



NATIONAL LABOR RELATIONS BOARD

WASHINGTON, DC 20570

I hereby submit this Semiannual Report for the period October 1, 2007 – March 31, 2008. This report summarizes the major activities and accomplishments of the Office of Inspector General (OIG) of the National Labor Relations Board (NLRB or Agency) and its submission is in accordance with the Inspector General Act of 1978, as amended (IG Act). Section 5 of the IG Act requires that the Chairman transmit this report to the appropriate committees or subcommittees of the Congress within 30 days of its receipt.

In the audit program, OIG issued two audit reports, one inspection report, and two issue alerts. We also conducted the annual review required by the Federal Information Security Management Act. In the investigations program, OIG processed 89 contacts, initiated 9 cases, and closed 4 cases. The investigations resulted in two resignations, one retirement, one reprimand, and three referrals to the Department of Justice. We reviewed four pieces of legislation. Details on these accomplishments can be found in the body of this report.

During this reporting period, Jane Alenhofen retired as Inspector General. I was designated the Acting Inspector General while the Chairman goes through the process of selecting a permanent replacement. I also continue to perform my prior duties as Counsel and Assistant Inspector General for Investigations. In the upcoming reporting period, the OIG will focus its efforts on assisting the Board and General Counsel in meeting the challenges facing the NLRB by providing timely and objective work products that demonstrate our commitment to positive change through teamwork, excellence, and integrity.

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

David Berry
Acting Inspector General
April 30, 2008

AGENCY PROFILE

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

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

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

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

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

On December 16, 2007, Chairman Robert J. Battista's term expired. Also, on December 31, 2007, the recess appointments of Members Peter N. Kirsanow and Dennis P. Walsh expired with the sine die adjournment of the Senate.

Effective March 19, 2008, the President designated Peter C. Schaumber as Chairman. Wilma B. Liebman is also a Member.

The NLRB received an appropriation of \$256,238,000 for Fiscal Year (FY) 2008, less a rescission of 1.747 percent, leaving a net spending ceiling of

\$251,762,000 to fund a ceiling of 1,690 full-time equivalents. NLRB Headquarters is at 1099 14th Street, NW, Washington, DC.

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

Additional information about the NLRB can be found at www.NLRB.gov.

OFFICE OF INSPECTOR GENERAL

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

Resources

The FY 2008 OIG budget is \$1,065,900 for operations, of which \$180,943 is for contract services. In addition to the Inspector General, the OIG consists of a Counsel/Assistant Inspector General for Investigations, Assistant Inspector General for Audits, three auditors, and a staff assistant.

Jane Altenhofen retired as Inspector General on December 28, 2007. David Berry, Counsel to the Inspector General/Assistant Inspector General for Investigations, was designated the Acting Inspector General while the Chairman selects a permanent replacement. Kevin Hames entered on duty as an auditor on January 22, 2008.

AUDIT PROGRAM

The Inspector General is to provide policy direction for and is to conduct, supervise, and coordinate audits relating to program operations of the Agency. *OIG issued two audit reports and one inspection report, conducted the annual review required by the Federal Information Security Management Act, and released two issue alerts.*

Reports Issued

- We issued Audit Report
OIG-F-12-08-01, ***Audit of the NLRB Fiscal Year 2007 Financial Statements***, on December 17, 2007. The audit, performed by Carmichael, Brasher, Tuvell & Company, an independent public accounting firm, found that NLRB's FY 2007 Financial Statements were fairly stated. No material weaknesses in controls over financial reporting were identified. In addition, no instances of noncompliance with laws and regulations required to be reported by Government Auditing Standards or the Office of Management and Budget (OMB) were identified.

A Management Letter identified three areas that could have improved controls. These included information technology

security training, password management and the overaccrual of payroll expenses.

Management generally agreed with the three findings and related recommendations.

- We issued Audit Report
OIG-AMR-57-08-01, ***Office of the Chief Information Officer Procurement Functions***, on March 14, 2008. We conducted this audit to determine whether controls over procurement actions by the Office of the Chief Information Officer (OCIO) were sufficient to ensure compliance with the Federal Acquisition Regulation (FAR) and were operating as intended.

