

# THE NATIONAL LABOR RELATIONS BOARD



## PERFORMANCE AND ACCOUNTABILITY REPORT FISCAL YEAR 2008



# MESSAGE FROM THE CHAIRMAN



**Peter C. Schaumber**  
Chairman

The National Labor Relations Board (NLRB) is an independent Federal agency created by Congress in 1935 to administer and enforce the National Labor Relations Act, the primary Federal statute governing labor relations in the private sector. The NLRB has an unusual structure among executive branch agencies. Agency leadership culminates in six presidential appointees—five Board Members (including the Chairman) and the General Counsel. The Chairman is the head of the Agency. Day-to-day management of the Agency is divided by law, delegation, and Agency practice between the Chairman, the five-member Board and the General Counsel.

As Chairman, it is my privilege to present the NLRB's Performance and Accountability Report for Fiscal Year (FY) 2008. Contained in this document are the NLRB's audited financial statements and performance information related to the goals in the Agency's Strategic Plan.

The two strategic goals established by the Agency to achieve its mission of administering and enforcing the Act are as follows:

- (1) to impartially and promptly resolve questions concerning representation by conducting secret ballot elections among employees to determine whether or not the employees wish to be represented by a union; and
- (2) to impartially and promptly investigate, prosecute, prevent and remedy statutorily defined unfair labor practices by employers and unions.

In pursuing our goals the NLRB maintains a citizen-centered and results-oriented approach, striving to serve the public by making timely and well-reasoned decisions at each level of the organization. In the last quarter of FY 2007, to support our mission and the Agency's strategic goals, the Agency adopted three performance measures to assess the overall time to process cases to completion. Each of these measures has interim yearly goals through 2012 to assess the overall time to process cases.

I am proud to report that in FY 2008 the Agency met all of its interim goals for the three overarching measures. I am especially pleased with the progress we have made in abbreviating the time it takes to fully process representation cases. In FY 2008, the Agency resolved 83.5 percent of representation cases within 100 days of the filing of an election petition, exceeding our goal of 80 percent. The expeditious resolution of unfair labor practice (ULP) charges is the Agency's other priority. In FY 2008, the Agency met its goals by resolving 68 percent of ULP charges by withdrawal, dismissal, or closing upon compliance within 120 days of the filing of a charge and closing 76 percent of meritorious charges on compliance within 365 days of the filing of the ULP charge. With regard to each of these performance measures, the Agency's performance improved over the year before.

There are those who have expressed a view that the Board's representation processes take too long. Our performance in FY 2008, as in prior years, demonstrates that those concerns are not warranted. NLRB elections are held expeditiously. Indeed, our latest statistics show that initial elections are held within a median of 38 days, one day less than the 39 median days achieved in FY 2007, and 95.1 percent of all initial elections are conducted within 56 days of the filing of the petition, compared to 93.9 percent in FY 2007.

I am also pleased to report the Board's case production during FY 2008. The Board issued 328 decisions in contested cases during the fiscal year. Of this total, 241 were unfair labor practice cases, and 87 were representation cases. At full strength, the Board consists of five Members. Since January 1, 2008, the Board has had two Members. The two-member quorum, comprised of my worthy colleague Member Wilma B. Liebman and myself, issued 255 decisions in contested cases, nearly 78 percent of the total for the fiscal year. Although the total number of decisions issued falls short of historic production levels for a fully constituted Board, that number is significant given that Member Liebman and I both had to participate in every decided case, rather than the normal practice of spreading the workload across multiple three-member panels.

Regrettably, because we can only decide those cases on which we both agree, approximately 20-25 percent of our cases are being set aside for consideration at a future date. That group of cases includes a number of novel and contentious issues. Notwithstanding those limitations, we have continued to perform as we believe Congress intended, minimizing potential delays in the final adjudication of cases while at the same time reducing our case inventory. At the end of FY 2007, our backlog stood at 207 cases. The backlog at the end of FY 2008 was 171 cases, a drop of 17.4 percent.

There is no better gauge of how faithfully the Board is following its statutory mandate and deciding cases based on precedent and the evidentiary record before it than how reviewing courts have treated the Board's decisions on appeal. Over the past several years the Agency's enforcement rate before the Federal circuit courts has been among the highest in its history. This trend continued in FY 2008, when the Board's decisions and orders were enforced by the Courts in full 80.6 percent of the time, and in full or in part 88.9 percent of the time.

In FY 2008, the Board implemented several important programs, including a pilot project for the electronic issuance and service of final decisions of the Board and its Administrative Law Judges (ALJs). The E-Issuance/E-Service project has been a great success and well received by the parties that volunteered to participate. Under the old practice, decisions generally were issued at the close of the business day and

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copies were formally served on the parties, usually by U.S. mail. Decisions were then released to the public and posted on the NLRB Web site (nlrb.gov) on the third business day following issuance. Under that pilot project, final Board and ALJ decisions are served immediately by e-mail on the parties at the close of business on the date of issuance and the decision is publicly made available on the Agency's Web site the next day at 2 pm. Given the demonstrated success of this project, it is expected that E-Issuance/E-Service will be expanded to include most, if not all, agency documents. The project has improved our service to the public and reduced costs.

As Chairman of the NLRB, I certify that the NLRB's management controls and financial systems meet and conform with the requirements of the Federal Managers' Financial Integrity Act. (A more detailed discussion of the Agency's internal controls can be found starting on page 23 of this report.) I have also made every effort to verify the accuracy and completeness of the financial and performance data presented in this report. While I note that the Agency's Inspector General recently reported shortcomings with respect to financial controls in the Procurement and Facilities Branch of the Division of Administration, the Agency is currently working to correct those deficiencies and to implement internal controls and reporting structures necessary to protect the Agency's resources.

I have served on the Board since 2002, and have had the privilege of serving as Chairman since March 2008. My tenure has been a rewarding experience both personally and professionally. I have worked with a talented group of employees who are dedicated to ensuring that our statute is enforced in a fair and impartial manner. The Agency's accomplishment of meeting its FY 2008 performance goals is a testament to their hard work, talent, and dedication. I am proud to have the opportunity to lead this great organization.



Peter C. Schaumber  
Chairman

## BOARD MEMBERS



**Peter C. Schaumber**  
Chairman



**Wilma B. Liebman**  
Board Member

# MESSAGE FROM THE GENERAL COUNSEL



**Ronald Meisburg**  
**General Counsel**

The General Counsel of the National Labor Relations Board (NLRB) is responsible for the investigation and prosecution of the unfair labor practice cases filed in the NLRB's Regional, Subregional, and Resident Offices. As the General Counsel of the NLRB, I exercise general supervisory authority over this network of field offices. This network consists of 32 Regional Offices, 3 Subregional Offices, and 16 Resident Offices, and is staffed by approximately 1,200 employees.

In FY 2008, 22,501 unfair labor practice cases and 3,400 representation cases were filed in the Regional Offices. Upon investigation, it was determined that over 8,100 of the unfair labor practice charges were meritorious, which warranted the issuance of an unfair labor practice complaint. The Regional Offices settled more than 96 percent of these, thus providing speedy relief to the affected employees, unions, and employers without the delay and costs of litigation. In addition, the Regional Offices conducted over 2,000 initial representation elections over 95 percent of which were held within 56 days of the filing of the petition. But processing time and casehandling percentages are not our only focus. The Office of the General Counsel has an extensive Quality Review Program that assures those who seek our help receive the best service from their government.

During my tenure as General Counsel of the NLRB, I have implemented or expanded upon several initiatives designed to increase our effectiveness in serving our customers. Among these initiatives is an electronic filing program. Since 2002, the NLRB has been steadily expanding its electronic filing program to the public. It began when the Office of the General Counsel permitted charging parties to E-file extension-of-time requests in cases before the Office of Appeals. The Office of the General Counsel has now expanded the program allowing parties to use the Agency's Web site to E-file most casehandling documents with NLRB Regional, Subregional, and Resident Offices. In addition, the Office of Appeals will now accept the E-filing of appeals from a Regional Director's refusal to issue a complaint and a Regional

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Director's compliance determination, including the actual appeal, supporting statements, supplemental statements, and responses to the appeal. Field offices have received over 4,000 electronic submissions through the Agency E-filing process and the Office of Appeals over 1,000 such submissions.

In FY 2007, the Agency implemented three new performance measures. These new measures were more outcome-based, better aligned with the mission of the NLRB, and more meaningful to the public we serve. While the Agency did not fully implement the measures until June 2007, as a whole, it came very close to meeting these new measures in 2007. However, knowing that FY 2008 would be the Agency's first realistic test of its performance under these overarching measures, in order to ensure that the Agency met its performance targets, I convened a committee of experienced Field and Headquarters managers to review caseworking experience with reference to the overarching measures and to recommend strategies for meeting the measures over the 5 years covered by the Agency's Strategic Plan (2007-2012). The committee did recommend and I immediately adopted a number of concrete steps to improve the Agency's ability to meet the overarching goals. I am happy to report that the Agency met its three performance measures in FY 2008.


On December 10, 2007, the Agency deployed a pilot version of NxGen, its enterprise-wide case management system, in Region 9 (Cincinnati), Region 10 (Atlanta), and Headquarters offices. The initial pilot tested the viability of the NxGen software for electronic storage and transmission of caseworking documents. Beginning in November 2008, plans call for extending the NxGen pilot to completely replace the legacy case tracking and reporting system formerly used by the Office of Appeals. Upon successful deployment of the Office of Appeals' portion of the system, the Agency will replace other legacy software until it has a completely integrated electronic case management system.

Another initiative I have continued to expand is the Outreach Program. Under this program, NLRB agents make contact with schools, community groups, churches, business organizations, and others to provide information about the NLRB, and the rights and obligations under the National Labor Relations Act applicable not only to employers and unions, but also to individual workers. Through this program, Agency representatives have now participated in over 500 outreach events. A significant number of these events had several hundred people in attendance such as the Government on Display at the Mall of America in Minneapolis, the Cincinnati Latino Festival, and a Webcast to all of Alcoa's U.S. facilities. Also, through the Speakers Bureau located on the NLRB's Web site, we have received 53 requests for speakers, including requests from government officials from Dubai and Shenzhen, China who were visiting the United States. In addition, the Agency has completed filming an English/Spanish video about NLRB representation case processing for nationwide distribution to the public. The video will also be posted on the NLRB's Web site.

The General Counsel of the NLRB, on delegation from the Board, exercises general supervision over the administrative functions of the Agency, including financial management. I am pleased that this year's financial audit resulted in an unqualified opinion from our auditors, thereby vindicating the trust the public places in us as a guardian of its resources. Indeed, the auditor's letter states that they did not identify any material weaknesses in internal control mechanisms. Further, the auditors identified only two small contracts (valued at less than \$112,000) that they believed to be invalid. In my view, both instances involved a mistaken interpretation of a Federal procurement regulation. Importantly, the auditors reported that, while their review is limited, with the exception of these two minor instances, their "tests of compliance with selected provisions of laws and regulations disclosed no other instances of non-compliance that would be reportable under U.S. generally accepted auditing standards or OMB audit guidance."



As the General Counsel of the NLRB, I am committed to informing the public of its workplace rights and protections under the National Labor Relations Act and ensuring its enforcement in a fair and impartial manner. This commitment is evidenced by the proper stewardship of resources, ensuring that Agency employees have the appropriate tools to enforce the Act, and the accountability mechanisms we maintain for the casehandling process.



Ronald Meisburg  
General Counsel

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# I. MANAGEMENT'S DISCUSSION AND ANALYSIS



**PROTECTING DEMOCRACY IN THE WORKPLACE SINCE 1935**

## AGENCY OVERVIEW

### *About the NLRB*

The National Labor Relations Board (NLRB) is an independent Federal agency created by Congress in 1935 to administer and enforce the National Labor Relations Act (NLRA or Act), which is the primary Federal statute governing labor relations in the private sector.<sup>1</sup> The purpose of the law is to serve the public interest by reducing interruptions to commerce caused by conflict between employers and employees.

The Act embodies a bill of rights, which establishes freedom of association for purposes of collective bargaining. It defines and protects the rights of employees, unions, and employers, and seeks to eliminate certain unfair labor practices on the part of employers and unions so as to promote commerce and strengthen the Nation's economy. Under the Act, the NLRB has two primary functions:

1. to conduct secret-ballot elections among employees to determine whether or not the employees wish to be represented by a union; and
2. to prevent and remedy statutorily defined unfair labor practices by employers and unions.

