



2011



National Labor Relations Board

Performance and Accountability Report



How This Report is Organized

This Performance and Accountability Report consists of:

<p>MANAGEMENT DISCUSSION AND ANALYSIS</p>	<p>The Management Discussion and Analysis (MD&A) Section is an overview of the entire report. The MD&A presents performance and financial highlights as well as the National Labor Relations Board's (NLRB's) operational and casehandling highlights for fiscal year 2010. The MD&A also contains a discussion of compliance with legal and regulatory requirements, such as the Federal Managers' Financial Integrity Act.</p>
<p>PERFORMANCE SECTION</p>	<p>The Performance Section compares the NLRB's performance to its annual performance goals as set forth in the 2007-2012 Strategic Plan. In fiscal year 2007, the NLRB revised its Strategic Plan and adopted three overarching performance measures. These measures are outcome-based, aligned with the mission of the NLRB, and are meaningful to the public the Agency serves. This is the fourth year that the NLRB is reporting its performance under these three overarching measures.</p>
<p>FINANCIAL SECTION</p>	<p>The Financial Section is composed of the NLRB's financial statements and their related footnotes and the Independent Auditors' Report.</p>
<p>OTHER ACCOMPANYING INFORMATION</p>	<p>Other Accompanying Information provides an update on the Board's progress in addressing management and performance challenges identified by the Inspector General in the FY 2010 Performance and Accountability Report as well as any new challenges identified in this fiscal year. Also included is the NLRB's summary of audit and management assurances.</p>
<p>APPENDICES</p>	<p>The Appendices contain a glossary of the acronyms and definitions of terms used in the report.</p>

An electronic version of the NLRB FY 2011 Performance and Accountability Report is available on the Internet at www.nlr.gov. The NLRB's 2007-2012 Strategic Plan is also available at this Web site along with graphs and data which reflect the NLRB's work.

In its 76-year history the NLRB has counted millions of votes, investigated hundreds of thousands of charges, and issued thousands of decisions. The numbers in these charts tell an important part of the Agency's story. They are organized on the Web site into five sections:

- **Charges and Complaints** – Data related to charges of unfair labor practices received by Regional Offices and their disposition over time, including dismissals, complaints, and settlements.
- **Petitions and Elections** – Data related to petitions for representation and decertification elections received by Regional Offices, elections held, and outcomes.
- **Decisions** – Data related to decisions by the Board and NLRB Administrative Law Judges
- **Litigation** – Data related to litigation pursued by Board attorneys in federal court, including petitions for temporary injunctions, defending Board decisions in court, and pursuing enforcement and compliance actions.
- **Remedies** – Data related to remedies obtained to resolve unfair labor practices, including backpay and offers of reinstatement.

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Message From The Chairman



October 21, 2011

As Chairman of the National Labor Relations Board, it is my pleasure to submit the Performance and Accountability Report for Fiscal Year 2011. This annual report provides insight into the finances and activities of the NLRB, an independent federal agency that protects the rights of employees to act together to improve the terms and conditions of their work.

It has been a year of high productivity, active public engagement, and new initiatives for the Board. The Board issued 368 decisions during this period, of which 272 were in unfair labor practice cases and 96 were in representation cases. These included a number of decisions addressing difficult issues that had awaited Board guidance for years, such as the access rights of union members and organizers to employer property and the rights of illegal immigrant workers to backpay remedies. Two decisions reversed prior Board rulings regarding the protection of new collective bargaining relationships, and another clarified the standard for

determining appropriate bargaining units in non-acute health care settings.

In order to encourage public participation in its decision-making, the Board invited briefs from the public in five cases of significant interest, and it invited public comment in two formal rulemaking proceedings. The response to these invitations was substantial. About 7,000 submissions were received concerning the first proposed rule, to require employers to post a notice of rights protected by the National Labor Relations Act. A final rule was promulgated following the analysis of those comments. Employers will be required to post the notice, provided by the Agency at no cost, beginning January 31, 2012. Nearly 70,000 submissions were received concerning the second rulemaking proposal, to modernize and simplify election procedures through a series of amendments. The review and analysis of those submissions is still in process. The proposed rule was also the subject of a two-day public hearing in July that attracted more than 60 speakers and was Webcast in its entirety.

The Board's high level of productivity and engagement has been accompanied by increased scrutiny in the media and by Members of Congress. During the fiscal year, news coverage of the Agency increased tenfold when measured by prominent mentions in the media. The Agency was also the subject of several committee hearings in the House of Representatives and received numerous Congressional requests for information. To facilitate improved communication with Members of Congress, the Board created the new position of Special Counsel for Legislative and Intergovernmental Affairs.

Following several years of turnover and vacancies, this has been a period of relative stability in terms of Board composition. The fiscal year began with four of the Board's five seats filled, and continued that way until late summer brought a key leadership change, as the term of Chairman Wilma Liebman expired on August 27. I was honored to be appointed to the chairmanship by President Obama on that same day. The Board currently has three members, but that could drop to two at the end of the year, when the recess appointment of Member Craig Becker is due to end. With only two members, the Board would lack a quorum and be unable to issue decisions, under the 2010 Supreme Court decision in *New Process Steel*.

In addition to its casework, the Board unveiled a new public Web site designed with a range of audiences in mind — from labor law practitioners to members of the general public with little knowledge of labor law. Along with more basic information posted in accessible language, the new site also brings greater transparency: Board decisions are now posted immediately rather than waiting 24 hours, and, for the first time, unpublished decisions are publicly posted. Launched in February, the Web site's success is evidenced by statistics showing significant increases in both the numbers of visitors and the time spent on the site.

As Chairman of the NLRB, I certify that the NLRB's internal controls and financial systems meet and conform to the requirements of the Federal Managers' Financial Integrity Act. (A more detailed discussion of the Agency's internal controls can be found starting on page 25 of this report.) I have also made every effort to verify the accuracy and completeness of the performance data presented in this report.



Mark Gaston Pearce
Chairman

Board Members



Mark Gaston Pearce
Chairman



Craig Becker
Board Member



Brian E. Hayes
Board Member

Message From The Acting General Counsel



October 26, 2011

The Office of the General Counsel of the National Labor Relations Board is responsible for the investigation and prosecution of the unfair labor practice cases filed in the NLRB's 32 Regional, 3 Subregional, and 16 Resident Offices. The office exercises general supervisory authority over this network of field offices which is staffed with approximately 1,200 employees. In addition, the Office of the General Counsel is composed of five Headquarters components which are responsible for various casehandling, administrative, and personnel functions.

It has been my privilege to serve as Acting General Counsel for this entire fiscal year. Some significant highlights include: providing guidance to the regions and members of the public with respect to employer social media policies and employees' social media interactions; providing effective remedies in cases involving the unlawful discharge of employees and other hallmark violations; and issuing guidelines that ensure full backpay remedies for illegally discharged employees.

Since becoming Acting General Counsel, I have seen the Agency move into an era where it is more open and engaged with the public. For example, our Web Site was redesigned for greater usability with an array of audiences in mind and is noteworthy for its organizational structure, enhanced navigation, increased information sharing, social media usage, electronic filing system, and visual presentation. We also successfully completed deployment of the Agency's new enterprise-wide case management system to all field offices, which will enable full sharing of information and processes across the Agency, improve reporting capabilities, track all case events and documents in an electronic case file, and integrate with the Agency's Web site providing for greater transparency. Further, the Public Information Program successfully expanded our outreach efforts and we made great strides in communicating with those groups of employees with limited English proficiency, who continue to be integrated into the mainstream workforce. For example, we have now translated representation notices and ballots into 31 languages and our new public Web site features Agency publications on our statute and processes in Spanish, Chinese, Creole, Korean, Russian, Somali, and Vietnamese.

The Office of General Counsel, in addition to its other duties, is charged by the Board Members with supervising the administrative functions of the Agency. One of these functions directly pertains to financial management. It is with great pleasure that I can report that the Agency once again received an unqualified opinion from our auditors.

As Acting General Counsel, I am committed to conducting the business of the Office of the General Counsel in an open and transparent manner. I enjoy and encourage constructive relationships with representatives of both management and labor who appear before us as that enhances the performance of our mission to protect workplace rights and provide better service to the public.

A handwritten signature in cursive script that reads "Lafe E. Solomon".

Lafe E. Solomon
Acting General Counsel

EXECUTIVE SUMMARY

In 2011, the National Labor Relations Board continued to serve the American public and in so doing proposed rule-making changes concerning employer requirements to notify their employees of their rights under the National Labor Relations Act and procedures governing representation elections. Both Notices of Proposed Rulemaking were published in the *Federal Register* during this fiscal year. The Board held a two-day open hearing in July to hear and receive comments on the proposed representation case rule changes.

With the expiration of Chairman Wilma B. Liebman's term in late August, the President designated Board Member Mark Gaston Pearce as Chairman. The Board currently consists of three members and nominations to fill the two vacant Board Member positions are pending in the U.S. Senate.

In September, Acting General Counsel Lafe Solomon issued a report, documenting 14 social media cases, to clarify the Agency's position with respect to the extent to which employee communication in these new venues is concerted and protected under the National Labor Relations Act.

The Office of Public Affairs launched a redesigned public Web site with an array of audiences in mind, from labor law practitioners to members of the general public, which explains in plain language the functions of the Board and rights afforded under the National Labor Relations Act. It meets the Agency's goals of efficiency and greater transparency, such as through posting of published Board decisions on the day that they are issued and of unpublished Board decisions for the first time. The new Web site is noteworthy for its organizational structure, enhanced navigation, increased information sharing, social media usage, electronic filing system, and visual presentation, which includes photographs, maps, charts, graphs, and tables that allow for greater usability of the site.

The **Performance and Accountability Report** for fiscal year (FY) 2011 shows sustained progress in meeting the two strategic goals. The Agency



continued a record of fiscal responsibility and stewardship by receiving an unqualified audit opinion for the eighth consecutive year.

PROGRAMMATIC HIGHLIGHTS

NxGen – Five years into the program, the NLRB's Next Generation Case Management System (NxGen) project continued to evolve with the Agency successfully reaching its goal of completing full deployment of NxGen to all field offices by the end of FY 2011. NxGen has also been integrated with the Division of Judges tracking system and the Board's collaborative Judicial Case Management System.

Outreach to the community – The NLRB continues to emphasize the importance of its Public Information Program with particular attention to providing access for the Limited English Proficiency (LEP) Community. It incorporates an easy to use, bilingual toll-free telephone service for inquiries. In addition, the Agency employs full-time Spanish-speaking language assistants whose sole job is to provide interpretation and translation service to our field offices. Our public Web site contains Agency publications about our statute and processes translated into Spanish, Chinese, Creole, Korean, Russian, Somali and



Vietnamese. The number of our electronic document templates available in Spanish continue to increase and our database of translated representation case notices and ballots has expanded to include 31 languages. An Agency film about representation case processing was recently recorded for the benefit of the Spanish-speaking community.

Special Remedies – One of the Agency’s priorities is to ensure that effective remedies are achieved as quickly as possible, particularly in “nip-in-the-bud” cases where employees are unlawfully discharged or victims of other serious unfair labor practices because of union organizing at their workplaces. With that in mind, the Acting General Counsel announced an initiative to seek injunctive reinstatement relief in all “nip-in-the-bud cases” involving unlawful discharges during a union organizing campaign. He also directed Regional Offices to consider whether to seek additional remedies to remove the impact of the

discharges and of other serious unfair labor practices. These remedies include: notice reading, union access to non-work areas on non-work time, to employer bulletin boards, and to employee contact information; union notice of, and equal time and facilities for, the union to respond to any address made by the employer regarding union organizing; and a union right to deliver a speech to employees before a representation election.

As to special remedies in first-contract bargaining cases, the Acting General Counsel authorized the Regional Offices to use their discretion to seek notice reading, certification-year-extensions, and bargaining-schedule remedies in first-contract bargaining cases. Regional Offices were directed to continue to submit to the Division of Advice first-contract bargaining cases that involve special remedies addressing reimbursement of bargaining and/or litigation expenses and the propriety of injunctive relief.



STATISTICAL HIGHLIGHTS

- For FY 2011, the Board issued 368 decisions in contested cases.
- Agency regional offices achieved a 93 percent settlement rate in meritorious unfair labor practice cases.
- The Regional Offices won 88 percent of Board and ALJ unfair labor practice cases in FY 2011.
- 95 percent of all initial elections were conducted within 56 days of filing of the petition.
- A total of \$26,992,344 was recovered on behalf of employees as backpay or reimbursement of fees, dues, and fines with 3,591 employees offered reinstatement.

FINANCIAL HIGHLIGHTS

The NLRB ended FY 2011 in a financially stable status, as certified by the auditors and statements of control. As of September 30, 2011, the financial position indicated:

- Balance Sheet – NLRB assets were approximately \$39 million
- Net Cost – NLRB spent approximately \$304 million on operations
- Changes in Net Position – From FY 2010 to FY 2011 the change was \$2.7 million

Budgetary Resources – Summary

- Available Resources \$288 million
- Budget Outlays \$292 million
- Funds Remaining \$4 million
- Obligations \$284 million

SUMMARY

The NLRB recently celebrated a major anniversary and, as the Agency looks forward to the future, it understands that its mission, irrespective of social and technological changes, remains constant: to continue to safeguard workplace rights and protect productive management-labor relationships. The National Labor Relations Board will build on its performance in FY 2011 in the years to come.

Management Discussion and Analysis



Protecting Democracy in the Workplace Since 1935

About The NLRB



The NLRB strives to create a positive labor-management environment for the nation's employees, unions, and employers by assuring that the employees have free choice on union representation and by preventing and remedying statutorily-defined unfair labor practices. The Agency maintains a customer-focused philosophy that best serves the needs of the American people.

Mission Statement

The mission of the National Labor Relations Board is to carry out the statutory responsibilities of the National Labor Relations Act, as efficiently as possible, in a manner that gives full effect to the rights afforded to all parties under the Act.

The National Labor Relations Board (NLRB) is an independent federal agency created by Congress in 1935 to administer and enforce the National Labor Relations Act (NLRA or Act), which is the basic law governing relations between labor unions and business enterprises engaged in interstate commerce in the private sector. The purpose of the Act is to serve the public interest by reducing interruptions in commerce caused by conflict between employers and employees. It seeks to do this by providing orderly processes for protecting and implementing the rights of employees and regulating the respective relationships between employees, their unions and employers. Declared constitutional by the Supreme Court in 1937, the Act was substantially amended in 1947, 1959, and 1974.

The Act embodies a bill of rights, which establishes freedom of association for purposes of collective

bargaining. It defines and protects the rights of employees, unions, and employers. Under the Act, the NLRB has two primary functions:

- 1) to conduct secret-ballot elections among employees to determine whether or not the employees wish to be represented by a union; and
- 2) to prevent and remedy statutorily defined unfair labor practices by employers and unions.

The NLRB acts only on those cases brought before it, and does not initiate cases. All proceedings originate with the filing of charges or petitions by employees, labor unions, private employers, and other private parties.

STATUTORY STRUCTURE

The NLRB has an unusual structure among executive branch agencies. Agency leadership culminates in six presidential appointees — five Board Members (including the Chairman) and the General Counsel. Day-to-day management of the Agency is divided by law, delegation, and Agency practice between the Chairman, the five-member Board, and the General Counsel.

THE FIVE-MEMBER BOARD

The five-member Board primarily acts as a quasi-judicial body in deciding cases on the basis of formal records in administrative proceedings. Board Members are appointed by the President with the advice and consent of the Senate, and serve staggered five-year terms.¹ The President designates one of the Board Members as Chairman. During most of FY 2011, the Board operated with four members – Chairman Wilma B. Liebman and Board Members Craig Becker, Mark Gaston Pearce, and Brian E. Hayes. The term of Chairman Wilma B. Liebman expired on August 27, 2011, and the President designated Member Pearce as Chairman effective August 28.

However, Board Member Becker is serving on a recess appointment which will expire at the end of the current session of the Senate (end of calendar year 2011). Absent the confirmation or recess appointment of at least one other Board Member, upon the expiration of Board Member Becker's appointment, the Board will be left with only two members, which will halt the issuance of decisions in Board cases.

The Supreme Court ruled in June 2010 that the Board was not authorized to act as a two-member quorum when decisions issued by then-Chairman Wilma B. Liebman and Board Member Peter C. Schaumber were challenged in various courts of appeals. Two nominations are pending in the Senate. Terence F. Flynn was nominated on January 5, 2011, and Craig Becker was nominated again for a full five-year term on January 26, 2011.

Both Chairman Pearce and Board Member Hayes were confirmed in June 2010, with Chairman Pearce's term expiring on August 27, 2013, and Board Member Hayes' term expiring on December 16, 2012.

NLRB GENERAL COUNSEL

The General Counsel is appointed by the President to a four-year term, with Senate consent, and is responsible for the investigation and prosecution of unfair labor practice cases and for the general supervision of the NLRB Regional Offices. In performing delegated functions, and in some aspects statutorily assigned functions, the General Counsel acts on behalf of the Board.

However, with respect to the investigation and prosecution of unfair labor practice cases, the General Counsel has sole prosecutorial authority under the statute, independent of the Board. Lafe E. Solomon has been serving as Acting General Counsel since June 21, 2010, and was nominated by President Obama to a full four-year term on January 5, 2011. His confirmation is pending in the Senate.

¹ Even though Board Members' terms are for five years, a new five-year term begins running immediately upon the expiration of the previous Member's term. The seat remains vacant until an individual is nominated and confirmed by the Senate. Therefore, a significant lapse of time could occur between when a term expires and a new Board Member is confirmed, which means that a new Board Member might serve only a portion of a five-year term. In recent years, the NLRB has experienced significant delays in the confirmation of new Board Members, such as that which occurred between 2007 and 2010 when the Board had only two members for approximately 27 months.

Organization

BOARD		OFFICE OF THE GENERAL COUNSEL
Mark Gaston Pearce <i>Chairman</i>		Lafe E. Solomon <i>Acting General Counsel</i>
Craig Becker <i>Board Member</i>	OFFICE OF THE INSPECTOR GENERAL	Celeste J. Mattina <i>Acting Deputy General Counsel</i>
Brian E. Hayes <i>Board Member</i>	David P. Berry <i>Inspector General</i>	DIVISION OF OPERATIONS MANAGEMENT
Vacant <i>Board Member</i>	OFFICE OF EQUAL EMPLOYMENT OPPORUTNITY	Anne G. Purcell <i>Associate General Counsel</i> (REGIONAL OFFICES)
Vacant <i>Board Member</i>	Brenda Valentine-Harris <i>Acting Director</i>	DIVISION OF ENFORCEMENT LITIGATION
OFFICE OF THE EXECUTIVE SECRETARY	OFFICE OF EMPLOYEE DEVELOPMENT	John H. Ferguson <i>Associate General Counsel</i>
Lester A. Heltzer <i>Executive Secretary</i>	Thomas J. Christman <i>Director</i>	DIVISION OF ADVICE
OFFICE OF REPRESENTATION APPEALS	DIVISION OF ADMINISTRATION	Barry J. Kearney <i>Associate General Counsel</i>
Vacant <i>Director</i>	Gloria J. Joseph <i>Director of Administration</i>	
OFFICE OF THE SOLICITOR	OFFICE OF THE CHIEF INFORMATION OFFICER	
William B. Cowen <i>Solicitor</i>	Bryan Burnett <i>Chief Information Officer</i>	
DIVISION OF JUDGES		
Robert A. Giannasi <i>Chief, ALJ</i>		
OFFICE OF PUBLIC AFFAIRS		
Nancy Cleeland <i>Director</i>		

Casehandling Functions

The primary function of the NLRB is the effective and efficient resolution of charges and petitions filed voluntarily under the NLRA by individuals, employers, or unions. In carrying out the NLRA's mandates, the NLRB supports the collective bargaining process and seeks to eliminate certain unfair labor practices on the part of employers and unions so as to promote commerce and strengthen the Nation's economy.

The two major goals of the NLRB are:

- To promptly resolve all questions concerning representation
- To promptly investigate, prosecute, and remedy unfair labor practices by employers or unions

UNFAIR LABOR PRACTICE PROCEEDINGS

The NLRA contains a code of conduct for employers and unions and regulates that conduct in unfair labor practice (ULP) proceedings. Unfair labor practices are remedied through adjudicatory procedures under the NLRA, in which the Board and the General Counsel have independent functions.

Congress created the position of General Counsel in its current form in the Taft-Hartley Act of 1947. At that time, it gave the General Counsel sole responsibility — independent of the Board — to investigate charges of unfair labor practices, and to decide whether to issue complaints with respect to such charges. The Board, in turn, acts independently of the General Counsel in deciding ULP cases.

