

**PROTECTING WORKPLACE DEMOCRACY**

# **STRATEGIC PLAN**



**FY 2007— FY 2012**

**JUNE 2007**

# **National Labor Relations Board**



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## **I. INTRODUCTION**

This document updates and revises the National Labor Relations Board's (NLRB) six-year Strategic Plan published in September 2000. This Strategic Plan is intended to meet the requirements of the Government Performance and Results Act (GPRA) of 1993 and covers fiscal years 2007 through 2012. The Plan details the goals of the NLRB, and introduces three new overarching, outcome-based performance measures that the Agency has adopted to better measure and report the overall timeliness and effectiveness of our service to the public. Further, the Plan outlines the means and strategies to be employed to achieve these goals and measures. The Agency's actual yearly performance against the goals and revised measures published herein will be included in the Performance and Accountability Report (PAR) submitted to the Office of Management and Budget (OMB) and Congress each November.

To communicate our goals and objectives throughout the Agency and to the public, this Strategic Plan is posted on the NLRB web site as well as internal electronic bulletin boards.

## **II. 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. 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 conduct secret-ballot elections among employees to determine whether the employees wish to be represented by a union; and (2) to prevent and remedy statutorily defined unfair labor practices by employers and unions. 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 all parties under the Act.

## **III. AGENCY STRUCTURE AND FUNCTIONS**

The National Labor Relations Board's two principal functions, as reflected in our mission statement and general strategic goals, are to conduct secret-ballot elections among employees to determine whether the employees wish to be represented by a union, and to prevent and remedy unfair labor practices by employers and unions. In an unusual structure among Executive Branch agencies, the NLRB's authority does not reside in one central position. Rather, our authority is divided by law and by delegation between the five-member "Board" and the General Counsel, all of whom are appointed by the

President, subject to confirmation by the Senate. This statutorily mandated division of authority results in the Board and the General Counsel having different and separate roles in many of our legal proceedings.

### **Representation 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 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 such. The role of the Agency in such cases is to investigate the petition and, if necessary, to conduct a hearing to determine questions such as whether the employees constitute an appropriate bargaining unit under the Act and, if so, which employees are to be 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.

### **Unfair Labor Practice Proceedings**

In contrast to representation proceedings, unfair labor practices (ULPs) are remedied under the Act through adjudicatory procedures in which the Board and the General Counsel have independent functions. The General Counsel has the sole responsibility for investigating charges of unfair labor practice, deciding whether to issue complaints with respect to such charges, and prosecuting these complaints before the Board. The Board, in turn, acts as a quasi-judicial body, independent of the General Counsel, in deciding ULP cases. These cases come to the Board on appeal from administrative law judge decisions, which are issued following hearings when a complaint is not settled.

### **Compliance Cases**

In order to obtain compliance with the NLRB's Orders and Settlement Agreements, staff must follow up to ensure that the results of the processes discussed above are enforced. Staff work with employees whose rights have been violated to calculate backpay, work with respondents when terminated employees are entitled to reinstatement or backpay, or monitor the bargaining process when the Board has ordered the parties to bargain. Noncompliance or disputes on findings may require additional hearings or actions by the judicial system.

### **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, and the attorneys who serve as counsel to the Board Members. The General Counsel also has general supervision over the officers and employees in the Regional Offices. Additionally, general supervision over the administrative functions of the Agency (such as human resources, budget, finance, purchasing, and the leasing of office space,) has

been delegated by the Board to the General Counsel. Those supervised by the General Counsel, either through statutory assignment or delegation of authority from the Board, represent approximately 85% of the Agency's workforce.

### **Current Case Processing Environment**

The NLRB acts only on those cases brought before it, and does not initiate cases. All proceedings originate with the filing of charges or petitions by employees, labor unions, private employers, and private parties. About 28,000 cases are received by the Board through its Regional, Subregional, and Resident Offices each year. Of those, approximately 24,000 are unfair labor practice (ULP) cases and the remaining 4,000 are representation cases, which involve petitions to conduct secret ballot elections. Under the Act's procedures, the General Counsel's staff investigates the 24,000 ULP cases, which results in a finding of no merit—no probable cause to support the charge—about two-thirds of the time. 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, approximately 95 percent (96.7 percent in FY 2006) are settled without formal litigation. Cases are settled through the Agency's settlement program by which the parties agree to a remedy and thereby avoid 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. A one percent drop in the settlement rate would cost the government over \$2 million dollars.

## **IV. GOALS AND OBJECTIVES**

The two goals in our Strategic Plan represent the core functions of the Agency in enforcing the National Labor Relations Act. They thus reflect both the short- and long-term goals of the Agency. These strategic goals, as fully described below, translate the Agency's mission into major policy directions and are focused on the unique characteristics of the organization.

**GOAL #1:** Resolve all questions concerning representation impartially and promptly.

### **OBJECTIVES:**

- 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 the parties involved in questions concerning union representation.

### **STRATEGIES:**

- 1. Give priority in timing and resource allocation to the processing of representation cases that implicate the core objectives of the Act and are expected to have the greatest impact on the public. A core objective of the Act is to conduct secret ballot elections among employees to determine whether the employees wish to be represented by a union.
- 2. Evaluate the quality of representation casework regularly to provide the best possible service to the public. A description of the quality review is provided on page 21.
- 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.
- 6. Assure 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 skills needs and address these skills 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 will provide NLRB employees with technology tools and access to research and professional information comparable to that of their private sector counterparts.

**GOAL #2:** Investigate, prosecute and remedy cases of unfair labor practice by employers or unions, or both, impartially and promptly.

**OBJECTIVES:**

- A. Conduct thorough ULP investigations and issue all ULP 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. One of these core objectives is to prevent and remedy statutorily defined unfair labor practices by employers and unions.
- 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 ULP 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 ULP casework regularly to provide the best possible service to the public. A description of the quality review is provided on page 21.
3. Utilize impact analysis to provide an analytical framework for classifying ULP 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 ULP cases to assist regions in resolving ULP 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 ULP disputes at all stages of the casehandling process.
8. Identify and utilize alternative decision-making procedures to expedite Board decisions in ULP cases.
9. Analyze and prioritize the critical skills needs and address these skills needs using a cost effective instructional delivery system that ensures timely access to the needed training in a work environment which 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 will provide management with the information it needs to manage the Agency and provide NLRB employees with technology tools and access to research and professional information comparable to that of their private sector counterparts.

## **V. MEASURING OUR PERFORMANCE**

In support of our goals, strategies, and objectives, the Agency has a long, successful history of performance measurement focusing on timeliness and effectiveness in our case handling process – timeliness, because we firmly believe that "justice delayed is justice denied," and effectiveness, because we strive to give customers a response they can trust.

In furtherance of these objectives, the Agency has developed three new overarching measures to replace the previous measures that had been in place. The new measures emphasize the time taken to resolve cases, from beginning to end, including both the General Counsel and Board sides. This moves our performance measurement approach from an emphasis on individual segments of case processing, as in previous years, to one that focuses on the time taken to process an entire case, from start to finish. While the previous measures were quite effective in facilitating timely, efficient, well-managed case handling, and will continue to be used as internal guides to assessing performance, the new measures emphasize outcomes, and serve to answer the central question most important to the public: what is our overall success in bringing quick resolutions to labor disputes. These measures and time targets are detailed below. Additional information regarding these measures, including annual targets and definitions, is provided in Appendix A.



## **New Performance Measures**

### **GOAL #1:    **Resolve all questions concerning representation impartially and promptly.****

Measure #1: The percentage of representation cases resolved within 100 days of filing the election petition.