The NLRB acts only on those cases brought before it, and does not initiate cases. All proceedings originate with the filing of charges or petitions by employees, labor unions, private employers, and other private parties.

### *Mission*

The mission of the National Labor Relations Board is to carry out the statutory responsibilities of the National Labor Relations Act, as efficiently as possible, in a manner that gives full effect to the rights afforded to all parties under the Act.

### *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. The NLRB maintains a citizen-centered and results-oriented philosophy to best serve the needs of the American people.

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

### *Statutory Structure of the NLRB*

The Board has five Members and primarily acts as a quasi-judicial body in deciding cases on the basis of formal records in administrative proceedings. Board Members are appointed by the President with the advice and consent of the Senate, and serve staggered 5-year terms. The President designates one of the Board Members as Chairman. From January 1, 2008, through the end of the fiscal year on September 30, there were three vacant seats on the Board.<sup>2</sup> As a result, during that period, and continuing through the present, the Board operated as a two-member quorum, comprised of Chairman Peter C. Schaumber and Member Wilma B. Liebman.

The General Counsel, currently Ronald Meisburg, is appointed by the President to a 4-year term, with Senate consent, and is responsible for the investigation and prosecution of unfair labor practice cases and for the general supervision of the NLRB Regional Offices. Each Regional Office is headed by a Regional Director who is responsible for making an initial determination in cases within the geographical area served by that Regional Office.

The NLRB has an unusual structure among executive branch agencies. Agency leadership culminates in six presidential appointees—five Board Members (including the Chairman) and the General Counsel. The Chairman is the head of the Agency. Day-to-day management of the Agency is divided by law, delegation, and Agency practice between the Chairman, the five-member Board and the General Counsel. In performing delegated functions, and in some aspects statutorily assigned functions, the General Counsel acts on behalf of the Board. However, with respect to the investigation and prosecution of unfair labor practice cases, the General Counsel has sole prosecutorial authority under the statute, independent of the Chairman or the Board.

### ***UNFAIR LABOR PRACTICE PROCEEDINGS<sup>3</sup>***

The NLRA contains a code of conduct for employers and unions and regulates that conduct in unfair labor practice proceedings. Unfair labor practices are remedied through adjudicatory procedures under the NLRA in which the Board and the General Counsel have independent functions.

Congress created the position of General Counsel in its current form in the Taft-Hartley Act 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 unfair labor practice (ULP) cases.

The General Counsel investigates ULP charges through the Agency's network of Regional, Subregional, and Resident Offices (field offices). In

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<sup>2</sup>The term of Chairman Robert J. Battista expired on December 16, 2007. The recess appointments of Board Members Dennis P. Walsh and Peter N. Kirsanow expired on December 31, 2007.

<sup>3</sup>Appendix C is a chart showing the basic procedures in an unfair labor practice case.

*Statutory  
Role  
(cont'd.)*

FY 2008, 22,501 ULP charges were filed in the field offices. If there is reason to believe that a ULP charge has merit, the Regional Director, on behalf of the General Counsel, issues and prosecutes a complaint against the charged party unless a settlement is reached. With some exceptions, a complaint that is not settled or withdrawn is tried before an administrative law judge (ALJ), who issues a decision which may be appealed by any party to the Board through the filing of exceptions. The Board decides 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.

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. 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 a U.S. Court 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 Sections 10(e) and (f) of the NLRA after the entry of a Board order and pending enforcement or review of proceedings in circuit court.

Section 10(j) of the NLRA empowers the NLRB to petition a Federal district court for an injunction to temporarily prevent unfair labor practices by employers or unions and to restore the status quo, pending full review of the case by the Board. In enacting this provision, Congress was concerned that delays inherent in the administrative processing of ULP charges, in certain instances, would frustrate the Act's remedial objectives. In determining whether the use of Section 10(j) is appropriate in a particular case, the principal question is whether injunctive relief is necessary to preserve the Board's ability to effectively remedy the unfair labor practice alleged, and whether the alleged violator would otherwise reap the benefits of its violation.

Under NLRB procedures, after deciding to issue a ULP complaint, the General Counsel may request authorization from the Board to seek injunctive relief. The Board votes on the General Counsel's request and, if a majority votes to authorize injunctive proceedings, the General Counsel, through his Regional staff, files for injunctive relief with an appropriate Federal district court.

In addition, Section 10(l) of the Act *requires* the Board to seek a temporary Federal court injunction against certain forms of union misconduct, principally involving work stoppages or picketing with an unlawful secondary objective.

### **SEEKING 10(j) INJUNCTIVE RELIEF**

In the case *Majestic Towers d/b/a Wilshire Plaza Hotel*, the General Counsel was authorized to seek 10(j) injunctive relief by the Board, as it was found that the employer had committed extensive violations of the NLRA, which undermined the incumbent Union during contract negotiations, including implementing a number of unilateral changes and subsequently implementing an unlawful final contract offer which contained a severe reduction in benefits.

On February 28, 2008 the U.S. District Court for the Central District of California granted the injunction in full. The Court ordered that the employer take the following affirmative action: upon request of the Union, rescind unilateral changes and restore former terms and conditions of employment and benefits of employees until the parties had bargained in good faith to an agreement or a lawful impasse; meet and bargain in good faith with the Union; provide the Union with requested relevant information; timely submit to the Union all monthly union dues deducted from employees' paychecks; resume making monthly payments and reports to the Trust Funds; restore Union access to the employees at the Hotel; process grievances; pay employees' vacation pay; offer an employee employment on his prior shift; and remove from its files photos or videos of employees speaking with Union representatives or engaging in protected concerted activity.

The Board issued its decision and order on September 30, 2008 (353 NLRB No. 29), affirming the ALJ's finding that the employer violated Section 8(a)(5) by unilaterally implementing portions of its final contract offer. In the months preceding the Board's decision, because the General Counsel secured 10(j) injunctive relief, the employees of the Wilshire Plaza Hotel were able to continue to work under the same terms and conditions of employment that had previously been agreed upon until such time as the employer and the Union can conclude contract negotiations.

*Statutory  
Role  
(cont'd.)*

### **REPRESENTATION PROCEEDINGS<sup>4</sup>**

In contrast to ULP proceedings, representation proceedings conducted pursuant to the Act are not adversarial. Representation cases are initiated by the filing of a petition—by an employee, a group of employees, an individual or a 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 employees constitute 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.

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<sup>4</sup> Appendix D is a chart on representation case processing.



*Statutory  
Role  
(cont'd.)*

In the processing of representation cases, the Board and the General Counsel 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 based on a delegation of authority made in 1961. As a result, the General Counsel and the Board have historically worked together in developing procedures for the conduct of representation proceedings. 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 authority to render initial decisions in representation matters, which are subject to Board review.

***COMPLIANCE PROCEEDINGS***

In order to obtain compliance with the Board's Orders and settlement agreements, the General Counsel's 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.

***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 ALJs, who are under the general supervision of the Board, 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.

***STRATEGIC GOALS***

The Board and the General Counsel share a common goal of ensuring that the Act is fully and fairly enforced. While they have separate statutory functions, the Board and the General Counsel work together in developing one comprehensive Strategic Plan and annual Performance Plan.

As set forth more fully in the following section, the goals of the NLRB as outlined in the Strategic Plan represent the core functions of the Agency in enforcing the NLRA. These strategic goals translate the Agency's mission into major policy directions and are focused on the unique characteristics of the organization.

*Strategic  
Goals  
(cont'd.)*

***Strategic Goal #1***

Resolve all questions concerning representation impartially and promptly.

***Performance Measure #1***

- ◆ The percentage of representation cases resolved within 100 days of filing of the election petition.

***Strategic Goal #2***

Investigate, prosecute, and remedy cases of unfair labor practices by employers or unions, or both, impartially and promptly.

***Performance 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.

***Performance Measure #3***

- ◆ The percentage of meritorious (prosecutable) ULP cases closed on compliance within 365 days of the filing of the ULP charge.

## PERFORMANCE HIGHLIGHTS

The NLRB updated its Strategic Plan last year, introducing three new performance measures that are more outcome-based, better aligned with the mission of the NLRB, and more meaningful to the public we serve. The change moved the Agency’s performance measurement approach from one of emphasis on individual segments of the casehandling process to one that focused on the time taken to process an entire case, from start to finish. While the performance measures were not fully introduced until June 2007, in that year the NLRB met, and/or exceeded, the targets set for all but one of the new performance measures. However, FY 2008 was the first realistic test of the Agency’s performance with respect to these three new measures as they reflected the Agency’s performance for the entire year.

The new measures advance the NLRB’s long and successful history of performance measurement, which previously focused on the timeliness and effectiveness of the individual stages of the casehandling pipeline. Measure #1 assesses the NLRB’s effectiveness in achieving the first of its two Strategic Goals – to resolve all questions concerning representation impartially and promptly. Measures #2 and #3 assess the NLRB’s effectiveness in achieving its second Strategic Goal – investigating, prosecuting, and remedying cases of unfair labor practices by both employers and unions, or both, impartially and promptly.

We are pleased to report that we exceeded all interim goals for our three performance measures in FY 2008:

*Measure #1. By 2012, resolve questions concerning representation in at least 85 percent of all representation cases within 100 days from the filing of the representation case petition.*

Year	Interim Goal	Actual Performance
FY 2007	79.0%	79.0% <sup>t</sup>
<b>FY 2008</b>	<b>80.0%</b>	<b>83.5%</b>

*Measure #2: By 2012, resolve at least 71 percent of all charges of unfair labor practice cases 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.*

Year	Interim Goal	Actual Performance
FY 2007	67.5%	66.0%
<b>FY 2008</b>	<b>68.0%</b>	<b>68.0%</b>

*Performance  
Highlights  
(cont'd.)*

*Measure #3: By 2012, close 77 percent of meritorious (prosecutable) unfair labor practices on compliance within 365 days of the filing of the unfair labor practice charge.*

Year	Interim Goal	Actual Performance
FY 2007	74.0%	73.5%
<b>FY 2008</b>	<b>75.0%</b>	<b>76.0%</b>

The two goals of the NLRB's Strategic Plan represent the core functions of the Agency in enforcing the NLRA. They thus reflect both the short- and long-term goals of the Agency. These strategic goals translate the Agency's mission into major policy directions and are focused on the unique characteristics of the organization.

# FINANCIAL HIGHLIGHTS

## *ANALYSIS OF FINANCIAL STATEMENTS*

The NLRB's financial statements summarize the financial activity and financial position of the Agency. The financial statements, footnotes, and the balance of the required supplementary information appear in the Financial Section of this Performance and Accountability Report (PAR).

- (1) ***Balance Sheet***—The NLRB assets were approximately \$38 million as of September 30, 2008. The Fund Balance with Treasury, which was \$25 million, represents the NLRB's largest asset. The Fund Balance consists of unspent appropriated and unappropriated funds from the past six fiscal years and includes backpay settlement funds. The NLRB has one unusual account, Backpay Settlements Due to Others. These are backpay funds that are owed to discriminatees by employers due to the filing of ULP charges with the NLRB. The source of these funds is either the original employer or a bankruptcy court disposition. During the time it takes the Agency to locate discriminatees, these funds are sometimes invested in U.S. Treasury market-based securities.
- (2) ***Statement of Net Cost***—The NLRB's appropriation is used to resolve Representation Cases or ULP Charges filed by employees, employers, unions, and union members. Of the \$261 million net cost of operations in FY 2008, 16 percent was used to resolve representation cases and 84 percent was used to resolve ULP charges.
- (3) ***Statement of Changes in Net Position***—The Statement of Changes in Net Position reports the change in net position during the reporting period. Net position is affected by changes in its two components: Cumulative Results of Operations and Unexpended Appropriations. From FY 2007 to FY 2008, there was a change in net position of \$3,592,227.
- (4) ***Statement of Budgetary Resources***—The Statement of Budgetary Resources shows budgetary resources available and the status at the end of the period. It represents the relationship between budget authority and budget outlays, and reconciles obligations to total outlays. For FY 2008, the NLRB had available budgetary resources of \$256 million, the majority of which were derived from new budget authority. This represents a \$1 million decrease from FY 2007, when available budgetary resources were \$257 million. In both FY 2007 and FY 2008 the status of budgetary resources shows

### *Financial Highlights (cont'd.)*

obligations of almost \$252 million, or about 98 percent of funds available in each year. Total outlays for FY 2008 were \$250 million which is a \$3 million decrease from FY 2007.

