

## X. FISCAL YEAR 2009 PERFORMANCE BUDGET

The FY 2009 budget request of \$262.595 million is formulated on the following assumptions:

- FY 2009 case intake will remain at projected FY 2008 levels – 23,000 unfair labor practice charges, and 3,500 representation cases
- Planned performance goals under GPRA will be met
- Efforts will continue to reduce the inventory of ULP cases in the Regional Offices
- The President's Management Agenda will be supported by funding Agency investment

programs that are essential to maintaining productivity, efficacy and efficiency, including employee development and information technology

**Funding Profile**

The \$262.595 million requested will fund essential staffing, space requirements, long term investments in IT, and employee development needs.

The NLRB’s mission – the resolution of labor disputes through investigation, settlement, advocacy and adjudication – relies primarily on skilled and experienced professional employees; accordingly, most of the Agency’s budget is dedicated to personnel costs. In FY 2009, an estimated \$210 million or 80 percent of the Agency’s budget will go for employee pay and benefits. The second largest expense, space rent and associated security costs, is estimated to total \$31.0 million in FY 2009, or about 12 percent of the requested funding. The remaining 8 percent will be allocated among all other operating costs and activities critical to meeting and supporting the Agency’s mission and management objectives, including IT development, acquisition and maintenance; providing transcripts of formal hearings; covering statutory fees, travel reimbursements and, increasingly, paying for interpreters for witnesses; maintaining current legal research collections; and complying with government-wide statutory and regulatory mandates.

The following table places the FY 2009 performance budget request in the context of resources received or anticipated over the FY 2007 through FY 2009 timeframe:

	<b>FY 2007 Actual</b>	<b>FY 2008 President’s Request</b>	<b>FY 2008 Post-Rescission</b>	<b>FY 2009 President’s Request</b>
<b>Funding Level (000s)</b>	\$251,507	\$256,238	\$251,762	\$262,595
<b>Agency FTE</b>	1,729	1,690	1,655	1,680
<b>Backlog of ULP Cases</b>	100	100	400	100

The requested funding of \$262.595 million constitutes an increase of \$10.8 million over the \$251.762 million provided in FY 2008, and \$11.1 million over the funding provided in FY 2007. The \$10.8 million will help fund the compensation costs associated with 1,680 FTE, an increase of 25 over the FY 2008 projected FTE of 1,655. The additional FTE will be utilized to reduce the backlog to the FY 2006-2007 level of 100, down from the projected FY 2008 level of 400. The increase will also fund a projected \$500,000 increase in space rent and security costs.

**Budget Oversight**

The NLRB prides itself on being an extremely effective steward of taxpayer dollars. As such, we have conserved funds and maximized our spending flexibility over the years, by imposing strict hiring controls in all offices; restructuring and streamlining our workforce to either

eliminate higher graded positions, or fill them at lower grades; consolidating space so as to reduce rental costs; and cutting back on travel, and other case handling and support costs. While increased fuel and rental costs have offset, somewhat, these efforts, they have still enabled us to cover our normal requirements, while continuing to serve our constituents at a high level, maintain labor peace, and achieve our GPRA goals. Listed below are cost-cutting actions that we plan to continue in fiscal years 2008 and 2009:

- Actions to conserve and better manage resources, such as:
  - consolidated case handling travel; and
  - higher standards for discretionary travel
- Leave without pay program, and 120 – 150 day hiring lag for vacancies as necessary

## **Performance**

Through our judicious and efficient use of resources, combined with a decrease in case intake, the Agency has been able to minimize the backlog, while also cutting its FTE.

The normal pipeline of unfair labor practice situations pending in the regions is 3,600, which includes the normal cycle of cases pending preliminary investigation. Cases in the inventory may range from the newly filed to those that have been in process many months. Depending on its classification under Impact Analysis (Section VII), the target disposition period for a case is from 7 to 12 weeks. A pending caseload in the regions above the 3,600 figure is generally considered overage and, therefore, is defined by the Agency as its “backlog.”

