

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
Office of Inspector General



MEMORANDUM

DATE: June 27, 1996

To Chairman William B. Gould IV  
General Counsel Frederick L. Feinstein

From Acting Inspector General John E. Higgins, Jr.

Subject: Final Audit Report - "Review of the Agency's Process for Measuring and Reporting on its Performance"  
Audit Report No. OIG-AMR-16

Attached is the Office of Inspector General (OIG) audit report regarding the above referenced matter. A draft of the report was submitted to both of you for comment. Each of you advised me that you had no formal comments for inclusion in the final report. There were no recommendations requiring a response, therefore, the audit is closed.

We appreciate the cooperation extended to the OIG, specifically to Auditor Emil George, during the conduct of this audit. Should you have any questions concerning this report, please do not hesitate to call upon us.

  
J.E.H.

# AUDIT REPORT

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*Office of Inspector General*

**REVIEW OF THE AGENCY'S PROCESS FOR  
MEASURING AND REPORTING ON ITS PERFORMANCE**



**National Labor Relations Board**

***Audit OIG-AMR-16***

Issued: June 27, 1996

TABLE OF CONTENTS

	<u>PAGE</u>
I. EXECUTIVE DIGEST	2
II. BACKGROUND	5
III. OBJECTIVES, SCOPE AND METHODOLOGY	7
IV. RESULTS OF AUDIT	
A. AUDIT CONCLUSIONS	
1. Performance Measurements	8
2. Case Handling Information Processing System	9
B. AUDIT OBSERVATIONS	
1. Reporting Requirements Under GPRA	10
2. NLRB Annual Report	11
3. Settlement Rate	11
4. Duplicative Systems	12
5. Perpetual Time In Motion Study	13

## I. EXECUTIVE DIGEST

This audit assessed the Agency's collection and processing of casehandling data that is used for measuring and reporting on the performance of the National Labor Relations Board (NLRB). Casehandling data relates directly to the NLRB's mission which is to (1) prevent and remedy unfair labor practices by employers or unions and (2) conduct elections to determine whether or not employees wish to be represented by a union. Our audit scope was Fiscal Years 1990 through 1994. The audit also reviewed the Agency's progress in implementing the Government Performance and Results Act (GPRA) which requires, beginning with Fiscal Year 1999, that each agency submit to the President and to the Congress a report on program performance for the most recent fiscal year. The GPRA requires that agencies establish performance goals as well as the indicators which will be used to assess "relevant outputs, service levels, and outcomes of each program activity."

The NLRB has a 36 year history of using performance data to manage workload, to evaluate employees, and to report on Agency operations. Time objectives usually in the form of medians have been established for various stages of casehandling and Agency and office performance is measured by the amount of time it takes an office or the Agency to complete particular stages. The objectives are based on the time it is expected to process the particular function in a typical or average case. Some of the time factors include complaint processing and issuing election decisions. In addition to time measurement, the Agency also measures certain program activities such as the percentage of cases settled and of litigation success. Performance information appears in the NLRB Annual Report, the General Counsel's Summary of Operations, and in budget documents sent to the Office of Management and Budget (OMB) and to the Congress. It is also used to evaluate performance and to assess staffing needs.

### Government Performance and Reporting Act - GPRA

It is our view that the Agency is approaching the GPRA and its future requirements in an appropriate manner. The NLRB has coordinated with recognized experts in the field and with employees at all levels. Agency efforts began with defining a common performance measurement language and a framework for developing a Strategic Plan. NLRB's performance data has traditionally been based on outputs e.g., number of cases closed, service levels e.g., time to process cases at various stages, and on outcomes e.g., number of employees offered reinstatement or the amount of backpay awarded discriminatees. Various implementing directives on GPRA from OMB and GAO have suggested that

agencies should consider dividing reports into intermediate and final outcomes

The Acting Inspector General believes that current Agency reports such as those described above satisfy the GPRA reporting requirements including any requirements for reporting end or final outcomes. The Agency has been considering development of other "end outcomes" and has designated a Performance Measurement Committee for this purpose. This Committee has suggested as one possible end outcome "The Agency has created a positive environment for the exercise of employee free choice and for the promotion of collective bargaining." It goes without saying that some "end outcomes" by their nature can be difficult to quantify or describe. An "end outcome" such as the example suggested by the Committee could perhaps be supported in part by clustering outputs and intermediate outcomes to demonstrate whether the end outcome was achieved. But in the final analysis, this kind of outcome will call for a subjective assessment by Agency leadership.