Baseline: Currently, the NLRB resolves 78.0% of representation cases within 100 days of the filing of the election petition.

Long-term target: 85% by FY 2012

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

Measure #2: The percentage of unfair labor practice (ULP) charges resolved by withdrawal, by dismissal, or by closing upon compliance with a settlement or Board order or Court judgment within 120 days of the filing of the charge.

Baseline: Currently, the NLRB resolves 66.7% of ULP charges by withdrawal, dismissal, or closing upon compliance within 120 days of the filing of the charge.

Long-term target: 71% by FY 2012

Measure #3: The percentage of meritorious (prosecutable) ULP cases closed on compliance within 365 days of the filing of the ULP charge.

Baseline: Currently, the NLRB closes 73.6% of meritorious ULP cases on compliance within 365 days of the filing of the ULP charge.

Long-term target: 77% by FY 2012

By being more outcome-based, we believe these measures will better inform the public as to overall Agency performance in providing quick and effective responses to labor disputes. As the Agency meets the time targets, they will be adjusted accordingly to facilitate continued efficiencies and enhancements in overall performance.

## **RELATIONSHIP OF PERFORMANCE TO GOALS AND MEASURES**

To facilitate achievement of our goals and measures, employee performance plans will be aligned with this Strategic Plan. Direct linkages between employee performance and

overall organizational performance will be incorporated into the Agency performance appraisal system. In particular, performance plans for Agency executives will include specific goals tied to those outlined herein, for which they will be held directly responsible. Further, there will be clear distinctions in rating distributions and associated pay adjustments provided to executives, to ensure that Agency executive performance is tied to and reflects organizational performance.

## **VI. STRATEGIC INITIATIVES**

As evidenced in our goals and measures, the Agency places the highest priority on issues relating to the quality and timeliness of case handling. While our case handling procedures have been well established for many years, we have developed several initiatives aimed at further increasing our effectiveness in these areas. The initiatives described below comprise an overall Agency strategy to facilitate achievement of our goals and measures through special emphasis in certain program areas.

### **Program Areas of Special Emphasis:**

**Outreach** - The purpose of the Act, and the role of the NLRB in enforcing it, insofar as it relates to the right of employees to select or reject a collective-bargaining representative are relatively well known. For over 70 years the NLRB has been actively and publicly involved in the protection of employee rights to self-organization, the conduct of secret ballot representation elections, and the enforcement of employer and union obligations to engage in good-faith bargaining. This is the role of the NLRB that is most often the subject of accounts in the press. It is also the role that is featured in communications to employees by unions and employers during organizing campaigns.

Less well known, but of equal stature in the Act, is the protection afforded to employees to engage in "concerted protected activity." This activity, which can be initiated with or without the presence or involvement of a union, is peaceful conduct by or on behalf of two or more employees for "mutual aid or protection," as described in Section 7 of the Act. For example, employees have the right to join together and approach their employer to request higher wages, to question work loads, or otherwise to deal with their employer about terms and conditions of employment. Under the Act, an employer cannot lawfully discipline employees for raising such demands or complaints. As with union activity, employees not only have the right to engage in such activity, but they also have the right to decline to engage in this activity without fear of retribution.

In an effort to inform working Americans fully about all their rights under the National Labor Relations Act, including their rights with regard to concerted protected activity, the General Counsel has initiated an expansion of the agency's outreach program. Traditionally under this program, NLRB field and headquarters personnel meet with members of the labor-relations communities in their geographic areas to discuss NLRB procedures and developments in the law. These contacts have generally been with labor lawyers representing both unions and management, labor organizations and business groups. Among these contacts are those with the American Bar Association and State

and local bars and local chapters of the Labor and Employment Relations Association. Under the General Counsel's new initiative, NLRB agents will expand the scope of their outreach activities.

Independently or in partnership with other organizations such as the Equal Employment Opportunity Commission, NLRB agents are initiating contact with schools, community groups, churches, business organizations, and others to make information about the NLRB available to individual workers. Brochures, model speeches and other materials to facilitate outreach are available to NLRB agents on the Agency's intranet. Our Regional Directors will be operating under revised performance plans that will include specific goals with respect to the outreach activities they conduct. In addition, a new feature of the NLRB website, [www.nlr.gov](http://www.nlr.gov), has been added to advertise a speaker's bureau to permit individuals and groups to request that a NLRB representative address gatherings to present information about the Agency. Our agents will respond to these requests and speakers will be assigned, as appropriate.

***First Contract Bargaining*** - A critical responsibility of the NLRB is to conduct prompt and fair representational elections to resolve questions concerning representation – whether employees will be represented by a labor union for purposes of collective-bargaining. The General Counsel has highlighted the ancillary responsibility of the Agency to consider promptly and fairly ULP charges that, following the certification of a labor organization as the bargaining representative of a group of employees, an employer has failed or refused to bargain in good faith. These cases are prioritized as Category III under our Impact Analysis system. Further information regarding Impact Analysis can be found on page 12, and in Appendix B.

First contract bargaining is the fruition of the free choice that employees have made for collective bargaining. That free choice needs to be enforced by protecting the collective bargaining process that employees chose. Initial contract bargaining constitutes a critical stage of the negotiation process because it forms the foundation for the parties' future labor-management relationship. And when employees are bargaining for their first collective bargaining agreement, they are highly susceptible to unfair labor practices intended to undermine support for their freely chosen bargaining representative.

In this regard, NLRB records indicate that in the initial period after election and certification, charges alleging that employers have refused to bargain are meritorious in more than a quarter of all newly-certified units (28 percent). Moreover, of all charges alleging employer refusals to bargain, almost half occur in initial contract bargaining situations (49.65 percent). In addition, half of the Section 10(j) injunction cases which deal with unfair labor practices that undermine incumbent unions involve parties bargaining for first contracts.

In order to ensure that bargaining rights secured by the free choice of employees through NLRB elections are meaningful, the General Counsel has required that the investigation of unfair labor practice charges dealing with first contract bargaining are accorded the highest administrative priority in the Regional Offices. He also has required the consideration of special remedies if those charges are found to have merit. These special remedies could include Section 10(j) injunctions and the use of the

contempt process to further monitor compliance with court enforced Board actions.

**Remedies Initiative** – The remedial purpose of the Act is to make whole those persons who have suffered a loss as a result of unfair labor practices. Under this initiative, we are examining two additional areas of remedies for consistency with this basic policy: interest on monetary awards and remedies for “hallmark” violations during a union organizing drive.

The General Counsel has recently directed the Regions to seek compound interest, rather than simple interest, in future unfair labor practice proceedings. A monetary award compensates the injured party for the amount the party would have received absent the unfair labor practice; interest compensates the party for the lost use of the money over the time it takes to adjudicate the unfair labor practice. Because contemporary practice is to assess compound interest on loaned funds, the General Counsel is asking the Board to re-examine whether simple interest properly makes employees whole for the lost use of money they would have received but for the unfair labor practices; or whether compounding of interest is necessary to make employees whole.

As to the second issue, it is well recognized that certain kinds of violations during an organizing campaign are highly coercive and not easily eradicated. These so-called “hallmark violations” – threats of closure, unlawful discharge of union adherents, threats of job loss, and the grant of significant benefits – can undermine the conditions for a free and fair election. For this reason, in *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), the Supreme Court upheld the Board’s right to issue a remedial bargaining order where an employer’s hallmark violations undermine a union’s majority and impede the election process. At the same time, because an election is the preferred means of resolving representation questions, the Board and courts have been wary of granting remedial bargaining orders where, even though hallmark violations have occurred, they have not clearly precluded the possibility of holding a fair election. It is appropriate to examine whether remedies short of a bargaining order should be added to the Board’s traditional remedies in such cases, to insure that any election held will be conducted in an atmosphere free of coercion. A decision on this issue is anticipated during the latter part of FY 2007.