The General Counsel investigates ULP charges through the Agency's network of Regional, Subregional, and Resident Offices (field offices). If there is reason to believe that a ULP charge has merit, the Regional Director, on behalf of the General Counsel, issues and prosecutes a complaint against the charged party, unless a settlement is reached. With some exceptions, a complaint that is not settled or withdrawn is tried before an administrative law

judge (ALJ), who issues a decision. The decision may be appealed by any party to the Board through the filing of exceptions. The Board decides cases on the basis of the formal trial record, according to the statute and the body of case law that has been developed by the Board and the federal courts.

If the Board finds that a violation of the Act has been committed, the role of the General Counsel thereafter is to act on behalf of the Board to obtain compliance with the Board's order remedying the violation. Although Board decisions and orders in ULP cases are final and binding with respect to the General Counsel, they are not self-enforcing. The statute provides that any party (other than the General Counsel) may seek review of the Board's decision in a United States Court of Appeals. In addition, if a party refuses to comply with a Board decision, the Board itself must petition for court enforcement of its order. In court proceedings to review or enforce Board decisions, the General Counsel represents the Board and acts as its attorney. Also, the General Counsel acts as the Board's attorney in contempt proceedings and when the Board seeks injunctive relief under Sections 10(e) and (f) of the NLRA after the entry of a Board order and pending enforcement or review of proceedings in circuit court.

Section 10(j) of the NLRA empowers the NLRB to petition a federal district court for an injunction to temporarily prevent unfair labor practices by employers or unions and to restore the status quo, pending full review of the case by the Board. In enacting this provision, Congress was concerned that delays inherent in the administrative processing of ULP charges, in certain instances, would frustrate the Act's remedial objectives. In determining whether the use of Section 10(j) is appropriate in a particular case, the principal question is whether injunctive relief is necessary to preserve the Board's ability to effectively remedy the unfair labor practice alleged, and whether the alleged violator would otherwise reap the benefits of its violation.

Under NLRB procedures, after deciding to issue a ULP complaint, the General Counsel may request

authorization from the Board to seek injunctive relief. The Board votes on the General Counsel's request and, if a majority votes to authorize injunctive proceedings, the General Counsel, through his Regional staff, files for injunctive relief with an appropriate federal district court.

In addition, under Section 10(l) of the Act, when a Region's investigation of a charge yields reasonable cause to believe that a union has committed certain specified unfair labor practices such as a work stoppage or picketing with an unlawful secondary objective, the Regional Director or Regional Attorney is required, on behalf of the Board, to seek an injunction from a federal district court to halt the alleged unlawful activity.

REPRESENTATION PROCEEDINGS

In contrast to ULP proceedings, representation proceedings conducted pursuant to the Act are not adversarial. Representation cases are initiated by the filing of a petition — by an employee, a group of employees, an individual, or a labor organization acting on their behalf, or in some cases by an employer. The petitioner requests an election to determine whether a union represents a majority of the employees in an appropriate bargaining unit and therefore should be certified as the employees' bargaining representative. The role of the Agency in such cases is to investigate the petition and, if necessary, to conduct a hearing to determine whether employees constitute an appropriate bargaining unit under the Act. The NLRB must also determine which employees are properly included in the bargaining unit and therefore eligible to vote, conduct a secret-ballot election if an election is determined to be warranted,

hear and decide any post-election objections to the conduct of the election, and, if the election is determined to have been fairly conducted, to certify its results.

In the processing of representation cases, the Board and the General Counsel have shared responsibilities. The Regional Offices, which are under the day-to-day supervision of the General Counsel, process representation petitions and conduct elections on behalf of the Board based on a delegation of authority made in 1961. As a result, the General Counsel and the Board have historically worked together in developing procedures for the conduct of representation proceedings. The Board has ultimate authority to determine such matters as the appropriateness of the bargaining unit and to rule on any objections to the conduct of an election. The Regional Directors have been delegated authority to render initial decisions in representation matters, which are subject to Board review.

COMPLIANCE PROCEEDINGS

In order to obtain compliance with the Board's orders and settlement agreements, the General Counsel's staff must follow up to ensure that the results of the processes discussed above are enforced. Staff must be prepared to work with employees whose rights have been violated to calculate backpay, work with respondents when terminated employees are entitled to reinstatement or having their records expunged in unlawful disciplinary actions, or monitor the bargaining process when the Board has ordered the parties to bargain. Noncompliance or disputes on findings may require additional hearings or actions by the judicial system.



Administrative Functions

Section 3(d) of the Act assigns the General Counsel supervision over all attorneys employed by the Agency, with the exception of the ALJs, who are under the general supervision of the Board, the NLRB Solicitor, and the attorneys who serve as counsel to

the Board Members. The Board has also delegated to the General Counsel general supervision over the administrative functions of the Agency and over the officers and employees in the Regional Offices.

Employee Rights Under The NLRA

The National Labor Relations Act extends rights to many private sector employees, including the right to organize and to bargain collectively with their employer. Employees covered by the Act are protected from certain types of employer and union misconduct and have the right to attempt to form a union where none currently exists or to attempt to improve their working conditions through other group action.

Examples of Employee Rights Under the NLRA Are:

- Forming, or attempting to form, a union among the employees of an employer.
- Joining a union whether the union is recognized by the employer or not.
- Assisting a union in organizing employees.
- Engaging in protected concerted activities. Generally, “protected concerted activity” is group activity that seeks to change wages or working conditions.
- Refusing to do any or all of these things. However, the union and employer, in a State where such agreements are permitted, may enter into a lawful union-security clause requiring employees to pay union dues and fees.

The NLRA forbids employers from interfering with, restraining, or coercing employees in the exercise of rights relating to organizing, forming, joining or assisting a labor organization for collective bargaining purposes, or engaging in protected concerted activities, or refraining from these activities. Similarly, unions may not restrain or coerce employees in the exercise of these rights.

Performance Highlights

The Board and the General Counsel share a common goal of ensuring that the NLRA is fully and fairly enforced. Although they have separate statutory functions, the Board and the General Counsel work together in developing one comprehensive Strategic Plan and annual Performance Plan. The NLRB's Strategic Plan was updated in FY 2007 and covers fiscal years 2007–2012.

The NLRB's Strategic Plan states the Agency's Strategic Goals and Performance Measures.

Strategic Goal No. 1

Resolve all questions concerning representation impartially and promptly.

Performance Measure No. 1

The percentage of representation cases resolved within 100 days of filing of the election petition.

Strategic Goal No. 2

Investigate, prosecute, and remedy cases of unfair labor practices by employers or unions, or both, impartially and promptly.

Performance Measure No. 2

The percentage of ULP charges resolved by withdrawal, by dismissal, or by closing upon compliance with a settlement or Board order or Court judgment within 120 days of the filing of the charge.

Performance Measure No. 3

The percentage of meritorious (prosecutable) ULP cases closed on compliance within 365 days of the filing of the ULP charge.

The two goals of the NLRB's Strategic Plan represent the core functions of the Agency in its enforcement of the NLRA. They reflect both the short- and long-term goals of the Agency. These strategic goals translate the Agency's mission into major policy directions and are focused on the unique characteristics of the organization.

The NLRB's two strategic goals are supported by three overarching performance measures. Rather than focus on the individual segments of the casehandling process, these performance measures focus on the time it takes to process an entire case, from start to finish. They are outcome-based, aligned with the mission of the NLRB, and are meaningful to the public the Agency serves. The NLRB tracks the total time taken to accomplish three outcomes: resolution of all questions concerning representation;



the processing, investigation, and remedy of ULP charges; and the resolution of those ULP charges found to have merit. The goal has been to resolve representation matters within 100 days, resolve all ULP cases within 120 days, and resolve meritorious ULP cases within 365 days.

Because the Agency has either met or exceeded the annual targets set since the institution of these performance measures in 2007, it undertook a review of the annual targets and revised them for FY 2010, 2011, and 2012.

Measure No. 1, the performance measure associated with Goal No. 1, focuses on the total time taken to resolve a representation case, from beginning to end, including time spent on the case on both the General Counsel and Board sides of the Agency. In representation cases, elections result from petitions filed by unions, employees, or employers seeking a secret ballot determination as to whether a majority of employees wish union representation. Included in this measure are withdrawals, dismissals, settlements, hearings, and elections, which occur in the field. It also includes requests by aggrieved parties for review of Regional decisions by the Board in Washington, DC.

Measures No. 2 and No. 3, the performance measures associated with Goal No. 2, address the timely resolution of ULP cases, including time spent on the case by both the General Counsel and Board sides of the Agency. On a yearly basis, there are more than six times as many ULP cases as representation cases, usually involving more complicated issues for Regions to address.

For FY 2011, the NLRB met its performance goals for Measures No. 2 and 3, but was 0.3 percent below its stated goal of 85 percent for Measure No. 1. In FY 2011, the NLRB deployed a new case management system, the Next Generation Case Management System² to its 32 Regional Offices. While eventually this system will create many efficiencies in the management of cases and provide more accurate information regarding Agency work, the transition was a massive undertaking and required an intensive training schedule that began in April and lasted through



September. This transition, coupled with the learning curve that accompanies the implementation of a new system had an impact on operational efficiency through the latter half of the fiscal year and resulted in the Agency being slightly below the interim goal for Measure No. 1.

Furthermore, while the interim goals for Measures No. 2 and 3 were met, the transition had an effect there as well, as actual performance for these two goals was below that of FY 2010, by 0.8 percent for Measure No. 2 and 1.4 percent for Measure No. 3. However, as staff becomes more familiar with the operation of the new case management system, the Agency is confident that it will meet the performance targets set for FY 2012, the last year covered by the current Strategic Plan. Notably, the Agency was closing 85.6 percent of its representation cases within 100 days prior to the training.

Measure No. 1. Resolve questions concerning representation in all representation cases within 100 days from the filing of the representation case petition.

Year	Interim Goal	Actual Performance
FY 2007	79.0%	79.0%
FY 2008	80.0%	83.5%
FY 2009	81.0%	84.4%
FY 2010	85.0%	86.3%
FY 2011	85.0%	84.7%

² See discussion regarding Next Generation Case Management System starting on page 35 of this report.

Measure No. 2: Resolve all charges of unfair labor practice cases by withdrawal, by dismissal, or by closing upon compliance with a settlement or Board order or court judgment within 120 days of the filing of the charge.

Year	Interim Goal	Actual Performance
FY 2007	67.5%	66.0%
FY 2008	68.0%	68.0%
FY 2009	68.5%	71.0%
FY 2010	71.2%	73.3%
FY 2011	71.2%	72.5%

Measure No. 3: Close meritorious (prosecutable) unfair labor practices on compliance within 365 days of the filing of the unfair labor practice charge.

Year	Interim Goal	Actual Performance
FY 2007	74.0%	73.5%
FY 2008	75.0%	76.0%
FY 2009	75.5%	79.7%
FY 2010	80.0%	84.6%
FY 2011	80.2%	83.2%

LINKING BUDGET AND PERFORMANCE

The NLRB's annual Performance Plan is integrated into its budget request to form the basis of its Performance Budget. Budget priorities are linked to Agency goals and measures to maximize performance and efficiency. The NLRB strengthens budget and performance linkages by establishing a direct, vertical relationship between the performance plans of individual executives in its Regional and Headquarters offices and the performance goals for their programs, which are derived from the Agency's broader strategic goals. These goals are implemented on a daily basis through the actions of individual managers leading programs and activities throughout the Agency.

Financial Highlights

The NLRB prepares annual financial statements in accordance with Generally Accepted Accounting Principles (GAAP) for federal government entities and subjects the statements to an independent audit to ensure their integrity and reliability in assessing performance. The NLRB's financial statements summarize the financial activity and financial position of the Agency. The financial statements, footnotes, and the balance of the required supplementary information appear in the Financial Section of this Performance and Accountability Report (PAR).

ANALYSIS OF FINANCIAL STATEMENTS

Balance Sheet — The NLRB assets were \$39 million as of September 30, 2011. The Fund Balance with Treasury, which was \$27 million, represents the NLRB's largest asset. The Fund Balance consists of unspent appropriated and unappropriated funds from the past six fiscal years.

The NLRB Property, Plant and Equipment was over \$13 million and was primarily related to information technology.

Statement of Net Cost — The NLRB's appropriation is used to resolve representation cases or ULP charges filed by employees, employers, unions, and union members. Of the \$304 million net cost of operations in FY 2011, 16 percent was used for representation case activities and 84 percent was used to resolve ULP charges.

Statement of Changes in Net Position — The Statement of Changes in Net Position reports the change in net position during the reporting period. Net position is affected by changes in its two components: Cumulative Results of Operations and Unexpended Appropriations. From FY 2010 to FY 2011, there was a change in net position of \$2.7 million.

Statement of Budgetary Resources — The Statement of Budgetary Resources shows budgetary

resources available and the status at the end of the period. It represents the relationship between budget authority and budget outlays, and reconciles obligations to total outlays. For FY 2011, the NLRB had available budgetary resources of \$288.4 million, the majority of which were derived from new budget authority. This represents a \$1.4 million increase from FY 2010, when available budgetary resources were \$287 million. For FY 2010 and FY 2011, the status of budgetary resources shows obligations of \$283 million and \$284 million. Total outlays for FY 2011 were \$292 million, which is a \$20 million increase from FY 2010.

The NLRB's mission —the resolution of labor disputes through investigation, settlement, advocacy, and adjudication— relies on skilled and professional employees; accordingly, most of the Agency's budget, approximately 80 percent, is dedicated to personnel costs. Of the remaining 20 percent, about 10 percent is required for rent and associated security costs, and the other 10 percent is allocated among other operating costs and activities, including IT development, acquisition and maintenance, telecommunications, court reporting, case-related travel, witness fees, interpreters, maintenance of current legal research collections, training, and compliance with government-wide statutory and regulatory mandates.

LIMITATIONS OF PRINCIPAL FINANCIAL STATEMENTS

The principal financial statements of the NLRB have been prepared to report the financial position and results of operations of the Agency, pursuant to the requirements of 31 U.S.C. 3515(b). While the statements have been prepared from the books and records of the entity in accordance with generally accepted accounting principles for federal entities and the formats prescribed by Office of Management and Budget, the statements are in addition to the financial reports used to monitor and control budgetary resources, which are prepared from the same books and records.

The statements should be read with the realization that they are for a component of the U.S. Government, a sovereign entity.

FINANCIAL PLANNING COMMITTEE

The NLRB's Financial Planning Committee has met annually since 1992 to review and update the NLRB's Five-year Financial Management Plan. The committee met in FY 2011 to assess the Agency's performance under the FY 2010 goals and to review and approve the goals for FY 2011. After reviewing the goals, and the tasks and milestones associated with each goal, the committee determined that the NLRB's five-year financial management goals should be:

- 1) Improved financial accountability
- 2) Improved financial management systems
- 3) Development of financial staff
- 4) Improved administration of Travel/Purchase Card program
- 5) Use of electronic commerce to improve financial management

The NLRB's major financial initiative for FY 2011 was to be the upgrade of its accounting system, Momentum Financials, which is obtained through the Department of Interior's National Business Center (NBC). An agreement was signed with NBC in September 2009, but the upgrade was delayed due to unresolved issues between NBC and the system developer.

In support of the NLRB's Five-year Financial Management Goals, the NLRB undertook the following initiatives:

IMPROVED FINANCIAL MANAGEMENT SYSTEMS

- Purchase of special software for Backpay System for preparation of W-2s to backpay recipients and 1099s to vendors
- Preparation for the Implementation of new accounting system in FY 2012
- Possibility of new eTravel provider in FY 2012.

DEVELOPMENT OF FINANCIAL STAFF

- Cross-training program for employees of the Finance Branch
- Succession planning
- Momentum training for allottees and budget allowance holders
- Training for Regional Office Managers on new Momentum system

IMPROVED ADMINISTRATION OF TRAVEL/ PURCHASE CARD PROGRAMS

Purchase Card Program

- Continued refinement of documentation of charges
- Issuance of guidance to cardholders on mandatory sources of office supplies
- Development of Purchase Card guide for cardholders

Travel Card Program

- Development of Travel Card Management Plan
- Development of guidance documents for cardholders
- Requirement that each cardholder certify completion of GSA online Travel Card Training

USE OF ELECTRONIC COMMERCE:

- Continue to encourage electronic funds transfer (EFT) by both employees and witnesses
- Educate vendors on requirement to enroll in the Central Contracting Registry (CCR)

Management Assurances

FEDERAL MANAGERS' FINANCIAL INTEGRITY ACT

The Federal Managers' Financial Integrity Act (FMFIA) requires federal agencies to develop and implement appropriate and cost-effective internal controls for results-oriented management, assess the adequacy of those internal controls, identify needed areas of improvement, take corresponding corrective action, and provide an annual statement of assurance regarding internal controls and financial systems. This annual statement of assurance is provided in the PAR.

NLRB management is responsible for establishing and maintaining an environment throughout the Agency that is positive and supportive of internal controls and conscientious management. The NLRB is committed to management excellence and recognizes the importance of strong financial systems and an internal control system that promotes integrity, accountability, and reliability.

Internal control systems are expected to provide reasonable assurance that the following objectives are being achieved:

- Effectiveness and efficiency of operations
- Reliability of financial reporting
- Compliance with applicable laws and regulations



In assessing whether these objectives are being achieved, the NLRB used the following standards in accordance with OMB Circular A-123, *Management's Responsibility for International Control*, dated December 21, 2004:

Control Environment	Creating and maintaining an organizational structure that promotes a high level of integrity and personal and professional standards and sets a positive and supportive attitude toward internal controls through conscientious management
Risk Assessment	Identification and analysis of risks that could impede the achievement of agency goals and objectives
Control Activities	Policies, procedures, techniques, and mechanisms to ensure proper stewardship and accountability for government resources and for achieving effective and efficient program results
Information and Communications	Ensures the agency's control environment, risks, control activities, and performance results are communicated throughout the agency
Monitoring	Assessing quality of performance over time ensuring that internal control processes are appropriate and effective

The NLRB's approach to assessing its internal controls included the identification and assessment of risks by 25 designated managers on an Agency-wide basis. In completing this annual review, the designated managers, in conjunction with subordinate staff as needed,

used personal judgment as well as other sources of information. These sources included: knowledge gained from day-to-day operations; Inspector General audits and investigations; program evaluations; reviews of financial systems; annual performance plans; and management reviews for the purpose of assessing internal controls. The designated managers were responsible for conducting reviews of program operations, assisting program offices in identifying risks and conducting internal control reviews, issuing reports of findings, and making recommendations to improve internal controls and risk management.

Based on the internal controls program, reviews, and consideration of other information, senior management's assessment of the NLRB's internal controls is that controls are adequate to provide reasonable assurance in support of effective and efficient operations, reliable financial reporting, and compliance with laws and regulations.

The Statement of Assurance provided on page 25 is required by the Federal Managers' Financial Integrity Act (FMFIA) and OMB Circular A-123, *Management's Responsibility for Internal Control*. The assurance is for internal controls over operational effectiveness (we do the right things to accomplish our mission) and operational efficiency (we do things right).

FMFIA Section 2, Management Control

Section 2 of the FMFIA requires federal agencies to report, on the basis of annual assessments, any material weaknesses that have been identified in connection with their internal and administrative controls. The reviews that took place in FY 2011 provide reasonable assurance that NLRB systems and internal controls comply with the requirements of FMFIA and there are no material weaknesses to report relating to Section 2 of the FMFIA. This is based primarily on written assessments by the 25 designated managers who responded to an extensive survey.

FMFIA Section 4, Financial Management Systems

Section 4 of the FMFIA requires that agencies' financial management systems controls be evaluated annually. The NLRB evaluated its financial management systems for the year ending September 30, 2011, in accordance with the FMFIA and OMB Circular A-127, *Financial Management Systems*, Section 7 guidance. The annual statement by the Chief, Finance Branch, indicates that the NLRB's financial systems, taken as a whole,

conform to the principles and standards developed by the Comptroller General, OMB, and the Department of Treasury.

