

## XII. PERFORMANCE MEASURES

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

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

##### **BACKGROUND:**

This measure was first implemented in FY 2003. An employer, labor organization, or a group of employees may file a petition in a NLRB Regional Office requesting an election to determine whether a majority of employees in an appropriate bargaining unit wish to be represented by a labor organization. When a petition is filed, the Agency works with the parties toward a goal of reaching a voluntary agreement regarding the conduct of an election. If a voluntary agreement is not possible, the parties present their positions and evidence at a formal hearing. The NLRB Regional Director issues a decision after review of the transcript of the hearing and the parties' legal argument, either dismissing the case, or directing an election. If the parties in the case disagree with the Regional Director's decision, they may appeal that decision to the Board for review. Prompt elections are desirable because an expeditious determination affords employers, employees, and unions a more stable environment and promotes the adjustment of industrial disputes. This measure reflects the number of median days from the filing of a petition to the date of certification. Certification is the issuance of a document by the NLRB certifying the results of the election. This measure includes approximately 200 post-election cases, about 100 of which are appealed to the Board.

<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
53 median days	52 median days	53 median days	53 median days
<b>FY 2006</b>	<b>FY 2007 Target</b>	<b>FY 2008 Target</b>	
54 median days	60 median days	60 median days	

**2. Hold 90 percent of all representation elections within 56 days of filing of a petition.**

**BACKGROUND:**

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

<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
90.7% of elections held w/in 56 days	92.5% of elections held w/in 56 days	93% of elections held w/in 56 days	94.2% of elections held w/in 56 days
<b>FY 2006</b>	<b>FY 2007 Target</b>	<b>FY 2008 Target</b>	
94% of elections held w/in 56 days	90% of elections held w/in 56 days	90% of elections held w/in 56 days	

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

**BACKGROUND:**

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

<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
41 median days	40 median days	39 median days	38 median days
<b>FY 2006</b>	<b>FY 2007 Target</b>	<b>FY 2008 Target</b>	
39 median days	42 median days	42 median days	

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

**BACKGROUND:**

After the NLRB conducts an election to resolve a representation case, a union may be certified if it receives a majority of the votes cast, or the results may be certified if no Union received a majority of the ballots. In elections where a party objects to the outcome of the election or challenges are posed to the eligibility of a determinate number of voters, the Board's post-election procedures offer the parties an opportunity to present their evidence and arguments. If the parties involved file objections to the election, and there is merit to their objections, a second election is ordered. Post-election determinations by the Regional Director or a hearing officer about election results can be appealed to the Board, thus lengthening the time to determination. This performance measure establishes a goal for the Regions to issue 85 percent of post-election reports within 100 days of the election in cases involving challenged ballots and within 100 days of the filing of objections to the election.

<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
82% within 100 days	85.7% within 100 days	92.1% within 100 days	90.5% within 100 days
<b>FY 2006</b>	<b>FY 2007 Target</b>	<b>FY 2008 Target</b>	
94.4% within 100 days	85% within 100 days	85% within 100 days	

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

**BACKGROUND:**

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

<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
87.2%	88.5%	89%	91.1%
<b>FY 2006</b>	<b>FY 2007 Target</b>	<b>FY 2008 Target</b>	
88.2%	85%	85%	

**6. Issue all test-of-certification decisions in an 80 day median from filing of charge by FY 2008.**

**BACKGROUND:**

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

<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
135 median days	114 median days	83 median days	118 median days
<b>FY 2006</b>	<b>FY 2007 Target</b>	<b>FY 2008 Target</b>	
100 median days	90 median days	80 median days	

**7. Decide 90 percent of representation cases pending at the Board for more than 12 months.**

**BACKGROUND:**

Once a representation election has been held and the NLRB Regional Director has determined the results of the election, any of the parties involved may appeal the Regional Director's decision to the Board. If the decision of the Regional Director is appealed, the Board reviews the election and certification occurs after the Board decision. The Board's goal is to dispose of 90 percent of all representation cases that have been pending before it for more than 12 months.

