



***FY 2003 ANNUAL PROGRAM  
PERFORMANCE PLAN  
AND  
FY 2001 ANNUAL PERFORMANCE  
REPORT***

**GOVERNMENT PERFORMANCE and RESULTS ACT of 1993**

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**FY 2003 ANNUAL PROGRAM PERFORMANCE PLAN  
AND  
FY 2001 ANNUAL PERFORMANCE REPORT**

**TABLE OF CONTENTS**

Introduction..... 3

I. Background and Mission of the NLRB..... 3

II. Statutory Structure of the Agency: Role of the Board and General Counsel..... 5

Unfair Labor Practice Proceedings..... 5

Representation Proceedings..... 6

Administrative Functions ..... 7

Effect of Division of Authority on GPRA Plans..... 7

Output vs. Outcome Measures..... 7

III. Prioritization of Cases – Impact Analysis..... 8

IV. External Factors and Agency Performance..... 9

V. Human Resources..... 10

VI. Workforce Restructuring..... 10

VII. Information Resource Management..... 11

VIII. Program Evaluation..... 12

IX. Verification and Validation of Data..... 13

X. Budget and Performance Integration..... 14

XI. Goals, Objectives, Strategies and Performance Measures..... 14

Performance Measures and FY 2001 Results..... 18-39

Summary of Performance Measures..... 40-46

Appendix A: Crosswalk of Budget and Performance Measures..... 47

Appendix B: Definitions..... 49

Appendix C: ..... 52

Attachment A: Explanation of Types of Cases

Attachment B: Procedures in Cases Involving Charges of Unfair Labor Practices

Attachment C: Outline of Representation Procedures Under Section 9c

Attachment D: Organization Chart of the NLRB

**INTRODUCTION**

This is a combined document of the National Labor Relations Board's (NLRB) Annual Performance Plan (Plan) for fiscal year 2003, as well as the fiscal year 2001 Performance Report (Report). The Annual Plan is based on the fiscal 2000-2006 six-year strategic plan adopted by the NLRB in September 2000 and describes the specific steps that the NLRB proposes to take in fiscal 2003 to achieve the strategic plan's goals and objectives. Input for the Plan was also received during a strategic planning retreat of the Agency's presidential appointees and top managers in June 2001, as well as through follow-up meetings and review by the retreat participants and other employees of the Agency. As a result of input received, several new broader measures were adopted that capture larger pieces of the overall casehandling process.

Generally, FY 2001 results were very favorable. In the area of unfair labor practice cases, the NLRB exceeded its goal of settling 95 percent of its cases prior to formal litigation and also exceeded Regional level disposition goals within its case prioritization (Impact Analysis) system. The NLRB Board reached the case issuance goal for its oldest cases and exceeded its goal for reducing the number of pending cases before the Board. The time needed for the Division of Judges to issue decisions was also decreased significantly. In the area of representation election cases, the percentage of elections held within the time target increased slightly from FY 2000 and the 85 percent goal for achieving voluntary election agreements was exceeded. The Board reached its goal of issuing all representation election cases that were over 18 months old.

The new format of this document combines in one section the discussion of each performance measure with the FY 2001 results and analysis. This will give the reader a better understanding of the performance measures and results achieved.

## **I. BACKGROUND AND MISSION OF THE NLRB**

The NLRB is an independent federal agency created by Congress in 1935 to administer and enforce the National Labor Relations Act (NLRA), which is the primary federal statute governing labor relations in the private sector.<sup>1</sup> The purpose of the law is to serve the public interest by reducing interruptions in commerce caused by conflict between employers and employees. It seeks to do this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The Act embodies a bill of rights, which establishes freedom of association for the purposes of participating in the practice and procedure of collective bargaining. Under the Act, the NLRB has two primary functions: (1) to prevent and remedy statutorily defined unfair labor practices by employers and unions; and (2) to conduct secret-ballot elections among employees to determine whether the employees wish to be represented by a union.<sup>2</sup> The mission of the Agency is to carry out these statutory responsibilities as efficiently as possible, in a manner that

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<sup>1</sup> Major amendments to the Act were enacted in 1947 (the Taft-Hartley Amendments) and in 1959 (the Landrum-Griffin Amendments).

<sup>2</sup> See Attachment A for a detailed description of the types of cases handled by the Agency.

gives full effect to the rights afforded to employees, unions, and employers under the Act.

The NLRB acts only on those cases brought before it, and does not initiate cases. All proceedings originate from the filings by employees, labor unions, and private employers who are engaged in interstate commerce. Over 36,000 cases are received by the Board through its Regional, subregional, and resident offices each year, with approximately 30,000 being unfair labor practice cases and the remaining 6,000 representation cases, which involve petitions to conduct secret ballot elections. Under the Act's procedures, the General Counsel investigates these 30,000 unfair labor practice cases, which result in a finding of no merit—no probable cause to support the charge—in about two-thirds or 20,000 cases. These decisions are made by the Regional Directors, who have been delegated substantive decision-making authority over these cases. Of those cases in which merit is found, 95 percent are settled without formal litigation. It has long been the NLRB's belief that all parties are better served if disputes are settled without the need for time-consuming and costly formal litigation.

The Agency also provides an extensive employment information service to employers, employees, and unions outside the formal case procedures. Under its Information Officer (IO) Program, many potential charges that relate to matters outside the jurisdiction of the NLRB are directed to more appropriate federal or state agencies before extensive resources have been spent. Of the 146,768 inquiries received in FY 2001, only 7,549 resulted in charges being filed by an employee, employer, union, or individual alleging that an unfair labor practice has been committed.

In addition to the unfair labor practice cases, the NLRB conducted over 2,837 elections in FY 2001 from the 6,000 representation cases in which a petition was filed. In 88 percent of elections conducted, the NLRB was able to negotiate agreements between the parties as to when, where, and who should be involved in the election. A hearing was required to resolve such issues in approximately 12 percent of the cases going to election.

The NLRB's FY 2002 budget is \$226.438 million with a ceiling of 1,985 FTE, a 4.6 percent increase over the FY 2001 budget of \$216.438 million, which provided for an actual FTE of 1,992. In FY 2003, the President is requesting an increase of \$6.785 million over the FY 2002 appropriation, bringing the total funding level to \$233.223 million and providing for an FTE level of 1,952. Over 92 percent of the Agency's budget is dedicated to fixed costs--77 percent to personnel costs and 15 percent to space and equipment rental. That leaves 5 percent for infrastructure costs and the remaining 3 percent for case processing expenses.

## **II. THE STATUTORY STRUCTURE OF THE AGENCY: ROLE OF THE BOARD AND THE GENERAL COUNSEL**

The NLRB's authority is divided by law and by delegation between the five-member National Labor Relations Board ("the Board") and the General Counsel, all of whom are

appointed by the President subject to confirmation by the Senate.<sup>3</sup> To carry out their respective functions, described below, the Board and the General Counsel maintain a headquarters in Washington, D.C. The Agency also maintains a network of Regional or “field” offices, each of which is under the direction of a Regional Director.<sup>4</sup>

The National Labor Relations Act assigns separate and independent responsibilities to the Board and the General Counsel, particularly in the prevention and remedying of unfair labor practices. This division of authority between the Board and the General Counsel is reflected in the Agency’s operations, thereby affecting the strategic and annual performance plans. An explanation of this division of authority between the Board and the General Counsel will help to provide an understanding of the operation of the Agency.

### **Unfair Labor Practice Proceedings<sup>5</sup>**

Unfair labor practices are remedied through adjudicatory procedures under the National Labor Relations Act in which the Board and the General Counsel have independent functions. The role of the General Counsel is to investigate unfair labor practice charges filed by individuals and organizations and, if there is reason to believe that a charge has merit, to issue and prosecute a complaint against the charged party unless settlement is reached. With some exceptions, a complaint that is not settled or withdrawn is tried before an administrative law judge, who issues a decision which may be appealed by any party to the NLRB Board through the filing of exceptions. The Board acts in such matters as a quasi-judicial body, deciding cases on the basis of the formal trial record according to the statute and the body of case law that has been developed by the Board and the federal courts.

Congress created the position of General Counsel in its current form in the Taft-Hartley amendments of 1947. At that time, it gave the General Counsel sole responsibility -- independent of the Board -- to investigate charges of unfair labor practices, and to decide whether to issue complaints with respect to such charges. The Board, in turn, acts independently of the General Counsel in deciding unfair labor practice cases.

Under Section 10(l) of the Act, when the region’s investigation of a charge yields reasonable cause to believe that a union has committed certain specified unfair labor practices such as a work stoppage or picketing with an unlawful secondary objective, the “regional officer or regional attorney” is *required*, on behalf of the Board, to seek an injunction from a U.S. District Court to halt the alleged unlawful activity. Section 10(j) of the Act provides that where the General Counsel has issued a complaint alleging that

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<sup>3</sup> As of March 2002, one vacancy exists on the Board. Three Board Members, including the Chairman, are recess appointments whose terms expire no later than the close of this session of Congress, and the fourth Member’s term expires on December 16, 2002. The General Counsel’s position is filled with a confirmed appointee.

<sup>4</sup> Attachment D is an organizational chart of the Agency.

<sup>5</sup> Attachment B is a chart on unfair labor practice case processing.

any other type of unfair labor practice has been committed, by a union or by an employer, the Board *may* direct the General Counsel to institute injunction proceedings if it determines that immediate interim relief is necessary to ensure the efficacy of the Board's ultimate order.

If the Board finds that a violation of the Act has been committed, the role of the General Counsel thereafter is to act on behalf of the Board to obtain compliance with the Board's order remedying the violation. Although Board decisions and orders in unfair labor practice cases are final and binding with respect to the General Counsel, they are not self-enforcing. The statute provides that any party (other than the General Counsel) may seek review of the Board's decision in the U.S. Courts of Appeals. In addition, if a party simply refuses to comply with a Board decision, the Board itself must petition for court enforcement of its order. In court proceedings to review or enforce Board decisions, the General Counsel represents the Board and acts as its attorney. Also, the General Counsel acts as the Board's attorney in contempt proceedings and when the Board seeks injunctive relief under Section 10(e) and (f) after the entry of a Board order and pending enforcement or review of proceedings in circuit court.

## **Representation Proceedings<sup>6</sup>**

In contrast to unfair labor practice proceedings, representation proceedings conducted pursuant to the Act are not adversarial proceedings. Representation cases are initiated by the filing of a petition -- by an employee, a group of employees, an individual or a labor organization acting on their behalf, or in some cases by an employer. The petitioner requests an election to determine whether a union represents a majority of the employees in an appropriate bargaining unit and therefore should be certified as the employees' bargaining representative. The role of the Agency in such cases is to investigate the petition and, if necessary, to conduct a hearing to determine whether the employees constitute an appropriate bargaining unit under the Act. The NLRB must also determine which employees are properly included in the bargaining unit and therefore eligible to vote, conduct the election if an election is determined to be warranted, hear and decide any post-election objections to the conduct of the election, and, if the election is determined to have been fairly conducted, to certify its results.

