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REPORT BY THE U.S.

General Accounting Office

Effects Of Fiscal Year 1982 Budget Cuts On The Merit Systems Protection Board And Its Office Of The Special Counsel

In response to significant budget cuts in fiscal year 1982, the Merit Systems Protection Board and its Office of the Special Counsel took several steps to reduce operating expenses.

The Merit Systems Protection Board's budget cut coincided with a substantial increase in new cases. Savings were achieved through freezes on hiring and staff promotions and a 2-week, part-time furlough of all employees. Other savings accrued from a halt on travel, which, in some instances, resulted in greater costs to the Government. The cut in the Board's budget adversely affected all areas of the agency's operations.

The Office of the Special Counsel experienced high attrition during the period the budget cuts had to be absorbed and did not fill the vacant positions. It also severely limited travel, which contributed to cases not being reviewed thoroughly or in a timely manner.

This report was requested by the Chairman, House Committee on Post Office and Civil Service, and by the Chairwoman, Subcommittee on Civil Service, and Chairman, Subcommittee on Human Resources, House Committee on Post Office and Civil Service.



GAO/FPCD-83-20
APRIL 8, 1983

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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

FEDERAL PERSONNEL AND
COMPENSATION DIVISION

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The Honorable William D. Ford
Chairman, Committee on Post Office
and Civil Service
House of Representatives

The Honorable Donald J. Albosta
Chairman, Subcommittee on Human
Resources
Committee on Post Office and Civil
Service
House of Representatives

The Honorable Patricia Schroeder
Chairwoman, Subcommittee on Civil
Service
Committee on Post Office and Civil
Service
House of Representatives

This report responds to your March 11, 1982, request that we review the impact of fiscal year 1982 budget reductions on the Merit Systems Protection Board and its Office of the Special Counsel. The report discusses the actions taken by the agencies to reduce their operating costs and the effects these actions had on the agencies and their ability to perform their missions.

We are sending copies of this report to the Chairman, Merit Systems Protection Board; the Special Counsel, Office of the Special Counsel; and the Director, Office of Management and Budget.


Clifford I. Gould
Director

D I G E S T

The Merit Systems Protection Board (MSPB) and its Office of the Special Counsel (OSC) received substantial budget reductions in fiscal year 1982, requiring both agencies to cut their operating expenses. The Chairman, House Committee on Post Office and Civil Service, and two subcommittees of the Committee asked GAO to review the effect of the budget cuts on the agencies and their ability to accomplish their missions. GAO found that MSPB and OSC were less timely and, in some instances, less thorough in performing their duties in fiscal year 1982 than in previous years. This deterioration in service adversely affected other agencies and Federal employees, particularly in terms of increased costs and processing times.

MSPB ACTIONS TO ABSORB BUDGET CUT
ADVERSELY AFFECTED OPERATIONS

MSPB began fiscal year 1982 with the same funding as in the preceding year, but in December 1981, the Congress significantly reduced that level. To accommodate the cut, MSPB took several steps to reduce its operating expenses. However, MSPB's options for absorbing the cut were somewhat limited since the cut was not finalized until after the fiscal year had begun. To save travel and transcription expenses, MSPB did not hold any hearings for several weeks after the December reduction. When MSPB resumed hearings in February 1982, it held them only in its regional offices. As a result, agencies and appellants had to pay for their own travel costs to MSPB offices. When appellants, and in some cases agencies, could not afford to pay the travel costs, the hearing was postponed.

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MSPB also stopped purchasing written transcripts of hearings for its presiding officials and instead used tape recordings when drafting decisions. Other parties who wanted written transcripts had to purchase them from court reporters rather than receiving them free from MSPB. Although the action to stop purchasing written transcripts was considered before the budget cut occurred, its implementation helped MSPB absorb the cut.

MSPB realized the majority of its savings by freezing hiring, staff promotions, and overtime pay. The hiring freeze resulted in staff imbalances in several regional offices. Not hiring clerical support caused particularly acute problems because MSPB had a large administrative burden resulting from its receipt of about 11,000 appeals from fired air traffic controllers. MSPB's professional employees worked considerable uncompensated overtime to prevent the administrative burden from halting the office's operations. When MSPB did not receive early approval of supplemental funding, it placed all employees on a part-time furlough for about 2 weeks, beginning in late June 1982.

Although MSPB was able to somewhat offset the impact of its personnel actions primarily through the use of uncompensated overtime, and in fact closed about as many cases during fiscal year 1982 as in 1981, a greater number of the 1982 decisions exceeded MSPB's self-imposed 120-day processing standard.

OSC ACTIONS TO REDUCE BACKLOG
AND ABSORB BUDGET CUT RESULTED
IN LESS EFFECTIVE PERFORMANCE

OSC also had to take several steps to accommodate its reduced budget. Because OSC was already well below its authorized personnel ceiling, cost-cutting efforts did not include a reduction in force. However, OSC did postpone additional hiring despite a high rate of attrition during the year. The inability to hire created managerial and administrative problems for several regional offices.

