

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- Cases may also be withdrawn by the petitioner for a variety of reasons including lack of support among the bargaining unit and/or failure to provide an adequate showing of interest.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.