

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.