In the processing of representation cases, the General Counsel and the Board have shared responsibilities. The Regional Offices, which are under the day-to-day supervision of the General Counsel, process representation petitions and conduct elections on behalf of the Board. As a result, the General Counsel and the Board have historically worked together in developing procedures for the conduct of representation proceedings. Although the Board has ultimate authority to determine such matters as the appropriateness of the bargaining unit and to rule on any objections to the conduct of an election, the Regional Directors have been delegated authority to render initial decisions in representation matters, which are subject to Board review.

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<sup>6</sup> Attachment C is a chart on representation case processing.

## **Administrative Functions**

Section 3(d) of the Act assigns to the General Counsel general supervision over all attorneys employed by the Agency, with the exception of the administrative law judges, who are under the general supervision of the Board, and the attorneys who serve as counsel to the Board members. The Board has also delegated to the General Counsel general supervision over the administrative functions of the Agency (such as purchasing, personnel, communications and the leasing of office space) and over the officers and employees in the Regional Offices.

## **Effect of Division of Authority on GPRA Plans**

Although the General Counsel and the Board share a common goal of ensuring that the Act is fully and fairly enforced on behalf of all those who are afforded rights under the Act, the division of authority mandated by the Act necessarily means that the two branches of the Agency will have separate objectives, and separate strategies for achieving objectives relating to those aspects of their statutory functions which are uniquely their own. The statutory framework in the processing of unfair labor practices cases separates the prosecutorial functions of the General Counsel from the adjudicatory functions of the Board. The Board and the General Counsel, however, have worked together in developing one comprehensive strategic plan.

## **Output Versus Outcome Measures**

It is difficult for an agency such as the NLRB to measure “outcomes” in the sense intended by the authors of the Government Performance and Results Act. In the representation case area, for instance, the Agency does not control or seek to influence the results of elections, but strives instead to ensure the rights of employees to freely and democratically determine, through a secret ballot election, whether they wish to be represented by a labor organization. If the Agency concludes that all of the necessary requirements for the conduct of an election have been met, it will either direct an election or approve the parties’ agreement to have an election. The performance measures the Agency has established for the conduct of elections are objective and are not dependent on the results of the election. The true outcome of properly-conducted elections is employees, employers and unions voluntarily and freely exercising their statutory rights as set out in the National Labor Relations Act.

The same difficulty is inherent in any attempt to define “outcomes” in the prevention of unfair labor practice conduct. The aim of the Agency is to prevent industrial strife and unrest that burdens the free flow of commerce. An indicator of success in the achievement of this aim is labor peace. In the absence of a mechanism to accurately gauge “labor peace” or the impact of Agency activities among a range of variables

influencing that goal, the NLRB has established a number of objective standards to measure its performance in this area. In particular, the timeliness and quality of case processing at various stages, from the filing of an unfair labor practice charge to the closing of a case upon compliance with a litigated or agreed-to remedy, are the focus of the performance measures. The settlement rate for unfair labor practice cases, found after a full investigation to warrant further administrative action, is another key indicator of Agency success in handling the case workload.

### **III. PRIORITIZATION OF CASES—IMPACT ANALYSIS**

A new case management system called Impact Analysis was developed for implementation in FY 1996 to address the growing case management problem in the Regional Offices during the early and mid 1990s. This problem was generated by reduced budgets, which resulted in an increased backlog of cases. Impact Analysis provided a uniform framework for the prioritization of cases across the country and insured that those cases having the greatest impact upon the NLRB's customers received the most prompt and highest level of attention. The Impact Analysis system allows for the measurement of the Agency's effectiveness in handling the most important cases and moves away from the Agency's more traditional approach of measuring effectiveness exclusively based on the numbers of cases processed, regardless of their significance in the labor relations environment.

Through the Impact Analysis approach, the cases that now receive the most immediate attention are those where the alleged unlawful activity is having a demonstrable impact on the public through disruptions of business activities or would significantly affect a large number of employees or high percentage of the workforce in a smaller business. Under Impact Analysis, a case involving a remedial bargaining order affecting an entire unit of employees or the systematic abuse by a union of an exclusive hiring hall would command greater priority and Agency resources than would a charge involving a claim by an individual regarding his or her union's failure to process an individual grievance.

The Impact Analysis model consists of three categories of cases, with Category III being the cases of the highest impact and Category I the lowest. Cases can be recategorized during the investigative stage, if warranted. Generally, about 20 percent of unfair labor practice cases fall in Category III, about 45 percent in Category II, and 35 percent in Category I. Impact Analysis time goals for processing an unfair labor practice charge from the filing of the charge through investigation and implementation of a Regional determination through the issuance of a complaint or dismissal or with-drawal are different for each of the three categories. The time targets in FY 2001 were 7 weeks for Category III cases, 9 weeks for Category II, and 12 weeks for Category I.

The time frames are reviewed each year to reflect the realities of Regional workload. In FY 2002, the Impact Analysis system will shift certain types of cases to a higher category in order to encourage more prompt investigations and disposition of these cases.



#### **IV. EXTERNAL FACTORS AND AGENCY PERFORMANCE**

Various external factors can affect each goal, objective, and performance measure contained in the NLRB's strategic and annual performance plans. These factors include the following.

- **Budget**

Our goals assume full funding as set forth in the President's budget request of \$233.223 million for FY 2003. Requested resources will be targeted to achieve the results described in this plan. Funding for FY 2003 would continue to support the processing of the Agency's caseload and provide resources for information technology improvements critical for integrating and tracking the Agency caseload and expenditures.

- **Case Intake**

Public perceptions about unionization and the role of the Agency, employment trends, stakeholder strategies, the globalization of the economy, industrial economic trends, corporate reorganizations and the level of labor management cooperation efforts can all have an impact on our intake and the complexity of our work. Difficult issues affecting our ability to achieve full compliance can arise when companies relocate or close, dissipate or hide assets, file for bankruptcy or reorganize or operate through a different corporate entity. An unexpected large increase in our intake or in the complexity of issues we handle without a sufficient increase in resources will result in increased backlogs and delays in processing cases.

- **Settlements**

While the Agency has experienced outstanding success in achieving voluntary resolutions of representation and unfair labor practice cases and litigating cases, we cannot control the likelihood of these agreements. Parties may conclude that litigation serves their legitimate or tactical interests. The Agency's procedures provide for administrative hearings, briefs and appeals, and disputes cannot always be resolved informally or in an expeditious manner. When the process becomes formal and litigation takes over, a case takes longer to complete. Consequently, a drop in the settlement rate would likely reduce the number of cases closed in a particular year.

- **Presidential Appointees**

Another factor outside the control of the Agency is the timely confirmation of Presidential appointees. Vacancies on the five-member NLRB Board have a substantial impact on the ability to issue decisions and result in an increased backlog of cases. The assigned caseload of individual Board members rises and decisions in difficult or controversial cases may be delayed due to vacancies on the Board. It is important to

note that in fiscal year 2002 the Board operated without a quorum for more than one month (December 21, 2001—January 23, 2002). Thus, for more than a month, the Board was unable to issue any decisions. In addition, the Board, as of March 2002, was functioning with only one confirmed Board Member and three recess appointees (two of whom have been serving less than two months). It is unrealistic to expect the Board to maintain the success achieved in FY 2001 under these circumstances. As the General Accounting Office pointed out in a 1991 analysis of Board production, Board Member vacancies and turnover are the primary delays in issuance of Board decisions.

## **V. HUMAN RESOURCES**

A well-trained professional and support staff is essential to the effective and efficient achievement of the Agency's mission. The need to make the most efficient use of human resources and to attract qualified staff will become more critical in the next few years as a high percentage of the on-board staff will be eligible to retire. Appropriate training of personnel ensures that our customers will receive the highest level of service and enhances our ability to achieve the GPRA goals set forth by the Agency. Accordingly, the Agency is committed to providing Agency employees with the work environment, support, training, guidance and resources necessary to carry out the Agency's mission.

## **VI. WORKFORCE RESTRUCTURING**

The NLRB had 1,992 actual FTE in FY 2001 and an authorized ceiling of 1,985 in FY 2002. Approximately 43% of the workforce are attorneys, 20% field examiners, 12% other administrative and professional staff, and 25% support and technical staff. The Washington DC headquarters has approximately 600 employees, with the remaining staff located in 32 Regional offices, 3 subregional offices, and 17 resident offices located throughout the country. Through its Regional office field structure, the Agency

has provided the public with easy access and direct contact with decision-makers. Over the next five years, 411 NLRB employees or 20 percent of the workforce will be eligible for optional retirement. In addition, another 308 employees could be eligible for early out retirements. One third of those eligible for optional retirement in the next five years are supervisors. The attrition rate at the NLRB has been increasing in recent years, rising from 5.1% in 1996, 5.7% in 1997, 6.1% in 1998, 6.3% in 1999, to 7.1% in 2000. As new employees come on board to replace those who are lost, Agency supervisors dedicate significant time to their supervision and training.

In an effort to ensure that the Agency has the staff resources closest to where they needed, a boundary study of Regional offices has been initiated in a continuing effort to assess changes in case intake across geographic areas. This will also help to evaluate potential adjustments in the size and number of offices. The last study was completed in 1998 and resulted in one Regional office being downgraded to a subregion. The new

boundary study will help the Agency identify pressing and long-term human capital needs, and help make informed decisions critical to resources management.

## **VII. INFORMATION RESOURCE MANAGEMENT**

To support the Agency's core mission functions and goals, the Agency will provide automated case management data research tools and other technological aids to enhance employees' ability to work more efficiently, assess and manage workload, and increase responsiveness to the public. The Agency is committed to the creation of a mainstream information architecture and infrastructure that will support the planned and anticipated use of information technology in the future. This includes furnishing to all employees the informational tools and resources that enhances their productivity and facilitates good decisions and appropriate action by the Agency.

The NLRB also is committed to the establishment of corporate data sharing capabilities to allow the activities and results of Regional actions to be shared among all locations nationally. This will help ensure consistent legal processes and equitable administration of labor law throughout the United States. Among these resources are the capability to retrieve and search documents that provide relevant research on related cases and legal decisions in order to ensure the appropriate and complete investigation and analysis for the Agency's cases, as well as information systems that improve case tracking and processing, and facilitate aggregate reporting and analyses. In addition, a telecommunications network will continue to be implemented that supports data transfer and communications among all geographic locations at the Regional and subregional level.

## **VIII. PROGRAM EVALUATION**

The Agency has had an evaluation program in place for many years to assess the performance of its Regional operations. The Quality Review program of the Division of Operations Management reviews unfair labor practices and representation case files on an annual basis to ensure that they are processed in accordance with substantive and procedural requirements and that the General Counsel's policies are appropriately implemented. Those reviews have assessed, among other things, the quality and completeness of the investigative file, the implementation of the General Counsel's priorities in the areas of representation cases, Impact Analysis prioritization of cases, and compliance with Agency decisions. The results of the reviews are set forth in a written report and are incorporated into each Regional Director's performance appraisal on an annual basis. Additionally, personnel from the Division of Operations Management conduct site visits during which they evaluate Regional procedures in these areas. The quality and timeliness of Regional work, and the Region's effectiveness in implementing the General Counsel's priorities are evaluated as part of

the annual Regional Director performance appraisal system.