<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
90% of cases pending over 18 months	67% of cases pending over 12 months	65% of cases pending over 12 months	57% of cases pending over 12 months
<b>FY 2006</b>	<b>FY 2007 Target</b>	<b>FY 2008 Target</b>	
78% of cases pending over 12 months	90% of cases pending over 12 months	90% of cases pending over 12 months	

**8. Conduct quality reviews in 100 percent of the Regional Offices each year.**

**BACKGROUND:**

The NLRB is not only concerned about how quickly cases move through its pipeline but also the quality of the case handling. This issue of quality control is critical to the Agency and its stakeholders, and its importance is emphasized and reaffirmed by this performance goal. The General Counsel's Division of Operations-Management randomly selects Regional case files for quality review. The quality review process referred to in this performance measure is conducted in all 32 of the NLRB's Regional Offices and reviews case files that would not otherwise be seen by Headquarters managers.

<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
100% of regions	100% of regions	100% of regions	100% of regions
<b>FY 2006</b>	<b>FY 2007 Target</b>	<b>FY 2008 Target</b>	
100% of regions	100% of regions	100% of regions	

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

**1. Achieve informal resolution of unfair labor practice cases within a median time of 70 days by FY 2008.**

**BACKGROUND:**

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

<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
82 median days	68 median days	61 median days	60 median days
<b>FY 2006</b>	<b>FY 2007 Target</b>	<b>FY 2008 Target</b>	
59 median days	70 median days	70 median days	

**2. Resolve 90 percent of unfair labor practice cases within established Impact Analysis time frames.**

**BACKGROUND:**

NLRB has created a system, Impact Analysis, to prioritize the processing of unfair labor practice cases based on their public impact and how closely they relate to the Agency's core mission. This Impact Analysis system has been used to classify cases into three categories, with Category III being the highest priority. Usually Category III cases involve significant issues, large-scale labor unrest, or high economic impact. NLRB has set goals for the number of days within which a disposition should be reached for each category, beginning on the day a ULP charge is filed. If a disposition on the case has not been reached within that timeframe it is considered "overage" — for Category III the standard is 49 days (seven weeks), for Category II, 63 days (nine weeks) and for Category I, 84 days (12 weeks). NLRB's goal is to reduce the percentage of overage cases in each category to the lowest possible percentage, and reach and maintain a 90 percent level for all categories. Cases, which cannot be processed within the time lines established under the Impact Analysis program for reasons that are outside the control of the Regional Office, are not considered to be overage.

	<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
<b>Cat. III</b>	92.9%	95.7%	96.8%	97.6%
<b>Cat. II</b>	93.3%	97.3%	98.4%	98.7%
<b>Cat. I</b>	94.0%	99.3%	99.5%	99.5%

	<b>FY 2006</b>	<b>FY 2007 Target</b>	<b>FY 2008 Target</b>	
<b>Cat. III</b>	98.3%	90%	90%	
<b>Cat. II</b>	99.1%	90%	90%	
<b>Cat. I</b>	99.5%	90%	90%	

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

**BACKGROUND:**

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

<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
93.7%	92.8%	96.1%	97.2%
<b>FY 2006</b>	<b>FY 2007 Target</b>	<b>FY 2008 Target</b>	
96.7%	95%	95%	

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

**BACKGROUND:**

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

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

opened, many intervening factors can affect the closing date of a hearing.

