

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Impact Analysis

Report No. OIG-AMR-54-07-01

March 2007

INSPECTOR GENERAL



NATIONAL LABOR RELATIONS BOARD

WASHINGTON, DC 20570

March 12, 2007

I hereby submit an audit on *Impact Analysis*, Report No. OIG-AMR-54-07-01. This audit was conducted to evaluate the current usefulness of the Impact Analysis program.

Impact Analysis was established in General Counsel Memorandum 95-15, *Lightening the Regional Office Workload*, dated August 22, 1995. This system was designed to provide for differentiation of cases based on public impact and to ensure that those cases that require prompt resolution receive sufficient resources and the Agency's best efforts. As initially proposed, cases were divided into three categories, all with longer timeframes than the previous one of 45 days from receipt of an unfair labor practice case to disposition.

Although caseload and staffing parameters have changed significantly since Impact Analysis was initiated, the program remains a logical mechanism to manage the Regional Office caseload. The program is broadly supported by managers and employees and is not administratively burdensome.

The percentage of cases not meeting performance goals has decreased since Impact Analysis was initiated. We believe several factors unrelated to Board agent efficiency made the performance goals more attainable. These factors include excusing a large number of overage cases, a shrinking caseload, and increasing the timeframes for completing a case.

An exit conference was held on January 29, 2007, with representatives of the Division of Operations-Management. They generally agreed with our findings. The Associate General Counsel had no additional comments on the draft report that was issued February 5, 2007.


Jane E. Altenhofen
Inspector General

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Memorandum from the Associate General Counsel, Division of
Operations-Management, "Impact Analysis (OIG-AMR-54)," dated March
9, 2007

BACKGROUND

The National Labor Relations Board (NLRB or Agency) administers the principal labor relations law of the United States, the National Labor Relations Act (NLRA) of 1935, as amended. The NLRA is generally applied to all enterprises engaged in interstate commerce, including the United States Postal Service, but excluding other governmental entities as well as the railroad and airline industries. The Fiscal Year (FY) 2006 appropriation authorized 1,840 full-time equivalents (FTE) that are located at Headquarters, 51 field offices throughout the country, and 3 satellite offices for administrative law judges. NLRB received an appropriation of \$252,268,000 for FY 2006, less a rescission of 1 percent, leaving a net spending ceiling of \$249,745,320. For FY 2007, the Agency is operating under a Continuing Resolution at the FY 2006 ceiling.

Impact Analysis was established in General Counsel (GC) Memorandum 95-15, Lightening the Regional Office Workload, dated August 22, 1995. This system was designed to provide for differentiation of cases based on public impact. The fundamental purpose of this system was to ensure that those cases that require prompt resolution because of their public impact receive sufficient resources and the Agency's best efforts. As initially proposed, cases were divided into three categories: Category III (exceptional), Category II (significant), and Category I (important). Category III cases have the greatest impact. Impact Analysis was implemented in the Regional Offices on a staggered basis beginning in January 1996.

The timeframes established initially were 7 weeks from receipt of an unfair labor practice case (C case) to disposition of the C case for Category III, 11 weeks for Category II, and 15 weeks for Category I. Disposition for case tracking purposes is the point at which the case is dismissed, deferred, withdrawn, or settled; a complaint is issued; or a 10(k) notice of hearing is issued. The timeframes for Category II and Category I cases were amended in FY 2000 to 9 weeks and 12 weeks, respectively, where they currently remain. The cases included in each category have been amended. Generally, more cases are now categorized as exceptional or significant. Prior to implementing Impact Analysis, the target for disposition in all cases was within 45 days.

Guidance was issued in 1998 to address compliance cases, which implement C case remedial action and were not included in the original Impact Analysis system. GC Memorandum 98-4, Impact Analysis for Compliance Cases, dated February 20, 1998, divides compliance cases into three categories. The timeframes established in GC Memorandum 98-4 are 91 days (13 weeks) from receipt of the Board Order or Court Judgment to completion of the compliance actions for Category III, 119 days (17 weeks) for Category II, and 147 days (21 weeks) for Category I. These timeframes have not changed. Prior to the implementation of Impact Analysis for compliance cases, the target for completion of compliance actions in all cases was within 80 days.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objective of this audit was to evaluate the current usefulness of the Impact Analysis program. Our scope was Impact Analysis for C cases and compliance cases from implementation of the program through FY 2006.

