

**UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
Office of Inspector General**



**MEMORANDUM**

**DATE:** September 14, 1998

**To:** Richard Siegel  
Associate General Counsel

**From:** Aileen Armstrong *AA*  
Inspector General

**Subject:** Final Audit Report - "Audit of Backpay"  
OIG-AMR-25

Enclosed is a copy of the Office of Inspector General (OIG) audit report in the above referenced matter. A draft of our report was submitted to management for comment. Your comments are included in their entirety at Exhibit A.

This review determined that Regional Offices were not collecting sufficient information to ascertain whether proposed settlements met thresholds established by the Agency. We also noted that the Agency's casehandling database did not accurately reflect the amount of backpay collected in several cases reviewed by the OIG. We are making four recommendations regarding these matters.

We request that you provide an action plan which implements the audit recommendations. The action plan should set forth specific actions which implement each recommendation and a schedule for their implementation. Your action plan should be submitted to the Supervisory Auditor within 60 days of this report.

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

cc The Board  
Acting General Counsel

# AUDIT REPORT

*Office of Inspector General*

## **AUDIT OF BACKPAY**



## **National Labor Relations Board**

Audit Report NO. OIG-AMR-25

Issued: September 14, 1998

## RESULTS OF AUDIT

**Summary.** This audit evaluated the controls over the computation and disposition of backpay. Backpay is a standard Board remedy whenever a violation of the National Labor Relations Act (Act) has resulted in a loss of employment or earnings. The goal in determining backpay is the same in all cases. The Act is remedial; when it has been violated, its intent is to restore the situation to that which would have taken place had the violation not occurred.

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

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

The OIG determined that procedures were in place which provided reasonable assurances that backpay obtained for employees was being distributed in the amounts agreed upon and to those individuals entitled to receive the moneys. We noted that the Agency's casehandling database did not accurately reflect the amount of backpay collected for 6 of the 34 cases reviewed by the OIG. We are making two recommendations regarding this matter. Our recommendations and further details follow finding number 1.

### **1. Files Lacked Sufficient Backpay Information**

The Regional Offices were not collecting sufficient information to ascertain whether proposed settlements met thresholds established by the Agency. We reviewed 34 cases involving backpay and determined that 13 did not include computations or other evidence indicating amounts of gross backpay. Four of these 13 related to cases in which the parties reached a monetary settlement before the Regional Office determined whether the unfair labor practice charge had merit and, therefore, no determination of backpay was required. Requirements for determining backpay are

addressed in the following sections of the Agency's Casehandling Manual, Volume Three - Compliance

Section 10500.2 - "In the course of unfair labor practice proceedings, the following are among the compliance actions that must be undertaken:

a. Assessing appropriate remedies and liabilities at the time the Region finds merit to an unfair labor practice charge "

Section 10505.2 - "When the Region determines that a violation has occurred, appropriate remedial action must also be determined, both to support immediate settlement discussions and in anticipation of eventual compliance proceedings "

Section 10530.3 - "The compliance officer is responsible for determining net backpay due in all cases. To do so, the compliance officer should obtain information and supporting records from both respondent and discriminatee. Further, " the compliance officer should not rely wholly on the parties to determine any component of backpay "

Section 10530.4 - "Determination of backpay should begin as soon as the Region determines that an unfair labor practice charge has merit and that backpay is among the appropriate remedies "

Section 10531 - "Appropriate steps in investigating and determining backpay include identifying and discussing backpay issues with all parties; obtaining information and supporting records regarding wage rates, work schedules, available overtime, promotions, or other conditions relevant to determining gross backpay; obtaining information and appropriate documentation from discriminatees regarding interim earnings and availability for work; evaluating information to determine a reasonable gross backpay formula and gross backpay amounts; preparing net backpay estimates; initiating settlement negotiations; and, where necessary, formally determining backpay "

Section 10564.1 - "When the following criteria are met, Regional Directors are authorized on behalf of the Board to accept settlements of backpay without Division of Operations Management authorization:

a. The backpay computation is based on an appropriate method and the backpay settlement is at least 80 percent of full backpay due "

We were informed that the Regional Offices have significant latitude in applying the aforementioned policies. The OIG assessed these guidelines relating to backpay and concluded that the policies are sound. These

guidelines, when applied, enable the Agency to assess the reasonableness of proposed settlements including the amounts of backpay involved. Further, if a backpay computation is not performed the Regional Office would not be able to determine whether the backpay settlement is at least 80 percent of full backpay due

#### Recommendation 1 of 4

That the Division of Operations Management formally direct Regional Offices to adhere to the Agency's policies in its Casehandling Manual regarding a determination of the amount of backpay due; or, amend its policies to reflect actual practices utilized by the Regional Offices

#### Recommendation 2 of 4

That the Division of Operations Management assess compliance with these policies during its annual review of the cases handled by the Regional Offices

Management agreed. Their full response is at Exhibit A.

