

UNITED STATES GOVERNMENT  
*National Labor Relations Board*  
Office of Inspector General



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# Review of the *Collyer* Deferral Process

Report No. OIG-AMR-41-04-01

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March 2004

## INSPECTOR GENERAL



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# NATIONAL LABOR RELATIONS BOARD

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WASHINGTON, DC 20570

March 17, 2004

I hereby submit a *Review of the Collyer Deferral Process*, Report No. OIG-AMR-41-04-01. This review was conducted to determine whether the Regional Offices of the National Labor Relations Board (NLRB or Agency) are resolving charges deferred under *Collyer Insulated Wire (Collyer)*, 192 NLRB 837 (1971), expeditiously and to evaluate how the Regional Offices monitor the *Collyer* deferral process.

Under *Collyer* and subsequent cases, certain charges must be deferred to an existing contractual grievance procedure. In its decision, the Board found that letting the grievance procedure resolve the underlying dispute would avoid formal and sometimes lengthy litigation. Close to 29,000 unfair labor practices were filed with the Agency in FY 2003 and approximately 2,900 of these were deferred under *Collyer*. About 5,000 cases were pending under *Collyer* as of September 30, 2003. Because the goal of resolving disputes expeditiously through the deferral process was not being met in a significant number of cases, in September 2002 and June 2003 the Division of Operations-Management (Operations-Management) requested the Regional Offices to perform two surveys of cases deferred under *Collyer* for extended periods.

The number and age of *Collyer* cases pending as of September 30, 2003 were lower than at September 30, 2001, even though more cases were deferred under *Collyer* in FYs 2002 and 2003 than in FY 2001. This progress was likely the result of the *Collyer* surveys requested by Operations-Management and not because Regional Offices followed Agency policy for managing *Collyer* cases.

Regional Offices did not manage *Collyer* cases in accordance with Agency policy. Generally, the Regional Offices reviewed did not contact the parties to follow up on the status of *Collyer* deferrals in accordance with Agency policy, which is every 90 days. The average age of *Collyer* deferrals as of September 30, 2003 was about 1½ years. In our sample of cases pending as of September 30, 2003, parties were only contacted within 91 days 12 percent of the time. In 45 percent of these cases, parties were not contacted for more than 1 year.

The Agency's policy statement for *Collyer* deferrals, Arbitration Deferral Policy Guidelines Under *Collyer* – Revised Guidelines, is inconsistent with the NLRB Casehandling Manual. The Revised Guidelines state that the charging party can request a review of the arbitrator's award, but the NLRB Casehandling Manual indicates that a review should be performed in each case.

The *Collyer* surveys requested by the Division of Operations-Management (Operations-Management) resulted in the closing of many deferred cases that were resolved or were no longer proceeding, but many Regional Offices included in the survey responses cases that were deferred under other authorities. The summary results of the survey are available to the public on the NLRB Internet site and were reported in publications such as BNA's *Daily Labor Report*. In addition, staff in Operations-Management stated that surveying *Collyer* deferrals more than two years old might recur on a yearly basis. To the extent that the surveys are intended as a recurring management tool, having the results measure what management intends is imperative.

Regional Offices did not consistently document actions related to *Collyer*. Proof of service and signed copies of the *Collyer* letters were not maintained in the case files in two of the four Regional Offices visited. Also, only two of the four Regional Offices used the Case Activity Tracking System (CATS) to monitor when the parties were contacted, despite a field existing in CATS to note contacts with the parties. Some errors existed in the date filed and date closed fields in each of the four Regional Offices visited. One Regional Office recorded cases that were a partial deferral and a partial dismissal or withdrawal as "partial" deferrals in CATS, resulting in deferred cases being underreported.

An exit conference was held on February 4, 2004 with representatives of Operations-Management and the Division of Advice. A draft report was sent to the Operations-Management Associate General Counsel on February 13, 2004 for review and comment. He generally agreed with the findings and three of the five recommendations. He disagreed with our conclusion that the NLRB Casehandling Manual was inconsistent with the Agency's policy regarding *Spielberg* reviews. He also disagreed with our recommendation that signed copies of the *Collyer* deferral letters should be maintained in the case files, noting that controls should be flexible enough to accommodate the needs of the offices. We agree that other forms of evidence may be sufficient and we modified recommendation 4 to provide the needed flexibility. Management's comments are presented in their entirety as an appendix to this report.

