

INSPECTOR GENERAL



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## NATIONAL LABOR RELATIONS BOARD

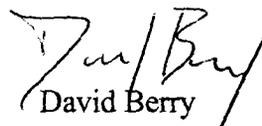
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WASHINGTON, DC 20570

I hereby submit this Semiannual Report for the period October 1, 2008 – March 31, 2009. This report summarizes the major activities and accomplishments of the Office of Inspector General of the National Labor Relations Board 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, the Office of Inspector General issued two audit reports and two issue alerts. In the investigations program, the Office of Inspector General processed 118 contacts, initiated 5 cases, and closed 5 cases. Our investigative efforts resulted in two resignations, one referral to the Department of Justice, two convictions, and an investigative recovery of \$14,654. Details on these accomplishments can be found in the body of this report.

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

  
David Berry  
Inspector General  
April 30, 2009

## AGENCY PROFILE

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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.

Effective January 20, 2009, President Barack H. Obama designated Wilma B. Liebman as Chairman. Chairman Liebman has served on the Board since November 14, 1997.

Peter C. Schaumber continues to serve as a Board Member, and currently there are three vacant seats on the five-Member Board.

Ronald Meisburg continues to serve as the General Counsel.

The NLRB received an appropriation of \$262,595,000 for Fiscal Year (FY) 2009

to fund a ceiling of 1,680 full-time equivalents. NLRB Headquarters is at 1099 14<sup>th</sup> 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](http://www.NLRB.gov).

## OFFICE OF INSPECTOR GENERAL

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

### Resources

At the time of this report, the Agency has not adopted its budgetary operating plan and the OIG has not received an allocation of funds. Funding, however, is being provided to the OIG on an as needed basis.

In addition to the Inspector General, the OIG consists of a Counsel/Assistant Inspector General for Investigations, an Assistant Inspector General for Audits, two auditors, and a staff assistant.

Effective November 23, 2008, former Chairman Peter C. Schaumber appointed David P. Berry as Inspector General. Prior to the appointment, Mr. Berry was the Acting Inspector General and Counsel/Assistant Inspector General for Investigations.

Jennifer S. Kovachich entered on duty as Counsel/Assistant Inspector General for Investigations effective January 18, 2009.

## AUDIT PROGRAM

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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 two issue alerts.*

### Reports Issued

- We issued Audit Report

OIG-F-13-09-01, *Audit of the NLRB Fiscal Year 2008 Financial Statements*, on December 16, 2008. The audit, performed by Carmichael, Brasher, Tuvell & Company (CBTC), an independent public accounting firm, found that NLRB's FY 2008 Financial Statements were fairly stated. Although no material weaknesses in controls over financial reporting were identified, an issue involving noncompliance with laws and regulations was reported.

The issue involving noncompliance with laws and regulations was that the Agency did not comply with the Federal Acquisition Regulation (FAR) requirement that contractors have active registrations in the Central Contractor Registration when it entered into two contracts totaling \$111,002. The result was that there were two invalid

obligations recorded against the FY 2008 appropriation.

The Management Letter by CBTC, as part of the financial statement audit process, contained two findings with recommendations. One of the findings and recommendations involved the issue with the Central Contractor Registration and the other involved incremental funding of a contract. The Management Letter also provided information on the status of four prior year recommendations.

The Agency's responsible management official agreed with the findings in the audit report, but the official disagreed with the analysis of the cause for the FAR noncompliance. The official made no comments on the Management Letter findings. Management agreed to work with the OIG to resolve the incremental funding finding.

- We issued Audit Report OIG-AMR-59-09-01, *Laptop Computer Accountability and Security*, on February 27, 2009. We conducted this audit to determine whether Agency-owned laptop computers were properly controlled and configured to protect sensitive data.

We found that the Agency's laptop computers were not properly controlled and not all of the laptop computers were configured to protect sensitive data. In general, the Office of the Chief Information Officer lacked a system of internal control for the Agency's laptop computers.

As a result of the lack of internal control, there was a significant risk of loss of equipment and, therefore, the data stored on that equipment. During the course of the audit, we identified 21 laptop computers as either being lost, stolen, or otherwise missing. While 17 of the missing laptop computers were older and no longer in useful service, because of a

lack of documentation, we could not determine when the laptop computers became missing. In addition to the 21 missing laptop computers, we also found that two additional laptop computers had been improperly removed from the electronic inventory system. Information regarding these laptop computers was referred to the OIG investigative staff.

