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Personnel
Appeals
Board

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ANNUAL REPORT

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BIOGRAPHIES OF BOARD MEMBERS

MICHAEL W. DOHENY was appointed to the Board in 2002 and elected Vice-Chair in fiscal year 2003 and Chair in fiscal year 2004. He is a graduate of St. Francis DeSales College in Milwaukee, Wisconsin and the Catholic University Columbus School of Law. Mr. Doheny retired after 32 years with the Federal Government in October 2001. He started his federal employment with the former Civil Service Commission as a hearing officer adjudicating EEO complaints and adverse action appeals. Mr. Doheny was an administrative judge, appellate counsel and a manager with the U.S. Merit Systems Protection Board. He also served as Deputy General Counsel and Regional Director of the Washington, DC Regional Office at the Federal Labor Relations Authority. Mr. Doheny is an arbitrator on the panel of the Federal Mediation and Conciliation Service and is certified as a mediator by the State of Virginia.

PAUL M. CORAN was appointed to the Board in January 2005 and elected Vice-Chair in September 2005. Mr. Coran is a graduate of Northeastern University and Boston College Law School. He retired from the Federal Government with 33 years of service in July 2001. Mr. Coran engaged in the practice of employment law throughout his career, serving consecutively at the National Labor Relations Board, U.S. Department of Labor, Federal Labor Relations Council, U.S. Department of State, and, following his retirement and until August 2004, as Deputy Executive Director for the U.S. Senate, Office of Compliance. Mr. Coran represented management,

employees and labor, conducted mediations, and also performed impartial adjudication functions in both the Executive and Legislative branches. He was a regular contributor to the American Bar Association's Annual Employment Law Report for a number of years. Mr. Coran is a member of the Massachusetts Bar.

MARY E. LEARY was appointed to the Board in 2006 and is a graduate of Southwest Minnesota State University and the Howard University School of Law. Ms. Leary began her career as a field attorney with the National Labor Relations Board and served as an attorney advisor with the NLRB in Washington, DC. As an arbitrator for the U.S. Postal Service and its unions from 1988 to 1992, Ms. Leary decided numerous cases involving discipline, discharge, and contract interpretation. She served as general counsel for the United Electrical, Radio and Machine Workers of America from 1992 to 1997, where she handled a wide array of cases arising under personnel and labor laws and has litigated cases in Federal courts and the U.S. Supreme Court. Ms. Leary was an attorney advisor for the U.S. Patent and Trademark Office, handling labor and employment law cases, and the Merit Systems Protection Board, drafting decisions for cases on appeal. She was appointed the Director of Labor Relations and Collective Bargaining for the District of Columbia where she oversaw the development of a comprehensive labor relations program. Ms. Leary currently serves as Associate Vice Chancellor for Labor Relations for the Minnesota State Colleges and Universities. She is a member of the South Dakota Bar, numerous U.S. Courts of Appeals and District Courts, and the U.S. Supreme Court.

PERSONNEL APPEALS BOARD

Michael W. Doheny	<i>Chair</i>
Paul M. Coran	<i>Vice-Chair</i>
Mary E. Leary ¹	<i>Member</i>

PERSONNEL APPEALS BOARD STAFF

Beth L. Don	<i>Executive Director</i>
M. Gail Gerebenics	<i>Director, EEO Oversight</i>
Susan P. Inzeo	<i>Solicitor</i>
Sue Sung Farley	<i>Senior Attorney</i>
Patricia V. Reardon-King	<i>Clerk of the Board</i>
Anne M. Wagner ²	<i>General Counsel</i>
Diane R. Williams	<i>Senior Trial Attorney</i>
Frank J. Mack ³	<i>Senior Trial Attorney</i>
Darian C. Jackson	<i>Legal Information Assistant</i>

¹ Ms. Leary joined the Board in April 2006.

² Ms. Wagner joined the PAB/OGC in April 2006.

³ Mr. Mack joined the PAB/OGC in August 2006.

CHAPTER 1: The Personnel Appeals Board

Section 1: About the PAB

Under the General Accounting Office Personnel Act of 1980 (GAOPA),⁴ the Personnel Appeals Board (PAB or the Board) is charged with adjudicating disputes, issuing decisions and ordering corrective or disciplinary action, when appropriate, in cases involving prohibited personnel practices, discrimination, and prohibited political activity involving employees of the U.S. Government Accountability Office⁵ (GAO or the Agency), a legislative branch agency. The GAOPA also authorizes the Board to oversee GAO's employment regulations, procedures and practices relating to anti-discrimination laws.⁶

The PAB's authority combines the adjudicatory functions of its executive branch counterparts: the Merit Systems Protection Board (MSPB);⁷ the Equal Employment Opportunity Commission (EEOC);⁸ and the Federal Labor Relations Authority (FLRA).⁹ The Board's Office of General Counsel (PAB/OGC) performs the investigatory and prosecutorial functions of its

executive branch equivalents at the Office of Special Counsel (OSC)¹⁰ and the EEOC.