OSC significantly reduced funds available for investigative travel before its request for supplemental funding was approved in July 1982. Concurrent with these efforts, the agency continued an ongoing effort to reduce its backlog of cases, particularly cases which had been pending 9 months or more. Because of the push to reduce the backlog and the lack of travel funds to conduct onsite investigations, some potentially valid cases may have been closed without any followup action and others were closed because of incomplete telephone or mail investigations.

The reduction in travel funds also affected OSC's ability to pursue legal actions. OSC staff said the shortage of funds had kept OSC from intervening in some MSPB hearings or had hindered their attorneys from proper pretrial preparation for other hearings.

Although travel for investigations and legal actions was limited, GAO noted that more than half of all travel funds OSC spent in the first 9 months of the fiscal year were for administrative and non-case-related purposes.

OSC also postponed outreach efforts to inform Federal employees and agencies of OSC functions and employees' right to file complaints, closed one field office, and did not open another.

AGENCY COMMENTS

GAO met with MSPB and OSC officials to obtain their comments on the draft report. MSPB officials said the report was factually correct but should place greater emphasis on the savings achieved through, and the efforts of the staff to overcome the impact of, personnel actions. GAO added some statements to highlight the MSPB officials' views.

A new Special Counsel was appointed after GAO completed its review. He declined to comment since the report addressed the time period before he took office.



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ABBREVIATIONS

| | |
|------|---------------------------------|
| GAO | General Accounting Office |
| MSPB | Merit Systems Protection Board |
| OMB | Office of Management and Budget |
| OSC | Office of the Special Counsel |

CHAPTER 1

INTRODUCTION

On March 11, 1982, the Chairman, House Committee on Post Office and Civil Service, and the Chairwoman, Subcommittee on Civil Service, and Chairman, Subcommittee on Human Resources, House Committee on Post Office and Civil Service, asked us to review the impact of fiscal year 1982 budget reductions on the Merit Systems Protection Board (MSPB) and its Office of the Special Counsel (OSC). This report presents the results of that review.

FUNCTIONS OF MSPB AND OSC

MSPB and OSC were established on January 1, 1979, by President Carter's Reorganization Plan No. 2 of 1978. The plan abolished the Civil Service Commission and transferred its personnel management functions to the new Office of Personnel Management (OPM) and its adjudicatory, appellate, and merit system enforcement functions to MSPB. MSPB, with a three-member, presidentially appointed Board, is a bipartisan agency with its headquarters in Washington, D.C., and regional offices in 11 major cities. As of January 1983, it had a staff of approximately 365 full-time and 59 temporary employees. MSPB is, in its own words, "a quasi-judicial agency designed to protect the integrity of Federal merit systems against partisan political and other abuse and to insure adequate protection for employees against unlawful abuses by agency management." Its functions are

- hearing and deciding appeals of adverse actions from Federal employees;
- conducting studies of merit systems to determine whether they are free of prohibited personnel practices;
- reviewing OPM regulations to determine whether they violate merit system principles, as written, or as implemented by a particular agency; and
- hearing and deciding cases brought before it by the Special Counsel.

OSC, headed by a presidentially appointed Special Counsel, is an independent office which shares with MSPB the responsibility of insuring that personnel practices in the Federal Government are consistent with merit system principles. Although OSC has regulatory and management control over its operations, it

does not have independent budget authority from MSPB. OSC is headquartered in Washington, D.C., and has field offices in six locations. As of February 1983, OSC had a staff of 95.

The Special Counsel is required to receive and investigate allegations or initiate, in the absence of an allegation, investigations of

- prohibited personnel practices, including reprisals against "whistleblowers" (Federal employees who report improper or illegal Government activities);
- activities prohibited by other civil service laws, rules, or regulations;
- arbitrary or capricious withholding of information under the Freedom of Information Act; and
- prohibited political activity by Federal employees and certain State and local government employees.

The Special Counsel forwards allegations of mismanagement, gross waste of funds, and abuse of authority or substantial and specific danger to the public health or safety to the head of the agency involved. The agency head reports to OSC on actions taken.

The Special Counsel may request MSPB to order a stay (a temporary halt) of any personnel action if there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice. MSPB can order the withholding of pay from employees who knowingly and willfully refuse or fail to comply with an MSPB order. Disciplinary action can also be taken against employees who have engaged in prohibited personnel practices. Also, the Special Counsel may request MSPB to order an agency to take appropriate corrective action whenever the agency does not take action recommended by the Special Counsel.

CHRONOLOGY OF MSPB AND OSC BUDGET REDUCTIONS

In February 1981, MSPB submitted its proposed 1982 budgets for MSPB and OSC to the Congress and to the Office of Management and Budget (OMB). This concurrent submission arrangement was established by the Civil Service Reform Act to allow MSPB and OSC to request funds from the Congress without prior OMB approval.

MSPB requested \$17.4 million, a 16-percent increase over its fiscal year 1981 appropriation. In addition to appropriated funds, MSPB requested authority to be reimbursed up to \$1.2 million during fiscal year 1982 by the Civil Service Retirement and Disability Trust Fund for costs incurred to adjudicate retirement appeals. MSPB based the latter request on its estimate of the number of retirement appeals it would receive during the year. OSC requested \$5.2 million, a 17-percent increase over its fiscal year 1981 appropriation.