<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
121 median days	104 median days	101 median days	96 median days
<b>FY 2006</b>	<b>FY 2007 Target</b>	<b>FY 2008 Target</b>	
84 median days	120 median days	120 median days	

**5. Issue sustained appeals decisions within 90 median days of receipt of the appeal of the Regional Directors’ dismissal of the charge.**

**BACKGROUND:**

If a Regional Director dismisses an unfair labor practice charge, it can be appealed to the Office of Appeals, which could reverse the Regional Director’s decision with the instruction to issue a complaint, absent settlement. Of the 3,000 cases per year that are appealed, about 2 to 5 percent are reversed by the Office of Appeals. The measure was slightly revised for FY 2005 to reflect median days, instead of a percentage of actual days.

<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
72 % w/in 120 days	63% w/in 110 days	36% w/in 90 days	83 median days
<b>FY 2006</b>	<b>FY 2007 Target</b>	<b>FY 2008 Target</b>	
73 median days	90 median days	90 median days	

**6. Achieve a 25 median day case processing time, excluding deferral time, for closing those Advice cases where the General Counsel recommended and the Board authorized Section 10(j) injunction proceedings. Additionally, close 90 percent of these cases within 30 actual days, excluding deferral time, by FY 2008.**

**BACKGROUND:**

In certain unfair labor practice cases, the NLRB Regional Director may request authorization to file an injunction in U. S. District Court to prevent what the Director sees as a practice that will do irreparable harm while the case is being litigated. Regional Directors submit a request for authorization to the Division of Advice. If the General Counsel agrees injunctive relief is

warranted, he asks the Board for authorization to institute injunction proceedings. If the Board approves, the Region files for an injunction in the relevant U.S. District Court. This measure excludes deferral time (time waiting) for Regional Offices to provide additional information about the cases to the Division of Advice that may be needed to present the case to the Board.

This measure was slightly revised for FY 2003. The original measure had a goal of closing 95 percent of Advice cases within 25 days of receipt from Regional Offices. The revised measure focuses on closing all cases, but uses median days as the time factor. Therefore, the data between FY 2002 and FY 2003 in the chart below changes significantly. The second part of the measure (30 days) focuses on actual days as the time factor.

<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
46.2% closed within 25 days	Closed all cases within 30.5 median days	Closed all cases within 25 median days	Closed all cases within 24 median days
53.9% closed within 30 days	50% closed within 30 days	77.3% closed within 30 days	90.9% closed within 30 days
<b>FY 2006</b>	<b>FY 2007 Target</b>	<b>FY 2008 Target</b>	
Closed all cases within 24.5 median days	Close all cases within 25 median days	Close all cases within 25 median days	
86.7% closed within 30 days	90% closed within 30 days	90% closed within 30 days	

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

**BACKGROUND:**

After a Regional Director determines action should be taken on a case, the Regional Director issues a formal complaint and schedules a hearing before an administrative law judge. After presiding over a full-scale hearing, which lasts an average of about three days, the judge usually provides for the subsequent filing of briefs; a small number of cases may be submitted, after trial, on oral argument. The judge then issues a decision. This measure is based from the date of receipt of the briefs or submissions after the close of the hearing to the issuance of the ALJ decision. Although the goal of issuing decisions within 62 median days has been substantially exceeded in FY 2001 and FY 2002, the goal represents a historical standard that is a good indicator of performance without compromising the quality of judges' decisions.

<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
27 median days	33 median days	27 median days	26 median days
<b>FY 2006</b>	<b>FY 2007 Target</b>	<b>FY 2008 Target</b>	
31 median days	62 median days	62 median days	

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

**BACKGROUND:**

After an administrative law judge’s decision is appealed to the Board, the Board considers the case and issues a final order resolving an unfair labor practice (ULP) case. Board orders are not self-enforcing, and therefore, absent voluntary compliance, the Board must secure enforcement of its order by an appropriate U. S. Court of Appeals. The Appellate Court Branch handles all litigation in the courts of appeals seeking review or enforcement of final Board orders. Cases come to the Branch in two ways. A party aggrieved by the Board’s final order may file a petition for review in an appropriate court of appeals. Parties seeking review of Board orders initiate a majority of cases handled in the Branch. No goal has been set for review cases because the courts control the processing of their dockets. The second avenue is referral of the case from the Regional Office, if the Region cannot secure compliance in the period immediately following the Board’s order. Upon referral, a determination is made by the NLRB whether to continue to pursue compliance or to initiate court proceedings by filing an application for enforcement. This measure was modified slightly for FY 2002 and beyond to reflect the median (rather than absolute) number of days required to file all applications for enforcement. This modification is only in the phrasing of the goal, because the previous version of this goal was expressed as 50 percent of applications would be filed within a specified number of days, and was intended to be used as a median.

