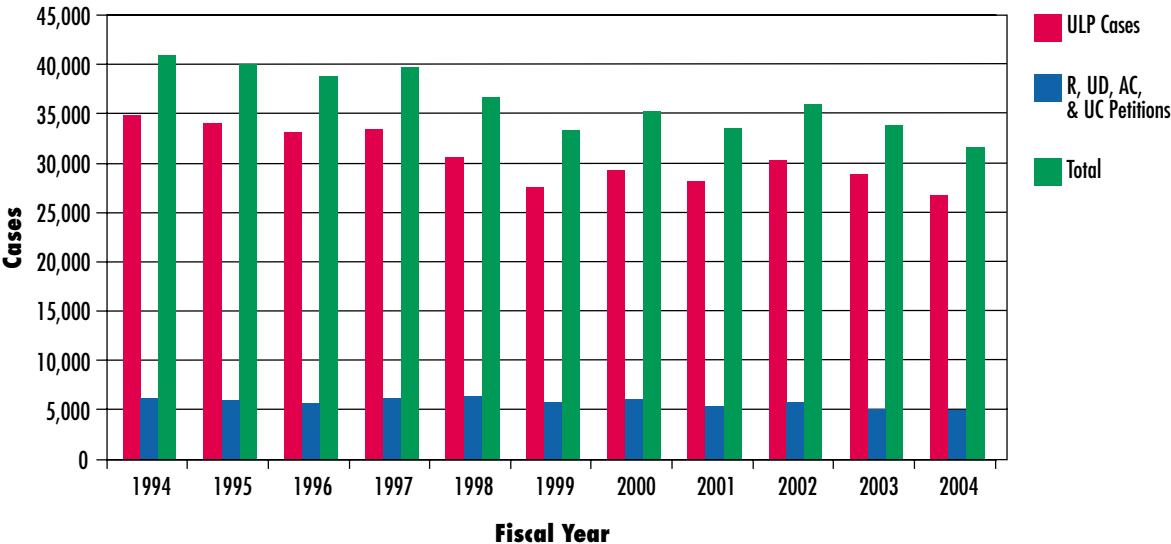
Appendix E

National Labor Relations Board Organization Chart

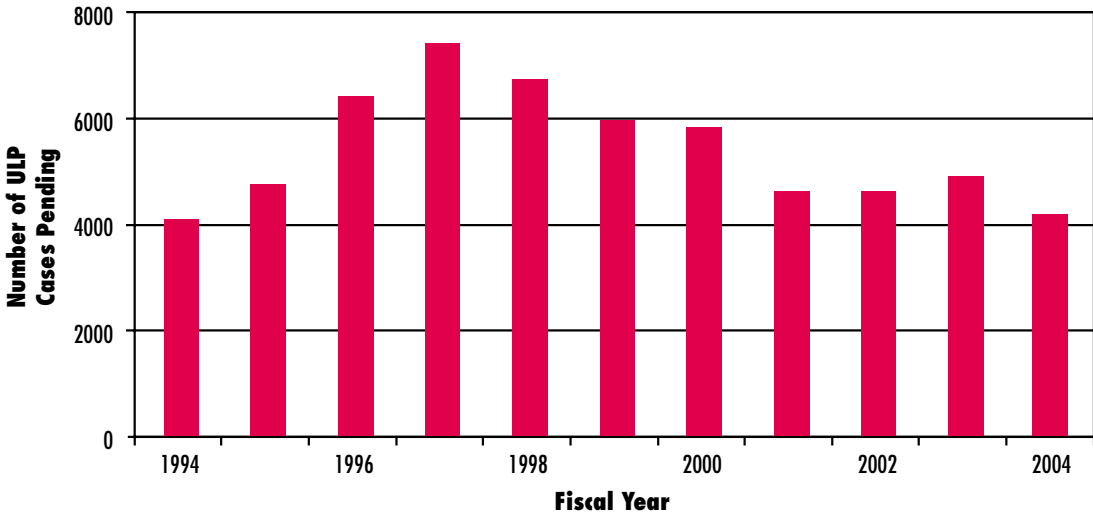


Performance Data Charts

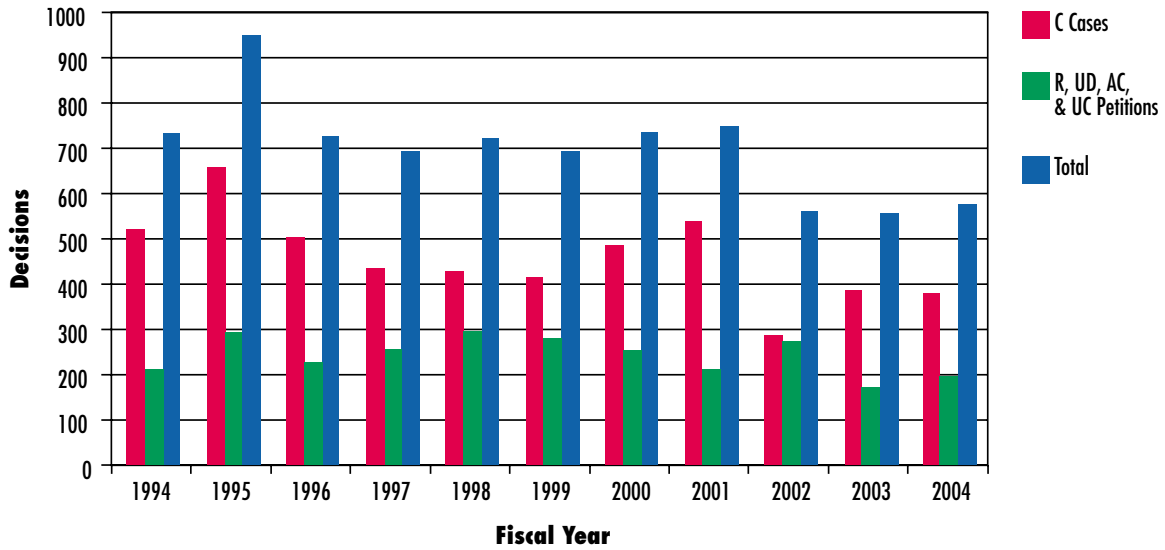
Case Intake by Unfair Labor Practice Charges and Representation Petitions



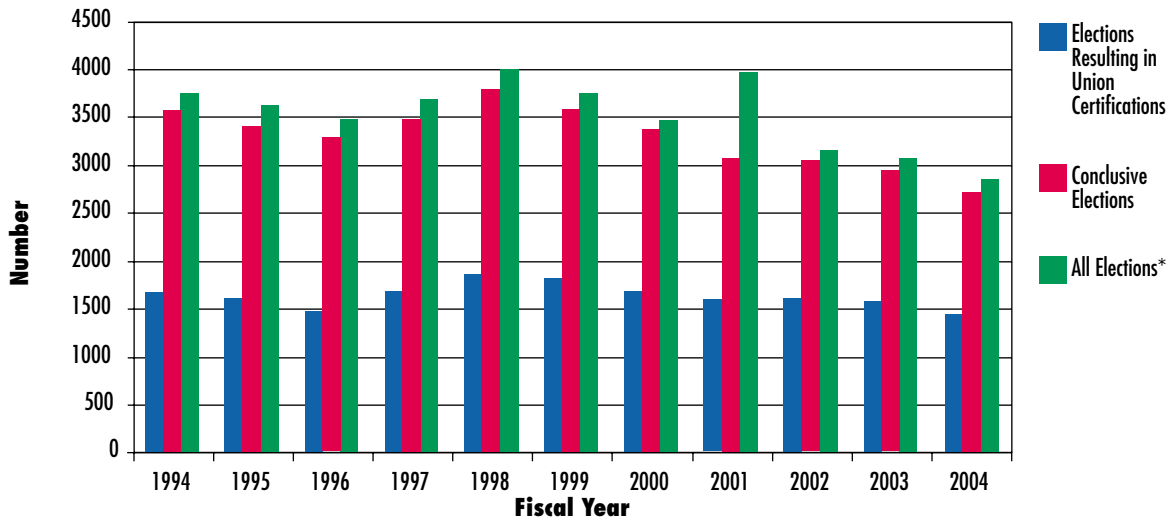
Number of Unfair Labor Practice Cases Pending Under Preliminary Investigation



Contested Board Decisions Issued



Representation Elections Conducted *(Based on Cases Closed During Year)*



*All elections include those resulting in certification, those resulting in a rerun or runoff election, and those in which a petition was withdrawn or dismissed before certification.



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