

**Government Performance and Results Act of 1993**

# **STRATEGIC PLAN**



**Fiscal Years 1997 - 2002**

## I. MISSION STATEMENT

The National Labor Relations Board (NLRB) is an independent administrative 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 Act embodies a bill of rights, which establishes freedom of association for the purposes of participating in the practice and procedure of collective bargaining. It defines and protects the rights of employees, unions and employers, and seeks to eliminate certain unfair labor practices on the part of employers and unions so as to promote commerce and strengthen the Nation's economy. 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 gives full effect to the rights afforded to employees and employers under the Act.

## II. THE STATUTORY STRUCTURE OF THE AGENCY: HOW AUTHORITY IS DIVIDED BETWEEN 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"), whose members are appointed by the President subject to Senate confirmation, and the General Counsel, who is also 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 staffs 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>

Because Congress, in enacting and amending the National Labor Relations Act, has assigned separate and independent responsibilities to the Board and the General Counsel -- particularly in the prevention and remedying of unfair labor practices -- the division of authority between the Board and the General Counsel has necessarily been reflected in the development of the agency's strategic plan and in the content of the plan. Accordingly, the Agency's plan begins with an explanation of this division of authority and how it is reflected in the agency's operations.

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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.

<sup>3</sup> Currently, only three of the Board positions are filled and the Senate (Chairman William Gould) has confirmed only one appointment. Recess appointments (Sarah Fox and John Higgins) fill the other two positions. Two seats are vacant. The General Counsel is Fred Feinstein.

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

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

Under the National Labor Relations Act, unfair labor practices are remedied through adjudicatory procedures 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. 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 to the five-member Board through the filing of exceptions by any party. The Board acts in such matters as a quasi-judicial body, deciding cases on the basis of the formal trial record in accordance with the statute and the body of case law interpreting the statute that has been developed by the Board and the 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, to decide whether complaints with respect to such charges should issue. 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 region, "officer or regional attorney" to whom the matter is referred, is *required*, on behalf of the Board to seek an injunction from a United States 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 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.<sup>6</sup> 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 and in section 10(j)

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

<sup>6</sup> Attachment D is a chart on enforcement/review of Board Orders.

proceedings in Federal district court.

### **Representation Proceedings<sup>7</sup>**

In contrast to unfair labor practice proceedings, representation proceedings conducted pursuant to the Act are not adversarial proceedings in which the General Counsel appears as a party prosecuting a complaint before the Board. 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 -- requesting 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 such questions as whether the employees constitute an appropriate bargaining unit under the Act, and if so, which employees are properly included in the unit and therefore eligible to vote; to conduct the election if an election is determined to be warranted; to 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. Because 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, the General Counsel and the Board have historically worked together in developing procedures for the conduct of representation proceedings. In addition, 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.

### **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 and the Solicitor and members of the Solicitor's staff. 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.

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<sup>7</sup> Attachment E is a chart on representation case processing.

## **Effect of Division of Authority on Agency Strategic Plan**

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 described above reflects a policy judgment by Congress that, in the processing of unfair labor practices cases, the goals of the Act could best be achieved by clearly separating the prosecutorial functions of the General Counsel from the adjudicatory functions of the Board, and assuring that each acted independently of the other in carrying out their respective responsibilities. In our view, it would be contrary to our statutory mandate for the Board to participate in defining specific goals to be achieved by the General Counsel with respect to the investigation and prosecution of unfair labor practice charges, or for the Board to endorse or otherwise commit itself to assisting the General Counsel in achieving such goals. Similarly, because the General Counsel appears as a party litigant in unfair labor practice cases before the Board, we believe it would be equally inappropriate for the General Counsel to participate in defining or enforcing goals or objectives to be achieved by the Board in carrying out its adjudicatory functions.

Accordingly, where one or the other branch of the agency has established goals and objectives which relate specifically to functions as to which it acts independently of the other branch, these goals have been denominated in our plan as “Board goals” or “General Counsel goals,” and should not be viewed as having been developed or subscribed to by the agency as a whole. Where the Board and the General Counsel have worked together in developing shared goals in areas of shared responsibility; these goals are denominated in our plan as “agency goals.”

## **Inspector General Reports**

In 1996, the Agency’s Acting Inspector General conducted an audit of the Agency’s performance measurement system and its preparation for the Government Performance and Results Act (GPRA). He concluded, inter alia, that the “Agency is approaching the GPRA and its future requirements in an appropriate manner.” He also concluded that there was reason to believe that the performance data that had been used by the Agency over a 36-year period “are outcomes within the meaning of GPRA and may be “end” outcomes within the meaning of the GAO guidelines”. Finally, he made the following comments with respect to the work of the Agency’s Performance Measurement Committee, which had issued guidance on the development of strategic plan and performance measures under GPRA:

The Agency Performance Measurement Committee has done an excellent job of evaluating GPRA responsibilities. Their recommendations are not inconsistent with GPRA, and they may go beyond what GPRA requires. Indeed, one of their

suggestions or examples of an “end outcome” may be counter productive. Thus, at page 5 of the definitions developed by NLRB’s Performance Measurement Committee it suggests that an end outcome could be: “The Agency has created a positive environment for the exercise of employee free choice and for the promotion of collective-bargaining.” The Acting Inspector General believes that an assessment such as this is a political conclusion, not a “performance or a result” within the meaning of GPRA and that it would do little to advance the purposes of GPRA as they are listed in Section 2(b) of the Act.

The report evaluated the Agency’s performance measurement system that had been in place for many years. In the area of representation cases, that system measured median times for the conduct of an election and the issuance of a report resolving post election issues, as well as the percentage of cases in which a voluntary agreement for an election was obtained. In the area of unfair labor practices, that system measured the median time for issuing a complaint, the percentage of cases under investigation or pending compliance which were not resolved within the established time goal for reasons within the regions’ control, the percentage of cases which were settled and the regions’ success in litigation. This system had served as both the method of managing caseloads and reporting on the Agency’s performance to the public and Congress.

Although the Acting Inspector General concluded that this system was the kind of system contemplated by GPRA drafters, the Agency has since implemented changes in its system. In the area of representation cases, the Agency now measures not only median times for the conduct of the election, but the time within all elections which are within the regions’ control are conducted. All other measures have been maintained. In the area of unfair labor practices, the Agency continues to measure the number of cases which are not completed within established time frames, but that figure is now based on the impact the case has on the mission of the Agency and the public. Although the Agency no longer measures median times for the issuance of a complaint, all other measurements have remained. See discussion “Performance Measurements - Past”, *infra*.

The Agency has also always had systems for evaluating the quality of its casehandling work. In another report, the Acting Inspector General concluded that the Division of Operations-Management, which reviews the quality of cases processed by regional offices, has an effective quality control program from which management can obtain reasonable assurances that casehandling standards are being followed. The audit recommended a change in the method used for selecting case files and the review of cases with significant backpay computations. Those changes have been implemented. See discussion Program Evaluation, *infra*.