Of the budget appropriation received by the NLRB, approximately 90 percent of the payments are for employees' salaries and benefits, space rent, and building security. The remaining 10 percent is utilized for expenses integral to the Agency's casehandling mission, such as casehandling travel; transcripts in cases requiring a hearing; interpreter services, reflective of a growing community of non-English-speaking workers; witness fees; and information technology.

### ***LIMITATIONS OF PRINCIPAL FINANCIAL STATEMENTS***

The principal financial statements of the NLRB have been prepared to report the financial position and results of operations of the Agency, pursuant to the requirements of 31 U.S.C. 3515(b). While the statements have been prepared from the books and records of the entity in accordance with generally accepted accounting principles for Federal entities and the formats prescribed by OMB, the statements are in addition to the financial reports used to monitor and control budgetary resources which are prepared from the same books and records.

The statements should be read with the realization that they are for a component of the U.S. Government, a sovereign entity.

### ***FINANCIAL PLANNING COMMITTEE***

The NLRB has a long-established Financial Planning Committee (FPC) which has been meeting annually since 1992 to review and update the NLRB's 5-year Financial Management Plan. The committee met in early FY 2008 to assess the Agency's performance under the FY 2007 goals and review and approve the goals for FY 2008. The committee, after reviewing the goals, and the tasks and milestones associated with each goal, determined that the NLRB's 5-year financial management goals should include:

1. Improved financial accountability;
2. Improved financial systems;
3. Development of financial management human resources;
4. Improved administration of the credit card program; and
5. Use of electronic commerce to improve financial management.

*Financial  
Highlights  
(cont'd.)***FPC HIGHLIGHTS**

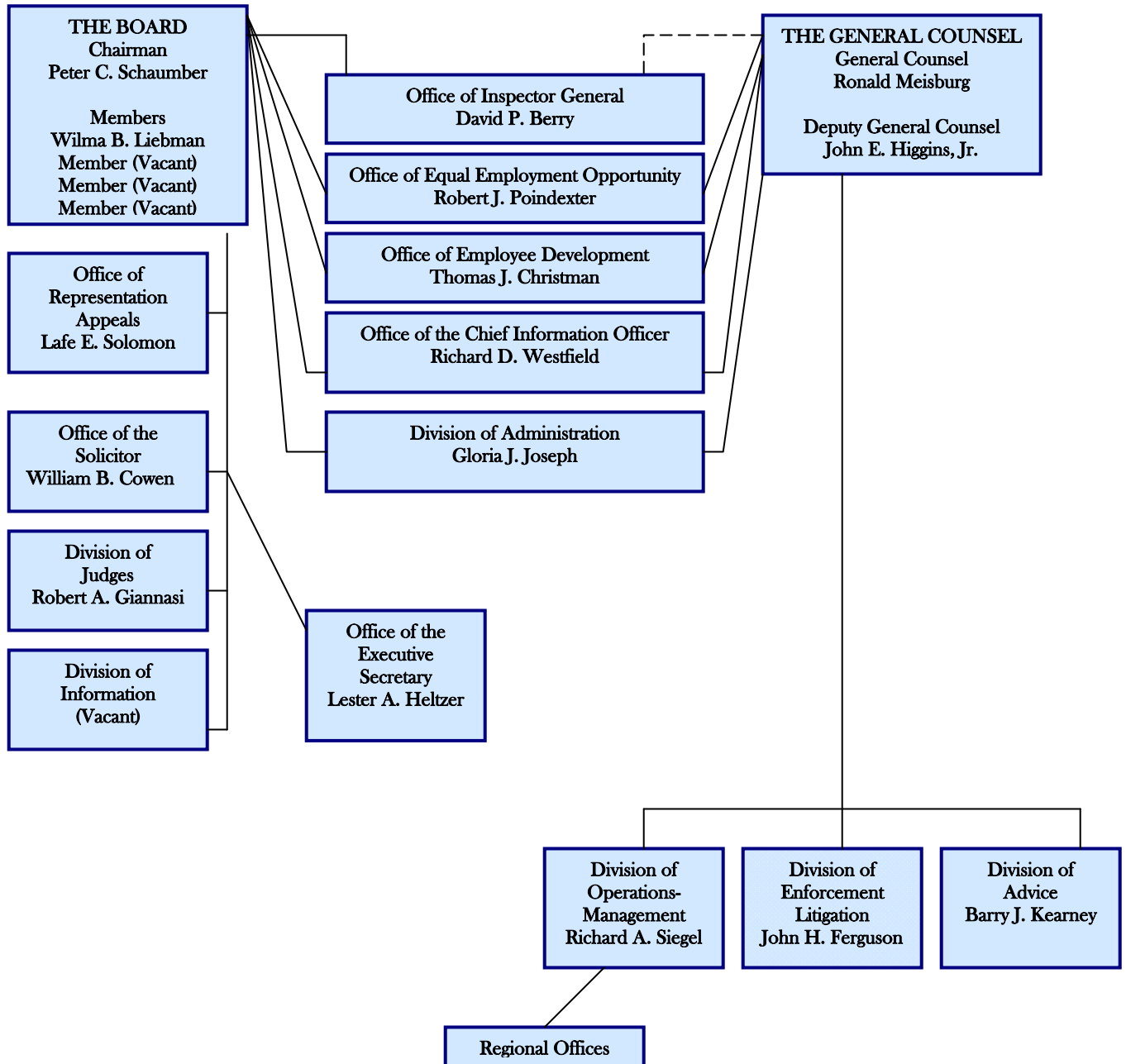
The NLRB has now fully implemented the eTravel System. This GSA-mandated system is used to process travel authorizations and travel vouchers. Users of the system can make reservations online, prepare a travel order and, finally, the travel voucher once the travel is completed. The voucher is then transmitted electronically to the Finance Branch for payment. The system was originally scheduled for full implementation in FY 2005, but various problems encountered government-wide delayed start of implementation until 2007. The NLRB's field offices began using the system in August 2007 and the Headquarters offices in September 2007.

In the area of electronic commerce, the NLRB continued to make use of several Treasury Department systems to facilitate electronic payments and deposits. The Secure Payment System allows the NLRB to make payments to Treasury over the Internet using a secure ID and certification, and the Plastic Card Network permits outside parties to make payments to the NLRB using a credit card rather than issuing a check. At the NLRB, it is mainly used for payment of fees associated with requests made under the Freedom of Information Act. The Paper Check Conversion System eliminates the need for personnel to physically go to the bank to make a deposit. Deposits are made electronically, in-house.

To further the goal of improving administration of the Credit Card Program, the Agency issued updated administrative policy guidance with respect to the Travel Card Program. The policy contained a section on the proper use of the travel card and, per direction from the Office of Management and Budget, included guidance regarding the appropriate use of first class and business class travel.

In FY 2008, the General Services Administration's contract for the Travel and Purchase Card Programs expired, requiring the Agency to choose a new provider for these services. As it had in the past, the NLRB chose to be part of a larger agency's contract rather than negotiate on its own. Citibank will continue as the Agency's provider of its Travel and Purchase Card Programs.

# ORGANIZATIONAL CHART





## MANAGEMENT ASSURANCES

### FEDERAL MANAGERS' FINANCIAL INTEGRITY ACT (FMFIA)

The FMFIA requires Federal agencies to provide an annual statement of assurance regarding management controls and financial systems. NLRB management is responsible for establishing and maintaining effective internal control and financial systems that meet the requirements of the FMFIA.

Management control systems reviewed under FMFIA are expected to provide reasonable assurance that the following objectives are being achieved:

- ◆ Effectiveness and efficiency of operations;
- ◆ Reliability of financial reporting; and
- ◆ Compliance with applicable laws and regulations.

The NLRB's approach to assessing its internal controls included the identification and assessment of risks by 20 designated managers on an Agencywide basis in accordance with OMB Circular A-123, *Management's Responsibility for Internal Control*, dated December 21, 2004. In completing this annual review, the designated managers, in conjunction with subordinate staff, as needed, used personal judgment as well as other sources of information. Such sources included: knowledge gained from day-to-day operations; Inspector General audits and investigations; program evaluations; reviews of financial systems; annual performance plans; and management reviews for the purpose of assessing internal controls. The designated managers were responsible for conducting reviews of program operations; assisting program offices in identifying risks and conducting internal control reviews; issuing reports of findings and making recommendations to improve internal controls and risk management.

Based on the internal controls program, reviews, and consideration of other information, senior management's assessment of the NLRB's internal controls is that controls are adequate to provide reasonable assurance in support of effective and efficient operations, reliable financial reporting, and compliance with laws and regulations.

Section 2 of the FMFIA requires Federal agencies to report, on the basis of annual assessments, any material weaknesses that have been identified in connection with their internal and administrative controls. The reviews that took place in FY 2008 provide reasonable assurance that NLRB systems and internal

*Management  
Assurances  
(cont'd.)*

controls comply with the requirements of FMFIA and there are no material weaknesses to report relating to Section 2 of the FMFIA. This is based primarily on the written assessments of the 20 designated managers who responded to an extensive survey.

Section 4 of the FMFIA requires that agencies' financial management systems controls be evaluated annually. The NLRB evaluated its financial management systems for the year ending September 30, 2008, in accordance with the FMFIA and OMB Circular, A-127, *Financial Management Systems*, Section 7 guidance. The annual statement by the Chief, Finance Branch, indicates that the NLRB's financial systems, taken as a whole, conform to the principles and standards developed by the Comptroller General, OMB, and the Department of Treasury.



**UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
Washington, DC**

October 31, 2008

**STATEMENT OF ASSURANCE**

The NLRB's management is responsible for establishing and maintaining effective internal control and financial management systems that meet the objectives of the Federal Managers' Financial Integrity Act (FMFIA). The NLRB conducted its assessment of the effectiveness of internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations in accordance with OMB Circular A-123, *Management's Responsibility for Internal Control*. Based on the results of this evaluation, the NLRB can provide reasonable assurance that its internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations as of September 30, 2008 was operating effectively and no material weaknesses were found in the design or implementation of internal controls.

Handwritten signature of Peter C. Schaumber in cursive.

**Peter C. Schaumber  
Chairman**

Handwritten signature of Ronald Meisburg in cursive.

**Ronald Meisburg  
General Counsel**

## STRATEGIC INITIATIVES

As evidenced in the NLRB's goals and measures, the Agency places the highest priority on issues relating to the quality and timeliness of casehandling. While the NLRB's casehandling procedures have been well established for many years, the Agency has developed several initiatives aimed at further increasing its effectiveness in these areas. Several of these initiatives are described below.

### *FIRST CONTRACT BARGAINING*

A critical responsibility of the NLRB is to conduct prompt and fair representational elections to resolve questions concerning representation or determining 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 alleging that, following the certification of a labor organization as the bargaining representative of a group of employees, an employer or union has failed or refused to bargain in good faith.

First contract bargaining is the fruition of the free choice that employees have made to embrace collective bargaining. That free choice must be vindicated by protecting the collective bargaining process chosen by employees. Initial contract bargaining constitutes a critical stage of the negotiation process because it forms the foundation for the parties' future labor-management relationship and, 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 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 ULP charges dealing with first contract bargaining are accorded high priority in the Regional Offices. He also has required the consideration of additional appropriate remedies if those charges are found to have merit. The appropriateness of these remedies is considered based upon the facts of each case.

As a result of this initiative, nearly 200 first contract cases were reviewed to determine whether additional remedies or injunctive relief was warranted. In selected meritorious cases, the General Counsel authorized settlements or litigation to extend the certification year for certified bargaining representatives and required parties to adhere to bargaining schedules in cases

*Strategic  
Initiatives  
(cont'd.)*

involving refusals to meet at reasonable times. In other cases, Regional Offices obtained settlements requiring multi-facility notice postings, the e-mail distribution of notices, union access to bulletin boards, the payment of negotiation expenses, and bargaining reports.

***OUTREACH PROGRAM***

The purpose of the Act and the role of the NLRB in enforcing it, insofar as it relates to the right of employees to select or reject a collective-bargaining representative, are relatively well known. For 73 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.

A less well known protection under the Act affords employees “the right to engage in other concerted activity.” This activity, which can be initiated with or without the presence or involvement of a union, is conducted by or on behalf of two or more employees for “mutual aid or protection,” as described in Section 7 of the Act. 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 refrain from engaging in any or all of this activity without fear of retribution.