In the view of the Acting Inspector General, the choice of a subjective rather than objective end outcome will put the agency in the position of making a political rather than a performance assessment. In a highly charged field like labor relations, use of subject outcomes can very easily propel the Agency out of performance reporting and into political and ideological evaluations. In short it may be counterproductive to the goals of GPRA to choose to report on subjective outcomes. There may be a place for new objective outcomes such as the "recidivism" suggestion made by the Committee. If the Agency chooses to add to the outcomes it has traditionally reported, it may wish to avoid the political problems presented by subjective outcomes.

#### Casehandling Information

The Agency is currently using a system called the Casehandling Information Processing System (CHIPS). Agency management is not satisfied with this system and is currently working on a new system called Case Activity Tracking System (CATS). The CATS is a multi-year initiative intended to automate a unified information system which would replace the multiple systems currently in use. While our audit deals with CHIPS, it is quite relevant to the CATS initiative because the audit evaluated data gathering aspects that are common to both systems. After the CATS initiative began, we reassessed the need for the current audit and determined that it should continue because it offers the agency three important opportunities:

- (1) An assessment of the validity of past case handling performance information;

(2) An assessment of the data gathering information that will be the cornerstone of CATS; and

(3) An assessment of whether GPRA places any additional data collecting and reporting obligations on the NLRB and if so, Agency progress in developing those reports

The Office of Inspector General (OIG) assessed manual and electronic systems used to collect and compile performance data. Our audit included the identification and evaluation of management controls. We determined that effective controls are in place and functioning as management intended. As noted, the CHIPS is the primary source of data for performance statistics included in the Annual Report. We flowcharted internal CHIPS processing in order to identify and gain an understanding of the system's internal controls. The flowcharts were provided to Agency management for whatever use they would be to the CATS initiative. We then performed testing of the CHIPS database and analyzed the CHIPS capacity to meet operational needs. Our review of the CHIPS and testing of the database disclosed that the current system is capable of producing accurate Annual Reports, and it has an inventory of reports available which could be useful to management. While the CATS initiative will be gathering similar data in similar ways, the Agency has already identified information needs that exceed CHIPS capabilities.

Additionally, the OIG has five observations regarding performance management at the NLRB. These observations relate to issues which the Agency may want to consider during the implementation of the GPRA.

A draft of this report was submitted to the Chairman and General Counsel for comment. The Acting Inspector General was advised that neither the Chairman or the General Counsel had any comments for inclusion in this report.

## II. BACKGROUND

The Agency's mission is to administer 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 Act is intended to protect the public interest by providing employees the opportunity to make their decisions concerning collective bargaining free from interference and coercion by employers and unions; and by empowering the NLRB to prevent and remedy certain union and employer actions which Congress determined to be unfair labor practices. The National Labor Relations Act requires good faith bargaining by all parties and prohibits such actions as employer domination of labor organizations; discrimination against employees because of union activities whether pro or con; and certain kinds of picketing by unions.

NLRB accomplishes 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 can not 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 General Counsel has determined to be prosecutable; and (5) adjudicating those unfair labor practice cases which the Agency litigates.

In a sense the NLRB is two entities within one Agency. The General Counsel side of the Agency which includes the Agency's Regional Offices, coordinates secret ballot elections, investigates unfair labor practices, and litigates before the Board side of the Agency. The Board side of the NLRB is judicial in nature and includes Administrative Law Judges (ALJ) and Board legal staffs. ALJ decisions may be appealed by any of the parties to the five member Board appointed by the President. Board decisions may be appealed by parties other than the General Counsel, to the U.S. Court of Appeals and to the Supreme Court. The General Counsel side of the Agency represents the NLRB in those cases and in matters before Bankruptcy and District Courts.

The NLRB responds to matters brought before it and does not initiate cases on its own. During Fiscal Year 1994, employees - unions - employers filed a total of 40,861 representation and unfair labor practice cases with the Agency. Also in 1994, the Agency closed 38,551 cases enabling more than 200,000 eligible voters the opportunity

to make their decisions concerning collective bargaining; providing remedial actions such as reinstatement and backpay to over 20,000 employees; and ending union picketing on 146 occasions. The Agency employed about 2,000 people and had an appropriation of over \$176 million for Fiscal Year 1995.