We initiated this review because the General Counsel and his managers repeatedly raised concerns that

providing warrant authority to an individual who is supervised by the Chief Information Officer (CIO) was inconsistent with long-standing Federal procurement principles regarding internal controls of fiscal matters.

Internal controls should provide reasonable assurance that the Agency complies with applicable laws and regulations. The controls that were put in place for OCIO procurement actions that we reviewed did not meet that standard and were generally ineffective in preventing violations of the FAR and Antideficiency Act. These violations include the failure to properly plan and compete procurement actions, inappropriate use of contract types, exercising a nonexistent option, executing contract actions without proper authority, and taking affirmative action that obscured an unauthorized commitment. We also found violations of the Antideficiency Act involving indemnification clauses.

The internal controls also failed to meet Government Accountability Office (GAO) standards. Internal controls were not properly documented, the employees involved did not know what procedures to follow, and the controls that were in place were not always followed.

The primary recommendation of this report was that the Senior Procurement Executive, who is the Director of Administration, remove the warrant authority for the Associate CIO for Program Management. We also recommended that the Senior Procurement Executive and CIO work together to establish procedures for ensuring that OCIO procurement needs are met.

- We issued Inspection Report OIG-INS-52-08-01, *Tax Gap*, on March 18, 2008. We conducted this inspection to determine whether the NLRB's reporting to the Internal Revenue Service (IRS) is consistent with

applicable requirements and supports proper reporting of taxable income.

Payments made to backpay recipients generally matched the instructions received from the Regional Office regarding the amounts and distribution of the payments. In general, items were properly reported on the appropriate forms.

For calendar year 2007, the value of services reported by the Agency on Form 1099-MISCs to vendors totaled \$11,058,238. The Agency did not prepare Form 1099-MISCs for 19 vendors who provided services that exceeded \$600. Also, the Agency did not prepare a Form 1099-INT for a vendor who was paid Prompt Payment Act interest. The Finance Branch subsequently prepared and sent the appropriate tax forms to the vendors by the date required by the IRS. For 28 vendors, the amount reported on Form 1099-MISC did not match the payment data in the Agency's financial system. The total underreported payments in calendar year 2007 was \$402,349.

Overall, this was a relatively favorable finding in that it represents 96 percent accuracy in reporting.

- *The Federal Information Security Management Act of 2002* requires inspectors general to conduct annual reviews of information security programs. The OIG review was primarily accomplished as part of the audit of the FY 2007 financial statements. On October 1, 2007, the Chairman submitted reports from the Inspector General and the Chief Information Officer to OMB.

- We released Issue Alert OIG-IA-08-01, *Top Management and Performance Challenges*, on October 15, 2007. The OIG developed a list of what it considers to be the most serious management and performance challenges facing the NLRB. They are:

1. Reduce the Board's pending caseload to meet performance goals;
2. Manage the Agency during periods of time that are covered by

- continuing resolutions and appropriations that are expected to be flat or provide only nominal increases;
3. Manage the Agency's procurement process to ensure compliance with the FAR;
 4. Strengthen control over employees' use of the Agency information technology assets to include Internet access;
 5. Implement e-government initiatives to effectively communicate with parties and the public; and
 6. Implement audit findings in a timely manner.
- We released Issue Alert *OIG-IA-08-02, Attorney Positions for Former Board Members*, on February 15, 2008. We received several Hotline complaints regarding the appointment of former Board Members to excepted service attorney positions within the Agency. To address those complaints, we used this Issue Alert to provide the Board and General Counsel with a brief summary of three GAO

reports issued between 1994 and 2006 that cautioned agencies against making personnel appointments that created situations and appearances which could compromise the credibility and integrity of the merit system. We also encouraged the Board and General Counsel to reconsider the practice of providing an excepted service appointment to a Presidential appointee once his or her term expires.