### **Output versus outcome measures**

It is difficult for an agency such as ours to measure outcomes. For instance, in the representation case area, the Agency does not control or seek to influence the results of an election, 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. Because it is through the election that employees are given the opportunity to exercise their statutory right to determine whether they want to designate a labor organization as their collective bargaining representative, the Agency has established performance measures for the conduct of elections. As noted more fully below, most of these elections are not contested and conclusively resolve the representation question. The Agency is also collecting data with the goal of establishing a performance measure for the final certification of election results. These measures are objective and are not dependent on the results of the election.

As noted in the Act's preamble, Congress specifically found that certain conduct constituted unfair labor practices which obstructed commerce and charged the Agency with the responsibility of investigating and remedying prosecuting those unfair labor practices. In adjudicating unfair labor practice cases, the Board does not seek to achieve particular outcomes, but rather to decide each case on its facts in accordance with the statute and the body of law interpreting the statute that has been developed by the Board and the courts. The General Counsel, who has statutory responsibility for the investigation and prosecution of unfair labor practice complaints, has been sensitive to the requirements of GPRA by establishing a performance management system that gives priority to the investigation and litigation of those cases that impact most seriously on the mission of our Agency. The General Counsel is also in the process of developing a system for evaluating its efforts to seek compliance with the statute consistent with the requirements of GPRA.

To the extent possible, consistent with its statutorily assigned functions, the Agency has endeavored to measure outcomes and is continuing to reassess its performance management systems consistent with the requirements of GPRA.

### **III. CURRENT ENVIRONMENT**

#### **Case-Processing**

Under the statutory scheme set out in the Act, the Agency does not initiate cases on its own. All charges and petitions are filed voluntarily by individuals, employers or unions.

The Agency receives approximately 200,000 inquiries from the public per year. Through the Information Officer program, which is explained more fully in this plan under Goal 2, the Agency attempts to screen out matters that are best resolved in other forums or which do not fall within its jurisdiction. Approximately 95% (or 190,000 inquiries) of these public inquiries are screened out in this fashion.

Approximately 30,000 additional cases are filed without Information Officer assistance each year. The total number of cases filed thus approximates 40,000 cases per year, of

which approximately 34,000 are unfair labor practices and 6000 are representation petitions. The merit factor (the percentage of cases in which the General Counsel as independent prosecutor concludes that there is sufficient evidence to warrant issuance of a complaint) for unfair labor practices has consistently been in the mid-30th percentile. Thus, over 65% of the unfair labor practice charges are dismissed after investigation because it is concluded that they are not worthy of prosecution. Only 5 - 10% of the meritorious charges are litigated. The vast majority of meritorious cases are resolved through the Agency's settlement program.

In the area of representation cases, the Agency has maintained a voluntary election agreement rate of over 80%. In other words, over 80% of the cases proceed to election without a pre-election hearing because the Agency was able to negotiate a voluntary agreement for the conduct of the election. In addition, in over 90% of cases the election conclusively resolves the representation question. Objections or challenges to the election are filed by the party which did not prevail in the election in only 7% -10% of the cases and in only 13% of those cases does the Agency find that the allegedly objectionable conduct warrants holding a rerun election.

### **Performance Measures - Past (General Counsel)**

As noted previously, performance measures are not a new concept for the Agency. Our system of organization and measurement has been highly regarded for decades and followed by other federal agencies. The Agency has long prided itself on the timeliness of its service, while maintaining the highest standards of fairness, quality and effectiveness. This task of combining timeliness with fairness and quality is one of the main challenges faced by the Agency.

In the past, unfair labor practice cases were assigned and investigated in Agency regional offices on a "first in, first out" basis with a fixed 30 day time target for reaching a determination and a 45 day target for implementing a dismissal, withdrawal or complaint. No attempt was made to prioritize the handling of cases (except where expressly required by the Act) because cases were generally promptly addressed. In the area of representation cases, the performance goal for elections was based on a 50-day median and there was no formal prioritization of cases or incentives for promptly resolving cases which exceeded the median.

### **Performance Measures - Past (Board)**

With respect to complaint cases, which proceed to a hearing, administrative law judges sought to issue their decisions and recommendations to the Board in a time period related to the length of the transcript of the hearing. Thus, for cases in which the hearing transcript is 500 pages or less, the goal was issuance of the decision in 60 or fewer days in at least 50 percent of those cases. The target was less than 120 days for cases involving transcripts between 500 and 1000 pages. When the transcript was more than 1000 pages the time target is determined by consultation between the chief judge and the trial judge.



A party that does not prevail before the administrative law judge can file an appeal before the Board. The Board's goals for deciding cases include 4 weeks for research and analysis (Stage 1), 4 weeks for the writing and circulation of a draft decision (Stage 2), and 4 weeks for action by Board members (Stage 3).

### **Agency Backlogs**

The traditional time targets the Agency employed for over three decades to judge its success in serving the public are no longer realistic in this era of downsizing and diminishing resources. Despite the Agency's success at screening out tens of thousands of public inquiries and voluntarily resolving the vast majority of its representation and unfair labor practice cases, backlogs continued to grow with no concomitant increases in staffing. Agency staffing for FY 1996 was 1925 FTE, the lowest since 1962. The net effect of this reduction, unaccompanied by a commensurate decline in case intake, has been that the case handling burden per FTE has risen markedly. The intake per FTE for 1996 was more than 50 percent above the figure for 1962 and 28 percent more than in 1985. At the beginning of FY 1997, there were 7498 charges pending investigation in our regional offices and 332 representation cases pending determination. In contrast, 4794 charges and 467 representation cases were pending at the end of FY 1994. As of July 1997, the Board's backlog included 33 cases (23 unfair labor practice cases and 10 representation cases) which had been pending for at least 3 years. An additional 41 cases (26 unfair labor practice cases and 15 representation cases) had been pending before the Board between 2 and 3 years. The number of cases pending compliance with Board Decisions and court orders was 1095 on October 1, 1996, while in FY 1994 there were 1050 compliance cases pending. Rising backlogs necessarily impact adversely on our ability to effectively and efficiently carry out the Agency's mission.

As discussed more fully under Goal 2, the Agency is meeting the challenge of developing backlogs by implementing a new case prioritization system that is sensitive to the requirements of GPRA.

### **Budget**

The resolution of labor disputes is also inherently labor-intensive. Over 90% of our budget is dedicated to fixed costs; 78% to salaries and 12% to space and equipment rental. That leaves 5% for our infrastructure (communications maintenance contracts) and the remaining 5% for case processing expenses. When less than full funding is authorized for the Agency, there is very little leeway in the budget to shift resources to casehandling activities.

### **Training**

The Agency has been unable to meet all of its training needs. There is an ongoing need for training on many subjects, including new program initiatives, substantive and

procedural developments, automation and casehandling and personnel management issues. Turnover amongst managerial, supervisory and non-supervisory employees requires that certain training be repeated and conducted on a periodic basis. Moreover, there has been limited, if any, follow up nationwide training programs for many experienced employees. For example, the last full training conferences for supervisors, compliance officers, office managers and field examiners were held in 1989, 1990 or 1992.