In addition to the evaluation of Regional Office activities discussed above, the Office of the General Counsel monitors the litigation success rate before the Board and before district courts with regard to injunction litigation. The success rate before the NLRB Board has been in the mid to high 80 percentile and before the district courts it has been 85-90 percent. If a field office has a success rate significantly below those standards, the Division of Operations Management will examine the reasons for the deviation in order to determine whether it reflects a decrease in quality. Similarly, the Agency keeps abreast of its success rate before circuit courts of appeals and when the success rate changes significantly, the Agency will analyze the reasons for such changes, in order to ensure quality in its litigation. Other branches and offices, such as the Office of Appeals, Division of Advice, Contempt Litigation and Compliance Branch and Office of Representation Appeals, provide valuable insight and constructive feedback on the performance and contributions of field offices. The Division of Operations Management also obtains information to assess existing and potentially new programs at management conferences and through periodic and ongoing consultations with field employees at all levels.

In the area of training, the Agency has traditionally consulted with all affected groups in identifying training needs, developing training programs and evaluating these programs. Employee training committees evaluate our training efforts and submit recommendations for future training.

The NLRB's Inspector General has taken a very active role in evaluating GPRA and its performance measures. The Inspector General provides on-going comment on draft and final plans, as well as on the annual reports that provide performance results.

## **IX. VERIFICATION AND VALIDATION OF DATA**

**Background:** Approximately forty years ago the National Labor Relations Board developed a performance measurement system to track case processing times. This system of organization and measurement has been highly regarded for decades and modeled by other federal agencies. Most data collected indicates how much time is spent in each step of the case processing "pipeline." The Agency does not rely on any outside sources for the data it uses in its performance measurement system.

The Agency is moving toward full implementation of its Case Activity Tracking System (CATS). Installed in phases over the past five years, the CATS system is a critical part of the Agency's effort to modernize its casehandling information processing system and case tracking systems. The CATS system's first goal is to provide case activity and status information to all NLRB offices on approximately 36,000 new cases per year and provide a history of closed cases nationally. Its second goal is to provide support for the functional and work requirements of the NLRB's attorneys, investigators, managers, and support staff by providing a means of access to internal and external collections of

documents.

**Verification:** Each NLRB office is responsible for collecting performance measurement data and verifying it. The data comes primarily from administrative records or sample surveys. Data about each case is collected and reported in all offices at least monthly and in most cases, weekly. Verification of the accuracy of the data collected occurs regularly in all Regional Offices as most resource allocation decisions are made on the basis of these data. Systemic verification occurs quarterly during various phases of the budget and GPRA reporting cycles. Baseline data is reviewed annually during the preparation of the Annual Performance Plan.

Additionally, the Inspector General selectively verifies and validates performance measurement data each year. When pertinent to the conduct of ongoing audit activities, the Inspector General will also review performance measures to consider their appropriateness. The assessments may lead to changes in performance measures and/or data collection systems.

**Validation:** A comprehensive review of performance measures and indicators occurred at the June 2001 strategic planning retreat by the Agency's presidential appointees and senior managers, who reviewed the existing performance measures and decided whether to retain or modify them. Agency staff and retreat participants continue to review the GPRA measures and make adjustments during the weeks and months following the retreat.

**Opportunities for Improvement:** The quality of data generated by the collection and reporting systems will vary until CATS is fully implemented. Projections on case intake are typically calculated using a simple trend line analysis, plus anticipated economic conditions and other events which may affect case activity. The accuracy of measurement depends on common definitions as to when a case is received and concluded. The CATS system will use a unified measurement system to track data at the Agency's headquarters and Regional field offices.

## **X. BUDGET AND PERFORMANCE INTEGRATION**

The GPRA Annual Plan for FY 2003 includes a crosswalk of budget program areas matched with related GPRA performance measures. The crosswalk table also includes the associated staff resource and budget dollar amounts for these program and GPRA performance areas. The NLRB has fully integrated its case management information system with its GPRA performance measurement system. The Agency will continue to explore ways to more fully integrate the budget with GPRA performance in the future.

## **XI. GOALS, OBJECTIVES, STRATEGIES AND PERFORMANCE MEASURES**

The following discussion reviews the existing goals, objectives and strategies for the

NLRB contained in the Agency's five-year strategic plan adopted in September 2000. Following this discussion, the next section will look at each measure, including background information and performance targets, as well as analysis of FY 2001 performance as part of the Annual Performance Report.

## **GOAL 1: Resolve questions concerning representation promptly.**

### **OBJECTIVES**

The Act recognizes and expressly protects the right of employees to freely and democratically determine, through a secret ballot election, whether they want to be represented for purposes of collective bargaining by a labor organization. In enforcing the Act, the Agency does not have a stake in the results of that election, it merely seeks to ensure that the process used to resolve such questions allows employees to express their choice in an open, uncoerced atmosphere. The NLRB strives to give sound and well supported guidance to all parties and to the public at large with respect to representation issues. Predictable, consistent procedures and goals have been established to better serve our customers and avoid unnecessary delays. The Agency will process representation cases promptly in order to avoid unnecessary disruptions to commerce and minimize the potential for unlawful or objectionable conduct.

- A. Encourage voluntary election agreements by conducting an effective stipulation program.
- B. Conduct elections promptly.
- C. Issue all representation decisions in a timely manner.
- D. Afford due process under the law to all parties involved in questions concerning union representation.

### **STRATEGIES:**

- 1. Give priority in timing and resource allocation to the processing of cases that implicate the core objectives of the Act and are expected to have the greatest impact on the public.
- 2. Evaluate the quality of representation casework regularly to provide the best possible service to the public.
- 3. Give sound and well-supported guidance to the parties, and to the public at large, on all representation issues.

4. Share best practices in representation case processing to assist regions in resolving representation case issues promptly and fairly.
5. Identify and utilize alternative decision-making procedures to expedite Board decisions in representation cases, e.g. superpanels.
6. Ensure that due process is accorded in representation cases by careful review of Requests for Review, Special Appeals and Hearing Officer Reports, and where appropriate, the records in the cases.
7. Analyze and prioritize the critical skill needs and address these skill needs using a cost effective instructional delivery system that ensures timely access to the needed training in a work environment that encourages employees to effectively utilize their diverse talents in achieving Agency goals.
8. Provide an information technology environment that is mainstream with other federal agencies and the public, and that will provide NLRB employees with technology tools and access to research and professional information comparable to that available to their private sector counterparts.

**GOAL 2: Investigate, prosecute and remedy cases of unfair labor practices by employers or unions promptly.**

**OBJECTIVES**

Certain conduct by employers and labor organizations leading to workplace conflict has been determined by Congress to burden interstate commerce and has been declared unfair labor practice under Section 8 of the National Labor Relations Act. This goal communicates the Agency's resolve to investigate charges of unfair labor practice conduct fairly and expeditiously. Where violations are found, the Agency will provide such remedial relief as would effectuate the policies of the Act, including, but not limited to, ordering reinstatement of employees; making employees whole, with interest; bargaining in good faith; and ordering a respondent to cease and desist from the unlawful conduct. The Agency will give special priority to resolving disputes with the greatest impact on the public and the core objectives of the Act.

- A. Conduct thorough unfair labor practice investigations and issue all unfair labor practice decisions in a timely manner.
- B. Give special priority to disputes with the greatest impact on the public and the core objectives of the Act.
- C. Conduct effective settlement programs.
- D. Provide prompt and appropriate remedial relief when violations are found.
- E. Afford due process under the law to all parties involved in unfair labor practice disputes.

**STRATEGIES:**

- 1. Take proactive steps to disseminate information and provide easily accessible facts and information to the public about the Board's jurisdiction in unfair labor practice matters and the rights and obligations of employers, employees, unions, and the Board under the Act.
- 2. Evaluate the quality of unfair labor practice casework regularly to provide the best possible service to the public.
- 3. Utilize impact analysis to provide an analytical framework for classifying unfair labor practice cases in terms of their impact on the public so as to differentiate among them in deciding both the resources and urgency to be assigned to each case.
- 4. Share best practices in the processing of unfair labor practice cases to assist



- regions in resolving unfair labor practice issues promptly and fairly.
5. Emphasize the early identification of remedy and compliance issues and potential compliance problems in merit cases; conduct all phases of litigation, including settlement, so as to maximize the likelihood of obtaining a prompt and effective remedy.
  6. Utilize injunctive proceedings to provide interim relief where there is a threat of remedial failure.
  7. Emphasize and encourage settlements as a means of promptly resolving unfair labor practice disputes at all stages of the casehandling process.
  8. Identify and utilize alternative decision-making procedures to expedite Board decisions in unfair labor practice cases.
  9. Analyze and prioritize the critical skill needs and address these skill needs using a cost effective instructional delivery system that ensures timely access to the needed training in a work environment that encourages employees to effectively utilize their diverse talents in achieving Agency goals.
  10. Provide an information technology environment that is mainstream with other Federal agencies and the public, and that will provide NLRB employees with technology tools and access to research and professional information comparable to that available to their private sector counterparts.

## **GOAL #1: RESOLVE ALL QUESTIONS CONCERNING REPRESENTATION PROMPTLY .**

It is in the national interest of the United States to maintain full production in its economy. Industrial strife among employees, employers and labor organizations interferes with full production and is contrary to our national interest. Experience has shown that labor disputes can be lessened if the parties involved recognize the legitimate rights of each in their relations with one another. To establish these rights under law, Congress enacted the National Labor Relations Act. Its purpose is to define and protect the rights of employees, employers, and unions in their relations with one another, to encourage collective bargaining, and to eliminate certain practices on the part of labor and management that are harmful to the general welfare.

The National Labor Relations Act states and defines the rights of employees to organize and to bargain collectively with their employers through representatives of their own choosing or not to do so. To ensure that employees can freely choose their own representatives for the purpose of collective bargaining, or choose not be represented, the Act establishes a procedure by which they can exercise their choice at a secret-ballot election conducted by the National Labor Relations Board (NLRB).

Every year the NLRB handles about 6,000 cases where employees, labor organizations, or employers have asked the agency to conduct an election to determine the desires of the employees as to whether they wish to be represented by a particular labor organization. The Agency does not solicit election requests. NLRB's goal is to handle these cases promptly.

## **Performance Measures for Goal 1**

### **1. Issue certifications in representation cases within 60 median days of filing of petition.**

**BACKGROUND:**

This is a new measure for FY 2003. An employer, labor organization, or a group of employees may file a petition in a NLRB Regional Office requesting an election to determine whether a majority of employees in an appropriate bargaining unit wish to be represented by a labor organization. When a petition is filed, the Agency works with the parties toward a goal of reaching a voluntary agreement regarding the conduct of an election. If a voluntary agreement is not possible, the parties present their positions and evidence at a formal hearing. The NLRB Regional Director issues a decision after review of the transcript of the hearing and the parties' legal argument, either dismissing the case, or directing an election. If the parties to the case disagree with the Regional Director's decision, they may appeal that decision to the Board for review. Prompt elections are desirable because an expeditious determination affords employers, employees, and unions a more stable environment and promotes the adjustment of industrial disputes. This measure reflects the number of days from the filing of a petition to the date of certification—issuance of a document by the NLRB certifying the results of the election either to elect a union representative or not to have union representation--in all representation cases. This measure includes approximately 300 post-election cases that are appealed to the Board.

