

INSPECTOR GENERAL



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## NATIONAL LABOR RELATIONS BOARD

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WASHINGTON, DC 20570

I hereby submit this Semiannual Report for the period April 1 – September 30, 2008. This report summarizes the major activities and accomplishments of the Office of Inspector General of the National Labor Relations Board and its submission is in accordance with the Inspector General Act of 1978, as amended (IG Act). Section 5 of the IG Act requires that the Chairman transmit this report to the appropriate committees or subcommittees of the Congress within 30 days of its receipt.

In the audit program, the Office of Inspector General issued one audit report, three inspection reports, and conducted the annual review required by the Federal Information Security Management Act. In the investigations program, the Office of Inspector General processed 112 contacts, initiated 6 cases, and closed 10 cases. The investigations resulted in three resignations, three referrals to the Department of Justice, three arrests, and one conviction. Details on these accomplishments can be found in the body of this report.

I appreciate the support of all Agency employees in achieving the accomplishments set forth in this report.

A handwritten signature in cursive script that reads "David Berry".

David Berry  
Acting Inspector General  
October 31, 2008

## AGENCY PROFILE

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The National Labor Relations Board (NLRB or Agency) is an independent Federal agency established in 1935 to administer the National Labor Relations Act (NLRA). The NLRA is the principal labor relations law of the United States, and its provisions generally apply to private sector enterprises engaged in, or to activities affecting, interstate commerce. NLRB jurisdiction includes the U.S. Postal Service (other government entities, railroads, and airlines are not within NLRB's jurisdiction).

The NLRB seeks to serve the public interest by reducing interruptions in commerce caused by industrial strife. It does this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The NLRB has two principal functions: (1) to determine and implement, through secret ballot elections, the free democratic choice by employees as to whether they wish to be

represented by a union in dealing with their employers and, if so, by which union; and (2) to prevent and remedy unlawful acts, called unfair labor practices, by either employers or unions.

NLRB authority is divided by law and delegation. The five-member Board primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel investigates and prosecutes unfair labor practices before administrative law judges, whose decisions may be appealed to the Board; and, on behalf of the Board, conducts secret ballot elections to determine whether employees wish to be represented by a union.

The Board consists of the Chairman and four Members who are appointed by the President with the advice and consent of the Senate. Board Members serve staggered terms of 5 years each. The General Counsel is also appointed by the President with the advice and consent of the Senate and serves a 4-year term.

Chairman Peter C. Schaumber and Member Wilma B. Liebman continue to serve as Board Members. Currently, there are three vacant seats on the five-Member Board.

The NLRB received an appropriation of \$256,238,000 for Fiscal Year (FY) 2008, less a rescission of 1.747 percent, leaving a net spending ceiling of \$251,762,000 to fund a ceiling of 1,690 full-time equivalents. NLRB Headquarters is at 1099 14<sup>th</sup> Street, NW, Washington, DC.

In addition to the Headquarters building, employees are located in 51 field offices throughout the country. Three satellite offices for the administrative law judges are located in Atlanta, San Francisco, and New York City. Since October 2, 2000, field offices have included 32 Regional Offices, 16 Resident Offices, and 3 Subregional Offices.

Additional information about the NLRB can be found at [www.NLRB.gov](http://www.NLRB.gov).

## OFFICE OF INSPECTOR GENERAL

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NLRB established the Office of Inspector General (OIG) pursuant to the 1988 amendments to the Inspector General Act of 1978 (IG Act).

### **Resources**

The FY 2008 OIG budget is \$1,065,900 for operations, of which \$180,943 is for contract services. In addition to the Inspector General, the OIG consists of a Counsel/Assistant Inspector General for Investigations, Assistant Inspector

General for Audits, three auditors, and a staff assistant.

At this time, one auditor position is vacant and the Counsel is serving as the Acting Inspector General.

The Inspector General is to provide policy direction for and is to conduct, supervise, and coordinate audits relating to program operations of the Agency. *OIG issued one audit report, three inspection reports, and conducted the annual review required by the Federal Information Security Management Act.*

### Reports Issued

- We issued Audit Report

OIG-AMR-58-08-02, ***Budget***

***Submission Case Processing Data***, on September 3, 2008. We conducted this audit to evaluate the process used to develop case intake and related employee requirements for annual budget requests and to compare forecasted amounts to actual figures.

