

## 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 2008 request totals \$256.238 million, with an estimated Agency FTE of 1,725. 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.

Further, 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. 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.

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 seven 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 2005, intake for ULP cases decreased from 26,883 cases in FY 2004 to 24,736. Representation case intake, however, increased from 4,897 cases in FY 2004, to 5,151 in FY 2005. In FY 2006, ULP cases totaled 22,921, and representation cases were 3,473.

Based on current trends, total ULP and representation cases are estimated to total about 29,500 in FY 2007, and remain at that level in FY 2008. Of that total, ULP cases are estimated to be about 25,000, while representation cases are expected to total 4,500.

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 (96.7 percent in FY 2006) are settled without formal litigation. Cases are settled through the Agency's settlement program by which the parties agree to a remedy and thereby avoid 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.

### ***Presidential Appointees***

Another factor outside the control of the Agency is the timely confirmation of Presidential appointees. The assigned caseload of individual Board members rises and decisions in difficult or controversial cases may be delayed due to vacancies on the five-member Board. As the then General Accounting Office pointed out in a 1991 analysis of Board production, Board member vacancies and turnover are the primary reason for delays in issuance of Board decisions. For example, from December 16, 2004 through September 30, 2005, the Board had three members, which affected the ability of the Board to achieve caseload reduction goals during the year. The lack of a full-Board complement and the learning curve for new appointees can decrease Board productivity and prevent the Board from meeting its performance goals.

With the confirmation of two members in August 2006, the Agency now has a full five-member Board, comprising three confirmed Members and two recess appointees. One confirmed Member's term expires in December 2007, and the two recess appointees' terms will last until confirmation or adjournment of Congress in FY 2007. The General Counsel's position is filled by a confirmed appointee. The chart below shows the appointment and term expiration dates of the current Board members and General Counsel.

## BOARD MEMBERS AND GENERAL COUNSEL

	<u>Appointed</u>	<u>Term Expiration</u>
Robert J. Battista Chairman	12/17/02	12/16/07
Wilma B. Liebman Member	8/14/06	8/27/11
Peter C. Schaumber Member	8/14/06	8/27/10
Peter N. Kirsanow Member	1/04/06	Recess Appointment <sup>8</sup>
Dennis P. Walsh Member	1/17/06	Recess Appointment
Ronald Meisburg General Counsel	8/14/06	8/13/10