FINANCIAL SYSTEM STRATEGIES

The NLRB obtains the majority of its financial systems and services from the Department of the Interior's National Business Center (NBC). NBC provides the following systems:

- Momentum Financials and Momentum Acquisitions – Integrated systems which allow the sharing of data and information between the NLRB's Finance Branch, the Budget Branch, and its Acquisitions Management Branch.
- Finmart Reporting System – A system of various accounting and budgetary reports that are used by staff in the Finance and Budget Branches and the Budget Allowance Holders to monitor the Agency's financial activities. The reports in this system are custom designed for the NLRB's use.
- Hyperion – Hyperion is the system used for the preparation of the Agency's audited Financial Statements which are contained in the Performance and Accountability Report. Statements are prepared annually and quarterly.
- FPPS – Federal Payroll and Personnel System – Integrated with the Momentum system, providing for more efficient payroll processing.
- E²Solutions – eTravel system provided by Carlson Wagonlit, the NLRB's Travel Management Service.

The integration of the various accounting and payroll systems and processes has provided the NLRB with consistent and reliable financial data and reporting, and enabled it to continue to meet government financial reporting standards.

The NLRB is planning an upgrade of its financial systems in FY 2012. This upgrade has been in the planning stages since FY 2009 when the Agency contracted with NBC. The Agency has spent the better part of the time laying the groundwork for the change and had fully expected to complete implementation by mid-FY 2011, but unresolved issues between NBC and the system developer temporarily halted the project. The NLRB continues to explore options with NBC, in order to leverage funds already spent, and hopes to move forward in FY 2012 in implementing its decision regarding the appropriate systems' support.



**UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
WASHINGTON, DC**

November 1, 2011

ANNUAL STATEMENT OF ASSURANCE

The NLRB's management is responsible for establishing and maintaining effective internal control and financial management systems that meet the objectives of the Federal Managers' Financial Integrity Act (FMFIA). The NLRB conducted its assessment of the effectiveness of internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations in accordance with OMB Circular A-123, *Management's Responsibility for Internal Control*. Based on the results of this evaluation, the NLRB can provide reasonable assurance that its internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations as of September 30, 2011, was operating effectively and no material weaknesses were found in the design or implementation of internal controls.

Handwritten signature of Mark Gaston Pearce in cursive.

Mark Gaston Pearce
Chairman

Handwritten signature of Lafe E. Solomon in cursive.

Lafe E. Solomon
Acting General Counsel

2011 Year In Review

THE NLRB ENGAGES IN RULEMAKING

Posting Notification of Employees of Rights Under the NLRA

On August 30, 2011, the NLRB issued a final rule that will require employers to notify employees of their rights under the NLRA as of November 14, 2011³. The purpose of the rule is “to increase knowledge of the NLRA among employees, to better enable the exercise of rights under the statute, and to promote statutory compliance by employers and unions.”

Private-sector employers (including labor organizations) whose workplaces fall under the NLRA will be required to post the employee rights notice where other workplace notices are typically posted. Also, employers who customarily post notices to employees regarding personnel rules or policies on an internet or intranet site will be required to post the Board’s notice on those sites. Copies of the notice will be available from the Agency’s Regional Offices and can be downloaded from the NLRB Web site.

The notice, which is similar to one required by the U.S. Department of Labor for federal contractors, states that employees have the right to act together to improve wages and working conditions, to form, join, and assist a union, to bargain collectively with their employer, and to refrain from any of these activities. It provides examples of unlawful employer and union conduct and instructs employees how to contact the NLRB with questions or complaints.

The Notice of Proposed Rulemaking was published on December 22, 2010, in the *Federal Register*, with a 60-day comment period. The Board received approximately 6,500 comments during the comment period and accepted an additional 500 that arrived after the deadline. In response to the comments, some parts of the rule were modified. For example, employers will not be required to distribute the notice via email, voice mail, text messaging, or related electronic

communications even if they customarily communicate with their employees in that manner, and they may post notices in black and white as well as in color. The final rule also clarifies requirements for posting in foreign languages. Similar postings of workplace rights are also required under other federal workplace laws.

Amendments to Procedures in Representation Elections

On June 22, 2011, the NLRB published another Notice of Proposed Rulemaking in the *Federal Register*, with a 60-day comment period, which proposed amendments to its existing rules and regulations governing

procedures in representation cases. The proposed amendments are intended to reduce unnecessary litigation, streamline pre- and post-election procedures, and facilitate the use of electronic communications and document filing. The proposed amendments would allow the Board to more promptly determine if there is a question concerning representation and, if so, resolve it by conducting a secret ballot election.

If finally adopted, after the public notice-and-comment period, the proposed rule would:

- Allow for electronic filing of election petitions and other documents.
- Ensure that employees, employers, and unions receive and exchange timely information they need to understand and participate in the representation case process.

“One of the most important duties of the NLRB is conducting secret ballot elections to determine whether employees want to be represented by a labor union. Resolving representation questions quickly, fairly, and accurately has been an overriding goal of American labor law for more than 75 years.”

Former Chairman
Wilma B. Liebman

³The original effective date of November 14 was postponed by the Board until January 31, 2012, in order to allow for enhanced education and outreach to employers, particularly those who operate small and medium-sized businesses.

- Standardize timeframes for parties to resolve or litigate issues before and after elections.
- Require parties to identify issues and describe evidence soon after an election petition is filed to facilitate resolution and eliminate unnecessary litigation.
- Defer litigation of most voter eligibility issues until after an election.
- Require employers to provide a final voter list in electronic form soon after the scheduling of an election, including voters' telephone numbers and email addresses, when available.
- Consolidate all election-related appeals to the Board in a single post-election appeals process and thereby eliminate delay in holding elections currently attributable to the possibility of pre-election appeals.
- Make Board review of post-election decisions discretionary rather than mandatory.

The Board held an open meeting on July 18 and 19 in Washington, DC, to receive comments on the proposed rule as well as other suggestions for improving representation case procedures. Approximately 150 individuals registered to attend the event and 62 speakers, representing a wide range of perspectives, addressed the Board at the meeting.

The deadline for submitting written comments on the proposed rule was August 22, with responses to initial comments allowed for a period of 14 days thereafter. In response, the Board received more than 70,000 comments, which are currently under review.



SPECIAL REMEDIES

Seeking 10(j) injunctive relief is an effective remedy the Board has used for many years in cases involving an employer's unlawful conduct during an organizing campaign. In 2010, the Acting General Counsel initiated a streamlined process for seeking 10(j) injunctive relief in these types of cases. The intent of the streamlined process was to ensure that these cases were identified and processed in "real time" to provide relief to affected employees. However, often times, discharges are accompanied by other serious unfair labor practices such as threats, solicitation of grievances, promises or grants of benefits, interrogations, or surveillance. These additional unfair labor practices also have a serious impact on employee free choice, as they inhibit employees from engaging in union activity and dry up channels of communications between them. Thus, the Acting General Counsel is seeking in appropriate cases the following remedies to enhance the effectiveness of Section 10(j) of the Act and ultimate Board relief.

Public Reading of Board Notices. In organizing cases, the Board's cease-and-desist and notice posting remedies announce to employees, who have been subjected to interference, restraint, and coercion with respect to their right to select a bargaining representative, that they have a protected right to engage in such activity free from unlawful reprisal. A public reading of a Board notice not only ensures that the information set forth in the notice is disseminated to all employees, but also allows employees to take in all of the notice, as opposed to hurriedly scanning the posting, under the scrutiny of others. Another reason is to reverse the effects of unlawful coercion and interference by having it read by a high-level management official. Regions can specifically seek language in an order that the notice should be read to the widest audience possible.

Access Remedies. The full exercise by employees of their Section 7 rights requires that employees be fully informed not only concerning those rights, but also concerning the advantages and disadvantages of selecting a particular labor organization, or any labor organization, as their bargaining representative. Where an employer unlawfully interferes with communications between employees, or between employees and a union, the impact of that interference requires a remedy that will ensure free and open communication. Remedies include: union

access to non-work areas on non-work time, to employer bulletin boards and to employee contact information; union notice of, and equal time and facilities for, the union to respond to any address made by the employer regarding union organizing; and a union right to deliver a speech to employees before a representation election.

These access remedies assure employees that they can learn about unionization and can contact union representatives in an atmosphere free of restraint or coercion and without fear of retaliation.



In addition to the special remedies in organizing campaigns, for the past several years the NLRB has pursued special remedies in first-contract bargaining cases. Regional Offices were instructed to consider remedies beyond the standard bargaining order to effectively address the consequences of bad faith bargaining and other violations during initial contract negotiations. These remedies included: public notice reading, required bargaining on a set or compressed schedule, periodic reports on bargaining status, a minimum six-month extension of the certification year, and reimbursement of bargaining expenses and/or litigation expenses. In order to ensure consistent application of these special remedies, Regional Offices were directed to submit first-contract bargaining ULP cases to the NLRB's Division of Advice to determine if additional remedies were required or if Section 10(j) relief was appropriate.

In February 2011, the Acting General Counsel authorized the Regional Offices to use their discretion to seek notice reading, certification-year-extensions, and bargaining-schedule remedies in first-contract

bargaining cases that exhibited certain fact patterns (i.e., undermining union support among employees, bad faith or surface bargaining, dilatory tactics, blanket refusals to bargain, delays in responding to requests for bargaining dates, cancellation of bargaining sessions, refusals of requests for information). Regional Offices will still submit to the Division of Advice first-contract bargaining cases that involve reimbursement of bargaining and/or litigation expenses as a remedy, as well as those where a complaint has been issued with a recommendation on whether section 10(j) relief, including additional remedies in the 10(j) order, is appropriate.

The Acting General Counsel also issued guidelines that provide more effective backpay remedies for illegally discharged employees. These guidelines outline new methods for calculating backpay that includes daily compounded interest (as ordered by the Board in *Jackson Hospital Corporation d/b/a Kentucky River Medical Center*) and compensates for search-for-work-related expenses and tax penalties on lump sum payments.

ACTING GENERAL COUNSEL ISSUES REPORT ON SOCIAL MEDIA CASES

Recent developments in the NLRB's General Counsel's Office have presented emerging issues involving protected and/or concerted activity under the NLRA in the context of today's social media. To keep the labor-management community informed of cases that raise significant legal or policy issues, the Acting General Counsel issued a report detailing the outcome of the investigations into 14 cases involving the use of social media and employers' social and general media policies.

Each case was submitted by Regional Offices to the NLRB's Division of Advice in Washington, DC. In four cases involving employees' use of Facebook, the Division found that the employees were engaged in "protected concerted activity" because they were discussing terms and conditions of employment with fellow employees. In five other cases involving Facebook or Twitter posts, the Division found that the activity was not protected.

In one case it was determined that a union engaged in unlawful coercive conduct when it videotaped interviews with employees at a non-union jobsite about their immigration status and posted an edited version on YouTube and the Local Union's Facebook page.

A number of the reported cases addressed the legality of employers' social media policies and related conduct. In five cases, some provisions of the employer's social media policies were found to be unlawfully over-broad. The remaining case involved an employer's lawful policy restricting its employees' contact with the media.

NLRB LAUNCHES NEW WEB SITE

The NLRB launched a new Agency Web site in February 2011 that is more flexible, timely, easy to navigate, and useful to a variety of audiences, from practitioners to first-time visitors. The re-designed and re-imagined site, at www.nlr.gov, builds on an overarching effort toward greater transparency and efficiency at the NLRB,

Among highlights of the new site:

Case Information. More case information is available more quickly than ever before. All Board decisions are now posted to the site at the time they are issued, rather than after a one-day holding period. The Board is also for the first time posting unpublished decisions, which do not appear in the official bound volumes of Board decisions. Additional documents from Washington and the Regional Offices not previously available will be posted to the site over time.

Case Management System. The Web site showcases a new case management system that has been coming online at the Agency for more than a year, and will be deployed to all Regional Offices. The new single system replaces 13 separate case-tracking systems, and allows for seamless searches that cover the entire life of a case at the Agency. Each case is assigned its own page, where information and documents are posted. More information and documents will be added over time.

Featuring of Regional Offices. For the first time, the Agency's 32 Regional Offices — where all cases

and elections begin — are prominently highlighted in the new site. An interactive map shows regional boundaries and allows visitors to quickly locate their own Regional Office. One click away is a page for each Region that lists top officials and features newsletters, news releases, and local cases and decisions.

Graphs & Data. A data section tracks NLRB activities over the years by the numbers. The section displays charts and tables covering a variety of indicators, from charges filed to backpay collected. More charts and tables, with greater interactivity, will continue to be added..

Improved Navigation. Visitors will find it far easier to navigate through the site, and new pages explain NLRB processes and functions in accessible language. At the same time, all the casehandling manuals, memos, and forms found on the old Web site are available on the new one.

The new NLRB Web site, which has resulted in a marked increase in the number of visitors and time spent on the site, is a reflection of a more open and engaged Agency. Other recent developments to that end include the establishment of a new Office of Public Affairs in 2010, increased use of press releases to describe activities in Washington and the regions, a subscription service that allows users to choose email delivery of press releases, decisions and memos (with more than 11,000 subscribers), and active Facebook and Twitter accounts.

INFORMATION TECHNOLOGY INITIATIVES

The NLRB's Office of the Chief Information Officer (OCIO) is in the midst of executing an enterprise-architecture-based technology program that delivers value and advances the Agency's mission. The current information technology (IT) initiatives support the NLRB's broader efforts to improve productivity and provide greater transparency.

The Agency's major IT initiatives are results-oriented and are designed to:

- Improve productivity of the Agency's case management processes by standardizing business processes in a singly unified case management system.

- Optimize business processes by providing employees ready access to the tools, data, and documents they require from anywhere, at anytime.
- Transform the way the NLRB serves the public, including making its case processes transparent and providing more information to its constituents in a timely manner.
- Reduce the paperwork burden on constituents, including individuals, labor unions, businesses, government entities, and other organizations.

Through modernization and consolidation of its IT structure, the NLRB is able to provide 7x24x365 service and support, disaster recovery, consolidated storage, and robust interconnection with the NLRB and to the public.

Next Generation Case Management System

The Next Generation Case Management System (NxGen), launched in 2006, is an enterprise case management system that allows the NLRB to manage cases across all of its offices as well as interface with the public. This is the most comprehensive technology project ever undertaken by the NLRB, and its success is essential to the Agency's mission. The system is allowing the NLRB to replace many manual paper-based processes and legacy systems with a standards-based solution.

In 2011, the system entered a critical phase focused on addressing the outstanding business processes of the Board and field offices. The goal was to complete development and deployment of NxGen to the field offices prior to the end of FY 2011. Initially, full deployment in the Regional Offices in Cincinnati (Region 9) and Atlanta (Region 10) — the two offices



used to pilot the system — was completed in April 2011. The NLRB spent the next two months working on enhancements to the system before beginning an aggressive schedule of deployment and training in the remaining 30 Regional Offices. This aggressive schedule of deployment and training began in June and was completed in late September. With this successful deployment, the NLRB's Case Activity Tracking System (CATS), its largest legacy case-tracking system, has now been retired in all of the Regional Offices. Full deployment in the field also removed the requirement to have database servers located in each office. Consolidation of these servers to the NxGen system and data centers left no application-provisioning equipment in the field offices and met one of the NLRB's core IT objectives first proposed in 2006.

The Agency's next efforts will focus on replacing the remaining Headquarters' case-tracking applications and modernizing its records management system.

Other areas where NxGen is in use:

- The General Counsel's Office of Appeals — whose Appeals Case Tracking System (ACTS) legacy system has now been fully retired
- All offices for processing incoming electronically-filed documents, including hearing transcripts and exhibits
- Integration with the Board's collaborative Judicial Case Management System (JCMS); the Board is in the final stages of retiring its legacy Pending Case List System (PCL) system
- Integration with the Division of Judges' Case Tracking System (TIGER)
- Electronic issuance of Board and Division of Judges Decisions

PUBLIC INFORMATION PROGRAM

The Agency's Public Information Program is one of the critical services provided to employers, unions, and employees. Under this program, officers in the field provide information directly to individuals or entities that contact the Agency seeking assistance. In responding to these inquiries, Board agents spend considerable time explaining the coverage of the NLRA, accepting charges, or referring parties to other federal or state agencies. In FY 2011, the



NLRB's Field Offices received 83,826 public inquiries regarding workplace issues.

The public can also contact the Agency through a toll-free telephone service (1-866-667-NLRB) designed to provide easy and cost-free access to information. Callers to the toll-free number may listen to messages recorded in English and Spanish that provide a general description of the Agency's mission and connections to other government agencies or Information Officers located in the Agency's Regional Offices. In FY 2011, 34,331 inquiries were received through the Agency's toll-free number.

Public outreach is encouraged and has been embraced at all levels of the Agency. Over the past few years, the Board Members, General Counsel, and Acting General Counsel participated in numerous speaking engagements at a myriad of events, including law schools, American Bar Association meetings and events, the Chamber of Commerce, and various employer and union groups. Similarly, other Agency representatives participated in outreach events, independently and in partnership with other organizations such as the Equal Employment Opportunity Commission, the Department of Labor, and through the NLRB's Regional Offices. Agency employees visited and spoke at schools, community groups, churches, other federal agencies, business

organizations, workers' rights centers, human resources professional groups, labor organizations, and other similar type groups to make information about the NLRB available to individual workers. Agency representatives also reached out to employers, unions, workers, and soon-to-be workers to educate them regarding the role of the NLRB as an impartial enforcement agency. Furthermore, many Regional Offices publish newsletters, participate on radio talk shows, and make presentations in their local communities.

The NLRB continues to reach out to those communities of workers who have limited English proficiency by incorporating an easy-to-use, bilingual toll-free telephone service for inquiries. In addition, the Agency employs full-time Spanish-speaking language assistants whose sole job is to provide interpretation and translation service to our field offices. Our public Web site contains Agency publications about our statute and processes translated into Spanish, Chinese, Creole, Korean, Russian, Somali and Vietnamese. Our electronic document templates available in Spanish continue to increase and our database of translated representation case notices and ballots has expanded to include 31 languages. Lastly, an Agency film about representation case processing was recently recorded for the benefit of the Spanish-speaking community.

Casehandling Highlights

The NLRB acts only on those cases brought before it, and does not initiate cases. All proceedings originate with the filing of charges or petitions by employees, labor unions, or private employers who are engaged in interstate commerce. During fiscal year 2011, the public filed 22,189 charges alleging that employers or labor organizations committed unfair labor practices prohibited by the Act, adversely affecting employees. Also, in FY 2011, the NLRB received 2,833 representation petitions, including 2,636 petitions to conduct secret-ballot elections in which workers in appropriate groups select or reject unions to represent them in collective bargaining with their employers, as well as 74 petitions for elections in which workers voted on whether to rescind existing union-security agreements. The NLRB also received 8 petitions to amend the certification of existing collective bargaining and 97 petitions seeking clarification of an existing bargaining unit.

The NLRB strives to create a positive labor-management environment for the nation's employees, unions, and employers by assuring employees free choice on union representation and by preventing and remedying statutorily defined unfair labor practices. The NLRB maintains a citizen-centered and results-oriented philosophy to best serve the needs of the American people.

The following cases highlight this philosophy and reflect the NLRB's mission of protecting democracy in the workplace:

OS Transport (32-CA-25100, et al.) – On May 17, 2011, the U.S. District Court in San Jose ordered the Employer, *OS Transport LLC*, a San Jose area waste hauling company, to offer reinstatement to two drivers and to restore full work assignments to other drivers who had expressed support for the Union, Teamsters Local No. 350, during an organizing campaign. In issuing the temporary injunction, the court found that the Regional Office had shown a likelihood of prevailing before the Board in establishing that the Employer had violated the Act as alleged and that the Employer's employees would experience irreparable harm if injunctive relief did not issue immediately. In addition to the interim reinstatement of the unlawfully discharged drivers and the restoration of full work assignments for other drivers, the judge also ordered that the Employer's owner attend a reading of the full Court order to the Employer's employees in English and Spanish by an agent of the NLRB.

Thereafter, following an administrative hearing, an NLRB ALJ, on August 15, 2011, issued a decision in Cases 32-CA-25100, 25399, and 25490 finding, among other things, that the Employer unlawfully terminated two drivers, unlawfully decreased wages



and changed work routes and hours of drivers, and threatened to discharge employees or to close its business because employees engaged in activities in support of the Union. Accordingly, the Employer was ordered to reinstate the discharged employees and to make employees whole for any losses they may have suffered as a result of the discharges, the decrease in wages, and the changed work routes and hours. The ALJ also required the Employer's owner to read the remedial Notice to the Employer's employees in English and Spanish and required the Employer to provide the Union, upon request within one year of the issuance of the decision, a list of the employees' names and addresses.