We reviewed Division of Operations-Management (Operations-Management) and GC Memoranda, including GC Memorandum 95-15 and GC Memorandum 98-4, and training manuals prepared by the Impact Analysis Regional Work Group to identify policies and procedures regarding the implementation of and amendments to Impact Analysis. We also reviewed current and archived NLRB Casehandling Manuals for C cases and compliance cases to identify processing timeframes for cases before and after Impact Analysis was implemented.

We interviewed staff in Operations-Management, Office of the General Counsel, and the Regional Offices visited to clarify policy and to gather their impressions regarding the current usefulness of Impact Analysis. We interviewed staff in the Regional Offices visited to learn how cases were categorized and monitored.

We obtained case intake reports for the period from FY 1997 through FY 2006 and Regional Office staffing reports for the period from FY 1995 through FY 2006 from Operations-Management. From these reports, we calculated a statistic on case intake per professional FTE to determine the change in caseload relative to staffing changes since Impact Analysis was implemented. We received reports from Operations-Management showing the number of case situations pending disposition from FY 1993 through FY 2006 and reviewed the trends during this time.

We obtained databases from the Case Activity Tracking System (CATS) for C cases and compliance cases received during FY 2006. We computed statistics and time lags for C cases and compliance cases received during FY 2006 for the Agency and for the four Regional Offices visited. We reviewed the statistics released under the Government Performance and Results Act (Results Act) relating to Impact Analysis to identify the measurements used and the Agency's performance against them.

This audit was performed in accordance with generally accepted government auditing standards during the period of October 2006 through January 2007 at NLRB Headquarters in Washington, D.C. and the following Regional Offices: Region 10 – Atlanta, Region 19 – Seattle, Region 25 – Indianapolis, and Region 29 – Brooklyn.

FINDINGS

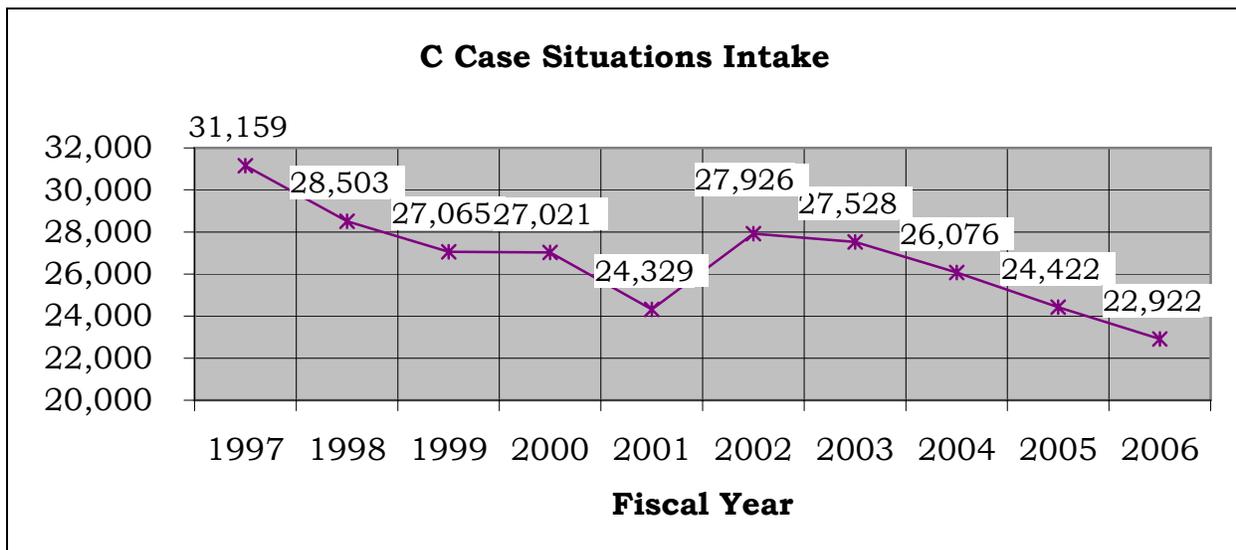
Although case intake, cases pending, and staffing parameters have changed significantly since Impact Analysis was initiated, the program remains a logical mechanism to manage the Regional Office caseload. The program has the broad support of the GC's managers at Headquarters, Regional Office managers at all levels, and Board agents. The program is not administratively burdensome, as the categorization has become routine in the Regional Offices. Programming Impact Analysis into the Agency's new casehandling system is not expected to be a significant use of resources.