In an effort to inform the public fully about all their rights under the NLRA, including their rights with regard to protected concerted activity, the General Counsel initiated an expansion of the Agency’s traditional outreach program in 2006. Under the expanded outreach program, independently or in partnership with other organizations such as the Equal Employment Opportunity Commission, NLRB agents are initiating contact with schools, community groups, churches, other Federal agencies, business organizations, and others to make information about the NLRB available to individual workers. The Regional Offices, taking advantage of local opportunities and addressing local conditions, are reaching out to employers, unions, workers, and soon-to-be workers to educate them regarding the role of the NLRB as an impartial enforcement agency.

Agency representatives have now participated in over 500 outreach events. A significant number of these events had several hundred people in attendance such as the Government on Display at the Mall of America in Minneapolis, the Cincinnati Latino Festival, and a Webcast to all of Alcoa’s U.S. facilities. In

### *Strategic Initiatives (cont'd.)*

addition, many Regional Offices have published newsletters to their local communities.

The Agency has also completed filming an English/Spanish video about NLRB representation case processing for nationwide distribution to the public. The video will be posted on the NLRB's Web site.

In addition to both the traditional and expanded outreach program, one of the critical services the Agency has long provided to employers, unions, and employees is the Agency's Public Information Program. Under this program, the Agency provides information about the Agency directly to individuals or entities that contact the Agency seeking assistance. In FY 2008, the Agency's 51 field offices received 154,028 public inquiries regarding workplace issues. In responding to these inquiries, Board agents, acting as "Information Officers," spent considerable time explaining the coverage of the NLRA, accepting charges, or referring parties to other Federal or state agencies.

Two other initiatives have also enhanced our public service outreach efforts. The public has easy and cost-free access to the Agency through a toll-free telephone number. Callers to the toll-free number may listen to messages recorded in English and Spanish that provide a general description of the Agency's mission and connections to other government agencies or to Information Officers located in the Agency's Regional Offices. In FY 2008, the toll-free telephone service received 53,077 calls.

Further, to extend its public services efforts across the Internet, the Agency's Web site ([www.nlr.gov](http://www.nlr.gov)) contains a public information "Questions" page which is designed to provide answers to frequently asked questions involving the NLRA and NLRB procedures. During FY 2008, visitors to this site area had 50,175 sessions.

A feature of the NLRB's Web site is a Speakers Bureau which permits individuals and groups to request that a NLRB representative address gatherings to present information about the Agency. Our agents respond to these requests and speakers are assigned, as appropriate. The Agency has received 53 requests for speakers through this feature, including officials from Dubai and Shenzhen, China visiting the United States.

In addition, the public can easily access information about pending cases through the Agency's Electronic Case Information System (ECIS).

*Strategic  
Initiatives  
(cont'd.)*

### ***ALTERNATIVE DISPUTE RESOLUTION PILOT PROGRAM***

In December 2005, the five-member Board implemented a pilot “alternative dispute resolution” (ADR) program to assist parties in settling ULP cases pending before the Board on exceptions to decisions issued by the Agency’s administrative law judges (ALJ). (This program is in addition to the Settlement Program conducted by the General Counsel.) The program is currently being evaluated for permanent retention.

The Board established the 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 ALJ’s decision would resolve the contested matter and allow the Board to cease its deliberations on the case and the Board Members and their staffs to turn their attention to other matters. In addition, as approximately 40 percent of Board decisions generated 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 the details of compliance often generate additional investigation and litigation following the merits litigation before the Board and courts. Resolution of the matter through the ADR process invariably include the settlement of those compliance details as well, such as reinstatement and backpay, making further proceedings before the Agency unnecessary.

### **DELEGATES FROM 14 NATIONS VISIT THE NLRB**



Visitors from Bangladesh, Barbados, Burkina Faso, Cambodia, Ghana, Jordan, Kenya, Mexico, Nigeria, Oman, Philippines, Sierra Leone, South Africa, and Sri Lanka visited with NLRB officials as part of a program sponsored by the State Department's Office of International Visitors. This program introduces participants to the political, economic, and social importance of the American labor movement and to the institutional ties between American unions and counterpart organizations in the delegates' home countries.

### *Strategic Initiatives (cont'd.)*

Participation in the program was voluntary, and a party who entered into settlement discussions under the program could withdraw its participation at any time. The Board provided the parties with an experienced neutral, usually an NLRB ALJ, to facilitate confidential settlement discussions and explore resolution options that served the parties' interests. The Board stayed further processing of the ULP case for 60 days from the first meeting with the neutral or until the parties reached a settlement, whichever occurred first. Extensions of the stay beyond the 60 days could be granted by the neutral, but only with the agreement of all parties.

During the pilot program, 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.

### ***VIDEO TESTIMONY PILOT PROGRAM***

In January 2008, the General Counsel, with the authorization of the Board, created a Pilot Video Testimony Program to allow the participation in representation case hearings of parties, representatives, or witnesses from remote locations. The 2-year program was established to monitor the use of video testimony and assess its effectiveness in situations where a party, a witness, or representative is unable to appear at a hearing in-person. The pilot program is limited to representation cases.

While in-person testimony and the presence of all parties at a representation hearing is still the preference, where circumstances demonstrate a benefit from the use of videoconferencing equipment, Regional Directors now have the authority to require its use during both pre-election and post-election representation case hearings. In exercising this discretion, the Regional Directors will consider various factors, including the number, length, and types of documents (e.g. affidavits) to be introduced through a witness providing testimony via video; the number of witnesses who would testify by video and the expected length of their testimony; the types of issues involved in the proceeding; the potential costs of using video testimony versus travel costs; and the positions of the parties.

Other Federal agencies have used video testimony with great success and it is hoped that this pilot program will save time and money while facilitating the development of complete records during representation case hearings



*Strategic  
Initiatives  
(cont'd.)*

### ***DEFERRAL OF "BLOCKING" CHARGES***

The pendency of a representation petition and ULP charges in a unit covered by a collective bargaining agreement with a grievance-arbitration procedure implicates several significant policy interests under the NLRA. The Board has two well-established policies - resolving questions concerning representation expeditiously, and allowing employers and unions to resolve disputes through existing grievance-arbitration procedures. Over the past several years, there have been a limited number of representation cases that have been "blocked" while the blocking ULP charges were deferred in accordance with the Board's decisions in *Collyer Insulated Wire* and *Dubo Manufacturing Corp.*

In September 2008, the General Counsel announced a program to speed the processing of ULP charges that "block" the processing of representation cases. This program provides for uniform case processing procedures which balance those two well-established policies of expeditiously resolving representation questions and resolving disputes through existing grievance-arbitration procedures. Rather than indefinitely deferring ULP charges which may interfere with the outcome of employee voting, Regional Offices will now fully investigate the allegations and provide the parties with a preliminary determination regarding the merits of those charges. The parties will then be afforded an opportunity to resolve and remedy the meritorious allegations - either through private negotiations or through an NLRB settlement - thereby quickly restoring the conditions of a free and fair election.

## CROWN CORK & SEAL - USING THE BOARD'S ADR PROCESS



Region 10 (Atlanta) Settlement Team:  
(Pictured Left to Right):  
Field Attorney Ellen Hampton, Compliance Assistant Shawn Watkins-Carroll, Field Attorney Kerstin Meyers, and Supervisory Field Examiner Diane Williams.

This was a noteworthy case for the Board, not only because it involved multi-state plant closings and unusual procedural issues, but also because the settlement came about through the Board's ADR mediation process.

In 2003, Crown Cork & Seal, a manufacturer of food and beverage containers, was found by an NLRB ALJ to have unlawfully closed plants in Atlanta and Cincinnati; lied in negotiations to force its Baltimore plant out of the United Steel Workers' of America's (USWA) Master Agreement and into a concessionary contract; and terminated Orlando, Florida employees - subsequently refusing to employ them at a plant in Winter Garden, Florida - while at the same time bargaining in bad faith and refusing to extend recognition to the USWA at Winter Garden. Parties filed exceptions to the ALJ's decision and the case remained before the Board, with little movement toward settlement, until early 2006 when mediation began through the Board's ADR Program.

While initial settlement offers were unsuccessful, staff from the Board, the Office of the General Counsel, and the NLRB's Regional Offices in Tampa and Atlanta continued in their efforts and, only weeks before the anticipated issuance of the Board decision, Crown Cork & Seal agreed to a backpay settlement for the employees in Atlanta, Cincinnati, and Orlando. Once that agreement was in place, issues involving the Maryland plant were quickly resolved. The settlement amounted to \$6.3 million in backpay and benefits and required Crown Cork & Seal to post *Notices to Employees* and to execute a collective bargaining agreement at its plant in Baltimore, MD.

While two teams of employees from two different NLRB Regional Offices worked to settle this case, these teams noted that it was the effort of the Board's ADR Program that resulted in success where all other efforts to settle had failed.

Region 12 (Tampa) Settlement Team  
(Seated left to right): Co-op Latoria  
Grinder and Language Assistant Chastity  
Pabon; (Standing from left to right):  
Supervisory Field Examiner Karen  
Marksteiner, Regional Director Rochelle  
Kentov, and Regional Attorney Margaret  
Diaz.



## PRESIDENTIAL MANAGEMENT INITIATIVES

The NLRB's integration of the President's management initiatives into its programs has greatly aided the Agency in meeting its performance goals.

### *WORKFORCE PLANNING*

The NLRB has a long tradition of operating effectively through 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 2008, 40 percent of GS 13-15 supervisors and 75 percent of Senior Executive Service members in the Agency were eligible to retire.

The NLRB workforce is spread throughout the country, with 450 employees located in the Washington, D.C. Headquarters, and 1,206 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 casehandlers 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 Agencywide workforce assessment that was completed in FY 2004. The assessment resulted in a 5-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.

### *COMPETITIVE SOURCING*

Further, in accordance with the PMA, the Agency has fully utilized competitive sourcing and direct conversion outsourcing opportunities. 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 began outsourcing invoice payment to the Department of the Interior's National Business Center, the provider of the Agency's accounting, personnel, and payroll systems, in September 2007. The Division had previously outsourced mailroom operations in FY 2004.

*Presidential  
Initiatives  
(cont'd.)*

Other opportunities for outsourcing continue to be explored within the Agency.

***BUDGET AND PERFORMANCE***

The NLRB's annual Performance Plan is integrated into its budget request to form the basis of our Performance Budget. As mentioned previously, the Agency updated its Strategic Plan in FY 2007. As part of this process, the Agency replaced the previous measures, which focused on case processing within the Board and General Counsel's offices, with three new, overarching, outcome-based performance measures that focus on the time taken to resolve cases, from beginning to end, including both the Board and General Counsel sides.

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, 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's accounting system is the Department of Interior's National Business Center's Momentum System, which carries an annual cost of over \$1 million. The Agency upgraded to this system in 2004, as it provided better Web-based functionality and improved integration with other systems.

Momentum is integrated with the Federal Personnel and Payroll System, providing for more efficient payroll processing and also with the Agency's E-travel compliant travel manager system, E<sup>2</sup>Solutions, which was implemented in August 2007. Additionally, as mentioned previously, to increase efficiencies the Agency outsourced the invoice payment function, beginning in September 2007.

***TECHNOLOGY AND E-GOV 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. The Agency's information technology initiatives support its broader efforts to improve productivity and provide greater transparency. These initiatives, consistent with the Expanding Electronic Government element of the PMA, focus on citizen-centered and results-oriented principles.

*Presidential  
Initiatives  
(cont'd.)*

Over the last 5 years, the Agency has launched major information technology initiatives that are part of its implementation of the President's Management Agenda. These initiatives fall under three major categories: (1) Next Generation Case Management (NxGen); (2) Improved Web site with Citizen-centered Portal; and (3) Infrastructure Modernization and Consolidation.

These initiatives are designed to:

- ◆ Improve the productivity of the Agency's case management process.
- ◆ Transform the way the NLRB does business with the public by making its case processes more transparent, and providing more information to customers in a timely matter.
- ◆ Standardize the Agency's electronic case management systems on an enterprise-wide platform.
- ◆ Optimize internal NLRB case processing by providing employees with easy access to the tools, data, and documents they require by using Web-based technologies.
- ◆ Provide Agency-wide electronic case records and document management to improve case flow, capability to provide electronic court filings, and access to documents.
- ◆ Reduce the costly and time-consuming paperwork burden on our customers.