OMB reduced the fiscal year 1982 requests to fiscal year 1981 levels--about \$15 million for MSPB (plus a maximum of \$700,000 from the retirement and disability fund) and about \$4.5 million for OSC. The House of Representatives approved the requests at this level. Because the Senate had not acted by September 30, 1981, both agencies were included in a continuing resolution which set their appropriations at the House-approved level through November 20, 1981. This resolution was later extended to December 15, 1981.

In September 1981, the President had recommended a general 12-percent reduction to most agencies' budgets included in the appropriations bill. MSPB officials said they were assured by the Administration that the reduction would not apply to MSPB's budget--to the point of MSPB being excluded from cuts in the Administration's formal budget transmission. OSC was not excluded. However, when the Senate Appropriations Committee approved the reduction, MSPB was included. On November 17, 1981, the Senate accepted the reduced levels approved by its Appropriations Committee.

On December 15, 1981, the Congress passed a third continuing resolution effective through the end of March 1982. This resolution was keyed to the Senate-approved levels and imposed an additional 4-percent reduction. As a result, the appropriations of both agencies were reduced 16 percent below their fiscal year 1981 funding levels. MSPB received \$12.6 million (plus a maximum of \$700,000 from the trust fund) and OSC \$3.69 million.

Because MSPB had originally been excluded from the Administration's 12-percent reduction, it conducted business and obligated funds through December 15, 1981, as though its fiscal year 1982 appropriation would be about the same as fiscal year 1981. Consequently, after the third continuing resolution was passed, MSPB had to drastically reduce spending to compensate for the fact that the 16-percent reduction was retroactive to the beginning of the fiscal year. OSC officials told us that since their

agency had always been included in the Administration's request for budget reductions, they prepared for the reduction by cutting expenses at the beginning of the fiscal year.

Both MSPB and OSC submitted supplemental funding requests to the Congress, which were approved in mid-July 1982. MSPB requested about \$4 million, primarily to cover a move to a new building in October 1981, higher than anticipated rent and utility bills, and temporary professional and clerical staff to process and adjudicate about 11,000 appeals received from fired air traffic controllers. OSC requested an additional \$238,000 primarily to cover increases in rent and utilities. Approval of MSPB's request did not come soon enough to prevent the agency's furloughing nearly all employees part-time for about 2 weeks beginning in late June 1982.

FUNDING PROBLEMS ARE NOT
NEW TO MSPB AND OSC

Since MSPB's and OSC's inception in 1979, inadequate funding has prevented the agencies from effectively accomplishing their missions. We discussed this problem in several previous reports:

"In our opinion with their present staffing and funding, the Board and particularly the Special Counsel do not have adequate resources to establish full operations and effectively carry out the duties and responsibilities assigned to them under the Civil Service Reform Act. **As a result, the intent of the legislation cannot be achieved.* * *** (FPCD-79-51, Apr. 20, 1979.) Emphasis added.

"In its first year of operation,* * *the Special Counsel's Office was restricted in carrying out its statutory mandate by a lack of staff and other resources; and **as a result, the full intent of its role as envisioned by the Reform Act was not achieved.**

* * *The Board, like the Special Counsel, did not have the personnel or resources to effectively carry out the full range of its statutory functions and responsibilities." (FPCD-80-46, June 9, 1980.) Emphasis added.

"As a result of fiscal year 1980 recision of funds,* * * the Special Counsel's office terminated all hirings, travel for investigation of complaints, and purchase plans. In addition, about 60 percent of the office's staff was detailed to the Merit Systems Protection Board.

We believe this budget cut* * *raises questions about the real commitment of the Congress and the Administration to the activities and responsibilities of the Special Counsel." (FPCD-81-10, Dec. 30, 1980.) Emphasis added.

"In August 1980, OSC stopped all traveling and most other outlays.* * *As a result,* * *the case backlog increased, and OSC has not been able to fully recover.

The inability to hire staff during two presidential hiring freezes added to OSC's problems." (FPCD-82-10, Dec. 2, 1981.)

OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives were to (1) identify the steps taken by MSPB and OSC to absorb fiscal year 1982 budget reductions, (2) identify the impact of the steps taken by these agencies to accommodate the reductions, and (3) assess the agencies' capabilities to discharge their responsibilities under the Civil Service Reform Act of 1978 and other statutes.

To obtain information on how the budget reductions were implemented and the impact of the actions on the agencies and their missions, we reviewed agency budget justifications, staffing plans, annual reports, regulations, internal memorandums, and caseload statistics. We interviewed MSPB and OSC officials in the Washington, D.C., headquarters and the Atlanta, Georgia; Dallas, Texas; and San Francisco, California, regional offices.

We selected the Dallas and Atlanta regional offices because Dallas and Atlanta do not have high concentrations of Federal employees; thus, the regional offices are dependent on travel funds to conduct onsite hearings or investigations. We chose Washington, D.C., and San Francisco regional offices since they are less dependent on travel funds because of the large numbers of Federal employees within commuting distance. We also telephoned staff in the Los Angeles and Seattle suboffices of OSC's San Francisco regional office to determine the effect of the reductions.