The Deputy General Counsel subsequently issued a memorandum to the Board and General Counsel disagreeing with the position taken by the OIG with regard to this matter. The Deputy General Counsel generally stated that providing temporary appointments to individuals awaiting a re-nomination was in the best interest of the Agency.

Audit Follow-up

In our September 30, 2007, Semiannual Report, we reported that management did not agree with a recommendation to re-compete a contract for the management and operational support of

the mailroom as a fixed-price contract using the correct Federal Supply Schedule. Management subsequently recompeted the contract for a variety of concerns that were raised by the new Chief of the Contracts and Procurement Section. The contract was awarded on March 19, 2008, under the correct Federal Supply Schedule. We estimate that this action saved the Agency approximately \$178,000 for the base and the option year of the new contract.

Agreed upon actions were not completed within 1 year on two audit reports. One of these reports is now closed.

- ***Non-Standard Work Hours Compensation***, OIG-AMR-47-05-04, was issued on August 9, 2005, and we reached agreement with management on that date. Action has been completed on five of seven recommendations. One of

the open recommendations is to revise the Administrative Policies and Procedures Manual (APPM) to require that overtime be authorized in advance, if feasible, and approved in writing. The other open recommendation is to revise the APPM to require limiting the time that credit hour balances can be carried. During this reporting period, the Agency and the OIG continued to work together to address the open recommendations. We both anticipate a resolution during the next reporting period.

- ***Information Technology Procurement Actions***, OIG-AMR-51-06-02, was issued on June 29, 2006, and we reached agreement with management on August 14, 2006. Action was completed on the final open recommendations. We closed the audit report on March 31, 2008.

INVESTIGATIONS PROGRAM

The Inspector General is to provide policy direction for and is to conduct, supervise, and coordinate investigations relating to the programs and operations of the Agency. *OIG processed 89 contacts, initiated 9 cases, and closed 4 cases. The investigations resulted in two resignations, one retirement, one reprimand, and three referrals to the Department of Justice.*

Case Workload		Contacts Processed	
Open (10/1/2007)	9	Received	89
Initiated	9	Initiated Investigation	1
Closed	4	Opened Case -- Referred to Agency	0
Open (3/31/2008)	14	Non-Investigative Disposition	88

- Altering Evidence.** As previously reported, the OIG initiated this investigation after receiving a report that the subject interfered with an unfair labor practice (ULP) investigation by altering e-mail messages that she received from a party involved in the ULP investigation. The e-mail messages were relevant to a pending ULP case and copies had been requested by an Agency attorney. When interviewed, the subject admitted that she engaged in this misconduct. Because the subject's conduct violated Federal statutes regarding obstruction of justice and false statements, we referred this matter to the U.S. Attorney's Office,

which declined prosecution. During this reporting period, the subject agreed to retire in lieu of a removal action. (OIG-I-407)

- Obstruction of Justice.** As previously reported, the OIG initiated an investigation of a support employee who failed to process litigation material related to the Agency's pending cases in the circuit courts. The U.S. Attorney's Office declined prosecution. During this reporting period, the subject submitted a resignation in lieu of disciplinary action after being interviewed by the OIG investigator. (OIG-I-411)

- **Fraud.** As previously reported, the OIG initiated an investigation of an employee who was suspected of creating fraudulent leave and earnings statements for a third party who submitted them with an application for housing benefits for low income individuals. The U.S. Attorney's Office declined prosecution. During this reporting period, we completed our investigation and found that two employees were involved in creating and using fraudulent leave and earnings statements to receive a variety of state welfare benefits. During the course of the investigation, one employee resigned in lieu of disciplinary action. Agency managers are considering disciplinary action for the remaining employee. Because the misconduct involved state welfare benefits, we provided our investigative results to the state prosecutor's office, which has initiated an investigation of this matter. (OIG-I-412)

- **Misuse of Position.** The OIG initiated an investigation of a former political appointee who allegedly

misused his position to obtain a non-political position with the Agency. During the course of our investigation, we found that the subject did not take official action with respect to approving his selection of the non-political position and that he did not accept the position. We coordinated our investigative efforts with the Public Integrity Section of the Department of Justice and the Office of Government Ethics, both of which concurred that the subject had not engaged in any misconduct. (OIG-I-418)