### **Technology**

The Agency is taking advantage of the many significant innovations in information technology that has been achieved over the past few years. While it is widely dispersed over 54 geographical sites, it is closely bound by the need for common information and consistent decisions nationwide. To provide an information architecture and infrastructure, a nationwide configuration has been adopted and is currently being implemented. In addition to meeting internal processing needs, the infrastructure will support databases and information retrieval processes for the Agency and the public. A new system is being implemented to track case activity, support litigation, provide legal research, and ensure accurate and consistent data through electronic forms. Information access is a major aspect of technology requirements, both for the Agency and the public. A web site is being used, and will be expanded, to give prompt public access to Agency activities and information, and a national telecommunications architecture is being designed for data collection and sharing among Agency offices. The information technology design and implementation will make it possible to monitor casehandling performance measures developed as a result of this plan, while at the same time assuring that prosecutorial (General Counsel) and adjudication (Board) information is strictly separated

## **IV. INPUT FROM OUR STAKEHOLDERS**

### **Input from the Public**

The Agency has benefited greatly from the input of Labor-Management Advisory Panels. These panels are composed of distinguished union and management labor lawyers, 26 of each. Members of the panels serve without compensation and meet twice yearly to advise the Board on changes in Agency procedures that will expedite cases and improve service to the public. The panels provide an invaluable sounding board for the Agency on various public policy issues and a link to the labor law bar and constituents in labor and management. Instrumental in the operations of the panels has been William Stewart, former chief counsel to Board Chairman William B. Gould IV. In part because of his efforts in connection with these panels, Mr. Stewart recently received the prestigious President's Award for Distinguished Federal Civilian Service. The Agency is fortunate to have employees of this caliber to maximize the benefit the Agency receives from the Advisory Panels.

In identifying what is required to become a more effective organization, we have also

received input from our stakeholders. At the outset, we think it necessary to point out that as a law enforcement agency, the Agency has a challenging task in defining and evaluating “customer satisfaction”. Unfair labor practice allegations by their very nature are adversarial and reflect the existence of a labor dispute. Although representation cases are not adversarial in the traditional sense, the stakes are high and the parties usually do not share common goals as to the outcome. Enforcement of the Act inevitably results in some disappointment for the non-prevailing party. Accordingly, those aspects of GPRA that discuss customer satisfaction are not as easy to apply as they might be with a purely service-oriented federal agency. Nevertheless, the Agency recognized the value of seeking input from those parties who come before us and in 1994 conducted a customer survey to help us to determine the level of satisfaction with the Agency’s services. The survey included unfair labor practice cases, representation cases, and the Information Officer program. It focused on three major points of service: A) quality in case processing; B) timeliness; and C) new initiatives. The response rate for the Information Officer program reflected very high levels of customer satisfaction with this program. With respect to unfair labor practice and representation cases, the survey disclosed that most respondents were generally satisfied with the overall quality of our casehandling efforts in these areas, but were dissatisfied with delays in the resolution of cases and post election matters. The survey also revealed customer support for expediting representation cases; prioritizing cases based upon their impact on the public and providing more meaningful interim relief and remedies. As noted more fully below, after the survey was completed the Agency either implemented or is in the process of developing a series of initiatives or programs to address those issues.

Comments regarding a preliminary draft of the Agency’s Strategic Plan were also received from the Small Business Survival Committee (SBSC) and were considered in developing this plan.

### **Input from NLRB Employees**

Through the establishment of national and local partnerships with the labor organizations representing Agency employees, the Agency has received valuable input with respect to its goals and strategies. The Agency also has benefited from the input of its managers and supervisors. The Agency will continue to confer with employee bargaining representatives, managers and supervisors in refining and developing its strategies and performance goals.

Additionally, in 1994 the Agency’s national partnership established a labor management partnership committee to provide guidelines for the development of a strategic plan under GPRA. The Presidential appointees, accompanied by this committee, received briefings from representatives of the National Performance Review management team and OMB, and reviewed voluminous literature on the subject. The partnership committee submitted a report to the national partnership to provide guidance in this area. Members of the Agency’s national partnership have provided input on the development of this strategic plan.

**Congressional Guidance**  
**Office of Management and Budget and General Accounting Office**

OMB and GAO have provided us with guidance in developing a plan that meets the requirements of GPRA. Consultations with Congress were initiated in the spring of 1997 when members of the Appropriations Committee sought input from the Agency with regard to the Agency's Strategic Plan and other related issues. In July 1997, Agency staff members met with various staff members of the Committee on Education and the Workforce to get their individual input on the Agency's draft strategic plan. In July, hearings conducted by the Human Resources subcommittee of the Government Reform and Oversight Committee provided the Agency with further input from that committee. GAO staff provided the Agency with a statement before these congressional subcommittee hearings. Drafts of this strategic plan have been shared with the House Committees on Appropriations, Education and the Workforce, and Government Reform and Oversight. The views of these congressional stakeholders have been critical in developing this plan.

Through these and other means, our customers and stakeholders have provided the Agency with valuable insight into the needs and concerns of the public we serve and helped the Agency develop its goals, strategies and performance measures.

**V. GOALS**

In recognition of our obligation to the public as set forth in our mission statement, and with input from our customers and stakeholders, the NLRB has established the following four goals:

1. Resolve questions concerning representation impartially, promptly and conclusively.
2. Investigate, prosecute and remedy unlawful acts, called unfair labor practices, by either employers or unions or both.
3. Develop a well trained, highly effective, productive, customer-oriented workforce in order to provide high quality service to the public.

Fully integrate information resource management into the working environment to more increase our ability to provide information to the public and meet Agency core mission functions and goals.

**VI. OBJECTIVES, STRATEGIES AND PERFORMANCE MEASURES**



## **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 control 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 uncoerced atmosphere. Representation cases will be processed impartially, promptly and conclusively in order to avoid unnecessary disruptions in the workplace and minimize the potential for unlawful or objectionable conduct. Uniform, predictable and consistent procedures and time goals will be established in order to better serve our customers. Training needs and performance will be continuously assessed to ensure high quality service to the public and avoid unnecessary delays.

## **STRATEGIES**

### **Agency Strategies**

Assign high priority to cases that raise questions concerning representation because of their impact on the public and the achievement of our mission to ensure that they are promptly processed.

Evaluate the quality of our representation casework to provide better and more conclusive service to the public.

Identify training needs and provide necessary training to increase the quality of representation casehandling work to provide better and more conclusive service to the public, as detailed more fully under Goal 3.

Increase our efficiency and ability to publicize substantive and procedural guidance to our employees and members of the public through automation to provide better and more conclusive service to the public, as detailed more fully under Goal 4.

Give sound and well supported guidance to the parties in a specific case and the public at large with respect to all issues, including the unit which will be appropriate to conduct the election and the eligibility of employees to participate in an election, taking into account industry realities and relevant case law, to promote impartial, prompt and conclusive resolution of questions concerning representation.