Case intake figures in the Agency's budget requests were not being prepared in accordance with the Administrative Policies and Procedures Manual (APPM). Also, the Budget Branch did not create and therefore did not maintain the documentation for this activity as required by the Agency's Records Disposition Standards.

We also found that as drafted, the Budget Chapter in the APPM did not

provide sufficient detail to satisfy the requirements for internal control.

The estimates and forecasts provided by the Budget Branch generally overestimated the anticipated case intake. From 2000 to 2007 the Agency overestimated case intake forecasts by 6.7 to 29.2 percent. This is significant because these figures are the basis for the amount of the appropriation requested by the President.

The Budget Branch Chief stated that she did not agree with our finding that the case intake calculation process lacked internal control as the numbers are reviewed by senior management before submission to the Office of Management and Budget (OMB). Despite this difference in opinion, the Budget Branch Chief agreed with our recommendations to document the procedures in an

upcoming revision to the APPM for this process and to maintain the supporting documentation.

- We issued Inspection Report OIG-INS-54-08-02, *NLRB Credit Union*, on May 6, 2008. We conducted this inspection to evaluate the appropriateness of support provided to the National Labor Relations Board Credit Union (Credit Union) by the Agency.

In calendar year 2007, we estimated that the Agency provided \$88,778 in support of the Credit Union. We found that when providing support to the Credit Union, the Agency has not requested and the Credit Union has not provided documentation to demonstrate that the Credit Union met the statutory requirement for receiving support from the Agency.

We also found time and attendance for Agency employees who use official time for Credit Union activities was not always accurately recorded and that

administrative leave was not provided to employees in a uniform manner.

Additionally, NLRB identification cards that purport to be contractual staff credentials were issued to Credit Union employees and volunteers. We were concerned with this practice because the credentials compromise security as they are equivalent to a Federal identification that could potentially provide access to other Federal buildings. We noted other non-Federal entities located in the Franklin Court Building have been issued building passes.

- We issued Inspection Report OIG-INS-55-08-03, *Cost Analysis of Serving Decisions and Orders*, on May 16, 2008. We initiated this inspection to determine whether there are savings to be had by officially serving Board and administrative law judge decisions and orders electronically, rather than by mailing paper copies.

We estimated that the Agency spent approximately \$10,746 to serve 268

Board and 199 administrative law judge decisions and orders in FY 2007. The Office of the Chief Information Officer (OCIO) estimated that it would cost approximately \$6,000 to create the means to serve decisions and orders electronically for the remainder of FY 2008. The OCIO estimated that the yearly ongoing costs would be approximately \$8,000.

We also identified indirect savings could be had. More than half of the usage for the two copy machines in the Copy Center can be allocated to reproducing decisions and orders for internal distribution. In FY 2007, the Copy Center made approximately 2.8 million copies. Of those copies, 1.76 million were for the 303 copies of each Board decision and order and 123 copies of each administrative law judge decision and order. Only 126,549 copies were necessary to serve the parties. If the Agency ceased reproducing copies for internal distribution, it could reduce the copies made each year by approximately 1.64 million. With that reduction, the

Agency could then consider ways to reduce the operational costs of the Copy Center and also save the associated paper cost of more than \$5,000.

We noted that serving decisions and orders electronically is consistent with Federal law requiring the Agency to promote the use of information technology to improve the productivity, efficiency, and effectiveness of its programs, including the dissemination of public information.

- We issued Inspection Report OIG-INS-53-08-04, *Bilingual Awards*, on June 13, 2008. We initiated this inspection in January 2008 to determine whether bilingual award recipients met the requirements for using two languages as part of his or her job.

We found that in FY 2007, the bilingual award recipients used at least two languages as part of his or her job and that the total amount of awards made each year and the individual employee's share were in accordance with the

collective bargaining agreements. We also found that the bilingual awards program was not administered consistently among the Regional Offices.

A comparison of bilingual awards nominations to reports from the Agency's payroll system identified several payment errors related to the FY 2006 bilingual awards. These include three employees who were nominated for bilingual awards and did not receive the awards and two employees were nominated for an award, but were paid for an award at a different level. In another instance, an employee apparently received an award intended for another employee. The two employees have the same last name and first initial.