We performed our review from April to September 1982 in accordance with generally accepted Government audit standards.

CHAPTER 2

BUDGET REDUCTION ADVERSELY

AFFECTED MSPB OPERATIONS

The fiscal year 1982 budget cut adversely affected all areas of MSPB operations. MSPB took several actions to reduce costs but was unable to avoid a 2-week, part-time furlough of all employees beginning in late June 1982.

MSPB did not reorder its program priorities to accommodate the cut because the agency viewed the reduction as temporary. Since the cut was not finalized until after the fiscal year began, MSPB determined that no savings would result from a reduction in force. However, MSPB did freeze hirings, promotions, and overtime pay; require participants to travel to MSPB regional offices for hearings; and stop purchasing written transcripts of hearings for use by MSPB officials and providing free copies of transcripts to parties involved in hearings. MSPB also made procedural adjustments to the hearings process aimed at reducing costs, such as postage and copying expenses. MSPB took these actions to cut costs, and, at the same time, to be able to continue holding hearings and settling employee appeals.

Although MSPB was able to continue settling appeals at nearly the same rate as the preceding year, the length of time needed to settle appeals and the overall cost to the Government to settle some appeals increased. Also, because of the travel costs involved, some employees did not request hearings. In addition, merit system studies had to be postponed. Moreover, MSPB was not able to handle a significant increase in its workload, which it carried forward to fiscal year 1983.

IMPACT OF PERSONNEL ACTIONS LIMITED BY UNCOMPENSATED OVERTIME

MSPB officials told us that most of the agency's budget cut was absorbed by limiting or suspending a variety of personnel actions during the fiscal year. MSPB froze hirings, promotions, and overtime pay. MSPB decided against a reduction in force because by the time the cut was finalized, it was too late in the year to achieve savings from such an action. However, MSPB was forced to impose a 2-week, part-time furlough of all employees, beginning in late June 1982, before the Congress approved supplemental funding. After the supplemental was approved, MSPB began to fill vacant positions.

The hiring freeze created a serious shortage of clerical employees to handle the administrative tasks needed to file and docket about 11,000 appeals MSPB received from fired air traffic controllers. Presiding officials in the Washington regional office told us they spent between 20 and 50 percent of their time typing and filing. We observed several officials typing hearing notifications and other documents during our May 1982 visit. We were also told by several regional directors that they spent time every day opening and sorting mail, docketing cases, and performing other clerical duties. Presiding officials in the regional offices frequently performed clerical work during uncompensated evening and weekend hours, or put aside their regular work during normal work hours.

While MSPB's personnel actions delayed case processing, the large amount of uncompensated overtime the staff worked enabled the agency to issue nearly as many decisions in fiscal year 1982 as it did in fiscal year 1981.

MSPB HEARING POLICY CHANGE INCREASED
COSTS TO OTHER PARTIES, DELAYED
SETTLEMENTS, AND EXCLUDED SOME EMPLOYEES
FROM THE HEARINGS PROCESS

To reduce its costs, MSPB required all parties to travel to MSPB regional offices for hearings. This change reduced MSPB's operating costs but often at the expense of those who used the agency's services. MSPB spent a total of \$308,000 for travel in fiscal year 1982, compared to \$425,000 a year earlier.

In November 1981, when MSPB was first aware that its budget request might not be approved, it announced that all hearings would be temporarily suspended. When MSPB resumed hearings in February 1982, it decided to hold them only in its 11 regional offices. Previously, MSPB had sent its presiding officials into the field to hold hearings at locations convenient to the appellant, agency, and witnesses. The change in policy requiring all parties to travel to the MSPB regional offices resulted in Federal agencies paying travel expenses for their own representatives and witnesses, as well as for many appellants and their witnesses.

Although the policy saved money for MSPB and allowed the agency to continue to operate within its reduced spending authority, certain costs to the Government as a whole increased. For example, MSPB's Dallas regional office received an appeal from a separated employee who had worked in Muskogee, Oklahoma. The agency had to pay the travel expenses of the appellant's witnesses, as well as its own representatives and

witnesses, because they were Federal employees. In all, 20 witnesses and 3 agency officials had to travel from Muskogee to Dallas. The agency's travel costs to attend this hearing in Dallas exceeded \$6,200. Had one presiding official gone from Dallas to Muskogee, MSPB's costs would have been about \$325.

In another case, an employee in Alabama appealed the denial of his within-grade increase. His employing agency filed three motions with MSPB's Atlanta regional office to request that the hearing be postponed because of the travel costs involved. MSPB denied each request. The agency estimated that it would have cost MSPB \$190 to send a presiding official to the work site to hold a hearing. However, the agency's representative who attended the hearing in Atlanta told us that his agency would spend between \$1,000 and \$1,500 in travel and per diem costs before the appeal was settled. He complained that the high cost of attending MSPB's hearings prevented agencies from taking some adverse actions.

