

OFFICE OF THE GENERAL COUNSEL**MEMORANDUM GC 03-01**

February 4, 2003

TO: All Employees, Office of the General Counsel**FROM:** Arthur F. Rosenfeld, General Counsel**SUBJECT:** Summary of Operations (Fiscal Year 2002)

Attached is a copy of the Summary of Operations for Fiscal Year 2002. As reflected in the summary, all of the employees of the Office of the General Counsel, Field and Headquarters, deserve great praise for your outstanding record of performance. In FY 2002, you handled more cases in less time and with less staff than last year. Most importantly, you continued to produce a quality product for the citizens who turned to us for assistance and for the labor-relations community. You have my gratitude and theirs for a job well done.

I am also pleased to report that for the most part the information contained in this Summary was generated from our Case Activity Tracking System (CATS). This system has been a longer time coming than we originally anticipated, but major budget cuts impacting on the system resulted in uncontrollable delays. It is now up and running and I am most appreciative to you for your efforts in bringing the system to fruition.

I wish to extend to you my sincere appreciation and congratulations for the excellent manner in which you continue to carry out the mission of the Agency year after year.

/s/
A. F. R.

Attachment

cc: NLRBU
NLRBPADistribution:
Regional Offices
Washington-Special Release to the Public

SUMMARY OF OPERATIONS FISCAL YEAR 2002**INTRODUCTION**

This summary is a resumption of the General Counsel's practice of providing an annual overview of the operations of the Office of the General Counsel.

As the summary reflects, the record of performance achieved by the staffs of the Headquarters and Regional Offices of the General Counsel in Fiscal Year 2002 was outstanding. The Regional Office and Washington staffs made great strides in making the promise of the National Labor Relations Act a reality.

Of special note in FY 2002:

- A 93.6% settlement rate was achieved in the Regional Offices in merit unfair labor practice cases.

- Initial elections in union representation elections were conducted in a median of 41 days from the filing of the petition, with 91% of such elections conducted in 56 days.
- The Regions promptly responded to over 157,485 inquiries from the public through the Public Information Program. Under this program we provided immediate assistance to members of the public regarding workplace disputes and saved Agency resources by discouraging the filing of charges that would clearly lack merit.

I extend my sincere appreciation to all staff members for their continued hard work and dedication to public service and for the cooperative manner in which they have responded to the priorities in case handling. My thanks also to those who practice before us for the cooperation and assistance that they extended to us in our efforts to administer the Act effectively and efficiently.

Arthur F. Rosenfeld
General Counsel

ORGANIZATION OF THE OFFICE OF THE GENERAL COUNSEL

The Office of the General Counsel is composed of six major components. These components are responsible for the various casehandling, administrative and personnel functions of the office. The six components are: the Division of Operations-Management and Regional Offices, the Division of Advice, the Division of Enforcement Litigation, the Division of Administration, the Office of Equal Employment Opportunity and the Office of Employee Development.

The Division of Operations-Management includes Headquarters and Regional Office staffs. The Headquarters staff has the responsibility on behalf of the General Counsel for the operations of the Regional, Subregional and Resident Offices, and the coordination of the casehandling of those offices with the Washington Divisions of the Office of the General Counsel and the Board.

There are 32 Regional Offices, 3 Subregional Offices and 17 Resident Offices. Each Regional Office is headed by a Regional Director who is responsible for the management of the office and any attached Subregional or Resident Offices and for the investigation and initial determination of the merits of unfair labor practice cases and representation cases. The Regional Director is also responsible for resolving through settlement or litigation the unfair labor practice charges found to warrant further proceedings, and for the conduct of representation elections.

The Division of Advice has the function of rendering substantive legal advice to the General Counsel and to Regional Offices in cases presenting novel or complex issues, cases of national interest or cases which involve developing and changing areas of the law. The Division also processes requests for injunctive relief under Section 10(j) of the Act, litigates injunction cases in Federal appellate courts under Section 10(l) and 10(j) and indexes and classifies Board and Court decisions under the Act.

The Division of Enforcement Litigation is responsible for the Agency's litigation in the United States Court of Appeals, the Supreme Court of the United States as well as for contempt and miscellaneous litigation in Federal and State Courts.

The Office of Appeals is a major component of the Division of Enforcement Litigation. This office reviews appeals from Regional Directors' refusals to issue complaint in unfair labor practice cases and recommends proposed action to be taken thereon by the General Counsel. It also processes appeals from the Regional Directors' denial of requests for documents under the Freedom of Information Act.

The Division of Administration is under the general supervision of the General Counsel and has been delegated responsibility for the development, direction and coordination of administrative staff support functions for both the Board and the General Counsel.