FY 1999 Actual	FY 2000 Actual	FY 2001 Actual	FY 2002 Planned
N/A	N/A	N/A	N/A
FY 2003 Projection	FY 2004 Projection	FY 2005 Projection	FY 2006 Projection
w/in 60 median days	w/in 60 median days	w/in 60 median days	w/in 60 median days

#### **FY 2001 Analysis of Results**

Not applicable. This is a new measure for FY 2003.

### **2. Hold 90% of all representation elections within 56 days of filing of a**

**petition.**

**BACKGROUND:**

An employer, labor organization, or a group of employees may file a petition in a NLRB Regional Office requesting an election to determine if a majority of employees wish to be represented by a labor organization for the purpose of collective bargaining. When a petition is filed, the Agency works with the parties toward a goal of reaching a voluntary agreement on the conduct of an election. If a voluntary agreement is not possible, the parties present their positions and evidence at a formal hearing. After review of the transcript of the hearing and the parties' legal argument, the Regional Director issues a decision, either dismissing the case, or directing an election. If the parties to the case disagree with the Regional Director's decision, they may appeal that decision to the Board for review. Prompt elections are desirable because an expeditious determination affords both employers and unions a more stable environment and promotes the adjustment of industrial disputes.

FY 1999 Actual	FY 2000 Actual	FY 2001		FY 2002
		Plan	Actual	Planned
90.3% of elections held w/in 56 days	86% of elections held w/in 56 days	92% of elections w/in 56 days	86.7% of elections w/in 56 days	92% of elections held w/in 56 days
FY 2003 Projection	FY 2004 Projection	FY 2005 Projection		FY 2006 Projection
90% of elections held w/in 56 days	90% of elections held w/in 56 days	90% of elections held w/in 56 days		90% of elections held w/in 56 days

FY 2001 Analysis of Results

The Agency did not meet this very challenging goal. However, 86.7% of all elections were completed within 56 days. This represents a slight improvement over the actual result for FY 2000. As a result of several significant Court and Board decisions, such as Kentucky River Community Care, Inc., and Levitz Furniture, parties litigated unit scope and placement issues at administrative hearings in a higher proportion of cases in FY 2001. As a result, Regional Directors issued 473 decisions in pre-election representation cases, as compared to 450 decisions in FY 2000. The issues raised by the parties in formal hearings often require the development of an extensive record or significant analysis, resulting in a delay of the election. As a result of this trend, the NLRB reduced the goal of the percentage of elections held within 56 days to 90 percent from 92 percent, beginning in FY 2003.

**3. Hold elections within 42 median days of filing petition.**

BACKGROUND:

This measure is very similar to the previous one, but it was added as a measure for FY 2003 to provide additional perspective and dimension to this part of the casehandling process. As described previously, an employer, labor organization, or a group of employees may file a petition in a NLRB Regional Office requesting an election to determine if a majority of employees wish to be represented by a labor organization for the purpose of collective bargaining. When a petition is filed, the Agency works with the parties toward a goal of reaching a voluntary agreement on the conduct of an election. If a voluntary agreement is not possible, the parties present their positions and evidence at a formal hearing. After review of the transcript of the hearing and the parties' legal argument, the Regional Director issues a decision, either dismissing the case, or directing an election. If the parties to the case disagree with the Regional Director's decision, they may appeal that decision to the Board for review. Prompt elections are desirable because an expeditious determination affords both employers and unions a more stable environment and promotes the adjustment of industrial disputes.

FY 1999 Actual	FY 2000 Actual	FY 2001 Actual	FY 2002 Planned
42 median days	42 median days	41 median days	N/A
FY 2003 Projection	FY 2004 Projection	FY 2005 Projection	FY 2006 Projection
42 median days	42 median days	42 median days	42 median days

FY 2001 Analysis of Results

Not applicable. This is a new measure for FY 2003, although it had previously been a measure and dropped from the Plan.

**4. Issue 85% of all post-election reports within 100 days from the date of the election, or in the case of objections, from the date they are filed.**

BACKGROUND:

After the NLRB conducts an election to resolve a representation case, a Union may be certified if it receives a majority of the votes cast, or the results may be certified if no Union received a majority of the ballots. In elections where a party objects to the outcome of the election or challenges are posed to the eligibility of a voter, the Board's post-election procedures offer the parties an opportunity to present their evidence and arguments. The Board then issues a final report to

the parties involved informing them of the result of the election and disposing of any issues in the case. If the parties involved file objections to the first election, and there is merit to their objections, a second election is ordered. Post-election determinations by the Regional Director or a hearing officer about election results can be appealed to the Board, lengthening the time to determination. The performance measure establishes a goal for the regions to issue 85% of post-election reports within 100 days of the election in cases involving challenged ballots and to issue the report within 100 days of the filing of the objection(s) when the parties file objections to the election.

FY 1999 Actual	FY 2000 Actual	FY 2001		FY 2002 Planned
		Plan	Actual	
N/A	N/A	85% w/in 100 days	80.7% w/in 100 days	85% w/in 100 days
FY 2003 Projection	FY 2004 Projection	FY 2005 Projection		FY 2006 Projection
85% w/in 100 days	85% w/in 100 days	85% w/in 100 days		85% w/in 100 days

FY 2001 Analysis of Results

The Agency was slightly under its performance goal for FY 2001, with 80.7% of all post election reports (109 of 135 cases) completed within 100 days from the date of election. Improved performance in five cases would have resulted in achievement of the goal for FY 2001. With the deployment of improved case tracking software scheduled for the fourth quarter of FY 2002, Agency managers will have more timely access to information relating to their effectiveness in this area. In addition, new professional staff hired in FYs 2000 and 2001 are gaining the experience and skills required to handle post-election disputes, which often involve sophisticated and difficult issues. These factors should help improve performance.

**5. Achieve voluntary representation election agreements for 85% of the petitions filed.**

BACKGROUND:

When a petition to hold an election is filed, the Regional Director conducts an investigation and may hold a hearing. However, it is NLRB’s goal to encourage employers and employees to enter voluntary agreements to hold elections in order to avoid the time and cost involved in a formal hearing. It is NLRB’s goal to obtain voluntary election agreements not less than 85% of the time.

FY 1999 Actual	FY 2000 Actual	FY 2001		FY 2002 Planned
		Plan	Actual	

87.7%	89%	86%	87.7%	86%
FY 2003 Projection	FY 2004 Projection	FY 2005 Projection	FY 2006 Projection	
85%	85%	85%	85%	

FY 2001 Analysis of Results

The Agency exceeded its goal for obtaining voluntary election agreements. The success in this area can be attributed, in part, to the Agency’s continued emphasis on resolving questions concerning representation without resort to formal administrative procedures.

**6. Issue rulings on requests for review of Regional Director decisions within a 14-day median.**

**BACKGROUND:**

Before a representation election is held, parties may file with the Board a request for review of the Regional Director’s decision to hold an election. If the Board has not ruled on a request for review by the date of the election, the election is conducted, but the ballots are impounded. It is the Board’s policy to rule on all requests for review, to the maximum extent possible, before the election date in order to allow the ballots to be counted in all cases in which the Board denies review. Toward this end, it is the Board’s goal to continue to issue these review decisions within 14 median days from receipt through FY 2006.

FY 1999 Actual	FY 2000 Actual	FY 2001 Plan Actual	FY 2002 Planned
13 day median	12 day median	14 day median 13 day median	14 day median
FY 2003 Projection	FY 2004 Projection	FY 2005 Projection	FY 2006 Projection
14 day median	14 day median	14 day median	14 day median

FY 2001 Analysis of Results

Review decisions were issued by the Board within a 13-day median, meeting the 14 day median goal established in the plan. It is expected that the 14-day median goal will be maintained through FY 2006.

**7. Issue all test-of-certification decisions in an 80-day median from filing of charge by FY 2006.**

**BACKGROUND:**

If after an election is held, and an employer refuses to bargain with the union certified by the election and the union files a charge, the Board must render what is called a test-of-certification decision. This procedure is the only statutorily approved method by which an employer can appeal a Board decision in an election case. Because all relevant legal issues should have been litigated during the phase of the case leading to the election itself, this test-of-certification decision can be rendered without a hearing and in a summary proceeding brought by the General Counsel before the NLRB Board. The Agency has an 80-day median goal for rendering a Board decision in these cases.

FY 1999 Actual	FY 2000 Actual	FY 2001		FY 2002 Planned
		Plan	Actual	
91 day median	97 day median	80 day median	101 day median	80 day median
FY 2003 Projection	FY 2004 Projection	FY 2005 Projection		FY 2006 Projection
95 day median	90 day median	85 day median		80 day median

FY 2001 Analysis of Results

The 80-day median goal was not met in FY 2001, with the actual figure at 101 days. A number of factors hampered our ability to meet the GPRA goal. Based on the trend over the last three years, the performance goals are being revised beginning in FY 2003 to be more realistic to potential accomplishments. Increased efforts will be undertaken, however, to decrease the current time needed to issue these decisions. Regional efforts in FY 2001 to increase efficiencies and expedite handling of these cases worked effectively to lower the median time for the filing of motions for summary judgment to 43 median days, from 47 days the previous year. These increased efforts should result in the greater likelihood that the GPRA goal of 80 median days from charge to decision will be met by FY 2006.

**8. Issue 100% of contested certification cases pending decision at the Board for more than 6 months by FY 2006.**

**BACKGROUND:**

Once a representation election has been held and the NLRB Regional Director has determined the results of the election, any of the parties involved may appeal the Regional Director's decision to the Board. If the decision of the Regional Director is appealed, the Board reviews the election and certification occurs after



the Board decision. The Board's goal is to dispose of all representation cases that have been pending before it for more than 18 months by FY 2001 and dispose of all cases that have been pending for more than 6 months by FY 2006.

FY 1999 Actual	FY 2000 Actual	FY 2001		FY 2002 Planned
		Plan	Actual	
92% over 24 months	100% over 20 months	100% over 18 mos	100% over 18 mos	100% over 12 months
FY 2003 Projection	FY 2004 Projection	FY 2005 Projection	FY 2006 Projection	
100% over 12 months	100% over 10 months	100% over 8 months	100% over 6 months	

### FY 2001 Analysis of Results

The Board issued all 30 representation cases that were over 18 months old during FY 2001. The goal was met despite the fact that the Board had less than a full complement of 5 members over the entire fiscal year. Much of the success in reaching the goal can be attributed to the collegial decision-making that existed on the Board during the year, the emphasis placed on reaching all the GPRA goals, and the concerted efforts made to meet those goals. Due to the number of vacancies on the Board early in the fiscal year, it may be difficult to issue all representation cases that are over 12 months old by the end of FY 2002. The Board, however, is confident of reaching its goal of issuing all pending representation cases older than 6 months by the end of FY 2006.

## **9. Conduct quality reviews in 100% of the Regional Offices each year.**

### BACKGROUND:

The National Labor Relations Board is not only concerned about how quickly cases move through its pipeline but the quality level of case handling. This issue of quality control is critical to the Agency and its stakeholders, and its importance is emphasized and reaffirmed by this performance goal. The Agency's Division of Operations Management randomly selects Regional unfair labor practice and representation case files for quality review. The quality review process referred to in this performance measure is conducted in all 32 NLRB Regional offices.