The statute provides for a Board comprised of five members who serve five-year, non-renewable terms.¹¹ Candidates are sought through a process that includes advertising and recruitment efforts that focus on organizations whose members are experienced in the adjudication or arbitration of personnel matters. Applicants are expected to have expertise or litigation experience in the area of federal personnel law, or demonstrated ability to arbitrate or adjudicate complex legal matters, or experience at a senior level position in resolving complex legal matters.

GAO establishes a screening panel to review applications for Board member positions and identify the best qualified candidates.¹² An interview panel composed of some of the screening panel members, including one member of the Employee Advisory Council (EAC), conducts the personal interviews and reports its results to the full screening panel. The panel recommends one or more of the candidates to the Comptroller General who makes an appointment to the Board after considering the recommended candidates. The Board members elect their own Chair and Vice-Chair.

Section 2: Board Staff

The Executive Director manages Board staff and operations. The Solicitor and Staff Attorney advise Board members and the Executive Director on legal matters and provide procedural advice to litigants before the Board. The Director of EEO Oversight reviews equal employment opportunity practices and procedures at GAO; and drafts evaluative reports that contain the Board's

⁴ 31 U.S.C. §731 et seq.

⁵ In July 2004, the Agency's name was changed to the Government Accountability Office. Pub.L. No. 108-271 (Jul. 7, 2004).

⁶ 31 U.S.C. §732(f)(2)(A).

⁷ The MSPB was "created to ensure that all Federal government agencies follow Federal merit systems practices. The Board does this by adjudicating Federal employee appeals of agency personnel actions, and by conducting special reviews and studies of Federal merit systems." 5 C.F.R. §1200.1.

⁸ The EEOC ensures that personnel actions that affect employees or applicants for employment in the executive branch "shall be made free from any discrimination based on race, color, religion, sex, or national origin." 42 U.S.C. §2000e-16(a) (Title VII). In addition, EEOC enforces the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §621 et seq. Similarly, the Board also has jurisdiction to hear and decide cases alleging discrimination. 4 C.F.R. §§28.95-28.99.

⁹ The FLRA protects the "right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them." 5 U.S.C. §7101. The Personnel Appeals Board also has the authority to certify collective bargaining representatives and to adjudicate unfair labor practices but, in the absence of unions at GAO, has not had the occasion to do so.

¹⁰ The OSC investigates and prosecutes allegations of 12 prohibited personnel practices, with an emphasis on protecting Federal whistleblowers. 5 U.S.C. §§1214, 2302(b). The Board's General Counsel investigates allegations of prohibited personnel practices. 4 C.F.R. §28.12. The Board has jurisdiction to hear and decide cases involving the 12 prohibited personnel practices under 5 U.S.C. §2302(b). 4 C.F.R. §28.2(b)(2).

¹¹ The Board currently operates with a quorum of three members.

¹² The voting members of the screening panel are three senior management officials designated by the Comptroller General. The non-voting members are six representatives selected by the Comptroller General's Employee Advisory Council and a representative from the Human Capital Office. GAO Order 2300.4, ¶7 (8/30/05).

findings and conclusions, and recommendations to the Agency.¹³ The Clerk of the Board is responsible for receiving filings, distributing Board orders and decisions and maintaining the Board's official records. In addition, the Clerk of the Board plays a major role in the administration of cases including

drafting orders and notices and assistance in report drafting. The PAB Office of General Counsel (PAB/OGC) investigates charges filed with the office and, if there is reasonable cause to believe that a violation of law has occurred, offers to represent the employee or applicant for employment before the Board.

¹³ 31 U.S.C. §732(f)(2)(A); see applicable regulations at 4 C.F.R. §§28.91 and 28.92. The Board's EEO Oversight reports can be found at www.pab.gao.gov.

CHAPTER 2: The Board Process

The Board's process is explained in detail in the Guide to Practice Before the PAB;¹⁴ a brief summary follows.

An employee, a group of employees,¹⁵ a labor organization or an applicant for employment at GAO may file a Petition with the Board seeking review of Agency action or inaction that adversely affected them. Such a Petition may arise from: (1) a removal, a suspension for more than 14 days, a reduction in grade or pay, or a furlough of not more than 30 days; (2) a prohibited personnel practice; (3) an unfair labor practice or other covered labor relations issue; (4) an action involving prohibited discrimination;¹⁶ (5) prohibited political activity; and (6) any other

¹⁴ The Guide is available at the PAB's website: www.pab.gao.gov.

¹⁵ The Board can hear individual complaints as well as class actions.

