

*Office of Inspector General*

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**SEMIANNUAL**

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**REPORT**

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**TO THE**

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**CONGRESS**

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**Covering APRIL 1, 1998 - SEPTEMBER 30, 1998**

*Eighteenth Semiannual Report*

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United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE INSPECTOR GENERAL

Washington, DC 20570-0001

October 29, 1998

Office of the Chairman  
National Labor Relations Board  
1099 14th Street, NW, Room 11100  
Washington, DC 20570

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

Dear General Counsel Feinstein:

This is the eighteenth Semiannual Report (SAR) for the Office of Inspector General (OIG). This SAR is prepared in accordance with Section 5 of the Inspector General Act and covers the period April 1, 1998 through September 30, 1998.

This will also serve as a reminder that, pursuant to Section 5(b) of the Inspector General Act of 1978, as amended, this report "shall be transmitted by (the head of the establishment) to the appropriate committees or subcommittees of the Congress within thirty days after receipt of the report, together with a report by the head of the establishment. "

Very truly yours,

A handwritten signature in cursive script that reads "Aileen Armstrong".

Aileen Armstrong  
Inspector General

## **FOREWORD**

The National Labor Relations Board (Agency or NLRB), which employs almost 1,900 employees and, for Fiscal Year 1998, had funding of about \$175,000,000, is an independent agency which was established in 1935 to administer the principal labor relations law of the United States - - the National Labor Relations Act. The provisions of the National Labor Relations Act are generally applied to all enterprises engaged in, or to activities affecting, interstate commerce, including the United States Postal Service, but excluding other Governmental entities, as well as the railroad and airline industries. The Agency protects the public interest: (1) by conducting secret ballot elections to determine if a group of employees wishes to be represented for collective bargaining purposes by a labor organization, and (2) by preventing and/or remedying unfair labor practices committed by employers and unions.

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

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

## **REPORTING REQUIREMENTS**

### **ACT CITATION AND REQUIREMENT**

		<b><u>PAGE</u></b>
Section 4(a)(2)	Review of Legislation and Regulations.	.None
Section 5(a)(1) and (2)	Significant Problems, Abuses and Deficiencies and Recommendations for Corrective Action.	.1
Section 5(a)(3)	Prior Recommendations Not Yet Implemented.	.None
Section 5(a)(4)	Matters Referred to Prosecutive Authorities.	.14
Section 5(a)(5) and 6(b)(2)	Summary of Instances Where Information Was Unreasonably Refused or Not Provided.	.No Instances
Section 5(a)(6)	List of OIG Audit Reports.	.16
Section 5(a)(7)	Summary of Each Significant Report.	.17
Section 5(a)(8)	Statistical Table on Management Decisions on Questioned Costs.	.18
Section 5(a)(9)	Statistical Table on Management Decisions on Recommendations That Funds Be Put to Better Use.	.19
Section 5(a)(10)	Summary of Each Audit Over 6 Months Old For Which No Management Decision Has Been Made.	.None
Section 5(a)(11)	Significant Revised Management Decisions.	.None
Section 5(a)(12)	Significant Management Decisions With Which the Inspector General Disagrees.	.None

## INSPECTOR GENERAL SUMMARY

- ◆ We completed our audit relating to the controls over the computation and distribution of backpay. Backpay is the Agency's remedy whenever it determines that a violation of the National Labor Relations Act has resulted in a loss of employment or earnings. Our audit report is discussed in Section 5 of this Semiannual Report.
- ◆ We evaluated procedures utilized by the Division of Judges to expedite the resolution of unfair labor practice cases. These procedures included the use of settlement judges, bench decisions, and time targets. The OIG will issue a final report summarizing the results of this audit, shortly.
- ◆ We initiated one audit during the reporting period. This review will assess the timeliness of casehandling by the Board. The OIG will focus on unfair labor practice cases adjudicated before the Board.
- ◆ We reviewed the Agency's performance plan for Fiscal Year 1999. An annual performance plan is mandated by the Government Performance and Results Act. Our comments relating to the plan are summarized in Section 1 of this Semiannual Report.

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

- ◆ A joint investigation with the Secret Service resulted in an arrest and conviction.
- ◆ Nine cases were opened and continue under active investigation.
- ◆ Five cases were opened and investigated to closure.
- ◆ Nineteen cases previously opened were investigated to closure during this reporting period.
- ◆ Several joint investigations with other law enforcement agencies continued.
- ◆ Forty-four "HOTLINE" calls were received and screened. A large number of these calls related to Agency operations and appropriate follow-up and referrals were made.

Chief Counsel/AIGI Zielinski served as legal and investigative consultant to the OPM Working Group on Workplace Violence, and as a special instructor for the U.S. Customs Service.