The NLRB utilizes performance data to formulate and justify the Agency's budget; allocate resources; evaluate employees; and compile its Annual Report to Congress and the President as required by Section 3(c) of the National Labor Relations Act. Performance data includes items such as median time to issue complaints and election decisions, median time elapsed between the closing of hearings and issuance of judges decisions; percentage of Board orders affirmed as well as remanded by the U.S. Courts of Appeals; percentage of cases settled; and the median age of open cases. The NLRB strives to resolve cases through settlement because litigation is more expensive, utilizes more staff time and delays the remedial actions sought by the Agency.

The Congress and the President have affirmed the use of performance data as a management tool through initiatives such as the GPRA of 1993 and the National Performance Review. The GPRA requires Federal agencies to

- develop Strategic Plans prior to Fiscal Year 1998;
- prepare annual plans setting performance goals beginning with Fiscal Year 1999; and
- report annually on actual performance compared to goals.

(The first report is due in March 2000.)

The Agency has undertaken a multi-year initiative intended to automate a unified information system which would replace the multiple systems currently in use. The CATS will be expected to track the progress of every case in the NLRB pipeline; provide employees with access to databases that enhance legal research efforts; and economize word processing applications through the use of electronic forms and document sharing.



### III OBJECTIVES, SCOPE AND METHODOLOGY

This audit evaluated the

1. information systems for collecting performance statistics on the handling of cases;
2. methods for translating statistics into performance data; and
3. Agency's use of the performance data in communicating its caseload and accomplishments

We also assessed the Agency's status relative to implementing the GPRA which requires, beginning with Fiscal Year 1999 that each agency submit to the President and the Congress a report on program performance for the fiscal year just ended. Under the Act, agencies must establish performance goals as well as the indicators which will be used to assess whether measurable goals were achieved. Program funding could be affected by an agency's implementation of the Act

The audit scope was Fiscal Years 1990 through 1994

During the audit we ascertained procedures and policies by interviewing officials from most Headquarters components. Regional operations were studied by use of questionnaires many which were followed up telephonically. The OIG assessed manual and electronic systems used to collect and compile performance data, including testing of the central electronic data base. The audit included the identification and the evaluation of management controls relating to the collection, compilation, and reporting of performance data. We analyzed the various indicators being used to measure performance. The OIG reviewed: NLRB Annual Reports; the contract deliverables and the progress reports relating to the CATS initiative; and the work products of the Performance Measurement Committee of the NLRB's Labor Management Partnership Council. We tested compliance with reporting requirements of the following laws and regulations: National Labor Relations Act; Office of Management and Budget Circulars A-11 (Budget Formulation) and A-130 (Information Resources); Government Performance and Results Act; Federal Managers' Financial Integrity Act; and NLRB manuals and handbooks.

This audit was performed in accordance with generally accepted Government auditing standards at NLRB's Headquarters from November 1993 through September 1995.

## IV RESULTS OF AUDIT

### A. AUDIT CONCLUSIONS

1. Performance Measurements. The NLRB has a 36 year history of using performance data to manage workload, evaluate employees, and report on Agency operations. Time objectives have been established for various stages of handling a case and performance is measured against the amount of time required to complete a particular stage in a typical or average case. In addition to these time factors, there are other performance factors such as percentage of cases settled and litigation success.

Performance information appears in the NLRB Annual Report, the General Counsel's annual Summary of Operations, and in budget documents sent to the OMB and the Congress. The Agency's Annual Report provides historical statistical information on productivity and a description of noteworthy cases. An Annual Report is required by Section 3(c) of the National Labor Relations Act although the Act does not identify the particular information required in the report. The Annual Report provides a comprehensive account of the Agency's operations and appears in essentially the same format and provides the same statistical information that it has for decades.

The NLRB continues to place a large emphasis on managing for performance which can be seen in the CATS initiative, work products of the Performance Measurement Committee, and the Agency's implementation of time targets for Administrative Law Judges.

It is our view that the Agency is approaching the GPRA and its future requirements in an appropriate manner. The NLRB has coordinated with recognized experts in the field and with employees at all levels. Agency efforts began with defining a common performance measurement language and a framework for developing a Strategic Plan.

Under GPRA, a Strategic Plan sets forth an agency's overall strategy for accomplishing its mission by establishing programmatic and policy goals and by describing how these goals will be achieved. Strategic Plans must cover at least the five year period after the fiscal year in which the plan was submitted. NLRB's performance data has essentially been based on outputs such as number of cases closed, and outcomes such as number of employees offered reinstatement or the amount of backpay awarded discriminatees. While GPRA requires reporting only as to relevant outputs, service levels, and outcomes, OMB has suggested that agencies distinguish between "intermediate" and "end" outcomes in accomplishing their GPRA obligations.