Continue to evaluate representation procedures and identify, where appropriate, changes in those procedures which can contribute to the prompt, informal and voluntary resolution of questions concerning representation and the quality of our service to the public.

Continue to examine the factors that contribute to delay in the oldest cases in an effort to promptly resolve questions concerning representation.

Reevaluate, where necessary, performance measures for the processing of representation cases and incorporate any revised goals in our publicized customer standards.

### **General Counsel Strategies**

Survey regions with the goal of publicizing best practices in the processing of representation cases to assist regions in resolving representation questions promptly, fairly and conclusively.

Encourage and support voluntary resolutions of questions concerning representation, both prior to and after the holding of an election, in furtherance of the goal of resolving representation questions promptly, fairly and conclusively.

Expedite hearings which consolidate unfair labor practices with post election issues or where appropriate, hold the unfair labor practice case in abeyance while the post election issues are resolved in order to avoid unnecessary delays and promptly resolve such questions.

Update the procedural and substantive representation case handling manuals, which provide guidance to Agency employees and the public on the Agency's procedures for processing representation cases and relevant case law, in order to make this information more useful to our employees and customers and improve the quality and promptness of our service.

### **Board Strategies**

Under the Board's "Super Panel" procedure, a panel of three Board Members meets each week to hear cases that involve issues that lend themselves to quick resolution without written analysis by each Board Member's staff. The primary advantage of the Super Panel procedure is the speed with which the issues are resolved, sometimes only a few days after an appeal or exceptions are filed. This avoids delays in conducting representation elections and deciding the merits of objections. Also, by providing for direct participation by Board Members on the "Super Panel" at the outset of each case, staff time for analysis and writing is saved and intermediate levels of review are eliminated. The Board will monitor and evaluate this experiment begun in 1996.

Institute and continue to utilize a "speed-team" subpanel procedure whereby the assigned originating Board Member identifies cases involving straightforward issues which, with the agreement and early involvement of the other two panel members, can be drafted and circulated promptly without the need for detailed, time-consuming memoranda.

**PERFORMANCE MEASURES  
FY 1998-2002**

Annually:

The quality of representation casework will be evaluated through various means, including performance appraisals, quality reviews<sup>8</sup> and review of Board Decisions and appellate court judgments involving challenges to the certification process. This will be the responsibility of the General Counsel or the Board, as appropriate.

As necessary, representation procedures will be modified with the goal of reducing the time it takes to resolve questions concerning representation and improving the quality of our service to the public. This will be the responsibility of the General Counsel and the Board.

The General Counsel will monitor the timeliness of elections and reports resolving post election issues in the field in an effort to implement the high priority that has been assigned to these cases. In April 1997 the following interim performance goals were established for the conduct of an election in place of the prior 50-day median:

At least 50% of all elections will be held within 42 days of the filing of the petition

At least 87.5% of all elections will be held within 56 days of the filing of the petition

No election will be held more than 85 days from the filing of the petition, unless this is due to circumstances beyond the Region's control

As of May 1997, the national median statistics for Fiscal Year 1997 disclosed that 50% of all elections were conducted in 43 days or less and that 87.5% of all elections were conducted in 56 days or less. The oldest reported case was 780 days. No information was maintained to identify the factors contributing to delay.

The current goal for issuing a report resolving post election issues is a 35 day median from the filing of objections/challenges if no hearing is conducted and a 95 day median from the filing of objections/challenges if a hearing is conducted. Most regions are currently meeting these medians.

Field offices will meet or surpass the current 80% goal for voluntary election agreements. Most regions are currently meeting this goal.

At the Board level, the Board will seek to maintain ruling on Requests for Review of Regional Decisions within a median of 21 days from the receipt of the request. Currently the Board is issuing such rulings in 21 days.

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<sup>8</sup> The quality review is described in more detail in Section VII Program Evaluation.

## GPRA Strategic Plan

The median age of cases pending at the Board is 158 days. The Board will seek to reduce the median age of representation cases pending before it by 5% each year.

FY 1998:

The Agency will collect baseline data to determine whether there are significant deviations from the interim performance measures established for the conduct of an election and identify the factors that contribute to any such deviations. The Agency has always collected statistics reflecting time frames for the conduct of the election and has, since April, been collecting information identifying the factors that contribute to significant deviations from the recently established interim standards. The information collected thus far will be reviewed in October 1997.

The Agency will collect baseline data to assess the appropriateness of our performance measures in the post election area and the time that it takes to issue a certification after the filing of a petition. The Agency has always collected information that reflects the time frames for the issuance of reports resolving post election issues. It is in the process of collecting statistics reflecting time frames for certifying election results. Those statistics will be reviewed in fiscal year 1998.

The Board will develop baseline data to evaluate the prioritization of representation cases in that office. In this regard, cases in the Office of Representation Appeals are assigned one of three categories according to the complexity of the issues and fact patterns. Category I and II cases, involving routine or intermediate complexity, usually require reduced written legal analysis compared to the lengthy written analysis in Category III cases. The baseline data will measure median times for each of the three case categories.

The Agency will reassess or establish performance goals for the conduct of an election, the resolution of post election issues and the issuance of a certification in light of baseline data.

The General Counsel will publish the substantive representation casehandling manual and make it accessible to its employees and to the public through several means, including through the Internet.

The General Counsel will issue a report publicizing best field practices in the processing of representation cases.

The Board will seek to reduce by 50% the number of representation cases pending before it that are over 2 years old. Currently there are 17 such cases pending before the Board.



FY 1999:

The General Counsel will publish the revised manual on casehandling representation procedures and make it accessible to the public through several means, including dissemination through the Internet.

The Board will seek to issue all representation cases pending at the Board more than two years.

FY 2000:

The Board will seek to issue all representation cases pending at the Board more than 20 months.

FYs 2001-2002:

The Board will seek to issue all representation cases pending at the Board more than 18 months.



## **OBJECTIVES**

Certain conduct by employers and labor organizations has been determined by Congress to burden interstate commerce and has been declared unfair labor practices under Section 8 of the National Labor Relations Act. Goal number two communicates the Agency's resolve to investigate charges of unfair labor practice conduct fairly and expeditiously and where violations are found, to provide prompt, certain and efficacious remedial relief, with a special priority given to resolving disputes with the greatest impact on the public and the core objectives of the National Labor Relations Act.

## **STRATEGIES**

### **General Counsel Strategies**

#### **Information Officer Program**

The Information Officer Program serves to screen out charges that obviously do not belong in the Board's case handling system before they are filed. Trained professional employees answer inquiries from the public. The Agency provides the inquiring party with facts and information about the Board's jurisdiction and, where appropriate, refers the individual to an appropriate agency if there is no Board jurisdiction. This program provides assistance to members of the public, and at the same time increases the Agency's efficiency by allowing it to devote its resources to those cases in which there

is a greater likelihood that some remedy under the National Labor Relations Act is available.