Pacific Beach Hotel (HTC Corp.) (37-CA-7311, et al.) – In September 2009, a NLRB Administrative Law Judge ruled that Pacific Beach Hotel (HTH Corp.) had committed numerous unfair labor practices against the Union over several years. This prompted a request for an injunction in the U.S. District Court for Hawaii, which in March 2010 ordered the Hotel to recognize the Union, bargain in good faith for a contract, and reinstate five union activists who had been fired. Additionally, the court ordered the parties to resume bargaining from the point where negotiations had broken off and to have Hotel managers read the court's order to all employees. In July 2011, the U.S. Court of Appeals for the 9th Circuit upheld the injunction. This decision not only affirmed the District Court's decision, but set forth criteria for future 10(j) injunctions. The court also upheld the Board's authority to delegate to the General Counsel the authority to initiate 10(j) cases in federal court. *Frankl v. HTH Corp.*, --- F.3d ----, 2011 WL 3250637, 191 L.R.R.M. (BNA) 2011.

On June 14, 2011, the Board issued an order that required the Hotel to offer reinstatement to a number of employees, resume bargaining, and make employees whole for their losses. In addition, in a relatively rare move, the Board directed the Hotel to reimburse the Union for its negotiating expenses and to have a responsible corporate official publicly read a remedial notice to employees.

Hispanics United of Buffalo (3-CA-27872) – The case involved an employee who, after hearing criticism from a coworker concerning the manner in which employees were performing their jobs, and that the coworker intended to take her criticisms to management, posted to her Facebook page the coworker's allegation that employees did not do

enough to help the organization's clients. The initial post generated responses from other employees who defended their job performance and criticized working conditions, including work load and staffing issues. After learning of the posts, Hispanics United discharged the five employees who participated, claiming that their comments constituted harassment of the employee originally mentioned in the post. In the first decision of its kind, an NLRB ALJ found that the employees' Facebook discussion was protected concerted activity within the meaning of Section 7 of the NLRA, because it involved a conversation among coworkers about their terms and conditions of employment, including their job performance and staffing levels. The judge also found that the employees did not engage in any conduct that forfeited their protection under the Act. The ALJ ordered that Hispanics United reinstate the five employees and awarded the employees backpay because they were unlawfully discharged.

The Longy School of Music (1-CA-46304) – Shortly after the faculty at this conservatory and music school selected a union as their representative, the Employer unilaterally made a series of major changes to its organization and operations. Among other changes, eight long-term faculty members were summarily terminated; more than 30 others experienced major changes in their assignments that significantly decreased their pay; a new health plan was implemented; and numerous other changes were made to faculty schedules. The NLRB's Boston Regional Office (Region 1) sought an injunction in federal district court to restore the status quo ante and require the School to bargain in good faith with the Union prior to implementing any changes. The district court ordered the interim reinstatement of the eight terminated employees, and, prior to trial before an ALJ, the parties entered into a global settlement of all outstanding matters, resulting in the parties' first three-year collective-bargaining agreement, union acceptance of the Employer's reorganization plans and health care provider, \$470,000 in backpay for the eight terminated employees, and severance packages for certain employees.

PRI XVIII, L.P. d/b/a Westin Providence Hotel (1-CA-45792, et al.) – The Boston Regional Office approved a settlement between this Rhode Island hotel and the Union representing its entire workforce after a protracted, high profile labor dispute. The complaint stemmed from negotiations for a successor collective-bargaining agreement and the Employer's

imposition of major cost cutting measures. In March 2010, the Employer unilaterally implemented the Hotel's contract offer in the absence of a good-faith impasse in bargaining. Immediately thereafter, the Hotel unlawfully subcontracted major parts of the Hotel's operations, including its restaurant, café, laundry, and valet/parking operations, putting a substantial portion of its staff out of work. The complaint also alleged three employees had been discharged for engaging in lawful union activities and the Hotel had made other unlawful unilateral changes, threatened employees for engaging in lawful union activities, and discriminatorily enforced rules. The parties' global settlement included the execution of a new three-year contract, reinstatement of 27 of the 54 laid-off employees, and a make-whole backpay remedy totaling \$405,000 for 175 employees.

Santa Barbara News-Press (31-CA-28162 et al, 357 NLRB No. 51 (August 11, 2011)) – The Board unanimously found that the publisher of the *Santa Barbara News-Press* committed multiple unfair labor practices after a successful union organizing campaign by newsroom employees, and ordered Ampersand Publishing LLC to offer reinstatement to eight fired journalists. The Board rejected arguments that the employees' actions were not protected because they dealt with editorial content rather than wages and benefits, and that its remedial order would interfere with the publisher's First Amendment right to control the newspaper's editorial content.

In the months following the employees' 2006 selection of the Graphics Communications Conference, International Brotherhood of Teamsters in a Board-conducted election, the News-Press discharged two union supporters for ostensibly biased reporting; cancelled the column of a union supporter; lowered the performance evaluation scores of four union supporters; and discharged six union activists who demonstrated on a footbridge to protest the News-Press's unlawful discharges of the reporters. NLRB Region 31 (Los Angeles) litigated the case before an NLRB ALJ. In its decision, the Board upheld the ALJ's findings that the News-Press' ostensible reasons for these actions were pretextual and that it had retaliated against employees because of their protected union activities.

Relying on *Associated Press v. NLRB*, 301 U.S. 103 (1937), the Board rejected the News-Press' contention

that reinstatement of reporters would impermissibly interfere with its First Amendment right to publish the paper as it sees fit. Among other remedies the Board ordered the News-Press to offer reinstatement to eight employees, including the six who hung a banner from a footbridge urging motorists to cancel their newspaper subscription and two others who were ostensibly fired for "biased reporting" and make all discriminated employees whole with backpay awards.

Deb-El Food Products (Case 3-CA-27215, et al.) – The complaint alleged that Deb-El committed numerous violations of Section 8(a)(1) and (3) of the Act including threats and interrogations, and the terminations of five pro-union employees who assisted the union in the organizing campaign. The union had obtained a card majority, and the complaint pled that the unfair labor practices were sufficiently egregious to preclude the holding of a fair election and thus warranted the imposition of a remedial bargaining order which required Deb-El to recognize and bargain with the Union. An administrative hearing began in March 2010, and continued for seven months before the parties reached a non-Board settlement facilitated by the Regional Office. Pursuant to the parties' non-Board settlement to open and count challenged ballots in the related representation case, the Union won the election and was certified as the bargaining representative. The settlement also required the Employer to pay the discriminatees backpay in excess of \$60,000. As the discriminatees were undocumented workers, no reinstatement offer was required.

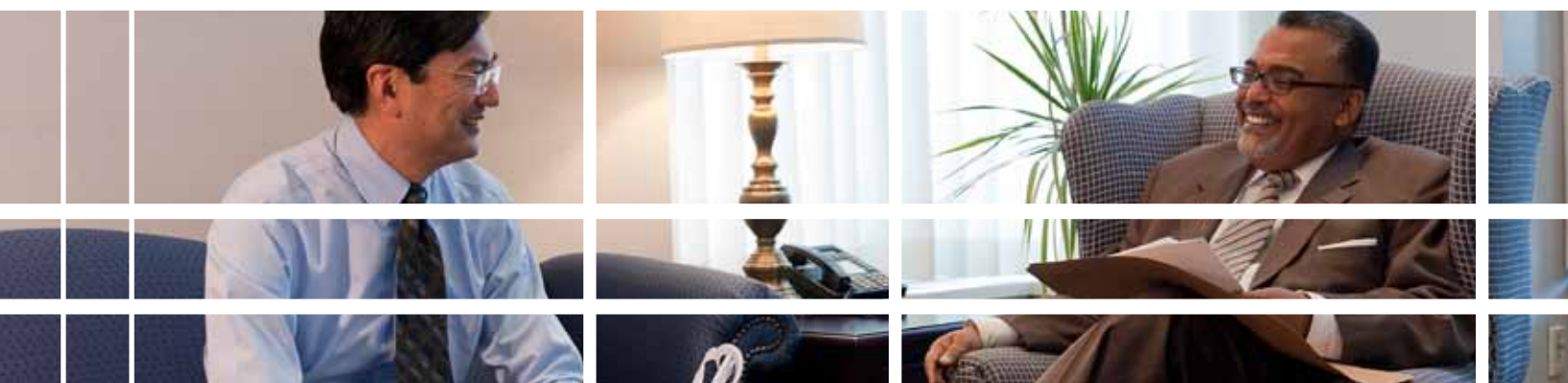
Tom Arand, P.C. d/b/a Animal Care Clinic (353 NLRB No 128 (2009)) – In this case, involving protected concerted activity, the Board found that the Employer, based in Round Rock, Texas (north of Austin), had discharged two employees in violation of Section 8(a)(1) of the Act. It is highlighted because of the unusual nature of the proceedings. The case went to the Board on a Motion for Default Judgment. Thereafter, the Employer continued to ignore efforts concerning compliance, enforcement, etc. The Employer ignored orders of the 5th Circuit and a writ of body attachment issued for the Employer's owner. Ultimately, the owner was taken into custody by the U.S. Marshal and brought before a magistrate. Thereafter, the Employer took steps to comply with the Board's enforced order (before filing bankruptcy).

Statistical Highlights



- The Board issued 368 decisions in contested cases in FY 2011, 272 ULP cases and 96 representation cases.
- 95 percent of all initial elections were conducted within 56 days of filing of the petition.
- Initial elections in union representation cases were conducted in a median of 38 days from the filing of the petition.
- Acting on the results of professional staff investigations, which produced a reasonable cause to believe unfair labor practices had been committed, Regional Offices of the NLRB issued 1,250 complaints, setting the cases for hearing.
- A 93 percent settlement rate was achieved in the Regional Offices in meritorious ULP cases.
- The Regional Offices won 88 percent of Board and ALJ ULP and Compliance decisions in whole or part in FY 2011.
- A total of \$26,992,344 was recovered on behalf of employees as backpay or reimbursement of fees, dues, and fines with 3,591 employees offered reinstatement.
- The Agency received in FY 2011 83,826 inquiries through its Public Information Program.
- The Agency received 34,331 calls through its toll-free number in FY 2011.
- The Division of Judges closed 226 hearings and issued 230 decisions in FY 2011.
- The Division of Judges achieved 464 settlements in cases on its trial docket.
- The Division of Advice received approximately 53 cases on the validity of social media rules or the discipline of employees for comments made on social media sites.

Performance Section



Protecting Democracy in the Workplace Since 1935

Program Performance

PERFORMANCE GOALS AND OBJECTIVES

This section of the PAR details the NLRB's efforts to meet its strategic and performance goals. The two goals of the NLRB's Strategic Plan represent the core functions of the Agency in enforcing the NLRA, as efficiently as possible, in a manner that gives full effect to the rights afforded to all parties under the Act. These strategic goals, as fully described in this section of the PAR, translate the Agency's mission into major policy directions and are focused on the unique characteristics of the organization.

The Board and the General Counsel share a common goal of ensuring that the NLRA is fully and fairly enforced. Although they have separate statutory functions, the Board and the General Counsel work together in developing one comprehensive Strategic Plan and annual Performance Plan.

STRATEGIC GOAL No. 1

Resolve all questions concerning representation impartially and promptly.

Objectives

The NLRA recognizes and expressly protects the right of employees to freely and democratically determine, through a secret-ballot election, whether they want to be represented for purposes of collective bargaining by a labor organization. The Agency seeks to ensure that the process used to resolve such questions allows employees to express their choice in an open, un-coerced atmosphere. The NLRB strives to give sound and well-supported guidance to all parties and to the public at large with respect to representation issues. Predictable, consistent procedures have been established to better serve our customers and avoid unnecessary delays. The Agency processes representation cases promptly in order to avoid unnecessary disruptions to commerce and to minimize the potential for unlawful or objectionable conduct.

The objectives are to:

- A. Encourage voluntary election agreements by conducting an effective stipulation program.
- B. Conduct elections promptly.
- C. Issue all representation decisions in a timely manner.
- D. Afford due process under the law to all parties involved in questions concerning union representation.

Strategies

1. Give priority in timing and resource allocation to the processing of representation cases that implicate the core objectives of the Act and are expected to have the greatest impact on the public.
2. Evaluate the quality of representation casework regularly to provide the best possible service to the public.
3. Give sound and well-supported guidance to the parties, and to the public at large, on all representation issues.
4. Share best practices in representation case processing to assist Regional Offices in resolving representation case issues promptly and fairly.
5. Identify and utilize alternative decision-making procedures to expedite Board decisions in representation cases.
6. Ensure that due process is accorded in representation cases by careful review of Requests for Review, Special Appeal and Hearing Officer Reports, and, where appropriate, the records in the cases.
7. Analyze and prioritize the critical workforce skill gaps of the Agency and address these needs through training and effective recruitment in order to achieve Agency goals.

8. Provide an information technology environment that will equip NLRB employees with technology tools and access to research and professional information comparable to that of their private-sector counterparts.

STRATEGIC GOAL No. 2

Investigate, prosecute, and remedy cases of unfair labor practices by employers or unions, or both, impartially and promptly.

Certain conduct by employers and labor organizations leading to workplace conflict has been determined by Congress to burden interstate commerce and has been declared an unfair labor practice under Section 8 of the NLRA. This goal communicates the Agency's resolve to investigate charges of unfair labor practice conduct fairly and expeditiously. Where violations are found, the Agency will provide such remedial relief as would effectuate the policies of the Act, including, but not limited to, ordering reinstatement of employees; ensuring that employees are made whole, with interest; directing bargaining in good faith; and ordering a respondent to cease and desist from unlawful conduct. The Agency will give special priority to resolving disputes with the greatest impact on the public and the core objectives of the Act.

Objectives

- A. Conduct thorough ULP investigations and issue all ULP decisions in a timely manner.
- B. Give special priority to disputes with the greatest impact on the public and the core objectives of the Act.
- C. Conduct effective settlement programs.
- D. Provide prompt and appropriate remedial relief when violations are found.
- E. Afford due process under the law to all parties involved in ULP disputes.

Strategies

1. Take proactive steps to disseminate information and provide easily accessible facts and information to the public about the Board's jurisdiction in ULP matters and the rights and obligations of employers, employees, unions, and the Board under the Act.

2. Evaluate the quality of ULP casework regularly in order to provide the best possible service to the public.
3. Utilize impact analysis to provide an analytical framework for classifying ULP cases in terms of their impact on the public so as to differentiate among them in deciding both the resources and urgency to be assigned to each case.
4. Share best practices in the processing of ULP cases to assist Regional Offices in resolving ULP issues promptly and fairly.
5. Emphasize the early identification of remedial and compliance issues and potential compliance problems in merit cases; conduct all phases of litigation, including settlement, so as to maximize the likelihood of obtaining a prompt and effective remedy.
6. Utilize injunctive proceedings to provide interim relief where there is a threat of remedial failure.
7. Emphasize and encourage settlements as a means of promptly resolving ULP disputes at all stages of the casehandling process.
8. Identify and utilize alternative decision-making procedures to expedite Board decisions in ULP cases.
9. Analyze and prioritize the critical workforce skills needs of the Agency and address these needs through training and effective recruitment in order to achieve Agency goals.
10. Provide an information technology environment that will give NLRB employees technology tools and access to research and professional information comparable to that of their private-sector counterparts.

Measuring Performance

One of the NLRB's human capital goals is to create a results-oriented performance culture that clearly links employee performance and pay to the attainment of the NLRB's strategic goals. When the Strategic Plan was last updated in FY 2007, the performance measures were modified to make them more robust and customer-focused to better serve the NLRB's constituents. The end result was the establishment of the three overarching measures that support the Agency's two strategic goals and annual targets that support the NLRB's long-term goals.

The NLRB will be reviewing its Strategic Plan and its goals and measures in FY 2012 for possible updating and, in accordance with the GPRA Modernization Act of 2010, expects to publish an addendum to its current plan. In updating the Strategic Plan, the goals and measures will be reviewed to ensure that they remain ambitious, facilitate improved performance, and promote only the most efficient and effective strategies to achieve them. Any new goals and measures identified as a result of this review will be integrated with the budget to ensure that resources are allocated appropriately and effectively.

The NLRB is an agency with a long history of performance measurement that dates back to the inception of the Agency, and before Congress passed GPRA. Traditionally, the NLRB's performance measurement approach was to emphasize individual segments of case processing to promote timely, efficient, and well-managed casehandling. These measures are still used by the NLRB as internal guides in assessing performance. The three overarching performance measures introduced in FY 2007 emphasize outcomes, and best serve to answer the question most important to the public:

What is the Agency's overall success in bringing effective resolution to labor disputes in a timely manner?

It should be noted that it is difficult for an agency such as the NLRB to measure "outcomes" in the sense intended by the authors of GPRA. In the representation case area, for instance, the Agency

does not control or seek to influence the results of elections, but strives instead to ensure the rights of employees to freely and democratically determine, through a secret ballot election, whether they wish to be represented by a labor organization. If the Agency concludes that all of the necessary requirements for conducting an election have been met, it will either direct an election or approve the parties' agreement to have an election. The performance measure the Agency has established for the conducting of elections is objective and is not dependent on the results of the election. The true outcome of properly conducted elections is employees, employers, and unions voluntarily and freely exercising their statutory rights as set out in the NLRA.

The same difficulty is inherent in any attempt to define "outcomes" in the prevention of unfair labor practice conduct. The aim of the Agency is to prevent industrial strife and unrest that burdens the free flow of commerce. An indicator of success in the achievement of this aim is labor peace. In the absence of a mechanism to accurately gauge "labor peace" or the impact of Agency activities among a range of variables influencing that goal, the NLRB established two performance measures. In particular, the timeliness and quality of case processing, from the filing of an ULP charge to the closing of a case upon compliance with a litigated or agreed-to remedy, are the focus of those performance measures.

The tables in this section show the proposed annual targets for the three overarching measures for the five-year period covered by the current Strategic Plan (2007-2012), and the actual results achieved for FY 2007, FY 2008, FY 2009, FY 2010, and FY 2011.

GOAL NO. 1: Resolve all questions concerning representation impartially and promptly.

MEASURE NO. 1: The percentage of representation cases resolved within 100 days of filing of the election petition.

Implemented in FY 2007, this is an overarching, outcome-based performance measure that focuses

on the time taken to resolve a representation case, including time spent on both the General Counsel and the Board sides.

An employer, labor organization, or group of employees may file a petition in an NLRB Regional Office requesting an election to determine whether a majority of employees in an appropriate bargaining unit wish to be represented by a labor organization. When a petition is filed, the Agency works with parties toward a goal of reaching a voluntary agreement regarding conducting an election. If a voluntary agreement is not reached, the Director of the Regional Office, after a hearing is conducted, will determine whether to conduct an election and the details of the election. The parties have a right to appeal to the Board the Director's decision. This measure reflects the percentage of representation cases closed within 100 days. When a case has been finally processed with no further rights of appeal or administrative action required, the question as to whether or not a labor organization will represent employees has been finally resolved.

Representation cases are resolved and closed in a number of ways:

- Cases may be dismissed before an election is scheduled or conducted. Dismissals at an early stage in processing may be based on a variety of reasons: For example, the employer does not meet the Agency's jurisdictional standards; the petitioner fails to provide an adequate showing of interest to support the petition; and/or the petition was filed in an untimely manner.
- Cases may also be withdrawn by the petitioner for a variety of reasons including the lack of support among the bargaining unit and/or failure to obtain an adequate showing of interest.
- The majority of cases are resolved upon either a certification of representative (the union prevails in the election) or a certification of results (the union loses the election).
- In a small percentage of cases, there are post-election challenges or objections to the election. These cases are not considered resolved and the case is not closed until the challenges and/or objections have been investigated either administratively or by a hearing and a report that has been adopted by the Board.

As reflected in Table 1, the NLRB was below its FY 2011 goal for Measure No. 1, which seeks to close

85 percent of all representation cases within 100 days from the filing of the petition. During FY 2011, the Agency closed 84.7 percent of representation cases within 100 days of filing—just 0.3 percent below the stated goal. This goal was revised upward in FY 2010, and the Agency was extremely close to achieving its target.



However, in FY 2011, it was particularly difficult to meet this and the other overarching goals because of the deployment of a new case management system, NxGen, to all 32 Regional Offices. NxGen is built on an electronic case file and software designed to capture all documents and information about case processing as the Agency transacts its business. Although this system will eventually create many efficiencies, as well as ensuring more accurate information about the Agency's work, the transition to this new case management system was a massive undertaking. Training on NxGen was conducted for two continuous weeks for all managers, supervisors and employees in each of our 32 Regional Offices during the period April through September 2011. In addition, there was a substantial learning curve for employees as they transitioned from the old system to NxGen.