### **NEXT GENERATION CASE MANAGEMENT**

The NxGen 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 NxGen 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 tools and a service-oriented architecture approach.

To build a solid foundation for NxGen, the NLRB analyzed its mission 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, Agencywide solution to satisfy the needs of all its offices.

*Presidential  
Initiatives  
(cont'd.)*

**IMPROVED WEB SITE WITH CITIZEN-CENTERED PORTAL**

In FY 2006 the Agency first launched its interactive Web site. Last year, the Web site was greatly improved with expanded document collections, enhanced 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 2,327,830 visitors and 10,034,397 page views in FY 2008.

The NLRB places a high priority on offering 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 Agency’s portal-based public interface is one component of our long-term unified case management vision: to provide better services, more efficient casehandling, create transparency, and continue to improve quality. The portal provides a gateway for the public, including participants in NLRB cases, Agency offices, and existing systems to communicate with one another in the course of transacting business, as well as offering documents online to the general public that can be requested under the Freedom of Information Act.

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. In 2007, the Agency expanded the E-Filing program to the General Counsel, the Division of Judges, and the Office of Appeals.

A significant new feature of the Agency's Web site, "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, which will make the E-filing process easier. The system can also save searches and other user preferences for registered users.

In addition, in July 2008, the NLRB launched a pilot project for the electronic issuance and service of final decisions of the Board and its ALJs. Final Board and ALJ decisions are issued electronically (E-issuance) at the end of each business day by being listed on an e-docket sheet posted on the Web site. Parties who register for electronic service (E-Service) will receive immediately, upon the posting of the e-docket sheet, an e-mail constituting formal notice of the Board's or ALJ's decision and an

*Presidential  
Initiatives  
(cont'd.)*

electronic link to the decision. This new procedure allows registered parties to receive service of decisions upon issuance rather than waiting for service by traditional means, which may take several days.

## **INFRASTRUCTURE MODERNIZATION AND CONSOLIDATION**

The NLRB has developed a unified network architecture, based on standard Internet technologies which is 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 information technology investments planned by the Agency;
- ◆ Is a core component of the Agency's designed viable and executable contingency plan for the continuity of operations;
- ◆ Provides a viable and consistently-available option for employees in telecommuting-eligible positions who desire workplace flexibility;
- ◆ Improves the Agency's capability to integrate information technology security into our enterprise architecture processes; and
- ◆ Enables the Office of the Chief Information Officer to benchmark the Agency's information technology organization against other possible service providers.

## II. PROGRAM PERFORMANCE



**PROTECTING DEMOCRACY IN THE WORKPLACE SINCE 1935**



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# PROGRAM PERFORMANCE

## *PERFORMANCE GOALS AND OBJECTIVES*

The two goals of the NLRB's Strategic Plan represent the core functions of the Agency in enforcing the NLRA. They thus reflect both the short- and long-term goals of the Agency. These strategic goals, as fully described in this section of the PAR, translate the Agency's mission into major policy directions and are focused on the unique characteristics of the organization.

### *GOAL No. 1*

*Resolve all questions concerning representation impartially and promptly.*

#### **Objectives:**

The Act 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, uncoerced 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 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.

*Goals  
(cont'd.)*

Strategies:

1. Give priority in timing and resource allocation to the processing of representation cases that implicate the core objectives of the Act and are expected to have the greatest impact on the public. A core objective of the Act is to conduct secret ballot elections among employees to determine whether the employees wish to be represented by a union.
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 Regional Offices in resolving representation case issues promptly and fairly.
5. Identify and utilize alternative decision-making procedures to expedite Board decisions in representation cases.
6. Assure that due process is accorded in representation cases by careful review of Requests for Review, Special Appeals and Hearing Officer Reports, and, where appropriate, the records in the cases.
7. Analyze and prioritize the critical workforce skills 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 of their private sector counterparts.

**GOAL NO. 2**

***Investigate, prosecute, and remedy cases of unfair labor practices by employers or unions, or both, impartially and promptly.***

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 NLRA. 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

**Goals**  
*(cont'd.)*

ordering a respondent to cease and desist from 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:

**Objectives:**

- A. Conduct thorough ULP investigations and issue all ULP 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. One of these core objectives is to prevent and remedy statutorily defined unfair labor practices by employers and unions.
- 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 ULP 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 ULP matters and the rights and obligations of employers, employees, unions, and the Board under the Act.
- 2. Evaluate the quality of ULP casework regularly to provide the best possible service to the public.
- 3. Utilize impact analysis to provide an analytical framework for classifying ULP 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 ULP cases to assist Regional Offices in resolving ULP issues promptly and fairly.
- 5. Emphasize the early identification of remedial 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.

*Goals  
(cont'd.)*

7. Emphasize and encourage settlements as a means of promptly resolving ULP disputes at all stages of the casehandling process.
8. Identify and utilize alternative decision-making procedures to expedite Board decisions in ULP cases.
9. Analyze and prioritize the critical workforce skills 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 of their private sector counterparts.

*FY 2008 Results*

## PERFORMANCE MEASURES

**GOAL NO. 1, TABLE 1**  
**Percentage of Representation**  
**Cases Resolved Within 100**  
**Days**

YEAR	TARGET
FY 2007	79.0%
	(ACTUAL) 79.0%
FY 2008	80.0%
	(ACTUAL) 83.5%
FY 2009	81.0%
FY 2010	82.0%
FY 2011	83.5%
FY 2012	85.0%

**Counting of Days:**

The 100 days is calculated from the date the petition is docketed.

In FY 2007, the NLRB updated its Strategic Plan, covering the 5-year period 2007- 2012. In updating its plan, the Agency developed three new performance measures to supplement the previous measures that had been in place. The new measures emphasized the time taken to resolve cases, from beginning to end, including both the Board and General Counsel sides of the Agency. This moved the NLRB’s performance measurement approach from emphasis on individual segments of case processing, as in previous years, to one that focuses on time taken to process an entire case. While the previous measures were effective in facilitating timely, efficient, and well-managed casehandling, and will continue to be used as internal guides to assessing performance, the new measures emphasized outcomes, and served to answer the question most important to the public: What is the Agency’s overall success in bringing effective resolution to labor disputes in a timely manner?

FY 2007 was the first year in which the NLRB reported the results associated with the three new performance measures. The tables in this section show the proposed annual targets for the three overarching measures for the 5-year period covered by the current Strategic Plan (2007-2012), and the actual results achieved for FY 2007 and FY 2008 as those are currently the only two years for which actual data is available.

*Performance Measures (cont'd.)*

**GOAL NO. 1:** Resolve all questions concerning representation impartially and promptly.

**MEASURE NO 1:** The percentage of representation cases resolved within 100 days of filing of the election petition. (Table 1, page 41)

**GOAL NO. 2, TABLE 2**

**Percentage of ULP Charges Resolved Within 120 Days**

YEAR	TARGET
FY 2007	67.5%
	(ACTUAL) 66.0%
FY 2008	68.0%
	(ACTUAL) 68.0%
FY 2009	68.5%
FY 2010	69.5%
FY 2011	70.0%
FY 2012	71.0%

**Counting of Days:**

The 120 days is calculated from the date the charge is docketed.

An employer, labor organization, or group of employees may file a petition in an 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 parties toward a goal of reaching a voluntary agreement regarding the conduction of an election. However, if a voluntary agreement is not reached, the Director of the Regional Office, after a hearing is conducted, will determine whether to conduct an election and the details of the election. The parties have a right to appeal to the Board the Director's decision. This measure reflects the percentage of representation cases closed within 100 days.

Representation cases are resolved and closed in a number of ways:

- ◆ Cases may be dismissed before an election is scheduled or conducted. Dismissals at an early stage in processing may be based on a variety of reasons; for example, the employer does not meet the Agency's jurisdictional standards, the petitioner fails to provide an adequate showing of interest to support the petition, and/or the petition was filed in an untimely manner.
- ◆ Cases may also be withdrawn by the petitioner for a variety of reasons including the lack of support among the bargaining unit and/or failure to provide an adequate showing of interest.
- ◆ The majority of cases (65.6 percent of representation cases in FY 2008) 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 and the case is not closed 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.

*Performance Measures (cont'd.)*

In FY 2008, the Agency closed 83.5 percent of its representation cases within 100 days of the filing of a petition. The Agency exceeded the interim goal of 80 percent for 2008, and it appears that it is well-positioned to achieve the 5-year goal of 85 percent.

**GOAL NO. 2:** *Investigate, prosecute, and remedy cases of unfair labor practices by employers or unions or both, impartially and promptly.*

**MEASURE NO. 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. (Table 2, page 42)*

A ULP case is resolved and closed when it has been finally processed. The issues raised by the charging party's charge have been answered and, where appropriate, remedied. There is no further action to be taken by the Agency.

In FY 2008, the NLRB closed 68 percent of all ULP cases within 120 days of the docketing of the charge. In FY 2007, the Agency closed 66 percent of its ULP cases within 120 days of docketing. As evidenced by this year's achievements, we are confident that the Agency will continue to make progress in this area and anticipate that we will be able to meet the interim goal of 68.5 percent in FY 2009.

**MEASURE NO. 3:** *The percentage of meritorious (prosecutable) ULP cases closed on compliance within 365 days of the filing of the ULP charge. (Table 3)*

ULP cases are closed on compliance when the remedial actions ordered by the Board or agreed to by the party charged with the violation of the NLRA are complete. This measure includes all litigated cases including those which are appealed to the circuit courts of appeals.

In FY 2008, the Agency closed 76 percent of all prosecutable ULP cases in 365 days from the docketing of the charge. Thus, the Agency exceeded the FY 2008 interim goal of 75 percent. Assuming continued stability in resources and intake, it is anticipated that the Agency will be able to meet the long-term target of 77 percent of cases before FY 2012.

**GOAL NO. 2, TABLE 3**

**Percentage of ULP Cases Closed on Compliance Within 365 Days**

YEAR	TARGET
FY 2007	74.0%
	(ACTUAL) 73.5%
FY 2008	75.0%
	(ACTUAL) 76.0%
FY 2009	75.5%
FY 2010	76.0%
FY 2011	76.5%
FY 2012	77.0%

**Counting of Days:**

The 365 days is calculated from the date the charge is docketed.

## FACTORS THAT AFFECT AGENCY PERFORMANCE

Various factors can affect each goal, objective, and performance measure contained in the NLRB's strategic and annual performance plans. These factors can also affect Agency performance as a whole. These factors include the following:

### BUDGET

The FY 2009 President's Budget request for the NLRB totals \$262.595 million, which is an increase of \$10.83 million over the funding provided in FY 2008. In FY 2008, the NLRB's budget request of \$256.238 million was reduced by 1.747 percent (\$4.476 million) because of a rescission contained in the FY 2008 omnibus spending bill. The resulting appropriation of \$251.762 million represented a little more than \$250,000 above the Agency's appropriation for FY 2007. Approximately 80 percent of the Agency's total budget is devoted to personnel costs. Budget shortfalls such as the one experienced in FY 2008 have a direct impact on staffing resources and limit the Agency's ability to facilitate casehandling.

However, the requested funding for FY 2009, if enacted by Congress, will provide the resources necessary to cover 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. Our goals assume the level of funding set forth in the President's Budget request.

### CASE INTAKE

During FY 2008, 22,501 ULP cases were filed with the NLRB, of which 36.1 percent were found to have merit, and 3,400 representation cases were filed, of which the merit factor rate was 65.6 percent. In FY 2008, the Agency's representation case intake increased by 2.3 percent and ULP case intake increased by 1.6 percent, with overall case intake increasing by 1.7 percent.

Based on current trends, the General Counsel estimates that the total of ULP and representation cases will remain level in FY 2009.

Several factors could affect case intake, impacting the Agency's effectiveness in accomplishing its strategic goals. As noted, the Agency does not control the number of cases filed. However, any event or issue that affects labor can spur potential union organizing, possibly resulting in an increase in caseload.

*Factors That  
Affect Agency  
Performance  
(cont'd.)*

Immigration reform, greater AFL-CIO focus on the immigration workforce, and the formation of the Change to Win labor federation can impact Agency caseload levels. Also, recent trends in union organizing among the service industries shows no sign of diminishing as organizing activities continue in the nursing home industry and among janitorial staffs where the Service Employees International Union has been particularly active in recent years.