- *The Federal Information Security Management Act of 2002* requires Inspectors General to conduct annual reviews of information security programs. The OIG review was

primarily accomplished as part of the audit of the FY 2008 financial statements. On September 30, 2008, the Chairman submitted reports from the Inspector General and the Chief Information Officer to OMB.

### **Audit Follow-up**

Agreed upon actions were not completed within 1 year on four audit reports. Two of those reports are now closed.

- *Non-Standard Work Hours Compensation*, OIG-AMR-47-05-04, was issued on August 9, 2005, and we reached agreement with management on that date. Action has been completed on the final open recommendations. We closed this audit report on August 18, 2008.

- *Procurement Actions*, OIG-AMR-52-07-02, was issued on March 26, 2007, and we reached agreement with management on July 31, 2007. Action has been completed on the final agreed upon open recommendations. We closed this audit report on August 28, 2008.



- *Audit of the NLRB Fiscal Year 2006 Financial Statements*, OIG-F-11-07-01, was issued on December 14, 2006, and we reached agreement with management on June 14, 2007. Management has completed actions on four of the five recommendation made in the audit.

- *Continuity of Operations*, OIG-AMR-55-07-03, was issued on September 18, 2007, and we reached agreement with management on that date. Action has been completed on one of the three recommendations. The Agency is actively working to implement the other two recommendations.

## INVESTIGATIONS PROGRAM

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The Inspector General is to provide policy direction for and is to conduct, supervise, and coordinate investigations relating to the programs and operations of the Agency. *OIG processed 112 contacts, initiated 6 cases, and closed 10 cases. The investigations resulted in three resignations, three referrals to the Department of Justice, three arrests, and one conviction.*

Case Workload		Contacts Processed	
Open (4/1/2008)	14	Received	112
Initiated	6	Initiated Investigation	1
Closed	10	Opened Case -- Referred to Agency	0
Open (9/30/2008)	10	Non-Investigative Disposition	111

• **Fraud.** As previously reported, the OIG initiated an investigation of an employee who was suspected of creating fraudulent leave and earnings statements for a third party who submitted them with an application for low income housing benefits. The U.S. Attorney's Office declined prosecution. We then continued our investigation and found the employee and other individuals, including another employee, used the fraudulent leave and earnings statements to receive state welfare benefits. The employee that was initially involved in the investigation resigned before we issued our investigative report. The

second employee resigned during this reporting period in lieu of a removal action.

Because the misconduct involved state welfare benefits, we also provided our investigative results to the state prosecutor's office. During this reporting period, both employees were arrested on felony charges involving fraud and perjury. One was then convicted and received 4 days confinement, 250 hours of community service, 5 years probation, and was ordered to pay \$11,070 in restitution. The other employee is pending trial. (OIG-I-412)

- **Threats to a Board Agent.** The OIG initiated an investigation after a Board Agent received a threat from an employer. After we referred this matter to the appropriate U.S. Attorney's Office, the Federal Bureau of Investigation (FBI) took the lead on this matter. The employer then made additional threats to employees at the NLRB Headquarters. Thereafter, we worked jointly with the FBI to obtain evidence that substantiated the employer's criminal activity. During this reporting period, the subject was indicted on charges related to her threats to kill NLRB employees. The employer is currently in a Federal confinement facility awaiting trial. (OIG-I-417)

- **Contractor Internet Misuse.** The OIG initiated an investigation of contract personnel for misusing the Agency's Internet access. During the course of a routine review of the Agency's Internet firewall logs, we found evidence that the contractor's employee was using the Agency's Internet access and official

time to engage in activity related to personal financial investments and outside business activities. When interviewed, the contract employee acknowledged that he was idle approximately 50 percent of the time. We issued an interim report to Agency managers so that they may attempt to resolve this matter with the contractor. During this reporting period, the Agency decided not to exercise an option for continued services from the contractor. By doing so, the Agency will be able to put approximately \$190,000 to better use. (OIG-I-413)

- **Time and Attendance Abuse.** The OIG initiated an investigation of an employee who was absent from his place of duty without leave and then provided false information to his supervisor when he was questioned about the absence. When interviewed by the OIG, the subject admitted to being absent without leave on the day in question, as well as other absences without leave. After we issued the investigative report, Agency

managers initiated a removal action. Thereafter, the subject resigned. (OIG-I-421).