Jane E. Altenhofen  
Inspector General

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dated March 12, 2004

## BACKGROUND

The National Labor Relations Board (NLRB or Agency) administers the principal labor relations law of the United States, the National Labor Relations Act (NLRA) of 1935, as amended. The NLRA is generally applied to all enterprises engaged in interstate commerce, including the United States Postal Service, but excluding other governmental entities as well as the railroad and the airline industries. The Fiscal Year (FY) 2004 appropriation authorizes 1,952 full-time equivalents that were located at Headquarters, 52 field offices throughout the country, and 3 satellite offices for Administrative Law Judges. NLRB received an appropriation of \$244,073,000 for FY 2004, less an across-the-board reduction of .59 percent, leaving a net spending ceiling of \$242,633,000.

In *Collyer Insulated Wire (Collyer)*, 192 NLRB 837 (1971), and subsequent cases, the Board decided that certain charges must be deferred to an existing contractual grievance procedure if the charge meets the following criteria:

1. The conduct is cognizable under the grievance procedure,
2. The grievance procedure culminates in final and binding arbitration, and
3. The charged party waives all timeliness defenses to the grievance.

The Board found that using grievance and arbitration procedures would resolve disputes and make it unnecessary for parties to follow the more formal, and at times lengthy, proceedings before the Board and courts. 192 NLRB at 843.

After the case is deferred, the Regional Office should inquire as to the status of the dispute that has been deferred for arbitration no later than 90 days after the issuance of the deferral letter. During the second 90-day period, and every 90 days thereafter, the Agency policy is that Regions make similar inquiries.

If an arbitrator sets an award, the charging party may request that the Regional Office conduct a review of the arbitration award. If a grievance was not filed or the grievance procedures are no longer pursued, the Regional Office should dismiss the charge. Of the 28,794 unfair labor practice cases filed in FY 2003, about 2,900 were deferred under *Collyer*. About 5,000 cases were pending under *Collyer* as of September 30, 2003.

The Regional Offices have historically used the Board Agents to monitor cases, but Memorandum GC 99-6, *Best Practices C Case Report*, dated August 16, 1999, stated that support staff should be used to do the routine tasks relating to deferred cases. That memorandum also recommended that a single person in the Regional Offices monitor the cases.

## OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of this audit were to determine whether the Regional Offices are resolving charges deferred under *Collyer* expeditiously and to evaluate how the Regional Offices monitor the *Collyer* deferral process. Our scope included unfair labor practice cases that were deferred under *Collyer* during FY 2003, were pending under *Collyer* as of September 30, 2003, and were deferred under *Collyer* and closed in FY 2003.

We interviewed Division of Operations-Management (Operations-Management) employees at Headquarters and in the Regional Offices regarding the *Collyer* deferral process and the procedures used to monitor *Collyer* cases. We reviewed the laws, including the NLRA and Labor-Management Relations Act, and Board decisions in *Collyer* and other cases that have affected the policy, and Agency policy and procedures affecting the *Collyer* deferral process, including the NLRB Casehandling Manual and Memoranda from the General Counsel and Operations-Management, such as *Arbitration Deferral Policy under Collyer – Revised Guidelines (Collyer Revised Guidelines)*, dated May 10, 1973.

We obtained and reviewed responses from Regional Offices to the requests in OM Memoranda 02-93, *Collyer Deferral Survey*, dated September 11, 2002, and 03-92, *Collyer Deferral Survey, Part II*, dated June 27, 2003, for the status of cases that were deferred under *Collyer* for extended periods. We obtained lists of *Collyer* cases deferred during FY 2003, pending as of September 30, 2003, and closed during FY 2003, and computed statistics for each group.