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

- ◆ **The OIG has continued a self initiated extensive review of potential fraudulent Federal Employees Compensation Act claims against the Agency.**
- ◆ **Three joint investigations are being conducted by the OIG with Regional Inspectors General of the Department of Labor Inspector General.**
- ◆ **Twenty-two cases previously initiated remain open and under active investigation by the OIG.**
- ◆ **Nine new cases are under active investigation by the OIG.**
- ◆ **A joint investigation is continuing with the New York City Police Department.**

## SECTION 1

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

#### INVESTIGATIONS

The following investigations were completed and/or referred for action during this reporting period:

#### Conflict of Interest

*After an OIG Investigation.* A Board Attorney, was charged by the Public Integrity Section, Criminal Division, of the United States Department of Justice, in the United States District Court, with a criminal violation of Title 18, United States Code, Sections 298(a) and 216(a)(1). The information filed with the Court charged that the employee of the NLRB participated personally and substantially in a particular matter in which the employee's spouse had a financial interest. The charge asserted that the employee submitted a claim for reimbursement for rent paid on a property owned by the employee's mother-in-law, and in which the spouse had a property interest and that the employee knew at the time the claim was prepared and submitted that the employee's spouse had a financial interest in the property.

On April 16, 1998, the employee appeared in the U.S. District Court and pleaded guilty to the violation. As part of the plea, the employee agreed to make restitution to the NLRB in the amount of \$6,375.00 for the cost of the claim.

As part of the plea agreement filed with the Court, the Public Integrity Section, Criminal Division, USDOJ, agreed to close its investigation of the matter, and to not seek additional prosecution of any individuals associated with the facts stipulated in the agreement.

On May 27, 1998, the defendant was sentenced to 3 years probation, fined \$1,500.00 and required to make restitution in the amount of \$6,375.00. Administrative action by the Agency is pending.



**Forgery**  
**False Statements**  
**False Claim**

***An OIG Investigation Disclosed That ...*** A self-employed union contractor may have filed a false claim and made false statements regarding the non-receipt of a U.S. Treasury check issued to him by means of NLRB funds.

Subsequent investigation by the OIG with the assistance of the U.S. Secret Service revealed that the check was never received by the payee, but instead was stolen, forged, and negotiated by a relative of the subject, with the assistance of another individual.

***Action Taken ...*** The payee's relative was arrested and charged with forgery under Iowa state law. On September 3, 1998, the defendant was convicted, sentenced to 2 years imprisonment (suspended) and required to make restitution in the amount of \$1,672.97.

**False Claim**

***An OIG Investigation Disclosed That ...*** An attorney representing an employer contacted one of our Regional Offices advising he had information that a local union member had made a false statement in regard to previously reported interim earnings.

Additionally, the union member declined to execute an authorization for the Region to secure his earnings data from the Social Security Administration.

***Action Taken ...*** As the direct result of IG subpoenas issued to the union member and his union, for financial records, the member and the union, upon advice of counsel, agreed to make reimbursement in the amount of \$6,600.00. The case was then closed.

**Credit Card Fraud**

***An OIG Investigation Disclosed That ...*** There was no direct evidence to support an allegation that an employee, during work hours, had conspired with others to defraud a local merchant by unauthorized use of a credit card.

***Action Taken ...*** A detailed investigation, including the participation of another federal law enforcement agency and the local merchants security officer, as well as sworn statements taken from the suspect and fellow employees failed to develop direct evidence that a violation of the U.S. Code had occurred.

Pursuant to the above, this case was closed.

### **Unauthorized Entry**

***An OIG Investigation Disclosed That ...*** There was no evidence to support an allegation that a regional case file was reviewed by an unauthorized individual(s) and a document not relative to the investigation was placed in it.

***Action Taken ...*** The facts as investigated did not support the conclusion that a crime had been committed, therefore the investigation was concluded.

### **Threats**

#### **Violation of Civil Rights**

***An OIG Investigation Disclosed That ...*** A citizen in a recorded message left on the IG hotline alleged that a Regional Director had made threats against him/her and otherwise had violated his/her civil rights.

***Action Taken ...*** A detailed investigation, including the participation of another federal law enforcement agency, and a review of previous files in which this complainant was the subject, determined the facts as alleged were false. The investigation was then concluded.

### **False Claim/Conflict of Interest**

***An OIG Investigation Disclosed That ...*** an agency attorney had submitted a travel claim which included a lease for a property that constituted a conflict of interest.

***Action Taken ...*** As a result of facts disclosed in a companion case, it was determined that the attorney, while on a detail, had leased an apartment that was owned variously by a close relative and a trust in which he had an interest. The claim was submitted without disclosure of the ownership of the property.

