

**JUSTIFICATION
OF
PERFORMANCE BUDGET
FOR
COMMITTEE ON APPROPRIATIONS**



FISCAL YEAR 2009

NATIONAL LABOR RELATIONS BOARD
Justification of Performance Budget
For the Committee on Appropriations
Fiscal Year 2009

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NATIONAL LABOR RELATIONS BOARD
Narrative Justification
Of
Appropriations Estimates
Fiscal Year 2009

I. Introduction

This document combines the National Labor Relations Board's (NLRB) budget request and Annual Performance Plan (Plan) for FY 2009. The Plan describes the strategies and initiatives the Agency proposes to take in FY 2009 to apply budgetary resources efficiently and effectively to achieve our annual and long-term performance goals under the Government Performance and Results Act (GPRA) of 1993.

The Agency's FY 2009 budget request of \$262.595 million represents an increase of \$10.834 million over the post-rescission funding of \$251.762 million provided in FY 2008. The \$262.595 million will support 1680 FTE, facilitate the Agency's ability to maintain a reduced backlog of cases, and provide the resources needed to cover the space and information technology costs necessary to continue to support effectively the National Labor Relations Act (NLRA).

II. MISSION STATEMENT OF THE NLRB

The mission of the NLRB is to carry out the statutory responsibilities of the National Labor Relations Act, the primary federal statute governing labor relations in the private sector, as efficiently as possible, in a manner that gives full effect to the rights afforded to employees, unions, and employers under the Act.

III. VISION STATEMENT

The NLRB strives to create a positive labor-management environment for the nation's employees, unions, and employers by assuring employees free choice on union representation and by preventing and remedying statutorily-defined unfair labor practices. We maintain a customer-focused philosophy and a results-oriented way of doing business that best serves the needs of the American people.

IV. MAJOR GOALS

The primary function of the NLRB is the effective and efficient resolution of charges and petitions filed voluntarily under the NLRA by individuals, employers or unions. The two major goals of the NLRB focus on its timeliness and effectiveness in addressing its caseload. The major goals are to:

- Resolve all questions concerning representation promptly
- Investigate, prosecute, and remedy unfair labor practices by employers or unions promptly

V. BACKGROUND INFORMATION

The NLRB is an independent federal Agency created by Congress in 1935 to administer and enforce the National Labor Relations Act, which is the primary federal statute governing labor relations in the private sector.¹ The purpose of the law is to serve the public interest by reducing interruptions in commerce caused by conflict between employers and employees. It seeks to do this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The Act embodies a statement of employees' bill of rights, which establishes freedom of association for the purposes of participating in the practice and procedure of collective bargaining. Under the Act, the NLRB has two primary functions: (1) to conduct secret-ballot elections among employees to determine whether the employees wish to be represented by a union², 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 employees, unions, and employers under the Act.

The NLRB acts only on those cases brought before it, and does not initiate cases. All proceedings originate from the filing of charges or petitions by employees, labor unions, and private employers who are engaged in interstate commerce. About 26,500 cases are received by the Board through its Regional, Subregional, and Resident Offices each year. Of those, approximately 23,000 are unfair labor practice (ULP) cases and the remaining 3,500 are representation cases, which involve petitions to conduct secret ballot elections. Under the Act's procedures, the General Counsel's staff investigates the 23,000 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.

The Agency's determinations to dismiss unfair labor practice charges are of great significance to the public and are an essential part of effectuating the Agency's mission. During the processing

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

²Exhibit A provides detailed descriptions of the types of cases handled by the Agency.

of a charge in the Regional Office a full and fair investigation is conducted with all parties having the opportunity to present evidence and statements of position in support of the charge, or in defense of it. If further proceedings are not found to be warranted by the Regional Director, the charging party can request and be provided with a full statement of the reasons. The charging party can then file an appeal of the Director's action with the Office of Appeals of the General Counsel's staff in Washington. If an appeal is filed, the Regional Office investigative file is independently reviewed to determine whether the investigation was complete and the legal conclusion sound.

Because the General Counsel's authority to issue a complaint in unfair labor practice cases is not subject to review, if the Regional Director's decision to dismiss the unfair labor practice charge is upheld, the parties know conclusively what their legal rights and obligations are with respect to the dispute underlying the charge. Although the charging party will likely be disappointed by the result, both parties will appreciate that a dismissal puts the matter to rest. This resolution allows the parties to move forward with a better understanding of their respective rights and responsibilities.

Of those cases in which merit is found, approximately 95 percent (97 percent in FY 2007) 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.

In addition to its ULP caseload, the NLRB received 3,324 petitions in representation cases, and conducted 2,005 elections in FY 2007. The difference between the number of petitions and the number of elections is explained by a number of factors. In some instances, a case may not proceed to an election when the Board has decided to dismiss the petition because it has determined it does not have jurisdiction over the matter, or because the petitioned for bargaining unit is inappropriate. In other cases, a union may independently decide to withdraw its petition if it feels that it is losing support among the employees. In 91 percent of elections conducted in FY 2007, up slightly from 88 percent in FY 2006, the NLRB was able to negotiate agreements between the parties as to when, where, and who should be involved in the election, thus conserving resources that would otherwise be spent on a hearing. Hearings were required in the remaining 9 percent of these cases.

Public Information Program

The Agency's Public Information Program continues to provide guidance to the public regarding the NLRA, offering assistance in the filing of charges and petitions, and referring inquiries not covered by the Act to the appropriate agency or organization.

The Agency's 51 Field Offices received 189,172 public inquiries in FY 2007, a 3.8% increase from the 182,161 received during FY 2006. The public can 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 NLRB's mission and connections to other government agencies or to Information Officers located in the Agency's Regional Offices. In FY 2007, the

toll-free telephone service received 68,556 calls, of which 24,547 were connected to Regional Offices for further assistance. In FY 2006, the toll-free telephone service received 68,018 calls, of which 25,849 were for further assistance by the Regions.

The rate of charge acceptance (percent of inquiries from the public in which the contact results in an unfair labor practice charge being filed) was approximately 4.6% in FY 2007, which is slightly higher than the 3.8% rate experienced in FY 2006. Since the inception of the Public Information Program in 1978, the Agency has reduced its charge acceptance rate from 9.2% to a low of 3.8%. Thus, through this program, the Regions have been very successful in disseminating accurate, comprehensive information to the public, which has increased the likelihood that any subsequent charges filed have merit.

Electronic Filing

The Agency's web site, www.nlrb.gov, was recognized this year by the National Security Archive as one of the five best in the federal government. To extend its public services efforts across the Internet, in November 2006, the Agency launched a new interactive web site with expanded document collections, improved navigational structure, a searchable database of case information, and new features allowing users to transact business with the Agency online. The new web site received 5,313,173 visitors and 10,327,584 page views in FY 2007. Of the site's visitors, 96 percent were able to find an answer to their question without requiring additional assistance. One of the Agency's most popular sites, the "Frequently Asked Questions" page, provided 95,830 answers in response to 68,209 searches. In addition, Agency personnel provided 2,604 direct email responses to specific inquiries from the public.

The Agency steadily has been expanding its electronic filing program for the public since July 2002, when the General Counsel began to permit charging parties to E-file extension-of-time requests in cases before the Office of Appeals. In FY 2007, the General Counsel expanded access to the offices under his supervision through the Agency's website, determining that parties may use the web site to E-file most casehandling documents with Regional, Subregional, and Resident Offices. Among the expanded list of documents that can now be sent to our offices electronically are Briefs (ULP and R cases), Answers to Complaints or Compliance Specifications, Motions for Summary Judgment, Petitions to Revoke Subpoenas, Motions for Bills of Particulars, and Election Objections. During FY 2007, field offices received over 4,000 electronic submissions through the Agency's E-Filing process and the Office of Appeals received over 1,000 such submissions.

A significant new feature of the Agency's website, "My NLRB," provides users with a web interface to various databases with case information and links to documents associated with selected cases. Users may register to be recognized by the system when they enter their user ID and password, which will make the E-filing process easier by automatically filling in certain information required on the online filing forms. The system also can save searches and other user preferences for registered users, who might want to follow the progress of certain cases.

Outreach

The role of the Act, and of the NLRB in enforcing the Act, 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 expanded 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 are usually with labor lawyers representing 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 expanded program, NLRB agents will widen 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, in FY 2007, we added a speaker’s bureau feature to our website, www.nlr.gov, which enables individuals and groups to request that a NLRB representative address gatherings to present information about the Agency. Our agents respond to these requests and assign speakers, as appropriate.

We estimate that when the General Counsel’s initiative is fully instituted, 70 agents in the agency’s 51 field offices will dedicate 1 month per year to outreach activities, for a total of about 6 Agency FTE devoted to outreach.

VI. STATUTORY STRUCTURE OF THE AGENCY: ROLE OF THE BOARD AND THE GENERAL COUNSEL

The NLRB's authority is divided by law and by delegation between the five-member National Labor Relations Board ("the Board") and the General Counsel, all of whom are appointed by the President, subject to confirmation by the Senate.³ To carry out their respective functions, described below, the Board and the General Counsel maintain a headquarters in Washington, D.C. The Agency also maintains a network of Regional or "Field" offices, each of which is under the direction of a Regional Director⁴, and three satellite Judges' offices.

The NLRA assigns separate and independent responsibilities to the Board and the General Counsel in the prevention and remedying of unfair labor practices. An explanation of this division of authority between the Board and the General Counsel will help to provide an understanding of the Agency's operations.

Unfair Labor Practice Proceedings⁵

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

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

As noted earlier, the General Counsel's decision to prosecute or not is not subject to review or appeal. A decision to dismiss a charge after full investigation is, in many respects, a resolution of that labor dispute.

Under Section 10(l) of the Act, when a Region's investigation of a charge yields reasonable

³ As of January 2008, there were two confirmed Board Members, and three vacant Board Member positions. The General Counsel's position is filled with a confirmed appointee.

⁴ Exhibit B is an organization chart of the Agency.

⁵ Exhibit C is a chart on ULP case processing.

cause to believe that a union has committed certain specified unfair labor practices such as a work stoppage or picketing with an unlawful secondary objective, the Regional Officer or Regional Attorney is *required*, on behalf of the Board, to seek an injunction from a U.S. District Court to halt the alleged unlawful activity. Section 10(j) of the Act provides that where the General Counsel has issued a complaint alleging that any other type of unfair labor practice has been committed, by a union or by an employer, the Board *may* direct the General Counsel to institute injunction proceedings if it determines that immediate interim relief is necessary to ensure the efficacy of the Board's ultimate order.

