OTHER ACCOMPANYING INFORMATION

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General

Memorandum

October 15, 2007

To: Robert J. Battista
Chairman

Ronald Meisburg
General Counsel

From: Jane E. Altenhofen
Inspector General

Subject: Issue Alert No. OIG-IA-08-01: Top Management and Performance Challenges

With the passage of the Accountability of Tax Dollars Act of 2002, Public Law 107-289, the Agency is required to produce audited financial statements. Along with the audited financial statements, the Agency must prepare a Performance and Accountability Report. As part of that report, the Office of Inspector General (OIG) is required by section 351 of title 31 to summarize what the Inspector General considers to be the most serious management and performance challenges facing the Agency and briefly assess its progress in addressing those challenges.

In October 2006, we identified eight management and performance challenges. For this report, we are including five of the previously identified challenges and adding one new challenge. Below are the top management challenges with brief summaries of the Agency's progress in addressing the previously identified challenges:

Current Challenges

1. **Reduce the Board's pending caseload to meet performance goals.**

The Fiscal Year (FY) 2006 Performance and Accountability Report (PAR) contained a performance goal to have a 90 percent reduction of pending unfair labor practice cases over 17 months old at the Board. The Board began FY 2007 with 215 cases that could potentially be more than 17 months old by September 30, 2007. The Board closed 84 percent (181 cases) of these by September 30, 2007.

The FY 2006 PAR also included a performance goal to decide 90 percent of representation cases pending at the Board for more than 12 months. By the close of FY 2007, the Board exceeded this goal. As of September 30, 2006, 59 of these cases were pending at the Board. The Board closed 98 percent of these (58 cases) by September 30, 2007.

Although the Board made significant progress in meeting this challenge, the decision making process of the Board remains a challenge. In FY 2007, we conducted an inspection that analyzed the Board's case processing statistics from a variety of vantage points. Of the 226 contested Administrative Law Judge decisions pending at the end of FY 2006, 172 were still before the Board on March 2, 2007. Approximately 41 percent of those cases were in Stage I, 23 percent were in Stage II, and 36 percent were in Stage III. The cases in Stage I had been pending an average of 1,346 days, compared with 1,009 days for Stage II and 951 days for Stage III. This indicates that the cases moving quicker towards being issued were those that had been at the Board for the shortest period of time.

2. Manage the Agency during periods of time that are covered by continuing resolutions and appropriations that are expected to be flat or provide only nominal increases.

Budgetary uncertainties and constraints create significant management hurdles. At the NLRB, those hurdles are magnified by the lack of precision and controls over budgeting and spending the appropriation. During the past fiscal year, significant fiscal restraints were imposed upon the Agency. Those restraints included a hiring freeze, suspension of training, limiting expenses related to case processing, and suspension of benefits provided by the contracts with the two employee unions. Senior managers also raised the possibility of furloughing employees to close the gap between the amount of funds available to the Agency and the amount of funds needed through the end of the fiscal year.

Some or all of those restraints may have been prudent at the beginning of FY 2007 when the Agency was operating under a continuing resolution and anticipating an appropriation that provided essentially level funding. The extent and duration of those measures, however, is questionable after the discovery of a first quarter accounting error of $3.8 million, the correction of which in the fourth quarter was to the benefit of the Agency.

The impact of that error and the failure to make a timely correction can only be fully understood in the context of how the Agency's appropriation is spent. In FY 2007, the Agency expended approximately 90 percent of its appropriation on space rent, building security and personnel related costs. The remaining 10 percent, approximately $25 million, was available to meet remaining operating needs. Under these circumstances the error, equating to the loss of 15 percent of funds for discretionary spending, can only be described as significant.

Greater controls over the budgeting and spending process seem clearly warranted. Indeed, the Finance and Budget Branches were reported to be closely watching the Agency's financial situation. Nevertheless, when auditors working for the OIG on the annual financial statement audit first brought the error to the attention of a Finance Branch official in April, they were told that it was an issue involving accrual of payroll-related expenditures that was dependent upon the timing of the pay periods and the cut-off. When the error remained through mid-July, it was again brought to the attention of the Finance Branch and corrected. Had the Division of Administration been appropriately monitoring the budgeting and spending process, it is likely that they would have identified and corrected the error in January, or at least in April when it was first brought to their attention, avoiding the need to continue some or all of the significant fiscal restraints into the fourth quarter.