We selected judgmental samples of *Collyer* cases pending as of September 30, 2003 and that closed during FY 2003 in each of the four Regional Offices visited. We tested the case file for each sample item to verify the accuracy of the data in Case Activity Tracking System (CATS) and to verify that the Regional Office was monitoring the case in accordance with Agency policy.

We calculated the mean length of time between contacts for the entire time the case had been deferred and the period after October 1, 2002. We tested case files contained in the filing cabinets of *Collyer* deferrals to determine whether the databases provided to us were complete. We tested a sample of cases listed in CATS as deferred under *Dubo Mfg. Co.*, 142 NLRB 431 (1963) (*Dubo*) to determine whether the cases were actually deferred under *Collyer*.

This audit was performed in accordance with generally accepted government auditing standards during the period of October 2003 through March 2004. We conducted the audit at NLRB Headquarters and the following Regional Offices: Region 7 – Detroit, Region 16 – Fort Worth, Region 27 – Denver and Region 29 - Brooklyn.

## **FINDINGS**

Generally, the Regional Offices did not contact the parties to follow up on the status of *Collyer* deferrals in accordance with Agency policy. One Regional Office that we visited had cases in which a request for withdrawal or a request for the Regional Office to perform a review of an arbitration award were not acted on in a timely manner.

The Agency's policy statement for handling *Collyer* deferrals, *Collyer* Revised Guidelines, is inconsistent with the NLRB Casehandling Manual because the guidelines state that the charging party can request a review of the arbitrator's award, but the NLRB Casehandling Manual indicates that a review should be performed in each case. The *Collyer* surveys completed resulted in the positive outcome of closing many cases that were resolved or were no longer proceeding, but many Regional Offices included in the survey responses cases that were deferred under *Dubo* and other authorities.

A signature or other proof of service of *Collyer* letters was not maintained in the case files in two of the four Regional Offices we visited. Only two of the four Regional Offices used CATS to monitor when the parties were contacted, despite a field existing in CATS to note the contact. Some data errors existed in the date filed and date closed fields in the four Regional Offices visited. One Region recorded cases that were a partial deferral and a partial dismissal or withdrawal as "partial" deferrals in CATS, resulting in deferred cases being underreported.

### **TIMELINESS OF CASE COMPLETION**

The number and age of *Collyer* cases pending as of September 30, 2003 were lower than at September 30, 2001, even though more cases were deferred under *Collyer* in FYs 2002 and 2003 than in FY 2001. Generally, parties in the Regional Offices reviewed were not contacted to follow up on the status of *Collyer* deferrals in accordance with Agency policy. The Agency policy is that the parties are to be contacted every 90 days. One Regional Office that we visited had cases in which a request for withdrawal or a request for the Regional Office to perform a review of an arbitration award in accordance with *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955) (*Spielberg*) were not acted on in a timely manner.

### ***Collyer* Deferral Statistics**

The number and age of *Collyer* cases pending as of September 30, 2003 were lower than at September 30, 2001, even though more cases were deferred under *Collyer* in FYs 2002 and 2003 than in FY 2001.

**Collyer Statistics**  
**FY 2001 – FY 2003**

	<b>FY 2001</b>	<b>FY 2002</b>	<b>FY 2003</b>
<i>Collyer</i> Cases Deferred	2,655	2,911	2,869
<i>Collyer</i> Cases Closed	2,487	2,682	3,411
<i>Collyer</i> Cases Pending as of September 30	5,225	5,415	4,971
Mean Length of <i>Collyer</i> Deferrals Pending as of September 30	805 Days (2.21 Years)	712 Days (1.95 Years)	563 Days (1.54 Years)

Because the goal of resolving disputes expeditiously through the deferral process was not being met in a significant number of cases, Operations-Management requested the Regional Offices to perform two surveys of cases deferred under *Collyer* for extended periods in September 2002 and June 2003. The improvements above were likely the result of the *Collyer* surveys.

**Timeliness of Contact with Parties**

Generally, parties in the Regional Offices reviewed were not contacted to follow up on the status of *Collyer* deferrals in accordance with Agency policy. The Agency policy is that the parties are to be contacted every 90 days.