The percentage of cases not meeting performance goals has decreased since Impact Analysis was initiated. Each Regional Office met the Results Act goal for FY 2006, and the Agency has met the Results Act goal in every year since FY 2000. We believe several factors contributed to meeting the performance goals. These factors include excusing a large number of overage cases, a shrinking caseload, and changing the timeframes for completing a case from 45 days under the previous case management system to between 7 and 12 weeks under Impact Analysis.

TRENDS SINCE IMPACT ANALYSIS

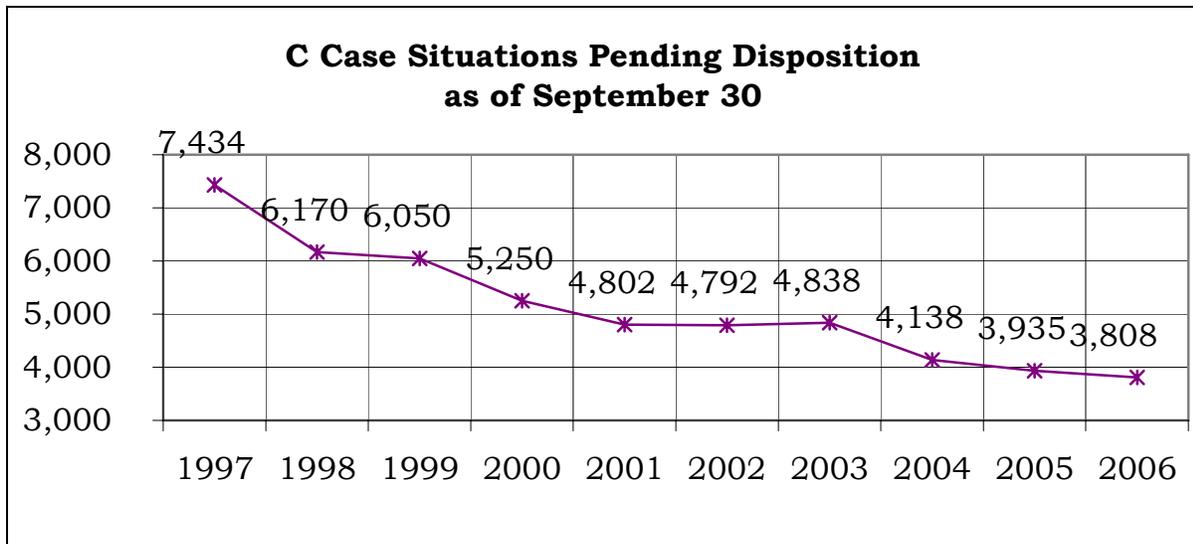
Case Intake

The number of C case situations received, as reported on Operations-Management's National Performance Factors, has generally decreased since FY 1997, the first full year under Impact Analysis, with the exception of FY 2002. The overall drop in case intake since 1997 is 26.4 percent.