FY 1999 Actual	FY 2000 Actual	FY 2001		FY 2002 Planned
		Plan	Actual	

100% of regions	100% of regions	100% of regions	100% of regions	100% of regions
FY 2003 Projection	FY 2004 Projection	FY 2005 Projection	FY 2006 Projection	
100% of regions	100% of regions	100% of regions	100% of regions	

FY 2001 Analysis of Results

The goal for FY 2001 was achieved. NLRB managers recognize that measures describing the timeliness of actions must be considered in conjunction with quality measures to assess the Agency’s effectiveness in achieving its mission. The annual quality review procedure affords managers an opportunity to address trends and areas of concern relating to case handling and to balance the need for expeditious action with quality decision-making. Quality review reports were provided to the General Counsel summarizing an evaluation of randomly selected representation case files for all 32 Regions.

**GOAL #2: INVESTIGATE, PROSECUTE AND  
REMEDY CASES OF UNFAIR LABOR PRACTICES BY  
EMPLOYERS OR UNIONS PROMPTLY.**

It is in the national interest of the United States to maintain full production in its economy. Industrial strife among employees, employers and labor organizations interferes with full production and is contrary to our national interest. Experience has shown that labor disputes can be lessened if the parties involved recognize the legitimate rights of each in their relations with one another. To establish these rights under law, Congress enacted the National Labor Relations Act. Its purpose is to define and protect the rights of employees, employers, and unions in their relations with one another, to encourage collective bargaining, and to eliminate certain practices on the part of labor and management that are harmful to the general welfare.

The National Labor Relations Act states and defines the rights of employees to organize and to bargain collectively with their employers through representatives of their own choosing or not to do so. To protect the rights of employees and employers, and to prevent labor disputes that would adversely affect the rights of the public, Congress has defined certain practices of employers and unions as unfair labor practices.

NLRB Information Officers in the Regional Offices field approximately 150,000 inquiries about possible unfair labor practice (ULP) cases every year. Of these inquiries only about 8,000 result in charges. Another 22,000 ULP charges are filed directly with Regional Offices, for a total of about 30,000 annually. Prompt case treatment benefits customers because justice is served promptly with minimal economic damage to those involved. Prompt and quality treatment of cases also lowers costs to the Agency because they result in fewer appeals or judgements against the Agency, meaning less time spent in formal proceedings by NLRB attorneys, judges and Board members.

## **Performance Measures for Goal 2**

### **1. Achieve informal resolution of unfair labor practice cases within a median time of 100 days in FY 2003 and within 60 days by FY 2006.**

**BACKGROUND:**

This is a new overarching measure that is designed to cover a larger piece of the casehandling pipeline and all of the NLRB divisions and offices that are involved in the decision process. Current performance measures primarily look at the impact that individual Agency branches have on casehandling timeframes. After an individual, employer, or union files an unfair labor practice charge, a Regional Director evaluates it for merit and decides whether or not to issue an official complaint. Complaints not settled or withdrawn are litigated before an administrative law judge, whose decision may be appealed to the Board. This measure would cover the time from the filing of the complaint through informal resolution, but not include any cases litigated before administrative law judges and appeals to the Board. This covers approximately 90 percent of all cases, however.

FY 1999 Actual	FY 2000 Actual	FY 2001 Actual	FY 2002 Planned
N/A	N/A	N/A	N/A
FY 2003 Projection	FY 2004 Projection	FY 2005 Projection	FY 2006 Projection
w/in 100 median days	w/in 90 median days	w/in 80 median days	w/in 60 median days

#### FY 2001 Analysis of Results

Not Applicable. This is a new measure for FY 2003.

### **2. Resolve 90% of unfair labor practice cases within established Impact Analysis time frames by FY 2006.**

**BACKGROUND:**

NLRB has created a system, Impact Analysis, to prioritize the processing of unfair labor practice cases based on their public impact and how closely they relate to the Agency's core mission. This Impact Analysis system has been used to classify cases into three categories, with Category III being the highest priority. Usually Category III cases involve significant issues, large-scale labor unrest, or high economic impact. NLRB has set goals for the number of days within which a disposition should be reached for each category, beginning on the day a ULP

charge is filed. If a disposition on the case has not been reached within that timeframe it is considered “overage” – for Category III the standard is 49 days (seven weeks), for Category II, 63 days (9 weeks) and for Category I, 84 days (12 weeks). NLRB’s goal is to reduce the percentage of overage cases in each category to the lowest possible percentage and reach a 90% level for all categories by FY 2006.

	FY 1999 Actual	FY 2000 Actual	FY 2001 Plan	FY 2001 Actual	FY 2002 Planned
Cat. III	90.3%	88.5%	90%	91.2%	91%
Cat. II	83%	85.1%	85%	88.7%	87%
Cat. I	84.8%	87.8%	85%	92.7%	86%

	FY 2003 Projection	FY 2004 Projection	FY 2005 Projection	FY 2006 Projection
Cat. III	90%	90%	90%	90%
Cat. II	87%	88%	89%	90%
Cat. I	86%	87%	88%	90%

### FY 2001 Analysis of Results

The goal for each category in FY 2001 was exceeded. These very positive results are attributed, in part, to improved training, and an emphasis on reducing the backlog of cases pending investigation. With an increased funding priority for field operations in FY 2001, the Agency focused more resources on front line investigations, and the result was very effective. Beginning with the FY 2001 report of actual results, the measure looks at the data from a positive perspective by looking at the percentage achieved, rather than the percentage not achieved. The chart above reflects this revised method of reporting results.

### **3. Settle 95% of meritorious unfair labor practice charges consistent with established standards.**

**BACKGROUND:**

Once a Regional Director has determined an unfair labor practice charge has merit, it is scheduled for a hearing date before an administrative law judge. However, the pursuit of a settlement by the NLRB begins immediately. Litigation is a costly process for the parties as well as the government, and the Agency has consistently focused on settlements to ensure efficient use of its own resources, obtain timely and effective remedies, and reduce the cost of litigation for the parties. Successive General Counsels have pursued an aggressive settlement program to ensure that the Agency is utilizing its resources in the most efficient manner possible. For every 1% increase in the settlement rate, the NLRB estimates an approximate \$2 million savings to the Agency per year. The NLRB attributes this high settlement rate to several activities at the Regional level - a careful charge acceptance procedure, thorough investigations, and careful merit determinations. The settlement rate is also attributable to a historically high success rate for the General Counsel during litigation.

FY 1999 Actual	FY 2000 Actual	FY 2001		FY 2002 Planned
		Plan	Actual	
98.2%	95%	95%	96.5%	95%
FY 2003 Projection	FY 2004 Projection	FY 2005 Projection	FY 2006 Projection	
95%	95%	95%	95%	95%

FY 2001 Analysis of Results

The Agency exceeded the 95 percent planned level with an actual rate of 96.5 percent. The NLRB’s emphasis on obtaining voluntary settlements is key to the achievement of the Agency’s mission. Such settlements ensure the parties’ commitment to the resolution of their issues and conserve Agency resources. Settlements typically provide remedies to aggrieved parties earlier and more effectively than formal litigation.

**4. Open hearings within 120 median days from the issuance of complaint by FY 2006.**

**BACKGROUND:**

When an unfair labor practice complaint is found to have merit by a Regional Director, a date for a hearing before an Administrative Law Judge is scheduled. As part of its mission to provide decisions promptly, the Agency aims to shorten the median number of days between the setting of a hearing date when a formal complaint is filed and the open of a hearing. Delays mean witnesses may be harder to locate, and their memories and thus their testimony may become less reliable. In addition, delays may result in parties becoming more intransigent in

their positions and less likely to settle.

The wording of this measure reflects an adjustment that has been made to this measure beginning in FY 2002. Through FY 2001, this measure focused on the time elapsed from the issuance of a complaint to the close of a hearing. The change has been made to the opening of the hearing in order to be consistent with existing NLRB data collection and performance management systems.

FY 1999 Actual	FY 2000 Actual	FY 2001		FY 2002 Planned
		Plan	Actual	
168 median days	132 median days	170 median days	140 median days	160 median days
FY 2003 Projection	FY 2004 Projection	FY 2005 Projection		FY 2006 Projection
150 median days	140 median days	130 median days		120 median days

FY 2001 Analysis of Results

The performance for FY 2001 exceeded the planned level and confirms that the Agency is on track in meeting the long-term goal of 120 median days by FY 2006. The 140 days in FY 2001 represents the number of median days to the close of the ALJ hearing. As stated above, a revised standard to the opening (rather than close) of the hearing will be used beginning in FY 2002 in order to be consistent with existing data collection and performance measurement systems. The data should not change significantly since an average ALJ hearing usually lasts for 3 days.

**5. Issue 60% of sustained appeals decisions within 60 days of receipt of the appeal of the Regional Directors' dismissal of the charge by FY 2006.**

BACKGROUND:

If a Regional Director dismisses an unfair labor practice charge, it can be appealed to the Office of Appeals, which could reverse the Regional Director's decision with the instruction to issue a complaint, absent settlement. Of the 3,000 cases per year that are appealed, about 3%-5% are reversed by the Office of Appeals.

FY 1999 Actual	FY 2000 Actual	FY 2001		FY 2002 Projection
		Plan	Actual	

41% w/in 120 days	54.5% w/in 120 days	60% w/in 120 days	68% w/in 120 days	60% w/in 120 days
FY 2003 Projection	FY 2004 Projection	FY 2005 Projection		FY 2006 Projection
60% w/in 110 days	60% w/in 90 days	60% w/in 70 days		60% w/in 60 days

### FY 2001 Analysis of Results

The Office of Appeals sustained 38 appeals during FY 2001. Sixty-eight percent of the appeals were sustained within 120 days of receipt of the appeal (26 of the 38). A prompt decision on a sustained appeal is very important because delays in case processing decrease the likelihood of a successful outcome. If a case must be litigated, delays mean witnesses may be harder to locate, and their memories and thus their testimony may become less reliable. In addition, delays may result in parties becoming more intransigent in their positions and less likely to settle. Twenty of the 38 sustained cases have closed to date. In 15 of the cases, the charging party received a remedy, either through litigation or settlement/adjustment. Settlements have been reached and are pending compliance in four others. The results for FY 2001 were better than planned due to the prompt handling of cases by the Office of Appeals.

### **6. Close all Advice cases seeking Section 10(j) injunction relief where there has been Board authorization within a median of 25 days of receipt from Regional Offices, excluding deferral time. Additionally, 90% of these cases will be closed within 30 days by FY 2006.**

#### BACKGROUND:

In certain unfair labor practice cases, the NLRB Regional Director may request authorization to file an injunction in U. S. District Court to prevent what the director sees as a practice that will do irreparable harm while the case is being litigated. Regional Directors submit a request for authorization to the Division of Advice. If the General Counsel agrees injunctive relief is warranted, he asks the Board for authorization to institute injunction proceedings. If the Board approves, the region files for an injunction in the relevant U.S. District Court. This measure excludes time waiting for Regional Offices to provide additional information about the cases to the Division of Advice that may be needed to present the case to the Board.

This measure was slightly revised for FY 2003. The original measure had a goal of closing 95% of Advice cases within 25 days of receipt from Regional Offices. The revised measure focuses on closing all cases, but uses median days as the



time factor. The second part of the measure focuses on actual days as the time factor.