The *Collyer* Revised Guidelines state that the Regional Office should send a letter to the parties stating the Regional Office's intention to inquire about the status of the case at intervals of not more than 90 days. OM Memorandum 84-1, *Collyer and Dubo Cases*, dated January 18, 1984, states that "during the second 90-day period, and every 90 days thereafter, in the event further deferral is deemed warranted, the Region should contact the parties and obtain the latest available information on the status of the case." This policy is affirmed in Memorandum GC 99-6, which stated that the best practice for Regional Offices is to maintain periodic contacts with the parties, normally every 90 days, regarding the status of the deferred case.

Only 11 percent of the closed cases tested and 12 percent of the pending cases tested had a mean time between contacts of less than or equal to 91 days. Forty-two percent of the closed cases and 45 percent of the pending cases had a mean time between contacts of greater than 1 year.



**Contact Timeliness  
Cases Closed in FY 2003**

<b>Mean Time Between Contacts</b>	<b>R - 7</b>	<b>R - 16</b>	<b>R - 27</b>	<b>R - 29</b>	<b>Total</b>	<b>%</b>
Less than 91 Days	4	2	4	1	11	11
92 - 182 Days	6	11	2	4	23	23
183 - 273 Days	5	4	4	2	15	15
274 - 365 Days	2	0	3	4	9	9
1 - 2 Years	8	5	11	4	28	28
2 - 3 Years	0	3	0	9	12	12
3 - 5 Years	0	0	1	1	2	2
Total	25	25	25	25	100	

**Contact Timeliness  
Cases Pending as of September 30, 2003**

<b>Mean Time Between Contacts</b>	<b>R - 7</b>	<b>R - 16</b>	<b>R - 27</b>	<b>R - 29</b>	<b>Total</b>	<b>%</b>
Less than 91 Days	8	0	3	1	12	12
92 - 182 Days	6	6	3	6	21	21
183 - 273 Days	4	6	1	5	16	16
274 - 365 Days	0	4	0	1	5	5
1 - 2 Years	7	4	7	7	25	25
2 - 3 Years	0	2	11	5	18	18
3 - 5 Years	0	1	0	0	1	1
5 - 10 Years	0	1	0	0	1	1
Total	25	24	25	25	99	

Operations-Management stated that sometimes the contact may take longer than 90 days, depending on weekends or other circumstances. An additional analysis of closed and pending cases tested took this into account and yielded similar results.

Even after the initial *Collyer* survey request, dated September 11, 2002, the Regional Offices tested did not contact the parties in accordance with the Agency policy. The Regional Offices we visited were complying with the policy regarding contact in about 15 percent of the cases tested. In 31 percent of the cases, the Regional Office did not contact the parties to determine the status of the grievance after October 1, 2002, even though the case had been deferred for more than 90 days.

**Contact Timeliness after October 1, 2002  
Cases Pending as of September 30, 2003**

	<b>R - 7</b>	<b>R - 16</b>	<b>R - 27</b>	<b>R - 29</b>	<b>Total</b>	<b>%</b>
Had contact for each full 90-day period the case was deferred after October 1, 2002	8	1	3	3	15	15
Did not have contact for each full 90-day period the case was deferred after October 1, 2002	17	23	21	22	84	85
Total	25	24	25	25	99	

Staff in the Regional Offices visited cited that the low priority of *Collyer* cases and limited resources prevented the Regional Offices from following up on the status of the grievance in accordance with the policy. Staff also noted that the Regional Offices may have contacted parties, but did not record the contact in the case files. Staff in Operations-Management and the Regional Offices visited noted that the contact with the parties regarding the status of the grievance should be included in the case files, regardless of the nature of contact.

When the Regional Offices do not contact the parties about the status of grievances on a regular basis, the *Collyer* cases may linger past when they have been resolved. Our methodology did not include collecting the time between when a grievance was resolved or was not being pursued and when the Regional Office learned about the grievance status, but we noted that time gaps existed in six cases. Five of these cases had gaps ranging from 158 and 874 days between the date of an arbitration award and the date the arbitration award was received by the Regional Office. The average was 359 days. The only inquiries with the parties to learn the status of these grievances were within 17 days of the Regional Office receiving the arbitration award. In one case, the Regional Office was not aware that the parties resolved a grievance until 397 days later.