¹⁶ The complete procedures for filing a complaint may be found at GAO Operations Manual, Order 2713.2, "Discrimination Complaint Process" (Dec. 2, 1997) (hereafter GAO Order 2713.2). At GAO, the discrimination complaint process begins when the employee consults with a civil rights counselor in the Agency's Office of Opportunity and Inclusiveness (OO&I).

Such contact must occur within 45 calendar days of the alleged incident. If the matter cannot be resolved, the employee may file a formal written complaint with OO&I within 15 days of receipt from the counselor of notice of the right to file a complaint. The Director of OO&I can either accept or dismiss the complaint. (See GAO Order 2713.2, ch. 3, §5, for reasons why a complaint may be dismissed).

If the complaint is accepted, it is investigated and a report of the investigation is submitted to the Director of OO&I. If the complaint cannot be resolved through negotiation with GAO management, the Director submits a recommended decision to the Comptroller General who issues a final Agency decision.

An individual may seek relief from the PAB by filing a charge with the PAB Office of General Counsel within 30 days of receipt of GAO's final decision or dismissal of a whole or portion of the complaint. GAO Order 2713.2, ch. 6, ¶ 4. An individual may also seek relief from the PAB anytime after 120 days have elapsed from the date the complaint was filed provided that GAO has not issued a final decision. *Id.*

The PAB's review is *de novo*, which means that the PAB will review all the facts and issues and render a decision independent of the final Agency decision, if there is one.

personnel issues that the Comptroller General, by regulation, determines that the Board should hear.

*Section 1: Charge Filing with the PAB Office of General Counsel*¹⁷

At GAO, an employee, group of employees or an applicant for a job may file a charge with the PAB Office of General Counsel to initiate the Board process.¹⁸ The PAB/OGC has the authority to investigate and to prosecute alleged violations of the law over which the Board has jurisdiction. A complaint that does not involve discrimination may be filed with the PAB/OGC within 30 calendar days after the effective date of the underlying personnel action or within 30 calendar days after the complainant knew or should have known of the action. An individual may file a charge involving alleged discrimination with the PAB/OGC either within 30 calendar days after receipt of the Agency rejection of the complaint in whole or in part, 30 calendar days after receipt of the Agency's final decision, or when more than 120 days have elapsed since the complaint was filed and GAO has not issued a final decision.

Once an individual complaint is filed with the PAB/OGC, the complainant is advised of his/her rights and settlement options. The individual is also advised of the availability of mediation as an alternative to the adversarial process, under the program finalized in 2006. The PAB/OGC then conducts an independent investigation of the matters raised in the charge to determine whether there are reasonable grounds to believe that the employee's rights under the GAOPA have been violated. This process may include obtaining documents and taking oral statements from persons with knowledge of the allegations.

Following the investigation, and if no settlement occurs, PAB/OGC issues a Right to Petition Letter notifying the complainant that the investigation has been completed and that he/she has the right to file a Petition with the Board seeking review of the Agency action or inaction. The PAB/OGC also issues to the complainant a confidential Report of Investigation that includes the results of the investigation and the

¹⁷ Figure 2.1 shows the process of cases once a charge is filed.

¹⁸ See www.pab.gao.gov, go to the Charges/Filing link.

PAB/OGC’s conclusions with regard to the legal and factual issues.

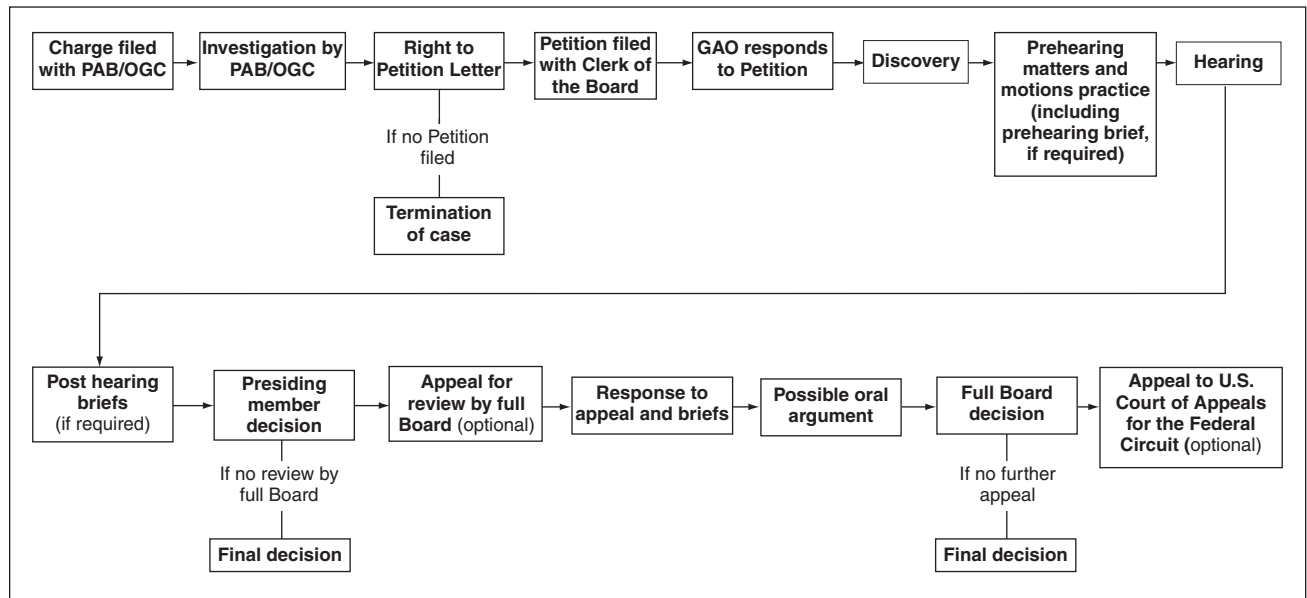
If the General Counsel concludes that reasonable grounds exist to believe that a violation of the law has occurred, the General Counsel will offer to represent the complainant in an evidentiary hearing before the Board at no expense to the employee. When the complainant accepts the PAB General Counsel’s offer of representation, the PAB/OGC assumes responsibility for the entire case even if the employee has retained private counsel. If the PAB General Counsel concludes that there are no reasonable grounds to support a claim, the complainant retains the right to file a Petition with the Board and request an evidentiary hearing. The complainant may represent him/herself or retain private counsel, if he/she chooses, before the Board.