## 2 Inaccurate Backpay Data In Agency's Reporting System

The casehandling database used to report on the Agency's performance contained inaccurate backpay data. We reviewed 34 cases and determined that the Casehandling Information Processing System (CHIPS) did not accurately reflect the amount of backpay collected for 6 of these cases. In five of the six cases the source document for CHIPS data input, Form NLRB-4582, did not agree with evidence in the case file. In the sixth case the amount in the CHIPS database did not agree with Form NLRB-4582. The table below shows the dollar amounts recorded in CHIPS compared with information in the case file

	DATABASE AMOUNT	CASE FILE AMOUNT	DIFFERENCE	PERCENTAGE DIFFERENCE
1	\$58,822.00	\$58,814.00	\$8.00	0.01%
2	\$4,032.00	\$2,016.00	\$2,016.00	50.00%
3	\$2,500,000.00	\$2,535,000.00	-\$35,000.00	-1.40%
4	\$22,456.00	\$20,521.00	\$1,935.00	8.62%
5	\$10,038.00	\$12,127.00	-\$2,089.00	-20.81%
6	\$567.00	\$268.85	\$298.15	52.58%

The Agency collects and compiles performance measures including the dollar amounts and number of employees receiving backpay. Credible reporting of the Agency's performance requires accurate data.

Form NLRB-4582 contains sign-offs that document approval by the Compliance Officer/Board Agent, Regional Attorney, and Regional Director. In 5 of the 6 cases identified we believe that proper attention by the Board Agents and managers would have detected inaccurate data on the source document and prevented its input to the CHIPS.

An adequate system of internal control requires that transactions and other significant events be promptly recorded and properly classified; and, that supervision be provided to ensure that internal control objectives are achieved.

**Recommendation 3 of 4**

That the Division of Operations Management formally direct Regional Offices to exercise care in preparing and approving closed case reports which serve as the source document for input to the CHIPS.

**Recommendation 4 of 4**

That the Division of Operations Management evaluate the accuracy of closed case reports during its annual review of cases handled by the Regional Offices.

**Management agreed. Their full response is at Exhibit A.**

**OBJECTIVES, SCOPE, AND METHODOLOGY**

This audit evaluated the controls over the computation and disposition of backpay. Auditing procedures were performed to ascertain whether computations were reasonable and materially in conformance with official policies; and, whether controls over the collection and disposition of backpay funds provided reasonable assurance that backpay was collected and distributed to employees as intended. The Agency's Casehandling Manual (Part Three) provides procedural and operational guidance regarding the computation, collection, and distribution of backpay. Our review tested the Agency's compliance with these policies and procedures.

The audit scope included cases in which backpay was distributed during Fiscal Years 1996 or 1997. Over \$153 million was distributed to almost 40,000 employees during those years. Backpay funds placed in escrow and distributed through the Agency's Finance Branch were excluded from this audit.

During the audit we ascertained procedures and policies by reviewing the Agency's Casehandling Manual as well as internal memoranda in which the General Counsel and the

Division of Operations Management provided guidance to Regional Offices on current policies and procedures. Officials from the Division of Operations Management were interviewed to clarify Agency policy.

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

This audit was performed in accordance with generally accepted Government auditing standards at NLRB's Headquarters from January through June of 1998.

#### BACKGROUND ON AGENCY

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 side of the Agency. 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 Court of Appeals and the Supreme Court. By delegation from the Board, the General Counsel side 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 1997, the Agency employed about 1,900 people and had an appropriation of over \$174 million. Approximately 33,000 charges of unfair labor practices and 5,900 representation petitions were filed with the NLRB during Fiscal Year 1997. During the same period, the Agency closed more than 38,000 cases which resulted in the following actions:

- Over 19,000 charges of unfair labor practices were investigated, determined to lack merit, and, therefore, dismissed by the NLRB or withdrawn by the charging party;
- Over \$80 million in backpay and other reimbursements were recovered for more than 22,000 employees;
- Over 2,800 employees received offers of reinstatement; and
- Over 3,400 elections were certified in which more than 236,000 employees were eligible to vote.



**UNITED STATES GOVERNMENT**  
**National Labor Relations Board**



Memorandum

September 1, 1998

To: Aileen Armstrong, Inspector General

From: Richard A. Siegel, Associate General Counsel

Subject: Audit of Backpay

This is in response to your memorandum dated July 31, 1998. I have reviewed the draft report in the above matter and accept it as written.

I appreciate the thoroughness of your audit as well as your consideration of the additional information that we provided. Upon finalization of your report, I anticipate that the recommendations contained in your report will be implemented through the issuance of appropriate memoranda to the Regional Offices and the enhancement of the quality review process. In addition, I expect to initiate the process of amending the Agency's casehandling manual to allow Regional Offices discretion to exempt certain situations from the requirement that the amount of backpay be computed in all meritorious cases. For example, we will consider exempting cases where substantial resources would be expended to determine the extent of a respondent's backpay liability and the respondent's demonstrated financial condition would preclude its ability to provide a substantial monetary remedy, or where a Charging Party or backpay claimant expresses an unwillingness to further cooperate in Agency proceedings.

  
R.A.S.