**Impact Analysis** - This prioritization system provides an analytical framework for classifying cases pending before the General Counsel so as to differentiate among them in determining the resources and urgency to be assigned to each case. It requires that all incoming cases at the field level be assessed in terms of their impact on the public and their significance to the achievement of the Agency's mission. Category III cases are of the highest priority, with the shortest processing time target. These may be cases where the alleged unlawful activity is having a demonstrable impact on the general public through disruptions of business activities. Similarly, charges that could significantly affect many employees, or most of the employees in a small complement, are also prioritized as Category III. As indicated, these Category III cases are to be handled most promptly and have all necessary resources assigned to that processing. Depending on their relative impact, other cases are placed in Category II or Category I, with longer processing times. The time targets for the different categories are reviewed

on an ongoing basis, and revised as necessary to promote increased efficiency and effectiveness in case processing. See Appendix B for further information regarding Impact Analysis.

### **Measures to Expedite Case Processing -**

#### **Casehandling Procedures:**

**Public Information Program** - One of the critical services provided to employers, unions, and employees is the Agency's Public Information Program. In FY 2006, the Agency's 51 Field Offices received 182,161 public inquiries regarding work place issues. In responding to these inquiries, Board agents spend a considerable amount of time explaining the coverage of the NLRA, accepting charges, or referring parties to other federal or state agencies.

The public can also contact the Agency through a toll-free telephone service designed to provide easy and cost-free access to information to the public. Callers to the toll-free number may listen to messages recorded in English and Spanish that provide a general description of the Agency's mission and connections to other government agencies or to Information Officers located in the Agency's Regional Offices. In FY 2006, the toll-free telephone service received 68,018 calls, of which 25,849 were connected to Regional Offices for further assistance.

To extend its public services efforts across the Internet, the Agency website, [www.nlrb.gov](http://www.nlrb.gov), was revised recently to enhance ease of use and effectiveness. Included on the website is a public information "Questions" page which is designed to provide answers to frequently asked questions involving the NLRA and NLRB procedures. Since its inception on February 28, 2005, this new feature has received 1,447,969 visits, 513,799 of which involved inquiries that could be satisfied by answers provided through the site's electronic search system. In addition, Agency personnel provided 12,754 direct email responses to specific inquiries from the public.

The rate of charge acceptance (percent of inquiries from the public in which the contact results in a charge) was approximately 5.2 percent in FY 2006, versus 9.7 percent prior to initiation of the Public Information Program. Thus, through this Program, the Regions have been very successful in disseminating accurate, thorough information to the public, that has increased the likelihood that subsequent charges filed have merit.

**Revision of Casehandling Guidance** - During the last several years the General Counsel's Office has sought to update and improve the guidance available to Regional Office managers to achieve the highest level of case handling efficiency and effectiveness. One thrust of this effort has been to update the case handling and administrative manuals published in print and electronic media. The three part NLRB Casehandling Manual is the basic staff guide for the processing of unfair labor practice and representation cases. It is also available to and widely utilized by party representatives coming before the agency. The first part of the Manual concerning unfair labor practice cases was fully reworked in 2003. The second part of the Manual deals with representation case processing, and also received a major updating in 2003.

The third volume of the Manual, dealing with the processing of compliance cases, was recently posted on the Agency's website, and completes the trilogy of updated, revised guidance available to our employees and customers.

***IRAP (Interregional Assistance Plan)*** - As we have since the inception of Impact Analysis, the Field Organization of the NLRB continues to use the Interregional Assistance Program (IRAP) to meet case processing exigencies. Under IRAP, a Regional Office can receive assistance, if it is having difficulty processing its cases in a timely manner because of a sudden influx of cases. This assistance is provided by a neighboring Region, which can assume responsibility for case handling in contiguous counties or by a remote Region, which can perform "portable" work. This work may consist of drafting Regional Director decisions after the conduct of pre-election hearings in representation matters or conducting remote investigations of unfair labor practice charges that lend themselves to such investigations.

***Consent Election Agreements*** - Currently, the Agency has consent election agreements which provide that appeals go to the Regional Director and waive the parties' right to appeal to the Board. This option is rarely utilized by the parties, though it is generally much faster. In order to better serve the public, we will be exploring ways to market this option more effectively so that representation cases can be more quickly resolved.

***Alternative Dispute Resolution (ADR) Pilot*** - In December 2005, the National Labor Relations Board created a pilot "alternative dispute resolution" (ADR) program to assist the parties in settling unfair labor practices cases pending before the Board on exceptions to decisions issued by the Agency's administrative law judges. The pilot ADR program will run for a two-year period. If successful, it will be implemented permanently.

This program is in addition to the Settlement Program conducted by the General Counsel, (see discussion under Current Case Processing Environment, Section III.)

The Board established this pilot ADR program in response to the success experienced by other federal agencies and the federal courts in settling contested cases through ADR, as well as the success of the NLRB's own settlement judge program at the trial level. A successful ADR intervention in a case pending before the Board on exceptions to an administrative law judge's decision will resolve the contested matter. The Board will be able to cease its deliberations on the case and the Board Members and their staffs will be freed to turn their attention to other matters. In addition, as approximately 50 percent of Board decisions generate court of appeals litigation, resolution of the matter through ADR obviates the need for such additional litigation and the commitment of Agency resources to its prosecution. Finally, disputes over the details of compliance often generate additional investigation and litigation after the merits litigation before the Board and courts. Resolution of the matter through the ADR process invariably includes the settlement of those compliance details as well – for example reinstatement and backpay – making further proceedings before the Agency unnecessary.

Participation in the program is voluntary, and a party who enters into settlement

discussions under the program may withdraw its participation at any time. The Board provides the parties with an experienced neutral, usually an NLRB administrative law judge, to facilitate confidential settlement discussions to explore resolution options that serve the parties' interests. Where feasible the settlement conferences are held in person, but some conferences may be held telephonically. The Board stays further processing of the unfair labor practice case for 60 days from the first meeting with the neutral or until the parties reach a settlement, whichever occurs first. Extensions of the stay beyond the 60 days may be granted by the neutral only with the agreement of all parties.

***Representation Case Triage*** - In a strategy similar to Impact Analysis, representation appeals cases pending before the Board are categorized, prior to assignment, according to the complexity of the issues and fact patterns. The most complex Category III cases still receive the traditional, lengthy written analysis due to the legal issues involved. However, in Category I and II cases, involving more routine factual patterns and settled Board precedent, the written legal analysis is substantially reduced from the pre-triage approach, increasing the overall speed of representation appeal processing.

***Alternative Decision-Making Procedures*** - We have instituted several procedures at the Board level in Washington that are specifically aimed at reducing case processing times while still preserving high quality decisions:

Super-panels: In this procedure, a panel of three Board members hears oral presentations of cases from staff involving issues that lend themselves to quick resolution, eliminating written analysis by each Board member's staff and intermediate levels of review. Issues can be resolved very quickly, sometimes only a few days after an appeal or exceptions are filed. The procedure is most often used to avoid delays in conducting elections and deciding the merits of objections, and sometimes used to decide other types of representation and unfair labor practice cases.

Speed-Team Subpanels: Here, 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 by Board members' staff and circulated promptly, without the need for detailed, time-consuming memoranda.