Agencies, employees, and their unions offered to reimburse MSPB for the travel expenses of its hearings officers. MSPB requested the Comptroller General to reconsider an earlier decision (59 Comp. Gen. 415) which prohibited MSPB from accepting reimbursement of its expenses. The new decision (B-195347/B-195348, dated May 26, 1982) affirmed the 1980 ruling. The Comptroller General held that, in view of MSPB's statutory responsibility to provide appeals hearings, there is no authority for MSPB to accept reimbursement of travel expenses. Without specific authority from the Congress, reimbursement by an employing agency would be an illegal transfer of appropriated funds. The decision also found that the unauthorized acceptance of payments from an employee or union would be an improper augmentation of MSPB's appropriations.

MSPB presiding officials tried to minimize the impact of the changed travel policy on agencies by

- flexibly scheduling hearings and allowing only short recesses and lunch breaks to enable agency representatives and witnesses to attend hearings and complete all travel in 1 day,
- carefully screening appellant witness lists to reduce the number of people the agency had to transport,

--relying more heavily on telephone conference calls rather than personal meetings to discuss hearing-related issues, and

--allowing more evidence to be introduced by deposition rather than testimony to further reduce witness lists.

The changed travel policy was in effect from February to July 1982. During this time, the number of decisions issued by MSPB's regional offices actually increased. Presiding officials issued about 200 more decisions than during the same period in the preceding year, despite the travel ban, for several reasons:

--Many hearings were held as scheduled, with agencies and appellants incurring travel costs.

--Regional offices were directed to settle as many disability retirement appeals as possible because MSPB is reimbursed by the Civil Service Retirement and Disability Trust Fund for settling disability cases. Disability cases are also often less time consuming than other cases.

--Presiding officials concentrated on cases in which appellants did not request hearings.

Although MSPB issued almost as many decisions in fiscal year 1982 as in 1981, the age of its pending caseload increased substantially, due in part to the flood of air traffic controller appeals. On August 8, 1981, only 68 pending cases exceeded the agency's self-imposed 120-day limit for issuing decisions. A year later, the number of overage cases was 11,615: 10,700 air traffic controller appeals and 915 cases of more typical variety. Many of the 915 cases were overage because of postponements requested by either the appellant or the agency because of the new travel policy.

After MSPB changed its travel policy, many appellants and agencies requested postponements until MSPB again had sufficient funds to send presiding officials to field locations. Former employees often lacked money to pay the transportation and per diem costs for themselves and their representatives. If these employees wanted a hearing, they had to request a postponement and wait until some unpredictable future date when MSPB could afford to send a presiding official to them. The cost to attend a hearing was particularly prohibitive to appellants from places like Alaska, Panama, the Far East, and Europe. Presiding officials automatically granted appellant requests for postponement but were less amenable to postponement requests received from agencies. As of May 1982, more than 400 cases had been postponed because of alleged financial hardship.

MSPB lifted its travel restriction in July 1982 when the Congress approved the agency's request for supplemental funding. We were told that after July, presiding officials scheduled and traveled to hearings held in locations convenient to other parties.

MSPB'S CHANGE IN TRANSCRIPTION
POLICY AFFECTED PRESIDING OFFICIALS,
APPELLANTS, AND OTHER AGENCIES

Title 5, United States Code, Section 7701, requires that MSPB maintain a transcript of any appellate hearing. Until January 1982, MSPB met this requirement by contracting for written transcripts of hearings from private court reporters. MSPB found contracting for this service less expensive than maintaining its own reporters. MSPB paid for not only its copies, but also those it provided to appellants and agencies. Contracts for transcription services cost MSPB about \$1 million annually.

In January 1982, MSPB published a new regulation which terminated the practice of providing free copies of transcripts to appellants and agencies. The idea had been developed before the budget reduction but did result in savings for the agency. After January, interested parties had to purchase transcripts directly from the court reporters. In March 1982, the National Treasury Employees Union sued MSPB, claiming the agency's travel and transcription policies denied employees their right to due process. At the end of February 1983, the case was still pending.

Because of the budget reduction, MSPB also decided that it could not afford to purchase written transcripts for its presiding officials to use when drafting decisions. For several months, the only exceptions were for cases involving long or complex hearings. In all other cases, the court reporter gave MSPB tape recordings of the hearings. MSPB estimated that the new policy of not providing free transcripts and of purchasing fewer transcripts for its own use would save about \$400,000 in fiscal year 1982.

Presiding officials told us that not having a written transcript made it more difficult to write decisions. Although it was easy to flip through a written transcript to find a particular witness' testimony, it was more time consuming to search through a tape recording. The presiding officials compensated by taking more notes during hearings and by preparing decisions with less complete recitations of facts and fewer direct quotes. Two regional office managers told us they

believed the writing quality (but not the accuracy) of MSPB decisions declined because of these shortcuts. The San Francisco regional office was particularly handicapped because it did not have equipment on which to play the recordings.

STAFF LIMITATIONS CURBED
MERIT SYSTEM OVERSIGHT

The Civil Service Reform Act vested in MSPB the responsibility for conducting special studies of the civil service merit systems. MSPB is required to report on whether the civil service is being adequately protected against prohibited personnel practices. MSPB performs these functions through its Merit Systems Review and Studies Office. This office, like the rest of MSPB, has experienced funding problems. MSPB's annual report to the Congress for 1981 stated:

"Budgetary restraints have prevented the Board from implementing through the Office of Merit Systems Review and Studies the comprehensive merit systems oversight the Civil Service Reform Act originally contemplated."