Section 2: Filing a Petition with the Board

The PAB/OGC files a Petition with the Board for employees whom it represents. If an employee chooses to go forward without representation by PAB/OGC, the employee must file a Petition with the Board within 30 calendar days after service of the Right to Petition Letter from the PAB/OGC. Alternatively, if 180 days have elapsed from the filing of a charge with PAB/OGC and no Right to Petition Letter has been issued by the PAB Office of General Counsel, the employee may “opt out” of the investigation and file a Petition with the Board. An employee who chooses that route foregoes the opportunity to have the PAB/OGC present the case to the Board.

Upon receipt of the Petition, the Chair may either appoint a single Board member to hear and decide the case or determine that the Board will hear the case *en banc* (by all Board members). The Petition to the Board is not a challenge to or

Fig. 2.1: PAB Case Process



review of the conclusions of the PAB/OGC, but a fresh review of the Petitioner's rights. The Board does not have access to the investigative work and conclusions of the PAB/OGC; the administrative judge does not know whether the PAB/OGC found reasonable cause to believe a violation existed in a given case.

A Board member's decision is final unless:

(1) the Board member grants a party's motion to reconsider; (2) the Board, on its own motion, decides to review the initial decision; or (3) a party appeals to the Board for full Board review. Final decisions of the Board, with few exceptions, may be appealed to the U.S. Court of Appeals for the Federal Circuit.

Section 3: Other PAB Office of General Counsel Authority

a. PAB/OGC Investigative Authority

The PAB Office of General Counsel is authorized to conduct independent investigations into matters raised and presented in charges filed by GAO employees or applicants for employment. This investigative authority represents the vast majority of investigations conducted by PAB/OGC. Upon the conclusion of an investigation, a confidential summary is forwarded to the complainant, detailing whether or not PAB/OGC finds sufficient evidence of reasonable grounds to believe that a violation of the law has occurred or is about to occur. The Agency and the Board are notified that the investigative phase is closed; they do not have access to the conclusions contained in the confidential summary.

In addition to investigations generated by individual or class charges, PAB/OGC may initiate its own investigations, otherwise known as informational or GC investigations.¹⁹ The General Counsel may initiate an investigation when information comes to his/her attention suggesting that a prohibited personnel practice has occurred, is occurring, or will occur, regardless of whether a charge has been filed. If an individual brings

an allegation to the attention of PAB/OGC, that individual may remain anonymous.

If, during the informational investigation, it is determined that there are sufficient grounds to believe that a violation of the law has occurred or is about to occur, the PAB/OGC will contact the Agency with the findings and its recommendation. If the recommendation is not followed within a reasonable period, PAB/OGC may petition the Board to order corrective action.

b. PAB/OGC Stay Requests

PAB/OGC may request that the Board issue an *ex parte* temporary stay, not to exceed 30 calendar days, of any proposed personnel action that, in the General Counsel's judgment, may constitute a prohibited personnel practice. If the request for an *ex parte* stay is granted, the General Counsel may request either a further temporary stay or a permanent stay of the proposed action. A further temporary stay may be granted if the Board member, or Board *en banc*, determines that under all of the circumstances the interests of justice would be served by providing more time for PAB/OGC to pursue the investigation.²⁰ In considering a request for a permanent stay, the Board balances the evidence as to whether the proposed personnel action arises out of a prohibited personnel practice against the nature and gravity of any harm that could flow from the granting or denial of the stay. The Board may grant or deny the requested stay based upon the pleadings, require further briefing and/or oral argument, or conduct an evidentiary hearing. When PAB/OGC seeks a stay of a personnel action, it conducts an investigation into the allegations of prohibited personnel practices.