Prior to the training, the Agency closed 85.6 percent of representation cases within 100 days. While staff worked hard to minimize the impact on case processing, this intensive training effort clearly affected the efficiency of operations during the latter half of the year and accounts for the Agency being slightly below its target for Measure No. 1.

GOAL NO. 1, TABLE 1**Percentage of Representation Cases Resolved Within 100 Days**

Year	TARGET	ACTUAL
FY 2007	79.0%	79.0%
FY 2008	80.0%	83.5%
FY 2009	81.0%	84.4%
FY 2010	85.0%	86.3%
FY 2011	85.0%	84.7%
FY 2012	85.2%	

Counting of days: The 100 days is calculated from the date the petition is formally docketed.

GOAL NO. 2: Investigate, prosecute, and remedy cases of unfair labor practices by employers or unions or both, impartially and promptly.

MEASURE NO. 2: The percentage of ULP charges resolved by withdrawal, by dismissal, or by closing upon compliance with a settlement or Board order or Court judgment within 120 days of the filing of the charge.

Implemented in FY 2007, this is an overarching, outcome-based performance measure that focuses on the time taken to resolve a ULP charge, including time spent on both the General Counsel and the Board sides.

After an individual, employer, or union files a ULP charge, a Regional Director evaluates it for merit and decides whether to issue a complaint. Complaints not settled or withdrawn, or dismissed, are litigated before an ALJ, whose decision may be appealed to the Board.

A ULP case is resolved and closed when it has been finally processed. The issues raised by the charging party's charge have been answered and, where appropriate, remedied. There is no further action to be taken by the Agency.

In FY 2011, the NLRB closed 72.5 percent of all ULP cases within 120 days of the docketing of the charge. The Agency exceeded the FY 2011 goal of 71.2 percent by 1.3 percent.

GOAL NO. 2, TABLE 2**Percentage of ULP Charges Resolved Within 120 Days**

Year	TARGET	ACTUAL
FY 2007	67.5%	66.0%
FY 2008	68.0%	68.5%
FY 2009	68.5%	71.0%
FY 2010	71.2%	73.3%
FY 2011	71.2%	72.5%
FY 2012	72.0%	

Counting of days: The 120 days is calculated from the date the charge is docketed.

MEASURE NO. 3: The percentage of meritorious (prosecutable) ULP cases closed on compliance within 365 days of the filing of the ULP charge.

This measure focuses on meritorious (prosecutable) ULP cases, and the time taken to close them on compliance, including time spent on both the General Counsel and Board sides. Compliance marks the point where an employer or union has ceased engaging in the ULP conduct being prosecuted and has taken appropriate affirmative action, including the payment of backpay, to make whole those injured by the ULP.

Once a Regional Director has determined an ULP charge has merit, it is scheduled for a hearing date before an ALJ. However, efforts to obtain voluntary compliance or appropriate settlements begin immediately and continue throughout the course of any necessary litigation. Most settlements are achieved before trial. Once the ALJ issues a decision, the decision can then be appealed to the Board. The Board, in turn, will consider the case and issue a final order resolving the ULP case. Ordinarily, the Regional Office will attempt to secure compliance in the 30-day period following the Board's order. If compliance cannot be obtained, the Region will refer the case to the Appellate and Supreme Court Litigation Branch of the Division of Enforcement Litigation, which, if it is unable to secure voluntary compliance or a settlement meeting established standards, will proceed to seek a judgment from an appropriate U.S. Court of Appeals enforcing the Board's order.

Following final court judgment, any disagreements about what steps are necessary before the case can be closed on compliance are resolved either in compliance proceedings before the Board and reviewing court proceedings, or in extreme cases, in contempt of court proceedings.

ULP cases are closed on compliance when the remedial actions ordered by the Board or agreed to by the party charged with the violation of the NLRA are complete. This measure includes all litigated cases including those appealed to the circuit courts of appeals.

In FY 2011, the NLRB closed 83.2 percent of all prosecutable ULP cases in 365 days from the docketing of the charge. Thus, the Agency exceeded the interim goal of 80.2 percent by 3 percent.

GOAL NO. 2, TABLE 3
Percentage of ULP Cases Closed on Compliance Within 365 Days

Year	TARGET	ACTUAL
FY 2007	74.0%	73.5%
FY 2008	75.0%	76.0%
FY 2009	75.5%	79.7%
FY 2010	80.0%	84.6%
FY 2011	80.2%	83.2%
FY 2012	80.3%	

Counting of days: The 365 days is calculated from the date the charge is docketed.

Factors Affecting Agency Performance

Various factors can affect each goal, objective, and performance measure contained in the NLRB's strategic and annual performance plans. These factors can also affect Agency performance as a whole. These factors include budget, case intake, settlements, board member vacancies, and the potential effect of statutory changes.

BUDGET

In FY 2011, the NLRB's budget was \$282.8 million, approximately \$600,000 below its FY 2010 funding level and \$4.3 million below the President's budget request. During FY 2011, the NLRB, like most federal agencies, operated under seven continuing resolutions, and did not receive its full appropriation until April 2011, six months into the fiscal year. Since approximately 80 percent of the Agency's total budget

is devoted to personnel costs, budget shortfalls and delays in receiving full funding (beginning each fiscal year operating under a Continuing Resolution), directly influence staffing resources and limit the Agency's ability to facilitate casehandling.

The requested funding for FY 2012, if enacted by Congress, will provide the resources necessary to cover staffing, training, space requirements, information technology, and other activities critical to handling the Agency's caseload, and ensuring continued integration and tracking of budget and performance. Our goals assume the level of funding set forth in the President's Budget request.

Because the Agency exceeded its FY 2009 performance targets it increased its annual performance targets for FY 2010 through FY 2012. These increases assume funding at the 2010 level or above.



CASE INTAKE

During FY 2011, 22,188 ULP cases were filed with the NLRB, of which 37 percent were found to have merit, and 2,834 representation cases were filed, of which the merit factor rate was 71 percent. In FY 2011, the Agency's overall case intake decreased by 6 percent.

Several factors affect case intake, thus impacting the Agency's effectiveness in accomplishing its strategic goals. As noted, the Agency does not control the number of cases filed. However, any event or issue that affects labor can spur potential union organizing, possibly resulting in an increase in caseload. Factors such as immigration reform or focused organizing drives in particular communities or industries could affect Agency caseload levels. Recent increases in union organizing among the service industries shows no sign of diminishing as organizing activities continue in the health care, hotel, janitorial, and casino sectors.

Additional factors that could affect the NLRB's intake and the complexity of its work include: employment trends, stakeholder strategies, economic globalization, industrial economic trends, corporate reorganizations and bankruptcies, the overall health of the nation's economy, the level of labor-management cooperation efforts, and statutory changes.

SETTLEMENTS

Currently, of those cases in which merit is found, approximately 90 to 96 percent, 93 percent in FY 2011, are settled without formal litigation. Cases are settled through the Agency's settlement program, by which the parties agree to a remedy and thereby avoid time-consuming and costly litigation. While the Agency has experienced outstanding success in achieving the voluntary resolution of ULP and representation cases, the settlement rate is, of course, not entirely subject to the Agency's control.

Disputes cannot always be resolved informally or in an expeditious manner. Parties may conclude



that litigation serves their legitimate and/or tactical interests. The Agency's procedures provide for administrative hearings, briefs, and appeals. When the process becomes formal and litigation takes over, Agency costs increase. The Agency calculates that every one-percent drop in the settlement rate costs the Agency more than \$2 million. Therefore, maintaining high settlement rates promotes performance, efficiency, and cost savings.

BOARD MEMBER VACANCIES

Another factor outside the control of the Agency that impacts case production is the failure to fill vacancies in Board Member positions, thus causing prolonged vacancies on the Board. The assigned caseload of individual Board Members rises and decisions can be delayed because of vacancies on the Board. Board Member vacancies are the primary reason for delays in issuance of Board decisions. The lack of a full-Board complement impairs Board productivity.

As noted earlier, through much of FY 2011, the Board operated with four members, but the term of Chairman Wilma B. Liebman expired on August 27, 2011, leaving the Board with three members. However, the recess appointment of Board Member Craig Becker will expire at the end of the current

session of the Senate (December 2011). Absent the confirmation or recess appointment of new Board Members, the Board will be left with two members, thus effectively halting the issuance of Board decisions. The Supreme Court ruled in June 2010 that the NLRA does not permit a two-member Board to issue decisions.

Two nominations are pending in the Senate. Terence F. Flynn was nominated on January 5, 2011, and Craig Becker was nominated again for a full five-year term on January 26, 2011.

POTENTIAL EFFECT OF STATUTORY/RULEMAKING CHANGES

As a general matter, changes in the law affect NLRB operations and could have consequences on the Agency's case load. Rulemaking and statutory changes, for example, could lead to an increase in ULP charges and/or election petitions filed with the Agency, with resulting increases in investigations and proceedings conducted by Agency personnel, especially if the settlement rate declines. Statutory changes may also directly mandate additional litigation by the Agency, e.g., seeking injunctive relief in federal district court. However, the overall impact of any pending labor law amendments is purely speculative.



Reliability Of Performance Data

The NLRB's performance measurement system has been highly regarded for decades and modeled by other agencies to track case processing times. Most of the data collected tracks the time spent at each step of the case processing "pipeline." The Agency does not rely on any outside sources for the data used in its performance management system. Each NLRB office is responsible for collecting and verifying performance measurement data.

From FY 2000 to FY 2010, the agency's performance measurement system was incorporated into an electronic database called the Case Activity Tracking System (CATS). CATS provided case activity and status information to all NLRB offices and supported the functions and work requirements of the NLRB's attorneys, field examiners, managers, and support staff. In FY 2010, the Agency began transitioning to a new Agency-wide case management system called NxGen. NxGen is designed to 1) transform the way the NLRB does business with the public, making its



cases transparent and more available to its customers in a timely manner, 2) optimize internal NLRB case processing so Agency employees can work smarter and faster, and 3) provide Agency-wide electronic case records and case document management to improve internal case flow. NxGen has been deployed on a limited extent to NLRB Headquarters offices and to the Board, which also continues to maintain its own case management system called Judicial Case Management System (JCMS) to track its internal case processes. In April 2011, the Agency began to deploy NxGen to its field offices. The deployment process to all field offices was completed in September 2011.

Most of the performance information for the GPRA measures has been obtained through the CATS and NxGen data generated to assess the casehandling process initiated in the Regional Offices. Data about each case is collected and reported in all offices on "real-time" basis. Offices conduct systematic verification through monthly and quarterly management reviews. Due to the timing of the transition from CATS to NxGen late in this fiscal year, the Agency's rigorous verification and validation of the data has not been fully completed at the time of this report.

Headquarters offices that have not transitioned to NxGen continue to maintain other automated systems that manage caseload and furnish data for the performance measures of the Headquarters offices. Continued deployment of NxGen is planned for Headquarters offices in FY 2012.

Offices conduct systematic verification through monthly and quarterly management reviews. Data is cross-checked and compared to historical trends to ensure the validity and reliability of the performance data.

Program Evaluation



The NLRB uses various techniques and mechanisms to evaluate whether programs are achieving their GPRA goals and other performance targets. The Board regularly tracks the status of all of its cases to determine performance against yearly targets that support the Agency's overarching measures and strategic goals. A standing committee composed of senior management officials, including, among others, the deputy chief counsels of each of the Board Members, meets at the beginning of each month to review the status of cases, to prioritize cases, and to develop lists of cases that the Board Members will jointly focus on each week in order to facilitate the issuance of decisions in those cases. These representatives also report back to the Board Members on performance data and staff workload, among other issues. The Board has an electronic casehandling management system that captures all case events in a database from which case production reports are generated. The Board Members also regularly meet and communicate with each other to discuss cases.

The NLRB also tracks how the various circuit courts have treated the Board's cases on appeal. Over the

past several years the Agency's enforcement rate has been among the highest in its history. This trend continued in FY 2011. In FY 2011, the United States Courts of Appeals ruled on Board decisions in 32 enforcement and review cases. Of those cases, 88 percent were enforced or affirmed in whole or in part, 84 percent were won in full, 3 percent were remanded in part, 3 percent were remanded entirely, and 6 percent were lost in full. Another 21 enforcement and review cases were dismissed or remanded by courts of appeals in FY 2011 in light of the Supreme Court's *New Process* decision holding that, during the period from January 2008 to late March 2010 when the Board had only two members, the Board lacked authority to issue decisions. In FY 2010, courts of appeals decided 16 enforcement and review cases involving the Board. In 100 percent of those cases the Board's order was enforced or affirmed in full. Another 72 enforcement and review cases were dismissed or remanded by courts of appeals in FY 2010 in light of *New Process*.

Further, the General Counsel has had an evaluation program in place for many years to assess the performance of its Regional operations. The Quality

Review Program of the Division of Operations-Management reviews ULP, representation, and compliance case files annually to ensure that they are processed in accordance with substantive and procedural requirements, and that the General Counsel's policies are implemented appropriately. Those reviews have assessed, among other things, the quality and completeness of the investigative file, the implementation of the General Counsel's priorities in the areas of representation cases, Impact Analysis prioritization of cases, and compliance with Agency decisions. Additionally, personnel from the Division of Operations-Management review all complaints issued in the Regions to ensure that pleadings are correct and supported. They also conduct site visits during which they evaluate Regional casehandling and administrative procedures. In addition, to assess the quality of litigation a field and Operations-Management Committee reviews all ALJ and Board decisions that constitute a significant loss. Moreover, the Regional Offices' performance with regard to quality, timeliness, and effectiveness in implementing the General Counsel's priorities is incorporated into the Regional Directors' annual performance appraisals.

The Division of Operations-Management regularly reviews case decisions to determine the quality of

litigation. Other branches and offices, such as the Office of Appeals, Division of Advice, Contempt Litigation and Compliance Branch, and Office of Representation Appeals, provide valuable insight and constructive feedback on the performance and contributions of field offices. Top Agency management also meets regularly with relevant committees of the American Bar Association to obtain feedback on their members' experiences practicing before the NLRB.

In addition to the evaluation of Regional Office activities, the Office of the General Counsel monitors the litigation success rate before the Board and before district courts with regard to injunction litigation. In FY 2011, the Injunction Litigation Branch received 154 cases from Regional Offices to consider for discretionary injunctive relief under Section 10(j) of the Act, as compared to 66 cases received in FY 2010. The Board authorized 59 cases during FY 2011, compared to 28 that the General Counsel authorized in FY 2010. Regional Offices filed 10(j) petitions in 45 cases and filed 23 petitions in FY 2010. The "success rate", i.e., the percentage of authorized Section 10(j) cases in which the Agency achieved either a satisfactory settlement or substantial victory in litigation was 93 percent at the end of FY 2011, compared to 92 percent at the end of FY 2010.

Financial Section



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LETTER FROM THE DIRECTOR OF ADMINISTRATION



As Director of Administration at the National Labor Relations Board (NLRB), I am responsible for the overall financial management of the Agency. I am very pleased to join the Chairman and Acting General Counsel in presenting this year's Performance and Accountability Report. The report highlights information relative to the NLRB's financial integrity, operating performance, systems, and internal controls. I am also gratified to note that the NLRB has received an unqualified opinion from the auditors on its financial statements. This is the eighth consecutive year that the NLRB has received such an opinion. The fact that the NLRB has received an unqualified opinion for eight straight years is a testament to a commitment to excellence by our entire financial management team.

By this time in FY 2011, we had fully expected to have completed the upgrade of our current financial management system, Momentum Financials. The NLRB obtains the bulk of its financial systems support through the Department of Interior's National Business Center (NBC), and our last system upgrade occurred in 2004 when we upgraded to the Momentum system. Much of FY 2010 was spent in laying the groundwork for the upgrade with implementation expected to begin in mid-FY 2011. However, unresolved issues between NBC and the system developer brought the project to a halt. The NLRB continues to explore options with NBC, in order to leverage funds already spent, and hopes to move forward in FY 2012 in implanting its decision regarding the appropriate systems' support.

In connection with the FY 2010 audit report involving two findings regarding non-compliance with the recording statute and the bona fide needs rule, the Agency obtained a ruling from the Government Accountability Office (GAO). GAO found that in one instance the Agency was compliant with the bona fide needs rule when it obligated \$876,374 in FY 2010 funds for 36 court reporting services contracts because they were severable services contracts, but that an obligation of \$39,000 for training at the Federal Executive Institute was improperly recorded, as the training was a bona fide need of FY 2011 and not FY 2010.

As the Director of Administration, I take very seriously my responsibilities in establishing internal controls. For that reason in FY 2009, the NLRB's Acquisition Management Branch was established, with the single mission of managing contracting and procurement. Having a single office committed solely to the procurement function provides a higher level of expertise and oversight and helps standardize and institutionalize more rigorous processes. We have also instituted other procedures to strengthen internal controls such as

establishing and implementing formal training plans for staff, as prescribed by the Office of Federal Procurement Policy; monthly meetings with the financial management team so that issues can be identified, tracked, and resolved; daily review of all purchase card transactions and follow-up with cardholders on questionable transactions; and ensuring that we have systems in place that conform with government-wide principles and standards.

Fiscal Year 2012 and forward may present significant financial challenges for all agencies. Having well-trained staff, systems, and controls in place will ensure that the NLRB maximizes its resources to accomplish its mission and support the needs of its workforce.

A handwritten signature in black ink, appearing to read "Gloria Joseph". The signature is fluid and cursive, with a large initial "G" and a long, sweeping underline.

Gloria Joseph
Director of Administration

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

November 7, 2011

To: Mark Gaston Pearce
Chairman

Lafe E. Solomon
Acting General Counsel

From: David P. Berry 
Inspector General

Subject: Audit of the National Labor Relations Board Fiscal Year 2011 Financial Statements
(OIG-F-16-12-01)

This memorandum transmits Carmichael, Brasher, Tuvell & Company's (CBTC) audit report on the National Labor Relations Board (NLRB) Fiscal Year (FY) 2011 Financial Statements.

The Accountability of Tax Dollars Act of 2002 requires the NLRB to prepare and submit to Congress and the Director of the Office of Management and Budget (OMB) annual audited financial statements. We contracted with CBTC, an independent public accounting firm, to audit the financial statements. The contract required that the audit be done in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States and Bulletin 07-04, *Audit Requirements for Federal Financial Statements*, issued by OMB.

Results of Independent Audit

CBTC issued an unqualified opinion on the NLRB FY 2011 financial statements. CBTC previously issued an unqualified audit opinion on the FY 2010 information included with the consolidated statements. The objective of the audit did not include providing assurances on internal control or on the effectiveness of NLRB's internal control over financial reporting. Consequently, CBTC did not provide an opinion on the effectiveness of NLRB's internal control over financial reporting. In its audit report, CBTC did not identify any new significant deficiencies, but noted the significant deficiency identified in the FY 2010 report that has not yet been remediated by management and those charged with governance. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

As part of obtaining reasonable assurance about whether the Agency's financial statements are free of material misstatement, CBTC performed tests of the Agency's compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts, and certain other laws and regulations. As a result of that testing, CBTC also reported that the Agency did not adhere to the recording statute or the *bona fide* needs rule (31 U.S.C. § 1502) when, on September 30, 2011, the NLRB obligated \$113,120 without a binding agreement for information technology advisory services using FY 2011 funds for services that were not received until FY 2012. CBTC also reported that the NLRB accepted and paid for telecommunication services after the period of performance expired without exercising the option for the next period of performance. CBTC continued to report the two violations of the Antideficiency Act that were reported in the FY 2010 report.

Evaluation of CBTC's Audit Performance

In connection with the contract, we reviewed CBTC's report and related documentation and inquired of its representatives. Our review, as differentiated from an audit in accordance with generally accepted government auditing standards, was not intended to enable us to express, and we do not express, opinions on the NLRB's financial statements or internal control or conclusions on compliance with laws and regulations. CBTC is responsible for the attached auditor's report dated November 7, 2011, and the conclusions expressed in the report. However, our review disclosed no instances where CBTC did not comply, in all material respects, with generally accepted government auditing standards.

The Office of Inspector General appreciates the courtesies and cooperation extended to CBTC and our staff during the audit. If you have any questions, please contact me or Emil T. George, Assistant Inspector General for Audits.

**Carmichael
Brasher Tuvell
& Company**

C E R T I F I E D P U B L I C A C C O U N T A N T S

INDEPENDENT AUDITORS' REPORT

To David P. Berry, Inspector General
National Labor Relations Board

The Accountability of Tax Dollars Act of 2002 made the National Labor Relations Board (NLRB) subject to the annual financial statement reporting requirements of the Chief Financial Officers Act of 1990, which requires agencies to report annually to Congress on their financial status and any other information needed to fairly present the agencies' financial position and results of operations.