As of mid-summer 1982, the Merit Systems Review and Studies Office had a staff of 14, including managers, researchers, and support employees. Managers told us that, because of limited staff, they had not initiated any new studies in fiscal year 1982, although numerous studies were under consideration. Proposed studies included onsite followups at individual agencies of issues covered in earlier reviews and an assessment of whether career Senior Executive Service managers are experiencing undue political pressure. The staff was occupied primarily with completing reports begun in 1981 on reductions in force and on significant actions taken by OPM during 1981.

MSPB TASK FORCE CONSIDERED OTHER
CHANGES TO ECONOMIZE OPERATIONS

In early 1982, MSPB formed an internal task force to find new ways to streamline operations and cut costs. The task force looked at virtually every step of MSPB's appeal settlement process and suggested a variety of changes. As a result of one of the task force's recommendations, MSPB now uses regular rather than registered mail for most purposes and requires parties to provide copies of relevant paperwork to each other rather than performing this task itself.

Another suggestion developed by the task force and being tested by MSPB provides appellants a new method of settling their appeals, which would also speed processing. Under section 7701(h) of title 5 of the United States Code, MSPB is authorized to provide alternative methods of settling disputes. Currently, appellants can request MSPB to issue a decision on the basis of documents or they can request a hearing. MSPB has developed an experimental third choice--"voluntary arbitration"--whereby an MSPB presiding official will arbitrate appeals. This procedure would be used only if requested by an appellant and if approved by the MSPB regional director. MSPB officials envision a simpler, less formal proceeding than a hearing, with the entire process taking less than 45 days. Decisions issued for these cases would have no precedential bearing on succeeding cases.

Although this procedure would not be suitable for all appeals, nearly every presiding official we interviewed stated that hearings are also not suitable for all appeals. Most presiding officials believed that appellants requested far more hearings than necessary and that MSPB should have authority to deny requests for hearings. They said many cases could be settled easily and quickly without the expense or delay of a hearing, particularly those cases which involve an interpretation of law and not a dispute over the facts.

The task force also suggested permanently limiting the number of sites at which hearings could be held to reduce MSPB's travel costs. MSPB implemented this proposal in November 1982 and identified 80 cities as hearing sites in addition to its 11 regional offices. All hearing participants within commuting distance of such a site are expected to travel to the site for hearings. If the distance is greater than commuting distance, the presiding officials will travel to a hearing site more convenient to the participants.

CONCLUSIONS

The size of the budget reduction, its delayed application, and the delayed approval of supplemental funds seriously affected MSPB's ability to operate efficiently and effectively in fiscal year 1982. Moreover, the actions MSPB had to take to adjust to its reduced budget had undesirable repercussions on other agencies and appellants.

Despite these difficulties, MSPB was able to issue nearly as many decisions in 1982 as in 1981. However, a far greater number of decisions exceeded MSPB's processing standard of 120 days. In addition, since MSPB could not hire additional staff to eliminate its huge backlog of air traffic controller appeals,

these cases were carried forward into fiscal year 1983 which will likely adversely affect processing times in that year. Staff shortages also limited MSPB's ability to perform Civil Service merit system oversight.

AGENCY COMMENTS

We met with MSPB officials to obtain their comments on the draft report. The officials said the report was factually correct and provided us with a few suggested wording changes for clarification. The officials also believed that the report should place greater emphasis on the savings achieved through MSPB's personnel actions and the extra efforts of the MSPB staff to overcome the adverse impacts of the budget cut in continuing to issue decisions.

We have incorporated the suggested wording changes where appropriate and have added statements to highlight the MSPB officials' views concerning the personnel actions.

CHAPTER 3

OSC ACTIONS TO ABSORB BUDGET REDUCTION RESULTED IN LESS EFFECTIVE PERFORMANCE

When OSC's 1982 budget was cut, its staffing level was well below its authorized personnel ceiling. Consequently, it decided against a reduction in force and focused cost-cutting efforts on other areas. Specifically, OSC cut travel; postponed staff hiring, promotions, and awards; and did not pursue planned outreach efforts.

The actions taken by OSC to operate within its fiscal year 1982 appropriation, in conjunction with an ongoing effort to reduce its backlogs, significantly reduced its effectiveness. During the fiscal year

- investigations were less timely and less thorough,
- staffing imbalances arose, and
- outreach efforts were not pursued.

In addition, because of budget and staff constraints, OSC closed one field office and did not staff another which had been opened and furnished.

INVESTIGATIONS WERE LESS TIMELY AND LESS THOROUGH

Two factors affecting how OSC investigators performed their duties were at work at the beginning of fiscal year 1982. The first was a policy carried over from the preceding fiscal year aimed at reducing the agency's backlog of pending cases, particularly those which had been in process for more than 9 months. The second was the agency's reduced budget for the year, which resulted in OSC cutting its planned travel expenses.