As noted above, the Agency has a 36 year history of utilizing performance data for management and reporting purposes. There is reason to believe that the reporting categories used in that 36 year period are "relevant outputs, service levels, and outcomes" within the meaning of Section 1115(a)(4) of GPRA and may be "end" outcomes within the meaning of OMB guidelines.

The Agency Performance Measurement Committee has done an excellent job of evaluating GPRA responsibilities. Its recommendations are not inconsistent with GPRA, and they may go beyond what GPRA requires. Indeed, one of their suggestions or examples of an "end outcome" may be counterproductive. Thus, on page 5 of the definitions developed by NLRB's Performance Measurement Committee it suggests that an end outcome could be "The Agency has created a positive environment for the exercise of employee free choice and for the promotion of collective bargaining."

The Acting Inspector General believes that an assessment such as this is a political conclusion, not a "performance" or a "result" within the meaning of GPRA and will do little to advance the performance reporting purposes of GPRA as they are described in Section 2(b) of that Act.

By their nature "outcomes" can be difficult to articulate and to quantify. However, there is reason to believe that the successes of the Agency have been grounded in the its ability to accomplish the task of identifying outcomes, reporting them, and then utilizing them as part of its case management strategies. New outcomes for reporting may be desirable and the Committee has suggested at least one outcome that is less subjective than that noted above. This outcome relates to the use of performance data to identify and reduce the number of recidivist violators of the National Labor Relations Act. The frequency in which particular unions or employers are found to have breached the Act, along with a year to year comparison of fluctuations in recidivists violations, is information which could be useful in assessing the NLRB's effectiveness over the period covered by the Strategic Plan and would seem quite consistent with the purposes of GPRA.

**2 Case Handling Information Processing System.** The CHIPS is the primary source of data for performance statistics included in the NLRB's Annual Report and is a focus of this audit.

The fact that the Agency is developing CATS and will discontinue CHIPS does not undermine the purpose and value of this audit for two reasons. First, any audit of

necessity will assess past events and performance and it is important to know the validity of Agency performance statistics. Second, the items of data collection and matters to be reported will remain similar under CATS.

We identified and flowcharted internal CHIPS processing in order to identify and gain an understanding of the system's internal controls. We provided our flowcharts to Agency management for whatever use they would be to the CATS initiative. We then performed testing of the CHIPS database. Our testing was developed around the CHIPS edit and update process which produces reports consisting of error and warning messages. These reports are provided to Regional offices monthly, in order that they can review the data and make necessary corrections. We analyzed the CHIPS capacity to meet operational needs.

Our review of the CHIPS and testing of the data base disclosed that the current system is capable of producing and has produced accurate Annual Reports, and that it has an inventory of reports available which could be useful to management. The CATS initiative, through various task group documents and contractor deliverables, has identified needs that exceed CHIPS capabilities. Our audit testing of the CHIPS database did not disclose erroneous data occurring with a material frequency.

## **B. AUDIT OBSERVATIONS**

**1. Reporting Requirements under GPRA.** Executive agencies are required to participate in a number of Government-wide management initiatives including GPRA and the National Performance Review. In addition, the NLRB publishes its Annual Report and prepares budgets for submission to the OMB and the Congress. GPRA requires that agencies prepare annual Performance Plans, beginning with the Plan for Fiscal Year 1999.

NLRB's first Performance Plan must be submitted to the OMB in September 1997, which is also when the Agency's budget request for Fiscal Year 1999, is due to the OMB. The timing, and to some extent the content, of NLRB's annual Performance Plan will be similar to the timing and content of the Agency's annual budget request, both of which must be submitted to the OMB in September of each year. The Performance Plan must include specific goals which the NLRB intends to achieve during the fiscal year, along with specific indicators which can be used to measure or assess the Agency's performance. GPRA also requires agencies to annually report to the Congress on their actual performance compared to the goals set forth in their annual Performance Plan.

NLRB's first Performance Report is due on March 31, 2000, and will address the Performance Plan which will be issued for Fiscal Year 1999. Thereafter, Performance Reports will be due each March 31, six months after the close of the fiscal year. This coincides with when the Agency's Annual Report should be completed if the system is capable of reporting in a timely manner. To the extent practicable, agencies should unify efforts relating to planning, budgeting, and reporting. Since the NLRB is not yet subject to the reporting requirements of the GPRA, it is an opportune time to consider a unified approach which will meet the requirements of the GPRA, Budget Formulation, and the annual reporting provision of the National Labor Relations Act. As we noted earlier in this Report, the Agency is approaching GPRA and its requirements in an appropriate manner.