Super Speed-Team Subpanels: This is an expedited procedure used in cases involving very straightforward issues which are highly likely to result in a unanimous vote to short-form adopt the underlying decision of the judge, Regional Director or hearing officer. Unlike Speed Team processing, under the Super Speed Team procedure the draft Board decision is not formally circulated, and the decision usually issues or enters the issuance process the same day the subpanel agenda meeting is scheduled. A Super Speed-Team case is presented on an expedited basis to each participating Board member by a staff representative, usually with a draft decision submitted to the Board Member for approval. Frequently, the draft is approved by all participating Board members during the staff presentations of the case, eliminating the need for a formal subpanel agenda meeting.

Settlement judges: In appropriate cases, the Chief Administrative Law Judge can appoint a settlement judge to work informally with the parties in an effort to reach a settlement. This process avoids 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.

Other procedures: These include the sharing of legal memoranda among the different Board Member staffs, shortening the length of legal memoranda, the use of a "focus list" of cases targeted for issuance, and the use of case "advocates."

### **Management of Resources and Technology:**

**Workforce Planning** – The NLRB has always sought to operate effectively by efficient management of its human resources. A well-trained professional and support staff is essential to the effective and efficient achievement of the Agency's mission and the meeting of its performance goals. The need to make the most efficient use of existing human resources and to attract qualified staff will become more critical in the next few years as by the end of FY 2007, 44 percent of GS 13-15 supervisors and 78 percent of Senior Executive Service members in the Agency will be eligible to retire.

The NLRB workforce is spread throughout the country, with about 500 employees located in the Washington, D.C. headquarters, and 1,300 located in 32 Regional Offices, 3 Subregional Offices, 16 Resident Offices, and 3 satellite judges offices nationwide. Through its Regional Office field structure, the Agency provides the public with easy access to and direct contact with case-handlers and decision-makers.

The ability of the Agency to continue to achieve its mission and meet performance goals in such a dynamic environment was facilitated by an Agency-wide workforce assessment that was completed in FY 2004. The assessment resulted in a five-year plan, the objective of which, in keeping with the President's Management Agenda (PMA), is to use workforce planning and restructuring to make the NLRB more citizen-centered and ensure that the Agency has the diverse workforce –the right people, with the right skills, in the right places – to effectively accomplish its mission.

As a part of this Workforce Plan, a new initiative to increase the skills of Agency supervisors, managers, and executives was implemented. Additionally, new training initiatives were developed to enhance the skills of the professional and support staff.

Programs were also created to train managers (through details to other offices) in areas other than where they are assigned. These programs broaden managers' knowledge and skills, facilitate cross-training, and enhance Agency flexibility, efficiency and effectiveness. As a result of these initiatives, the Agency now offers the following:

- Management Development Program – includes training for new supervisors
- Trial training
- Training on Compliance-related topics
- Weekly videoconference training for targeted groups of Field employees



- Support staff skills and organizational training
- Training materials developed by Agency professionals on developing areas of Board law or procedures

In FY 2006, the Agency also took steps to implement an entry-level professional recruitment program, which will allow the Agency to better compete for entry-level applicants and plan its workforce hiring needs.

***Technology and E-Government Advances*** - To support its mission and goals, the NLRB is committed to the development and continued maintenance of a mainstream information architecture and infrastructure that utilizes current technological advances to support program and administrative efforts. The Agency's Information Technology (IT) initiatives support its broader efforts to improve productivity and provide greater transparency. These initiatives, consistent with the Expanding Electronic Government element of the President's Management Agenda, focus on citizen-centered and results-oriented principles.

During the past year, the NLRB launched major information technology initiatives that are part of the Agency's implementation of the President's Management Agenda. These initiatives fall under three major categories: (1) Next Generation Case Management; (2) Improved Web Site with Citizen-centered Portal; and (3) Infrastructure Modernization and Consolidation.

#### *Next Generation Case Management (NGCM)*

The vision for the Next Generation Case Management (NGCM) project is to build an enterprise-wide, common case management platform using the latest technologies for interfacing with the public and managing cases across NLRB's offices in an automated, efficient and transparent way. The NGCM project will enable the NLRB to replace or optimize manual, paper-based processes and "stovepipe" legacy systems with a standards-based solution leveraging Commercial Off-The-Shelf (COTS) tools and a Service-Oriented Architecture (SOA) approach.

NGCM eventually will replace the various case tracking systems presently deployed at the NLRB, with the exception of the recently developed Judicial Case Management System (JCMS), which will become part of the enterprise solution.

#### *Improved Web Site with Citizen-centered Portal*

The NLRB recognizes a high priority need to offer publicly available case information to case participants, citizens, and employees based on their specific needs, rather than using a "one-size-fits-all" model for information distribution. As importantly, the Agency understands the significance of three technology trends:

- An emphasis on enterprise architecture and the need to harmonize IT investments across the Agency;
- The dominance of the Web platform and the desire within enterprises to work from a common Web application development and information platform; and

- The transition to a more componentized, Service-Oriented Architecture (SOA) which utilizes a common platform for services to be integrated.

Building a portal-based public interface is one component of the long-term unified case management vision: to be able to provide better services, more efficient case handling, greater transparency, and continue to improve quality. This important step will provide a gateway for the public, including participants in NLRB cases, the Agency and existing systems to communicate with one another in the course of transacting business, as well as offering FOIA-able documents online to the general public.

With this system in place the Agency will be poised to migrate legacy systems to a common platform seamlessly without interrupting the services we are currently providing. The NLRB Portal Project will offer a self-service solution to citizens so they might obtain, maintain, and share information. Having a broader group review case data will mitigate risks associated with inaccurate or incomplete data in our internal case processing systems.

As with improvements to the Web site and the addition of the Portal, the Board's e-Filing project increases the capability of the public to transact business with the Agency online. Beginning in June 2003, the Board developed an E-Filing project, which enabled the public to file documents online. In January 2005 this program was expanded to include all documents in all cases before the Board. The Agency is now expanding the E-Filing program to the General Counsel, Judges Division and the Office of Appeals.

In addition, the Agency is piloting electronic solutions in other areas. For instance, the Office of Appeals has converted to an electronic format for investigative case files. Also, a new pilot project by Operations-Management, Division of Judges, and Office of the Chief Information Officer (OCIO) was implemented in September 2005 to test electronic solutions for moving electronic case files between Field Offices and Headquarters Offices. The results of this pilot will guide the Agency toward an enterprise-wide, e-case management solution.

#### Infrastructure Modernization and Consolidation

In FY 2005, the NLRB developed and began implementation of an ambitious plan to modernize and consolidate its IT infrastructure. The Agency awarded contracts for commercial co-location hosting, monitoring, managed services, and file server consolidation, consistent with the Agency's Enterprise Architecture (EA) design.

Each of the Agency's 51 Regional, Sub-regional, or Resident Offices throughout the United States and Puerto Rico presently operates network servers to support mission critical applications. The Agency is developing a unified network architecture, based on standard Internet technologies and hosted by a commercial services provider. By modernizing and consolidating the infrastructure in such a manner, the NLRB will be able to maintain survivability by providing redundancy, disaster recovery, consolidated storage and robust interconnection with offices of the NLRB and the public. In addition, the Agency will be able to take advantage of advances in technology of local and wide area networks, high-availability computing, information lifecycle management,

enterprise software, and communications systems, thereby maintaining the highest level of computer data processing service to the NLRB staff and the public.