- **Contracting Irregularities.** The OIG initiated an investigation of OCIO contracts with indemnification clauses that violate the Antideficiency Act and other contracting matters that were identified through an audit. The appropriate U.S. Attorney's Office declined prosecution of the Antideficiency Act violations. Our administrative investigation of the Antideficiency Act violations is ongoing. The other contracting matters did not appear to be related to misconduct. (OIG-I-419)

- **Threats to a Board Agent.** The OIG initiated an investigation after a board agent received a threat from an employer. After we referred this matter to the appropriate U.S. Attorney's Office, the Federal Bureau of Investigation took the lead on this matter. (OIG-I-417)

- **Contractor Internet Misuse.** The OIG initiated an investigation of contract personnel for misusing the Agency's Internet access. During the course of a routine review of the Agency's Internet firewall logs, we found evidence that the contractor's employee was using the Agency's Internet access and official time to engage in activity related to personal financial investments and outside business activities. When interviewed, the contract employee acknowledged that he was idle approximately 50 percent of the time. We issued an interim report to Agency managers so that they may attempt to resolve this matter with the contractor. (OIG-I-413)

- **Travel Card Misuse.** OIG initiated this case after the Chief, Finance Branch, reviewed the transactions for the CitiBank Travel Card and found an improper charge by the subject. When interviewed, the subject admitted that she improperly used the travel card to pay certain expenses related to cable television and telephone/internet services. Agency managers resolved this matter by issuing a reprimand to the subject. (OIG-I-415)

Hotline

Employees and members of the public with information on fraud, waste, and abuse are encouraged to contact OIG. A log of calls to a nationwide toll free number or the office numbers and a log of mail, e-mail, and facsimile messages are maintained. All information received, regardless of the method used, is referred to as Hotline contacts.

The information received over the hotline is the basis for the initial review

for potential investigations. The information is analyzed to determine if further inquiry is warranted. Most Hotline contacts are calls from members of the public seeking help on an employment related problem or issues outside OIG and/or Agency jurisdiction.

As appropriate, OIG refers these callers to the Regional Office; local, state, or Federal agency; or private resource to provide assistance. During this reporting period, OIG received 89 Hotline contacts, of which 43 were telephone calls and 46 were in writing.

LEGISLATION, REGULATIONS, AND POLICY

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

Legislation

We reviewed the following legislation and provided input when appropriate.

S. 2324, Inspector General Reform Act of 2008. This bill amends the IG Act to require each Inspector General to be appointed without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. It requires the head of a designated federal entity to communicate to Congress in advance the reasons for removing or transferring an Inspector General. It sets forth the annual rate of basic pay for Inspectors General and prohibits an Inspector General from receiving cash awards or bonuses. The bill would require Inspectors General to obtain legal advice from a counsel either reporting directly to the Inspector General or another Inspector General. It

establishes within the executive branch the Council of the Inspectors General on Integrity and Efficiency and an Integrity Committee for the Council to review and refer for investigation allegations that are made against Inspectors General and certain staff of the Inspector General Offices. The bill provides for the transmission of Inspector General budget requests.

S. 2583, Improper Payments Elimination and Recovery Act of 2008. This bill amends the Improper Payments Information Act of 2002 (31 U.S.C. 3321 note) in order to prevent the loss of billions in taxpayer dollars. The bill requires the Inspector General of each agency to determine whether the agency is in compliance with the Improper Payments Information Act and submit a report to the head of the agency on that determination. The head of each agency shall include the report of the

agency's Inspector General in the Performance and Accountability Report.

HR. 1873, Small Business Fairness in Contracting Act. This bill would require that the Inspector General of each agency, on an annual basis, submit to Congress a report on the number and dollar value of contract awards that were coded as awards to small business concerns, but in fact were made to businesses that did not qualify as small business concerns.