c. Disciplinary Proceedings

The PAB General Counsel is authorized to initiate a disciplinary action against an employee when it is determined, after an investigation, that such action is warranted. In such cases, the PAB General Counsel will provide a written summary of the determination and facts to the employee and the Board.²¹ The authority to propose

¹⁹ 4 C.F.R. §28.131.

²⁰ 4 C.F.R. §28.133(d).

²¹ *Id.* at §28.132.

disciplinary action includes action for engaging in prohibited political activity.

After a hearing, the Board decides whether discipline is warranted and what punishment is appropriate. The Board may order removal,

reduction in grade, debarment from GAO employment, reprimand, or an assessment of civil penalty not to exceed \$1,000. Judicial review of the Board's final order may be obtained in the U.S. Court of Appeals for the Federal Circuit.

CHAPTER 3: Activity of the PAB – 2006

Section 1: Board Case Activity for the Government Accountability Office

During 2006, Board members addressed a number of issues relating to sixteen cases and appeals before them individually and collectively. In addition to issuing numerous procedural orders, Board members disposed of substantive motions in pending cases, and handled one stay request filed by the PAB/OGC.

a. Stays

In 2006, the PAB/OGC filed one request for an *ex parte* stay in a case where a probationary employee was being terminated on the asserted basis of unacceptable performance prior to completion of her first year at GAO. The employee alleged that the Agency unlawfully discriminated against her on the bases of her race, national origin, sex, and age and that, because she had transferred from another agency, she was entitled to certain rights. After the initial stay, the PAB/OGC subsequently filed a request for a further temporary stay of thirty (30) days to allow for completion of the investigation; the Administrative Judge denied the PAB/OGC's request. No further action was brought before the Board.

b. Other Cases

In Annual Report Year (ARY)²² 2005, a case was pending before the Board where a Petitioner alleged that he was not selected for a Senior Analyst, Band II position because of his race and age. He also claimed that the discrimination against him constituted constructive discharge. The Administrative Judge for this case did not find that the Agency had engaged in discriminatory conduct and found that Petitioner's retirement was voluntary. The Initial Decision was posted on May 17, 2006. Petitioner appealed the Administrative Judge's decision on the basis that it "was inconsistent with law; an erroneous

interpretation of statute or regulation; arbitrary, capricious or an abuse of discretion; or not consistent with required procedures resulting in harmful error." On December 8, 2006, the full Board affirmed the Initial Decision.

In September 2006, the PAB/OGC filed twelve (12) cases. Although each case was filed separately and has its own unique set of circumstances, they all have significant identical issues that are related to the newly created classification of Band IIA and IIB classifications. The twelve cases have been consolidated in the interests of justice and efficiency of process. However, each Petitioner has the burden of proving why he/she meets the criteria for placement into newly created Band IIB category instead of the Band IIA. The Petitioners in these cases allege that the Agency committed prohibited personnel practices in the restructuring process, because they are now subject to restrictions on annual pay and pay adjustments, reduced pay cap and other pay limitations. The Petitioners seek Board review of the restructuring of Band II employees into two categories (Band IIA and IIB) which resulted in Petitioners being placed in the Band IIA category. At the close of 2006, these cases were in the discovery process with a hearing set for late spring 2007.

There were three cases filed during the last two months of 2006. In the first case, the Petitioner alleged that the Agency committed prohibited personnel practices by inaccurately evaluating his job performance. The Petitioner also alleged that the Agency retaliated against him for previously exercising his appeal rights. This case was in the discovery process at the end of 2006. No hearing date has been set.

In another case filed late in the year, the PAB/OGC represented a Petitioner who alleged that the Agency's denial of his advancement to Band IIB constituted a prohibited personnel practice. The Petitioner raises issues about the defining factors for advancement to Band IIB; the alleged inadequate training of panel members; and the allegedly erroneous Mission and Training Systems (MATS) data on which the determination was based. This case is in the discovery stage.

In the last case filed in calendar year 2006, the Petitioner alleges that GAO has failed to

²² The ARY refers to Annual Report Year. The annual report for 2005 was prepared during the time the Board transitioned from a fiscal year to a calendar year reporting basis. The 2005 ARY incorporates a 15 month period from October 2004 through December 2005.

provide a valid remedy for failure to exclude him from automatic FERS coverage when he was hired by GAO. He had prior federal service between 1979 and 1985. Petitioner seeks a remedy for the resulting diminution of his retirement benefits. This case is in the discovery stage.