We concluded that if cases were monitored in a timely manner, the Agency might not have needed to perform the two surveys, which were significant undertakings. Management stated that regular monitoring of the cases might not have produced the same result because stronger language was used with letters mailed to the parties as part of the surveys.

**Timely Closing of Cases**

Region 16 had cases where a request for withdrawal or a request for the Regional Office to perform a *Spielberg* review were not acted on in a timely manner.

### *Withdrawal Requests*

In four cases tested in Region 16, a withdrawal was approved more than 1 year after the charging party requested withdrawal. In three of the four cases, no evidence of contact with the parties existed between when the charging party requested withdrawal and when the withdrawal request was approved. In the other case, the first contact between the parties and the Region occurred almost 4 years after the charging party requested withdrawal. Staff in Region 16 acknowledged that the cases should have been closed more expeditiously, but noted that the Region had been understaffed during this time, particularly in the San Antonio Resident Office where these cases originated.

The NLRB Casehandling Manual states that upon receipt of a withdrawal request, the Board Agent should promptly prepare and submit a recommendation to the Regional Director regarding approval of the withdrawal. Because the cases were not closed when the withdrawal was requested, the cases were included in the Region's pending cases. These cases required the use of Agency resources during the *Collyer* surveys to determine the status of the cases when in fact the cases should have been closed at least 1 year earlier.

### *Final Disposition of Spielberg Reviews*

In three cases, Region 16 performed *Spielberg* reviews on arbitration awards requested by the charging party more than 4 years after the reviews were requested. The *Collyer* Revised Guidelines state that the Regional Office should determine whether the award meets the standards for deferral to an arbitration award under *Spielberg*, to the extent any interested party contends the award fails to do so. Staff in Operations-Management said that *Spielberg* reviews should be done promptly, and that a delay of more than 1 year represented poor case management.

In all three cases tested, no evidence of contact with the parties about the status of deferral during the time between when the *Spielberg* review was requested and when the *Spielberg* review was performed existed. Staff in Region 16 stated that these cases were not handled promptly due to severe understaffing in the Region. Staff in Region 16 added that the Region handled new cases in accordance with Impact Analysis guidelines, and priority was given to the new cases. Staff also stated that the Region was fully staffed at present and was trying to improve its monitoring of *Collyer* cases.

Because the Region did not act on the *Spielberg* request for review in a timely manner, the Region was not being responsive to the rights of a charging party. These cases were included in the Region's pending cases, and required the use of resources during the *Collyer* surveys to determine the status of cases for which actions should have been resolved years earlier.

## **INCONSISTENT CRITERIA**

The Agency's policy statement for handling *Collyer* deferrals, the *Collyer* Revised Guidelines, is inconsistent with the NLRB Casehandling Manual. The *Collyer* Revised Guidelines state that the charging party can request a review of the arbitrator's award, but the NLRB Casehandling Manual provides that a review should be performed in each case.

The *Collyer* Revised Guidelines state:

When the region learns that an arbitration award has issued in a case deferred for arbitration under the *Collyer* policy, the region should dismiss the deferred charge unless the charging party contends the award fails to meet the *Spielberg* standards. If the charging party so contends, the region should review the award under the *Spielberg* standards and dismiss the charge or issue complaint, absent settlement, in accordance with the results of this review. (Page 55)

Staff in Operations-Management confirmed that the *Collyer* Revised Guidelines remain current Agency policy.

The NLRB Casehandling Manual, Part I, Unfair Labor Practices, Section 10118.2, Review Following Arbitration, states that:

Following issuance of an arbitration award, the Regional Office should determine whether the award meets the Board's standards as set forth generally in [*Spielberg*] and *Olin Corp.*, 268 NLRB 573 (1984).