FY 2008 Consolidated Appropriations Act. This law requires that Inspectors

General (1) post audits and other reports on his or her Web site within 1 day of the release of the report; (2) provide a service for individuals to request automatic receipt of audits and reports; and (3) provide a link on the OIG Web site allowing anonymous reporting of waste, fraud, and abuse.

Regulations

The Counsel to the Inspector General is an advisory member of the Agency's Rules Revision Committee that develops changes to the Agency's procedural regulations.

LIAISON ACTIVITIES

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

Inspector General Community

The Inspector General is a member of the Executive Council on Integrity and Efficiency (ECIE), which consists primarily of the inspectors general at the designated Federal entities in the IG Act.

The Inspector General also participates in activities sponsored by the President's Council on Integrity and Efficiency, which consists primarily of the Presidentially-appointed inspectors general.

The Assistant Inspector General for Audits, or designated auditors, participated in the Federal Audit Executives Council, Financial Statement Audit Network, the Interagency Investigative Data Mining Working Group, and the Chief Financial Officers Council A-136 Subcommittee.

The Counsel participated in the Council of Counsels to Inspectors General (CCIG). The Counsel also participated in the Interagency Investigative Data Mining Working Group.

Government Accountability Office

The IG Act states that each inspector general shall give particular regard to the activities of the Comptroller General of the United States, as head of GAO, with a view toward avoiding duplication and ensuring effective coordination and cooperation.

At the August 28, 2007, ECIE meeting, GAO announced that they were planning to evaluate the governance structures at designated federal entities and the inspectors general's roles and reporting

relationships within the governance structures. This evaluation was requested by Senator Charles Grassley. Official notifications were subsequently

sent to the Chairman and General Counsel. During this reporting period the OIG received a GAO survey regarding OIG independence.

INFORMATION REQUIRED BY THE ACT

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

Section 5(a)

- (1), (2), (7) OIG did not identify significant problems, abuses or deficiencies relating to the administration of programs. For the purpose of this section, we used the definition of significant as set forth in the Federal Managers' Financial Integrity Act.
- (3) Corrective action has been completed on all significant recommendations that were described in the previous semiannual reports.
- (4) Three cases were referred to prosecutorial authorities. There were no prosecutions or convictions.
- (5) No reports were made to the Chairman that information or assistance requested by the Inspector General was unreasonably refused or not provided.
- (6) A listing by subject matter is located on page 18.
- (8), (9) No audit reports issued during this period had a recommendation on questioned costs. One audit report issued during this period identified funds that could be put to better use. See Table 2.
- (10) There are no audit reports issued before the commencement of the reporting period for which no management decision has been made by the end of the reporting period.
- (11) No significant revised management decisions were made during the reporting period.
- (12) There were no significant management decisions with which I am in disagreement.

AUDIT REPORTS BY SUBJECT MATTER

<u>Report Title and Number</u>	<u>Questioned Costs</u>	<u>Unsupported Costs</u>	<u>Ineligible Costs</u>	<u>Funds To Be Put To Better Use</u>
ADMINISTRATION				
NLRB Fiscal Year 2007 Financial Statements OIG-F-12-08-01	0	0	0	0
Office of the Chief Information Officer Procurement Functions OIG-AMR-57-08-01	0	0	0	\$13,000

Table 1**REPORTS WITH QUESTIONED COSTS**

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

**REPORTS WITH RECOMMENDATIONS
THAT FUNDS BE PUT TO BETTER USE**

Table 2

	<u>Number of Reports</u>	<u>Funds Be Put To Better Use</u>
A. For which no management decision has been made by the commencement of the period	0	0
B. Which were issued during the reporting period	1	\$13,000
Subtotals (A+B)	1	\$13,000
C. For which a management decision was made during the reporting period	1	\$13,000
(i) Dollar value of recommendations that were agreed to by management	1	\$13,000
(ii) Dollar value of recommendations that were not agreed to by management	0	0
D. For which no management decision has been made by the end of the reporting period	0	0
Reports for which no management decision was made within six months of issuance	0	0

*Every employee is the
guardian of integrity.*



**OIG Hotline
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