The primary recommendation made in the report was that the Agency develop and maintain an inventory system that includes written procedures and a method for ensuring that those procedures are followed. The responsible management official generally agreed with the findings and recommendations.

We released Issue Alert OIG-IA-09-01, *Top Management and Performance Challenges*, on October 17, 2008. The OIG developed a list of what it considers to be the most serious management and performance challenges currently facing the NLRB. They are:

1. Issue Board decisions in a timely manner so as to ensure the effective enforcement of the National Labor Relations Act;
  2. Maintain the Agency's institutional knowledge;
  3. 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;
  4. Manage the Agency's procurement process to ensure compliance with the Federal Acquisition Regulation;
  5. Strengthen control over employees' use of Agency information technology assets to include Internet access; and
  6. Implement e-government initiatives to effectively communicate with parties and the public.
- We released Issue Alert OIG-IA-09-02, *The Agency's Procurement Function*, on October 21, 2008.

The purpose of this Issue Alert was to notify the Board and General Counsel of internal control issues involving the Agency's procurement functions. The Issue Alert encouraged the Board and the General Counsel to meet and discuss a means of restructuring the procurement function and concluded that, at a minimum, consideration should be given to removing the procurement function from the Procurement and Facilities Branch and the Division of Administration. The managers responsible for the procurement function did not agree with our assessment or suggested action.

Although not in response to the Issue Alert, the Division of Administration is in the process of establishing a procurement office separate from the Procurement and Facilities Branch. This action should, in part, address the concerns that resulted in the release of the Issue Alert.

**Audit Follow-up**

Agreed upon actions were not completed within 1 year on four audit reports.

- ***Audit of the NLRB Fiscal Year 2006 Financial Statements***, OIG-F-11-07-01, was issued on December 14, 2006, and we reached agreement with management on June 14, 2007. We are in the process of reviewing the actions taken by the Agency to determine if the final open recommendation has been implemented.
- ***Continuity of Operations***, OIG-AMR-55-07-03, was issued on September 18, 2007, and we reached agreement with management on that date. Action has been completed on one of the three recommendations. The Agency is actively working to implement the other two recommendations.

- ***Audit of the NLRB Fiscal Year 2007 Financial Statements***, OIG-F-12-08-01, was issued on December 17, 2007, and we reached agreement with management on that date. Action has been completed on one of the three recommendations. The Agency is actively working to implement one recommendation and we are reviewing actions taken by the Agency that implemented another recommendation.
- ***Office of the Chief Information Officer Procurement Functions***, OIG-AMR-57-08-01, was issued on March 14, 2008, and we reached agreement with management on that date. Action has been completed on five of the seven recommendations. The Agency is actively working to implement the other two recommendations.

## INVESTIGATIONS PROGRAM

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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 118 contacts, initiated 5 cases, and closed 5 cases. The investigations resulted in two resignations, one referral to the Department of Justice, two convictions, and \$14,654.00 in investigative recoveries.*

Case Workload		Contacts Processed	
Open (10/1/2008)	10	Received	118
Initiated	5	Initiated Investigation	1
Closed	5	Opened Case -- Referred to Agency	0
Open (3/31/2009)	10	Non-Investigative Disposition	117

- 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 (FBI) took the lead on this  
 matter. The employer then made  
 additional threats to employees at the  
 NLRB Headquarters. Thereafter, we  
 worked jointly with the FBI to obtain  
 evidence that substantiated the  
 employer's criminal activity. In a prior  
 reporting period, the subject was  
 indicted on charges related to her threats  
 to kill NLRB employees. During this  
 reporting period, the subject was

convicted of making threats against a  
 Federal employee and witness  
 tampering. The subject was sentenced to  
 5 years confinement and 3 years  
 probation. (OIG-I-417)

- 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 low income  
 housing benefits. The U.S. Attorney's  
 Office declined prosecution. We then  
 continued our investigation and found  
 that the employee and other individuals,  
 including another employee, used the

fraudulent leave and earnings statements to receive state welfare benefits. The employee that was initially involved in the investigation resigned before we issued our investigative report. The second employee resigned in lieu of a removal action after our investigative report was issued.