If the Board finds that a violation of the Act has been committed, the role of the General Counsel thereafter is to act on behalf of the Board to obtain compliance with the Board's order remedying the violation.⁶ Although Board decisions and orders in ULP cases are final and binding with respect to the General Counsel, they are not self-enforcing. The statute provides that any party (other than the General Counsel) may seek review of the Board's decision in the U.S. Courts of Appeals. In addition, if a party refuses to comply with a Board decision, the Board itself must petition for court enforcement of its order. In court proceedings to review or enforce Board decisions, the General Counsel represents the Board and acts as its attorney. Also, the General Counsel acts as the Board's attorney in contempt proceedings and when the Board seeks injunctive relief under Section 10(e) and (f) after the entry of a Board order and pending enforcement or review of proceedings in circuit court.

Representation Proceedings⁷

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

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

⁶ Exhibit D is a chart on NLRB Order Enforcement

⁷ Exhibit E is a chart on representation case processing.

authority to render initial decisions in representation matters, which are subject to Board review.

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 must be prepared to work with employees whose rights have been violated to calculate backpay, work with respondents when terminated employees are entitled to reinstatement or having their records expunged in unlawful disciplinary actions, 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.

Further, at times the financial status of the respondent has changed during the period the case has been litigated. These changes may require more and more sophisticated litigation in bankruptcy and federal district courts pursuant to the Federal Debt Collection Procedures Act of 1990. As the Agency has been required to engage in this complex litigation, considerable staff resources have been devoted not only to the actual litigation, but also towards preparing and training staff to represent the Agency in these forums.

Administrative Functions

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

Under the General Counsel, the Division of Operations-Management has responsibility for the administration of the NLRB's Field offices. Approximately 70 percent of the Agency's staff is employed in the field, where all ULP charges and representation petitions are initially filed. Currently, the Field offices include 32 Regional Offices, 3 Subregional Offices, and 16 Resident Offices.

Effect of Division of Authority on Strategic Plan and Goals

The General Counsel and the Board share a common goal of ensuring that the Act is fully and fairly enforced on behalf of all those who are afforded rights under the Act, but the division of authority mandated by the Act necessarily means that the two branches of the Agency will have separate objectives and strategies for achieving objectives relating to those aspects of their statutory functions which are uniquely their own. The statutory framework in the processing of ULP cases separates the prosecutorial functions of the General Counsel from the adjudicatory functions of the Board. As we did this fiscal year, when the Agency revised its six-year Strategic Plan, and the performance measures therein, the Board and the General Counsel work together in developing one comprehensive Strategic Plan and Annual Performance Plan.

VII. MANAGEMENT INITIATIVES

President's Management Initiatives

The section below discusses how the President's management initiatives and several separate, internal initiatives help the Agency meet its performance goals.

Workforce Planning

The NLRB has always sought to operate effectively by efficient management of its human resources. The need to make the most judicious use of existing human resources and to attract qualified staff is critical to the Agency, as by the end of FY 2007, 29 percent of GS 13-15 supervisors and 58 percent of Senior Executive Service (SES) members in the Agency were eligible to retire.

The NLRB workforce is spread throughout the country, with about 500 employees located in the Washington, D.C. headquarters, and the remaining staff 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
- Orientation for new Regional Directors
- Training on Compliance-related topics
- Mentoring program
- Conflict Management Training for Managers/Supervisors
- 360 Feedback Tool
- 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 addition, the Agency also has an entry-level professional recruitment program, first implemented in FY 2006, which allows the Agency to better compete for entry-level applicants and plan its workforce hiring needs.

Finally, one of NLRB's human capital goals is to create a results-oriented performance culture that clearly links employee performance and pay to the attainment of the NLRB's strategic goals. In FY 2007, in order to better serve our constituents, the Agency modified its performance measures to make them more robust and customer-focused. The end result was the creation of three overarching measures that support the Agency's two strategic goals, and annual targets that support the Agency's long term goals. In recognizing the need to link employee performance to the Agency's strategic goals, we totally revamped our SES Pay for Performance System to show a clear linkage between executive performance and pay, and attainment of our goals. (See Sections XI and XII of this document for further details regarding our strategic goals, and new performance measures.)

Competitive Sourcing

Further, in accordance with the PMA, the Agency has utilized competitive sourcing and direct conversion outsourcing opportunities to the fullest extent possible. Managers have reviewed public and private competitions of commercial activities to enhance cost efficiencies and program performance. In keeping with this effort, the Division of Administration's Finance Branch outsourced the payment of invoices to the Department of Interior's National Business Center, in September 2007. The Division had previously outsourced mailroom operations in FY 2004. Other opportunities for competitive sourcing continue to be explored within the Agency.

Budget and Performance Integration

The NLRB's annual GPRA Performance Plan is integrated into our budget request to form the basis of our Performance Budget. As mentioned previously, the Agency updated its Strategic Plan earlier this year. As part of this process, the Agency replaced the previous measures, which focused on case processing within the component offices of the Board or GC sides, with three new, overarching, outcome-based performance measures that focus on the time taken to resolve cases, from beginning to end, including both the General Counsel and Board sides. Sections XI and XII of this document provide further details regarding these new measures, as well as a discussion of the relationship between our GPRA goals and measures, and the amount of resources, both FTE and dollars, that are devoted to them.

The NLRB strengthens budget and performance linkages by establishing a direct, vertical relationship between the performance plans of individual executives in its Regional and Headquarters offices and the performance goals for their programs, goals which are derived from the Agency's broader strategic goals. Agency goals are implemented on a daily basis through the actions of individual managers leading programs and activities throughout the Agency.

Improved Financial Performance

The Agency upgraded its financial system to the Department of Interior's National Business Center's (NBC) Momentum system 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, E²Solutions, which was implemented in August 2007. Additionally, as mentioned previously, to increase efficiencies the Agency outsourced the invoice payment function in September 2007. The improved integration of these systems and functions 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.

Technology and E-Government Advances

To support its mission and goals, the NLRB has committed itself to the development of a mainstream information architecture and infrastructure that utilizes the latest 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.

Over the last two years, the Agency launched major information technology initiatives that are part of our 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. These initiatives were designed to:

- Improve the productivity of the Agency's case management process.
- Transform the way the NLRB does business with the public; make its case processes more transparent; and provide more information to its customers in a timely matter.
- Standardize the Agency's electronic case management systems on enterprise applications.
- Optimize internal NLRB case processing by providing NLRB employees with uncomplicated access to the tools, data and documents they require.
- Provide Agency-wide electronic case records and document management to improve:
 - Case flow
 - Capability to provide electronic court filings
 - Access to documents.
- Reduce the paperwork burden on individuals, governments, businesses, labor unions, universities, and other organizations.

Next Generation Case Management (NGCM)

As noted above, the NLRB's authority is divided by law and delegation. The five-Member Board serves in a quasi-judicial capacity and decides cases based on formal records in unfair labor practice (ULP) and representation (R) case proceedings. The General Counsel of the NLRB has a separate statutory role under Section 3(d) of the Act to investigate and prosecute ULP cases before the Board and other authority as delegated by the Board.

The Next Generation Case Management (NGCM) project started in August 2006 with the goal of building an enterprise-wide, common case management platform using Siebel Public Sector Case Management software and Documentum as the Agency Enterprise Content Management solution. 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.

To build a solid foundation for NGCM, the NLRB has analyzed the missions of the Agency and, based on the analysis, revised mission-related and administrative processes as appropriate to utilize the new technologies. Likewise, the new technologies were carefully selected to ensure that they align with NLRB's current and anticipated business needs and government regulations. The NLRB is building an Enterprise-level, Agency-wide solution to satisfy the needs of all its offices. The system is based on open industry standards with "data mart" capabilities.

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

Improved Web Site with Citizen-centered Portal

The National Labor Relations Board continues to deliver results through the adoption of electronic government management principles and best practices for the implementation of information technology in accordance with the President's Management Agenda. The NLRB is focused on providing timely and accurate information to the citizens and government decision-makers while ensuring security and privacy.

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. The Office of the Chief Information Officer (OCIO) 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;
- The transition to a more componentized, Service-Oriented Architecture (SOA) which utilizes a common platform for services to be integrated.

Historically, agencies developed and/or invested in technologies that were internally focused rather than citizen centered. The NLRB 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 provides 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 is poised to migrate legacy systems to a common platform seamlessly without interrupting the services we are currently providing. The NLRB Portal Project offers 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.

These business requirements and technology trends converge in an enterprise portal solution. The portal solution provides NLRB stakeholders a single point of entry for all content and processes that can be accessed from the public facing web site. This portal solution provides a solid foundation for a long term technology strategy.

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. 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. Recently, the Agency has expanded the E-Filing program to the General Counsel, Judges Division and the Office of Appeals. This new capability has been integrated and released simultaneously with the new web site and portal.

Infrastructure Modernization and Consolidation

In FY 2006, the NLRB developed and began implementation of an ambitious plan to modernize and consolidate its IT infrastructure. The Agency issued Request for Quotes ("RFQ") and awarded contracts for commercial collocation hosting, monitoring, managed services, and file server consolidation, consistent with the Agency's Enterprise Architecture (EA) design.

Each of the Agency's 51 Regional, Subregional, or Resident Offices throughout the United States, Puerto Rico and Hawaii presently operates network servers to support mission critical applications. The Agency developed a unified network architecture, based on standard Internet technologies and hosted externally. By modernizing and consolidating the infrastructure in such a manner, the NLRB is 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 is 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.

The Infrastructure Modernization and Consolidation program:

- Is foundational to the aforementioned projects and all IT investments planned by the Agency;
- Is a core component of the Agency's designed viable and executable contingency plan for the continuity of operations (COOP);
- Provides a viable and consistently-available option for employees in telecommuting-eligible positions who desire workplace flexibility;
- Improves the Agency's capability to integrate IT security into our enterprise architecture processes;
- Enables the OCIO to benchmark our IT organization against other possible service providers.

Other Agency Management Initiatives

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. 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. 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, more than a quarter of all newly-certified units (28 percent) subsequently involve meritorious charges that employers have refused to bargain with the certified collective-bargaining representative. Moreover, of all charges alleging employer refusals to bargain, almost half occur in initial contract bargaining situations (49.65 percent). Overall, 44.64 percent of initial contract bargaining cases are meritorious, as compared with the 33 percent merit rate of all unfair labor practice charges. 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 receive a prompt and thorough investigation in the Regional Offices. He also has required the consideration of special remedies if those charges are found to have merit.