The Office of Equal Employment Opportunity is dedicated to giving managers, supervisors, and employees timely professional assistance and advice in understanding and promoting diversity in the workplace. Its mission includes providing

assistance to all Agency employees to avoid or resolve discrimination and harassment complaints. In so doing, the OEEO serves as EEO counselor to Agency employees and manages the EEO complaint processing system for the Agency.

The Office of Employee Development reports directly to the General Counsel and is responsible for the training needs of Agency employees. It is the mission of the OED to develop an agency-wide approach to training, to assist managers in providing employees with needed development opportunities and to help managers and supervisors manage their own careers and obtain developmental opportunities.

General Information

The information set forth below reflects the work of the various case handling Divisions during the past fiscal year (FY 2002). These statistics are preliminary and based on actions taken during the year.

Regional Offices

Case Intake

The NLRB has no authority to initiate proceedings on its own. Its processes can be invoked only by the filing of an unfair labor practice charge or a representation petition by a member of the public. Total case intake during FY 2002 was 35,853, compared to 33,535 cases in FY 2001, representing a 6.9 percent increase in intake. Unfair labor practice case intake was 30,161, a 7.2 percent increase over the FY 2001 intake of 28,125. Representation case intake was 5,298, an increase of 4.8 percent over the FY 2001 intake of 5,057. In other types of cases filed (UD, AC and UC), there was an increase of 11.6 percent from the previous year's intake with the filing of 394 such cases compared to 353 cases the previous year. During FY 2002, the reported inventory of situations (disputes represented by one or more individually filed charges) pending investigation in the Regional Offices rose from 4282 to 4796, or 516 situations.

Regional Professional Staff

The average professional staff to handle the workload in the Regional Offices during FY 2002 was 971.84 employees compared to 989.79 in FY 2001, a decrease of 1.81 percent. As a result of severely restricted budgets in Fiscal Years 1994 through 1999 the NLRB was not able to engage in routine hiring of professional investigators and attorneys and as a consequence average professional staffing in the Regional Offices declined from 930 to 874. In FY 2000 and FY 2001 more substantial budgets were provided to the Agency supporting hiring increases to process both current case intake and the backlog of cases that had developed during the years of budget shortfalls. Only limited hiring took place in FY 2002.

Information Officer Inquiries

The General Counsel's Public Information Program continued to prevent a large number of nonmeritorious cases from being filed with the Agency and continued to provide assistance to members of the public by referring them to the appropriate agencies or organizations or by assisting them in filing charges with the NLRB, where appropriate. In FY 2002, the total number of inquiries received through the Public Information Program was 157,485, an increase of 7.3 percent from the 146,768 inquiries received during FY 2001. The rate of charge acceptance (percent of instances in which the contact results in a charge being filed) was 5 percent, identical to the 5 percent in FY 2001. Since the inception of this program in 1978 the Agency has reduced its charge acceptance rate by over 4 percent from 9.2 percent to the current 5 percent rate. In terms of cases, this program in this year alone saved the Agency the cost and time of investigating what would have been approximately 6,600 no-merit cases.

Unfair Labor Practice Cases

Settlements

The Agency's effectiveness and efficiency in administering the Act is greatly enhanced by its ability to effect a voluntary resolution of meritorious unfair labor practice cases, cases which, after investigation, are deemed worthy of prosecution. (See

merit factor, infra). Over the years, the Agency has had an excellent settlement record due to the efforts of staff and the cooperation of the Bar. In FY 2002, 9,156 settlements of unfair labor practice cases were obtained, representing a rate of 93.6 percent of total merit cases, as compared to 9,279 settlements in FY 2001 and a rate of 96.5 percent. Over the last 10 years the settlement rate has ranged from between 91.5 and 99.5 percent.

Complaints

In FY 2002 the Regional Offices issues 4022 complaints as compared to 3,963 in FY 2001. The median time to issue complaints was 93 days in FY 2002, as compared to the median of 106 days in FY 2001.

Merit Factor

The percentage of unfair labor practice cases in which a Regional Director determines that formal proceedings are warranted is called the merit factor. In FY 2002 that factor was 36.1 percent, compared to the merit factor of 37.1 percent in FY 2001. Since 1980, the merit factor has fluctuated between 32 and 40 percent.

Litigation Results

The Regional Offices won 79 percent of Board and Administrative Law Judge decisions in whole or in part in FY 2002, down from 81 percent in FY 2001.

Remedies

Amounts recovered on behalf of employees as backpay or reimbursement of fees, dues, and fines in FY 2002, was \$136,457,912, compared to \$211,382,429 in FY 2001. In FY 2002, 1,160 employees were offered reinstatement, as compared to 1,255 in FY 2001.

Representation cases

Elections

The Regions conducted 2,871 initial elections in FY 2002 of which 86.1 percent were held pursuant to agreement of the parties, compared to 2,842 initial elections and an 88.2 percent election agreement rate for FY 2001. The median time to proceed to an election from the filing of a petition was 41 days, a slight increase from the 40 day median in FY 2001. Ninety-one percent of all initial representation elections were conducted within 56 days of the filing of the petition.