Section 2: Board Case Activity for the Library of Congress

During 2005, the Agency, Board and the Library of Congress (LOC) entered into an Interagency Agreement that established a pilot program giving the Board authority to hear certain LOC cases. The Board has handled seven cases since the inception of this program. The LOC case process system is slightly different from the Board’s process for GAO cases (see chart below).

There were three cases brought before the Board in ARY 2005. One is currently on appeal to the full Board.

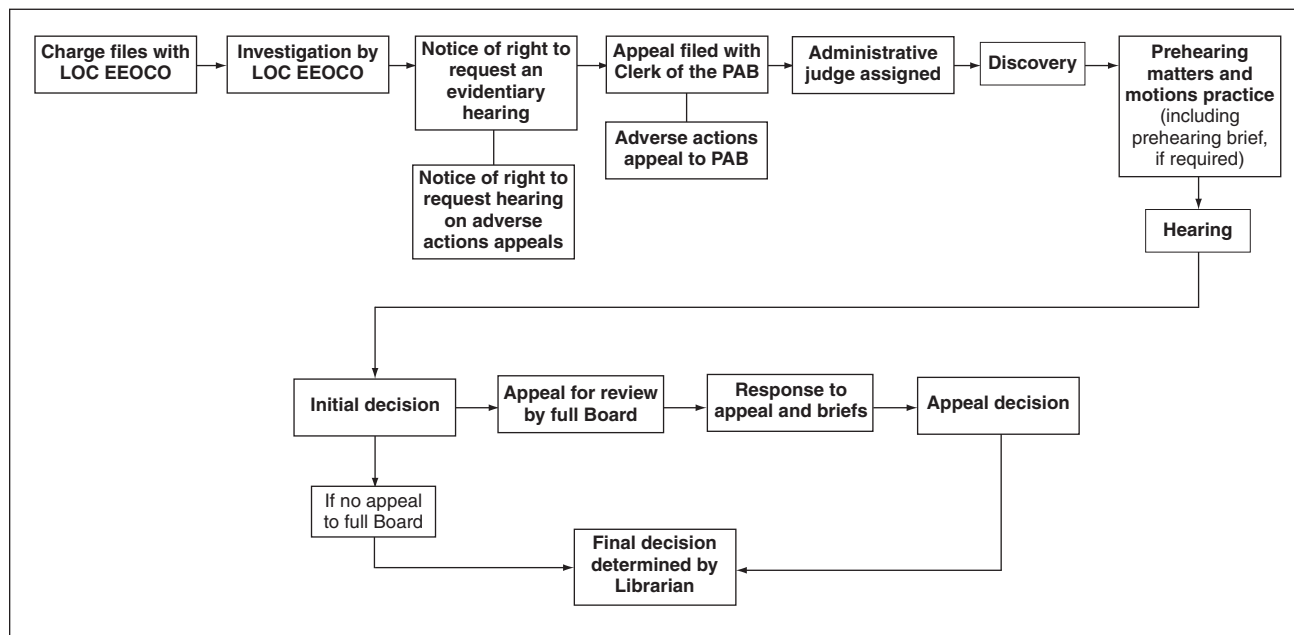
In 2006 there were four (4) cases from the Library filed with the Board. Two of these cases were voluntarily withdrawn and dismissed with prejudice by the Administrative Judge. The remaining two cases are still pending before Administrative Judges.

Section 3: PAB Office of General Counsel Activity

a. Case Activity for GAO

There were 34 new cases filed with the PAB/OGC from January 1, 2006 through December 31, 2006. The 34 cases related to GAO contained claims of prohibited personnel practices and one

Fig. 3.1: LOC Case Process



of the charges contained claims of discrimination based on age. Four of the cases filed in calendar year 2006 have been closed. The charges contained the following legal issues:

New Charges Legal Issues	
Violation of law, rule, or regulation	21
Discrimination (race)	11
Discrimination (age)	1
Discrimination (sex)	1
Discrimination (handicapping condition)	1
Reprisal (Participation in EEO process)	1
Reprisal for exercising appeal rights	3
Willful obstruction of right to compete for employment	1

Personnel actions alleged in the new charges:	
Performance appraisal/evaluation	4
Promotion	10
Decisions concerning pay	20
Decisions concerning benefits	2
Adverse Actions-Removal/Termination	1
Involuntary Retirement	1
Significant change in duties, responsibilities, or working conditions	1
Other	1

The PAB/OGC filed thirteen Petitions with the Board and sought one *ex parte* stay of an employee's removal. The Office settled one case during calendar year 2006. All of the GAO investigations conducted by the Office of General Counsel were initiated by charges filed by employees. PAB/OGC did not initiate any information investigations in 2006 nor did it initiate any disciplinary proceedings.