Agency managers are currently considering disciplinary action. (OIG-I-425)

- **Assault by an Employee.** The OIG received information that, without provocation, an employee initiated an altercation with a fellow employee. We initiated an investigation and coordinated our investigative efforts with the Federal Protective Service. We found that the employee assaulted the fellow staff member for no apparent reason. After we issued our investigative report, the employee agreed to resign in lieu of a removal action. (OIG-I-423)

**Hotline**

Employees and members of the public with information on fraud, waste, and abuse are encouraged to contact OIG. A log of calls to a nationwide toll free number or the office numbers and a log of mail, e-mail, and facsimile messages are maintained. All information received, regardless of the method used, is referred to as Hotline contacts.

- **Transit Subsidy Fraud and Misleading Statement.** The OIG initiated an investigation of an employee who was suspected of driving to work while receiving the transit subsidy. Our investigation substantiated the allegation and also that employee provided misleading information regarding her use of the transit subsidy. The U.S. Attorney’s Office declined prosecution.

The information received over the hotline is the basis for the initial review for potential investigations. The information is analyzed to determine if further inquiry is warranted. Most Hotline contacts are calls from members of the public seeking help on an employment related problem or issues outside OIG and/or Agency jurisdiction.

As appropriate, OIG refers these callers to the Regional Office; local, state, or

Federal agency; or private resource to provide assistance. During this reporting period, OIG received 112

Hotline contacts, of which 56 were telephone calls or walk-ins and 56 were in writing.

## LEGISLATION, REGULATIONS, AND POLICY

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The Inspector General is to review existing and proposed legislation and regulations relating to programs and operations of the Agency and is to make recommendations concerning the impact of such legislation or regulations. Similarly, we review Agency and OIG policy. *We reviewed three pieces of legislation.*

### Legislation

We reviewed the following legislation and provided input when appropriate.

- **Pub. L. No. 110-409, Inspector General Reform Act of 2008.** The amendments to the Inspector General Act of 1978 require each Inspector General to be appointed without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. It requires the head of a designated Federal entity to communicate to Congress in advance the reasons for removing or transferring an Inspector General. It sets forth a basis for determining the annual rate of basic pay for Inspectors General at the designated Federal entities and prohibits an Inspector General from receiving cash awards or bonuses. The amendments require that Inspectors

General obtain legal advice from a counsel either reporting directly to the Inspector General or another Inspector General. It establishes within the executive branch the Council of the Inspectors General on Integrity and Efficiency and an Integrity Committee for the Council to review and refer for investigation allegations that are made against Inspectors General and certain staff. The amendments require transmission of the Office of Inspector General budget requests to the Office of Management and Budget and Congress. The amendments also require that an OIG maintain a Web page with a direct link to reports and a means for the submission of anonymous reports of fraud, waste, or abuse.

- **Pub. L. No. 110-323, Government Accountability Office Act of 2008.** This law created an Office of Inspector General at the Government Accountability Office (GAO). The law

also allows GAO to audit an Agency's financial statement for a fiscal year beginning on or after October 1, 2009, if the Agency requests the audit, with the concurrence of the Inspector General of such agency. It also allows GAO to be reimbursed for the costs of such audit. The Agency, Inspector General, and GAO shall consult prior to the initiation of the audit on the scope, terms, and cost of such audit.

- **Pub. L. No. 110-322, Amendment to the Federal Rules of Evidence.** This law amends the Federal Rules of Evidence with respect to the disclosure of a communication or information covered by the attorney-client privilege and work product protection. It provides that, when a disclosure that waives the attorney-client privilege or work product protection is made to a Federal office or agency, the waiver extends to an undisclosed communication or information in a Federal or state

proceeding only if the waiver is intentional; the disclosed and undisclosed communications or information concern the same subject matter; and they ought in fairness to be considered together. The amendment states that, when the disclosure is made in a Federal proceeding or to a Federal office or agency, it does not operate as a waiver in a Federal or state proceeding if the disclosure is inadvertent; the holder of the privilege or protection took reasonable steps to prevent disclosure; and the holder promptly took reasonable steps to rectify the error. Additional requirements apply to disclosures made in state proceedings.

### **Regulations**

The Counsel to the Inspector General is an advisory member of the Agency's Rules Revision Committee that develops changes to the Agency's procedural regulations.