Amongst the remedies that can be most effective in some cases involving violations during first

contract bargaining are: (1) prescribed or compressed bargaining schedules to minimize the potential for further unlawful delays in bargaining; (2) periodic reports to Regional Directors on the status of bargaining; (3) reimbursement of bargaining costs where substantial violations infect the core of the bargaining process and render time spent in bargaining fruitless; and (4) extension of certification year (where presumption of union's majority support is insulated from challenge) for a minimum of six months where violations have disrupted an initial bargaining relationship.

The appropriateness of these remedies is considered based on the specific facts of each case. For example, in one case, the employer repeatedly ignored union requests to schedule meetings and cancelled bargaining sessions to which it had agreed; as negotiations dragged on, employees began to express dissatisfaction to the union's negotiators about the lack of progress in reaching agreement. As a remedy, the General Counsel authorized the Region to seek a prescribed bargaining schedule of two full days per month.

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.

For example, in one case, an employer responded to employees' organizing with a severe and widespread anti-union campaign, including discriminatory discharge or lay off of 14 union supporters; numerous and widespread threats, including threats of plant closure, discharge or job loss, lower wages, more onerous working conditions and stricter enforcement of work rules; and interrogation of employees' union activity. The Region was authorized to seek, in addition to the usual reinstatement, backpay and notice posting remedies, the following remedies that would reassure employees of their right to organize and facilitate communications between employees and the union: (1) providing to the union (a) a list of current employee names and addresses, updated every six months, (b) access to post on plant bulletin boards, (c) additional equal time opportunity to respond on plant premises to any employer address to employees concerning union representation; (2) requiring a responsible official of the employer to read the Board Notice to assembled employees or to be in attendance when it is read by a Board Agent; (3) mailing a copy of the Notice to all employees, including those on layoff.

Prioritization of Cases—Impact Analysis

In addition to the President's management initiatives discussed above, several longstanding management initiatives and programs increase the NLRB's effectiveness and improve its ability to achieve performance goals and objectives. A case management system called Impact Analysis, adopted in FY 1996 to streamline case management in the Regional Offices, has reformed case processing at the Agency. Impact Analysis provides a uniform framework for the prioritization of cases and insures that those cases having the greatest impact upon the NLRB's customers receive the promptest and highest level of attention. The Impact Analysis system allows for the measurement of the NLRB's effectiveness in handling the most important cases and moves away from the Agency's more traditional approach of measuring effectiveness exclusively based on the numbers of cases processed, regardless of their significance in the labor relations community.

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

The Impact Analysis model consists of three categories of cases, with Category III being the cases of the highest impact and Category I the lowest. Cases can be recategorized during the investigative stage, if warranted. Generally, about 33 percent of unfair labor practice cases fall in Category III, about 62 percent in Category II, and 5 percent in Category I. Impact Analysis time goals for processing an unfair labor practice charge from the filing of the charge, through investigation and implementation of a Regional determination, through the issuance of a complaint or dismissal or withdrawal, are different for each of the three categories. The current time targets are 7 weeks for Category III cases, 9 weeks for Category II, and 12 weeks for Category I, and it is anticipated that they will remain at these levels in fiscal years 2007 and 2008.

We constantly review performance against our Impact Analysis time targets to determine whether our goals can be adjusted to better serve the public. The types of cases handled under each category can be changed if staffing is found to be sufficient to permit greater expedition in case handling. The NLRB will again be reviewing the Impact Analysis process this year, and, if appropriate, make modifications.

Streamlined Board Case Processing

The Board has adopted the methods and procedures recommended by a three-year study, “Guide to Streamlined Case Processing,” that has led to the use of expedited case processing procedures. Under the Board’s “Super Panel” procedure, a panel of three Board Members meets each week to hear cases that involve issues that lend themselves to quick resolution without written analysis by each Board Member’s staff. Staff counsel attending the Super Panel session present the Board Members with a draft decision that can be approved “on the spot.” The net result is that the case is issued immediately after the Super Panel meeting, avoiding intermediate levels of review. This avoids delays in conducting representation elections and deciding the merits of objections.

The streamlining guide also encourages the use of “speed team” subpanels. In this process, the assigned originating Board Member identifies cases involving straightforward issues that, with the agreement and early involvement of the other two panel members, can be drafted and circulated quickly, without the need for detailed, time-consuming memoranda.

Other procedures adopted 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.”

Alternative Dispute Resolution (ADR) Pilot

In December 2005, the NLRB created a two-year pilot “alternative dispute resolution” (ADR) program to assist the parties in settling ULP cases pending before the Board on exceptions to decisions issued by the Agency’s administrative law judges.

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 40 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 compliance details 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 will provide the parties with an experienced neutral arbiter, 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 will be held in person, but some conferences may be held telephonically. The Board will stay further processing of the ULP 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.

The ADR pilot was completed in December 2007, and is currently being evaluated for permanent implementation. Since its inception in December 2005, through December 2007, 41 cases were set for mediation, of which 19 cases did not settle, and were returned to the Board for further processing. During this time, the total number of cases pending before the Board averaged about 285 per month.

VIII. EXTERNAL FACTORS AND AGENCY GOALS

Various external factors can affect each goal, objective, and performance measure contained in the NLRB's Strategic and Annual Performance Plans. These factors include the following:

Budget

The FY 2009 request totals \$262.595 million, with an estimated Agency FTE of 1,680. The requested funding will provide the resources necessary to cover the staffing, space requirements, information technology, and other activities critical to handling the Agency's caseload, and ensuring continued integration and tracking of budget and performance. As approximately 80 percent of the Agency's total budget is devoted to personnel costs, budget shortfalls can have a direct impact on staffing resources, and the ability to facilitate case handling. Our goals assume the level of funding set forth in the President's Budget request.

Case Intake

Several additional factors could inhibit or facilitate the Agency's effectiveness in accomplishing the goals set out in these Plans. As noted, the Agency does not control the number of cases filed. However, any event or issue that affects labor, and that, in turn, can spur potential union organizing, can result in an increase in caseload. In the past two years, the increased focus on immigration reform, and the formation of the Change to Win labor federation, are two such factors that could result in an increase in case intake.

The effects of the immigration reform debate could lead to more organizing efforts, as employees and employers are mobilized, and become more proactive about asserting their respective positions. This was evident in FY 2006, as thousands of workers demonstrated openly, many of them for the first time, while the topic of immigration was being debated publicly.

The immigrant workforce is already showing signs of becoming more organized and active, affiliating itself with mainstream labor organizations as necessary to advance its interests. In fact, in August 2006, the AFL-CIO and National Day Laborer Organizing Network signed an agreement with the aim of strengthening the ability of the labor movement and worker centers to promote and enforce the workplace rights of the workers served by both organizations, including immigrant workers.

This is reflected in our case intake, as increasing numbers of cases involving immigrant workers are being filed in the New York metropolitan area, California, Florida, Texas, and other Southwestern states with traditionally large Hispanic populations, as well as in other metropolitan areas, where large immigrant communities had previously not been common. For instance, a large number of cases involving the Hmong-speaking Cambodian witnesses have recently been filed in our Minneapolis Regional Office.

Additionally, the policies of the Change to Win labor federation, a federation of seven international labor unions that severed their affiliation with the AFL-CIO, could also directly affect Agency caseload. At its founding convention, the federation adopted a constitution that devotes 75 percent of per capita dues to organizing. With federation leaders focusing on bringing large numbers of new workers into the labor movement, case intake could increase in the next few years.

Immigration reform, greater AFL-CIO focus on the immigrant workforce, and the formation of Change to Win, could affect Agency caseload levels. This has already occurred, in fact, as Change to Win actively supported immigrant workers during the demonstrations in April – May 2006. This, in turn, resulted in about 30 unfair labor practice charges being filed by Change to Win and others, contesting discharges and discipline of employees, allegedly for their participation in these demonstrations. Most of these charges have been closed with settlements or withdrawals, but a number remain under investigation. These alliances and activities may be a harbinger of increasing activity among the immigrant worker population resulting in an increase in the filing of unfair labor practice charges.

Further, labor organizations are engaging in more non-traditional organizing campaigns, including organizing across employer lines, e.g. janitorial organizing drives in major cities. It is anticipated that these campaigns will result in more litigation before the Agency, as unit issues, bargaining responsibilities, and jurisdictional issues may arise.

Also, recent trends in union organizing among the service industries show no signs of diminishing. For example, Tenet Healthcare, headquartered in Dallas, just reached agreement with the California Nurses Association to permit the Union to attempt to organize 3,000 non-union nurses outside California using NLRB election procedures. Organizing activities continue in the nursing home industry and among janitorial staffs where the SEIU has been particularly active in recent years.

Additional factors that could affect our intake and the complexity of our work include: 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.

An unexpected large increase in our intake or in the complexity of issues we handle may result in increased backlogs and delays in processing cases. Over the past nine years, case intake has fluctuated, decreasing from FY 1999 to FY 2000, increasing in FY 2001 and FY 2002, and then decreasing in recent years. In FY 2007, intake for ULP cases decreased from 22,922 cases in FY 2006 to 22,164, and representation case intake decreased from 3,473 cases to 3,150.

Based on current trends in the labor movement, as describe above, we estimate that total ULP and representation cases will total about 26,500 in FY 2008, and remain at that level in FY 2009. Of that total, ULP cases are estimated to be about 23,000, while representation cases are expected to total 3,500.

It is essential that we maintain our outstanding record in protecting employee free choice by means of timely secret ballot elections. Congress and certain members of the public have expressed concerns about the NLRB election process. Complaints have been made by some about what they perceive to be unwarranted delays in our elections. As our performance measures indicate, however, these assertions are unfounded. This budget request assures that we will continue to have the trained professional and support staff as well as the other resources necessary to maintain the enviable record that has been the hallmark of the NLRB since 1935.

Settlements

Currently, of those cases in which merit is found, approximately 95 percent (97 percent in FY 2007) 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 time-consuming and costly litigation. While the Agency has experienced outstanding success in achieving the voluntary resolution of ULP and representation cases, the settlement rate is not subject to the Agency's control. Disputes cannot always be resolved informally or in an expeditious manner. Parties may conclude that litigation serves their legitimate or tactical interests. The Agency's procedures provide for administrative hearings, briefs and appeals. When the process becomes formal and litigation takes over, Agency costs increase. Every one percent drop in the settlement rate costs the Agency more than \$2 million. Therefore, maintaining high settlement rates promotes performance, efficiency, and cost savings.

