



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF THE INSPECTOR GENERAL

WASHINGTON, D.C. 20424-0001

SUBJECT: Federal Labor Relations Authority Inspector General's Internal Review of the Administrative Law Judges Office

METHODOLOGY: This Internal Review was conducted in compliance with the Inspector General Act of 1978, as amended, the Inspector General Reform Act of 2008 and Federal Labor Relations Authority Inspector General Instructions. The immediate response of the Chief Judge and entire staff enabled this Internal Review to be conducted exceptionally well.

REFERENCES:

- The Inspector General Reform Act of 2008
- The Inspector General Act of 1978, as amended

BACKGROUND:

The Administrative Law Judges Component is the most independent aspect of the Federal Labor Relations Authority. It was part of the Federal Labor Relations Authority from the beginning in 1978.

FACTS:

The Federal Labor Relations Authority Administrative Law Judges Office was created with the Federal Labor Relations Authority in 1978. It previously had 6 or 7 Law Judges but currently has a Chief Administrative Law Judge, 3 Administrative Law Judges who are Administrative Law Judges and obtain the same salaries which the Chief Judge felt was sufficient for their responsibilities. The ALJ's office has 1 Assistant Attorney/Director, Settlement Program and 1 Legal Technician who acts as an Office Manager. The current Administrative Law Judges have been with the Federal Labor Relations Authority since 2000 and 2001, are experienced and usually attend annual training offered by the Federal Administrative Law Judges Conference that is held in September of each year. Otherwise, there have not been many opportunities for training relating to what they do.

The current Chief Administrative Law Judge has been in his job since March 2006. The Chief Judge affirmed that current management invites him to attend Management meetings. Even though he and his staff are independent, he feels that the Administrative Law Judge Component is part of the Federal Labor Relations Authority's Administration even though they have an independent operation. Because of the independence of the

Administrative Law Judges, no other Federal Labor Relations Authority Managers or employees should question the Judges' decisions. When the Chief Judge started his job, there were a significant amount of cases which were two years old which needed to be addressed. The Chief Judge then provided his Judges with the 4 measures to address so that each case was handled within 90 days. The Chief Judge can not share or assign any of his employees with any other office in the Federal Labor Relations Authority. The Chief Judge is the receiver of the complaint from the Office of General Counsel's Regional Directors and assigns it to the Administrative Law Judge who has total responsibility to handle the case and hearing and make the final decision. If exceptions are filed after the decision is made, the Federal Labor Relations Authority reviews the exceptions and modifies, reverses or remands it and sends it back to the judge. A further appeal can be issued which goes to the U.S. Court

When the current Chief Judge first came, there were two staff supporting employees but now he has one. Once the Administrative Law Judges cases begin, he believes his 4 Judges will be sufficient but he may need another (temporary) staff support employee to make sure that settlement cases are handled within 60 days prior to the hearings if both parties agree to try to do so. Once the past cases are completed, one staff member should be sufficient.

The Federal Labor Relations Authority Administrative Law Judges conduct unfair labor practice charge hearings that involve General Counsel Regional Offices and the recipients. The previous General Counsel would not permit the Regional Directors to make decisions on the unfair labor practice charges. The decisions could only be made by the General Counsel. Since there is no General Counsel now, the Regional Directors are now making the decisions. Appeals that are approved by the General Counsel Appeal Officer are forwarded to the Administrative Law Judges. The Administrative Law Judges review submitted documents, hold pre-hearing conferences, respond to motions, engage in legal research, conduct hearings and issue recommended decisions. They also sometimes handle settlement conferences. In addition to interacting with the Federal Labor Relations Authority Regional Offices, the Judges also interact with the Office of the Solicitor when appealed cases from hearings are sent to the U.S. Circuit Court.

The Judges maintain files for each case assigned by the Chief Judge until a decision is made and then copies are filed in the file room so that they are available for a further appeal with the Authority or a court case. Although the Judges maintain communication with the Chief Administrative Law Judge, no professional interaction is made regarding the case hearing. The time for processing cases depends on the complexity of the case. The goal for the days from the complaint being filed to the decision made is within 180 days. The hearing is usually held within 90 days after the complaint is received and the decision is then issued within 90 days. However, they are generally handled within 60 days after the complaint is received. Hearings usually take anywhere from several hours to 2 days and the majority of hearings take 1 day.