***Videoconference Testimony*** - In order to become more citizen-centered, the Agency is studying allowing witnesses in pre-election representation case hearings, where credibility is not an issue, to testify via videoconferencing equipment. As well as being more convenient for witnesses, it is hoped that an expanded use of the videoconferencing equipment could save time and money for all participants, as hearings are often postponed due to the unavailability of witnesses. Videoconference testimony would expedite and improve the election process and provide better service to the public.

***Telework*** - Attorneys and investigators employed by the NLRB in Washington and in the field have long worked away from their offices. By its very nature "field" work involves going to the homes and places of business of parties filing and responding to unfair labor practice charges. In addition, professionals working on highly portable work such as trial briefs and transcript review and decision drafting, can be authorized to perform "project work-at-home." Regular work-at-home is also authorized for employees whose work assignments can be accomplished off site.

***Flexible Work Assignment Program*** - To facilitate the Agency's efforts in meeting its operational needs and to enhance employee opportunities for career development, the Agency implemented a Flexible Work Assignment Program within its headquarters offices. Under the program, work may be assigned from one Branch to another Branch in the Division of Enforcement Litigation, and from one Division within the General Counsel's office to another.

***Streamlined Regional Office Management Structure (Deputy Director Positions)*** - Traditionally, Regional Offices are staffed with 25-45 professional employees and process between 900 - 1800 cases annually. When intake and staffing levels increase in a Region appreciably above the higher ends of those ranges, adjustments to regional boundaries or the creation of a new office are considered. When there are appreciable declines in intake and staffing, consideration is given to eliminating the Regional Director position in the office and changing the status of the office to that of a satellite office of another Region. Where declines in intake and staffing are significant but do not warrant a change in the status of an office, the General Counsel has developed a new position that will result in the elimination of one management position in the office. In a traditional Regional Office the SES Regional Director has two immediate subordinates: the Regional Attorney (RA) and the Assistant to the Regional Director (ARD). The new position: Deputy Regional Director, provides the necessary immediate support for the Director of a smaller Region and replaces both the RA and ARD subordinate manager positions.

***Financial Management*** - The Agency upgraded its financial system to the Department of Interior's National Business Center's (NBC) Momentum Financials in FY 2004. This system has provided better web-based functionality, and improved integration with other systems. Currently, Momentum is integrated with the Federal Personnel and Payroll System, providing for more efficient payroll processing.

Additionally, Momentum will be fully integrated with the Agency's new E-travel compliant travel manager system, which is scheduled to be fully implemented in FY 2007. The improved integration of these systems will enhance financial reporting capabilities, facilitate more efficient and effective program and administrative performance, and enable continued compliance with the Chief Financial Officers Act of 1990. NBC is scheduled to implement a new version of Momentum at the NLRB in FY 2008.

## **VII. EXTERNAL FACTORS**

The goals and measures 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 a manner as possible. The Agency's ability to accomplish the goals is also dependent, in part, upon the continued stability of the economy and the current level of union activity remaining constant.

### **Budget**

Our goals and measures assume full funding of Agency budgets as submitted by the President to Congress. As a labor-intensive agency, over 90% of our budget is dedicated to fixed costs, including about 80% for salaries and benefits. If less than the full funding request is authorized, it may limit this Agency's ability to produce the results and benefits set forth in this Plan.

### **Case Intake**

Several factors could inhibit the Agency's ability to accomplish the goals set out in this plan. While the Agency does project caseload based on known factors, and recent history, as noted previously, we cannot 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 case 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, reorganize or operate through a different corporate entity. An unexpectedly large increase in our intake or in the complexity of issues would likely result in significant delays in processing cases.

### **Settlements**

While the Agency has experienced outstanding success in achieving voluntary resolutions of representation and ULP cases and litigating cases, we cannot control the desires of the other parties. Parties may conclude that litigation serves their strategic 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 more than \$2 million as the process becomes formal and litigation takes over.

## **Presidential Appointees**

The timely naming of Presidential appointees and their confirmation by the Senate is another factor outside the control of the Agency. A failure to timely appoint and confirm Board Members can lead to Board Member vacancies for months at a time, affecting 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. Having a full complement of members increases the Agency's ability to achieve its goals and measures.

## **Legislative Changes**

Any regulatory or statutory changes either in the Act or in the management of the federal government could affect the Agency's ability to meet the goals of this Plan.

## **VIII. PROGRAM EVALUATION**

As discussed previously in the Strategic Initiatives section, Impact Analysis is the case prioritization system utilized by the Agency to assess all incoming cases in terms of their impact on the public and their significance to the achievement of the Agency's mission. Category III cases are of the highest priority, with the shortest processing time target. Depending on their relative impact, other cases are placed in Category II or Category I, with longer processing times. We constantly review performance against our Impact Analysis time targets to determine whether adjustments can be made to better serve the public, and will continue to do so under this Plan.

The Agency will also continue to evaluate the field offices 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 ULP 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) injunction litigation. 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.

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. 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 or not 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 and headquarters employees at all levels.

The Board monitors and reviews the effectiveness and efficiency of its procedures and processes on a regular basis. To do so, the Board draws on both technology and human capital, as below:

The Board's Judicial Case Management System (JCMS), a case processing database, has been continuously enhanced since its implementation in 2000. JCMS has afforded Board Members, managers, supervisors, and employees ready access to the status of cases in real time and to a wide range of case information that was previously unavailable or, if previously available, was not easily accessible.

In addition to its function as a database, JCMS has been developed as the Board's principal system for the actual processing of cases. Through JCMS, the Board's cases are now processed largely electronically, including the scheduling of cases for decision, the identification of the issues presented and internal memoranda discussing the case, the circulation of draft decisions, the Board Members' votes on the draft decisions, as well as several of the ministerial steps needed to issue the Board's decisions.

Through the enhancements of JCMS, the Board has made substantial progress towards reaching its goal of achieving a paperless case handling process.

The Board's Triage Committee, comprising the most senior managers from each of the case handling offices, meets weekly to monitor case progress in Stage III cases, i.e., those in which a draft decision has been circulated among the Board Members. The Triage Committee addresses concerns relating to the processing of individual cases and particular groups of cases. It also discusses, initiates, recommends, and on the Board's approval, implements changes designed to increase the sufficiency and effectiveness of casehandling at all stages of the process.

Recently, the Board created a GPRA Coordinators Committee, comprising supervisors from each of the casehandling offices, to focus directly on the Board's oldest cases under the Government Reporting and Results Act. The GPRA Coordinators Committee identifies GPRA cases for issuance each month, facilitates communication among the Board's individual staffs, managers and Board Members with regard to resolving particular cases, and monitors the Board's progress on these cases.

In addition to the above, the Agency uses other internal and external resources, such as consultants, employee surveys, academic studies, stakeholder contacts and audits, to develop, implement and evaluate programs. We also expect our Inspector General to periodically review Agency programs, including the preparation of strategic planning documents.

# Office of the Inspector General

## IX. OFFICE OF INSPECTOR GENERAL STRATEGIC PLAN

**GOAL #1:** Promote economy, efficiency, and effectiveness in the administration of the Agency's programs and operations.

### **OBJECTIVES**

- A. Conduct audits and inspections of the issues, programs and operations of most importance to the Agency.
- B. Achieve positive change by presenting findings, identifying causes of reported problems, and making recommendations that are useful to the Agency.
- C. Acquire a staff of independent, competent personnel consistent with professional standards.

### **STRATEGIES**

- 1. Solicit input from Agency employees to prepare an annual audit work plan.
- 2. Identify ways to improve and strengthen management controls in Agency programs and operations.
- 3. Establish a tracking system that provides data necessary for reporting on audit recommendations.
- 4. Improve quality control of audit and inspection products.
- 5. Establish a recruitment and training program for staff.