IX. PROGRAM EVALUATION

The NLRB evaluates whether programs are achieving their GPRA and other performance targets through a variety of techniques and mechanisms. The five-member Board tracks the status of its GPRA cases (usually its oldest) on a monthly basis to determine performance against yearly goals. A committee comprising top management officials reviews monthly performance data to determine the status of Agency workload and performance and discuss the need to adjust Agency resources, if necessary. Field data is available through CATS, the Agency's case management system. The Management Committee also reviews highlights of performance data prepared by NLRB divisions and offices on a monthly basis.

GPRA performance data prepared for the Annual Performance Plan is reviewed and evaluated by Agency management officials. Additionally, when pertinent to the conduct of ongoing audit activities, the Inspector General will review performance measures to consider their appropriateness.

Further, the General Counsel has had an evaluation program in place for many years to assess the performance of its Regional operations. The Quality Review program of the Division of Operations-Management reviews ULP, representation, and compliance case files on an annual basis to ensure that they are processed in accordance with substantive and procedural requirements, and that the General Counsel's policies are implemented appropriately. Those reviews have assessed, among other things, the quality and completeness of the investigative file, the implementation of the General Counsel's priorities in the areas of representation cases, Impact Analysis prioritization of cases, and compliance with Agency decisions. Additionally, personnel from the Division of Operations-Management review all complaints issued in the Regions to ensure that pleadings are correct and supported, and conduct site visits during which they evaluate Regional case handling and administrative procedures. Also, a Field and Operations-Management Committee reviews all administrative law judge and Board Decisions constituting a significant loss, in order to assess the quality of litigation. Moreover, the Region's performance with regard to quality, timeliness, and effectiveness in implementing the General Counsel's priorities, is incorporated into the Regional Director's annual performance appraisal.

In addition to the evaluation of Regional Office activities discussed above, the Office of the General Counsel monitors the litigation success rate before the Board and before district courts with regard to injunction litigation. The success rate before the Board has been approximately 80 percent and before the district courts it has been 85-90 percent. The Division of Operations-Management regularly reviews case decisions in order to determine the quality of litigation. Similarly, the Agency keeps abreast of its success rate before circuit courts of appeals and analyzes case decisions 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. Moreover, top Agency management meets regularly with relevant committees of the American Bar Association regarding their members' experiences practicing before the NLRB.

X. FISCAL YEAR 2009 PERFORMANCE BUDGET

The FY 2009 budget request of \$262.595 million is formulated on the following assumptions:

- FY 2009 case intake will remain at projected FY 2008 levels – 23,000 unfair labor practice charges, and 3,500 representation cases
- Planned performance goals under GPRA will be met
- Efforts will continue to reduce the inventory of ULP cases in the Regional Offices
- The President's Management Agenda will be supported by funding Agency investment

programs that are essential to maintaining productivity, efficacy and efficiency, including employee development and information technology

Funding Profile

The \$262.595 million requested will fund essential staffing, space requirements, long term investments in IT, and employee development needs.

The NLRB’s mission – the resolution of labor disputes through investigation, settlement, advocacy and adjudication – relies primarily on skilled and experienced professional employees; accordingly, most of the Agency’s budget is dedicated to personnel costs. In FY 2009, an estimated \$210 million or 80 percent of the Agency’s budget will go for employee pay and benefits. The second largest expense, space rent and associated security costs, is estimated to total \$31.0 million in FY 2009, or about 12 percent of the requested funding. The remaining 8 percent will be allocated among all other operating costs and activities critical to meeting and supporting the Agency’s mission and management objectives, including IT development, acquisition and maintenance; providing transcripts of formal hearings; covering statutory fees, travel reimbursements and, increasingly, paying for interpreters for witnesses; maintaining current legal research collections; and complying with government-wide statutory and regulatory mandates.

The following table places the FY 2009 performance budget request in the context of resources received or anticipated over the FY 2007 through FY 2009 timeframe:

	FY 2007 Actual	FY 2008 President’s Request	FY 2008 Post-Rescission	FY 2009 President’s Request
Funding Level (000s)	\$251,507	\$256,238	\$251,762	\$262,595
Agency FTE	1,729	1,690	1,655	1,680
Backlog of ULP Cases	100	100	400	100

The requested funding of \$262.595 million constitutes an increase of \$10.8 million over the \$251.762 million provided in FY 2008, and \$11.1 million over the funding provided in FY 2007. The \$10.8 million will help fund the compensation costs associated with 1,680 FTE, an increase of 25 over the FY 2008 projected FTE of 1,655. The additional FTE will be utilized to reduce the backlog to the FY 2006-2007 level of 100, down from the projected FY 2008 level of 400. The increase will also fund a projected \$500,000 increase in space rent and security costs.

Budget Oversight

The NLRB prides itself on being an extremely effective steward of taxpayer dollars. As such, we have conserved funds and maximized our spending flexibility over the years, by imposing strict hiring controls in all offices; restructuring and streamlining our workforce to either

eliminate higher graded positions, or fill them at lower grades; consolidating space so as to reduce rental costs; and cutting back on travel, and other case handling and support costs. While increased fuel and rental costs have offset, somewhat, these efforts, they have still enabled us to cover our normal requirements, while continuing to serve our constituents at a high level, maintain labor peace, and achieve our GPRA goals. Listed below are cost-cutting actions that we plan to continue in fiscal years 2008 and 2009:

- Actions to conserve and better manage resources, such as:
 - consolidated case handling travel; and
 - higher standards for discretionary travel
- Leave without pay program, and 120 – 150 day hiring lag for vacancies as necessary

Performance

Through our judicious and efficient use of resources, combined with a decrease in case intake, the Agency has been able to minimize the backlog, while also cutting its FTE.

The normal pipeline of unfair labor practice situations pending in the regions is 3,600, which includes the normal cycle of cases pending preliminary investigation. Cases in the inventory may range from the newly filed to those that have been in process many months. Depending on its classification under Impact Analysis (Section VII), the target disposition period for a case is from 7 to 12 weeks. A pending caseload in the regions above the 3,600 figure is generally considered overage and, therefore, is defined by the Agency as its “backlog.”

The backlog had reached 1,046 in FY 2003, but due to the resources provided, and the workforce planning and information technology initiatives described in Section VII, the Agency was able to reduce the backlog to about 100 cases at the end of FY 2006, and maintain it at that level in FY 2007. Two factors will affect the backlog in FY 2008 -- funding and the absence of a full five-member Board. With the funding provided in FY 2008, and a two-member Board, the Agency projects that the backlog will increase to about 400 cases at the end of FY 2008. However, in FY 2009, assuming funding as per this request, a full Board, and a stable case intake, the Agency expects to again reduce the backlog to the FY 2007 level of 100.

During this same time period, the Agency will have reduced its FTE from 1,874 in FY 2003 and 1,888 in FY 2004, to 1,680 in FY 2009. Additional FTE cuts below this level, however, could again lead to increases to the backlog, and hurt the Agency’s ability to meet its GPRA goals, particularly its traditionally high settlement rate of about 95 percent. As mentioned, previously, every one percent drop in the settlement rate costs over \$2 million.

BUDGET PROGRAM ACTIVITIES

The following is a discussion of the Program and Financing section of the budget that illustrates obligations by program activity. The FY 2009 figures below reflect increases to cover compensation, space rent, and systems-related contractual and equipment costs.

\$ Millions	FY 2007 Actual	FY 2008 Post-Rescission	FY 2009 President's Request
Field investigation	\$200	\$201	\$209
ALJ hearing	12	12	13
Board adjudication	25	25	26
Securing compliance with Board orders	13	13	14
Internal review	1	1	1
Total	\$251	\$252	\$263

Field Investigation

The FY 2009 budget request of \$262.595 million is based on an estimated intake level of 23,000 ULP cases and 3,500 representation cases. Staffing in the Regions comprises approximately 70 percent of total Agency FTE, and this ratio will be maintained in FY 2009.

The initial processing and disposition of new case filings in the Field drives the intake for other stages of the case handling pipeline. Approximately one-third of the cases dismissed by the Regional Directors based on a lack of merit are appealed to the Office of Appeals. The meritorious charges, if not settled, go onto the administrative law judges' trial calendar and from there a portion are appealed to the Board for final decision. Some cases proceed to the Enforcement Division for Appellate Court review, and some of those may proceed to contempt or other post-enforcement proceedings. While cases are winnowed out at every stage of the pipeline, the rates tend to be constant over time. The primary indicator of overall caseload throughout the process is the rate at which the Field processes new filings.

At the FY 2009 requested level of \$262.595 million and 1,680 FTE, the number of situations pending is expected to total about 3,700 cases, a decrease of about 300 from the FY 2008 level.

Administrative Law Judges Hearing

The requested funding anticipates that the number of hearings and judicial decisions issued in the Judges Division will remain relatively stable in fiscal years 2008 and 2009. The number of cases pending an administrative law judge decision is expected to remain stable at about 55 cases during this same period.

Board Adjudication

The number of pending ULP cases at the Board decreased from 317 at the end of FY 2006, to 208 at the end of FY 2007, and is expected to remain at this level in FY 2008 and FY 2009. This assumes that case intake remains at the current level, and that the Agency will have a full Board and staff in FY 2009. A full five-member Board is essential to decide cases on a timely basis and to continue to reduce the Board backlog.

Securing Compliance with Board Orders

Once the Board has decided a case, the next step in the process is to secure full compliance with Board Decisions and orders. The decisions and orders of the Board require either voluntary compliance or enforcement in the courts. A substantial portion of the Field FTE will be devoted to seeking voluntary compliance, while at Headquarters, resources will be allocated to the Division of Enforcement Litigation to continue to seek enforcement of Board orders in the courts. The Agency estimates that the number of cases pending compliance and court litigation will increase slightly in FY 2008 and FY 2009, as the Agency deals with ULPs resulting from recent Board decisions in several “lead” cases. The release of these decisions, as well as the anticipated release of decisions in other cases involving similar or related issues, will result in a spike in Board decisional output, in Appellate Court enforcement work, and in compliance work in the regions.

XI. GOALS OF THE STRATEGIC PLAN AND THEIR RELATIONSHIP TO THE PERFORMANCE BUDGET

As noted previously in this document, the Agency revised its six-year Strategic Plan in June 2007. In so doing, we retained our goals, but replaced the previous measures with three new, overarching, outcome-based measures to gauge performance for the period FY 2007 – FY 2012. These new measures were first implemented during the fourth quarter of FY 2007. Please note that the old measures will also continue to be used as internal guides to further assess performance.

Historically, the NLRB has always been a top performer, meeting over 76 percent of its targets from FY 2004 to FY 2006. The Agency has been able to sustain this high level of performance through the judicious, efficient, and effective use of our appropriations. We fully expect to continue this level of performance under these new measures.