After the case was withdrawn from consideration for criminal prosecution, the attorney reimbursed the government for \$5,311.43, the full amount of the claim.

The case remains under investigation by the OIG.

### **Sexual Threat**

***An OIG Investigation Disclosed That ...*** a sexually threatening communication had been made to an Agency attorney.

**Action Taken** ... After being asked by the General Counsel to assist in the confirmation of the identity of a party that had left a sexually explicit message on the desk of an Agency attorney, the OIG concluded that the matter posed a potential threat to the employee and assumed immediate jurisdiction.

Working with The Federal Protective Service, the OIG determined that the party had an extensive criminal record of sexual violence. The Regional Director banned the party from the government building and special security arrangements were taken for the employee.

Several attempts were made to confront the subject without success. As the matter did not constitute a federal criminal violation, the subject's representatives were advised to convey caution to the subject as to his actions.

### **Privacy Act Violation**

**An OIG Investigation Disclosed That** ... there was no basis upon which to conclude that a Regional Office had engaged in a Privacy Act violation.

**Action Taken** ... After receiving a complaint that Regional Office personnel had used improper safeguards and made inappropriate disclosure of protected data, the OIG made inquiry into the matter.

The Inspector General concluded that there was insufficient evidence to support the allegation and that the Regional Office was proceeding improperly.

### **Violation of Appropriations Act**

**An OIG Investigation Disclosed That** ... the Chairman had not violated the 1998 Appropriations Act covering the Agency.

**Action Taken** ... This investigation was undertaken at the request of the Chairman of the Agency to determine if he had committed a violation of Public Law 105-78; 111 Stat. 1467 et seq., November 13, 1997.

The Chairman was invited by a state legislator to testify before a committee of the state legislature at an informational joint hearing regarding a Proposition, involving labor relations, going before the voters of the state at a subsequent date.

The Chairman did not attend the hearing, but submitted a statement in opposition to the Referendum which was forwarded to state legislators.

A press release was issued by the Agency summarizing the Chairman's statement. The Agency also released a press release of a speech by the Chairman wherein he referenced the Referendum. An "OP-ED" piece was drafted by the Chairman and provided to two newspapers.

The Chairman directed that the press release first issued be withdrawn from the Agency website, and upon becoming aware of the provisions of the Appropriations Act presented a check to the Agency reflecting the cost of the press release to the government. The payment was declined.

The essence of Public Law 105-78 is to restrict appropriated funds from being used for the purpose of supporting or defeating legislation pending before the Congress or any state legislature, except in presentation to the Congress or any state legislature.

The Inspector General looked to the law of the state and determined that the Proposition pending as a Referendum to be voted upon by the state's voters, was not a matter that was "legislation pending before any state legislature" and the action taken by the Chairman did not violate the provisions of the cited Appropriations Act.

#### **False Statements**

#### **Release of Confidential Information**

**An OIG Investigation Disclosed That ...** a Board Agent had made false and inappropriate disclosures.

**Action Taken ...** Information was developed by the OIG that allegations had been made by a party in a case in a Regional Office, that a Board Attorney had made false statements imputing a racial slur during an Agenda.

An interview was conducted with the original party, and he confirmed that he had been advised by a Board Agent that a Board Attorney, at an Agenda, had falsely imputed a racial slur to the party, thereby negatively impacting the outcome of the Agenda as it related to the party.

An interview was conducted, under oath, of the Board Attorney who unequivocally denied making the statement attributed to her.

An interview was conducted of the Board Agent, under oath, in which he confirmed, unequivocally, that the Board Attorney had made the statement at the Agenda, as alleged, and that he had advised the party in the case accordingly.

After being allowed to review previous documents related to the matter, the Board Agent then stated that it then appeared that the alleged racial slur was not made by the Board Attorney, and that the party in the case must have misconstrued his statement.

This case arose amid a situation where the same Board Agent had been assigned to handle some 60 or more cases involving the same party. The facts developed in the case indicated that this had

impacted upon the Board Agent's objectivity in dealing with the party, and the professional relationship between the Board Agent and the Board Attorney.

The Inspector General also raised concerns regarding the physical security of the Regional Office as a result of a site visit.

The matter was referred to the General Counsel as to the conduct of the Board Agent regarding the information released to the party, and the making of false statements under oath to the OIG.

The General Counsel advised the OIG that as regards the original conduct by the Board Agent, the agent had received a letter of warning and oral admonition by the Regional Director.

The General Counsel found insufficient evidence in the Board Agent's affidavit to take action on the false statements under oath.

The General Counsel also advised that the agent would no longer be assigned cases in which the original party was involved.

This case remains open in the OIG.

### **Witness Intimidation**

**An OIG Investigation Disclosed That** ... there was evidence that a Charging Party had engaged in intimidation of witnesses.