**GOAL #2:** Prevent or detect fraud and abuse in the Agency's programs and operations.

### **OBJECTIVES**

- A. Evaluate all referrals to the OIG in an objective, timely, and lawful manner.

- B. Conduct investigations in a thorough, efficient, timely, and lawful manner.
- C. Monitor referrals under investigation by other offices to ensure appropriate action is taken.

## **STRATEGIES**

1. Operate a fraud hotline and advertise its existence and other means for referring matters of possible fraud or abuse to the OIG.
2. Refer matters within the jurisdiction of other Agency offices, e.g., EEO, security, or ethics, to those offices for action.
3. Conduct investigations in accordance with PCIE Quality standards, identify program vulnerabilities and recommend ways to prevent program abuse as part of the investigative process.
4. Report immediately to the Chairman and/or the General Counsel any serious or flagrant problems, abuses, or deficiencies.
5. Report expeditiously to the Attorney General potential violations of Federal criminal law.
6. Present findings of wrongdoing to the appropriate officials for action.

**GOAL #3:** Establish a collaborative relationship with the Congress, the Board and Agency employees to improve Agency operations.

## **OBJECTIVES**

- A. Keep the Chairman, General Counsel, Board, and Congress informed of program or operational vulnerabilities and significant issues.
- B. Respond to requests from program managers for technical advice on changes in program operations or new functions and activities.
- C. Operate in a manner that demonstrates values such as fairness, courtesy, professionalism, empathy, openness, access, and a willingness to listen.



## **STRATEGIES**

1. Issue semiannual reports by April 30 and October 31 each year.
2. Participate in ECIE and PCIE projects to improve financial and program operations.
3. Participate in Agency projects or provide technical advice and recommendations as requested.
4. Review and comment on proposed laws and regulations and draft Agency directives.

## **APPENDICES**

These appendices provide additional information regarding Agency performance measures, further details regarding the Impact Analysis case prioritization process, outlines of the types of cases arising under the Labor Management Relations Act, and the basic procedures in the processing of cases within the Agency.

A. Performance Measures

B. Impact Analysis

C. Explanation of Types of Cases and Case Handling Procedures

C-1. Explanation of Types of Cases

C-2. Procedures in Cases Involving Charges of Unfair Labor Practice

C-3. NLRB Order Enforcement

C-4. Outline of Representation Procedures under Section 9c

## PERFORMANCE MEASURES

**GOAL #1:** Resolve all questions concerning representation impartially and promptly.

**Measure #1:** The percentage of representation cases resolved within 100 days of filing the election petition.

<b>Baseline:</b>		78.0%
<b>Long-term target:</b>	FY 2012	85.0%
<b>Annual targets:</b>	FY 2007	79.0%
	FY 2008	80.0%
	FY 2009	81.0%
	FY 2010	82.0%
	FY 2011	83.5%
	FY 2012	85.0%

### **Definitions:**

*Resolve* -- When a case has been finally processed with no further rights of appeal or administrative action required. The question as to whether or not the labor organization will represent the employees has been finally resolved. Representation cases are resolved in a number of ways:

- Cases may be dismissed before an election is scheduled or conducted. Dismissals at an early stage in the processing may be based on a variety of reasons, for example, the employer not meeting our jurisdictional standards, the petitioner's failure to provide an adequate showing of interest to support the petition and/or the petition being filed in an untimely manner.
- Cases may also be withdrawn by the petitioner for a variety of reasons including lack of support among the bargaining unit and/or failure to provide an adequate showing of interest.
- The majority of cases are resolved upon either a certification of representative (the union prevails in the election) or a certification of results (the union loses the election).
- In a small percentage of cases there are post-election challenges or objections to the election. These cases are not considered resolved until the challenges and/or objections have been investigated either administratively or by a hearing and a report that has been adopted by the Board.

*Counting of Days* -- The Agency starts counting the 100 days on the date that the petition is formally docketed.

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

**Measure #2:** The percentage of unfair labor practice (ULP) charges resolved by withdrawal, by dismissal, or by closing upon compliance with a settlement or Board order or Court judgment within 120 days of the filing of the charge.

<b>Baseline:</b>		66.7%
<b>Long-term target:</b>	FY 2012	71.0%
<b>Annual targets:</b>	FY 2007	67.5%
	FY 2008	68.0%
	FY 2009	68.5%
	FY 2010	69.5%
	FY 2011	70.0%
	FY 2012	71.0%

**Definitions:**

*Resolve* -- The ULP case has been finally processed. The issues raised by the charging party's charge have been answered and where appropriate, remedied. There is no further Agency action to be taken.

*Counting of Days* -- The 120 days is calculated from the date that the charge is docketed.

**Measure #3:** The percentage of meritorious (prosecutable) ULP cases closed on compliance within 365 days of the filing of the ULP charge.

<b>Baseline:</b>		73.6%
<b>Long-term target:</b>	FY 2012	77.0%
<b>Annual targets:</b>	FY 2007	74.0%
	FY 2008	75.0%
	FY 2009	75.5%
	FY 2010	76.0%
	FY 2011	76.5%
	FY 2012	77.0%

**Definitions:**

*Resolve* -- Cases are closed on compliance when the remedial actions ordered by the Board or agreed to by the party charged with the violation are complete.

*Counting of Days* -- The 365 days is calculated from the date the charge is docketed.

## IMPACT ANALYSIS

Impact Analysis provides an analytical framework for classifying cases so as to differentiate among them in deciding both the resources and the urgency to be given each case. Impact Analysis requires that all cases be assessed in terms of their impact on the public and their significance in the effective achievement of the NLRB's mission. It is a system for differentiating cases so as to ensure that cases with the highest impact on the public are handled most expeditiously.

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. Categorization is not based upon the type of charge filed or which section of the National Labor Relations Act may have been violated, but upon consideration of the relative impact on the public or a significant number of employees and the core purposes of the Act. A description of the different categories, the types of cases in each, and the applicable time targets, is provided below:

**Category III:** Cases involving the greatest impact on the public and allegations most central to the achievement of the Agency mission.

Timeframe: 7 weeks

Types of Cases:

- First Contract Bargaining Cases – These are cases where there are alleged violations that occur during the period after certification when parties are or should be bargaining for an initial collective bargaining agreement. First contract bargaining constitutes a crucial stage of the negotiation process because it forms the foundation for the parties' future labor-management relationship. Initial contract negotiations are often more difficult than established successor contract negotiations since they often follow contentious representation election campaigns. Moreover, when employees are bargaining for their first collective-bargaining agreement they are highly susceptible to unfair labor practices intended to undermine support for their bargaining representative. Regional Offices have been instructed to focus particular attention on remedies for such violations and to consider whether injunctive relief should be sought to protect the representational choice of employees. In addition, Regional Offices are also to consider whether additional remedies are appropriate to fully remedy unfair labor practices committed during initial contract bargaining. Such additional remedies would include seeking a new full certification year, notice reading and publication, union access to bulletin boards and other means of communication, periodic reports on the status of bargaining and bargaining and/or litigation expenses.
- Cases where injunctive relief may be warranted
- Representation cases involving the resolution of a question concerning the collective bargaining status of the union
- Cases that block the processing of a representation case

- Unfair labor practice cases in which the establishment or continuation of a union's status as the collective bargaining representative of employees is at stake. This would include: cases involving bargaining orders; the relocation, transfer or elimination of a bargaining unit; cases where the Employer is contesting the certification of the union; and alleged misconduct designed to frustrate a union's ability to obtain an initial contract after certification.
- Cases involving the resolution of the question whether a strike or lockout is based on economic or unfair labor practice considerations
- Any case involving the issue of whether a strike is unprotected and the status of strikers is at issue or the employment status of significant numbers of employees is to be settled
- Cases involving a strike or an intent to strike at a health care institution
- Cases involving a permanent or indefinite loss of employment
- Cases where individuals have been denied work opportunities because of the union's discrimination, including hiring hall refusal to refer allegations. National cases or cases of unusually high impact involving the national application of a provision affecting employment.
- Any case where injunctive relief under either Section 10(l) or 10(j) may be pursued

**Category II:** Cases not included in Categories III or I. They typically involve conduct which affects core rights under the Act, and for which there is no alternative remedy.