Beginning in August 1981, OSC statistics showed a steady decrease in both the total number of pending cases and in the number of cases in process for more than 9 months. An OSC official told us that a push to reduce the inventory of older cases began in early 1981 and was reemphasized in July 1981 by the newly appointed Special Counsel. In June 1981, the Special Counsel had withdrawn regional office authority to close cases without headquarters review. In October 1981, the Special Counsel returned that authority but stressed the importance of moving all cases which had been pending 9 months or longer.

Investigators told us that this directive was relayed to them as instructions to close, without action, all cases in which complainants had not supported their allegations in their initial complaint letters. The Dallas regional office manager told us her office closed so many cases that, for a time, cases were processed in assembly-line fashion.

The Atlanta office had 24 cases in October 1981 which had been pending 9 months or longer. The Special Counsel directed they be closed or moved to litigation before MSPB by December 1, 1981. By December 1, all but four of the cases had been closed with no further action taking place. Agencywide, the number of cases which had been pending at least 9 months decreased from about 350 in August 1981 to about 100 4 months later.

OSC had originally planned to spend \$135,000 for travel in fiscal year 1982. Following the budget reductions, it reduced this amount to \$40,000 pending approval of supplemental funding. This sum was intended to cover the cost of both case-related and administrative/managerial travel.

Investigators and headquarters officials used informal, ad hoc criteria to determine which cases would receive a share of the limited travel funds available for onsite investigations. Regional office managers and staff members told us that they believed that as a result of the two efforts--reducing the backlogs and limiting onsite investigations--many potentially valid cases were closed prematurely.

Investigators made similar allegations in the past, which we discussed in our report, "Observations on the Office of the Special Counsel's Operations" (GAO/FPCD-82-10, Dec. 7, 1981). We stated:

"Some OSC staff members expressed concern that investigators have been pressured to act quickly on complaints and only spend time on those that appear to have the strongest case.* * *If OSC had decided to investigate each case more fully, OSC's backlog would certainly have increased, but each complainant would have had the opportunity to explain his/her case,* * *. The investigator also would have had the opportunity to determine that a complaint was indeed unsubstantiated rather than just poorly presented to OSC."

During our 1982 review, OSC investigators told us that when claimants provided enough information and OSC did not close their cases after initial review, the investigation began with a preliminary inquiry, by mail or by telephone, to the complainant and perhaps other agency officials. Many cases were closed after this step because OSC considered the allegations to be unfounded. Investigators reviewed any remaining cases for justification for further, perhaps onsite, investigation. Their regional offices then, contrary to past practice, had to request approval for investigative travel funds from OSC headquarters in advance and on a case-by-case basis. In a sense, the regional offices competed among each other for funds for their cases.

These requests for travel funds were screened by the Associate Special Counsel for Investigations. He told us that he approved investigative travel expenses on the basis of such factors as

- the likelihood that a prohibited personnel practice could be proven,
- the potential per diem and travel costs involved in the investigation,
- the severity and immediacy of the action in dispute, and
- the likelihood of OSC success if the matter was litigated before MSPB.

The travel restrictions affected the day-to-day operations of the regional offices. When investigators could not get funds for an onsite visit, they contacted the complainant and agency officials by mail and by telephone to conduct investigations, which they said was unsatisfactory. Written inquiries had the potential for being misunderstood and investigators often had to follow up responses with additional letters. Also, they could not be certain who had actually prepared the responses. Telephone interviews posed problems, too, particularly if the investigators had to ask potentially embarrassing questions to someone they had never met--for example, in cases involving alleged sexual harassment.

If investigators needed to review documents and files but could not travel, they had to request copies from the agency involved. This practice was time consuming and often disruptive to agency operations if large numbers of files had to be located, copied, and mailed to OSC. In addition it was

difficult for investigators to determine whether one allegation of a prohibited personnel practice was part of a pattern when investigations had to be conducted in this manner.

Travel funds were so limited that as of May 1982, the Atlanta regional office had conducted only two nonlocal, on-site investigations and the Dallas office had made only five non-local visits. Investigators in Atlanta did not pursue cases within the city limits because even \$.50 bus fares required advance approval. One Dallas case went without action for 2 months while OSC headquarters considered a request for \$30 to send an investigator to a work site only 35 miles away. An investigator from the Seattle suboffice of OSC's San Francisco region told us that he made only one nonlocal investigation in the first 7 months of fiscal year 1982.

The San Francisco office completed 33 onsite investigations before July 1982 because most of its caseload comes from employees working within the San Francisco/Oakland area. Only five of those investigations involved costs exceeding \$10. Investigators in Washington also were not handicapped by shortages of travel funds because of the large local Federal work force in its vicinity and the resulting low cost of onsite investigations.

The large number of cases closed without investigation or delayed pending the availability of travel funds reduced the number of cases forwarded by investigators to OSC's Prosecution Division for legal action. In addition, travel restrictions affected the attorneys' ability to travel to MSPB hearings, thus preventing the attorneys from intervening in some hearings.