FY 1999 Actual	FY 2000 Actual	FY 2001		FY 2002
		Plan	Actual	Projection
67.2% closed w/in 25 days	61.1% closed w/in 25 days	60% closed w/in 25 days	67.4% closed w/in 25 days	60% closed w/in 25 days
79.3% closed w/in 30 days	83.3% closed w/in 30 days	84% closed w/in 30 days	88.4% closed w/in 30 days	86% closed w/in 30 days
FY 2003 Projection	FY 2004 Projection	FY 2005 Projection		FY 2006 Projection
100% closed w/in 25 median days	100% closed w/in 25 median days	100% closed w/in 25 median days		100% closed w/in 25 median days
87% closed w/in 30 days	88% closed w/in 30 days	89% closed w/in 30 days		90% closed w/in 30 days

[30-day figures are included to show significant improvement in requesting section 10(j) authorizations]

### FY 2001 Analysis of Results

The performance for FY 2001 exceeded planned levels and puts performance levels on track to meeting longer term goals by FY 2006. The 10(j) cases which this goal focuses on are those in which the Board believes that immediate relief is necessary to preserve rights guaranteed by the Act. By closing the 10(j) cases within the established time frames, the NLRB is minimizing delay in those cases where obtaining timely relief is particularly crucial and contributes to effective enforcement of the Act.

## **7. Issue administrative law judge decisions within 62 median days from the receipt of briefs or submissions after the close of a hearing.**

### **BACKGROUND:**

After a Regional Director determines action should be taken on a case, the Regional Director issues a formal complaint and schedules a hearing before an Administrative Law Judge. After presiding over a full-scale hearing, which lasts

an average of about 3 days, the judge usually provides for the subsequent filing of briefs; a small number of cases may be submitted, after trial, on oral argument. The judge then issues a decision.

FY 1999 Actual	FY 2000 Actual	FY 2001 Plan	FY 2001 Actual	FY 2002 Planned
48 median days	56 median days	62 median days	42 median days	62 median days
FY 2003 Projection	FY 2004 Projection	FY 2005 Projection	FY 2006 Projection	
62 median days	62 median days	62 median days	62 median days	62 median days

FY 2001 Analysis of Results

The Judges Division in FY 2001 issued its decisions within a median of 42 days from receipt of briefs or submissions, thus substantially exceeding the goal of 62 days. The positive performance can be attributed to the hard work of individual judges. It is expected that the 62 median day goal will be met in FY 2002, although a considerable number of retirements of experienced judges is expected during the fiscal year.

**8. File applications for enforcement within 30 median days from referral by the Regional Director by FY 2006.**

**BACKGROUND:**

After an Administrative Law Judge’s decision is appealed to the Board, the Board considers the case and issues a final order resolving an unfair labor practice (ULP) case. If the respondent refuses to voluntarily comply with the Board’s order, the Board must seek enforcement of its order in an appropriate U. S. Court of Appeals. Ordinarily the Regional Office will attempt to secure compliance in the period immediately following the Board’s order. If compliance cannot be obtained, the region will refer the case to the Appellate Court Branch of the Division of Enforcement Litigation. The Appellate Court Branch handles all litigation in the courts of appeals seeking to review or to enforce final Board orders in ULP cases. A majority of cases handled in the Branch are initiated by outside parties seeking review of the Board’s order. No goal has been set for review cases because the courts control the processing of their own dockets. When no petition for review has been filed and the region refers a case to the Appellate Court Branch for enforcement, the Branch will initiate the court proceeding by filing an application for enforcement. The Branch has clarified its goal of filing all applications for enforcement within 30 median days of a Regional referral by FY 2006. This measure is being modified slightly for FY 2002 and

beyond to reflect the median (rather than absolute) number of days required to file all applications for enforcement. The previous version of this goal was expressed as 50% of applications would be filed within a specified number of days, and was intended to be used as a median. The Branch thinks that this helps clarify the measure.

FY 1999 Actual	FY 2000 Actual	FY 2001		FY 2002 Projection
		Plan	Actual	
N/A	N/A	50% w/in 50 days	65.5% w/in 50 days	45 median days
FY 2003 Projection	FY 2004 Projection	FY 2005 Projection		FY 2006 Projection
40 median days	35 median days	30 median days		30 median days

FY 2001 Analysis of Results

The performance goal for FY 2001 was exceeded. In order to meet the performance goal, the backlog of unfiled petitions from the previous year, as well as the newly referred cases, are reflected in the percentage of cases filed within the 50 days. In this past year, the Appellate Court Branch was able to exceed the projected level of performance.

**9. Reduce the number of unfair labor practice cases pending decision at the Board to 300 by FY 2006.**

BACKGROUND:

The vast majority of the Board’s unfair labor practice (ULP) cases arise after an administrative law judge rules on an unfair labor practice complaint. Any party in the case can appeal the administrative law judge’s decision to the Board. The Board’s goal is to reduce the number of ULP cases pending at the Board level from 650 cases in FY 1999 to 300 cases by FY 2006.

FY 1999 Actual	FY 2000 Actual	FY 2001		FY 2002 Planned
		Plan	Actual	
New for FY 2001	518 cases	450 cases	408 cases	400 cases
FY 2003 Projection	FY 2004 Projection	FY 2005 Projection		FY 2006 Projection
375 cases	350 cases	325 cases		300 cases

FY 2001 Analysis of Results

The NLRB reduced the number of pending unfair labor practice cases before the Board from 518 at the beginning of FY 2001 to 408 cases at the end of the fiscal year. The goal was to reduce the number of pending unfair labor practice cases to 450 by the end of the year. The goal was exceeded by more than 11% despite the fact that the Board had less than a full complement of 5 members over the entire fiscal year. Much of the success in reaching the goal can be attributed to the collegial decision-making that existed on the Board during the year, the emphasis placed on reaching all the GPRA goals, and the concerted efforts made to meet those goals. Due to the number of vacancies on the Board early in the fiscal year, it may be difficult to reduce the number of pending cases below the 400 level by the end of FY 2002. The Board, however, is confident of reaching its goal of 300 pending cases by the end of FY 2006.

**10. Issue all unfair labor practice decisions pending at the Board within 12 months by FY 2006.**

**BACKGROUND:**

The amount of time unfair labor practice (ULP) cases wait for a Board decision has an impact on the agency’s effectiveness, the interests of the parties, and the public. The Board’s goal is to reduce the maximum age of cases to 12 months by FY 2006.

FY 1999 Actual	FY 2000 Actual	FY 2001		FY 2002 Planned
		Plan	Actual	
85% reduction to 36 months	78% reduction to 30 months	100% reduction to 24 months	100% reduction to 24 months	100% reduction to 20 months
FY 2003 Projection	FY 2004 Projection	FY 2005 Projection		FY 2006 Projection
100% reduction to 18 months	100% reduction to 16 months	100% reduction to 14 months		100% reduction to 12 months

FY 2001 Analysis of Results

The Board issued all 242 unfair labor practice cases that were over two years old during FY 2001. The goal was met despite the fact that the Board had less than a full complement of 5 members over the entire fiscal year. Much of the success in reaching the goal can be attributed to the collegial decision-making that existed on the Board during the year, the emphasis placed on reaching all the GPRA goals, and the concerted efforts made to meet those goals. Due to the number of vacancies on the Board early in the fiscal year, it may be difficult to reach the 20-month goal by the end of FY 2002. The Board, however, is confident of reaching its goal of having no case older than 12 months by the end of FY 2006.

## 11. Resolve compliance cases within established Impact Analysis guidelines.

### BACKGROUND:

After an administrative law judge's decision is appealed to the Board, the Board considers the case and issues a final order resolving an unfair labor practice (ULP) case. If the respondent refuses to voluntarily comply with the Board's order, the Board must seek enforcement of its order in an appropriate U. S. Court of Appeals. Ordinarily the Regional Office will attempt to secure compliance in the 30-day period following the Board's order. If compliance cannot be obtained, the region will refer the case to the Appellate Court Branch of the Division of Enforcement Litigation.

Regional Directors are responsible for effectuating compliance with administrative law judge's decisions, Board orders, and court judgments resulting from cases filed in their regions. The Agency has set goals to ensure the orders that result from its litigation or Board directives are implemented promptly, since the passage of time can reduce the effectiveness of its remedies. The time is measured beginning on the date a decision, order, or judgment is received. The following are the current processing time targets.

	FY 1999 Actual	FY 2000 Actual	FY 2001 Plan	FY 2001 Actual	FY 2002 Planned
Cat. III	90.2% @ 91 days	89.6% @ 91 days	91 % @ 91 days	95.3%	91% @ 91 days
Cat. II	85.7% @ 119 days	87.1% @ 119 days	88% @ 119 days	96.9%	88% @ 119 days
Cat. I	90.9% @ 147 days	92% @ 147 days	90% @ 147 days	98.5%	90% @ 147 days

	FY 2003 Projection	FY 2004 Projection	FY 2005 Projection	FY 2006 Projection
Cat. III	91% @ 91 days	91% @ 91 days	91% @ 91 days	95% @ 91 days
Cat. II	88% @ 112 days	88% @ 105 days	88% @ 98 days	88% @ 91 days
Cat. I	90% @ 140 days	90% @ 133 days	90% @ 126 days	90% @ 119 days

### FY 2001 Analysis of Results

The goal for each category was exceeded. This measure was modified slightly beginning with the results for FY 2001 by reporting the outcomes in positive rather than

negative terms. These very positive results are attributed, in part, to the Agency's focus on improved training, and an emphasis on improved collection techniques and innovative remedies. The priority of increasing resources on front line investigations was also very effective in reaching these results.

**12. Conduct quality reviews in 100% of the Regional Offices each year.**

**BACKGROUND:**

The National Labor Relations Board is not only concerned about how quickly cases move through its pipeline but the quality level of case handling. Case files the Regional Offices are randomly selected for quality review by the Division of Operations Management. Quality reviews are conducted in all NLRB Regional Offices each year. The number of Regional Offices decreased by one in FY 2001 when Peoria, Ill., was reclassified as a subregional office.

FY 1999 Actual	FY 2000 Actual	FY 2001 Plan      Actual	FY 2002 Planned
100% of regions	100% of regions	100% of regions    100% of regions	100% of regions
FY 2003 Projection	FY 2004 Projection	FY 2005 Projection	FY 2006 Projection
100% of regions	100% of regions	100% of regions	100% of regions

FY 2001 Analysis of Results

The goal for FY 2001 was achieved. NLRB managers recognize that measures describing the timeliness of actions must be considered in conjunction with quality measures to assess the Agency's effectiveness in achieving its mission. The annual quality review procedure affords managers an opportunity to address trends and areas of concern relating to case handling and to balance the need for expeditious action with quality decision-making. Quality review reports were provided to the General Counsel summarizing an evaluation of randomly selected unfair labor practice case files for all 32 Regions.