3. Manage the Agency's procurement process to ensure compliance with the Federal Acquisition Regulation.

The OIG conducted audits of the Agency's procurement actions. These audits found numerous problems that generally depicted a lack of proper internal controls. Because of the number and severity of the problems identified in these audits, the Office of Inspector General (OIG) is initiating a third audit of procurement actions. Although we believe that through this audit process we can assist the Agency in making positive changes in its procurement process, we are concerned that the Agency's procurement practices are putting the Agency's budgetary resources at risk.

4. Strengthen control over employees' use of the Agency information technology assets to include Internet access.

Over the last several years, the Agency devoted significant resources to improving and upgrading information technology equipment and capability. The OIG continues to devote significant resources investigating employees and contractors for improper use of the Agency's Internet access and e-mail systems. Despite readily available software that could assist managers in this area, we are unaware of any action during the preceding year by the Agency to meet this challenge.

5. Implement e-government initiatives to effectively communicate with parties and the public.

In November 2006, NLRB re-launched its Web site and deployed a companion portal, mynlrb.nlrb.gov, as components in a long-term unified management of its Government to Constituent (G2C) operations. The site now allows users to transact business online with the Agency more easily. Several important enhancements are included within "MyNLRB," including those enabling participants who E-file documents to establish their own accounts in order for the system to automatically fill in data fields on E-Filing forms; and an expanded E-filing program for filing documents electronically with the General Counsel's Office of Appeals; Regional, Subregional, and Resident Offices; and the Division of Judges.

The significant progress made by the Agency in the area of e-government largely benefits practitioners who regularly interact with the NLRB. Progress towards allowing the electronic submission of charges and petitions to the Regional Offices – the initiation of cases by individual employees – largely remains dependent on the development of the Agency's "Next Generation Case Management" system.

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New Challenge

6. Implement audit findings in a timely manner.

The Agency is not implementing audit recommendations in a timely manner, has had a recurrence of findings for which corrective action was reported as implemented, disagreed with audit recommendations without a sufficient legal basis, and often chooses to not implement cost-saving recommendations.

Despite substantial OIG resources given to audit recommendation follow-up, the number of audit reports with recommendations open for over 1 year has increased from one in semiannual reports issued in 2002 to consistently being three to four in later semiannual reports. When Agency managers do report that action is completed on a recommendation, we attempt to verify the corrective action only to find that the information provided by the manager is incorrect. Through a verification process, we have also found that Agency employees disregard new policies and procedures that were implemented as corrective action. Additionally, the Agency has increasingly decided to not implement some recommendations with major cost-savings despite a supposed lack of budgetary resources.

Challenges Met

When we provided the management and performance challenges in October 2006, we included three challenges related to compliance with the Privacy Act's notice requirements, implementation and testing of an information technology contingency plan, and protection of personally identifiable information. We believe that Agency managers have made sufficient progress in those areas to warrant removal of those items as management challenges.

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I. SUMMARY OF FINANCIAL STATEMENT AUDIT

Audit Opinion	Unqualified
Restatement	No

Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Ending Balance
0	0	0	0	0	0
TOTAL	0	0	0	0	0

II. SUMMARY OF MANAGEMENT ASSURANCES

Effectiveness of Internal Control Over Operations (FMFIA § 2)	
Statement Assurance	Unqualified

Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
0	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

SUMMARY OF MANAGEMENT ASSURANCES (cont'd.)

Conformance With Financial Management Systems Requirements (FMFIA §4)	
Statement Assurance	Systems conform with financial management systems requirements

Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
0	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Compliance With Federal Financial Management Improvement Act (FFMIA)		
	Agency	Auditor
Overall Substantial Compliance	Yes	Yes
1. Systems Requirements	Yes	
2. Accounting Standards	Yes	
3. USSGL at Transaction Level	Yes	