We reviewed all vouchers on file at OSC for travel to be completed between October 1, 1981, and July 1, 1982. Of the 49 vouchers, 27 were for travel related to investigating or litigating specific cases. The remaining 22 were for administrative purposes. The total cost to OSC for the case-related travel was \$6,043. However, in the same period, \$9,681 was spent for non-case-related travel.

Supplemental funding was eventually provided in July 1982 and an additional \$40,000 was allotted for investigative travel. As a result, the agency planned to spend more on investigative travel in the last 3 months of the fiscal year than it did in the preceding 9 months. The official in charge of OSC investigative activities told us that by the end of the fiscal year all cases requiring onsite visits had been investigated, although less timely than was desirable.

HIGH ATTRITION CAUSED STAFFING
PROBLEMS IN OSC FIELD OFFICES

OSC lost more than 20 percent of its staff from attrition from June 1981 to August 1982. Although it was authorized 111 positions, as of August 1982, OSC had only 79 employees to staff its headquarters and 6 field offices. Some investigators told us that the staff's dissatisfaction with OSC's policies concerning case closure and onsite investigations contributed to the high attrition during the year. OSC officials told us that they expected some attrition during this period because the office established strict performance standards for quality and timeliness of case processing. The officials said, however, that most of the staff that left the office during this period did so for reasons other than dissatisfaction over the work conditions. Other factors which adversely affected morale included the postponement of promotions and awards.

OSC had insufficient funds to hire additional staff. As a result, management and clerical vacancies in its six field offices were not filled, which caused managerial and administrative problems. For example, because of staff shortages, the Atlanta office was placed under the direction of the Dallas regional office manager in October 1981. This remote supervision caused numerous administrative problems and delays in processing cases in Atlanta office. Most correspondence and decisions on pending cases had to be forwarded through Dallas for review and approval, before being sent to the Washington headquarters for final action. The Dallas manager said that only one managerial visit to Atlanta had been possible between October 1981 and June 1982 because of the shortage of travel funds. As a result, she was unable to provide the guidance and assistance to the Atlanta staff she believed was necessary.

The San Francisco office manager also directs the activities of the Seattle and Los Angeles suboffices. The restricted availability of travel funds limited supervisory visits to these locations. The Los Angeles suboffice had unique problems because it could not fill vacant positions and had only one staff member--an investigator. Because the agency could not hire a secretary, the investigator had to perform clerical duties. The Seattle suboffice had a full-time staff of three--an investigator, an attorney, and a secretary.

Because of its limited staff, OSC closed its Boston branch office in February 1982. In addition, it did not staff an office it had leased and furnished in Denver. Although OSC realized some savings when it turned back this property, it had to pay \$5,000 on the vacant offices because it had to give 120 days' notice for lease cancellation.

The agency could not begin hiring to alleviate its staff shortages until the beginning of fiscal year 1983. By February 1983, OSC had hired 30 additional staff members, bringing its total staff to 95.

OUTREACH EFFORTS WERE LIMITED
BECAUSE OF BUDGET RESTRICTIONS

Several OSC field office managers told us that, because of limited travel funds, they had been unable to provide outreach services to Federal employees located beyond normal commuting distance from OSC offices. Outreach efforts typically include informational pamphlets, posters, articles, lectures, or seminars by OSC staff which discuss in layman's terms OSC's role and functions and encourage people to file complaints or report wrongdoing.

In a December 1980 report, ^{1/} we stated that OSC could do more to encourage employees to report improper or illegal Government activities. We found that Federal employees generally appeared confused about OSC's role and responsibility. We recommended that OSC take steps to inform agencies and employees of its role and its procedures which might encourage more employees to report wrongdoing without fear of reprisal. However, OSC was able to undertake few outreach activities in fiscal year 1982 despite its realization that efforts to reach potential whistleblowers were necessary.

OSC reported that agency Inspectors General expressed a general desire to refer instances of reprisal against whistleblowers to OSC for disposition. However, OSC's managers believed that with its limited staff and lack of travel funds, OSC would be unable to handle an increase in workload. The managers believed only minimal efforts to encourage whistleblowing were practical.

OSC's major outreach effort in fiscal year 1982 was a management training course it conducted in Washington, D.C. The course was designed to acquaint managers from one Federal agency with Reform Act provisions pertaining to initiating adverse

^{1/}"The Office of the Special Counsel Can Improve Its Management of Whistleblower Cases" (GAO/FPCD-81-10, Dec. 30, 1980).

actions without committing prohibited personnel practices. The course elicited favorable comments from the participants but negative comments in news reports and from one union which perceived that the Special Counsel was taking a pro-management position.

CONCLUSIONS

Complaints considered by OSC in fiscal year 1982 were not likely to receive thorough, timely investigations. This situation occurred because of several factors, not all related to the agency's fiscal year 1982 budget reduction. Actions taken in response to the budget reduction lengthened complaint processing time. The push to reduce the inventory of old cases caused OSC staff to close cases without any followup with the complainant, permitting the speculation that some cases were closed prematurely. These actions prevented OSC from effectively carrying out its responsibilities.

AGENCY COMMENTS

We met with OSC officials to obtain their comments on our draft report. A new Special Counsel was appointed after we completed our work. He declined to comment on the report since it addressed the time period prior to his taking office.

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