Additional factors that could affect the NLRB's intake and the complexity of its work include: public perception about unionization and the role of the Agency, employment trends, stakeholder strategies, globalization of the economy, industrial economic trends, corporate reorganizations and bankruptcies, the overall health of the nation's economy, the level of labor-management cooperation efforts, and statutory changes.

### **SETTLEMENTS**

Currently, of those cases in which merit is found, approximately 95 percent (96.9 percent in FY 2008) 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 of course not entirely 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 and/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.

### **BOARD MEMBER VACANCIES**

Another factor outside the control of the Agency that impacts case production is the failure of the Senate to confirm Presidential appointees to Board Member positions, or to permit recess appointments, causing prolonged vacancies on the Board. The assigned caseload of individual Board Members rises, and decisions can be delayed, due to vacancies on the Board. Board Member vacancies are the primary reason for delays in issuance of Board decisions. The lack of a full-Board complement impairs Board productivity.

The term of Chairman Robert J. Battista expired on December 16, 2007, and the terms of Board Members Dennis P. Walsh and



*Factors That  
Affect Agency  
Performance  
(cont'd.)*

Peter C. Kirsanow, who were serving on recess appointments, ended on December 31, 2007, with the adjournment of Congress. The President designated Board Member Peter C. Schaumber as Chairman in March 2008. However, the Senate did not confirm the President's nominees for the three seats vacated in December 2007. As a consequence, for most of FY 2008, the Board had only two confirmed appointees, Chairman Schaumber and Board Member Wilma B. Liebman. The lack of a full Board, or even a three-member Board panel, prevented issuance of decisions in approximately 20-25 percent of cases. It is expected that the Board will continue to operate with only the two confirmed appointees into FY 2009.

Terms of Board Members and General Counsel	Confirmed	Term Expiration
Chairman Peter C. Schaumber	08/14/06	08/27/10
Member Wilma B. Liebman	08/14/06	08/27/11
Member (Vacant since 12/16/07)		
Member (Vacant since 12/31/07)		
Member (Vacant since 12/31/07)		
General Counsel Ronald Meisburg	08/14/06	08/13/10

## RELIABILITY OF PERFORMANCE DATA

The NLRB's performance measurement system used to track case processing times has been highly regarded for decades and modeled by other Federal agencies. Most of the data collected tracks how much time is spent in each step of the case processing "pipeline." The Agency does not rely on any outside sources for the data it uses in its performance measurement system.

This system has been incorporated into an electronic database called the Case Activity Tracking System (CATS). CATS provides case activity and status information to all NLRB offices on the new cases filed each year, as well as cases carried over from the previous year. It provides support for the function and work requirements of the NLRB's attorneys, field examiners, managers, and support staff. CATS has been a key tool for managing caseload and human resources.

Each NLRB office is responsible for collecting performance measurement data and verifying it. Most of the performance

*Factors That  
Affect Agency  
Performance  
(cont'd.)*

information for the Government Performance and Results Act (GPRA) measures is obtained through the CATS data generated to assess the casehandling process initiated in the Regional Offices. Data about each case is collected and reported in all offices daily. Data and reports are available online to users at the Regional and National levels. Verification of the accuracy of the data collected occurs regularly in all Regional Offices, as most resource allocation decisions are made on the basis of this data. The Board maintains its own case management system, supported by Documentum, called the Judicial Case Management System (JCMS), which handles all internal case processing, including the storage, circulation, and approval of documents.

In Headquarters offices there are several other automated systems that furnish data for the performance measures of the Headquarters offices and aid in managing caseload and staff in those offices. Systemic verification occurs monthly during management reviews and during various phases of the budget and GPRA reporting cycles. Data is cross-checked and compared to historical trends to ensure the validity and reliability of the performance data.

When pertinent to the conduct of ongoing audit activities, the Inspector General will review performance measures to consider their appropriateness.

## **PROGRAM EVALUATION**

The NLRB evaluates whether programs are achieving their GPRA and other performance targets through different techniques and mechanisms. The Board tracks the status of all of its cases on a regular basis to determine performance against yearly targets that support the Agency's performance measures and strategic goals. A standing committee (Triage Committee) comprised of senior management officials meets weekly to review the status of cases that have entered the issuance process, plus other cases that are likely to require special handling. Triage representatives report back to the Board Members on performance data and staff workload, among other issues. The Board has an electronic casehandling management system that captures all case events in a database from which reports are generated. The Board Members also meet and communicate with each other on a regular basis to discuss cases.

The NLRB also tracks how the various circuit courts, comprised of judges with lifetime appointments with no apparent labor-management bias, have treated the Board's cases on appeal. Over the past several years the Agency's enforcement rate has been among the highest in its history. This trend continued in FY 2008. During that period, the United States Courts of Appeals

*Program  
Evaluation  
(cont'd.)*

decided 72 enforcement and review cases involving the Board, compared with 67 in FY 2007. In these cases, 88.9 percent of Board decisions were enforced in full or in part and 80.6 percent were enforced in full.

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 casehandling and administrative procedures. Also, a field and Operations-Management Committee review all ALJ and Board decisions constituting a significant loss in order to assess the quality of litigation. Moreover, the Regional Offices' performance with regard to quality, timeliness, and effectiveness in implementing the General Counsel's priorities is incorporated into the Regional Directors' annual performance appraisals.

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 86.7 percent and before the district courts has been 85 to 90 percent. The Division of Operations-Management regularly reviews case decisions in order to determine the quality of 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 to obtain feedback on their members' experiences practicing before the NLRB.

## III. FINANCIAL SECTION



**PROTECTING DEMOCRACY IN THE WORKPLACE SINCE 1935**

## LETTER FROM THE DIRECTOR OF ADMINISTRATION

As the Director of Administration at the National Labor Relations Board (NLRB), I am responsible for the overall administrative management of the NLRB, including financial management.

For Fiscal Year (FY) 2008, I am pleased that the NLRB received an unqualified opinion from the auditors on its financial statements. In these challenging financial times, it is important that the public know the NLRB is using its resources in the manner entrusted to us. The Financial Section of this Performance and Accountability Report contains the NLRB's financial statements, which present a fair and accurate financial picture of the Agency.

FY 2008 was a challenging year for the NLRB. The Agency's budget was reduced \$4.476 million by a rescission contained in the omnibus spending bill for those agencies that were part of the Labor-HHS appropriations bill. The resulting appropriation for FY 2008 was a little more than \$250,000 above that received in FY 2007. As in fiscal years 2006 and 2007, increases in salaries, rent, etc., which have totaled several million dollars over the past two years, had to be absorbed within funding that had not been correspondingly increased. The post-rescission funding required decreases in many areas and, because staffing comprises 80 percent of Agency spending, the Agency had to rely heavily on FTE reduction to cover any shortfall. However, as in the past two fiscal years, Agency managers, supervisors, and staff rose to the challenge and by being proactive and enhancing efficiencies throughout the year, in conjunction with attrition and a conservative hiring plan, the Agency was able to effectively manage its caseload without an increase in the backlog, provide training and other benefits, fill critical vacancies, cover increased rental and security costs, and pay for essential information technology requirements.

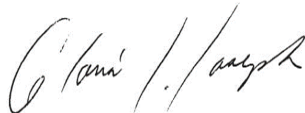
Since 2002, the NLRB's financial systems services have been provided by the Department of the Interior's National Business Center (NBC). In 2004, the Agency upgraded its accounting system to NBC's Momentum System as it provided better Web-based functionality and improved integration with other systems. However, this past fiscal year, we began encountering a number of problems with NBC, such as its inability to produce accurate cost estimates for an accounting system upgrade that it described as mandatory and numerous posting errors, such as the one that resulted in an audit finding which was reported in the FY 2007 Management Letter. The number and seriousness of the problems forced the NLRB to seek intervention from the Office of Management and Budget. While the Agency continues to use the Momentum System as its accounting system and work with NBC to resolve problems, the Agency has begun the process of reviewing services offered by other providers.

In connection with the FY 2007 audit, the NLRB's Office of the Inspector General (OIG) issued a management letter which contained four findings, one which involved a recommendation made in connection with the FY 2006 audit and three new findings. Two of the new findings were in the information technology area and the third involved an over-accrual of payroll expenses that occurred, as stated earlier, due to a posting error by NBC.

While we were not able to originally reach an agreement with the OIG on the implementation of the OIG recommendations, the Office of the Chief Information Officer and the Division of Administration worked throughout FY 2008 to address problems reported by the OIG. In fact, the auditors reviewed our progress in implementing solutions throughout the FY 2008 financial statement audit. To date, one of the two findings with respect to information technology has been completed and progress continues to be made regarding compliance with the Agency's standards on password management.

Because of the posting error which resulted in the over-accrual of payroll expenses, the Agency's Finance Officer instituted further internal controls to assist in monitoring accruals and reversals. These controls allowed him to identify and correct any errors almost immediately, and there has not been a re-occurrence of the problem found by the auditors in FY 2007.

The NLRB is committed to providing high quality financial management services. As we go forward in FY 2009, the Agency faces the challenges of not only managing and marshalling its resources in a constrained budget environment, but also ensuring that the appropriate systems and financial tools are in place to assist in the management of those resources, all with the aim of efficiently accomplishing the mission of the NLRB - protection of democracy in the workplace.



Gloria Joseph  
Director of Administration

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# INDEPENDENT AUDITOR'S REPORT

**UNITED STATES GOVERNMENT**  
**National Labor Relations Board**  
**Office of Inspector General**



## Memorandum

November 12, 2008

To: Peter C. Schaumber  
Chairman

From: David P. Berry *D.P. Berry*  
Acting Inspector General

Subject: Audit of the National Labor Relations Board Fiscal Year 2008 Financial Statements  
(OIG-F-13-09-01)

This memorandum transmits Carmichael, Brasher, Tuvell & Company's (CBTC) audit report on the National Labor Relations Board (NLRB) Fiscal Year (FY) 2008 Financial Statements.

The Accountability of Tax Dollars Act of 2002 requires NLRB to prepare and submit to Congress and the Director of the Office of Management and Budget (OMB) annual audited financial statements. We contracted with CBTC, an independent public accounting firm, to audit the financial statements. The contract required that the audit be done in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States and Bulletin 07-04, *Audit Requirements for Federal Financial Statements*, issued by OMB.

### Results of Independent Audit

CBTC issued an unqualified opinion on the NLRB FY 2008 financial statements. CBTC previously issued an unqualified audit opinion on the FY 2007 information included with the consolidated statements. CBTC is not required to and did not provide an opinion on internal control. In its audit report, CBTC did not identify any significant deficiencies. A significant deficiency is a deficiency in internal control, or a combination of deficiencies, that adversely affects the Agency's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the Agency's financial statements that is more than inconsequential will not be prevented or detected.

CBTC also reported that the Agency did not comply with the Federal Acquisition Regulation when it entered into contracts totaling \$111,002 with two vendors who were not

registered in the Central Contractor Registration prior to the date of the award. This resulted in two invalid obligations being recorded against the FY 2008 appropriation.

NLRB's Director of Administration agreed with the report findings. The Director of Administration's response, dated November 12, 2008, follows CBTC's report.

**Evaluation of CBTC's Audit Performance**

In connection with the contract, we reviewed CBTC's report and related documentation and inquired of its representatives. Our review, as differentiated from an audit in accordance with generally accepted government auditing standards, was not intended to enable us to express, and we do not express, opinions on the NLRB's financial statements or internal control or conclusions on compliance with laws and regulations. CBTC is responsible for the attached auditor's report dated November 6, 2008, and the conclusions expressed in the report. However, our review disclosed no instances where CBTC did not comply, in all material respects, with generally accepted government auditing standards.

The Office of Inspector General appreciates the courtesies and cooperation extended to CBTC and our staff during the audit. If you have any questions, please contact me or Emil T. George, Assistant Inspector General for Audits.

**Attachments**

cc: General Counsel





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CERTIFIED PUBLIC ACCOUNTANTS

## INDEPENDENT AUDITORS' REPORT

To David P. Berry, Acting Inspector General  
National Labor Relations Board

The Accountability of Tax Dollars Act of 2002 made the National Labor Relations Board (NLRB) subject to the annual financial statement reporting requirements of the Chief Financial Officers Act of 1990, which requires agencies to report annually to Congress on their financial status and any other information needed to fairly present the agencies' financial position and results of operations.