The objectives of the audit are to express an opinion on the fair presentation of NLRB's principal financial statements, obtain an understanding of the Agency's internal control, and test compliance with laws and regulations that could have a direct and material effect on the financial statements.

We have audited the balance sheets of NLRB as of September 30, 2011 and 2010, and the related consolidated statements of net cost, changes in net position, and budgetary resources for the years then ended.

NLRB's management is responsible for preparing the financial statements in conformity with accounting principles generally accepted in the United States of America; establishing, maintaining, and assessing internal controls over financial reporting; preparing the Management's Discussion and Analysis (MD&A); and complying with laws and regulations.

Our responsibility is to express an opinion on the Fiscal Year (FY) 2011 and 2010 financial statements of NLRB based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 07-04, *Audit Requirements for Federal Financial Statements*. These standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatements. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

OPINION ON FINANCIAL STATEMENTS

In our opinion, the financial statements referred to above present fairly, in all material respects, the assets, liabilities, and net position of NLRB, as of September 30, 2011 and 2010; and the net cost, changes in net position, and budgetary resources for the years then ended in conformity with accounting principles generally accepted in the United States of America.

REPORT ON INTERNAL CONTROL

In planning and performing our audit, we considered NLRB's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements. We limited our internal control testing to those controls necessary to achieve the objectives described in OMB Bulletin No. 07-04. We did not test all internal controls relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982, such as those controls relevant to ensuring efficient operations. The objective of our audit was not to provide assurance on internal control or on the effectiveness of NLRB's internal control over financial reporting. Because of inherent limitations in internal control, misstatements due to error or fraud, losses, or noncompliance may nevertheless occur and not be detected. Consequently, we do not provide an opinion on the effectiveness of NLRB's internal control over financial reporting.

A **deficiency in internal control** exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A **material weakness** is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the organization's financial statements will not be prevented, or detected and corrected on a timely basis. A **significant deficiency** is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies, or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above. In our previous year's audit, we identified a significant deficiency which has not yet been remediated by management and those charged with governance. This significant deficiency was previously communicated to management and those charged with governance on November 9, 2010 in our Report on Internal Control for the fiscal year ending September 30, 2010.

We also identified other matters in internal control that came to our attention during our audit that we communicated in writing to the management of NLRB and those charged with governance.

We considered NLRB's internal control over Required Supplementary Information (RSI) by obtaining an understanding of the Agency's internal control, determining whether these internal controls had been placed in operation, assessing control risk, and performing tests of controls as

required by OMB Bulletin No. 07-04. The objective of our audit was not to provide assurance on these internal controls. Accordingly, we do not provide an opinion on such controls.

REPORT ON COMPLIANCE WITH LAWS AND REGULATIONS

As part of obtaining reasonable assurance about whether the Agency's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts, and certain other laws and regulations specified in OMB Bulletin No. 07-04. We limited our tests of compliance to these provisions and we did not test compliance with all laws and regulations applicable to NLRB. We caution that noncompliance may occur and not be detected by these tests and that such testing may not be sufficient for other purposes.

Our tests of compliance with certain provisions of laws and regulations discussed in the preceding paragraph disclosed the following instances of noncompliance for the current fiscal year as follows:

NLRB did not adhere to the recording statute or the *bona fide* needs rule when, on September 30, 2011, the NLRB obligated \$113,120 without a binding agreement for information technology advisory services using FY 2011 funds for services that were not received until FY 2012.

NLRB accepted and paid for telecommunication services after the period of performance expired without exercising the option for the next period of performance.

Furthermore, two instances of noncompliance in regard to the Antideficiency Act, U.S. Code, Title 31 Section 1351.1517(b), were reported in our previous fiscal year's audit. These potential Antideficiency Act violations were communicated to management and those charged with governance on November 9, 2010 in our Report on Compliance with Laws and Regulations for the fiscal year ending September 30, 2010. NLRB sent draft letters for each Antideficiency Act violation to OMB for review and comment.

Except as noted above, our tests of compliance with selected provisions of laws and regulations disclosed no other instances of noncompliance that would be reportable under U. S. generally accepted government auditing standards or OMB audit guidance.

Providing an opinion on compliance with laws and regulations was not an objective of our audit and, accordingly, we do not express such an opinion.

OTHER ACCOMPANYING INFORMATION

Our audit was conducted for the purpose of forming an opinion on the financial statements of NLRB taken as a whole. The accompanying financial information is not a required part of the financial statements.

The other accompanying information included in the MD&A and RSI sections of the Performance and Accountability Report are required by the Federal Accounting Standards Advisory Board and OMB Circular A-136, *Financial Reporting Requirements*. We have applied limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the information. We did not audit the other accompanying information and, accordingly, do not express an opinion or any other form of assurance on it.

This communication is intended solely for the information and use of those charged with governance and management of NLRB, others within the organization, OMB, and the Congress of the United States, and is not intended to be and should not be used by anyone other than these specified parties.

CARMICHAEL, BRASHER, TUVELL & COMPANY, PC

Carmichael, Brasher, Tuvell + Co., P.C.

Atlanta, Georgia
November 7, 2011

Principal Financial Statements

National Labor Relations Board		
Balance Sheet		
As of September 30, 2011 and 2010		
(in dollars)		
	FY 2011	FY 2010
Assets:		
Intragovernmental:		
Fund balance with Treasury (Note 2)	\$ 26,485,035	\$ 36,676,482
Advances (Note 4)	77,635	23,336
Total Intragovernmental	26,562,670	36,699,818
Accounts receivable, net (Note 5)	53,951	92,784
General property, plant and equipment, net (Note 6 and 10)	12,703,848	12,349,329
Total Assets	\$ 39,320,469	\$ 49,141,931
Liabilities:		
Intragovernmental:		
Accounts payable (Note 7)	\$ 3,690,963	\$ 1,927,377
Employer contributions and payroll taxes	822,930	2,155,315
FECA liability (Note 8 and 10)	582,946	641,628
Other	83,867	140,060
Total Intragovernmental	5,180,706	4,864,380
Accounts payable (Note 7):	9,207,859	10,522,138
Estimated future FECA liability (Note 8 and 10)	1,278,528	1,746,665
Accrued payroll and benefits	3,269,476	8,960,673
Accrued annual leave (Note 8 and 10)	15,145,566	15,064,659
Total Liabilities	\$ 34,082,135	\$ 41,158,515
Net position:		
Unexpended appropriations	\$ 9,487,574	\$ 12,994,255
Cumulative results of operations (Note 10)	(4,249,240)	(5,010,839)
Total Net Position	\$ 5,238,334	\$ 7,983,416
Total Liabilities and Net Position	\$ 39,320,469	\$ 49,141,931

The accompanying footnotes are an integral part of these financial statements

National Labor Relations Board		
Statement of Net Cost		
For the Periods Ended September 30, 2011 and 2010		
<i>(in dollars)</i>		
	FY 2011	FY 2010
Program Costs:		
Resolve Representation Cases		
Net Cost	\$ 49,822,208	\$ 48,476,133
Resolve Unfair Labor Practices		
Net Cost	\$ 254,192,871	\$ 247,582,839
Other:		
Costs	17,814	59,371
Less: Earned Revenue	17,814	59,371
Net Cost	—	—
Total:		
Costs	304,032,893	296,118,343
Less: Earned Revenue	17,814	59,371
Net Cost of Operations (Note 11)	\$ 304,015,079	\$ 296,058,972

The accompanying footnotes are an integral part of these financial statements

National Labor Relations Board
Statement of Changes In Net Position
 For the Periods Ended September 30, 2011 and 2010
(in dollars)

	FY 2011	FY 2010
Cumulative Results of Operations:		
Beginning Balance	\$ (5,010,839)	\$ (7,771,755)
Budgetary Financing Sources:		
Appropriations-used	285,269,455	279,343,472
Other Financing Sources (Non-Exchange):		
Imputed financing costs (Note 13)	19,509,446	19,476,416
Loss on Disposal of Assets	(2,223)	
Total Financing Sources	\$ 304,776,678	\$ 298,819,888
Net Cost of Operations	(304,015,079)	(296,058,972)
Net Change	\$ 761,599	\$ 2,760,916
Cumulative Results of Operations (Note 10)	\$ (4,249,240)	\$ (5,010,839)
Unexpended Appropriations:		
Beginning Balance	\$ 12,994,255	\$ 10,691,205
Budgetary Financing Sources:		
Appropriations-received	283,400,000	283,400,000
Appropriations-used	(285,269,455)	(279,343,472)
Recissions & cancelled appropriations	(1,637,226)	(1,753,478)
Total Budgetary Financing Sources	\$ 3,506,681	\$ 2,303,050
Total Unexpended Appropriations	\$ 9,487,574	\$ 12,994,255
Net Position	\$ 5,238,334	\$ 7,983,416

The accompanying footnotes are an integral part of these financial statements

National Labor Relations Board Statement of Budgetary Resources For the Periods Ended September 30, 2011 and 2010 <i>(in dollars)</i>		
	FY 2011	FY 2010
Budgetary Resources:		
Unobligated balance, brought forward, October 1:	\$ 4,475,599	\$ 4,171,569
Recoveries of prior year unpaid obligations	1,798,665	973,430
Budget authority:		
Appropriations (Note 14)	283,400,000	283,400,000
Spending authority from offsetting collections:		
Earned		
Collected	411,043	211,226
Subtotal	283,811,043	283,611,226
Permanently not available (Note 14)	(1,637,226)	(1,753,478)
Total Budgetary Resources (Note 15)	\$ 288,448,081	\$ 287,002,747
Status of Budgetary Resources:		
Obligations incurred:		
Direct	\$ 284,134,967	\$ 282,467,777
Reimbursable	17,814	59,371
Subtotal (Note 15)	\$ 284,152,781	\$ 282,527,148
Unobligated balance:		
Apportioned (Note 15)	619,446	1,403,931
Unobligated balance not available	3,675,854	3,071,668
Total Status of Budgetary Resources	\$ 288,448,081	\$ 287,002,747
Change in Obligated Balance:		
Unpaid Obligations, brought forward, October 1:	\$ 32,060,824	\$ 22,972,285
Obligations incurred, net	284,152,781	282,527,148
Gross Outlays	(292,309,072)	(272,465,179)
Obligated balance transferred, net	(1,798,665)	(973,430)
Recoveries of prior year unpaid obligations, actual	(1,798,665)	(973,430)
Obligated balance, net, end of period:	\$ 22,105,868	\$ 32,060,824
Net Outlays:		
Gross outlays	292,309,072	272,465,179
Offsetting collections	(411,043)	(211,226)
Net Outlays	\$ 291,898,029	\$ 272,253,953

The accompanying footnotes are an integral part of these financial statements

Notes To Principal Statements

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. Reporting Entity

The National Labor Relations Board (NLRB) 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. The NLRB's jurisdiction includes the U.S. Postal Service (other government entities, railroads, and airlines are not within the NLRB's jurisdiction). The NLRB seeks to serve the public interest by reducing interruptions in commerce caused by industrial strife. The NLRB 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, 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 (ULP), by either employers, unions, or both. The NLRB's authority is divided both by law and delegation. The five-member Board (Board) primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel investigates and prosecutes ULP charges 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.

B. Basis of Accounting and Presentation

These financial statements have been prepared to report the financial position, net cost, changes in net position, and budgetary resources of the NLRB as required by the Accountability of Tax Dollars Act of 2002. These financial statements have been

prepared from the books and records of the NLRB in accordance with accounting principles generally accepted in the United States of America (GAAP), and the form and content requirements of the Office of Management and Budget (OMB) Circular No. A-136, *Financial Reporting Requirements*, revised as of September 29, 2010. GAAP for federal entities are the standards prescribed by the Federal Accounting Standards Advisory Board (FASAB), which is the official standard-setting body for the federal government. While the statements have been prepared from the books and records of the NLRB in accordance with GAAP for federal entities and the formats prescribed by OMB, the statements are in addition to the financial reports used to monitor and control budgetary resources which are prepared from the same books and records. These financial statements present proprietary and budgetary information.

The Balance Sheet presents agency assets and liabilities, and the difference between the two, which is the agency net position. Agency assets include both entity assets — those which are available for use by the agency — and non-entity assets — those which are managed by the agency but not available for use in its operations. Agency liabilities include both those covered by budgetary resources (funded) and those not covered by budgetary resources (unfunded). Effective for period beginning after September 30, 2008, the investments made for backpay funds will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide information about its fiduciary activities. See Note 1F, *Fiduciary Activities*, for additional information.

The Statement of Net Cost presents the gross costs of programs less earned revenue to arrive at the net cost of operations for both programs and for the Agency as a whole.

The Statement of Changes in Net Position reports beginning balances, budgetary and other financing sources, and net cost of operations, to arrive at ending balances.

The Statement of Budgetary Resources provides information about how budgetary resources were made available as well as their status at the end of the period. Recognition and measurement of budgetary information reported on this statement is based on budget terminology, definitions, and guidance in OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, dated August 2011.

The Agency is required to be in substantial compliance with all applicable accounting principles and standards established, issued, and implemented by the FASAB, which is recognized by the American Institute of Certified Public Accountants (AICPA) as the entity to establish GAAP for the federal government. The Federal Financial Management Integrity Act (FFMIA) of 1996 requires the Agency to comply substantially with (1) federal financial management systems requirements, (2) applicable federal accounting standards, and (3) the U.S. Government Standard General Ledger at the transaction level.

The FY 2013 Budget of the United States (also known as the President's Budget) with actual numbers for FY 2011 was not published at the time that these financial statements were issued. The President's Budget is expected to be published in February 2012 and will be available from the United States Government Printing Office. There are no differences in the actual amounts for FY 2010 that have been reported in the FY 2012 Budget of the United States and the actual numbers that appear in the FY 2010 Statement of Budgetary Resources.

OMB financial statement reporting guidelines for FY 2011 require the presentation of comparative financial statements for all of the principal financial statements. The NLRB is presenting comparative FY 2011 financial statements for the Balance Sheet, Statement of Net Cost, Statement of Changes in Net Position, and Statement of Budgetary Resources, and these statements have been prepared in accordance with generally accepted accounting principles.

The financial statements should be read with the realization that they are for a component of the United States Government, a sovereign entity. One implication of this is that liabilities cannot be liquidated without legislation that provides resources and legal authority to do so.

The accounting structure of federal agencies is designed to reflect both accrual and budgetary accounting transactions. Under the accrual method of accounting, revenues are recognized when earned, and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash.

The budgetary accounting principles, on the other hand, are designed to recognize the obligation of funds according to legal requirements, which in many cases is prior to the occurrence of an accrual based transaction. The recognition of budgetary accounting transactions is essential for compliance with legal constraints and controls over the use of federal funds.

The information as presented on the Statement of Net Cost is based on the programs below:

Representation Cases are initiated by the filing of a petition by an employee, a group of employees, an individual or labor organization acting on their behalf, or in some cases by an employer. The petitioner requests an election to determine whether a union represents, or in some cases continues to represent, a majority of the employees in an appropriate bargaining unit and therefore should be certified as the employees' bargaining representative. The role of the Agency is to investigate the petition and, if necessary, conduct a hearing to determine whether the employees constitute an appropriate bargaining unit under the NLRA. The NLRB must also determine which employees are properly included in the bargaining unit, conduct the election if an election is determined to be warranted, hear and decide any post-election objections to the conduct of the election and, if the election is determined to have been fairly conducted, to certify its results.

ULP Cases are initiated by individuals or organizations through the filing of a charge with the NLRB. If the NLRB Regional Office believes that a charge has merit, it issues and prosecutes a complaint against the charged party, unless settlement is reached. A complaint that is not settled or withdrawn is tried before an administrative law judge (ALJ), who issues a decision, which may be appealed by any party to the Board. The Board acts in such matters as a quasi-judicial body, deciding cases on the basis of the formal trial record according to the law and the body of case law that has been developed by the Board and the federal courts.

C. Budgets and Budgetary Accounting

Congress annually adopts a budget appropriation that provides the NLRB with authority to use funds from the U.S. Treasury (Treasury) to meet operating expense requirements. The NLRB has single year budgetary authority and all unobligated amounts at year-end are expired. At the end of the fifth year, all amounts not expended are canceled. All revenue received from other sources must be returned to the Treasury.

Budgetary accounting measures appropriation and consumption of budget/spending authority or other budgetary resources and facilitates compliance with legal constraints and controls over the use of federal funds. Under budgetary reporting principles, budgetary resources are consumed at the time of purchase. Assets and liabilities, which do not consume current budgetary resources, are not reported, and only those liabilities for which valid obligations have been established are considered to consume budgetary resources.

Transactions are recorded on an accrual accounting basis. Under the accrual method, revenues are recognized when earned and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash.

D. Financing Sources

The NLRB receives funds to support its programs through annual appropriations. These funds may be used to pay program and administrative expenses (primarily salaries and benefits, occupancy, travel, and contractual service costs).

For accounting purposes, appropriations are recognized as financing sources (appropriations used) at the time expenses are accrued. Appropriations expended for general property, plant and equipment are recognized as expenses when the asset is consumed in operations (depreciation and amortization).

E. Fund Balance with the Treasury

The NLRB does not maintain cash in commercial bank accounts. Cash receipts and disbursements are processed by the Treasury. The agency's records are reconciled with those of Treasury. The fund balances with the Treasury are primarily appropriated funds that are available to pay current liabilities and to finance authorized purchases. Funds with the Treasury represent the NLRB's right to draw on the Treasury

for allowable expenditures. In addition, funds held with the Treasury also include escrow funds that are not appropriated but are backpay funds that are the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings. Effective for the period beginning after September 30, 2008, the cash received and the investments made for backpay funds will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide information about its fiduciary activities. See Note 1F, *Fiduciary Activities*, for further explanation.

See Note 2 for additional information on Fund Balance with Treasury.

F. Fiduciary Activities

Fiduciary activities are the collection or receipt, and the management, protection, accounting, and investment, and disposition by the Federal Government of cash or other assets in which non-Federal individuals or entities have an ownership interest that the Federal Government must uphold. Fiduciary cash and other assets are not assets of the Federal Government. Beginning in FY 2009, fiduciary activities will no longer be recognized on the proprietary financial statements, but they are required to be reported on schedules in the notes to the financial statements. (See SFFAS No. 31, *Accounting for Fiduciary Activities*).

The fiduciary funds collected by NLRB and held in escrow accounts with the Treasury are funds that are not appropriated but are backpay funds that are the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings. The NLRB invests funds in federal government securities for backpay that are held in the escrow account at Treasury. Effective for the period beginning after September 30, 2008, the cash received and the investments made for backpay funds will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide information about its fiduciary activities. See Note 3, *Fiduciary Activities*.

The federal government securities include Treasury market-based securities issued by the Federal Investment Branch of the Bureau of the Public Debt. Market-based securities are Treasury securities that are not traded on any securities exchange, but mirror the prices of marketable securities with similar terms.

It is expected that Investments will be held until maturity; therefore they are valued at cost and adjusted for amortization of discounts, if applicable. The discounts are recognized as adjustments to interest income, utilizing the straight-line method of amortization for short-term securities (i.e., bills). Investments, redemptions, and reinvestments are controlled and processed by the Department of the Treasury.

There exists a signed Memorandum of Understanding (MOU) between the NLRB and the Treasury establishing the policies and procedures that the NLRB and the Treasury agree to follow for investing monies in, and redeeming investments held by, the deposit fund account in Treasury.

See Note 3 for additional information on Fiduciary Activities.

G. Advances

Advances consist of amounts advanced by the NLRB for the transit subsidy program, United States Postal Service for penalty mail and for commercial payment systems for postage.

See Note 4 for additional information on the Advances.

H. Accounts Receivable, Net of Allowance for Doubtful Accounts

Accounts Receivable primarily consists of health benefit premiums due the NLRB from Agency employees. Accounts receivable are stated net of allowance for doubtful accounts. The allowance is estimated based on an aging of account balances, past collection experience, and an analysis of outstanding accounts at year end.

See Note 5 for additional information on Accounts Receivable.

I. General Property, Plant and Equipment

General property, plant and equipment consist primarily of telephone systems, computer hardware and software. The Agency has no real property.

General property, plant and equipment with a cost of \$15,000 or more per unit is capitalized at cost and depreciated using the straight-line method over the useful life. Other property items are expensed when purchased. Expenditures for repairs and maintenance are charged to operating expenses as incurred. The

useful life for this category is five to twelve years. There are no restrictions on the use or convertibility of general property, plant and equipment.