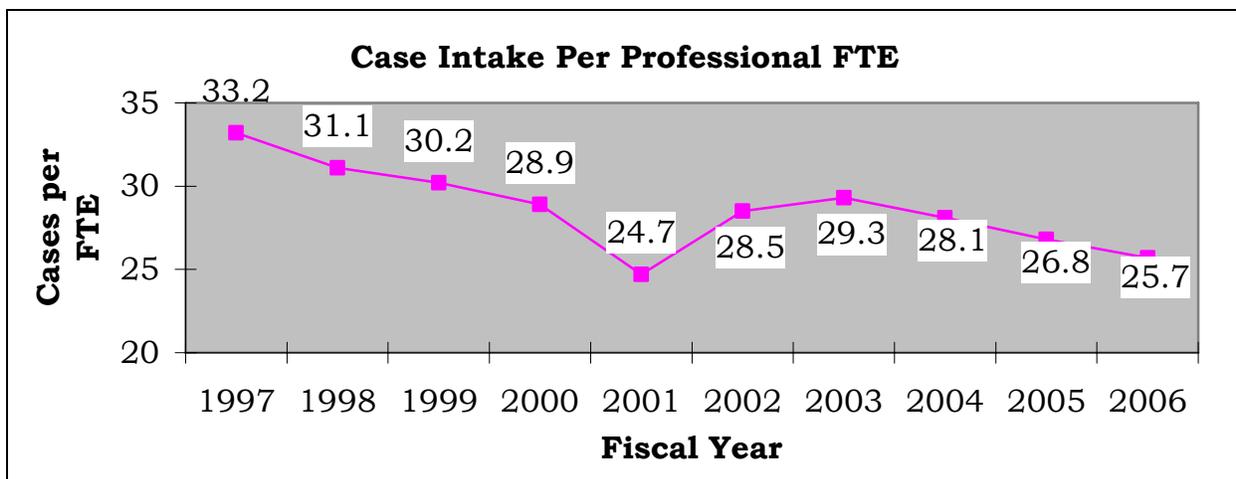
Case Situations Pending Disposition

Staff in Operations-Management and the Regional Offices visited said that a backlog in many Regional Offices was a main reason for developing Impact Analysis. In the years prior to Impact Analysis, the backlog, as measured by case situations pending disposition at year-end, had increased, peaking in FY 1997, the first full year under Impact Analysis. Since FY 1997, the number of case situations pending disposition at year-end has decreased, and by FY 2006 was at pre-Impact Analysis levels.



Regional Office Staffing

Since FY 1997, Regional Office professional staffing has decreased by 6 percent. The number of cases received has decreased more than the decrease in staffing, resulting in a decrease in the number of cases received per professional FTE from 33.2 cases in FY 1997 to 25.7 cases in FY 2006.



Overage Percentage

The Agency's Results Act measure states that 90 percent of C cases should be resolved within their Impact Analysis timeframes. The calculation uses the percentage of situations within Regional Office control, which is the number of overage case situations unexcused by Operations-Management divided by the number of case situations pending disposition. Cases are overage when the case is still pending disposition on the last day of the month in which its time target was exceeded. The FY 2006 Performance and Accountability Report notes that cases that cannot be processed within the times established under the Impact Analysis program for reasons that are outside the control of the Regional Office are not considered overage, but are "excused."

In FY 1995, the last year before Impact Analysis was implemented, 21.2 percent of C cases pending disposition were overage and unexcused. Among Regional Offices, the percentage ranged from 0.3 percent to 49.2 percent, with 4 Regional Offices having percentages greater than 40 percent. Since Impact Analysis was implemented, the percentage of overage and unexcused cases has generally declined in every year. In FY 2006, 1.1 percent of all case situations pending disposition were overage and unexcused, with 1.7 percent in Category III, 0.9 percent in Category II, and 0.5 percent in Category I. The percentages ranged among Regional Offices from 0 percent to 4.7 percent.

Each Regional Office met the Results Act goal for FY 2006. The Agency has met the Results Act goal in every year since FY 2000. We believe several factors contributed to meeting the performance goals. These include excusing a large number of overage cases, a shrinking caseload, and changing the timeframes for completing a case from 45 days under the previous case management system to between 7 and 12 weeks under Impact Analysis.

IMPRESSIONS OF IMPACT ANALYSIS

Original impressions regarding Impact Analysis were mixed. Many thought that it was a good idea and would be helpful, particularly given the Agency's decreased resources and staffing in the mid-1990s. A number of these employees were in Regional Offices that had a Regional Director or manager involved in developing the program. Some employees, particularly managers, thought that Impact Analysis was unnecessary because cases could be done within the previous timeframes and believed that they did not need to be told what cases had the highest priority.

Most everyone interviewed thought that Impact Analysis is currently useful and will be useful in the future. Regional Office employees who assign cases stated that the program is not an administrative burden due to the small amount of

additional time that categorizing the cases takes. Benefits of the program cited by staff include:

- Giving Board agents a clear idea of what cases are more important, enabling them to prioritize their workload;
- Having a criteria to allow for the use of the alternative investigative techniques for cases with a lower priority;
- Making it easier to manage travel;
- Enabling Compliance Officers to prioritize workload when many Board orders are received, such as at the end of the fiscal year; and
- Being able to quantify the difficulty of the work done by each employee for appraisal purposes.

Staff interviewed also noted some negative issues with Impact Analysis:

- As presently configured, Category I is basically used only for deferrable cases. Because few cases are placed in Category I, maintaining that category appeared unnecessary;
- Too many types of cases are in Category III, and those cases with statutory priority should be separated from other Category III cases;
- The Category III cases are generally the most complex, but the Board agent has the least amount of time to investigate them; and,
- Although the timeframes to complete C cases were fair and achievable, the timeframes for Category III and Category II in compliance cases are sometimes difficult to meet because those cases are more complex.

Operations-Management responded to the negative issues by stating that no changes are needed for the categorization of either Category I or Category III cases. A separate Category I is necessary because these cases are either deferrable or involve conduct for which alternate means are available to the charging party, and placing cases in this category allows the Regional Offices to focus limited resources on cases having a greater public impact. No changes are needed to Category III because these cases meet the definition of being most central to the achievement of the Agency's mission and are being processed timely.