The objectives of the audit are to express an opinion on the fair presentation of NLRB's principal financial statements, obtain an understanding of the Agency's internal control, and test compliance with laws and regulations that could have a direct and material effect on the financial statements.

We have audited the balance sheets of NLRB as of September 30, 2008 and 2007, and the related consolidated statements of net cost, changes in net position, and budgetary resources for the years then ended.

NLRB's management is responsible for preparing the financial statements in conformity with accounting principles generally accepted in the United States of America; establishing, maintaining, and assessing internal controls over financial reporting; preparing the Management's Discussion and Analysis (MD&A); and complying with laws and regulations.

Our responsibility is to express an opinion on the Fiscal Year (FY) 2008 and 2007 financial statements of NLRB based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 07-04, *Audit Requirements for Federal Financial Statements*. These standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatements. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

## OPINION ON FINANCIAL STATEMENTS

In our opinion, the financial statements referred to above present fairly, in all material respects, the assets, liabilities, and net position of NLRB, as of September 30, 2008 and 2007; and the net cost, changes in net position, and budgetary resources for the years then ended in conformity with accounting principles generally accepted in the United States of America.

#### REPORT ON INTERNAL CONTROL

In planning and performing our audit, we considered NLRB's internal control over financial reporting by obtaining an understanding of the design effectiveness of its internal controls, determined whether internal controls had been placed in operation, assessed control risk, and performed tests of controls as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements. We limited our internal control testing to those controls necessary to achieve the objectives described in OMB Bulletin No. 07-04. We did not test all internal controls relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982, such as those controls relevant to ensuring efficient operations. The objective of our audit was not to provide assurance on internal control or on the effectiveness of NLRB's internal control. Because of inherent limitations in internal control, misstatements due to error or fraud, losses, or noncompliance may nevertheless occur and not be detected. Consequently, we do not provide an opinion on the effectiveness of NLRB's internal control.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected by the entity's internal control.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the entity's internal control.

Our consideration of internal control was for the limited purpose described above and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control that we consider to be material weaknesses, as defined above. However, we identified certain other matters in internal control that came to our attention during our audit which we communicated in writing to management and those charged with governance.

We considered NLRB's internal control over Required Supplementary Information (RSI) by obtaining an understanding of the Agency's internal control, determining whether these internal controls had been placed in operation, assessing control risk, and performing tests of controls as required by OMB Bulletin No. 07-04. The objective of our audit was not to provide assurance on these internal controls. Accordingly, we do not provide an opinion on such controls.

#### REPORT ON COMPLIANCE WITH LAWS AND REGULATIONS

As part of obtaining reasonable assurance about whether the Agency's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts, and certain other laws and regulations specified in OMB Bulletin No. 07-04. We limited our tests of compliance to these provisions and we did not

test compliance with all laws and regulations applicable to NLRB. We caution that noncompliance may occur and not be detected by these tests and that such testing may not be sufficient for other purposes.

Our tests of compliance with certain provisions of laws and regulations discussed in the preceding paragraph disclosed the following instance of noncompliance required to be reported under U. S. generally accepted government auditing standards and OMB audit guidance.

**Federal Acquisition Regulation (FAR) Subpart 4.11 – Central Contractor Registration (CCR)**

Section 4.1103 of this subpart states that the contracting officer “shall verify that the prospective contractor is registered in the CCR database before awarding a contract or agreement.” On September 30, 2008, the Procurement and Facilities Branch entered into contracts totaling approximately \$111,002 with two vendors for space and design services and training. The contracting officers were aware that these vendors did not have active registrations in the CCR prior to the date of award, as required by the FAR. This resulted in two invalid obligations being recorded against the FY 2008 appropriation.

Except as noted above, our tests of compliance with selected provisions of laws and regulations disclosed no other instances of noncompliance that would be reportable under U. S. generally accepted government auditing standards or OMB audit guidance.

Providing an opinion on compliance with laws and regulations was not an objective of our audit and, accordingly, we do not express such an opinion.

**OTHER ACCOMPANYING INFORMATION**

Our audit was conducted for the purpose of forming an opinion on the financial statements of NLRB taken as a whole. The accompanying financial information is not a required part of the financial statements.

The other accompanying information included in the MD&A and RSI sections of the Performance and Accountability Report are required by the Federal Accounting Standards Advisory Board and OMB Circular A-136, *Financial Reporting Requirements*. We have applied limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the information. We did not audit the other accompanying information and, accordingly, do not express an opinion or any other form of assurance on it.

This communication is intended solely for the information and use of the management of NLRB, others within the organization, OMB, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

CARMICHAEL, BRASHER, TUVELL & COMPANY, PC

*Carmichael, Brasher, Tuvell + Co., P.C.*


Atlanta, Georgia  
November 6, 2008

## AGENCY RESPONSE

UNITED STATES GOVERNMENT  
*National Labor Relations Board*  
*Division of Administration*  
Memorandum



TO: David P. Berry  
Inspector General

FROM: Gloria Joseph   
Director of Administration

DATE: November 12, 2008

SUBJECT: Response to Draft Audit Report – NLRB Fiscal Year 2008 Financial Statements

We have reviewed the Audit Report submitted by Carmichael Brasher Tuvell & Company (Carmichael) and are pleased that the FY 2008 audit of the NLRB's financial statements has resulted in an unqualified opinion with no recommendations or corrective actions. We agree with the findings of the report and have no comments with respect to the report.

If you have any questions, please do not hesitate to contact me.

cc: Board  
General Counsel

## PRINCIPAL FINANCIAL STATEMENTS

### National Labor Relations Board

#### Balance Sheet

As of September 30, 2008 and 2007

*(in dollars)*

	FY 2008	FY 2007
<b>Assets:</b>		
<b>Intragovernmental:</b>		
Fund Balance with Treasury (Note 2)	\$ 24,894,658	\$ 22,594,083
Investments, Net (Note 3)	4,349,913	3,196,740
Advances (Note 4)	968	11,291
<b>Total Intragovernmental</b>	<b>29,245,539</b>	<b>25,802,114</b>
Accounts Receivable, Net (Note 5)	43,450	37,731
Advances (Note 4)	-	20,969
General Property, Plant and Equipment, Net (Notes 6 and 10)	8,910,658	5,993,887
<b>Total Assets</b>	<b>\$ 38,199,647</b>	<b>\$ 31,854,701</b>
<b>Liabilities:</b>		
<b>Intragovernmental:</b>		
Accounts Payable (Note 7)	\$ 999,354	\$ 1,247,449
Employer Contributions and Payroll Taxes	1,658,122	1,355,674
FECA Liability (Notes 8 and 10)	930,545	977,895
<b>Total Intragovernmental</b>	<b>3,588,021</b>	<b>3,581,018</b>
Accounts Payable	2,737,933	4,220,506
Estimated Future FECA Liability (Notes 8 and 10)	1,666,412	2,506,988
Accrued Payroll and Benefits	7,255,123	6,009,836
Accrued Annual Leave (Notes 8 and 10)	13,687,550	13,216,335
Backpay Settlement Due to Others (Notes 8 and 9)	7,338,443	3,680,543
Custodial Liability (Notes 8 and 9)	96,366	401,903
<b>Total Liabilities</b>	<b>\$ 36,369,848</b>	<b>\$ 33,617,129</b>
<b>Net position:</b>		
Unexpended Appropriations	9,160,197	8,907,172
Cumulative Results of Operations (Note 10)	(7,330,398)	(10,669,600)
<b>Total Net Position</b>	<b>1,829,799</b>	<b>(1,762,428)</b>
<b>Total Liabilities and Net Position</b>	<b>\$ 38,199,647</b>	<b>\$ 31,854,701</b>

*The accompanying notes are an integral part of these statements.*

**National Labor Relations Board**  
**Statement of Net Cost**  
**For the Periods Ended September 30, 2008 and 2007**  
*(in dollars)*

	FY 2008	FY 2007
<b>Program Costs:</b>		
Resolve Representation Cases		
<b>Total Gross Cost</b>	<b>\$ 42,766,870</b>	<b>\$ 43,589,206</b>
Resolve Unfair Labor Practices		
<b>Total Gross Cost</b>	<b>218,126,327</b>	<b>222,055,844</b>
<b>Other</b>		
Gross Costs	102,764	58,765
Less: Earned Revenue	102,764	58,765
<b>Total Net Cost - Other</b>	<b>-</b>	<b>-</b>
<b>Net Cost of Operations (Note 11)</b>	<b>\$ 260,893,197</b>	<b>\$ 265,645,050</b>

*The accompanying notes are an integral part of these statements.*

**National Labor Relations Board**  
**Statement of Changes In Net Position**  
**For the Periods Ended September 30, 2008 and 2007**  
*(in dollars)*

	Consolidated Total FY 2008	Consolidated Total FY 2007
<b>Cumulative Results of Operations:</b>		
Beginning Balance	\$ (10,669,600)	\$ (16,235,540)
Correction of Errors (Note 13)	-	1,689,486
Beginning Balance, as adjusted	(10,669,600)	(14,546,054)
<b>Budgetary Financing Sources:</b>		
Appropriations-used	249,805,059	253,749,692
<b>Other Financing Sources (Non-Exchange):</b>		
Imputed Financing Costs (Note 14)	14,427,340	15,778,464
Loss on Disposal of Assets	-	(6,652)
Total Financing Sources	264,232,399	269,521,504
Net Cost of Operations	(260,893,197)	(265,645,050)
Net Change	3,339,202	3,876,454
Cumulative Results of Operations (Note 10)	(7,330,398)	(10,669,600)
<b>Unexpended Appropriations:</b>		
Beginning Balance	8,907,172	11,859,346
<b>Budgetary Financing Sources:</b>		
Appropriations-received	256,238,000	251,507,470
Appropriations-used	(249,805,059)	(253,749,692)
Recissions & Cancelled Appropriations	(6,179,916)	(709,952)
Total Budgetary Financing Sources	253,025	(2,952,174)
Total Unexpended Appropriations	9,160,197	8,907,172
Net Position	\$ 1,829,799	\$ (1,762,428)

*The accompanying notes are an integral part of these statements.*

**National Labor Relations Board**  
**Statement of Budgetary Resources**  
**For the Periods Ended September 30, 2008 and 2007**  
*(in dollars)*

	FY 2008	FY 2007
<b>Budgetary Resources:</b>		
Unobligated balance, brought forward, October 1:	\$ 5,360,240	\$ 5,028,944
Recoveries of prior year unpaid obligations	704,286	1,032,460
Budget authority:		
Appropriations (Note 15)	256,238,000	251,507,470
Spending authority from offsetting collections:		
Earned		
Collected	173,502	248,439
Subtotal	256,411,502	251,755,909
Permanently not available (Note 15)	(6,179,916)	(709,952)
<b>Total Budgetary Resources (Note 16)</b>	<b>\$ 256,296,112</b>	<b>\$ 257,107,361</b>
<b>Status of Budgetary Resources:</b>		
Obligations incurred:		
Direct	251,582,616	251,688,356
Reimbursable	102,764	58,765
Subtotal (Note 16)	251,685,380	251,747,121
Unobligated balance:		
Apportioned (Note 16)	543,715	276,311
Unobligated balance not available	4,067,017	5,083,929
<b>Total Status of Budgetary Resources (Note 16)</b>	<b>\$ 256,296,112</b>	<b>\$ 257,107,361</b>
<b>Change in Obligated Balance:</b>		
Obligated balance, brought forward, October 1	16,348,138	18,395,138
Obligations incurred, net	251,685,380	251,747,121
Gross Outlays	(250,130,201)	(252,761,661)
Recoveries of prior year unpaid obligations, actual	(704,286)	(1,032,460)
Obligated balance, net, end of period	<b>\$ 17,199,031</b>	<b>\$ 16,348,138</b>
<b>Net Outlays:</b>		
Gross outlays	250,130,201	252,761,661
Offsetting collections	(173,502)	(248,439)
Net Outlays	<b>\$ 249,956,699</b>	<b>\$ 252,513,222</b>

*The accompanying notes are an integral part of these statements.*



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## NOTES TO PRINCIPAL STATEMENTS

### Note 1. Summary of Significant Accounting Policies

#### A. Reporting Entity

The National Labor Relations Board (NLRB) is an independent Federal agency established in 1935 to administer the National Labor Relations Act (NLRA). The NLRA is the principal labor relations law of the United States, and its provisions generally apply to private sector enterprises engaged in, or to activities affecting, interstate commerce. The NLRB's jurisdiction includes the U.S. Postal Service (other government entities, railroads, and airlines are not within the NLRB's jurisdiction). The NLRB seeks to serve the public interest by reducing interruptions in commerce caused by industrial strife. The NLRB does this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The NLRB has two principal functions: (1) to determine and implement, through secret ballot elections, free democratic choice by employees as to whether they wish to be represented by a union in dealing with their employers and, if so, by which union; and (2) to prevent and remedy unlawful acts, called unfair labor practices (ULP), by either employers, unions, or both. The NLRB's authority is divided both by law and delegation. The five-member Board (Board) primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel investigates and prosecutes ULP before administrative law judges, whose decisions may be appealed to the Board; and, on behalf of the Board, conducts secret ballot elections to determine whether employees wish to be represented by a union.