## **SUMMARY OF PERFORMANCE MEASURES**

### FY 2003 ANNUAL PERFORMANCE PLAN

Resolve all questions concerning representation promptly.  Goal #1: Performance Indicators	<i>INDICATORS</i>			
	FY 2000 Actual	FY 2001 Actual	FY 2002 Projected	FY 2003 Projected
<b>Measure 1</b> Issue certifications in representation cases within 60 median days of filing of petition.	NEW FOR FY 2003	NEW FOR FY 2003	NEW FOR FY 2003	Within 60 median days
<b>Measure 2</b> Hold 90% of all representation elections w/in 56 days of filing of petition.	86% w/in 56 days	86.7% w/in 56 days	90% w/in 56 days	90% w/in 56 days
<b>Measure 3</b> Hold elections within 42 median days of filing petition.	42 median days	41 median days	N/A	42 median days
<b>Measure 4</b> Issue 85% of all post-election reports w/in 100 days from the date of the election, or in the case of objections, from the date they are filed.	NEW FOR FY 2001	80.7% w/in 100 days	85% w/in 100 days	85% w/in 100 days
<b>Measure 5</b> Achieve voluntary election agreements for 85% of the petitions filed.	89%	87.7%	86%	85%



<b>Goal #1: Performance Indicators</b>	<b>INDICATORS</b>			
	<b>FY 2000 Actual</b>	<b>FY 2001 Actual</b>	<b>FY 2002 Projected</b>	<b>FY 2003 Projected</b>
<b>Measure 6</b> Issue rulings on requests for review of Regional Director <sup>7</sup> decisions within a 14 day median.	12 day median	13 day median	14 day median	14 day median
<b>Measure 7</b> Issue all test of certification <sup>8</sup> decisions in a 80-day median from filing of charge by FY 2006.	97 day median	101 day median	80 day median	95 day median
<b>Measure 8</b> Issue 100% of all contested certification cases pending decision at the Board for more than 6 months by FY 2006.	100% of cases over 20 months	100% over 18 mos.	100% over 12 mos.	100% over 12 mos.
<b>Measure 9</b> Conduct quality reviews in 100% of the regional offices each year. <sup>9</sup>	100% of regions	100% of regions	100% of regions	100% of regions

<sup>8</sup> A case that presents the issue of whether an employer has unlawfully refused to bargain with a newly certified union following a representation case.

<sup>9</sup> During FY 2000, the Peoria Regional Office was consolidated with and put under the authority of the St. Louis Regional Office, reducing the number of regional offices to 32 starting in FY 2001. The number of regions reviewed was changed to a percentage beginning in FY 2003.

<p><b>Investigate, Prosecute and Remedy Cases of Unfair Labor Practices by Employers or Unions Promptly</b></p> <p><b>Goal #2: Performance Indicators</b></p>	<p><b>FY 2000 Actual</b></p>	<p><b>INDICATORS</b></p>			<p><b>FY 2003 Projected</b></p>
		<p><b>FY 2001 Actual</b></p>	<p><b>FY 2002 Projected</b></p>		
<p><b>Measure 1</b> Achieve informal resolution of unfair labor practice cases within a median time of 100 days in FY 2003 and within 60 days by FY 2006.</p>	<p>NEW FOR FY 2003</p>	<p>NEW FOR FY 2003</p>	<p>NEW FOR FY 2003</p>	<p>Within 100 median days</p>	
<p><b>Measure 2</b> Resolve 90% of unfair labor practice cases within established Impact Analysis time frames by FY 2006.</p> <p>Cases from these targets: Category III = 49 days Category II = 63 days Category I = 84 days</p>	<p>Cat. III: 88.5% Cat. II: 85.1% Cat. I: 84.8%</p>	<p>Cat. III: 91.2% Cat. II: 88.7% Cat. I: 87.8%</p>	<p>Cat. III: 91% Cat. II: 87% Cat. I: 86%</p>	<p>Cat. III: FY03: 90% FY06: 90% Cat. II: FY03: 87% FY06: 90% Cat. I: FY03: 86% FY06: 90%</p>	
<p><b>Measure 3</b> Settle 95% of meritorious unfair labor practice charges consistent with established standards.</p>	<p>95%</p>	<p>96.5%</p>	<p>95%</p>	<p>95%</p>	
<p><b>Measure 4</b> Open hearings within 120 median days from the issuance of a complaint by FY 2006.</p> <p>Note: Measure was changed to open of hearing (instead of close) beginning in FY 2002.</p>	<p>168 day median from complaint to close of hearing</p>	<p>140 day median from complaint to close of hearing</p>	<p>160 day median from complaint to open of hearing</p>	<p>150 day median from complaint to open of hearing</p>	

Goal #2: Performance Indicators	FY 2000 Actual	INDICATORS		
		FY 2001 Actual	FY 2002 Projected	FY 2003 Projected
<b>Measure 5</b> Issue 60% of sustained appeals decisions within 60 days of receipt of the appeal of the Regional Directors' dismissal of the charge by FY 2006.	54.5% w/in 120 days	68% w/in 120 days	60% w/in 120 days	60% w/in 100 days
<b>Measure 6</b> Close all Advice cases seeking Section 10(j) injunction relief where there has been Board authorization within a median of 25 days of receipt from Regional Offices, excluding deferral time. Additionally, 90% of these cases will be closed within 30 days by FY 2006.  Note: Beginning in FY 2003, the measure will reflect median days, not actual days, and the % is increased to 100% from 95%.	61.1% closed w/in 25 days  83.3% closed w/in 30 days	67.4% closed w/in 25 days  88.4% closed w/in 30 days	60% closed w/in 25 days  84% closed w/in 30 days	100% closed w/in 25 median days  86% closed w/in 30 days
<b>Measure 7</b> Issue administrative law judge decisions within 62 median days from the receipt of briefs or submissions after the close of a hearing.	56 day median	42 day median	62 day median	62 day median

Goal #2: Performance Indicators	FY 2000 Actual	INDICATORS		
		FY 2001 Actual	FY 2002 Projected	FY 2003 Projected
<p><b>Measure 8</b> File applications for enforcement within 30 median days from referral by the Regional Director by FY 2006.</p> <p>Note: Measure was changed to 30 median days by FY 2006 for all applications in the FY 2003 plan.</p>	NEW FOR FY 01	65.5% within 50 days	50% w/in 50 days	40 median days
<p><b>Measure 9</b> Reduce the number of Unfair Labor Practice cases pending at the Board to 300 cases by FY 2006.</p>	518	408	400	375
<p><b>Measure 10</b> Issue all Unfair Labor Practice decisions pending at the Board within 12 mos. by FY 2006.</p>	78% reduction to 30 mos.	100% reduction to 24 mos.	100% reduction to 20 mos.	100% reduction to 18 mos.

Goal #2: Performance Indicators	FY 2000 Actual	INDICATORS		
		FY 2001 Actual	FY 2002 Projected	FY 2003 Projected
<p><b>Measure 11</b> Resolve compliance cases within established Impact Analysis guidelines.</p> <p>Category III: FY01: 91 days: 91%</p> <p>Category II: FY01: 119 days: 88%</p> <p>Category I: FY01: 147 days: 90%</p>	<p>Cat. III: 89.6%</p> <p>Cat. II: 87.1%</p> <p>Cat. I: 92%</p>	<p>Cat. III: 95.3%</p> <p>Cat. II: 96.9%</p> <p>Cat. I: 98.5%</p>	<p>Cat. III: 91%</p> <p>Cat. II: 88%</p> <p>Cat. I: 90%</p>	<p>Cat. III: 91%</p> <p>Cat. II: 88%</p> <p>Cat. I: 90%</p>
<p><b>Measure 12</b> Conduct quality reviews in 100% of the regional offices each year.</p> <p>(# of regions decreased from FY 2000 to 2001 and wording of measure changed to reflect % vs. number of regions)</p>	100% regions	100% regions	100% regions	100% regions

## **Appendix A**

### **BUDGET/GPRA CROSSWALK**

The GPRA/Budget crosswalk on the following page shows actual and requested FTE and budget amounts for NLRB program offices for fiscal years 2000 through 2003. It also shows how the performance measures in the FY 2003 plan are distributed among the various programs.

Office	FY 2003 Performance Measure(s)	FY 2000 (Actual)		FY 2001 (Actual)		FY 2002 (Enacted)		FY 2003 (Request)	
		FTEs	\$	FTEs	\$	FTEs	\$	FTEs	\$
<b>Board</b>	1.6, 1.7, 1.8, 2.9, 2.10	141.1	13,937,000	143.0	14,692,183	149.0	15,612,000	147.0	16,101,000
<b>Judges</b>	2.4, 2.7	81.6	9,646,000	82.7	9,922,895	80.0	10,129,600	79.0	10,510,000
<b>Advice</b>	2.6	38.6	3,627,000	45.2	4,433,812	45.0	4,814,600	44.0	5,113,000
<b>Enforcement Lit.</b>	2.5, 2.8	107.6	9,980,000	113.9	10,809,040	118.0	11,600,000	116.0	11,762,100
<b>Operations Mgt.</b>	1.1, 1.2, 1.3, 1.4, 1.5, 1.9, 2.1, 2.2, 2.3, 2.4, 2.5, 2.11, 2.12								
<b>HQ</b>		28.9	4,958,000	28.7	5,096,635	28.0	5,823,300	28.0	5,911,000
<b>Field</b>		1,300.8	105,770,000	1,392.6	115,265,341	1,381.0	117,935,400	1,357.0	114,445,900
<b>Adm. Support</b>									.
<b>General Counsel</b>		14.1	2,364,000	18.9	2,816,823	19.0	3,043,200	18.0	3,091,900
<b>Div. of Adm.</b>		156.6	11,075,000	160.4	11,705,103	158.0	12,086,800	156.0	12,087,000
<b>Inspector Gen.</b>		7.0	754,000	6.8	756,625	7.0	801,000	7.0	782,100
<b>Overhead</b>			43,487,000		40,939,543		44,592,100		53,419,000
<b>TOTAL</b>		1,876.3	205,598,000	1,992.2	216,438,000	1,985.0	226,438,000	1,952.0	233,223,000

Feb-02

## **APPENDIX B**

### **DEFINITIONS**



## DEFINITIONS

**Case:** The general term used in referring to a charge or petition filed with the Board. Each case is numbered and carries a letter designation indicating the type of case.

**Charge:** A document filed by an employee, an employer, a union, or an individual alleging that an unfair labor practice has been committed by a union or employer.

**Complaint:** A document which initiates “formal” proceedings in an unfair labor practice case. It is issued by the Regional Director when he or she concludes on the basis of a completed investigation that any of the allegations contained in the charge have merit and the parties have not achieved settlement. The complaint sets forth all allegations and information necessary to bring a case to hearing before an administrative law judge pursuant to due process of law. The complaint contains a notice of hearing, specifying the time and place of the hearing.

**Compliance:** The carrying out of remedial action as agreed upon by the parties in writing; as recommended by the administrative law judge in the decision; as ordered by the Board in its decision and order; or as decreed by the court.

**Dismissed Cases:** Cases may be dismissed at any stage. For example, following an investigation, the Regional Director may dismiss a case when he or she concludes that there has been no violation of the law, that there is insufficient evidence to support further action, or for other legitimate reasons. Before the charge is dismissed, the charging party is given the opportunity to withdraw the charge by the Regional Director. A dismissal may be appealed to the Office of the General Counsel.