After the Judges make decisions in their hearings and their final document for the parties is created, if there is no objection by the parties, the Administrative Law Judges decisions are sent to the Case Intake and Publication Office on Drive D to be sent to the parties. The Chairman of the Case Intake and Publication Office stated that electronic access to this information by other Federal Labor Relations Authority or external employees on the internet is not possible.

The hearings are generally conducted in the Region of the General Counsel Regional Director who issued the complaint. Hearings are conducted in person and not by telephone or videos; therefore the Judges must travel to the Regional Office area of their hearing. Briefs are usually received 30 days after the hearings and decisions are usually issued within an additional 60 days although most issuances are about a month. All of the Administrative Law Judges stated that when they were handling hearings, they had a sufficient budget to travel. The costs generally range between \$15,000.00 and \$20,000.00 per year.

Compliance cases normally are not submitted to the Administrative Law Judges but are directly submitted to the Federal Labor Relations Authority's Authority. Hearing decisions are not final and parties can appeal to the Authority within 45 days. The Authority either affirms the decision or contests it. If contested, the case then goes to the U.S. District Court.

During the last administration, unfair labor practice charges and Administrative Law Judge hearings decreased. In 2006, when a new General Counsel was appointed, the Administrative Law Judges had a backlog related to a number of unfair labor practice charge cases carried over from prior fiscal years. Since the amount of unfair labor practice charges filed with the Federal Labor Relations Authority was reduced during the last administration, the Administrative Law Judges had no problem handling these cases and did not have to carry over any cases in 2007. When the 2006 appointed General Counsel left in 2008, once again, the cases filed with the Administrative Law Judges by the Regional Offices were on hold until a new General Counsel is appointed. Currently, other Federal Labor Relations Authority Administrative Law Judges, work is minimal because a Federal Labor Relations Authority General Counsel has not yet been appointed. When a General Council is hired and the unfair labor practice charges are completed work will increase. Currently some Administrative Law Judges are conducting hearing work for other Federal Agencies (which are providing payments to the FEDERAL LABOR RELATIONS AUTHORITY for this work). The Administrative Law Judges also handle settlement cases, review the Authority's decisions and are currently involved in an Information Resource Settlement Hearing. The Administrative Law Judges are also updating the Office of General Counsel's Representation Case Handling Manual.

During the Pre-Hearing Conference, the assigned Administrative Law Judge talks to the parties about their possibility of settling the case prior to the Judges Hearing but does not

force them to do so. However, generally, about 70 percent of the cases filed for hearings are handled by the Attorney Advisor/Director of Settlement Program and a significant amount of these cases are settled.

Right now the Attorney Adviser/Director of Settlement Program is working on EEO and projects updating the Representational Manual. Although research is currently done through Lexis, the Attorney Adviser/Director of Settlement Program stated that there are no significant problems relating to the current information technology system and no problems with other administrative programs other than quality programs. Interaction involves the Chief Judge, EEO managers and the Acting Executive Director, Regional Attorneys and parties. There is no Strategic Plan and regulations related to the Hearings or Settlement Program which are in 5 CFR 2423 of the Statute.

The Attorney Adviser/Director of Settlement Programs was detailed to the Administrative Law Judges in April 2001 to handle settlement and became a permanent employee in August 2001 with additional duties added. These included handling EEO and preparing draft decisions for Administrative Law Judges. Although Judges normally prepare the drafts for their cases, if they are involved in a lot of cases, the Attorney Adviser/Director of Settlement Programs assists them if it does not interfere with the time sensitive settlements.

The Attorney Adviser/Director of Settlement Programs creates and maintains settlement files which include the request complaint, responses and contact information for the parties. Files are not prepared for the mediation but a summary and settlement leader are created. The Attorney Adviser/Director of Settlement Programs also prepares and keeps statistics on settlement records but this should be done by a support staff employee. Decisions are made by the parties. The Attorney Adviser/ Director of Settlement Programs does not follow-up with the parties after the settlement is completed but the Federal Labor Relations Authority Regional Offices do. The time for processing the settlement varies but must be done before the Judges conducts a hearing.