An experiment is being conducted whereby public inquires are handled by a voice mail system which provides the caller with relevant information while at the same time saving the Agency's resources. The Division of Operations-Management will assess whether the experiment provides necessary service to the public and increases productivity as part of a continuing evaluation of the efficacy of the program.

### **Impact Analysis**

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. It requires that all cases be assessed in terms of their impact on the public and their significance to the achievement of the Agency's mission. For purposes of this approach, Impact Analysis focuses on the two primary or core purposes of the Act: to resolve questions concerning the representation of employees and to remedy unfair labor practices committed by employers and unions. Accordingly, consistent with Impact Analysis, representation cases would normally have the highest priority, along with cases where the alleged unlawful activity is having a demonstrable impact on the general public through disruptions of business activities. In addition, if the remedy available under the Act would significantly affect many employees, or most of the employees in a small complement, the charge would normally be handled most promptly and have all necessary resources assigned to it. In the Impact Analysis lexicon, the cases of highest priority are placed in Category III. Other cases are placed in Category II or I, depending on their relative priority.

The Impact Analysis system is used by the Division of Advice and Office of Appeals in addressing and resolving unfair labor practice issues that are submitted for their consideration. The General Counsel will continue to monitor the appropriate and full implementation of Impact Analysis in our field and headquarters offices and make adjustments in this case management system, where warranted.

### **Alternative Investigative Techniques**

In order to enable regions to devote more resources to those cases which have the potential for creating the greatest disruption to commerce, regional offices will continue to employ alternative investigative techniques in cases in which further proceedings are unlikely, in potentially meritorious cases of limited, and frequently individual impact, and where alternative means of resolution may be available to the parties. Such alternative investigative techniques, which will be used in place of the more traditional affidavit that is taken in person, include the use of telephonic affidavits, written questionnaires and statements of positions.

## **Best Practices**

The Agency will emphasize those best practices in the field, which implement our commitment to investigate unfair labor practices fairly and expeditiously. Best field practices in the processing of unfair labor practices will continue to be publicized and disseminated in the Agency newsletter, in formal memoranda issued to field managers, in meetings of Agency managers and by Division of Operations-Management staff in their regular communications with regional office management. Additionally, a field labor management committee has been established to survey regions and publicize any such practices.

## **Resident Agent**

The Agency has initiated a resident agent program, whereby an employee is permanently relocated to a location distant from the regional office city in order to investigate cases arising in that remote location. The presence of an agent close to a concentration of cases ensures that those cases are addressed in a timely manner and saves Agency travel time and transportation expenses.

## **Unfair Labor Practice Casehandling Manual**

The General Counsel's unfair labor practice casehandling manual provides procedural and operational guidance to ensure that the policies of the Agency and the General Counsel in that area are consistently followed and unfair labor practices are fairly and expeditiously processed. The manual will be updated for distribution to Agency employees and members of the public.

## **Litigation**

The Impact Analysis method of prioritizing cases will continue to be employed once a case has reached the litigation stage. High priority (Category III) cases will be litigated ahead of other cases.

## **Injunction Litigation**

In Regional Offices, priority in investigation will be given to cases where §10(l) relief may be warranted, prompt merit determinations will be made and court proceedings will be initiated, as appropriate.

In Regional Offices, cases where Section 10(j) relief may be warranted will be promptly identified, issues bearing on the appropriateness of injunctive relief will be investigated along with merits issues, suitability of case for injunction proceedings will be decided and appropriate recommendations will be made.

In the Division of Advice, regional recommendations to seek injunctions under Section

10(j) will be promptly and thoroughly considered by applying applicable legal standards and giving due weight to views of all affected parties.

### **Pursuit of Settlements**

It has long been the Agency's belief that all parties are better served if we are able to settle their disputes without the need for time-consuming and costly formal litigation. The Agency will continue to emphasize settlements as a means of promptly resolving disputes and is committed to maintaining its traditionally high settlement rate.

### **Board Strategies**

#### **Board's Procedures regarding Settlement Judges, Bench Decisions and Oral Argument**

Based on the success of a 13-month experiment, the Board adopted two rule modifications on March 1, 1996. The first of these rules allows for the appointment of settlement judges. Under this new procedure, the Chief Judge, in appropriate cases, may appoint a "settlement judge" to work with the parties informally in an effort to reach a settlement -- thus avoiding the costs to the parties and the public, and the delay required by a formal hearing and possible appeals. If a settlement is not reached informally, the case proceeds to a hearing before an administrative law judge other than the settlement judge.

Under the second of these rule modifications, an administrative law judge has the discretion to decide whether briefs are needed in any case before rendering a decision. If the judge decides that briefs are not necessary, the parties are given the opportunity argue orally and present proposed findings and conclusions, either orally or in writing. The new procedures also give the administrative law judges the authority to render bench decisions in appropriate cases within 72 hours after oral argument. These procedures allow administrative law judges to more quickly resolve these cases.

The results to date of the settlement judge and bench decision procedures have been very promising. The Agency's goal is to expand the use of these procedures where and when feasible. A five-year training plan is being developed which will provide for biannual training conferences for all judges and orientations training, which will cover, among other subjects, these new procedures.

#### **Board Case Processing**

The Board will continue to use the "speed-team" subpanel procedure described more fully under Goal 1 to expedite decisions involving straightforward issues. As to the remainder of the C cases, the Board will strive to adhere as closely as possible to the goals for processing cases set forth under "Performance Measures - Past (Board)."

## **Agency Strategies**

### **Prioritization in the Enforcement of Board Orders**

Cases will be prioritized, consistent with the external requirement that review cases be assigned immediately, with special emphasis being given to cases involving bargaining orders, interim relief or other situations where delay in enforcement will most seriously impair effectuation of the policies of the Act.

### **Compliance**

The General Counsel will provide advice, resources, training materials, and assistance to regional offices in carrying out the compliance program.

The General Counsel will study and determine whether regional offices should be encouraged to take potential compliance issues into account in determining the merit of cases, in settling cases, and in ensuring a complete remedy as early in the process as possible in an effort to obtain more prompt, certain and efficacious relief.

The General Counsel will study whether to seek additional remedies in order to provide more meaningful relief to the charging parties and greater peace in the labor markets affecting commerce.

Regional Offices will be encouraged to take appropriate steps to obtain provisional relief when confronted with likely or apparent asset dissipation or other conduct likely to prevent compliance in order to protect the Agency's ability to obtain prompt, certain and efficacious relief.

Regional Offices will be expected to deploy a full range of investigative techniques to determine whether a respondent is likely to avoid, or is avoiding, compliance in order to protect the Agency's ability to obtain prompt, certain and efficacious relief.

Regional Offices will be encouraged to make appropriate use of guarantee and security arrangements, and of formal settlements providing for judicial orders enforceable through contempt in an effort to obtain prompt, certain and efficacious compliance. To that end, the Office of the General Counsel will also be actively studying whether we can improve the efficacy of formal settlements by providing in such settlements for attachment, garnishment, offset, and other available remedies.

The General Counsel will institute more formalized Impact Analysis standards for handling compliance cases at the regional level in order to focus resources and assign higher priority to those cases that impact most seriously on the mission of the Agency.