**2. NLRB Annual Report.** The Annual Report, which provides performance statistics at a very detailed level, will not, in and of itself, fulfill the intent of Performance Reports required by the GPRA. An example of the detail included in the Annual Report is Table 6A titled "Geographic Distribution of Cases Received" and Table 6B which provides the same information broken down by Standard Federal Administrative Region. Much of the information in the Annual Report appears more than once. Chapter 1 of the Annual Report, in addition to narrative information, provides 15 charts which provide meaningful performance information. The source of each of these charts are detailed statistical tables that appear as appendixes in the Annual Report.

Page 62 of the GPRA Implementation Plan issued by OMB states, "The performance report is to correspond to the agency performance plan, not to any summarized or abstracted performance plan included in the government-wide performance plan. Page 51 of the Implementation Plan states, "The strongest emphasis will be placed on having agencies develop performance plans that are not voluminous presentations describing performance at every level for every program activity."

In our view, these directives suggest that an abbreviated and revised version of the NLRB Annual Report, which addresses outcomes and includes financial data on budget execution, should provide the information necessary to compile a Performance Report.

**3. Settlement Rate.** The NLRB strives to resolve cases through settlement because litigation is more expensive and delays the remedial actions sought by the Agency. Each one percent increase in the settlement rate provides NLRB with an estimated savings of \$2 million in litigation costs. Because the Agency's budget is based on an estimated

caseload which it expects to handle during each fiscal year, the settlement rate is a significant factor regarding the amount of funding requested by NLRB to handle that caseload.

For many years the Agency has used two reporting systems to compute a settlement rate -- one based on performance achieved in cases closed during the reporting period and the second based on case transactions occurring during a reporting period regardless of whether the cases are closed. The Agency's Annual Report utilizes the former method while its budget formulation and operational management program use the latter. The reason for the two systems is historical -- it was simply not possible for many years to obtain the information about closed cases quickly enough to be of value in making management and operational decisions. With the advent of CATS, it may be that the historical reasons for the dual systems will become unnecessary and the Agency can adopt a single unified system.

The use of two different methods for computing settlement rates has resulted in Agency documents sometimes reporting different settlement rates for the same fiscal year. For example, the Fiscal Year 1994 budget to the Congress contained two exhibits which reported the settlement rate actually achieved in Fiscal Year 1991. One exhibit stated that settlement had been achieved for 93.2 percent of the cases during Fiscal Year 1991, while the other exhibit reported a settlement rate of 87.5 percent in Fiscal Year 1991.

**4. Duplicative Systems.** We reviewed the performance measurement systems of each program division and branch. Our review identified offices that used both an electronic and manual system for managing the case pipeline and compiling performance data. In some instances both systems were necessary because the electronic system did not meet management needs. In one instance the maintenance of two systems resulted in some duplication of effort.

As noted the Agency is currently involved in a major automation initiative, CATS. The requirements of the new case tracking system were established by Agency management, the CATS task group, and contractor deliverables. It is intended that the National Data Base in the new system be updated every 24 hours. Tasks such as docketing and maintaining electronic case cards have been identified as high priority items to be accomplished by CATS. One of the requirements of the CATS initiative is that NLRB staff be able to view and, when appropriate, update an individual case. These developments illustrate that management is aware of the problems of duplicative systems and their intention is to create a single unified electronic system that meets all operational requirements.

5 Perpetual Time In Motion Study. The Agency's budget has been based, in large part, on projected workload and the staffing needed to process that workload. The determination as to staffing needs is quantified using a measure called the "Rate Per Staff Year", which is intended to represent the number of particular work products that could be accomplished with one Full Time Equivalent (FTE). In conjunction with the rate per staff year, a prognostication must be made on how a case will proceed through the pipeline. This includes a projection as to the number of cases that will be withdrawn by the filing parties; dismissed by the Agency; resolved through settlement, and litigated. The number of FTE requested by the Agency is based on: the volume of cases that are expected to flow through the pipeline; the manner by which cases are expected to be resolved; and, the amount of work products that are expected from an employee.

This rate per staff year is based on a time study performed decades ago by NLRB's former Time and Performance Branch. Each successive budget has been formulated using the rate per staff year from the original study which was adjusted to incorporate estimated productivity increases for years since. A new information system (CATS) is being developed to manage case processing. It is an opportune time to consider designing into CATS the capacity to compile information needed to compute actual rates per staff year.