Internal Use Software. Internal use software (IUS) includes purchased commercial off-the-shelf software (COTS), contractor-developed software, and software that was internally developed by Agency employees. IUS is capitalized at cost if the acquisition cost is \$100,000 or more. For COTS software, the capitalized costs include the amount paid to the vendor for the software; for contractor-developed software it includes the amount paid to a contractor to design, program, install, and implement the software. Capitalized costs for internally developed software include the full cost (direct and indirect) incurred during the software development stage. The estimated useful life is two to five years for calculating amortization of software using the straight-line method.

Internal Use Software in Development. Internal use software in development is software that is being developed, but not yet put into production. At the time the software is moved into production the costs will be moved into the IUS account described above. The NLRB is currently undertaking a major software development project called the Next Generation Case Management System (NXGen) that will replace a number of case tracking systems with one enterprise-wide system. NXGen will support the President's Management Agenda, such as for e-Gov, E-Filing, e-FOIA, and public Web-based access to NLRB data. This project has been a multiple year undertaking in which a large portion of the system was rolled out in FY 2011. The overall cost of this project is expected to exceed \$14 million.

See Note 6 for additional information on General Property, Plant and Equipment, Net.

J. Non-Entity Assets

Assets held by the NLRB that are not available to the NLRB for obligation are considered non-entity assets.

See Note 9 for additional information on Non-Entity Assets.

K. Liabilities

Liabilities represent the amount of monies or other resources that are likely to be paid by the NLRB as the result of a transaction or event that has already occurred. However, no liability can be paid by

the NLRB absent an appropriation. Liabilities for which an appropriation has not been enacted are therefore classified as Liabilities Not Covered by Budgetary Resources and there is no certainty that the appropriation will be enacted. Also, liabilities of the NLRB arising from other than contracts can be abrogated by the government, acting in its sovereign capacity.

L. Liabilities Not Covered by Budgetary Resources

Liabilities represent the amount of monies or other resources that are likely to be paid by the NLRB as the result of a transaction or event that has already occurred. Liabilities not covered by budgetary resources result from the receipts of goods or services in the current or prior periods, or the occurrence of eligible events in the current or prior periods for which appropriations, revenues, or other financing sources of funds necessary to pay the liabilities have not been made available through Congressional appropriations or current earnings of the reporting entity.

Intragovernmental

The U.S. Department of Labor (DOL) paid Federal Employees Compensation Act (FECA) benefits on behalf of the NLRB which had not been billed or paid by the NLRB as of September 30, 2011 and 2010, respectively.

See Notes 8 and 10 for additional information on intragovernmental.

Federal Employees Workers' Compensation Program.

The Federal Employees Workers' Compensation Program (FECA) provides income and medical cost protection to covered federal civilian employees injured on the job, to employees who have incurred work-related occupational diseases, and to beneficiaries of employees whose deaths are attributable to job-related injuries or occupational diseases. The FECA program is administered by DOL, which pays valid claims and subsequently seeks reimbursement from the NLRB for these paid claims.

The FECA liability consists of two components. The first component is based on actual claims paid by DOL but not yet reimbursed by the NLRB. The NLRB reimburses DOL for the amount of the actual claims as funds are appropriated for this purpose. There is

generally a two- to three-year time period between payment by DOL and reimbursement by the NLRB. As a result, the NLRB recognizes a liability for the actual claims paid by DOL and to be reimbursed by the NLRB.

The second component is the estimated liability for future benefit payments as a result of past events. This liability includes death, disability, medical, and miscellaneous costs. The NLRB determines this component annually, as of September 30, using a method that considers historical benefit payment patterns.

The NLRB uses the methodology of reviewing the ages of the claimant on a case-by-case basis (because of the small number of claimants) to evaluate the estimated FECA liability. The determination was made to use the life expectancy of claimants of 80 and 84 years for male and female, respectively.

See Notes 8 and 10 for additional information on the FECA liability.

Accrued Annual Leave

Accrued annual leave represents the amount of annual leave earned by the NLRB employees but not yet taken.

See Notes 8 and 10 for additional information on Accrued Annual Leave.

M. Contingencies

The criteria for recognizing contingencies for claims are:

1. a past event or exchange transaction has occurred as of the date of the statements;
2. a future outflow or other sacrifice of resources is probable; and
3. the future outflow or sacrifice of resources is measurable (reasonably estimated).

The NLRB recognizes material contingent liabilities in the form of claims, legal action, administrative proceedings and suits that have been brought to the attention of legal counsel, some of which will be paid by the Treasury Judgment Fund. It is the opinion of management and legal counsel that the ultimate resolution of these proceedings, actions and claims, will not materially affect the financial position or results of operations.

Contingencies are recorded when losses are probable, and the cost is measurable. When an estimate of contingent losses includes a range of possible costs, the most likely cost is reported; where no cost is more likely than any other, the lowest possible cost in the range is reported. This item will normally be paid from appropriated funds.

See Note 16 for additional information on Contingencies.

N. Unexpended Appropriations

Unexpended appropriations represent the amount of the NLRB's unexpended appropriated spending authority as of the fiscal year-end that is unliquidated or is unobligated and has not lapsed, been rescinded, or withdrawn.

O. Annual, Sick, and Other Leave

Annual and Sick Leave Program.

Annual leave is accrued as it is earned by employees and is included in personnel compensation and benefit costs. Each year, the balance in the accrued annual leave liability account is adjusted to reflect current pay rates. Annual leave earned but not taken, within established limits, is funded from future financing sources. Sick leave and other types of non-vested leave are expensed as taken.

See Note 10 for additional information on Annual Leave.

P. Life Insurance and Retirement Plans

Federal Employees Group Life Insurance (FEGLI) Program.

Most of NLRB employees are entitled to participate in the FEGLI Program. Participating employees can obtain "basic life" term life insurance, with the employee paying two-thirds of the cost and the NLRB paying one-third. Additional coverage is optional, to be paid fully by the employee. The basic life coverage may be continued into retirement if certain requirements are met. The Office of Personnel Management (OPM) administers this program and is responsible for the reporting of liabilities. For each fiscal year, OPM calculates the U.S. Government's service cost for the post-retirement portion of the basic life coverage. Because the NLRB's contributions to the basic life coverage are fully allocated by OPM to the pre-retirement portion of

coverage, the NLRB has recognized the entire service cost of the post-retirement portion of basic life coverage as an imputed cost and imputed financing source.

Retirement Programs.

The NLRB employees participate in one of two retirement programs, either the Civil Service Retirement System (CSRS), a defined benefit plan, or the Federal Employees Retirement System (FERS), a defined benefit and contribution plan. On January 1, 1987, FERS went into effect pursuant to Public Law 99-335. Most of the NLRB employees hired after December 31, 1983, are automatically covered by FERS and Social Security. Employees hired prior to January 1, 1984, could elect to either join FERS and Social Security or remain in CSRS. Employees covered by CSRS are not subject to Social Security taxes, nor are they entitled to accrue Social Security benefits for wages subject to CSRS. The NLRB contributes a matching contribution equal to 7 percent of pay for CSRS employees.

FERS consists of Social Security, a basic annuity plan, and the Thrift Savings Plan. The Agency and the employee contribute to Social Security and the basic annuity plan at rates prescribed by law. In addition, the Agency is required to contribute to the Thrift Savings Plan a minimum of 1 percent per year of the basic pay of employees covered by this system and to match voluntary employee contributions up to 3 percent of the employee's basic pay, and one-half of contributions between 3 percent and 5 percent of basic pay. For FERS employees, the Agency also contributes the employer's share of Medicare. The maximum amount of base pay that an employee participating in FERS may contribute is \$17,000 in calendar year (CY) 2012 to this plan. Employees belonging to CSRS may also contribute up to \$17,000 of their salary in CY 2012 and receive no matching contribution from the NLRB. The maximum for catch-up contributions for CY 2012 is \$5,500. For CY 2012, the regular and catch-up contributions may not exceed \$22,000. The sum of the employees' and the NLRB's contributions are transferred to the Federal Retirement Thrift Investment Board.

OPM is responsible for reporting assets, accumulated plan benefits, and unfunded liabilities, if any, applicable to CSRS participants and FERS employees government-wide, including the NLRB employees. The NLRB has recognized an imputed cost and

imputed financing source for the difference between the estimated service cost and the contributions made by the NLRB and covered CSRS employees. The NLRB does not report on its financial statements FERS and CSRS assets, accumulated plan benefits, or unfunded liabilities, if any, applicable to its employees. Reporting such amounts is the responsibility of OPM. The portion of the current and estimated future outlays for CSRS not paid by the NLRB is, in accordance with Statement of Federal Financial Accounting Standards (SFFAS) No. 5, Accounting for Liabilities of the Federal Government, included in the NLRB's financial statements as an imputed financing source.

Liabilities for future pension payments and other future payments for retired employees who participate in the Federal Employees Health Benefits and the FEGLI programs are reported by OPM rather than the NLRB.

SFFAS No. 5, Accounting for Liabilities of the Federal Government, requires employing agencies to recognize the cost of pensions and other retirement benefits during their employees' active years of service. OPM actuaries determine pension cost factors by calculating the value of pension benefits expected to be paid in the future, and provide these factors to the agency for current period expense reporting. Information was also provided by OPM regarding the full cost of health and life insurance benefits.

In FY 2011, the NLRB, utilizing OPM provided cost factors, recognized \$9,014,600 of pension expenses, \$10,465,886 of post-retirement health benefits expenses, and \$28,960 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$19,509,446 as an imputed financing source to the extent that these intragovernmental expenses will be paid by OPM. In comparison, in FY 2010, the NLRB, recognized \$9,546,185 of pension expenses, \$9,901,409 of post-retirement health benefits expenses, and \$28,822 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$19,476,416 as an imputed financing source from OPM.

See Note 13 for additional information.

Q. Operating Leases

The NLRB has no capital lease liability or capital leases. Operating leases consist of real and personal property leases with the General Services Administration (GSA). Regarding NLRB's building lease, the GSA entered into a lease agreement for the NLRB's rental of building space. The NLRB pays GSA a standard level users charge for the annual rental. The standard level users charge approximates the commercial rental rates for similar properties. The NLRB is not legally a party to any building lease agreements, so it does not record GSA-owned properties. The real property leases are for NLRB's Headquarters and Regional Offices and the personal property leases are for GSA cars.

See Note 12 for additional information on Operating Leases.

R. Net Position

Net position is the residual difference between assets and liabilities and is composed of unexpended appropriations and cumulative results of operations. Unexpended appropriations represent the amount of unobligated and unexpended budget authority. Unobligated balances are the amount of appropriations or other authority remaining after deducting the cumulative obligations from the amount available for obligation. The cumulative results of operations are the net result of the NLRB's operations since inception.

S. Use of Management Estimates

The preparation of the accompanying financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make certain estimates and assumptions that directly affect the results of reported assets, liabilities, revenues, and expenses. Actual results could differ from these estimates.

T. Tax Status

The NLRB, as an independent Board of the Executive Branch, a federal agency, is not subject to federal, state, or local income taxes, and, accordingly, no provision for income tax is recorded.

U. Comparative Data

Comparative data for the prior year have been presented for the principal financial statements and their related notes.

V. Subsequent Events

Subsequent events and transactions occurring after September 30, 2011 through the date of the auditor's opinion have been evaluated for potential recognition or disclosure in the financial statements. The date of the auditors' opinion also represents the date that the financial statements were available to be issued.

NOTE 2. FUND BALANCE WITH TREASURY

Treasury performs cash management activities for all federal agencies. The net activity represents Fund Balance with Treasury. The Fund Balance with Treasury represents the right of the NLRB to draw down funds from Treasury for expenses and liabilities. Fund Balance with Treasury by fund type as of September 30, 2011 and September 30, 2010 consists of the following:

Fund Balance with Treasury by Fund Type:

(in thousands)	General Funds	Escrow Funds	Total Fund Balance with Treasury
FY 2011 Entity Assets	\$ 26,401		\$ 26,401
Non-Entity Assets		84	84
Total	\$ 26,401	\$ 84	\$ 26,485
FY 2010 Entity Assets	\$ 36,537		\$ 36,537
Non-Entity Assets		139	139
Total	\$ 36,537	\$ 139	\$ 36,676

The status of the fund balance may be classified as unobligated available, unobligated unavailable, and

obligated. Unobligated funds, depending on budget authority, are generally available for new obligations in current operations. The unavailable balance includes amounts appropriated in prior fiscal years, which are not available to fund new obligations. The obligated but not yet disbursed balance represents amounts designated for payment of goods and services ordered but not yet received or goods and services received but for which payment has not yet been made.

Obligated and unobligated balances reported for the status of Fund Balance with Treasury do not agree with obligated and unobligated balances reported on the Statement of Budgetary Resources because the Fund Balance with Treasury includes items for which budgetary resources are not recorded, such as deposit funds and miscellaneous receipts.

Status of Fund Balance with Treasury as of September 30, 2011 and September 30, 2010 consists of the following:

Fund Balance with Treasury by Availability:

(in thousands)	FY 2011	FY 2010
Unobligated Balance		
Available	\$ 619	\$ 1,404
Unavailable	3,676	3,072
Obligated balance not yet disbursed	22,106	32,061
Non-budgetary fund balance with Treasury	84	139
Totals	\$ 26,485	\$ 36,676

NOTE 3. FIDUCIARY ACTIVITIES

Effective for the period beginning after September 30, 2008, the cash received and the investments made for backpay funds will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide information about its fiduciary activities. See Note 1F, Fiduciary Activities, for further explanation.

Backpay funds are the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings. NLRB holds these funds in an escrow account with Treasury or invests the funds that are authorized by the Regional Compliance Officers and other management officials in market-based Treasury securities issued by the Federal Investment Branch of the Bureau of Public Debt.

There exists a signed MOU between the NLRB and the U.S. Treasury (Treasury) establishing the policies and procedures that the NLRB and the Treasury agree to follow for investing monies in, and redeeming investments held by, the deposit fund account in Treasury.

Schedule of Fiduciary Activity

As of September 30, 2011 and 2010

(in thousands)	FY 2011	FY 2010
Fiduciary net assets, beginning of the year	\$ 2,779	\$ 3,871
Fiduciary revenues	6,685	12,367
Investment earnings	0	1
Disbursements to and on the behalf of beneficiaries	(6,108)	(13,460)
Increase (Decrease) in fiduciary net assets	\$ 577	\$ (1,092)
Fiduciary net assets, end of year	\$ 3,356	\$ 2,779

Fiduciary Net Assets

As of September 30, 2011 and 2010

(in thousands)	FY 2011	FY 2010
Fiduciary Assets		
Cash and cash equivalents	\$ 3,131	\$ 2,779
Investments	225	–
Fiduciary Liabilities		
Less: Liabilities	–	–
Total Fiduciary net assets	\$ 3,356	\$ 2,779

NOTE 4. ADVANCES

Intragovernmental

Intragovernmental Advances to the United States Postal Service (USPS) for September 30, 2011 were \$12,513 and \$23,336 for September 30, 2010. The remainder of the balance for FY 2011 was with the Department of Transportation for the transit subsidy.

NOTE 5. ACCOUNTS RECEIVABLE, NET OF ALLOWANCES FOR DOUBTFUL ACCOUNTS

The FY 2011 intragovernmental accounts receivable is zero and the FY 2010 amount was also zero:

(in thousands)	FY 2011	FY 2010
With the public		
Accounts receivable	\$ 56	\$ 97
Allowance doubtful accounts	(2)	(4)
Accounts receivable-net	\$ 54	\$ 93

NOTE 6. GENERAL PROPERTY, PLANT AND EQUIPMENT, NET

General property, plant and equipment consist of that property which is used in operations and consumed over time. The table below summarizes the cost and accumulated depreciation for general property, plant and equipment.

Depreciation expense for the years ended September 30, 2011 and September 30, 2010 was \$3,783,870 and \$3,298,900 (in dollars), respectively.

(in thousands) FY 2011	Asset Cost	Accumulated Depreciation/ Amortization	Net Asset Value
Equipment	\$ 2,438	\$ 2,104	\$ 334
Internal Use Software	19,664	9,682	9,982
Internal Use Software in Development	2,388	–	2,388
Totals	\$ 24,490	\$ 11,786	\$ 12,704

(in thousands) FY 2010	Asset Cost	Accumulated Depreciation/ Amortization	Net Asset Value
Equipment	\$ 2,395	\$ 1,839	\$ 556
Internal Use Software	15,929	6,181	9,748
Internal Use Software in Development	2,045	-	2,045
Totals	\$ 20,369	\$ 8,020	\$ 12,349

NOTE 7. INTRAGOVERNMENTAL ACCOUNTS PAYABLE

These accounts payables are with our federal trading partners of whom the largest amounts are with the General Services Administration (GSA).

NOTE 8. LIABILITIES NOT COVERED BY BUDGETARY RESOURCES

Liabilities not covered by budgetary resources represent amounts owed in excess of available congressionally appropriated funds or other amounts. The custodial liability represents amounts collected from the public for court costs, freedom of information requests and other miscellaneous amounts that must be transferred to the Treasury.

The composition of liabilities not covered by budgetary resources as of September 30, 2011 and September 30, 2010, is as follows:

(in thousands)	FY 2011	FY 2010
Intragovernmental:		
FECA-Unfunded	\$ 583	\$ 642
Total Intragovernmental	\$ 583	\$ 642
Estimated Future – FECA	1,278	1,747
Accrued Annual Leave	15,146	15,065
Total Liabilities not covered by budgetary resources	17,007	17,454
Total Liabilities covered by budgetary resources	17,075	23,705
Total Liabilities	\$ 34,082	\$ 41,159

NOTE 9. NON-ENTITY ASSETS

Non-Entity assets, restricted by nature, consist of miscellaneous receipt accounts. These amounts represent cash collected and accounts receivable (net of allowance for doubtful accounts). The miscellaneous receipts represent court costs and freedom of information requests that must be transferred to the Treasury.

The composition of non-entity assets as of September 30, 2011 and September 30, 2010, is as follows:

(in thousands)	FY 2011	FY 2010
Non-entity assets		
Fund Balance with Treasury	\$ 84	\$ 139
Entity assets	\$ 39,236	\$ 49,003
Total Assets	\$ 39,320	\$ 49,142

NOTE 10. CUMULATIVE RESULTS OF OPERATIONS

(in thousands)	FY 2011	FY 2010
FECA paid by DOL	\$ (269)	\$ (226)
FECA – Unfunded	(583)	(642)
Estimated Future FECA	(1,278)	(1,747)
Accrued Annual Leave	(15,146)	(15,065)
General Property, Plant & Equipment, Net	12,704	12,349
Other	325	320
Cumulative Results of Operations	\$ (4,249)	\$ (5,011)

NOTE 11. INTRAGOVERNMENTAL COSTS AND EXCHANGE REVENUE

For the intragovernmental costs, the buyer and seller are both federal entities. The earned revenue is the reimbursable costs from other federal entities. The NLRB provided administrative law judges' services to other federal entities. There is no exchange revenue with the public.

(in thousands)	FY 2011	FY 2010
Resolve Representation Cases		
Intragovernmental Costs	\$ 9,953	\$ 9,635
Costs with the Public	39,869	38,841
Total Net Cost - Resolve Representation Cases	\$ 49,822	\$ 48,476
Resolve Unfair Labor Practices		
Intragovernmental Costs	\$ 50,356	\$ 48,753
Costs with the Public	203,837	198,830
Total Net Cost - Resolve Unfair Labor Practices	\$ 254,193	\$ 247,583
Other		
Intragovernmental Costs	\$ 18	\$ 59
Less: Intragovernmental Earned Revenue	18	59
Total Net Cost - Other	-	-
Net Cost of Operations	\$ 304,015	\$ 296,059

NOTE 12. OPERATING LEASES

GSA Real Property. Most of NLRB's facilities are rented from the GSA, which charges rent that is intended to approximate commercial rental rates. The terms of NLRB's occupancy agreements (OA) with GSA will vary according to whether the underlying assets are owned by GSA or another federal agency or rented by GSA from the private sector. The NLRB has OAs with GSA, which sets forth terms and conditions for the space the Agency will occupy for an extended period of time. Included within the OAs are 120 to 180 day notification requirements for the Agency to release space. For purposes of disclosing future operating lease payments in the table below, federally-owned leases are included in years FY 2012 through FY 2016.

Rental expenses for operating leases for the year ended September 30, 2011 were \$26,741,352 for Agency lease space and \$2,697,132 for Agency building security. For FY 2010 the operating lease costs were \$27,365,763 and the Agency building security portion was \$2,381,725.