These goals and measures are described below.

Goals and Strategies

GOAL NO. 1: Resolve questions concerning representation promptly

OBJECTIVES:

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

The objectives are to:

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

STRATEGIES:

- 1. Give priority in timing and resource allocation to the processing of cases that implicate the core objectives of the Act and are expected to have the greatest impact on the public.
- 2. Evaluate the quality of representation casework regularly to provide the best possible service to the public.
- 3. Give sound and well-supported guidance to the parties, and to the public at large, on all representation issues.
- 4. Share best practices in representation case processing to assist regions in resolving representation case issues promptly and fairly.
- 5. Identify and utilize alternative decision-making procedures to expedite Board decisions in representation cases, e.g. super-panels.
- 6. Ensure that due process is accorded in representation cases by careful review of

Requests for Review, Special Appeal and Hearing Officer Reports, and where appropriate, the records in the cases.

7. Analyze and prioritize the critical workforce skill needs of the Agency and address these needs through training and effective recruitment in order to achieve Agency goals.
8. Provide an information technology environment that will provide NLRB employees with technology tools and access to research and professional information comparable to that available to their private sector counterparts.

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

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

OBJECTIVES:

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

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

STRATEGIES:

1. Take proactive steps to disseminate information and provide easily accessible facts and information to the public about the Board's jurisdiction in unfair labor practice matters and the rights and obligations of employers, employees, unions, and the Board under the Act.
2. Evaluate the quality of unfair labor practice casework regularly to provide the best possible service to the public.
3. Utilize impact analysis to provide an analytical framework for classifying unfair labor practice cases in terms of their impact on the public so as to differentiate among them in deciding both the resources and urgency to be assigned to each case.
4. Share best practices in the processing of unfair labor practice cases to assist regions in resolving unfair labor practice issues promptly and fairly.
5. Emphasize the early identification of remedy and compliance issues and potential compliance problems in merit cases; conduct all phases of litigation, including settlement, so as to maximize the likelihood of obtaining a prompt and effective remedy.
6. Utilize injunctive proceedings to provide interim relief where there is a threat of remedial failure.
7. Emphasize and encourage settlements as a means of promptly resolving unfair labor practice disputes at all stages of the case-handling process.
8. Identify and utilize alternative decision-making procedures to expedite Board decisions in unfair labor practice cases.
9. Analyze and prioritize the critical workforce skill needs of the Agency and address these needs through training and effective recruitment in order to achieve Agency goals.
10. Provide an information technology environment that will provide NLRB employees with technology tools and access to research and professional information comparable to that available to their private sector counterparts.

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

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

Relationship of Budget to GPRA Goals

The charts below show the relationship between the budget, GPRA goals and the related performance measures for each goal. Agency overhead costs, including administrative support costs, were distributed by the percentage of attributed direct costs to that goal and measure. The discussion below the charts reviews the Strategic Plan’s goals, objectives, and strategies, and discusses their relationship to the performance measures contained in the Annual Performance Plan. In addition, each current performance measure in the Annual Performance Plan, including background information and performance targets, will be discussed.

Measure 1, the performance measure associated with Goal 1, focuses on the total time taken to resolve a representation case, from beginning to end, including both the General Counsel and Board sides. Elections result from petitions filed by unions, employees or employers seeking a secret ballot determination as to whether a majority of employees wish union representation. Included in this measure are withdrawals, dismissals, settlements, hearings, and elections, which occur in the Field. Additionally, aggrieved parties may also request a review of Regional decisions by the Board in Washington, DC.

Goal 2 relates to Measures 2 and 3, which address the timely resolution of ULP cases, including time spent by both the General Counsel and Board sides. On a yearly basis, there are more than 5 times as many ULP cases as representation cases, usually involving more complicated issues for Regions to address.

Goal 1—Resolve all questions concerning representation promptly.

	FY 2007 Actual		FY 2008 Post-Rescission		FY 2009 President’s Request	
	FTE	\$ (mill)	FTE	\$ (mill)	FTE	\$ (mill)
Measure #1: Percentage of representation cases resolved within 100 days of filing the election petition	293	\$ 42.4	279	\$ 42.5	283	\$44.0
Subtotal, Goal 1	293	\$ 42.4	279	\$ 42.5	283	\$44.0

Goal 2—Investigate, prosecute and remedy cases of unfair labor practices by employers or unions promptly.

	FY 2007 Actual		FY 2008 Post-Rescission		FY 2009 President's Request	
	FTE	\$ (mill)	FTE	\$ (mill)	FTE	\$ (mill)
Measure #2: Percentage of ULP charges resolved by withdrawal, by dismissal, or by closing on compliance with a settlement or Board order of Court judgment within 120 days of the filing of the charge	958	\$139.4	917	\$139.5	931	\$145.5
Measure #3: Percentage of meritorious ULP cases closed on compliance within 365 days of the filing of the ULP charge	478	\$69.7	459	\$69.8	466	\$73.1
Subtotal, Goal 2	1,436	\$209.1	1,376	\$209.3	1,397	\$218.6
Total, Goals 1 & 2:	1,729	\$251.5	1,655	\$251.8	1,680	\$262.6

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

The same difficulty is inherent in any attempt to define “outcomes” in the prevention of unfair labor practice conduct. The aim of the Agency is to prevent industrial strife and unrest that burdens the free flow of commerce. An indicator of success in the achievement of this aim is labor peace. In the absence of a mechanism to accurately gauge “labor peace” or the impact of Agency activities among a range of variables influencing that goal, the NLRB has established the two performance measures noted above. In particular, the timeliness and quality of case processing, from the filing of an unfair labor practice charge to the closing of a case upon compliance with a litigated or agreed-to remedy, are the focus of the performance measures.

XII. PERFORMANCE MEASURES

GOAL #1: RESOLVE ALL QUESTIONS CONCERNING REPRESENTATION PROMPTLY

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

Background:

This is an overarching, outcome-based performance measure first implemented in the fourth quarter of FY 2007. The measure focuses on the time taken to resolve a representation case, including time spent on both the General Counsel and Board sides.

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.

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.

Performance:	Actual Performance	Target
FY 2007	79.0%	79.0%
FY 2008		80.0%
FY 2009		81.0%
FY 2010		82.0%
FY 2011		83.5%
FY 2012		85.0%

This measure was first implemented during the fourth quarter of FY 2007, but the result above reflects performance for the entire fiscal year. For the year, the Agency was able to close 79 percent of its representation cases within 100 days of the filing of the representation case. Reviewing just the last quarter's performance was even more impressive – 82.3 percent of all representation cases were closed within 100 days. Both numbers meet the FY 2007 interim goal of 79 percent and the fourth quarter number begins to approach our five-year target of 85 percent.

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

Background:

This is an overarching, outcome-based performance measure first implemented in the fourth quarter of FY 2007. The measure focuses on the time taken to resolve a ULP charge, including time spent on both the General Counsel and Board sides.

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, or dismissed, are litigated before an administrative law judge, whose decision may be appealed to the Board.

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.

Performance:	Actual Performance	Target
FY 2007	66.0%	67.5%
FY 2008		68.0%
FY 2009		68.5%
FY 2010		69.5%
FY 2011		70.0%
FY 2012		71.0%

This measure was first implemented during the fourth quarter of FY 2007, but the result above reflects performance for the entire fiscal year. During FY 2007, the NLRB closed 66 percent of all ULPs within 120 days of the docketing of the charge. Reviewing performance during just the fourth quarter, the Agency closed 67.4 percent of its ULPs within 120 days, coming within one-tenth of one percent of the interim target. Based on fourth quarter performance, we are confident that the Agency will achieve the target for FY 2008, the first full year that the Agency will be

working under this measure.

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

Background:

This is an overarching, outcome-based performance measure first implemented in the fourth quarter of FY 2007. The measure focuses on meritorious (prosecutable) ULP cases, and the time taken to close them on compliance, including time spent on both the General Counsel and Board sides. Compliance marks the point where an employer or union has ceased engaging in the ULP conduct being prosecuted and has taken appropriate affirmative action, including the payment of backpay, to make whole those injured by the ULP.

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 (ALJ). However, efforts to obtain voluntary compliance or appropriate settlements begin immediately and continue throughout the course of any necessary litigation. Most settlements are achieved before trial. Once the ALJ issues a decision, the decision can then be appealed to the Board. The Board, in turn, will consider the case and issue a final order resolving the ULP case. 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, which, if it is unable to secure voluntary compliance or a settlement meeting established standards, will proceed to seek a judgment from an appropriate U.S. Court of Appeals enforcing the Board's order.

Following final court judgment, any disagreements about what steps are necessary before the case can be closed on compliance are resolved either in compliance proceedings before the Board and reviewing court or, in extreme cases, in contempt of court proceedings.

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.

Year	Actual Performance	Target
FY 2007	73.5%	74.0%
FY 2008		75.0%
FY 2009		75.5%
FY 2010		76.0%
FY 2011		76.5%
FY 2012		77.0%

This measure was first implemented during the fourth quarter of FY 2007, but the result above reflects performance for the entire fiscal year. For the year, the Agency closed 73.5 percent of all prosecutable ULPs in 365 days from the docketing of the charge. Performance during the fourth quarter totaled 72.5 percent, reflecting the movement of a number of the Board's oldest cases during September 2007. As with the other measures, we are confident that we will make continued progress towards meeting the target for FY 2008, the first full year in which the Agency will be working under this measure.