**Action Taken** ... The OIG was notified by a Regional Director that he had been advised by management in a pending case that the Charging Party had attempted to intimidate witnesses of management.

The investigation was conducted with the OIG on a joint basis with a State Police Task Force.

A witness for management told the OIG that the Charging Party had gone to his home after learning he would be a witness for management, and discussed the matter with his wife while the witness was working.

The witness also indicated that he had been at a landfill when he was approached by the Charging Party and another former employee, at a landfill. The witness stated that he was threatened with a baseball bat by the Charging Party regarding his testimony.

The OIG also learned from another witness that he had been approached by the Charging Party and his witness in public places, during which times the issue of the pending case was raised by the Charging party.

The Charging Party in the case was interviewed by the OIG, as was his witness.

It was determined that the witness had become the business partner of the Charging Party, a fact not previously disclosed to the Regional Office.

In testimony given to the OIG and State Police, both the Charging Party and his witness gave conflicting statements and other responses raising substantial questions of credibility regarding their testimony.

A report was forwarded to the General Counsel and Regional Director, and the RD issued an Order Withdrawing Complaint and Notice of Hearing and Dismissal of Charge. The matter was not appealed by the Charging Party.

The matter remains under consideration of a United States Attorney.

**Comment Paper: NLRB's Performance Plan  
For Fiscal Year 1999**

The Government Performance and Results Act mandates that the Agency prepare an annual performance plan. The performance plan should: communicate what the Agency proposes to accomplish during the fiscal year; state how the Agency will accomplish its goals; and describe how the Agency will assess whether the desired results were achieved. The OIG reviewed the Agency's performance plan for Fiscal Year 1999 and we provided several comments to management. The performance plan needed improvement in three areas. It did not state the resources required to accomplish the Agency's goals. The plan did not describe the means the Agency will use to verify and validate its performance data. Finally, some of the critical performance measures in the plan would not adequately measure the Agency's progress in achieving its goals.

**SECTION 2**

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

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

A matter involving violations of 18 U.S.C. 1001, 1512, and 1513 is pending.

**SECTION 3**

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

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

**AMOUNTS OF RESTITUTION MADE DURING REPORTING PERIOD**

\$21,459.40



**SECTION 4**

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

**Dollar Value (in thousands of \$)**

<b><u>REPORT TITLE AND NUMBER</u></b>	<b><u>QUESTIONED COSTS</u></b>	<b><u>UNSUPPORTED COSTS</u></b>	<b><u>RECOMMENDATIONS THAT FUNDS BE PUT TO BETTER USE</u></b>
Audit of Backpay	- 0 -	- 0 -	- 0 -

## SECTION 5

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

#### Audit of Backpay

This audit evaluated the controls over the computation and disposition of backpay. Backpay is a standard Board remedy whenever a violation of the National Labor Relations Act (Act) has resulted in a loss of employment or earnings. The goal in determining backpay is the same in all cases. The Act is remedial; when it has been violated, its intent is to restore the situation to that which would have taken place had the violation not occurred. Our audit scope was Fiscal Years 1996 and 1997. Over \$153 million was distributed to almost 40,000 employees during this period.

We generated a statistically valid random sample of 34 cases for review. Computer assisted auditing techniques were used to develop our sample size and select items for review. The statistical methodologies used allow us to draw conclusions regarding all cases in which backpay was distributed in either Fiscal Year 1996 or 1997 other than moneys distributed by the Finance Branch through an escrow account.

The OIG reviewed 34 cases involving backpay. The files relating to 21 cases contained materials which evidenced that the Regional Offices established the reasonableness of backpay amounts.

The remaining 13 cases reviewed by the OIG did not include computations or other evidence indicating amounts of gross backpay. Four of these 13 related to cases in which the parties reached a monetary settlement before the Regional Office determined whether the unfair labor practice charge had merit and, therefore, no determination of backpay was required. Regional Offices did not collect sufficient information regarding the remaining 9 (of 13) cases to ascertain whether proposed settlements met thresholds established by the Agency. Management agreed to implement our recommendations for corrective actions.

The OIG determined that procedures were in place which provided reasonable assurances that backpay obtained for employees was being distributed in the amounts agreed upon and to those individuals entitled to receive the moneys. We noted that the Agency's casehandling database did not accurately reflect the amount of backpay collected for 6 of the 34 cases reviewed by the OIG. Management agreed to implement our recommendations for corrective actions.

**SECTION 6**

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

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

**SECTION 7**

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

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

***HELP ELIMINATE***

***WASTE***

***FRAUD***

***ABUSE***

***AT THE NATIONAL LABOR RELATIONS BOARD***



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

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

***YOUR CALL OR LETTER MAY BE MADE ANONYMOUSLY***

***IF YOU WISH***