## PERFORMANCE MEASURES<sup>9</sup>

The General Counsel will evaluate, on a yearly basis, whether the Information program is appropriately managed in field offices. Experience suggests that a yearly acceptance rate of 5 to 5.5 percent of inquiries and a merit rate for these cases of at least 27 percent, demonstrates that the program is achieving its intended purposes.

The General Counsel will monitor the Impact Analysis program in field offices in order to ensure that those cases that have the greatest impact on the public and the core objectives of the Act are given special priority, as follows:

The percentage of unexcused overage cases pending in Category III will be reduced from its current cumulative level of 18.3 to 10 percent by the end of FY 2002.

The percentage of unexcused overage cases pending in Category II will be reduced from its current cumulative level of 32 percent to 20 percent by the end of FY 2002.

Category I unexcused overage cases are currently at 21 percent, a relatively low level. If the backlog of higher priority cases (Category III and II) is to be reduced, staff resources must be redeployed from the handling of lower priority cases. Accordingly, the backlog of Category I cases must increase. The absence of this result will demonstrate that resources are not being appropriately utilized.

Review and develop baseline data for the evaluation of the Impact Analysis case prioritization system in FY 1998. The Agency currently collects case intake and overage figures within each category, as well as dismissals, withdrawals, settlements, adjustments and number of hearings held in each case category. A committee will begin to evaluate this information in October and will be identifying any further information which should be collected in order to fully assess whether this system has been successful.

The Agency will continue to evaluate the quality of our unfair labor practice casework in accordance with our customer standards through the performance appraisal systems and quality reviews. Those standards require that cases be processed in a fair, judicious and prompt manner. All relevant evidence and contentions will be carefully reviewed and evaluated.

The Agency will continue to identify training needs and provide necessary training to

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<sup>9</sup> In reviewing these measures, the reader is reminded that the responsibility for developing and monitoring these measures is by statute charged to the General Counsel, if the measure involves prosecution matters, or to the Board, if it involves adjudication. Many of the measures set out here are untested or experimental goals or targets. They are subject to review or revision in consultation with the Agency's partnership committees.

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increase the quality of unfair labor practice casehandling work, as detailed more fully under Goal 3.

The Agency will increase our efficiency and ability to publicize substantive and procedural guidance to our employees and members of the public through automation, as detailed more fully under Goal 4.

Most appeals categorized as a priority by the Office of Appeals under the Impact Analysis program will be resolved within 60 days.

Field offices will seek to settle 90 to 95 percent of the unfair labor practice cases in which further proceedings are deemed warranted over each of the next five years.

The Division of Judges will monitor the timeliness of decisions as follows:

In cases where the number of transcript pages is less than 500 pages the goal is to issue the decision will issue within 60 days from the filing of briefs in at least 50% of cases.

In cases where the number of transcript pages is between 501 and 1000 pages the goal is to issue the decision will issue within 90 days from the filing of briefs in at least 50% of the cases.

At least 50% of all enforcement petitions categorized as a priority will be filed within 100 days from referral and at least 50% of all other petitions will be filed within 200 days of the referral in each of the next five years.

The General Counsel will monitor compliance activities as follows:

Develop baseline data for the evaluation of the qualitative success of the compliance program in FY 1998. At a minimum, data will be collected to reflect the amount and percentage of monies collected, the percentage of formal cases in which full or substantial compliance is achieved, and the amount of time required to achieve such.

Develop baseline data for the evaluation of the conversion of our timeliness data in compliance cases to time targets consistent with Impact Analysis in FY 1998 and establish such performance goals in FY 1999. Until the conversion is complete, the Agency will seek to reduce the percentage of unexcused overage compliance cases from 15.5 to 10 percent. Currently, the data collected by the Agency focuses primarily upon the number of overage cases. The data described more fully above will enable the Agency to evaluate how successful it has been in achieving prompt, full and meaningful compliance.

Issue reports providing guidelines to field offices with respect to compliance procedures and remedies in FY 1998.

The General Counsel will publish a report on best practices in FY 1998.

The General Counsel will review, update and disseminate through various means, including the Internet, the unfair labor practice manual in FY 1999.

The Board, using FY 1996 data as a base, will seek to reduce the age of unfair labor practice cases pending at the Board by 5% each year. Currently the median age of cases pending before the Board is 215 days.

In FY 1998 the Board will seek to reduce by 50% the number of unfair labor practice cases pending before it that are over 3 years old. Currently there are 27 such cases.

In FY 1999 the Board will seek to issue all unfair labor practice cases pending at the Board more than 3 years.

In FY 2000 the Board will seek to issue all unfair labor practice cases pending at the Board more than 30 months.

In FYs 2001-2002 the Board will seek to issue all unfair labor practice cases pending at the Board more than 24 months.



## **OBJECTIVES**

A well-trained professional and support staff is essential to the effective and efficient achievement of the Agency's mission. Appropriate training of personnel insures that our customers will receive the highest level of service and enhances our ability to achieve the other 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.

## **STRATEGIES**

Make available to all managers and employees the Agency's customer service standards.

Assess on a periodic basis the training needs of support staff, professional staff and the managers and supervisors. Invest in staff development by identifying and addressing organizational and individual training needs. Provide training to new supervisors and managers within a reasonable time after their promotions.

Consider recommendations for short range and long range training made by employee committees, labor organizations and Agency employees.



Publicize, through internal memoranda and electronic bulletin boards, substantive information regarding significant legal precedent and case handling policies for the use of Agency employees. Create and maintain central internal bulletin board for notification of external training opportunities, including seminars, conferences, and internal training.

Facilitate legal research through automation, as detailed more fully under Goal 4.

Continue to require in-house training on legal, procedural, administrative and policy issues. Review annually the Agency's success in providing such training.

Conduct training conferences for various groups of employees. Obtain feedback on the training provided and consider these evaluations in planning future conferences.

Improve documentation and data collection from participants concerning (1) the extent to which training expenditures enhance the ability of employees to perform the work of the Agency and (2) the extent to which family-friendly initiatives foster a stable, productive workforce and preserve the Agency's investment in training employees in the performance of their jobs.

Develop and establish computer specialists in field and headquarters offices to enhance computer skills and abilities of all staff.

Use Agency in-house experts to provide materials for training to be conducted throughout the Agency.

## **PERFORMANCE MEASURES**

### **ANNUALLY:**

The General Counsel will conduct periodic training in Agency initiatives, significant legal or procedural developments, administrative matters and issues related to the Agency's mission.

The General Counsel will set aside funds to provide training to all employees by outside vendors on subjects related to the performance of Agency employee responsibilities and career development.

The General Counsel will, on an annual basis, provide 24 field professional and 13 field support employees with voluntary details to headquarter offices to provide them with meaningful exposure to other facets of Agency work, computer training and career development opportunities. These programs will be evaluated by conducting close-out sessions with the participants, providing an opportunity for participants to evaluate the program in writing and considering that input in planning future details.