The NLRB Casehandling Manual also states in Section 10118.6, Pattern for *Collyer* Deferral Letter, "If the grievance is arbitrated, the charging party may request that the office review the arbitrator's award."

According to the introduction section of the latest revision of the NLRB Casehandling Manual in September 2003, "this comprehensive revision is more accessible and useful, increasing its value as a resource to the Agency and the public." Because the NLRB Casehandling Manual is available to the public on the NLRB's Internet site, the public may be misled about the requirement to request a review of an arbitration award under *Spielberg* because a well-informed person could reasonably believe that the Regional Office will review the award automatically. Furthermore, the inconsistency with the *Collyer* Revised Guidelines may lead Regional Offices to apply a *Spielberg* review in cases where the review is not warranted, wasting Agency resources.

## **Management's Comments and OIG Response**

Operations-Management took exception to our conclusion that the NLRB Casehandling Manual is inconsistent with Agency policy with respect to *Spielberg* reviews, and disagreed with our recommendation to amend it. We believe that Part I of the NLRB Casehandling Manual requires that the Regional Offices review all cases. This is contrary to later guidance in the manual, the earlier policies, and the current practice that cases are reviewed upon request of the charging party. Operations-Management stated that they did not intend to change the policy when updating the manual. To correct this inconsistency, Operations-Management would only need to add "and when requested by the charging party" to the first sentence of Section 10118.2.

### **COLLYER SURVEYS**

The *Collyer* surveys completed resulted in the positive outcome of closing many cases in which the charging parties had resolved their disputes, were no longer interested in pursuing their disputes, or had never pressed the grievance forward. Many Regional Offices, however, included in the survey responses cases that were deferred under *Dubo* and other authorities with the cases that were deferred under *Collyer*.

Memorandum OM 02-93 and Memorandum OM 03-92 specified that the Regional Offices survey only cases that had been deferred under *Collyer* for more than 5 years and 3 years respectively. Staff in Operations-Management stated that cases deferred under *Dubo* were excluded from the survey because of the voluntary submission to the grievance procedure.

Of the 23 responses to the first *Collyer* survey reviewed, 15 Regional Offices included cases that were not deferred under *Collyer*. Of the 526 cases examined, 140 cases (26.6 percent) were deferred under *Dubo* or other authorities. Region 27 accounted for 95 of these cases.

Of the 20 responses to the second survey we reviewed, 12 Regional Offices included cases that were not deferred under *Collyer*. Of the 637 cases tested, 136 cases (22.4 percent) were not deferred under *Collyer*. Region 27 accounted for 87 of the 136 cases that were deferred under *Dubo* or other authorities. The 39 cases we tested in Region 27 were all, in fact, deferred under *Dubo*.

Staff in Region 27 stated that the Region included all deferred cases in its responses because the Region handles all deferred cases the same way. Also, both Operations-Management memoranda mention "deferred cases" without specifying *Collyer* throughout the text. Finally, some Regional Offices specified

that the cases listed were deferred under *Dubo*, but the raw numbers the Regional Offices provided were used by Operations-Management anyway. Operations-Management stated that some Regional Offices asked whether including *Dubo* cases in the survey was appropriate. The Regional Offices were told that they could include *Dubo* cases if they chose, but that it was not required. Staff in Operations-Management noted that the *Dubo* cases should have been segregated from the *Collyer* results.

Because cases were incorrectly included in the survey results, the survey results did not accurately reflect the impact of conducting the surveys. The summary results of the survey are available to the public on the NLRB Internet site and were reported in publications such as BNA's *Daily Labor Report*. In addition, staff in Operations-Management stated that surveying *Collyer* deferrals more than two years old might recur on a yearly basis. To the extent that the surveys are intended as a recurring management tool and are being reported to the public, having the results measure what management intends is imperative.

#### **PROOF OF SERVICE OF THE COLLYER LETTER**

Proof of service, such as a signed copy, certified mail receipt, or other notation of mailing the *Collyer* letters, was not maintained in the case files in two of the four Regional Offices we visited. The NLRB Records Disposition Standards state that all papers relating to the Agency's processing of unfair labor practice charges should be maintained in the official case files. The General Accounting Office's *Standards of Internal Control in the Federal Government* states that "internal control and all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination."