XIII. SUMMARY OF PERFORMANCE MEASURES

2009 ANNUAL PERFORMANCE PLAN

Goal #1: Resolve all questions concerning representations promptly	Baseline	FY 2007 Actual	FY 2008 Target	FY 2009 Target
Measure 1 The percentage of representation cases resolved within 100 days of filing the election petition	78.0%	79.0%	80.0%	81.0%
Goal #2: Investigate, prosecute and remedy cases of unfair labor practices by employers or unions promptly	Baseline	FY 2007 Actual	FY 2008 Target	FY 2009 Target
Measure 2 The percentage of 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	66.7%	66.0%	68.0%	68.5%
Measure 3 The percentage of meritorious (prosecutable) ULP cases closed on compliance within 365 days of the filing of the ULP charge	73.6%	73.5%	75.0%	75.5%

XIV. BOARD MEMBERS AND GENERAL COUNSEL

	Appointed	Term Expiration
Chairman Vacant	--	--
Wilma B. Liebman Member	8/14/06	8/27/11
Peter C. Schaumber Member	8/14/06	8/27/10
Vacant Member	--	--
Vacant Member	--	--
Ronald Meisburg General Counsel	8/14/06	8/13/10

XV. OTHER BUDGET MATERIALS

FY 2009
Proposed Changes in Appropriation Language

NATIONAL LABOR RELATIONS BOARD

SALARIES AND EXPENSES

For expenses necessary for the National Labor Relations Board to carry out the functions vested in it by the Labor-Management Relations Act, 1947, as amended (29 U.S.C. 141-167), and other laws, \$262,595,207: Provided, That no part of this appropriation shall be available to organize or assist in organizing agricultural laborers or used in connection with investigations, hearings, directives, or orders concerning bargaining units composed of agricultural laborers as referred to in section 2(3) of the Act of July 5, 1935 (29 U.S.C. 152), and as amended by the Labor-Management Relations Act, 1947, as amended, and as defined in section 3(f) of the Act of June 25, 1938 (29 U.S.C. 203), and including in said definition employees engaged in the maintenance and operation of ditches, canals, reservoirs, and waterways when maintained or operated on a mutual, nonprofit basis and at least 95 percent of the water stored or supplied thereby is used for farming purposes.

Amounts Available for Obligation
(Dollars in Thousands)

	FY 2007 ACTUAL	FY 2008 ESTIMATE	FY 2009 ESTIMATE
Appropriation	\$251,507	\$251,762	\$262,595
Spending authority from offsetting collections 1/	59	60	60
Lapsed Balance in Prior Year	0	0	0
Total Estimated Obligations	<u>\$251,566</u>	<u>\$251,822</u>	<u>\$262,655</u>

1/ Offsetting collections are from federal sources for the Fitness Center Program in Washington and the Judges' Reimbursable Detail Program.

FY 2007 offsetting collections totaled \$58,765 which included the following:

Fitness Center Program in Washington - \$10,620

Judges' Reimbursable Detail Program - \$48,145

Budget Authority by Object Class
(Dollars in Millions)

	2007 ACTUAL	2008 ESTIMATE	2009 ESTIMATE
Personnel Compensation:			
Full-time Permanent	161	161	168
Other Than Full-time Permanent	1	1	1
Other Personnel Compensation	0	0	0
Subtotal Personnel Compensation	162	162	169
Civilian Personnel Benefits	37	38	41
Travel and Transportation of Persons	2	2	2
Rental Payments to GSA	28	30	31
Rent, Communications, and Utilities	5	5	5
Other Services	13	12	12
Supplies and Materials	1	1	1
Furniture and Equipment	3	2	2
Subtotal, Direct Budget Authority	251	252	263
Reimbursables	0	0	0
Total Budget Authority	251	252	263

Budget Authority and Staffing by Activity

(Dollars in Thousands)	2007 ACTUAL	2008 ESTIMATE	2009 ESTIMATE
Appropriation 1/	\$251,308	\$251,762	\$262,595
Reimbursables	59	60	60
Total Budget Authority	\$251,367	\$251,822	\$262,655

(Dollars in Millions)	FY 2007 ACTUAL		FY 2008 ESTIMATE		FY 2009 ESTIMATE		DIFFERENCE	
	FTE	AMT	FTE	AMT	FTE	AMT	FTE	AMT
Field Investigation	1,370	\$200	1,302	\$201	1,328	\$210	26	\$9
Administrative Law Judge Hearing	117	12	112	12	112	13	0	1
Board Adjudication	159	25	155	25	154	26	(1)	1
Securing Compliance with Board Order	83	13	80	13	80	13	0	0
Internal Review (Inspector General)	6	1	6	1	7	1	1	0
Subtotal, Direct Budget Authority	1,729	\$251	1,655	\$252	1,681	\$263	26	\$11
Reimbursables 1/	--	0	--	0	--	0	--	\$0
Total Budget Authority	1,729	\$251	1,655	\$252	1,681	\$263	26	\$11

1/ Due to rounding, the reimbursable amounts do not show on the table.

Actual FY 2007 reimbursables = \$58,765

Project reimbursables to total \$60,000 in FY 2008 and FY 2009.

Detail of Full-Time Equivalent Employment

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
	<u>ACTUAL</u>	<u>ESTIMATE</u>	<u>ESTIMATE</u>
Executive Level I	0	0	0
Executive Level II	0	0	0
Executive Level III	1	1	1
Executive Level IV	5	5	5
Executive Level V	<u>0</u>	<u>0</u>	<u>0</u>
Subtotal	<u>6</u>	<u>6</u>	<u>6</u>
ES	<u>58</u>	<u>61</u>	<u>63</u>
Subtotal	<u>58</u>	<u>61</u>	<u>63</u>
AL-1	1	1	1
AL-2	4	4	4
AL-3	<u>41</u>	<u>38</u>	<u>39</u>
Subtotal	<u>46</u>	<u>43</u>	<u>44</u>
GS/GM-15	220	209	204
GS/GM-14	534	520	527
GS/GM-13	261	242	248
GS-12	86	77	81
GS-11	71	70	70
GS-10	1	0	0
GS-9	70	61	61
GS-8	56	60	61
GS-7	182	179	176
GS-6	78	63	63
GS-5	52	50	61
GS-4	1	1	1
GS-3	5	9	9
GS-2	2	5	5
GS-1	<u>0</u>	<u>0</u>	<u>0</u>
Subtotal	<u>1,619</u>	<u>1,545</u>	<u>1,567</u>
Total Permanent Employment On Board, End-of-Year	<u>1,680</u>	<u>1,670</u>	<u>1,660</u>
Full-time Equivalent Usage	<u>1,729</u>	<u>1,655</u>	<u>1,680</u>
Average ES Level	3	3	3
Average ES Salary	\$154,300	\$158,500	\$163,517
Average AL Level	2.87	2.86	2.86
Average AL Salary	\$152,143	\$155,951	\$160,633
Average GS/GM Grade	11.79	11.78	11.74
Average GS/GM Salary	\$85,117	\$88,051	\$91,564