<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
88 median days	21 median days	28 median days	26 median days
<b>FY 2006</b>	<b>FY 2007 Target</b>	<b>FY 2008 Target</b>	
26 median days	30 median days	30 median days	

**9. Decide 90 percent of unfair labor practice cases pending at the Board for over 16 months by FY 2008.**

**BACKGROUND:**

The amount of time unfair labor practice (ULP) cases wait for a Board decision impacts the interests of the parties, and the public. The goal for FY 2005 and beyond was slightly modified to 90 percent of the universe of pending cases to more accurately reflect potential performance and the fact that some unique and complex cases require longer periods to resolve.

<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
53.8% reduction of pending cases over 20 months	46% reduction of pending cases over 18 months	38% reduction of pending cases over 18 months	38.6% reduction of pending cases over 17 months
<b>FY 2006</b>	<b>FY 2007 Target</b>	<b>FY 2008 Target</b>	
46% reduction of pending cases over 17 months	90% reduction of pending cases over 17 months	90% reduction of pending cases over 16 months	

**10. Resolve compliance cases within established Impact Analysis guidelines.**

**BACKGROUND:**

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

Regional Directors are responsible for effectuating compliance with administrative law judge’s decisions, Board orders, and court judgments resulting from cases filed in their Regions. The Agency has set goals to ensure the orders that result from its litigation or Board directives are implemented promptly, since the passage of time can reduce the effectiveness of its remedies. The time is measured beginning on the date a decision, order, or judgment is received. Cases which cannot be processed within the time lines established under the Impact Analysis program for reasons that are outside the control of the Regional Office, such as bankruptcy proceedings or other related litigation are not considered to be overage. The following are the current processing time targets: Category III--91 days, Category II—119 days, Category I—147 days.

	<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
<b>Cat. III</b>	95.2% @ 91 days	96.1% @ 91 days	98.1% @ 91 days	97.0% @ 91 days
<b>Cat. II</b>	95.1% @ 119 days	95.4% @ 119 days	95.7% @ 119 days	96.9% @ 119 days
<b>Cat. I</b>	98% @ 147 days	97.3% @ 147 days	97.8% @ 147 days	99.5% @ 147 days
	<b>FY 2006</b>	<b>FY 2007 Target</b>	<b>FY 2008 Target</b>	
<b>Cat. III</b>	97.6% @ 91 days	95% @ 91 days	95% @ 91 days	
<b>Cat. II</b>	98.6% @ 119 days	95% @ 119 days	95% @ 119 days	
<b>Cat. I</b>	99.5% @ 147 days	98% @ 147 days	98% @ 147 days	

**11. Conduct quality reviews in 100 percent of the Regional Offices each year.**

**BACKGROUND:**

The National Labor Relations Board is not only concerned about how quickly cases move through its pipeline but the quality level of case handling. The General Counsel's Division of Operations-Management randomly selects case files at the Regional Offices for quality review. The files involve cases that would not otherwise be reviewed by Headquarters management. Quality reviews are conducted in all NLRB Regional Offices each year.

<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>	<b>FY 2005</b>
100 % of regions	100 % of regions	100 % of regions	100 % of regions
<b>FY 2006</b>	<b>FY 2007 Target</b>	<b>FY 2008 Target</b>	
100 % of regions	100 % of regions	100 % of regions	