In Region 7, 16 of the 25 *Collyer* cases (64 percent) that closed in FY 2003 and 20 of the 25 *Collyer* cases (80 percent) pending as of September 30, 2003 that we tested did not have a copy of the signed *Collyer* letter in the case file. Seven closed *Collyer* cases (28 percent) and 13 pending *Collyer* cases (52 percent) did not have any other evidence of proof of service. Staff in Region 7 stated that a copy of the unsigned letter is placed in the case file as the letters is given to the Regional Director for signature. Staff also stated that because of the volume of mail the Region must send, the Region cannot wait to have the letter signed and then copied.

In Region 16, 2 of the 25 cases (8 percent) that closed in FY 2003 and 5 of the 25 cases (20 percent) pending as of September 30, 2003 that we tested did not have a copy of the signed *Collyer* letter or any other evidence of proof of service in the case file. At least 29 of the 50 case files (58 percent) that we examined

from the deferred case filing cabinet did not have a copy of a signed letter deferring the case. Staff in Region 16 stated that because the Regional Office in Fort Worth was understaffed in support personnel, the Houston Resident Office was tasked with issuing correspondence, including *Collyer* letters. Staff also stated that the Houston Resident Officer signs the letter in the Regional Director's name, with no notation that the signature is not the Regional Director's. Staff stated that a copy of the letters signed in the Houston Resident Office are not sent to Fort Worth. Staff in Region 16 acknowledged that a signed copy of the *Collyer* letter should be sent to Fort Worth.

Because the *Collyer* letters in the case files had no signature or evidence of proof of service, determining what letter executed the deferral is unclear, as one cannot distinguish between the letter that was sent and a draft. The letter lacking proof of service might also cause a reviewer to question whether the deferral was properly authorized or even occurred.

### **USING CATS TO MONITOR COLLYER DEFERRALS**

Only two of the four Regional Offices used CATS to monitor when the parties were contacted. A field exists in CATS to note when contacts are made with the parties in a deferral case. Staff in Region 7, however, stated that they did not know the field existed. Staff in Region 29 said that the field in CATS was not helpful because the field only noted past activity, and that a field should be added to CATS to note the date that the next contact should be made. Using the field would enable the Regional Offices to run queries to determine when the Regional Office needs to contact the parties.

### **DATA ACCURACY**

Some errors existed in the date filed and date closed fields in the four Regional Offices visited. Twenty-five of each item was tested.

#### **Data Entry Errors**

	<b>Closed Cases Date Filed</b>		<b>Closed Cases Date Closed</b>		<b>Pending Cases Date Filed</b>	
	<b>No.</b>	<b>%</b>	<b>No.</b>	<b>%</b>	<b>No.</b>	<b>%</b>
<b>R - 7</b>	0	0	3	12	2	8
<b>R - 16</b>	0	0	4	16	1	4
<b>R - 27</b>	2	8	7	28	2	8
<b>R - 29</b>	13	52	1	4	16	64

In Region 27, staff said that they were unaware of the proper date for closing a withdrawn case. Staff in Region 7 and Region 27 stated that they were also unaware of Memorandum OM 03-100, *Uniform Procedures for Entering Disposition/Closing Dates in the CATS Activity Tracking System (CATS)*, dated August 4, 2003, that stated the closing date of a dismissal that is not appealed was changed to 21 days after the dismissal letter from the end of the appeal period. Staff in Region 29 stated that Operations-Management had found the filing dates to be a problem during a Quality Review. Management in Region 29 has taken action to correct the problem by monitoring the time it takes the Docket Clerk to docket a case on the Case Assignment Sheet.

### **RECORDING CASES AS "PARTIAL" DEFERRALS**

Region 7 had 14 cases that were a partial deferral and a partial dismissal or withdrawal. Region 7 recorded these cases as "partial" deferrals in CATS. Staff in Operations-Management stated that in the event of a partial deferral and a partial dismissal or withdrawal, the deferral should be recorded as "Full" in CATS so that the case would show up in the C Case Situation Overage Report. Because the Region was not recording the cases as "Full" deferrals in CATS, the Region was underreporting the number of deferred cases.