Fiscal Year (in thousands)	GSA Real Property
2012	\$ 27,410
2013	28,095
2014	28,798
2015	29,517
2016	30,255
Total Future Lease Costs	\$ 144,075

NOTE 13. IMPUTED FINANCING

OPM pays pension and other future retirement benefits on behalf of federal agencies for federal employees. OPM provides rates for recording the estimated cost of pension and other future retirement benefits paid by OPM on behalf of federal agencies. The costs of these benefits are reflected as imputed financing in the consolidated financial statements. Expenses of the NLRB paid or to be paid by other federal agencies at September 30, 2011 and 2010 consisted of:

(in thousands)	FY 2011	FY 2010
Office of Personnel Management:		
Pension expenses	\$ 9,015	\$ 9,546
Federal employees health benefits	10,466	9,901
Federal employees group life insurance program	29	29
Total Imputed Financing	\$19,509	\$19,476

NOTE 14. APPROPRIATIONS RECEIVED

The NLRB received \$ 283,400,000 and \$ 283,400,000 in warrants for the fiscal years ended September 30, 2011 and 2010, respectively. The amount shown on the Statement of Budgetary Resources under caption "Permanently not available" for FY 2011 was the cancelled appropriation for FY 2006 for the amount of \$1,070,426 and the rescission amount of \$566,800 for fiscal year FY 2011. For FY 2010, the total amount was \$1,753,478 for the cancelled appropriation for FY 2005.

NOTE 15. STATEMENT OF BUDGETARY RESOURCES

The Statement of Budgetary Resources provides information about how budgetary resources were made available as well as their status at the end of the period. It is the only financial statement exclusively derived from the entity's budgetary general ledger in accordance with budgetary accounting rules that are incorporated into GAAP for the Federal Government. The total Budgetary Resources of \$288,448,081 as of September 30, 2011 and \$287,002,747 as of September 30, 2010, includes new budget authority, unobligated balances at the beginning of the year, spending authority from offsetting collections, recoveries of prior year obligations and permanently not available. The NLRB's unobligated balance available at September 30, 2011 was \$619,446 and at September 30, 2010 was \$1,403,931.

Apportionment Categories of Obligations Incurred. NLRB's obligations incurred

as of September 30, 2011 and September 30, 2010 by apportionment Category A and B is shown in the following table. Category A apportionments distribute budgetary resources by fiscal quarters and Category B apportionments typically distribute budgetary resources by activities, projects, objects or a combination of these categories. Beginning in FY 2010, OMB agreed that it was not necessary for NLRB to separate its information technology funding and therefore all obligations incurred were from one funding category.

(in thousands)	Apportioned		Not Subject to Apportionment	Total
FY 2011	Category A	Category B		
Obligations Incurred:				
Direct	\$ 284,135	–	–	\$ 284,135
Reimbursable	18	–	–	18
Total Obligations Incurred	\$ 284,153	–	–	\$ 284,153

(in thousands)	Apportioned		Not Subject to Apportionment	Total
FY 2010	Category A	Category B		
Obligations Incurred:				
Direct	\$ 282,468	–	–	\$ 282,468
Reimbursable	59	–	–	59
Total Obligations Incurred	\$ 282,527	–	–	\$ 282,527

NOTE 16. CONTINGENCIES

The NLRB is involved in various lawsuits incidental to its operations. There are 2 cases involving NLRB employees, that have a reasonable possibility of an unfavorable outcome and fees may be in excess of \$200,000 but not more than \$300,000. While the ultimate outcome of these matters is not presently determinable, it is the opinion of management that the resolution of outstanding claims will not have a materially adverse effect on the financial position of NLRB.

NOTE 17. RECONCILIATION OF NET COST OF OPERATIONS TO BUDGET

For the Month Ended September 30, 2011 and 2010

(in thousands)	FY 2011	FY 2010
Resources Used to Finance Activities		
Current Year Gross Obligations	\$ 284,153	\$ 282,527
Budgetary Resources from Offsetting Collections:		
Spending Authority from Offsetting Collections Earned		
Collected	(411)	(211)
Recoveries of Prior Year Unpaid Obligations	(1,799)	(973)
Other Financing Resources:		
Imputed Financing Sources	19,509	19,476
Other	(2)	-
Total Resources Used to Finance Activity	\$ 301,450	\$ 300,819
Resources Used to Finance Items Not Part of the Net Cost of Operations		
Budgetary Obligations and Resources not in the Net Cost of Operations:		
Change in Undelivered Orders	3,326	(1,999)
Current Year Capitalized Purchases	(4,141)	(5,468)
Components of the Net Cost of Operations which do not Generate or Use Resources in the Reporting Period		
Revenues without Current Year Budgetary Effect:		
Other Financing Sources Not in the Budget	(19,509)	(19,476)
Costs without Current Year Budgetary Effect:		
Depreciation and Amortization	3,784	3,299
Disposition of Assets	2	-
Future Funded Expenses	22	229
Imputed costs	19,509	19,476
Bad Debt Expense	6	8
Other Expenses Not Requiring Budgetary Resources	(434)	(829)
Net Cost of Operations	\$ 304,015	\$ 296,059

Other Accompanying Information



Protecting Democracy in the Workplace Since 1935

Inspector General's Top Management and Performance Challenges

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

October 14, 2011

To: - Mark Gaston Pearce
Chairman

Lafe Solomon
Acting General Counsel

From: David Berry
Inspector General

A handwritten signature in blue ink that reads "David Berry".

Subject: Top Management and Performance Challenges

As part of the Performance and Accountability Report, the Office of Inspector General (OIG) is required by section 3516 of title 31 to summarize what the Inspector General considers to be the most serious management and performance challenges facing the Agency and briefly assess its progress in addressing those challenges. This memorandum meets that requirement. The information provided in this report is based upon our reviews and investigations, as well as our general knowledge of the National Labor Relations Board's (NLRB or Agency) operations.

At the beginning of Fiscal Year (FY) 2011, we identified six management and performance challenges. To that list, we are adding challenges related to current political debate involving the NLRB and the management of human capital. The challenges are not listed in any particular order.

CHALLENGES

Manage in the current political environment.

Without commenting on the merits of the issues, we believe it is appropriate to highlight the current debate regarding the actions of the NLRB and the issues related to Government spending. Functioning in this environment is a challenge for both the appointees that govern and the career personnel who manage. The obvious challenge is that there is a diversion of resources and attention away from the Agency's mission to defend actions and decisions or to respond to demands for information – all outside the normal litigation procedures that ensure due process for the parties. There is also a level of uncertainty that is created by the prospect of the Board losing a quorum, operating for an extended period of time with an Acting General Counsel, and the

potential for changes to the National Labor Relations Act. The repeated threats of Government shutdowns also create a sense of a lack of stability in the workforce and siphon off resources in planning for events that may never happen.

Manage the NLRB's Human Capital

A significant challenge facing the NLRB is managing its human capital. The need to maintain a stable and productive workforce is key to the NLRB's ability to fulfill its statutory mission. Factors outside the NLRB's control that may directly affect its ability to maintain a stable and productive workforce include the prospect of Governmentwide hiring restrictions, reduced or flat appropriations, and loss of key personnel through retirements. Coupled with those issues are matters directly within the control of management including a healthy and productive relationship with the two employee unions; a fair and equitable means to address allegations of discrimination and grievances; and maintaining an environment throughout the NLRB that fosters collaboration along with effective and efficient processes.

Although attrition in the Agency's workforce is expected, the loss of employees and productivity because of dissatisfaction with the work environment or poor management is a waste. It is also worth noting that we have initiated investigations that were focused on matters that could have been resolved through effective management before the misconduct occurred. These types of matters may also result in months or years of litigation with the employee that can consume managerial resources.

Implement the Next Generation Case Management System and seize opportunities to create more productive and efficient procedures and organizations.

The Agency is in the final stages of implementing an enterprise-wide electronic case management and processing system. The system replaces 13 separate legacy systems by integrating them into a single unified system using multiple technologies, including 5 distinct software solutions for customer relationship management, document management, collaboration, business analytics, and Web-based services for external constituents. This is the most comprehensive information technology project undertaken at the NLRB. Its success is critical to the Agency's mission and presents a unique opportunity to create more productive and efficient procedures and organizations.

Manage the Agency's financial resources.

The division of the Agency between the Board and General Counsel creates unique issues with regard to the management of the Agency, and this is particularly true with regard to the management of the Agency's appropriation and budgetary issues.

Over the course of the last several years, we noted improvements that we believe were due to greater transparency in the allocation and spending of fiscal resources. Part of that success came from greater participation in the fiscal management by the Agency's senior management officials, who had previously been more focused on

the mission of the Agency, and part was due to the responsiveness of the staff involved in the daily financial management of the Agency. We believe that this cooperative effort netted better management and stewardship of the Agency's resources.

In addition to transparency and cooperation, there must also be effective management of the Agency's appropriation. In April 2011, we issued an audit report with recommendations to consider the consolidation of certain Regional Offices that have a low level of productivity. It is our understanding the report is being used in the assessment by the General Counsel of what the Agency can do to achieve cost savings in Field operations. We also believe that similar savings could result from the consolidation of duplicative functions at Headquarters.

We are also mindful that the audit of the FY 2010 financial statements contained a finding by the independent auditing firm that there was a significant deficiency in internal control. We are concerned that significant steps remain to implement recommendations related to that finding.

Manage the Agency's procurement process to ensure compliance with the Federal Acquisition Regulation.

In prior years, the OIG conducted audits involving the Agency's procurement function. These audits found numerous problems that could generally be attributed to some breakdown in the internal control process. Additional issues have been found during the course of the annual audits of the financial statements.

Adequate staffing, competence, and communication are critical to maintaining a well- managed procurement process. The prior years' convergence of budgetary issues and a shortage of competent candidates to fill vacant positions in a highly competitive field resulted in an understaffed procurement office. That lack of staffing created delays in processing procurement actions and greatly increased the opportunity for mistakes.

Over the course of several years, we observed improvement in staffing the procurement office and the procurement process itself. Nevertheless, the procurement function appears to be, and will likely remain, a challenge. As noted above, the audit of the FY 2010 financial statements noted a significant deficiency in internal control that was largely related to procurement issues. Following that report, the Comptroller General issued an appropriation law decision regarding procurement issues at the NLRB that was not completely favorable. We believe that the unimplemented recommendation from the audit of the FY 2010 financial statements to establish a Chief Financial Officer outside of the Division of Administration that reports to those charged with governance is central to meeting this challenge.

Manage the Agency's information technology resources in a manner that achieves efficiency and security.

The Agency continues to devote significant resources to improving and upgrading information technology equipment and capability. The OIG continues to devote

resources to investigating improper use and auditing, inspecting, or following up on information technology control and security issues.

The standards and requirements for information technology security evolve with changes in technology and threats. Balanced against that need to provide a secure information technology environment is the need to provide information technology services for the Agency. While deploying a completely new case processing system across the Agency, the Office of the Chief Information Officer met several security-related requirements this past year, to include ensuring that the NLRB is one of the few agencies that has all external connections to its systems made through one or more approved service providers. Despite that significant accomplishment, several information security audit recommendations that remain unimplemented.

Maintain the Agency’s institutional knowledge.

There have been many changes in technology, laws and regulations, and management systems that have altered the manner in which employees perform their official duties. As change occurs, the policy and procedures are not always updated on a timely basis, and individual offices come to rely upon the collective institutional knowledge of the staff. While this may be a short-term solution, it puts far too much reliance on the skills of individual employees while lacking the safeguards of a well-managed internal control system. This problem is compounded by the fact that in an Agency of this size, specialized tasks are often performed by a limited number of employees.

Although we continued to see progress in this area, particularly in the area of training, we continue to observe instances of “stove piping” and a significant effort in redeveloping processes that were lost with the departure of key personnel. As more key personnel reach the point of retirement, the challenge of formalizing institutional knowledge and succession planning become even greater.

Implement audit findings in a timely manner.

We added this challenge in FY 2008 because we observed that the Agency was not implementing audit recommendations in a timely manner, there was a recurrence of audit findings, and the Agency disagreed with audit recommendations without a sufficient basis – including recommendations that would have resulted in cost-savings. Also, since 2007, we have received yearly requests from the Committee on Oversight and Government Reform for detailed information on audit recommendations. This year, we reported that as of April 2011, we had 33 unimplemented recommendations. After we reported that figure, we added five recommendations and closed seven.

Summary of Audit and Management Assurances

I. SUMMARY OF FINANCIAL STATEMENT AUDIT

Audit Opinion			Unqualified		
Restatement			No		
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Ending Balance
	0	0	0	0	0
TOTAL	0	0	0	0	0

II. SUMMARY OF MANAGEMENT ASSURANCES

EFFECTIVENESS OF INTERNAL CONTROL OVER OPERATIONS (FMFIA §2)

Statement of Assurance			Unqualified			
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

COMPLIANCE WITH FINANCIAL SYSTEMS REQUIREMENTS (FMFIA §4)

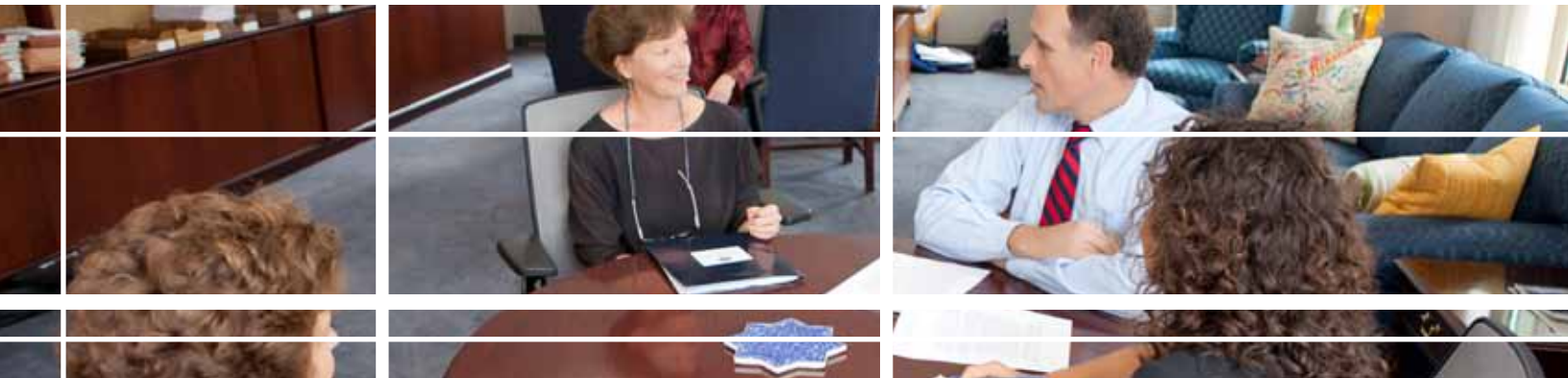
Statement of Assurance			Systems conform with financial management systems requirements			
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Improper Payments Information Act

The Improper Payments Information Act (IPIA) defined requirements to reduce improper/erroneous payments made by the federal government. OMB has also established specific reporting requirements for agencies with programs that possess a significant risk of erroneous payments and for reporting on results of recovery auditing activities. A significant erroneous payment as defined by OMB guidance is an annual erroneous payment in a program that exceeds both 2.5 percent of the program payments and \$10 million.

As such, the NLRB does not make program payments as described in the IPIA and has no information to report with respect to erroneous program payments.

Appendices



Protecting Democracy in the Workplace Since 1935

Appendix A

ACRONYMS

ALJ	Administrative Law Judge
CATS	Case Activity Tracking System
CR	Continuing Resolution
FASAB	Federal Accounting Standards Advisory Board
FMFIA	Federal Managers' Financial Integrity Act
FY	Fiscal Year
GAAP	Generally Accepted Accounting Principles
GPRA	Government Performance and Results Act
IUS	Internal Use Software
IPIA	Improper Payments Information Act
MDA	Management Discussion and Analysis
NBC	National Business Center
NxGen	Next Generation Case Management System
NLRA	National Labor Relations Act
NLB	National Labor Board
NLRB	National Labor Relations Board
NRA	National Recovery Act Of 1933
OCIO	Office of the Chief Information Officer
OIG	Office of Inspector General
OMB	Office of Management and Budget
PAR	Performance and Accountability Report
ULP	Unfair Labor Practice

Appendix B

DEFINITIONS

Case: The general term used in referring to a charge or petition filed with the Board. Each case is numbered and carries a letter designation indicating the type of case.

Charge: A document filed by an employee, an employer, a union, or an individual alleging that a ULP has been committed by a union or employer.

Collective Bargaining: Negotiation between organized workers and their employer or employers to determine wages, hours, rules, and working conditions.

Complaint: A document that initiates “formal” proceedings in a ULP case. It is issued by the Regional Director when he or she concludes on the basis of a completed investigation that any of the allegations contained in the charge have merit and the parties have not achieved settlement. The complaint sets forth all allegations and information necessary to bring a case to hearing before an administrative law judge pursuant to due process of law. The complaint contains a notice of hearing, specifying the time and place of the hearing.

Compliance: The carrying out of remedial action as agreed upon by the parties in writing; as recommended by the administrative law judge in the decision; as ordered by the Board in its decision and order; or as decreed by the court.

Dismissed Cases: Cases may be dismissed at any stage. For example, following an investigation, the Regional Director may dismiss a case when he or she concludes that there has been no violation of the law, that there is insufficient evidence to support further action, or for other legitimate reasons. Before the charge is dismissed, the charging party is given the opportunity to withdraw the charge by the Regional Director. A dismissal may be appealed to the Office of the General Counsel.

Formal Action: Formal actions may be documents issued or proceedings conducted when the voluntary agreement of all parties regarding the disposition of all issues in a case cannot be obtained, and where dismissal of the charge or petition is not warranted. Formal actions are those in which the Board exercises its decision-making authority in order to dispose of a case or issues raised in a case. “Formal action” also describes a Board decision and consent order issued pursuant to a stipulation, even though a stipulation constitutes a voluntary agreement.

Impact Analysis: Provides an analytical framework for classifying cases so as to differentiate among them in deciding both the resources and urgency to be assigned each case. All cases are assessed in terms of their impact on the public and their significance to the achievement of the Agency’s mission. The cases of highest priority, those that impact the greatest number of people, are placed in Category III. Depending on their relative priority, other cases are placed in Category II or I.

Interstate Commerce: In the U.S., any commercial transaction or traffic that crosses state boundaries or that involves more than one state. Government regulation of interstate commerce is founded on the commerce clause of the Constitution (Article I, section 8), which authorizes Congress “To regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes.”

“Nip-in-the Bud” Cases: Cases arising from allegations of unfair labor practices committed during union organizing campaigns.

Overage Case: To facilitate or simplify Impact Analysis, case processing time goals — from the date a charge is filed through the Regional determination — are set for each of the three categories of cases, based on priority. A case is reported “overage” when it is still pending disposition on the last day of the month in which its time target was exceeded. Cases that cannot be processed within the timelines established under the Impact Analysis program for reasons that are outside the control of the Regional Office are not considered to be overage.

Petition: A petition is the official NLRB form filed by a labor organization, employee, or employer. Petitions are filed primarily for the purpose of having the Board conduct an election among certain employees of an employer to determine whether they wish to be represented by a particular labor organization for the purposes of collective bargaining with the employer concerning wages, hours, and other terms and conditions of employment.

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Protected Concerted Activity: The National Labor Relations Act (NLRA) protects employees’ rights to engage in protected concerted activities with or without a union, which are usually group activities (two or more employees acting together) attempting to improve working conditions, such as wages and benefits.

Social Media: Various online technology tools that enable people to communicate easily via the Internet to share information and resources. These tools can encompass text, audio, video, images, podcasts, and other multimedia communications.

Test of Certification: A “test of certification” presents the issue of whether an employer has unlawfully refused to bargain with a newly-certified union. Because the Act does not permit direct judicial review of representation case decisions, the only way to challenge a certification is a refusal to bargain followed by a Board finding. However, because all relevant legal issues were or should have been litigated in the Representation case, the related ULP case is a no-issue proceeding that can be resolved without a hearing or extensive consideration by the Board.

Unfair Labor Practice (ULP): An unfair labor practice is illegal conduct by either a labor organization or an employer that violates the National Labor Relations Act.

Union Security Agreement: A contractual agreement, usually part of a union collective bargaining agreement in which an employer and a trade or labor union agree on the extent to which the union may compel employees to join the union, and/or whether the employer will collect dues, fees, and assessments on behalf of the union.

National Labor Relations Board
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