Because the misconduct involved state welfare benefits, we also provided our investigative results to the state prosecutor's office. In a prior reporting period, the former employees were arrested on felony charges involving fraud and perjury and one was convicted and sentenced. During this reporting period, the remaining employee was convicted of nine counts of perjury, one count of grand theft, and one count of welfare fraud. This former employee received a sentence of 210 days confinement, 2 years probation, and 120 hours of community service. (OIG-I-412)

• **Misuse of Time and Resources.** After receiving a Hotline complaint, the OIG initiated an investigation of an employee who used his official telephone to conduct outside employment. During the investigation, we obtained an electronic copy of the employee's Government e-mail account. A review of the e-mail messages disclosed evidence to support additional allegations involving the misuse of official time to conduct outside employment activities. Evidence collected from the employee's Government computer provided additional substantiation of the allegations. After the case was presented to the Department of Justice, the Agency and the employee entered into an agreement for his resignation and restitution of \$14,654.00. Based on the resolution of this matter by the Agency, the U.S. Attorney's Office declined prosecution. (OIG-I-426).

- **Abuse of Property and Insubordination.** We initiated an investigation of an employee who removed a computer hard drive from the office and apparently did something to destroy it. During the course of the investigation, additional information was received regarding allegations that the employee wrongfully came into possession of official electronic files belonging to a management official, was insubordinate, and provided false and/or misleading information to the OIG. After we issued an investigative report, the Agency issued to the subject a notice of proposed removal. Thereafter, the subject resigned. (OIG-I-420)
- **Alteration of Records.** We initiated an investigation of an employee who altered Agency records for the benefit of a fellow employee. The U.S. Attorney's Office declined prosecution. Agency managers are considering appropriate administrative action. (OIG-I-426)
- **Travel Card Abuse.** We initiated a case involving an employee who misused the Government travel card. During the 18-months preceding our investigation, the employee used the travel card on eight occasions to receive cash advances at casinos. The total amount of the cash advances, including the associated fees, was \$3,314.76. On two occasions, the employee used the travel card for food and lodging for total charges of \$240.03 that were not related to official travel. Agency managers are considering appropriate administrative action. (OIG-I-429)
- **Travel Card Abuse.** We initiated a case involving an employee who misused the Government travel card. During a 4-month period of time, the employee made 22 purchases at gas stations that totaled \$934.38. During approximately the same period of time, the employee was reimbursed \$192.33 for travel related expenses – including \$62.50 for parking and tolls.

The employee also failed to pay the balance due on the travel card and the travel card account was terminated. During the investigation, the employee provided misleading statements to the OIG investigator. Agency managers are considering appropriate administrative action. (OIG-I-430)

• **Transit Subsidy Fraud and Misleading Statement.** As previously reported, the OIG initiated an investigation of an employee who was suspected of driving to work while receiving the transit subsidy. The U.S. Attorney's Office declined prosecution. During this reporting period, the employee and the Agency entered into an alternative dispute resolution agreement involving a 5-day suspension that will be held in abeyance pending a year of good behavior. (OIG-I-425)

### **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 118 Hotline contacts, of which 47 were telephone calls or walk-ins and 71 were in writing.

## LEGISLATION, REGULATIONS, AND POLICY

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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 five pieces of legislation.*

### Legislation

We reviewed the following legislation and provided input when appropriate.

**H.R. 216, Government Credit Card Abuse Prevention Act of 2009.** This legislation would require the head of each executive agency, except the Department of Defense, to: (1) establish safeguards and internal controls for purchase cards, convenience checks, and travel cards; and (2) prescribe regulations implementing such safeguards and controls that provide for adverse personnel actions or other punishment against employees for card violations, negligence, misuse, abuse, or fraud.

It also requires each agency Inspector General to: (1) periodically conduct risk assessments of agency purchase and travel card programs and associated internal controls, analyze weaknesses and the frequency of improper activity,

and develop a plan to determine the scope, frequency, and number of periodic audits of cardholders; (2) perform periodic audits of card holders and report results to the agency head; and (3) report to the Director of the Office of Management and Budget and the Comptroller General on the implementation of recommendations to address audit findings.

