

# Audit of Administrative Law Judge Procedures

## Report No. OIG-AMR-24

- [Results of Audit](#)
- [Objectives, Scope, and Methodology](#)
- [Background](#)

### ***RESULTS OF AUDIT***

This audit evaluated procedures adopted by the Division of Judges to expedite the resolution of unfair labor practice cases. First, a settlement judge process was implemented to affect settlements prior to formal hearings. Second, judges were granted the authority to ask for oral argument in lieu of briefs and issue bench decisions at the close of hearings. Third, time targets were established for the issuance of Administrative Law Judges' decisions. Our review assessed whether the intended results were being achieved. We also determined if the information system used by the Division of Judges accurately reported the judges' performance. The scope of our audit was Fiscal Years 1996 and 1997.

The Division of Judges has successfully implemented the aforementioned procedures. The judges were achieving a higher number of settlements thus avoiding the costs and the delay required by a formal hearing. One key performance indicator related to the number of elapsed days between the date a judge received the case briefs and the date the judge issued a decision. The median number of days, from receipt of briefs to issuance of decisions, has been reduced each of the last several years. Our review also determined that the data relating to the Division of Judges' performance was reliable.

**Settlement Judges.** During Fiscal Years 1996 and 1997, 190 cases were assigned to settlement judges. The Division of Judges achieved settlements for 68 percent (129 of 190) of these cases. The success rate of the settlement judges is noteworthy considering these cases were about to be formally litigated. We noted that cumulative settlements obtained by the Division of Judges increased substantially since the adoption of the settlement judge process. Total settlements by judges increased 21 percent in Fiscal Year 1996 and 19 percent in Fiscal Year 1997 when compared to the period settlement judges were not utilized.

The Chief Administrative Law Judge, his Deputy, or one of the Associate Chiefs may appoint a settlement judge. The assigning judge considers factors such as: whether one of the case participants requested a settlement judge; the effect of an assignment on Agency resources; and the number of days that the trial is expected to last. Cases expected to include lengthy trials, defined as three to five days, receive strong consideration when settlement judges are assigned. As previously stated, the Division of Judges achieved 129 settlements during Fiscal Years 1996 and 1997. We noted that 27 percent (35 of 129) of these settlements related to cases handled by the General Counsel's office in Philadelphia (Region 4). The Division of Judges settled 65 percent (35 of 54) of the cases from Region 4 as compared to the settlement judges' nationwide average of 68 percent. Philadelphia's participation in the settlement judge process was proactive in nature. Each month Region 4 identified several cases for referral to a settlement judge. The Region then notified the parties involved in each case that the Division of Judges had been requested to assign a judge to conduct a settlement conference regarding their case. The Region stated a specific date on which the conference would be held and requested the parties to notify the Agency whether or not they wished to participate in such a conference. The Region stated that participation in the settlement conference is voluntary and that no conference would be held unless all parties agreed to participate. The Region also informed the parties that the settlement judge would not be the judge assigned to hear the case if it goes to trial; and, that settlement discussions would not be admissible in proceedings before the Board except by stipulation of the parties.

The practices utilized by Region 4, in regards to the settlement judge process, may be useful to other Regional Offices. The Office of Inspector General will bring this matter to the attention of the acting General Counsel.

**Bench Decisions.** During Fiscal Years 1996 and 1997, the Division of Judges issued 48 bench decisions. These cases represented about 5 percent of the total decisions issued by the judges during this period. Judges may render bench decisions after the conclusion of oral arguments. As a result, bench decisions were issued earlier than cases in which

judges reviewed the briefs before issuing a decision. In Fiscal Year 1997, the median time from the close of hearing to the submission of the judge's decision was 107 days. For bench decisions, the median time was 23 days.

Judges were given the discretion to decide whether briefs are needed in a case before rendering their decision. The Agency recognized that bench decisions are not suitable for many cases. In more complex cases, including cases with lengthy records, utilizing bench decisions may create situations which the reviewing courts might remand a case for more thoughtful consideration.

The Board provided guidance as to when it may be appropriate to issue bench decisions. In part, these guidelines focused on cases involving a well-settled issue where there is no dispute as to the facts and short record single-issue cases. As previously stated, 48 bench decisions were issued by the Division of Judges. Twenty-nine of these decisions were appealed to the Board of which 15 were affirmed. The Board reversed one decision, remanded two, and 11 were pending. Four bench decisions were appealed to the Court of Appeals. Three of these were pending and the court affirmed the remaining decision.