The backlog had reached 1,046 in FY 2003, but due to the resources provided, and the workforce planning and information technology initiatives described in Section VII, the Agency was able to reduce the backlog to about 100 cases at the end of FY 2006, and maintain it at that level in FY 2007. Two factors will affect the backlog in FY 2008 -- funding and the absence of a full five-member Board. With the funding provided in FY 2008, and a two-member Board, the Agency projects that the backlog will increase to about 400 cases at the end of FY 2008. However, in FY 2009, assuming funding as per this request, a full Board, and a stable case intake, the Agency expects to again reduce the backlog to the FY 2007 level of 100.

During this same time period, the Agency will have reduced its FTE from 1,874 in FY 2003 and 1,888 in FY 2004, to 1,680 in FY 2009. Additional FTE cuts below this level, however, could again lead to increases to the backlog, and hurt the Agency’s ability to meet its GPRA goals, particularly its traditionally high settlement rate of about 95 percent. As mentioned, previously, every one percent drop in the settlement rate costs over \$2 million.

## BUDGET PROGRAM ACTIVITIES

The following is a discussion of the Program and Financing section of the budget that illustrates obligations by program activity. The FY 2009 figures below reflect increases to cover compensation, space rent, and systems-related contractual and equipment costs.

\$ Millions	FY 2007 Actual	FY 2008 Post-Rescission	FY 2009 President's Request
<b>Field investigation</b>	\$200	\$201	\$209
<b>ALJ hearing</b>	12	12	13
<b>Board adjudication</b>	25	25	26
<b>Securing compliance with Board orders</b>	13	13	14
<b>Internal review</b>	1	1	1
<b>Total</b>	\$251	\$252	\$263

### *Field Investigation*

The FY 2009 budget request of \$262.595 million is based on an estimated intake level of 23,000 ULP cases and 3,500 representation cases. Staffing in the Regions comprises approximately 70 percent of total Agency FTE, and this ratio will be maintained in FY 2009.

The initial processing and disposition of new case filings in the Field drives the intake for other stages of the case handling pipeline. Approximately one-third of the cases dismissed by the Regional Directors based on a lack of merit are appealed to the Office of Appeals. The meritorious charges, if not settled, go onto the administrative law judges' trial calendar and from there a portion are appealed to the Board for final decision. Some cases proceed to the Enforcement Division for Appellate Court review, and some of those may proceed to contempt or other post-enforcement proceedings. While cases are winnowed out at every stage of the pipeline, the rates tend to be constant over time. The primary indicator of overall caseload throughout the process is the rate at which the Field processes new filings.

At the FY 2009 requested level of \$262.595 million and 1,680 FTE, the number of situations pending is expected to total about 3,700 cases, a decrease of about 300 from the FY 2008 level.

### *Administrative Law Judges Hearing*

The requested funding anticipates that the number of hearings and judicial decisions issued in the Judges Division will remain relatively stable in fiscal years 2008 and 2009. The number of cases pending an administrative law judge decision is expected to remain stable at about 55 cases during this same period.

### ***Board Adjudication***

The number of pending ULP cases at the Board decreased from 317 at the end of FY 2006, to 208 at the end of FY 2007, and is expected to remain at this level in FY 2008 and FY 2009. This assumes that case intake remains at the current level, and that the Agency will have a full Board and staff in FY 2009. A full five-member Board is essential to decide cases on a timely basis and to continue to reduce the Board backlog.

### ***Securing Compliance with Board Orders***

Once the Board has decided a case, the next step in the process is to secure full compliance with Board Decisions and orders. The decisions and orders of the Board require either voluntary compliance or enforcement in the courts. A substantial portion of the Field FTE will be devoted to seeking voluntary compliance, while at Headquarters, resources will be allocated to the Division of Enforcement Litigation to continue to seek enforcement of Board orders in the courts. The Agency estimates that the number of cases pending compliance and court litigation will increase slightly in FY 2008 and FY 2009, as the Agency deals with ULPs resulting from recent Board decisions in several “lead” cases. The release of these decisions, as well as the anticipated release of decisions in other cases involving similar or related issues, will result in a spike in Board decisional output, in Appellate Court enforcement work, and in compliance work in the regions.