**Formal Action:** Formal actions may be documents issued or proceedings conducted when the voluntary agreement of all parties regarding the disposition of all issues in a case cannot be obtained, and where dismissal of the charge or petition is not warranted. Formal actions are those in which the Board exercises its decision-making authority in order to dispose of a case or issues raised in a case. “Formal action” also describes a Board decision and consent order issued pursuant to a stipulation, even though a stipulation constitutes a voluntary agreement.

**Impact Analysis:** Provides an analytical framework for classifying cases so as to differentiate among them in deciding both the resources and urgency to be assigned each case. All cases are assessed in terms of their impact on the public and their significance to the achievement of the Agency’s mission. The cases of highest priority, those that impact the greatest number of people, are placed in Category III. Depending on their relative priority, other cases are placed in Category II or I.

**Overage Case:** To facilitate/simplify Impact Analysis, case processing time goals – from the date a charge is filed through the Regional determination – are set for each of the three categories of cases, based on priority. A case is reported “overage” when it is

still pending disposition on the last day of the month in which its time target was exceeded.

**Petition:** A petition is the official NLRB form filed by a labor organization, employee or employer. Petitions are filed primarily for the purpose of having the Board conduct an election among certain employees of an employer to determine whether they wish to be represented by a particular labor organization for the purposes of collective bargaining with the employer concerning wages, hours, and other terms and conditions of employment.

**Quality:** Complete assignments and investigations in a full and thorough manner consistent with high standards of excellence and performance expectations, as well as the National Labor Relations Act and controlling decisions of the Board and the courts.

**Quality Review Process:** Quality of unfair labor practices and representation case processing assessed through review of a randomly selected sample of Regional Office case files; review all administrative law judge and Board decisions; quality review also involved in Divisions of Advice, Office of Representation Appeals, and Enforcement Litigation's processing of cases arising in the Regional Offices.

**Test of Certification:** A "test of certification" presents the issue of whether an employer has unlawfully refused to bargain with a newly-certified union. Because the Act does not permit direct judicial review of representation case decisions, the only way to challenge a certification is a refusal to bargain followed by a Board finding. However, because all relevant legal issues were or should have been litigated in the R (Representation) case, the related unfair labor practice case is a no-issue proceeding that can be resolved without a hearing or extensive consideration by the Board.

## **APPENDIX C**

This appendix provides a series of attachments that outline of the types of cases arising under the National Labor Relations Act (NLRA) and the basic procedures in the processing of cases within the Agency, as well as an organization chart.

Attachments:

- A. Explanation of Types of Cases
- B. Procedures in Cases Involving Charges of Unfair Labor Practices (ULP)
- C. Outline of Representation Procedures under Section 9c
- D. Organization Chart of the NLRB

## TYPES OF NLRB CASES

### 1. CHARGES OF UNFAIR LABOR PRACTICES (C CASES)

Charges Against Employer	Charges Against Labor Organization					Charge Against Labor Organization and Employer
Section of the Act <b>CA</b>	Section of the Act <b>CB</b>	Section of the Act <b>CC</b>	Section of the Act <b>CD</b>	Section of the Act <b>CG</b>	Section of the Act <b>CP</b>	Section of the Act <b>CE</b>
8(a)(1) To interfere with, restrain, or coerce employees in exercise of their rights under Section 7 (to join or assist a labor organization or to refrain).	8(b)(1)(A) To restrain or coerce employees in exercise of their rights under Section 7 (to join or assist a labor organization or to refrain).	8(b)(4)(i) To engage in, or induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce, to engage in a strike, work stoppage, or boycott, or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object is:		8(g) To strike, picket, or otherwise concertedly refuse to work at any health care institution without notifying the institution and the Federal Mediation and Conciliation Service in writing 10 days prior to such action.	8(b)(7) To picket, cause, or threaten the picketing of any employer where an object is to force or require an employer to recognize or bargain with a labor organization as the representative of its employees, or to force or require the employees of an employer to select such labor organization as their collective-bargaining representative, unless such labor organization is currently certified as the representative of such employees:	8(e) To enter into any contract or agreement (any labor organization and any employer) whereby such employer ceases or refrains or agrees to cease or refrain from handling or dealing in any product of any other employer, or to cease doing business with any other person.
8(a)(2) To dominate or interfere with the formation or administration of a labor organization or contribute financial or other support to it.	8(b)(1)(B) To restrain or coerce an employer in the selection of its representatives for collective bargaining or adjustment of grievances.	(A) To force or require any employer or self-employed person to join any labor organization or to enter into any agreement prohibited by Section 8 (e).	(C) To force or require any employer to recognize or bargain with a particular labor organization as the representative of its employees if another labor organization has been certified as the representative.		(A) where the employer has lawfully recognized any other labor organization and a question concerning representation may not appropriately be raised under Section 9(c).	
8(a)(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.	8(b)(2) To cause or attempt to cause an employer to discriminate against an employee.	(B) To force or require any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or force or require any other employer to recognize or bargain with a labor organization as the representative of its employees unless such labor organization has been so certified.	(D) To force or require any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another trade, craft, or class, unless such employer is failing to conform to an appropriate Board order or certification.		(B) where within the preceding 12 months a valid election under Section 9(c) has been conducted, or	
8(a)(4) To discharge or otherwise discriminate against employees because they have given testimony under the Act.	8(b)(5) To require of employees the payment of excessive or discriminatory fees for membership.				(C) where picketing has been conducted without a petition under Section 9(c) being filed within a reasonable period of time not to exceed 30 days from the commencement of the picketing; except where the picketing is for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, and it does not have an effect of interference with deliveries or services.	
8(a)(5) To refuse to bargain collectively with representatives of its employees.	8(b)(6) To cause or attempt to cause an employer to pay or agree to pay money or other things of value for services which are not performed or not to be performed.					

### 2. PETITIONS FOR CERTIFICATION OR DECERTIFICATION OF REPRESENTATIVES (R CASES)

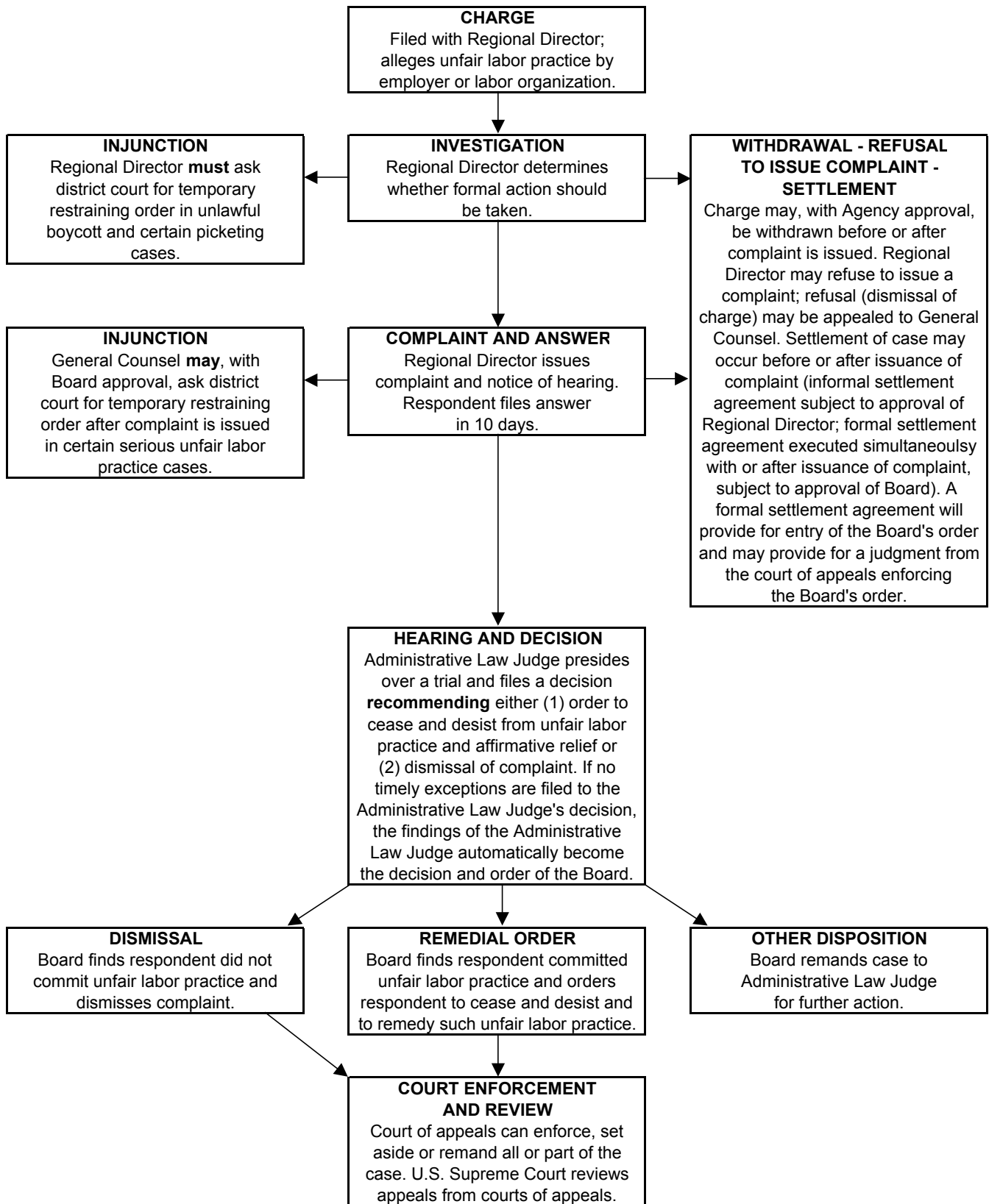
### 3. OTHER PETITIONS

By or in Behalf of Employees		By an Employer	By or in Behalf of Employees		By a Labor Organization or an Employer	
Section of the Act <b>RC</b>	Section of the Act <b>RD</b>	Section of the Act <b>RM</b>	Section of the Act <b>UD</b>	Board Rules <b>UC</b>	Board Rules <b>AC</b>	
9(c)(1)(A)(i) Alleging that a substantial number of employees wish to be represented for collective bargaining and their employer declines to recognize their representative. *	9(c)(1)(A)(ii) Alleging that a substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. *	9(c)(1)(B) Alleging that one or more claims for recognition as exclusive bargaining representative have been received by the employer. *	9(e)(1) Alleging that employees (30 percent or more of an appropriate unit) wish to rescind an existing union-security agreement.	Subpart C Seeking clarification of an existing bargaining unit.	Subpart C Seeking amendment of an outstanding certification of bargaining representative.	

\* If an 8(b)(1) charge has been filed involving the same employer, these statements in RC, RD, and RM petitions are not required.

Charges filed with the National Labor Relations Board are letter-coded and numbered. Unfair labor practice charges are classified as "C" cases and petitions for certification or decertification of representatives as "R" cases. This chart indicates the letter codes used for "C" cases and "R" cases, and also presents a summary of each section involved.

NATIONAL LABOR RELATIONS BOARD EXHIBIT B  
 BASIC PROCEDURES IN CASES INVOLVING CHARGES OF UNFAIR LABOR PRACTICES



# OUTLINE OF REPRESENTATION PROCEDURES UNDER SECTION 9(c)