**Time Targets.** In May 1995 the Board implemented the following time targets for the issuance of judges' decisions.

- For cases with transcripts of 500 pages or less, the time target is 60 days after receipt of briefs.
- For cases with transcripts of between 501 and 1000 pages, the time target is 90 days after receipt of briefs.
- For cases with transcripts of over 1000 pages, the time target is negotiated between one of the chiefs and the judge.

In Fiscal Year 1997, the Division of Judges reported that they met their time target 61 percent of the time when case transcripts were less than 500 pages. The average number of transcript pages that year was 553 but most cases involved transcripts of less than 500 pages. The judges met their time target 44 percent of the time when case transcripts were between 501 and 1000 pages. We generated a statistically valid random sample of 40 cases and determined how many cases were meeting the time targets. The statistical methodologies used allow us to draw conclusions regarding all cases in Fiscal Year 1996 and 1997. Our testing determined that 62 percent (25 of 40) of the cases met the established time target.

We noted that the median number of days, from the receipt of briefs to the issuance of decisions, has been decreasing. In Fiscal Year 1995, the median number of days was 64; in 1996 it was 62; and, in 1997 the median number of days had been reduced to 60. The OIG believes this measurement indicates steady progress towards the Board's goal of facilitating the expeditious resolution of unfair labor practice proceedings.

The time target for cases with 501 to 1000 pages was met 44 percent of the time during Fiscal Year 1997. The Chief Administrative Law Judge has proposed increasing the time target for these cases. Based on the data, an increase in the time target for the 501 to 1000 page cases may be a more realistic goal for the Division of Judges. The Division of Judges will have performance data for Fiscal Year 1998 very soon. This information should prove very useful in deciding whether to increase the time target.

**Information System.** We assessed the collection and processing of data that was used to report on the performance of the Division of Judges. This data related to settlement judges, bench decisions, time targets and other procedures. The data was accurate and the reports on the judges' performance were reliable.

**Management had no formal comments.**

### **OBJECTIVES, SCOPE AND METHODOLOGY**

This audit evaluated procedures adopted by the Division of Judges to expedite the resolution of unfair practice labor practice cases. Our review assessed whether the intended results were being achieved. We also determined if the information system used by the Division of Judges accurately reported the judges' performance.

Our audit scope was Fiscal Years 1996 and 1997. The Division of Judges issued 925 decisions and settled 1,436 cases during those years.

The OIG ascertained policies applicable to the Division of Judges by reviewing pertinent sections of the Agency's Rules and Regulations and Statement of Procedures. We also interviewed officials from the Division of Judges, selected regional offices, and the Division of Administration. These officials explained and clarified Agency procedures. We reviewed reports on the Judges' performance and examined source documentation that supported these reports. We generated a statistically valid random sample of 40 cases for review and determined the accuracy of performance data. The statistical methodologies used allow us to draw conclusions regarding all cases in Fiscal Years 1996 and 1997.

This audit was performed in accordance with generally accepted Government auditing standards at the Agency's Headquarters Office from January through September 1998.

## **BACKGROUND**

The Agency administers the principal labor relations law of the United States, the National Labor Relations Act of 1935, as amended, which 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 railroads and the airline industries. The National Labor Relations Board (NLRB) performs its mission by: (1) conducting secret ballot elections to determine if a group of employees wishes to be represented, for collective bargaining purposes, by a labor organization; (2) adjudicating representation issues if the parties cannot reach agreement; (3) investigating charges of unfair labor practices filed by the public with the Agency; (4) prosecuting, if the parties cannot settle and reach an agreement, those cases of unfair labor practices which the Agency determined to have merit; and (5) adjudicating those unfair labor practice cases which the Agency litigates.

In a sense, NLRB is two entities within one Agency. The General Counsel investigates unfair labor practices and litigates before the Board. The Board is judicial in nature and includes Administrative Law Judges, whose decisions may be appealed by any of the parties, including the General Counsel, to the five member Board appointed by the President. Board decisions may be appealed, other than by the General Counsel, to the US Courts of Appeals and the Supreme Court. By delegation from the Board, the General Counsel of the Agency represents the NLRB in those cases and in matters before Bankruptcy and District Courts. The Regional Offices coordinate secret ballot elections under the supervision of the Board. The NLRB responds to matters brought before it and does not initiate cases on its own. In Fiscal Year 1998, the Agency employed about 1880 people and had an appropriation of \$174,661,000.