b. Case Activity for LOC

During the time period of January 1, 2006 through December 31, 2006, the PAB/OGC handled six cases from the Library of Congress. The first investigation handled by the PAB/OGC from the Library of Congress was filed during ARY 2005. This case and the other five new cases were still being handled by the PAB/OGC at

the end of 2006. All of the LOC investigations conducted by the Office of General Counsel were initiated by charges filed by employees.

c. Employee Contacts

In addition to its investigative and prosecutorial authority, the PAB/OGC also provides information or informal advice to employees about their personnel and equal employment rights. This is accomplished by responding to questions about diverse issues such as personnel actions, performance appraisals, grievances, and the complaint process, as well as presentations to GAO's employee councils to update them on recent changes in the law and Board procedures. The PAB/OGC responded to 170 requests for information or informal advice during calendar year 2006. The requests involved the following issues shown in the table below.

Informational inquiries	
Discrimination (race)	7
Discrimination (handicapping condition)	3
Unfair Labor Practices	1
Violation of law, rule or regulation	155
Willful obstruction of competition for employment	1
Representational rights	3
Significant change in duties, responsibilities, or working conditions	1

Types of Actions	
Performance appraisal/evaluation	11
Promotion	3
Decisions concerning pay	142
Adverse Actions-Removal/Termination	7

d. Other Activity

The PAB Office of General Counsel often submits written comments on proposed GAO-initiated changes to GAO orders and policies to ensure that the protection of rights afforded employees under the GAO Personnel Act²³ is considered. In 2006, the Office submitted comments on Interim GAO Order 2575.1, Recruitment, Relocation and

²³ 31 U.S.C. § 732.

Retention Incentives; Draft GAO Order 0645.1, Limited Personal Use of Government-Provided Office and IT Equipment, Including Internet; and proposed revision to GAO Order 2771.1, Administrative Grievance Procedure.

Section 4: Office of EEO Oversight Activities

The GAO Personnel Act directs the Board to oversee equal employment opportunity at GAO through review and evaluation of GAO's procedures and practices.²⁴ To fulfill this mandate, the Board established an Office of EEO Oversight to help it conduct studies of selected issues and prepare evaluative reports that contain its findings and conclusions, as well as recommendations to the Agency.²⁵ During the past 12 months, the Office of EEO Oversight has focused its attention on completing a report relating to the employment of Hispanics at GAO; attempting to retool the focus of a study of adverse actions and disciplinary proceedings; and, reviewing revisions of HCO's survey instrument for separating employees which will provide data to the Board in its upcoming study of retention.

a. Employment of Hispanics at GAO

In 2006, the Board completed its study of and report on the employment of Hispanics at GAO. Hispanics remain the only underrepresented minority group in the Federal Government and at GAO constitute just 4.4% of the workforce even though they make up 12.6% of the Civilian Labor Force and 14% of the U.S. population.

The Board's report traces the recent history of Hispanics in the Federal Government and at GAO and highlights steps and initiatives that both entities have taken to increase the representation of Hispanics. The Board noted GAO's efforts to attract persons of Hispanic origin to its ranks, which included doubling the number of Hispanic-Serving Institutions that it targets for recruitment of Hispanic students; participating in an internship program under the aegis of the Hispanic Association of Colleges and Universities;

reaching out to Hispanic-serving professional organizations; making use of its direct hire authority to bring Hispanic employees on board; and, holding managers accountable for diversity and staff development.

In its report, the Board made a number of recommendations to the Agency focusing first on GAO's educational requirements. Because Hispanics have lower levels of educational attainment when compared to the rest of the population, the Board suggested that GAO establish a direct correlation between the work to be performed and advanced educational requirements. The Board also recommended that the Agency review skill set requirements to determine whether prior job experience could substitute in part for advanced degrees.

In addition, the Board asked the Agency to establish relationships with faculty members and career counselors at secondary schools with high Hispanic representation and to emphasize internship opportunities in field offices in areas with substantial Hispanic populations.

The Board also identified a number of other steps that GAO could take to increase the representation of Hispanics in its workforce such as recruiting mid-career employees and developing an across-the-board public and private sector recruitment plan in order to cast a wider net for potential employees at all levels, including outreach to the U.S. military departments, as well as accounting and auditing firms in order to identify and recruit Hispanic achievers.

The Board recommended that the Agency should also ensure that there is Hispanic representation at the leadership and advisor levels of its PDP²⁶ program, which not only provides the introduction to GAO's procedures but serves as a window to its culture.

The Board found that the Agency is not making strides in expanding Hispanic representation at the Band III level and developing those employees into viable candidates for the Agency's Senior Executive Service. Currently,

²⁴ 31 U.S.C. §732(f)(2)(A). See applicable regulations at 4 C.F.R. §§28.91 and 28.92.