**H.R. 478, Federal Agency Performance Review and Efficiency Act.** This legislation would amend the Inspector General Act of 1978 to make it the principal duty and responsibility of each Inspector General to review, annually, the operations, efficiency, and effectiveness of Federal programs within his or her entity and submit annually to Congress and the President recommendations, accompanied by proposed legislation, on whether an abolishment, reorganization, consolidation, or transfer of existing

Federal programs and agencies is necessary to: (1) reduce Federal expenditures; (2) increase efficiency of government operations; (3) eliminate overlap and duplication in Federal programs and offices; (4) abolish agencies or programs that no longer serve an important governmental purpose; and (5) identify reductions in amounts of discretionary budget authority or direct spending that can be dedicated to Federal deficit reduction.

**S. 272 and H.R. 1507, Whistleblower Protection Enhancement Act of 2009.**

This legislation clarifies Congressional intent that Federal employees are protected for any disclosure of waste, fraud, or abuse - including those made as part of an employee's job duties. It would also suspend the Federal Circuit Court of Appeals' sole jurisdiction over Federal employee whistleblower cases for 5 years.

**S. 458, False Claims Act Clarification Act of 2009.** This legislation would

make amendments to the False Claims Act, including extending the time to bring a civil action from 6 years to 10 years from the date of the violation. The legislation would also allow the civil penalty of not less than \$5,000 and not more than \$10,000 to be adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990.

**S. 560 and H.R. 1409, Employee Free Choice Act.** This legislation would amend the NLRA to allow employees to form a union either through majority sign-up or an NLRB election. The legislation would also increase the penalties against employers that illegally fire or discriminate against workers for their union activity during an organizing or first contract drive, including requiring employers to pay triple backpay to workers whom they are found to have illegally fired; and allow employers and newly formed unions to refer bargaining to mediation and, if necessary, binding arbitration if they are not able to agree on a first contract.

**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

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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 Council of the Inspectors General on Integrity and Efficiency. This organization consists of Inspectors General at the Federal Government's departments and agencies.

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

The Counsel participated in the Council of Counsels to Inspectors General. The

Counsel also participates 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 the Government Accountability Office (GAO), with a view toward avoiding duplication and ensuring effective coordination and cooperation. We had no activity during this reporting period that required coordination with GAO.

## PEER REVIEWS

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The IG Act provides that each Inspector General shall comply with standards established by the Comptroller General of the United States. One of the standards states that organizations conducting Government audits should have an external quality control review at least once every 3 years. That review of our organization was conducted during this reporting period by the Inspector General of the Federal Trade Commission (FTC).

### **Audit Quality Control**

The FTC conducted the review in accordance with *Government Auditing Standards* and guidelines established by the Council of the Inspectors General on Integrity and Efficiency. In his report, issued on February 6, 2009, the FTC Inspector General concluded that the system of quality control for the audit organization of the NLRB OIG has been

suitably designed and complied with to provide reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Federal audit organizations can receive a rating of pass, pass with deficiencies, or fail. The NLRB OIG received a rating of pass. No Letter of Comments was issued.

## INFORMATION REQUIRED BY THE ACT

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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)                One case was referred to prosecutorial authorities. There were two prosecutions and two 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 or that 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**

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<b><u>Report Title and Number</u></b>	<b><u>Questioned Costs</u></b>	<b><u>Unsupported Costs</u></b>	<b><u>Ineligible Costs</u></b>	<b><u>Funds To Be Put To Better Use</u></b>
ADMINISTRATION				
NLRB Fiscal Year 2008 Financial Statements OIG-F-13-09-01	0	0	0	0
Laptop Computer Accountability and Security OIG-AMR-59-09-01	0	0	0	0

**Table 1****REPORTS WITH QUESTIONED COSTS**

	<b><u>Number of Reports</u></b>	<b><u>Dollar Value</u></b>	
		<b><u>Questioned Costs</u></b>	<b><u>Unsupported Costs</u></b>
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**

	<b><u>Number of Reports</u></b>	<b><u>Funds Be Put To Better Use</u></b>
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	0	0
Subtotals (A+B)	0	0
C. For which a management decision was made during the reporting period	0	0
(i) Dollar value of recommendations that were agreed to by management	0	0
(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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