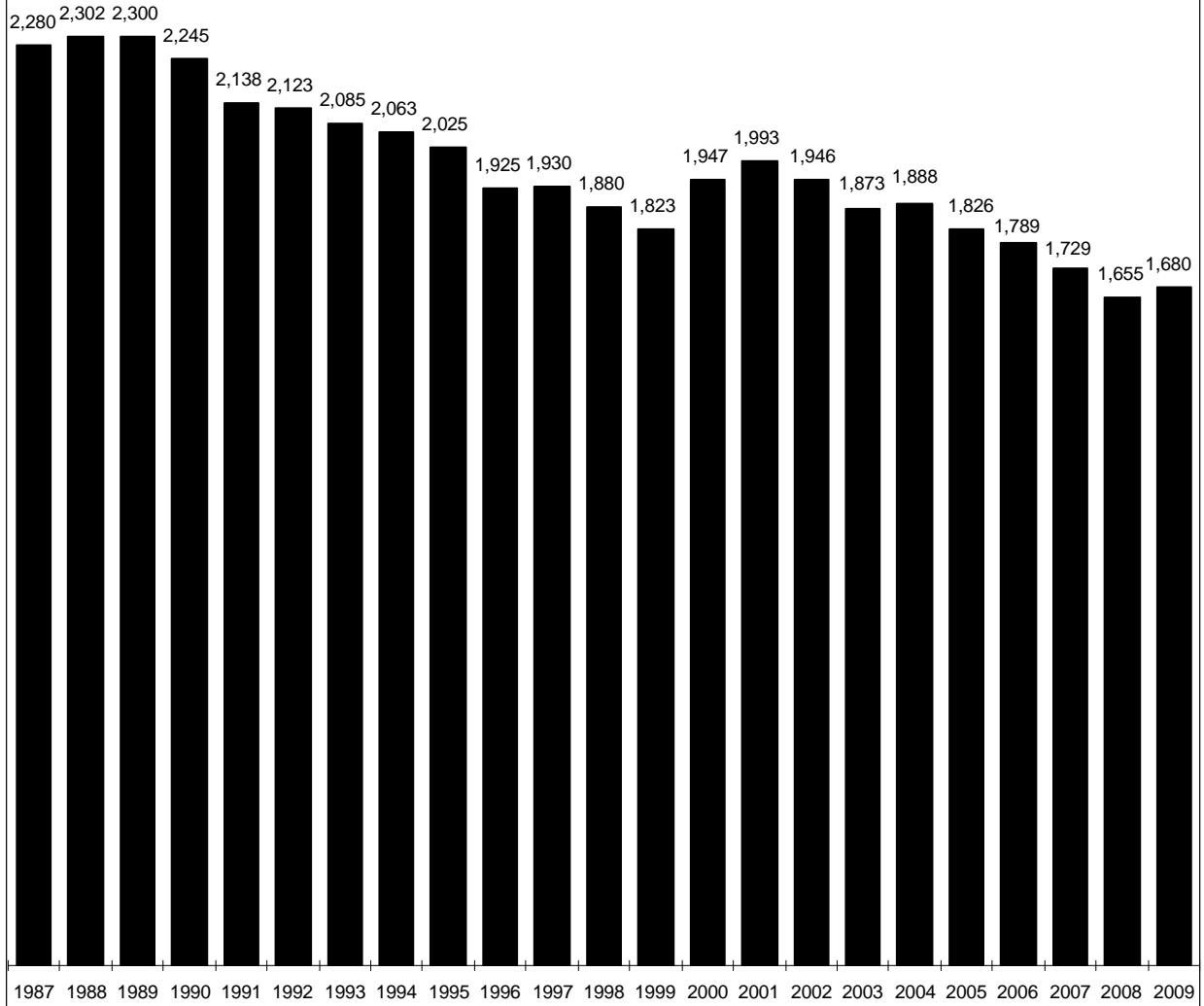
Appropriations History

Year	Estimate to Congress	House Allowance	Senate Allowance	Appropriation or Continuing Authorization
1977	\$81,336,000	\$80,908,000	\$81,336,000	\$80,908,000
1978	\$92,508,000	\$92,508,000	\$92,508,000	\$92,508,000
1979	\$103,012,000	\$102,762,000	\$102,762,000	\$102,762,000
1980	\$113,873,000	\$112,261,000	\$112,261,000	\$112,261,000
1981	\$119,548,000	\$119,548,000	\$119,548,000	\$118,488,000
1982	\$128,336,000	\$125,959,000	\$120,000,000	\$117,600,000
1983	\$133,000,000	\$126,045,000	\$126,045,000	\$126,045,000
1984	\$134,158,000	\$133,594,000	\$134,158,000	\$133,594,000
1985	\$137,964,000	\$137,964,000	\$137,964,000	\$137,964,000
1986	\$130,895,000	\$134,854,000	\$134,854,000	\$129,055,000
1987	\$130,865,000	\$132,247,000	\$132,247,000	\$132,247,000
1988	\$141,580,000	\$139,019,000	\$139,019,000	\$133,097,000
1989	\$138,647,000	\$138,647,000	\$138,647,000	\$136,983,000
1990	\$140,111,000	\$140,111,000	\$140,111,000	\$140,111,000
1991	\$151,103,000	\$151,103,000	\$151,103,000	\$147,461,000
1992	\$162,000,000	\$162,000,000	\$162,000,000	\$162,000,000
1993	\$172,905,000	\$171,176,000	\$171,176,000	\$169,807,000
1994	\$171,274,000	\$171,274,000	\$171,274,000	\$171,274,000
1995	\$174,700,000	\$173,388,000	\$176,047,000	\$175,721,000
1996	\$181,134,000	\$123,233,000		\$170,266,000
1997	\$181,134,000	\$144,692,000		\$174,661,000
1998	\$186,434,000	\$174,661,000	\$174,661,000	\$174,661,000
1999	\$184,451,000	\$174,661,000	\$184,451,000	\$184,230,000
2000	\$210,193,000		\$205,717,000	\$205,717,000
2001	\$216,438,000	\$205,717,000	\$216,438,000	\$216,438,000
2002	\$221,438,000	\$221,438,000	\$226,438,000	\$226,450,000
2003	\$233,223,000		\$231,314,533	\$237,428,592
2004	\$243,073,000	\$239,429,000	\$246,073,000	\$244,073,000
2005	\$248,785,000	\$248,785,000	\$250,000,000	\$249,860,000
2006	\$252,268,000	\$252,268,000	\$252,268,000	\$249,745,000
2007	\$249,789,000	\$249,789,000	\$249,789,000	\$251,507,470
2008	\$256,238,000	\$256,988,000	\$256,988,000	\$251,761,522
2009	\$262,595,207			

Appropriations History -- Footnotes

- 1/ Net \$356,000 rescinded for purchase of furniture, per P.L. 96-304.
- 2/ Reflects rescission of \$1,060,000, per P.L. 97-12.
- 3/ Total amount available under Continuing Resolutions.
- 4/ Reflects reduction of \$3,959,000 for 5% cut in Federal employee pay.
- 5/ Reflects \$5,799,000 reduction, per P.L. 99-177
- 6/ This amount was subsequently reduced by \$641,000 for an across-the-board appropriation travel reduction.
- 7/ Reflects a reduction of 1.2% applied to all discretionary programs, per P.L. 100-436.
- 8/ Reflects reduction of 2.41% applied to all discretionary programs, per P.L. 101-517.
- 9/ Reflects .8 percent across-the-board reduction applied during conference.
- 10/ Reflects government-wide rescission of \$326,000, per P.L. 104-19.
- 11/ The Senate Appropriations Committee recommended \$176,047,000. However, the full Senate never voted on the Labor/HHS Appropriations bill. Funding was provided through the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 104-134).
- 12/ Reflects reduction of \$477,000 per two rescissions in the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 104-134).
- 13/ The Senate Appropriations Committee recommended \$170,266,000. However, the full Senate never voted on the Labor/HHS Appropriations bill. Funding was provided through the Omnibus Consolidated Appropriations Act of 1997, (P.L. 104-208).
- 14/ Reflects reduction of \$339,000 due to across-the-board reductions in conference per Section 519, P.L. 104-208.
- 15/ Reflects reduction of \$221,000, per government-wide rescission (P.L. 106-5).
- 16/ The House Appropriations Committee recommended \$174,661,000. However, the full House never voted on the Labor/HHS Appropriations bill. Funding was provided through the Consolidated Appropriations Act for 2000 (P.L.106-113)
- 17/ Reflects reduction of \$783,000 due to across-the-board reductions in conference, per P.L. 106-113.
- 18/ This total includes a one-time transfer of \$180,000 from the Emergency Response Fund and reflects a rescission amount of \$168,000 as provided under P.L.s 107-117 and 107-206, respectively.
- 19/ The Senate bill initially provided for \$238,223,000 and two amendments reduced all discretionary programs by 2.9%.
- 20/ This total includes a rescission amount of \$1,440,031 as provided under P.L. 108-199.
- 21/ Reflects a .8 percent across-the-board rescission, per P.L. 108-477.
- 22/ Reflects a 1 percent across-the-board rescission, per P.L. 109-148.
- 23/ Reflects an additional \$1,762,150 to cover 50% of the pay increase, as per P.L. 110-5.
- 24/ The Labor/HHS bill was passed by Congress but vetoed by the President. The total reflects the President's Request less a 1.747% rescission, per H.R. 2764.

STAFFING HISTORY



Major Workload and Output Data

	FY 2007 ACTUAL	FY 2008 ESTIMATE	FY 2009 ESTIMATE
1) Regional Offices:			
Unfair Labor Practice (ULP) Cases			
Situations Pending Preliminary			
Investigation at Start of Year	3,808	3,792	3,990
Case Intake During Year	22,322	23,000	23,000
Consolidation of Dispositions	1,823	4,034	4,157
Total ULP Proceedings	20,499	18,768	19,143
Situations Pending Preliminary			
Investigation at End of Year	3,792	3,990	3,690
Representation Cases			
Case Intake During Year	3,324	3,500	3,500
Dispositions	1,871	1,908	1,937
Regional Directors Decisions	287	293	299
2) Administrative Law Judges:			
Hearings Pending at Start of Year	300	243	250
Hearings Closed	200	225	235
Hearings Pending at End of Year	243	250	253
Adjustments After Hearings Closed	0	0	0
Decisions Pending at Start of Year	45	50	55
Decisions Issued	207	230	235
Decisions Pending at End of Year	53	55	58
3) Board Adjudication:			
Contested Board ULP Decisions Issued	287	290	295
Contested Representation Election Decisions Issued	104	105	110
4) General Counsel - Washington:			
Advice Pending at Start of Year	110	81	63
Advice Cases Received During Year	770	713	727
Advice Disposed	799	731	740
Advice Pending at End of Year	81	63	50
Appeals Pending at Start of Year	327	209	172
Appeals Received During Year	2,168	2,083	2,125
Appeals Disposed	2,286	2,120	2,154
Appeals Pending at End of Year	209	172	143
Enforcement Cases Received During Year	173	175	178
Enforcement Briefs Filed	70	80	94
Enforcement Cases Dropped or Settled	47	55	58
Enforcement Consent/Summary	59	65	70

XVI. PROGRAM MATERIALS

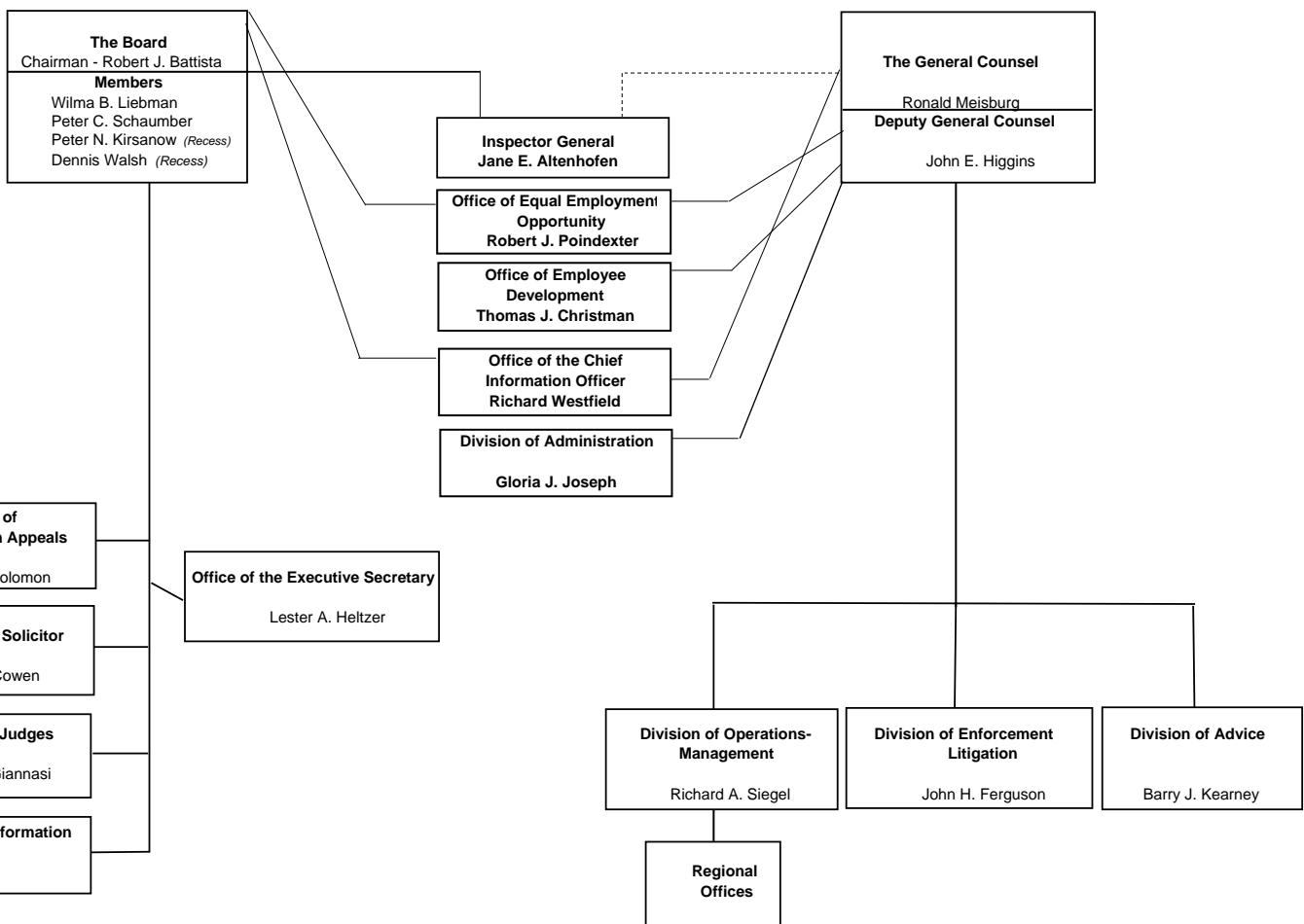
TYPES OF NLRB CASES						
1. CHARGES OF UNFAIR LABOR PRACTICES (C CASES)						
Charges Against Employer		Charges Against Labor Organization				Charge Against Labor Organization and Employer
Section of the Act CA	Section of the Act CB	Section of the Act CC	Section of the Act CD	Section of the Act CG	Section of the Act CP	Section of the Act CE
<p>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).</p> <p>8(a)(2) To dominate or interfere with the formation or administration of a labor organization or contribute financial or other support to it.</p> <p>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.</p> <p>8(a)(4) To discharge or otherwise discriminate against employees because they have given testimony under the Act.</p> <p>8(a)(5) To refuse to bargain collectively with representatives of its employees.</p>	<p>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).</p> <p>8(b)(1)(B) To restrain or coerce an employer in the selection of its representatives for collective bargaining or adjustment of grievances.</p> <p>8(b)(2) To cause or attempt to cause an employer to discriminate against an employee.</p> <p>8(b)(3) To refuse to bargain collectively with employer.</p> <p>8(b)(5) To require of employees the payment of excessive or discriminatory fees for membership.</p> <p>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.</p>	<p>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:</p> <p>(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).</p> <p>(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.</p>	<p>(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.</p> <p>(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.</p>	<p>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.</p>	<p>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:</p> <p>(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).</p> <p>(B) where within the preceding 12 months a valid election under Section 9(c) has been conducted, or</p> <p>(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.</p>	<p>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.</p>
2. PETITIONS FOR CERTIFICATION OR DECERTIFICATION OF REPRESENTATIVES (R CASES)				3. OTHER PETITIONS		
By or in Behalf of Employees		By an Employer	By or in Behalf of Employees		By a Labor Organization or an Employer	
Section of the Act RC	Section of the Act RD	Section of the Act RM	Section of the Act UD	Board Rules UC	Board Rules AC	
<p>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. *</p>	<p>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. *</p>	<p>9(c)(1)(B) Alleging that one or more claims for recognition as exclusive bargaining representative have been received by the employer. *</p>	<p>9(e)(1) Alleging that employees (30 percent or more of an appropriate unit) wish to rescind an existing union-security agreement.</p>	<p>Subpart C Seeking clarification of an existing bargaining unit.</p>	<p>Subpart C Seeking amendment of an outstanding certification of bargaining representative.</p>	