Regional Director Decisions

In FY 2002, Regional Directors issued 478 decisions in contested representation cases after hearing in a median of 36 days. Nearly identical results were obtained in FY 2001, when 474 decisions issued in a median time of 36 days.

Representation and Union Deauthorization Hearings

In this category, 646 initial hearings were closed in FY 2002 as compared to 637 in FY 2001.¹

Division of Enforcement Litigation

Appellate Court Activity

In FY 2002, the Appellate Court Branch received 159 cases. Private parties filed petitions to review the Board's order in 86 of the cases and the remaining 73 cases were referred by the Regional Offices for court enforcement. By filing briefs in 119 cases and securing compliance in 73 cases, the Branch resolved 192 cases in FY 2002. In FY 2001, total intake of enforcement and

reviews cases was 230 cases and dispositions totaled 193. Oral arguments were presented in 106 cases in FY 2002, compared with 105 cases in FY 2001. The median time for filing applications for enforcement was 88 days in FY 2002, compared with 37 days in FY 2001. Staffing considerations, settlement negotiations and the need to respond to petitions to review are the reasons for the increased median time for filing applications for enforcement. The median time for both enforcement and review cases, from receipt of cases to filing of briefs, was 210 days for FY 2002, compared with 181 days in FY 2001. In FY 2002, the Branch filed petitions for rehearing in three cases and filed responses to petitions for rehearing in three cases. The Branch also handled 52 summary enforcement cases and 18 consent cases.

In FY 2002, the United States Courts of Appeals decided 106 enforcement and review cases involving the Board, compared with 117 cases in FY 2001. Of these cases, 70.8 percent were won in whole or in part, and 60.4 percent won in whole, compared with success rates in part and in whole in FY 2001 of 76.1 percent and 61.6 percent, respectively. In FY 2002, 7.5 percent of cases were remanded entirely compared with 13.7 percent in FY 2001. Also, in FY 2002, 21.7 percent of cases were total losses, up from the 10.2 percent in FY 2001.

Supreme Court Activity. In FY 2002, the Supreme Court decided two Board cases on the merits; the Board lost both cases. In FY 2001, the Supreme Court decided one Board case on the merits; of the two issues resolved in that case, the Board prevailed in one and lost the other. In FY 2002, as in FY 2001, the Board did not participate as an amicus in any cases.

In FY 2002, the Court denied nine private party petitions for certiorari in cases involving the Board and granted one. In FY 2001, the Court denied three private party petitions for certiorari and granted one. In FY 2002, 33 memoranda respecting certiorari were submitted to the Board. In FY 2001, 41 memoranda respecting certiorari were submitted to the Board.

Special Litigation Branch Activity. In FY 2002, the Special Litigation Branch had an intake of 121 cases and closed 107 cases. This compares with an intake of 72 cases and the closing of 73 cases in FY 2001. Fiscal 2002 intake includes ethics cases, which the Branch started counting as part of its intake towards the end of fiscal year 2002. These are cases addressing State Bar issues presented by Board agent contacts with represented persons during investigations. From July to the end of the fiscal year, Special Litigation took in 50 ethics case and closed 43.

In FY 2002 the Branch filed 42 briefs: 12 appellate court briefs, 15 district court briefs, 14 bankruptcy court briefs, and 1 state court brief. The Branch also sent 75 memos to the Board and Regional Offices, including 51 ethics memos sent to Regional Offices since July 2002. This compares to FY 2001 when the Branch filed 58 briefs, 16 to the appellate courts, 31 to the district courts, 7 to the bankruptcy courts, 2 to the state courts, and 2 to federal agencies. In FY 2001 the Branch also sent 29 memos to the Board and Regional Offices.

In FY 2002, the Branch participated in 12 oral arguments and received 11 decisions, 8 wins and 3 losses, as follows: 3 district court decisions, 2 wins, 1 loss, and 8 appellate court decisions, 6 wins, 2 losses. This compares with FY 2001 when the Branch participated in 9 oral arguments and received 17 decisions as follows: 1 bankruptcy decision, a win, 11 district court decisions, winning all 11, 5 appellate court decisions, winning all 5.