The Agency will, on an annual basis, provide 17 headquarter professional employees

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with details to field offices and 11 headquarter professional employees with details to other headquarter offices in order to provide them with meaningful exposure to other facets of Agency work, training and career development opportunities.

The Agency will conduct training conferences for various groups of employees on matters related to the development and refinement of the Agency's goals and objectives, strategies or the appropriate measures for evaluating whether our goals have been achieved. Evaluations received from the participants will be analyzed and a report will be made for use in planning future conferences.

FY 1998:

The General Counsel will train its field and headquarters supervisors on various subjects, including effective and efficient casehandling, personnel issues and leadership.

The General Counsel will provide trial and 10(j) training to field attorneys, representation case training to field examiners and casehandling and managerial training to headquarters supervisors.

The Agency will provide computer training to all offices, particularly with regard to new software made available in those offices.

The Board will provide training to its managers and supervisors on various issues, including effective leadership, team management, personnel and efficiency and timeliness in case processing.

FY 1999:

The General Counsel will provide new employee training to field and headquarter employees, compliance training to compliance experts in the field, and Freedom of Information training to field and headquarters employees.

The Board will provide training to its 65 administrative law judges in decision writing and alternative dispute resolution.

To ensure the highest quality in all decisions, the Board will provide additional training in legal writing to all staff attorneys.

By 2002:

The General Counsel will provide training to employees on issues related to the Agency goals, objectives, strategies and measurements, as needed.

The Agency will provide employees with all necessary CATS and automation training.

The Agency will ensure that its customer service standards are updated, if necessary and are publicized through the Agency's web site and internal electronic message system, and also provided to any individual who files a charge or a petition.

**GOAL NO. 4: Fully integrate information resource management into the working environment to increase our ability to provide information to the public and meet Agency core mission functions and goals.**

### **OBJECTIVES**

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 our employees' ability to work more efficiently, assess and manage our workload and increase our responsiveness to the public.

### **STRATEGIES**

Create a mainstream information architecture and infrastructure that will support the planned and anticipated use of information technology in the future.

All employees will be furnished information tools and resources that enhance their productivity, provide increased responsiveness to the public, and facilitate good decisions and appropriate action by the Agency. There are many Commercial-off-the Shelf (COTS) software packages and custom developed software that will assist the Agency and the public. The number, capability, and complexity of these information technology tools and applications are increasing rapidly. The Agency will create and maintain an infrastructure of mainstream servers, PC's, networks, operating systems, databases, telecommunications, and other technology upon which these tools and applications will run. In addition to technology developed specifically for Agency functions, a standard suite of office automation software will be furnished to employees.

Establish corporate data sharing capabilities that give prompt access to current, accurate and consistent data throughout the agency.

The Agency must have the capability to search and retrieve documents that provide relevant research about related cases and legal decisions in order to ensure an appropriate and complete investigation and analysis for its cases. This database of legal material and Board decisions must be current and easily accessed by full text search techniques.

Create a telecommunications network that supports data transfer and communications among all geographical locations.

The Agency has offices in 54 geographical locations to monitor elections, and investigate and prosecute unfair labor practices. The activities and results of regional

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actions must be shared among all locations nationally to ensure consistent legal processes and equitable administration of labor law throughout the United States. A national communications architecture is needed that will provide prompt communications among Agency attorneys, investigators, and support staff and will also promptly, accurately, and securely transfer documents and data. This communications architecture must also support information search and retrieval of central repositories for legal and historical references.

Develop information systems that improve case tracking and processing, and facilitate aggregate reporting and analyses.

The Agency must maintain case activity and status information on approximately 40,000 cases that are open at any given time as well as the case history of closed cases. Since both research and case activity information could be about national organizations and unions, this information must be comprehensive nationally and accessible by all Agency offices throughout the country. Therefore, data from each region must be consistently collected, processed, stored, and then aggregated at the corporate level and made available nationwide.

Support consistency, compatibility, and responsiveness of NLRB decisions, actions, and information through the use of common automated processes and tools available at all Agency national sites.

The use of information technology and techniques that are in the mainstream of the general business community will best serve the Agency. The 54 separate geographical locations have staffs of about 5 to 70 except for the central office, which is about 600. It is important that the all regional components have a common hardware and software configuration so that the work, analyses, formats, and legal processes are consistent across all regions. In addition to consistent technology to support consistent processes and legal decisions, consistency and standardization of information technology nationwide is also important for maintaining an acceptable standard of information technology performance at the numerous locations. Since the small staff sizes of most regional sites cannot justify significant full-time technology support, this support can best be furnished by a combination of regional expertise, central office support, and by mainstream equipment and skills that are commonly available from industry sources located near the regional sites. The Agency will identify and implement a set of information standards, configurations, and guidelines that best serve the needs of the technology users while concurrently providing a consistently high level of support for that technology in all regional offices.

The NLRB will use modern automated technology and techniques, both inside and outside NLRB, to provide faster and better public access to labor information.

The Agency will improve responsiveness to information requests received by the public through the Freedom of Information Act (FOIA) process by using the query and reporting capabilities of new relational database technology; will provide greater public

access to Agency activities and decisions through use of the Internet and web sites; and will create a faster reporting process through networked national data collection and consolidation.

### **PERFORMANCE MEASURES**

A nationwide information infrastructure will be established that includes networked tools such as electronic mail, an office automation software suite, and a standard hardware configuration. The architecture will also be the platform upon which agency specific application systems can run. Thirty of the 54 sites will have the infrastructure operational by the end of FY 98 and the other 24 will be completed by the third quarter of FY 1999.

The ability to access both NLRB and external legal research materials electronically will be available in FY 1998.

A telecommunications architecture that supports standard office functions such as electronic mail and file transfer (small documents and spreadsheets) will be implemented by the end of FY 98. Also, an enhanced NLRB National Telecommunications Architecture (NLRB/NTA) to support data storage, search, and retrieval; remote software installation and network management; and communications with the public will be designed and piloted during FY 98 and fully implemented in FY 1999.

An automated process to track and process cases in NLRB is being developed in the Case Activity Tracking System (CATS). This system will be operational in eight Regions by the end of the third quarter FY 98 and implemented in all 54 sites in FY 1999.

The annual report preparation time will be reduced from about one year to six months.

Information not currently available to the public without receiving a FOIA or without significant search time will be readily available from sources such as web sites in FY 1998. This information will include casehandling manuals, Outline of Law and Procedures, current legislation and regulations, Classified Index of Board Decisions, Board decisions, case histories, and statistical summaries.