The Attorney Adviser/Director of Settlement Program conducts her settlement by phone and does not travel to do so except for settlements with parties in Washington D.C. Settlements are not conducted on videos or computers and mediation settlement conferences are not taped. If a settlement is made, the parties reconduct the General Council and Regional Directors and a hearing is not conducted by the Administrative Law Judge. The Attorney Adviser/Director of Settlement Program does not conduct work for Judges on the case she handled for settlement. To do so would be a conflict of interest.

In relation to the Federal Labor Relations Authority, the Administrative Law Judges affirmed that the Federal Labor Relations Authority programs have diminished. Several of them also feel that it is not proper to keep the Human Resources, Financial and Information Technology Programs with the Department of Interior National Business Center or contractors and that the programs need to be reinstated in the Federal Labor Relations Authority with proper staffs.

The Legal Technician who serves as the Administrative Law Judges Legal Technician was reassigned to the Administrative Law Judges Office in March of 2008, having been removed from there approximately in 2002. Her job began very shortly after the Federal Labor Relations Authority's General Counsel left and did process several Administrative Law Judge decisions in process and issued closed case files to the Case Intake and Publication Office when completed for issuance. Most of the records related to the hearings are created by the assigned judge. The Legal Technician handles the hearing files and stores them in the file room. Since then, other than time-and-attendance for Administrative Law Judge employees (except the Chief Judge whose time-and-attendance is handled by the Deputy Solicitor of the Office of Solicitor); the Legal Technician has virtually had nothing to do. The Legal Technician's only interaction with the Chief Judge is when she takes the employees time-and-attendance slips to the Chief Judge for approval. The Legal Technician does handle the time and attendance for Victoria Dutcher rather than the Chairman of FSIP. When the Legal Technician receives requests from the Deputy Solicitor for Office of the Solicitor attorneys to conduct court cases related to the hearings, she does not inform the Chief Judge. The Legal Technician has not received any other requests from management to conduct programs anywhere else in the Federal Labor Relations Authority.

Since 2008, the Legal Technician has had in house training regarding the Travel System and Video Conference but has had no outside training. The Legal Technician normally does not interact with the parties unless a Judge tells her to contact an individual. The Legal Technician does not attend hearings.

The Legal Technician does not have any problems with the information technology system except she would like her keyboard placed lower because the current level hurts her hand. She has been told by management that a repair person will be coming to correct the level of her keyboard. The Legal Technician does not maintain nor does she know anything about the Administrative Law Judge Office's budget. The former Administrative Law Judge's Office Manager had an Operating Manual for handling reports. The Legal Technician has made some edits and stated the Operating Manual needs some updating which she will do.

ADMINISTRATIVE FINDINGS

The location of the Office of the Administrative Law Judges on the 3rd floor is not private because its entrance doors have no locks and employees from the Members Offices can walk through. The main outside door of this Office does not have a lock. Once the last Administrative Law Judge employee leaves the office, people could get in and take out documents. Only the Chief Judge and the Attorney Advisor/Director of Settlement Program have locked office doors. The Attorney Advisor/Director of Settlement Programs obtained the lock by request. None of the other Judges have locked doors. The file room does not have a lock and also contains a refrigerator, microwave and water provider which is often accessed by other 3rd floor Federal Labor Relations Authority employees (and could be by other employees and individuals in the Federal Labor Relations Authority.) Several of the

file cabinets are not secured. These files contain copies of the final party hearings conducted by the Federal Labor Relations Authority Judges and could be accessed by other employees even before the parties and Regional Offices received the decision.

Judges are having a problem with the Federal Labor Relations Authority Library which has scrolled down and have not been updated through most of the last administration. The Library no longer has sufficient information for the Judges to process their hearings. The Federal Labor Relations Authority employed a librarian but no longer has one.