Operations-Management also stated that time consuming compliance investigations may preclude being able to meet goals; therefore, they

established a list of situations that warrant being excused. For cases that are less complex, the time goals are realistic and achievable.

OTHER DEVELOPMENTAL FACTORS

The Agency is currently in the process of defining preliminary requirements for the Next Generation Case Management System (NGCMS), which will replace CATS. Operations-Management stated that they intend to have Impact Analysis programmed into NGCMS, just as it has been programmed into CATS. Staff in the Office of the Chief Information Officer stated that because the NGCMS will be a commercial off the shelf product, any additional programming for Impact Analysis would be minimal.

DUE DATES

Impact Analysis sets timeframes for cases to be disposed of based on the categorization of the case. Operations-Management noted, however, that the last day of the month is the effective due date, regardless of where in the month the Impact Analysis due date fell. Three of the four Regional Offices visited stated that while striving to meet the Impact Analysis due date, they manage caseload to the end of the month. Region 10 uses the Impact Analysis due date instead of the end of the month to manage C cases. Staff interviewed in Region 10 generally were in favor of using the Impact Analysis due date as the deadline. Management in Region 10 cited this as a major reason why the Region performed so well. The average time from the receipt of a charge to the disposition date in Region 10 was 40.3 days, as compared to the national average of 53.1 days.

Staff in other Regional Offices had different thoughts about whether they should manage cases to the disposition due date instead of the last day of the month. Some employees said that the crunch at the end of the month would be eased, while others stated that the crunch would occur everyday. Staff also noted that record keeping for supervisors and agents would be more difficult, and that flexibility would be lost, possibly affecting investigation quality.

The following tables show the percentage of cases in which the disposition date and the end of the month were met, without considering whether the cases were excused.

Met Impact Analysis Due Date

	R – 10	R – 19	R – 25	R – 29	All Regions
Category III (49 days)	71.3%	40.8%	28.0%	57.0%	51.1%
Category II (63 days)	88.9%	68.7%	45.6%	75.0%	68.8%
Category I (84 days)	97.0%	87.2%	85.7%	90.2%	86.8%
Total	86.0%	61.4%	40.8%	66.8%	65.7%

Met End of the Month

	R – 10	R – 19	R – 25	R – 29	All Regions
Category III (49 days)	90.4%	69.1%	65.7%	84.5%	78.6%
Category II (63 days)	97.0%	91.9%	89.8%	94.4%	91.8%
Category I (84 days)	98.0%	95.7%	92.9%	95.1%	96.5%
Total	95.6%	84.5%	79.7%	89.6%	88.2%

A Regional Office's caseload would certainly affect its ability to resolve cases within Impact Analysis timeframes. The four Regional Offices' case intake per FTE was comparable and ranged from 26 in Region 19 to 28.6 in Region 25. Over 40 percent of cases received in Regions 25 and 29, however, were placed in Category III, compared with 35 percent in Region 19 and 23 percent in Region 10. Region 10, which managed cases to the Impact Analysis due date, completed a significantly higher percentage of their cases by the Impact Analysis due date and the end of the month. We think that managing to the Impact Analysis due date had a positive impact on their success.

COMPLIANCE CASES

Compliance cases have generally increased since Impact Analysis was implemented for compliance in 1998, but in FY 2006 compliance intake decreased 14 percent. Approximately 63 percent of compliance cases received during FY 2006 were still open in December 2006.

Of the cases received in FY 2006 that closed, 57 percent were closed before the Impact Analysis due date and 69 percent were closed by the end of the month. None of the compliance cases received during FY 2006 in the Regional Offices visited that went overage were unexcused by Operations-Management. Previously, we noted in Report No. OIG-AMR-35-03-02, Review of Compliance Actions, that the majority of overage compliance cases are excused.

Operations-Management noted that the open cases included ones that were pending enforcement in the U.S. Courts of Appeals, for which no compliance work could be done. Further, a disproportionate percentage of cases were received during August and September.

APPENDIX

UNITED STATES GOVERNMENT
National Labor Relations Board
Division of Operations-Management



Memorandum

TO: Jane Althenhofen, Inspector General

DATE: March 9, 2007

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Impact Analysis (OIG-AMR-54)

This will confirm that we have no additional comments to offer in response to your draft audit report in the subject matter. Thank you for the opportunity to comment.

R. A. S.