## LIAISON ACTIVITIES

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The Inspector General is to recommend policies for, and is to conduct, supervise, or coordinate relationships between the Agency and other Federal agencies, state and local governmental agencies, and non-governmental entities. The Inspector General is to give particular regard to the activities of the Comptroller General of the United States. Similarly, we encourage OIG staff members to participate in Agency programs and activities. *OIG staff are active in the inspector general community and Agency functions.*

### **Inspector General Community**

The Inspector General is a member of the Executive Council on Integrity and Efficiency, which consists primarily of the inspectors general at the designated Federal entities in the IG Act. The Inspector General also participates in activities sponsored by the President's Council on Integrity and Efficiency, which consists primarily of the Presidentially-appointed inspectors general.

The Assistant Inspector General for Audits, or designated auditors, participated in the Federal Audit Executives Council, Financial Statement Audit Network, the Interagency Investigative Data Mining Working

Group, and the Chief Financial Officers Council A-136 Subcommittee.

The Counsel participated in the Council of Counsels to Inspectors General. The Counsel also participated in the Interagency Investigative Data Mining Working Group.

### **Government Accountability Office**

The IG Act states that each inspector general shall give particular regard to the activities of the Comptroller General of the United States, as head of GAO, with a view toward avoiding duplication and ensuring effective coordination and cooperation. We had no activity during this reporting period that required coordination with GAO.



## **INFORMATION REQUIRED BY THE ACT**

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Certain information and statistics based on the activities accomplished during this period are required by section 5(a) of the IG Act to be included in the semiannual reports. These are set forth below:

### Section 5(a)

- (1), (2), (7)      OIG did not identify significant problems, abuses or deficiencies relating to the administration of programs. For the purpose of this section, we used the definition of significant as set forth in the Federal Managers' Financial Integrity Act.
  
- (3)                Corrective action has been completed on all significant recommendations that were described in the previous semiannual reports.
  
- (4)                Three cases were referred to prosecutorial authorities. There were three prosecutions and one conviction.
  
- (5)                No reports were made to the Chairman that information or assistance requested by the Inspector General was unreasonably refused or not provided.
  
- (6)                A listing by subject matter is located on page 17.
  
- (8), (9)          No audit reports issued during this period had a recommendation on questioned costs or that identified funds that could be put to better use. See Table 2.
  
- (10)              There are no audit reports issued before the commencement of the reporting period for which no management decision has been made by the end of the reporting period.
  
- (11)              No significant revised management decisions were made during the reporting period.
  
- (12)              There were no significant management decisions with which I am in disagreement.

## **AUDIT REPORTS BY SUBJECT MATTER**

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<b><u>Report Title and Number</u></b>	<b><u>Questioned Costs</u></b>	<b><u>Unsupported Costs</u></b>	<b><u>Ineligible Costs</u></b>	<b><u>Funds To Be Put To Better Use</u></b>
ADMINISTRATION				
Budget Submission Case Processing Data OIG-AMR-58-08-02	0	0	0	0

**Table 1****REPORTS WITH QUESTIONED COSTS**

	<b><u>Number of Reports</u></b>	<b><u>Dollar Value</u></b>	
		<b><u>Questioned Costs</u></b>	<b><u>Unsupported Costs</u></b>
A. For which no management decision has been made by the commencement of the period	0	0	0
B. Which were issued during the reporting period	0	0	0
Subtotals (A+B)	0	0	0
C. For which a management decision was made during the reporting period	0	0	0
(i) Dollar value of disallowed costs	0	0	0
(ii) Dollar value of costs not disallowed	0	0	0
D. For which no management decision has been made by the end of the reporting period	0	0	0
Reports for which no management decision was made within six months of issuance	0	0	0

## REPORTS WITH RECOMMENDATIONS THAT FUNDS BE PUT TO BETTER USE

**Table 2**

	<b><u>Number of Reports</u></b>	<b><u>Funds Be Put To Better Use</u></b>
A. For which no management decision has been made by the commencement of the period	0	0
B. Which were issued during the reporting period	0	0
Subtotals (A+B)	0	0
C. For which a management decision was made during the reporting period	0	0
(i) Dollar value of recommendations that were agreed to by management	0	0
(ii) Dollar value of recommendations that were not agreed to by management	0	0
D. For which no management decision has been made by the end of the reporting period	0	0
Reports for which no management decision was made within six months of issuance	0	0

*Every employee is the  
guardian of integrity.*



**OIG Hotline  
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