### **RECOMMENDATIONS**

We recommend that Operations-Management Associate General Counsel:

1. Emphasize to the Regional Offices that inquiries about the status of the grievance in *Collyer* cases be performed in accordance with Agency policy.
2. Amend the NLRB Casehandling Manual so it is consistent with the Agency policy with respect to *Spielberg* reviews.
3. Clarify language in future *Collyer* surveys so that the Regional Offices understand the information they are required to provide.
4. Instruct the Regional Offices to maintain a signed copy or other proof of service for the deferral letter.
5. Inform the Regional Offices of the proper fields in CATS to monitor the contact with the parties in cases deferred under *Collyer* and the proper way to account for partial deferrals in CATS.



## **APPENDIX**



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
OFFICE OF THE GENERAL COUNSEL  
Washington, D.C. 20570

3/12/04

To: Jane Altenhofen  
Inspector General

From: Richard A. Siegel  
Associate General Counsel

Re: Report of the *Collyer* Deferral Process

Thank you for the opportunity to comment on the report regarding the *Collyer* deferral audit. Our comment for each recommendation appears below.

Recommendation No. 1:

**Emphasize to the Regional Offices that inquiries about the status of the grievance cases be performed in accordance with Agency policy.**

We accept the recommendation. As we discussed during the exit conference, we have seen a significant improvement in the Regional Offices' monitoring efforts since the two *Collyer* surveys were conducted. We intend to conduct regular *Collyer* exercises and we expect that trend to continue.

Recommendation No. 2:

**Amend the NLRB Casehandling Manual so it is consistent with the Agency policy with respect to *Spielberg* reviews.**

We do not believe it is necessary to amend the casehandling manual because it states the current policy and is consistent with the existing practice in the Regional Offices. Currently, Regional Offices request the

charging party's position regarding deferral to an arbitrator's award. If the charging party argues against that deferral, the Charging Party is asked for the specific reasons why deferral is not appropriate and the Region will then examine the award under the *Spielberg* and *Olin* standards.

The letter sent to the parties notifying them of the original deferral action specifically requests that the charging party forward a copy of the arbitrator's decision to the Regional Office upon issuance. Additionally, the deferral letter also includes a form addressed to the arbitrator requesting a copy of the decision be sent directly to the Regional Office.

Recommendation No.3:

**Clarify language in future *Collyer* surveys so that Regional Offices understand the information they are required to provide.**

We accept the recommendation. During the exit conference, we discussed one Region that included a large number of *Dubo* deferrals in the survey results. Thus, to the extent there may have been confusion about which cases we were addressing, we will clarify that in future *Collyer* surveys.

Recommendation No.4:

**Instruct the Regional Offices to maintain a signed copy of the deferral letter.**

We do not believe that a change in the existing practice in the field is warranted. The audit determined that copies of deferral letters, bearing the Regional Director's signature, were not present in all case files sampled. It is not necessary that each case have a copy signed by the Regional Director and we do not believe there is any potential for confusion as to which letter executed the deferral action. We note that *Standards for Internal Control in the Federal Government* (GAO/AIMD-00-21.3.1, November 1999), illustrates the range and variety of possible control activities, but also acknowledges that agency controls should be flexible enough to accommodate the needs of the offices.

Recommendation No.5:

**Inform the Regional Offices of the proper fields in CATS to monitor the contact with parties in cases deferred under *Collyer* and the proper way to account for partial deferrals in CATS.**

We accept the recommendation that we need to have a proper method for accounting for partial deferrals. We have submitted a SCR (system change request) to the CATS contractor to make the necessary programming changes so that partial deferrals will appear in the appropriate case reports. We will also issue an OM memorandum reminding Regions of their obligation to check with the parties on a regular basis, and that this information can be input in CATS. Please note however, that we have not mandated that the Regions put the information regarding periodic checks in CATS. This is an optional field.

R.A.S.