²⁵ The Board's EEO Oversight reports can be found at www.pab.gao.gov.

²⁶ GAO's Professional Development Program was established in March 2001 for newly hired Band 1 staff. The program provides opportunities for staff to rotate on at least three engagements while participating in the 2-year program, to develop an Individual Development Plan (IDP), and to receive intensive supervision and formal and on-the-job training.

4.4% of the Band III analysts and specialists are Hispanic, which mirrors the percentage for the Agency as a whole. As noted in the report, not one Hispanic has been selected for any of the 71 competitive SES slots that have been filled since 1999; the same was true for the five year period of 1992-1997 that was featured in an earlier Board report.

In its 1999 report to the Comptroller General, GAO's Hispanic Liaison Group recommended the establishment of a mid-level management development program that would include formal mentoring for senior level staff (Bands IIB and III in today's Agency) and would proactively encourage qualified employees to pursue SES candidacy. The Board believes that implementation of this recommendation would be a critical step in enlarging the pool of SES candidates at GAO.

The Board recommended that, along with a mid-level development program, GAO should also direct its developmental efforts toward ensuring that there is a viable pool of candidates for Band IIB and Band III vacancies. The Board also suggested that GAO's Office of Opportunity and Inclusiveness should issue an annual or biennial report equivalent to the FEORP²⁷ describing and grading GAO's Hispanic employment efforts.

And finally, the Report recommended selecting officials should be cognizant of the Agency's affirmative obligation to remedy underrepresentation and should be able to explain why they were unable to select or hire a qualified Hispanic candidate for employment or promotion.

The Board received comments on its draft report from the Agency and PAB/OGC. The Agency indicated that it agreed with a number of the Board's recommendations and would consider others. The Board's General Counsel sent a letter indicating agreement with the conclusions and

recommendations. The comments can be found in the Appendix to the report.

b. Study on Discipline and Adverse Actions

In 2005, the Board began its study of discipline and adverse actions by collecting data from GAO on all disciplinary actions broken down by race, sex, national origin, age and disability. The data also reflected the job categories of employees who have been the subject of disciplinary or adverse actions; whether such actions were based on performance grounds or conduct; the offices or units to which the employees are assigned; whether the employees are career or probationary employees; and the employees' years of Government and GAO service. Subsequent to a thorough review of the information that the Agency provided, it was determined that additional information was required in order for the Board to make any meaningful conclusions from the data supplied. The new data was requested in July and September 2006; the Board was awaiting the supplementary information at the end of the year.

c. Study of Retention Rates

In 2005, the Board decided to embark on a two year study of retention rates at GAO in which it will attempt to identify whether there are any cultural, environmental, or organizational factors at GAO that could lead to a disproportionate number of members of any protected class leaving the Agency early in their tenures. Much of the data the Board will be relying on to determine the reasons behind employee separations is GAO gathered by means of an exit questionnaire. At the initiation of the PAB's project, Board staff worked with Human Capital Office (HCO) staff to refine GAO's exit survey instrument. Midway through 2006, HCO staff began further revision of the questionnaire in an effort to shorten it, improve the response rate, and make it more user-friendly. The new questionnaire was placed in operation in October 2006. Board staff will begin monitoring the exit survey results early in 2007; initial

²⁷ The Federal Equal Opportunity Recruitment Program (FEORP) is a recruiting initiative designed to eliminate underrepresentation of minorities and women in the Federal service. It was established by the Civil Service Reform Act of 1978 (5 U.S.C. §7201).

research on the topic and preparation of the report will also commence some time next year.

Section 5: Administrative Activities

a. Mediation Program

In conjunction with GAO and its Office of General Counsel, the PAB has developed a mediation process that is available to present and former employees of, and applicants for employment with GAO in matters pending before the PAB/OGC. The program is also available during litigation before the Board. The mediation process provides an opportunity to employees or applicants, the Agency, and their representatives, if any, to meet separately and/or jointly with a mediator, *i.e.*, a skilled neutral trained to assist them in resolving their disputes. The mediator is a facilitator who has no power or role to impose a specific resolution. Parties to the mediation explore and discuss alternatives to continuing

their dispute, including the goal of reaching a voluntary, mutually satisfactory resolution. Information about the program is available on the PAB’s website.

b. Website developments

The website (www.pab.gao.gov), currently in its fourth year, has continued to be an invaluable resource for information about the Board. For the past year, the Board has gathered statistical information on the use of its website. On average the Board’s web site was visited by approximately 150 individuals per month. Once on the site, individuals went to various sections such as the information about the PAB, Board decisions, how to contact PAB staff and the Board’s regulations.

The website is updated regularly to include new decisions, including LOC decisions, and announcements. The Annual Report is available exclusively on the website. The following chart shows the number of visits to the Board’s website this year. The table reflects usage within the site.

Fig. 3.2: Web Site statistics