The Administrative Law Judges Office does not personally occupy a hearing room to conduct hearings. If available they utilize FLRA large agenda room or if necessary the small agenda room which is too small.

The Administrative Law Judges and Attorney Advisor/Director of Settlement Program use Hq on 'svhq1' (F:) on their network to store their hearing files. This aspect is secure and can not be accessed. However, when the hearing is closed and the Judge's decision is made, a copy of the decision is provided to the Legal Technician (who is actually an Office Manager). Once received, the Legal Technician forwards the decision to the Federal Labor Relations Authority Case Intake and Publication Office for release. The decision is sent to the Case Intake and Publication Office to Local Disk (D).

CONCLUSION:

Although currently, the Federal Labor Relations Authority's Administrative Law Judges are not handling unfair labor practice charge hearings for appeals because there is no Federal Labor Relations Authority General Counsel who issues decisions regarding unfair labor practice charges, the current Chief Judge and Administrative Law Judges are professional and very experienced to conduct their jobs.

The fact that the Administrative Law Judges are conducting hearings for other Federal Agencies because they are not handling hearings right now, is better than them not doing anything at all. Although there is a lot of program issues that need to be addressed in the Federal Labor Relations Authority, it would not be proper for the independent Judges to be conducting other jobs for other components or administrative offices even though they currently have no hearings.

The fact that there is a significant amount of settlements of cases before the Judge's hearings is productive for the customers, as well as, the Federal Labor Relations Authority. The location of the Administrative Law Judge Office and fact that it is not private is wrong. None of their entry doors have locks. Also the fact that the Administrative Law Judges Office and file room has no lock is improper. Also the file room has files along with a

refrigerator, microwave and water provider which also can be accessed by outside people is improper because several file cabinets do not have locks and hearing documents could be taken by outsiders who come in to prepare or get lunch items.

FINDINGS AND RECOMMENDATION:

Finding 1:

Some Federal Labor Relations Authority employees on the 3rd floor walk to and from the restroom and lunch room through Administrative Law Judges Office. This is improper because discussions and information can be obtained in the file room by outside employees.

Recommendation 1:

a. The Chairman, Federal Labor Relations Authority should place the Administrative Law Judges in an Office which has doors to keep the Judges confidential and independent where other employees can not walk through and around to enter other Federal Labor Relations Locations or install locked doors in front and on either side of the current office.

b. Although Administrative Law Judge office is listed with other listings in the outside hallway, there is no Administrative Law Judge listing on the main door. A listing should be placed by its main door. This should also be done for all other Federal Labor Relations Authority Offices (even if it is created by the FLRA rather than purchased.)

Finding 2:

When Judges have Washington D.C. hearings, they can't always use the Federal Labor Relations Authority's large conference room and have to do their hearings in very small conference rooms.

Recommendation 2:

The Federal Labor Relations Authority should create a specific Judge Hearing Room which is large enough for the Judges to hold their Washington D.C. hearings with parties and witnesses and is available only for them when they need it. Outsiders should not be able to access it.

Finding 3:

Judges can access information regarding Federal laws, regulations and Agencies via the internet but an efficient Library is needed for information relating to process hearings properly. Since the Library has not been updated since 2003 and there is no Librarian the Administrative Law Judges often have to obtain necessary information regarding their appeal cases from other Federal or private sector Judges.

Recommendation 3:

The Federal Labor Relations Authority should restore the Library and appoint a Librarian Officer (when the budget increases) to keep it up-to-date.

Finding 4:

The Administrative Law Judges who conduct hearings do not have a scanner in their office to make copies of their hearing information. They currently conduct their scanning external to their office.

Recommendation 4:

A scanner should be provided to the Administrative Law Judge Office and installed so that their material does not go out of the office and can not be obtained by other Federal Labor Relations Authority employees.

Finding 5:

The Legal Technician does not inform the Chief Judge when the Deputy Solicitor of the Office of Solicitor contacts her for information relating to a hearing decision which goes to the U.S. Court Department.

Recommendation 5:

The Legal Technician should inform the Chief Judge when she is requested information from the Deputy Solicitor of the Office of Solicitor for the U.S. Court.

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