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

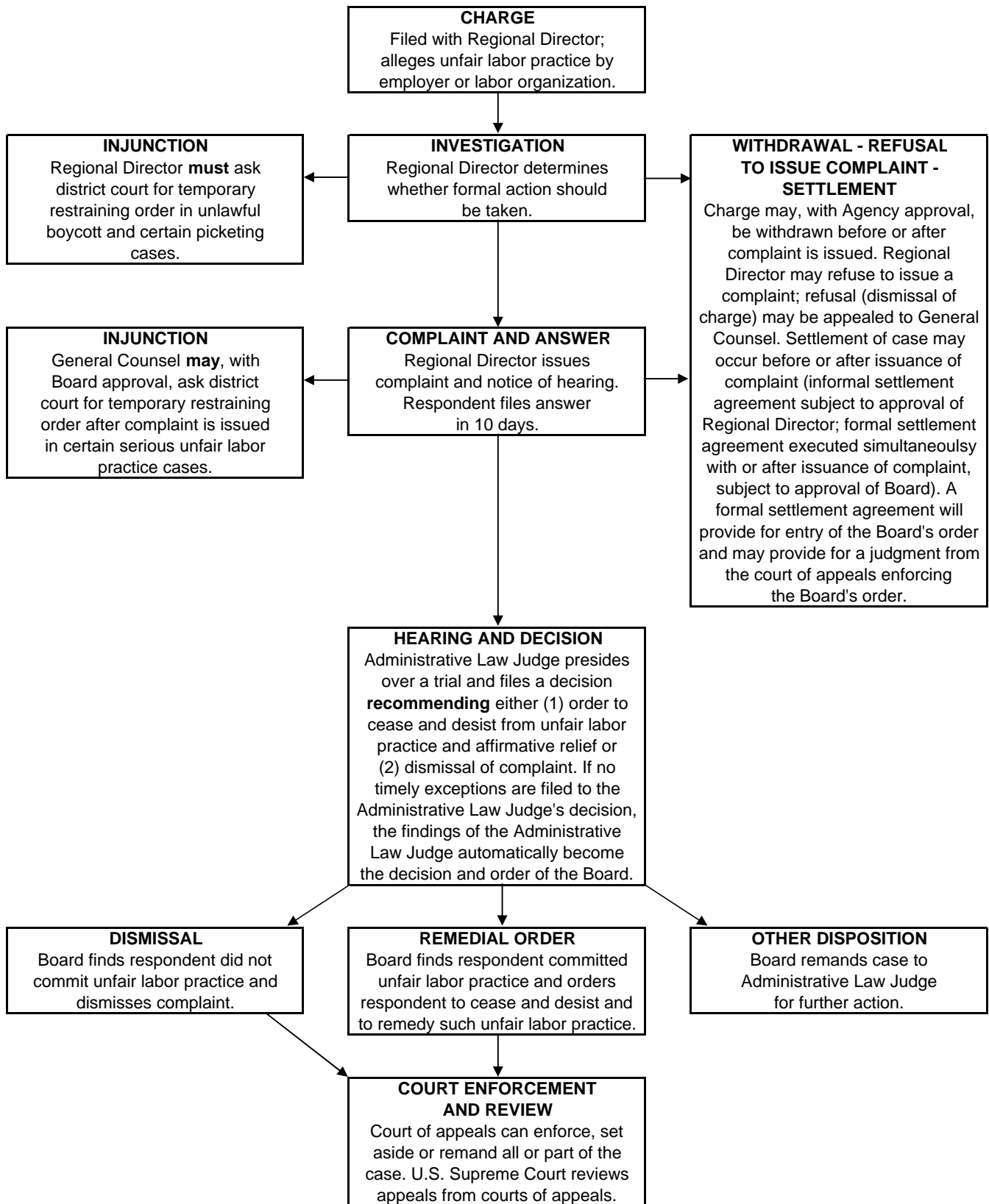
Charges filed with the National Labor Relations Board are letter-coded and numbered. Unfair labor practice charges are classified as "C" cases and petitions for certification or decertification of representatives as "R" cases. This chart indicates the letter codes used for "C" cases and "R" cases, and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

NATIONAL LABOR RELATIONS BOARD

ORGANIZATION CHART

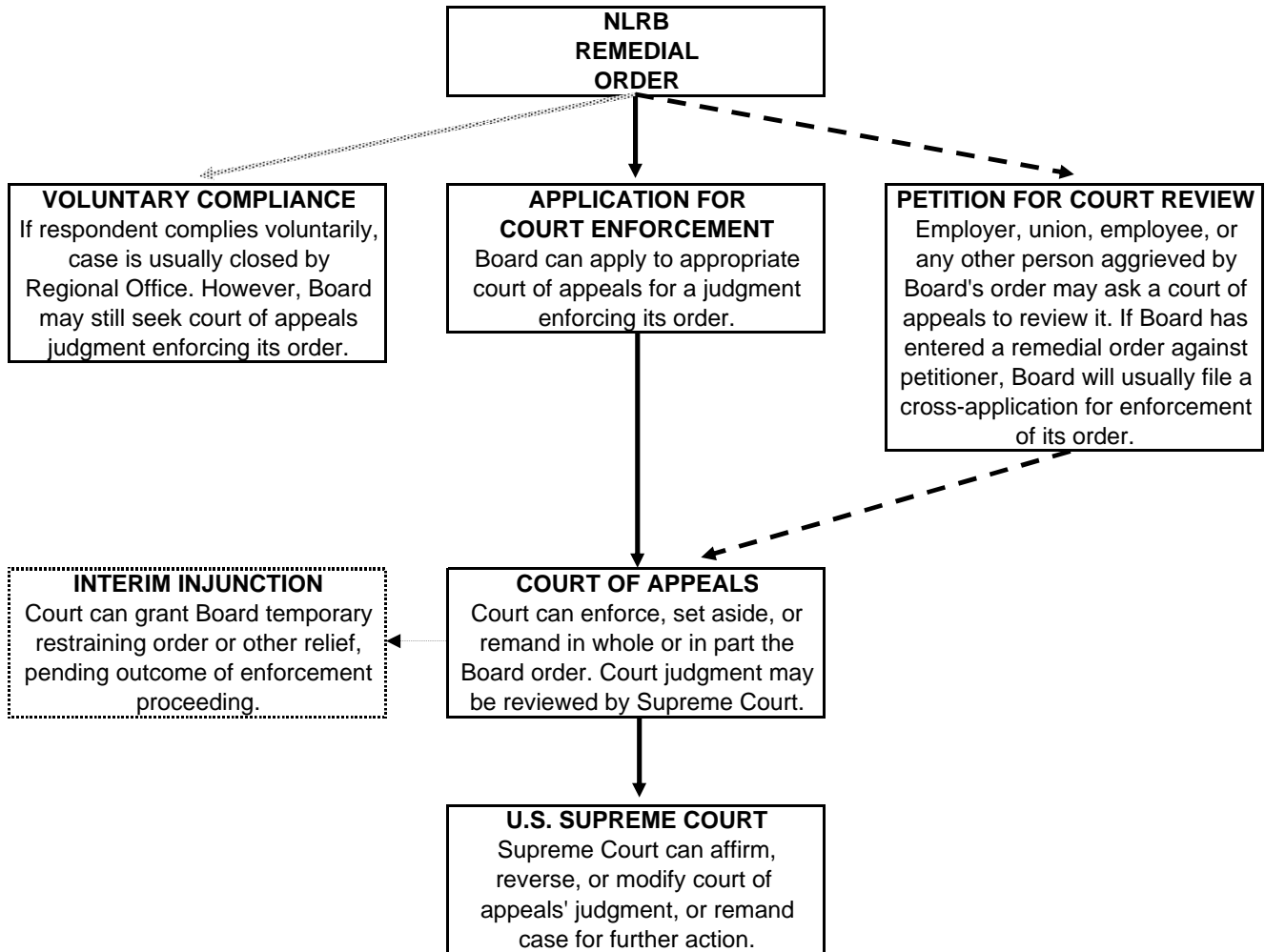


NATIONAL LABOR RELATIONS BOARD EXHIBIT C
 BASIC PROCEDURES IN CASES INVOLVING CHARGES OF UNFAIR LABOR PRACTICES



NLRB ORDER ENFORCEMENT CHART

EXHIBIT D



OUTLINE OF REPRESENTATION PROCEDURES UNDER SECTION 9(c)