### **OUTCOMES**

The strategies developed by the Agency in the area of information technology will result in positive internal and external outcomes. Internally the strategies will ensure accurate, comprehensive and timely legal research through on-line access to historical information that can be easily searched. The ready accessibility of such research will improve the quality of research and expedite casehandling. The accessibility of information on a nationwide basis will improve the Agency's ability to achieve compliance with Board decisions. With a consistently updated and maintained national

database, the Agency will be able to provide reliable and responsive information in a timely manner to the Agency's various stakeholders, many of whom need such information in order to study broader issues. Telecommunications initiatives through the Internet and a Wide Area Network has the added advantage of making certain information available not only to Agency employees and managers but also to the public on an ongoing basis. The availability of such information to the public will increase public awareness and understanding of the Agency's mission and the procedures to follow in order to bring relevant labor related matters to the attention of the Agency. An added benefit that the public availability of such information will have is that it will reduce the response time for information requests made pursuant to FOIA and in many cases may eliminate the need for such requests.

It is also expected the necessary changes in computer hardware and software and the current design of programs will satisfy the year 2000 problem.

### **VII. EXTERNAL FACTORS**

The goals set forth in this strategic plan represent the best efforts of the Agency to plan for the future, using all resources to the maximum and effectuating our goals in as economical manner as possible.

#### **Budget**

These goals assume full funding as set forth in the President's budget for 1998. If less than full funding is authorized, it will severely hamper our ability to produce the results set forth in this plan. In the past, training is an area that has been affected by budget shortfalls due to the fact that it is one of the few budget areas which is not directly related to case-handling. The postponement or elimination of necessary training will necessarily adversely affect the quality and promptness of our service to the public. Other cost-cutting measures, such as reducing case-related travel and delaying the investigative and litigation work of the Agency, directly impacts on the service we provide to public.

#### **Intake**

Several factors will inhibit the Agency's ability to accomplish the goals set out in this plan. As noted, the Agency does not control the number of cases filed. 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 deal with without a sufficient increase in resources will result in increased backlogs and delays in processing of 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 desires of the other parties. Parties may conclude that litigation serves their legitimate or tactical interests. The Agency's procedures provide for administrative hearings, briefs and appeals. Disputes cannot always be resolved informally or in an expeditious manner. It is estimated that a one percent drop in the settlement rate will cost the Agency an additional \$2 million as the process becomes formal and litigation takes over.

## **Appointment of Board Members**

Another factor not within the control of the Agency is the timely appointment and confirmation of Board Members. This impacts the Board's ability to issue decisions. The adverse impact of operating with less than a full Board was fully described in the Congressional hearings conducted by the Government Reform and Oversight Committee where both Rep. Christopher Shays (R-Conn.) and Rep. Tom Lantos (D-Calif.) communicated their understanding of this problem and their frustration with it. As noted in a recent Washington Post article, "Having seats not filled with the president's nominees can result in deadlocks on votes, postponement of actions on important issues..." (Help Wanted: Many Top Jobs at U.S. Agencies Vacant, *Washington Post*, August 2, 1997).

## **Legislative Changes**

Also, any regulatory or statutory changes either in the Act or in the management of the federal government could affect the ability to meet the goals of this plan.

## **VIII. PROGRAM EVALUATION**

The General Counsel established a field committee to evaluate the extent to which our representation case processes were helping us achieve our goal. The committee evaluated input obtained from Agency managers, supervisors and employees, through their elected representative, and from our customers through the labor advisory panels and the customer survey. After considering the recommendations of the committee and the input received from Agency employees and customers, the General Counsel reemphasized our commitment to this goal and implemented changes in procedure and performance measurement goals which were designed to provide increased uniformity, consistency and promptness in the resolution of questions concerning representation. In 1996, the Agency conducted a national field training conference to improve the quality of our representation work. The National Performance Review awarded the Representation Case Study Committee a "Hammer" award for the improvements in performance, which resulted from these reinvention efforts. Members of the committee continue to play a role in providing feedback on the implementation of the program and

evaluating new initiatives.

As noted previously, the General Counsel also established a labor-management field committee to evaluate the extent to which our unfair labor practice casehandling activities and performance measurement systems were helping us achieve our mission. The committee conducted a year long study to ensure that all casehandling objectives were thoroughly considered and sought input from all affected groups. In the Office of Appeals, employee representatives, managers and supervisors similarly reviewed their system for processing appeals from regional determinations to dismiss a charge. As a result of these evaluations, the General Counsel implemented in 1995 the Impact Analysis system for prioritizing, managing and measuring work based upon the extent of its impact on the public and our mission. The National Performance Review awarded a "Hammer" award to the field committee and to the Office of Appeals for their reinvention efforts in developing and implementing this system in those offices. The Impact Analysis field committee has continued to monitor the implementation of the program and recently, for example, conducted field wide surveys to assess whether the program was working as intended by redirecting resources toward the cases of greatest impact. As a result of this survey and the committee's recommendation, the General Counsel issued a memorandum to the field summarizing our experience under the program and reemphasizing the need to implement certain aspects of the program that had not been fully adopted by some regions.

To address the General Counsel's continued efforts to emphasize and refine the compliance program, a reinvention committee, composed of field and headquarter employees, has initiated a review of existing policies and procedures. The General Counsel has also established a subcommittee of the reinvention committee to evaluate existing performance measures and develop baseline data to assess the effect of revisions to the existing measures. A third committee is exploring ways in which the General Counsel can seek to obtain more effective remedies. The General Counsel has also expanded the scope of the Contempt and Compliance Litigation Branch's mission to provide additional technical assistance to regional offices. In conjunction with its work with field offices, this branch provides feedback to the Division of Operations-Management on the quality of work performed, as well as support for the implementation of new initiatives.

The Agency plans to continue to evaluate its programs as it has done for many years. The Division of Operations-Management has in place a Quality Review program for regional offices pursuant to which a sampling of unfair labor practices and representation case files are reviewed 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 implementation of the General Counsel's priorities in the areas of representation cases, Impact Analysis, compliance and 10(j). The results of that review 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 evaluating the quality of our litigation, the Office of the General Counsel monitors the litigation success rate before the Board and before district courts with regard to injunction litigation. Our success rate before the Board has been in the mid to high 80 percentile; before the district courts it has been 85-90%. If a field office has a success rate which 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. Finally, the Division of Operations-Management 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. Participants evaluate the quality and usefulness of training received by them at nationwide field training conferences. This input is shared with all participants and is considered in planning future conferences. Similar input is also obtained from individuals who obtain reimbursement for courses or seminars. Employee training committees evaluate our training efforts and submit recommendations for future training.

A field headquarters committee, in close consultation with Agency employees developed CATS. The committee is also monitoring its implementation on a selected number of regions and has made adjustments in the program, as necessary. We anticipate that the committee will have an ongoing role in evaluating this program. Additionally, the Agency has hired a consultant to help us develop its information technology system, restructure work and identify training needs in this area. The Division of Administration is in the process of implementing some of these recommendations and will be evaluating this program on a continuous basis.

The Board will continue reviewing the effectiveness and efficiency of its procedures, processes and personnel on a regular basis. A Streamlining Committee has been established and charged with this function. Members include representatives from the Executive Secretary's Office, Office of Representation Appeals, Office of the Solicitor and Deputy Chiefs.

In addition, budget permitting, the Agency may use other internal and external resources, such as consultants, surveys, academic studies, stakeholder contacts and

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audits, to develop, implement and evaluate programs.