Timeframe: 9 weeks

Types of Cases:

- Discrimination cases that do not involve a permanent or indefinite loss of employment
- Refusal to hire cases
- Picket line violence or misconduct cases where injunctive relief is not warranted and the violence of misconduct has ended
- All representation cases that do not involve the resolution of a question concerning the collective bargaining status of the union.
- Refusal to provide information cases
- Cases alleging the unilateral change of terms and conditions of employment
- Cases alleging a union's violation of its duty of fair representation
- Independent allegations of restraint and coercion of employees Section 7 rights under the Act

**Category I:** Cases involving conduct for which alternative means of redress are available to the charging party.

Timeframe: 12 weeks

Types of Cases:

- Cases that can be deferred to the parties' grievance/arbitration procedure
- Pension and welfare contribution collection cases

# **Appendix C:** Explanation of Types of Cases and Case Handling Procedures

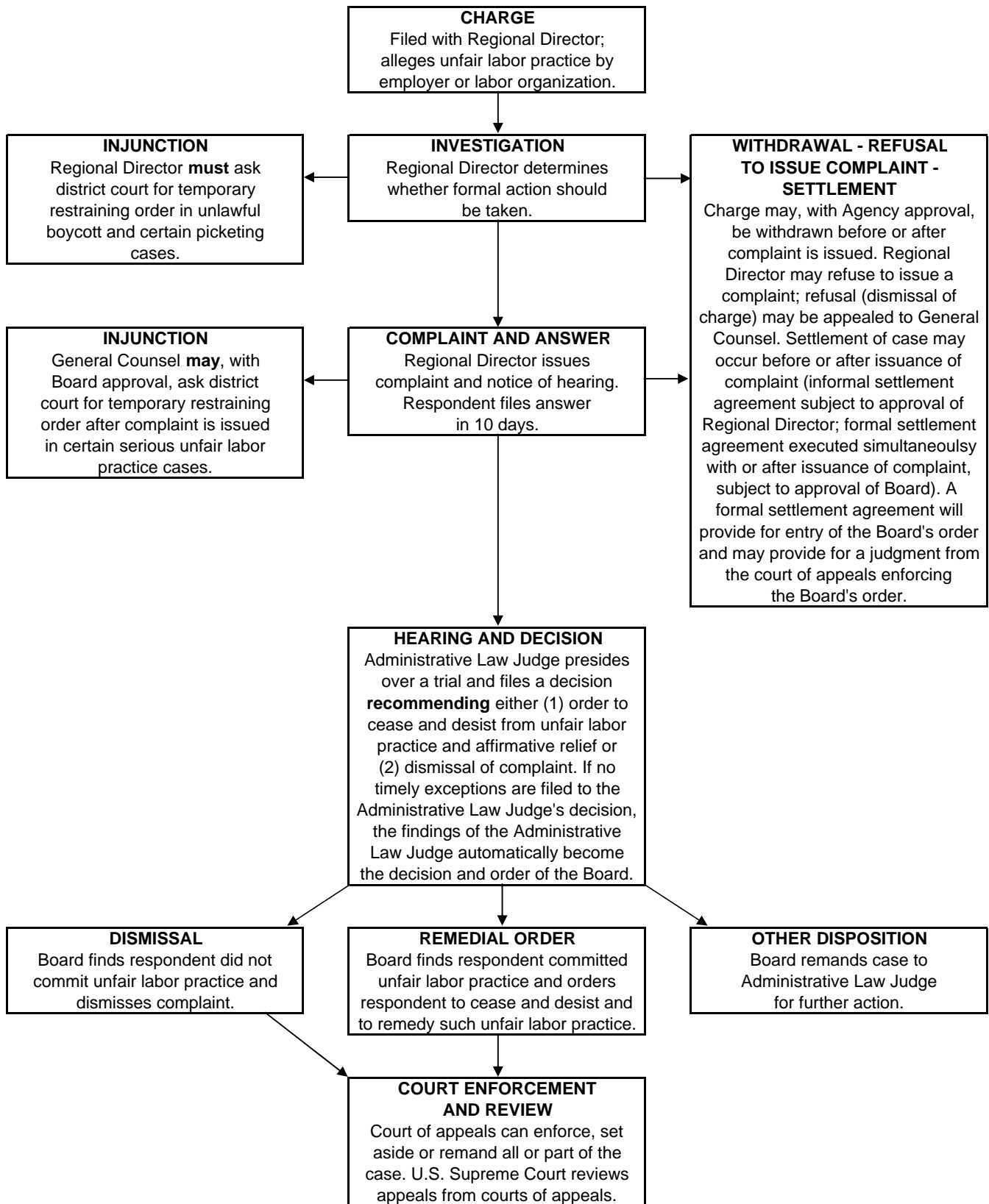
<b>TYPES OF NLRB CASES</b>						
<b>1. CHARGES OF UNFAIR LABOR PRACTICES (C CASES)</b>						
<b>Charges Against Employer</b>		<b>Charges Against Labor Organization</b>				<b>Charge Against Labor Organization and Employer</b>
<b>Section of the Act CA</b>	<b>Section of the Act CB</b>	<b>Section of the Act CC</b>	<b>Section of the Act CD</b>	<b>Section of the Act CG</b>	<b>Section of the Act CP</b>	<b>Section of the Act 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:	(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.	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).	(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.		(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.			(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)(3) To refuse to bargain collectively with employer.				(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)(5) To require of employees the payment of excessive or discriminatory fees for membership.					
	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.					
<b>2. PETITIONS FOR CERTIFICATION OR DECERTIFICATION OF REPRESENTATIVES (R CASES)</b>				<b>3. OTHER PETITIONS</b>		
<b>By or in Behalf of Employees</b>		<b>By an Employer</b>		<b>By or in Behalf of Employees</b>		<b>By a Labor Organization or an Employer</b>
<b>Section of the Act RC</b>	<b>Section of the Act RD</b>	<b>Section of the Act RM</b>	<b>Section of the Act UD</b>	<b>Board Rules UC</b>	<b>Board Rules 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.