Contempt Litigation and Compliance Branch Activity. In FY 2002, 307 cases were referred to the Contempt Litigation and Compliance Branch for consideration for contempt or other appropriate action to achieve compliance with the Act, compared to 370 cases in FY 2001.² Of these 307 cases, 220 were submitted for advice or litigation assistance without a formal referral, as compared to 194 in FY 2001. Of the 87 formal contempt submissions, voluntary compliance was achieved in 18 cases during the fiscal year, without the necessity of filing a contempt petition, while in 36 others, it was determined that contempt was not warranted. The remaining 33 cases continue to be processed. In FY 2001, voluntary compliance was achieved in 87 of the 176 formal submissions without the necessity of filing a contempt petition, while in 36 others, it was determined that contempt was not warranted.³

During FY 2002, 12 civil contempt proceedings were instituted as compared to 15 civil proceedings in FY 2001. In FY 2002, these included three motions for writs of body attachment. In FY 2002 the Branch also instituted three proceedings to obtain pre or post-judgment writs of garnishment under the Federal Debt Collection Procedures Act and drafted or assisted in drafting three requests for injunctive relief and/or protective restraining orders. Fourteen civil contempt or equivalent adjudications were awarded in favor of the Board in FY 2002, compared to fifteen in FY 2001. The Branch also successfully obtained three

protective restraining orders and/or injunctions during the fiscal year. During FY 2002, the Contempt Litigation and Compliance Branch collected \$6,000 in fines and \$995,667 in backpay, while recouping \$37,672 in court costs and attorneys' fees incurred in contempt litigation. In FY 2001, the Contempt Litigation and Compliance Branch collected \$6,000 in fines and \$509,887 in backpay, while recouping \$59,308 in court costs and attorneys' fees incurred in contempt litigation. In FY 2002, the Branch also conducted 239 asset/entity database investigations pursuant to requests from the Regions, as compared to 271 in FY 2001.

Appeals Activity. In FY 2002, the Office of Appeals received 2,887 appeals from Regional Directors' refusals to issue complaints, a 7 percent increase from the 2,694 appeals received in FY 2001. In FY 2002, the office disposed of 2,874 appeals, a 3 percent increase from the 2,798 decided in FY 2001. The percentage of reversals of Regional Directors' dismissals was 0.9 percent, a decrease from the 1.4 percent in FY 2001. Median time to process appeals in FY 2002 was 31 days, a slight increase from FY 2001, where the median was 30 days. Median time to process 27 sustained appeals was 83 days in FY 2002, up from 74 days in FY 2001 to process 36 sustained appeals. In FY 2002, the Office of Appeals also received 42 appeals under the Freedom of Information Act, and closed 44, compared with 48 appeals under the Freedom of Information Act and 45 closed in FY 2001.

Division of Advice

During FY 2002, the Division of Advice processed its cases in a median of 21 days, compared to 22 days in FY 2001. Also, during FY 2002, the Division received 744 cases and closed 761 cases, compared to 777 cases received and 794 cases closed in FY 2001. The median age of cases pending at the end of FY 2002 was 23 days, as compared to 30 days in FY 2001.

Section 10(j) Injunction Activity

In FY 2002, the Injunction Litigation Branch received 87 cases, as compared to the 99 cases received in FY 2001. Section 10(j) relief was authorized in 16 cases, or 18 percent of the cases in FY 2002, as compared to 43 cases, or 43 percent of the cases in FY 2001. In addition, the success rate, i.e., the percentage of authorized 10(j) cases in which the Agency achieved either a satisfactory settlement or substantial victory in litigation for cases, was 80 percent, as compared to the success rate of 88 percent in FY 2001.

Section 10(l) Activity

The Regional Offices filed 4 petitions for 10(l) injections with the appropriate district courts in FY 2002, as compared to 5 petitions filed in FY 2001.

Injunction Litigation Branch

During FY 2002, the Injunction Litigation Branch handled 93 cases in addition to the requests for Section 10(j) authorization, compared to 111 cases in FY 2001. These cases involved appeals from district court decisions in 10(j) or 10(l) cases, contempt of district court decrees, and litigation advice to regions in their litigation of 10(j) and 10(l) cases. The Branch handled 8 appeals that were pending at the beginning of the fiscal year and 6 appeals that were filed during FY 2002, compared to 15 appeals that were pending at the beginning of FY 2001 and 12 appeals that were filed during FY 2001. Of these 14 cases in FY 2002, the Branch won 4 court decisions and lost 1 decision, satisfactorily resolved 5 others before decision and 4 were pending decision at the end of FY 2002, as compared to 27 cases in FY 2001, in which the Branch won 6 and lost no court decisions, satisfactorily resolved 15 others before decision and 6 were pending decision at the end of FY 2001. The Branch also authorized the Regions to institute contempt proceedings in 1 case during FY 2002, as compared to 3 cases during FY 2001.

Date: February 2003

¹ The difference between the number of hearings closed and the number of Regional Director decisions issued results from the withdrawal of petitions and the approval of election agreements after the close of hearings obviating the need for the issuance of decisions.

² The number of referrals was unusually high in FY 2001 because of multiple submissions concerning the United States Postal Service, and the Branch's undertaking to review such cases at the charge stage, even if no contempt issues were implicated.

³ The number of cases settled in FY 2001 was somewhat skewed because of the large number of cases involving a single employer which settled at the same time.