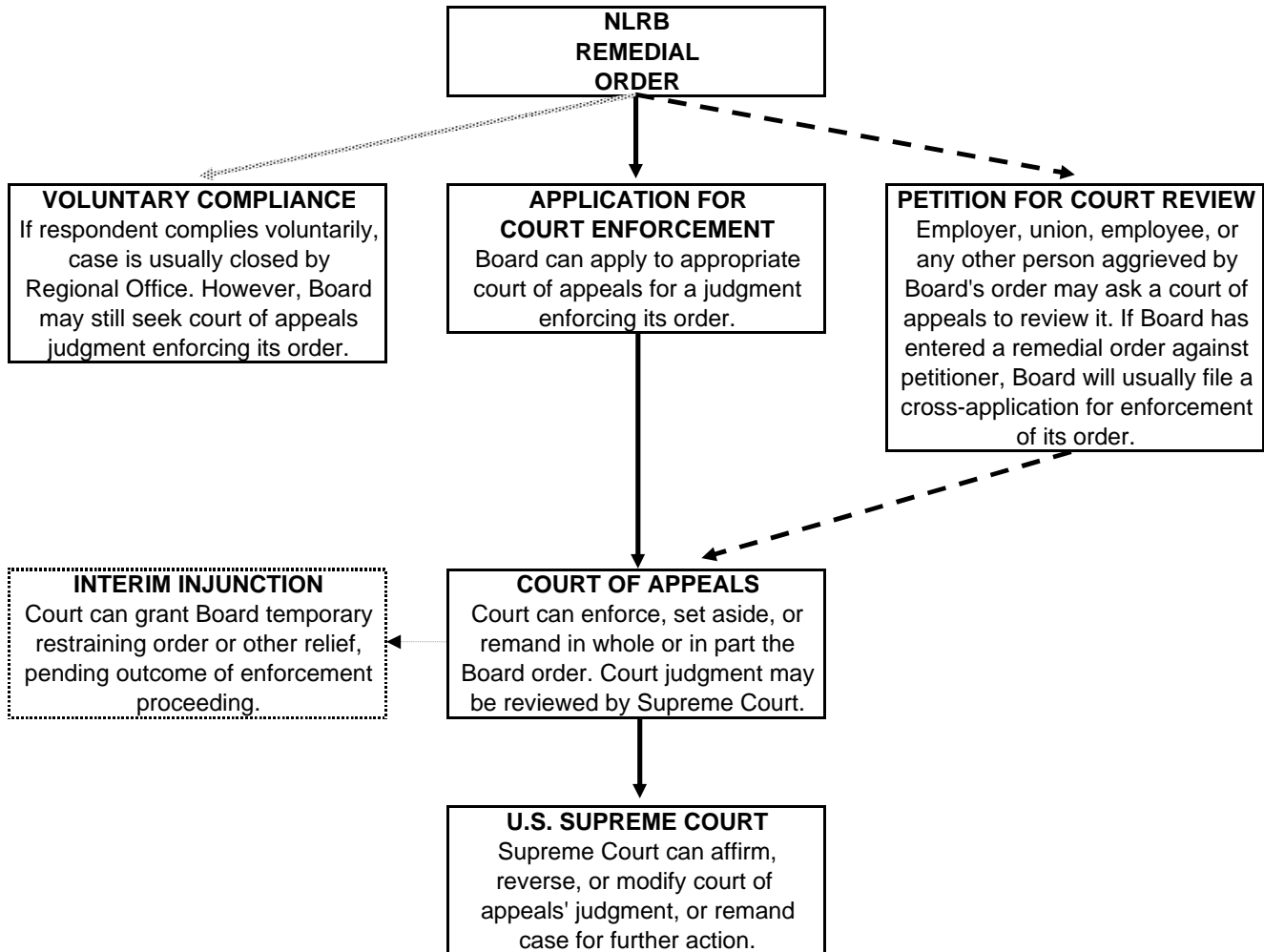
Charges filed with the National Labor Relations Board are letter-coded and numbered. Unfair labor practice charges are classified as "C" cases and petitions for certification or decertification of representatives as "R" cases. This chart indicates the letter codes used for "C" cases and "R" cases, and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



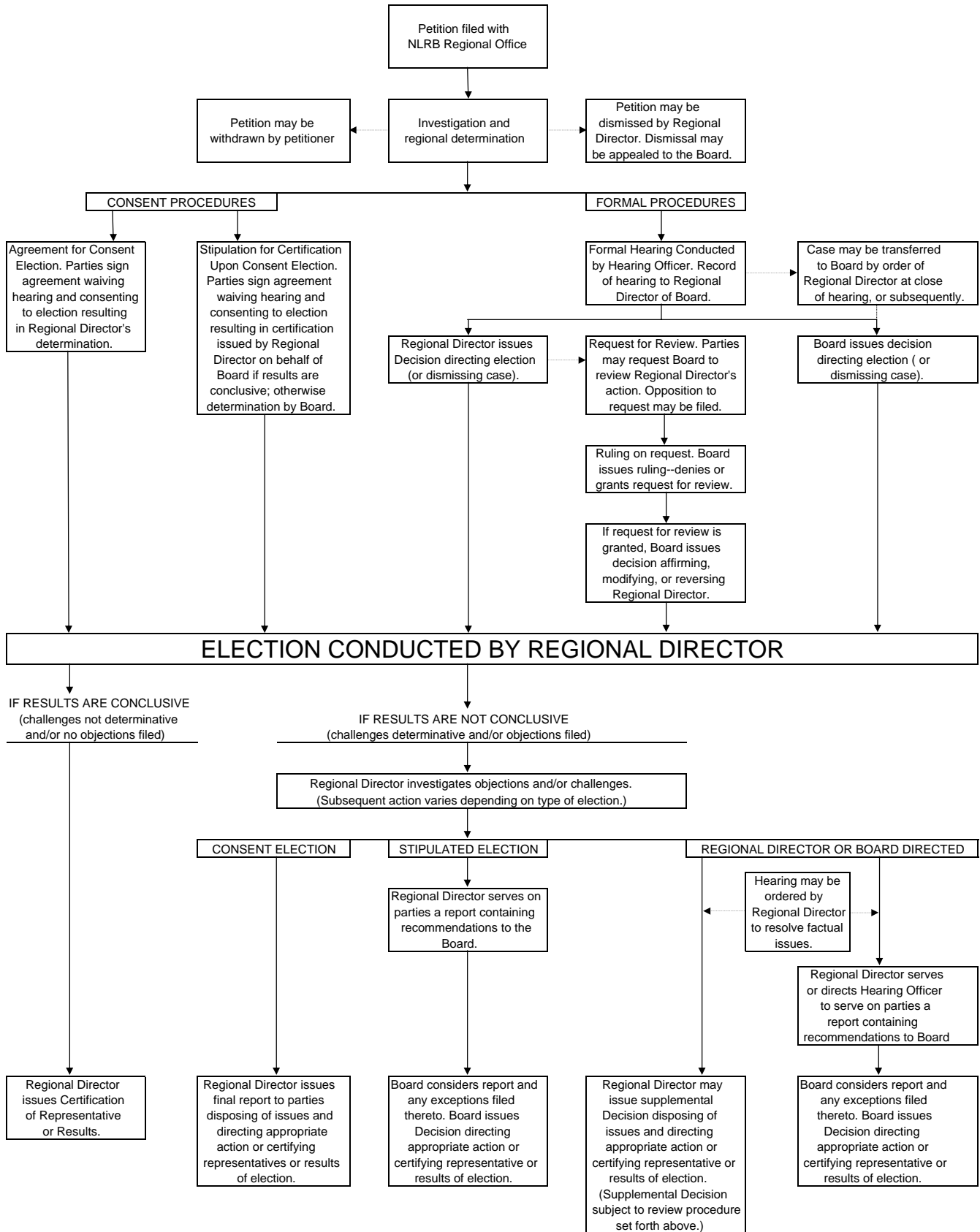
NATIONAL LABOR RELATIONS BOARD  
 BASIC PROCEDURES IN UNFAIR LABOR PRACTICE CASES



## NLRB ORDER ENFORCEMENT CHART



# OUTLINE OF REPRESENTATION PROCEDURES UNDER SECTION 9(c)





National Labor Relations Board  
1099 14th Street, N.W.  
Washington, D.C. 20570-0001

[www.nlr.gov](http://www.nlr.gov)