#### B. Basis of Accounting and Presentation

These financial statements have been prepared to report the financial position, net cost, changes in net position, and budgetary resources of the NLRB as required by the Accountability of Tax Dollars Act of 2002. These financial statements have been prepared from the books and records of the NLRB in accordance with accounting principles generally accepted in the United States of America (GAAP), and the form and content requirements of the Office of Management and Budget (OMB) Circular No. A-136, *Financial Reporting Requirements*, revised as of June 03, 2008. GAAP for Federal entities are the standards prescribed by the Federal Accounting Standards Advisory Board (FASAB), which is the official standard-setting body for the Federal Government. While the statements have been prepared from the books and records of the NLRB in accordance with GAAP for Federal entities and the formats prescribed by OMB, the statements are in addition to the financial reports used to monitor and control budgetary resources which are prepared from the same books and records. These financial statements present proprietary and budgetary information.

The Balance Sheet presents agency assets and liabilities, and the difference between the two, which is the agency net position. Agency assets include both entity assets—those which are available for use by the agency—and non-entity assets—those which are managed by the agency but not available for use in its operations. Agency liabilities include both those covered by budgetary resources (funded) and those not covered by budgetary resources (unfunded).

The Statement of Net Cost presents the gross costs of programs less earned revenue to arrive at the net cost of operations for both programs and for the agency as a whole.

The Statement of Changes in Net Position reports beginning balances, budgetary and other financing sources, and net cost of operations, to arrive at ending balances.

The Statement of Budgetary Resources provides information about how budgetary resources were made available as well as their status at the end of the period. Recognition and measurement of budgetary information reported on this statement is based on budget terminology, definitions, and guidance in OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, dated June 2008.

The Fiscal Year (FY) 2010 Budget of the United States (also known as the President's Budget) with actual numbers for FY 2008 was not published at the time that these financial statements were issued. The President's Budget is expected to be published in March 2009 and will be available from the United States Government Printing Office. There are no differences in the actual amounts for FY 2007 that have been reported in the FY 2009 Budget of the United States and the actual numbers that appear in the FY 2007 Statement of Budgetary Resources.

OMB financial statement reporting guidelines for FY 2008 require the presentation of comparative financial statements for all of the principal financial statements. The NLRB is presenting comparative FY 2008 financial statements for the Balance Sheet, Statement of Net Cost, Statement of Changes in Net Position, and Statement of Budgetary Resources, and these statements have been prepared in accordance with GAAP.

The financial statements should be read with the realization that they are for a component of the United States Government, a sovereign entity. One implication of this is that liabilities cannot be liquidated without legislation that provides resources and legal authority to do so.

The accounting structure of Federal agencies is designed to reflect both accrual and budgetary accounting transactions. Under the accrual method of accounting, revenues are recognized when earned, and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash.

The budgetary accounting principles, on the other hand, are designed to recognize the obligation of funds according to legal requirements, which in many cases is prior to the occurrence of an accrual based transaction. The recognition of budgetary accounting transactions is essential for compliance with legal constraints and controls over the use of Federal funds.

The information as presented on the Statement of Net Cost is based on the programs below:

**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, or in some cases continues to represent, 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 is to investigate the petition and, if necessary, conduct a hearing to determine whether the employees constitute an appropriate bargaining unit under the NLRA. The NLRB must also determine which employees are properly included in the bargaining unit, 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.

**ULP Cases** are initiated by individuals or organizations through the filing of a charge with the NLRB. If the NLRB Regional Office believes that a charge has merit, it issues and prosecutes a complaint against the charged party, unless settlement is reached. A complaint that is not settled or withdrawn is tried before an administrative law judge (ALJ), who issues a decision, which may be appealed by any party to the Board. The Board acts in such matters as a quasi-judicial body, deciding cases on the basis of the formal trial record according to the law and the body of case law that has been developed by the Board and the Federal courts.

### **C. Budgets and Budgetary Accounting**

Congress annually adopts a budget appropriation that provides the NLRB with authority to use funds from the U.S. Treasury (Treasury) to meet operating expense requirements. The NLRB has single year budgetary authority and all unobligated amounts at year-end are expired. At the end of the fifth year all amounts not expended are canceled. All revenue received from other sources must be returned to the Treasury.

Budgetary accounting measures appropriation and consumption of budget/spending authority or other budgetary resources and facilitates compliance with legal constraints and controls over the use of Federal funds. Under budgetary reporting principles, budgetary resources are consumed at the time of purchase. Assets and liabilities, which do not consume current budgetary resources, are not reported, and only those liabilities for which valid obligations have been established are considered to consume budgetary resources.

Transactions are recorded on an accrual accounting basis. Under the accrual method, revenues are recognized when earned and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash.

### **D. Financing Sources**

The NLRB receives funds to support its programs through annual appropriations. These funds may be used to pay program and administrative expenses (primarily salaries and benefits, occupancy, travel, and contractual service costs).

For accounting purposes, appropriations are recognized as financing sources (appropriations used) at the time expenses are accrued. Appropriations expended for general property, plant and equipment are recognized as expenses when the asset is consumed in operations (depreciation and amortization).

### **E. Fund Balance with the Treasury**

The NLRB does not maintain cash in commercial bank accounts. Cash receipts and disbursements are processed by the Treasury. The Agency's records are reconciled with those of Treasury. The fund balances with the Treasury are primarily appropriated funds that are available to pay current liabilities and to finance authorized purchases. Funds with the Treasury represent the NLRB's right to draw on the Treasury for allowable expenditures. In addition, funds held with the Treasury also include escrow funds that are not appropriated but are backpay funds that are the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings.

See Note 2 for additional information on Fund Balance with Treasury.

### **F. Investments, Net**

The NLRB invests funds in Federal Government securities for backpay that are held in the escrow account at Treasury. These funds held in Treasury are not appropriated funds. Backpay is the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings.

The Federal Government securities include marketable Treasury market-based securities issued by the Federal Investment Branch of the Bureau of Public Debt. Market-based securities are Treasury securities that are not traded on any securities exchange, but mirror the prices of marketable securities with similar terms.

It is expected that Investments will be held until maturity; therefore they are valued at cost and adjusted for amortization of discounts, if applicable. The discounts are recognized as adjustments to interest income, utilizing the straight-line method of amortization for short-term securities (i.e., bills). Investments, redemptions, and reinvestments are controlled and processed by the Department of the Treasury.

There exists a signed Memorandum of Understanding (MOU) between the NLRB and the Treasury establishing the policies and procedures that the NLRB and the Treasury agree to follow for investing monies in, and redeeming investments held by, the deposit fund account in Treasury.

See Note 3 for additional information on Investments, Net.

### **G. Advances**

Advances consist of amounts advanced by the NLRB for the transit subsidy program, United States Postal Service for penalty mail, and for commercial payment system for postage.

See Note 4 for additional information on the Advances.

### **H. Accounts Receivable, Net of Allowance for Doubtful Accounts**

Accounts Receivable primarily consists of health benefit premiums due the NLRB from agency employees. Accounts receivable are stated net of allowance for doubtful accounts. The allowance is estimated based on an aging of account balances, past collection experience, and an analysis of outstanding accounts at year-end.

See Note 5 for additional information on Accounts Receivable.

### **I. General Property, Plant and Equipment**

General property, plant and equipment consist primarily of telephone systems, computer hardware, and software. The Agency has no real property.

General property, plant and equipment with a cost of \$15,000 or more per unit is capitalized at cost and depreciated using the straight-line method over the useful life. Other property items are expensed when purchased. Expenditures for repairs and maintenance are charged to operating expenses as incurred. The useful life for this category is 5 to 12 years. There are no restrictions on the use or convertibility of general property, plant and equipment.

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*Internal Use Software.* Internal use software (IUS) includes purchased commercial off-the-shelf software (COTS), contractor-developed software, and software that was internally developed by Agency employees. IUS is capitalized at cost if the acquisition cost is \$100,000 or more. For COTS software, the capitalized costs include the amount paid to the vendor for the software; for contractor-developed software it includes the amount paid to a contractor to design, program, install, and implement the software. Capitalized costs for internally developed software include the full cost (direct and indirect) incurred during the software development stage. The estimated useful life is 2 to 5 years for calculating amortization of software using the straight-line method.

*Internal Use Software in Development.* Internal use software in development is software that is being developed, but not yet put into production. At the time the software is moved into production, the costs will be moved into the IUS account described above. The NLRB is currently undertaking a major software development project called the Next Generation Case Management System (NxGen) that will replace a number of case tracking systems with one enterprise-wide system. NxGen will support the President's Management Agenda, such as for e-Gov, e-Filing, e-FOIA, and public Web-based access to NLRB data. This project is a multiple year undertaking in which various portions of the system will be rolled out as they are developed. The overall cost of this project is expected to exceed \$7 million.

See Note 6 for additional information on General Property, Plant and Equipment, Net.

#### **J. Non-Entity Assets**

Assets held by the NLRB that are not available to the NLRB for obligation are considered non-entity assets. The NLRB holds non-entity assets for backpay.

See Notes 9 and 17 for additional information on Non-Entity Assets.

#### **K. Liabilities**

Liabilities represent the amount of monies or other resources that are likely to be paid by the NLRB as the result of a transaction or event that has already occurred. However, no liability can be paid by the NLRB absent an appropriation. Liabilities for which an appropriation has not been enacted are therefore classified as Liabilities Not Covered by Budgetary Resources and there is no certainty that the appropriation will be enacted. Also, liabilities of the NLRB arising from other than contracts can be abrogated by the Government, acting in its sovereign capacity.

#### **L. Liabilities Not Covered by Budgetary Resources**

Liabilities represent the amount of monies or other resources that are likely to be paid by the NLRB as the result of a transaction or event that has already occurred. Liabilities not covered by budgetary resources result from the receipts of goods or services in the current or prior periods, or the occurrence of eligible events in the current or prior periods for which appropriations, revenues, or other financing sources of funds necessary to pay the liabilities have not been made available through Congressional appropriations or current earnings of the reporting entity.

#### ***Federal Employees Workers' Compensation Program.***

The Federal Employees Workers' Compensation Program (FECA) provides income and medical cost protection to covered Federal civilian employees injured on the job, to employees who have incurred work-related occupational diseases, and to beneficiaries of employees whose deaths are

attributable to job-related injuries or occupational diseases. The FECA program is administered by Department of Labor (DOL), which pays valid claims and subsequently seeks reimbursement from the NLRB for these paid claims.

The FECA liability consists of two components. The first component is based on actual claims paid by DOL but not yet reimbursed by the NLRB. The NLRB reimburses DOL for the amount of the actual claims as funds are appropriated for this purpose. There is generally a 2- to 3-year time period between payment by DOL and reimbursement by the NLRB. As a result, the NLRB recognizes a liability for the actual claims paid by DOL and to be reimbursed by the NLRB.

The second component is the estimated liability for future benefit payments as a result of past events. This liability includes death, disability, medical, and miscellaneous costs. The NLRB determines this component annually, as of September 30, using a method that considers historical benefit payment patterns.

The NLRB uses the methodology of reviewing the ages of the claimant on a case-by-case basis (because of the small number of claimants) to evaluate the estimated FECA liability. The determination was made to use the life expectancy of claimants of 80 and 84 years for male and female, respectively.

See Note 8 for additional information on the FECA liability.

### *Other*

Accrued annual leave represents the amount of annual leave earned by the NLRB employees but not yet taken.

See Note 10 for additional information on Annual Leave.

### **M. Contingencies**

The criteria for recognizing contingencies for claims are:

1. a past event or exchange transaction has occurred as of the date of the statements;
2. a future outflow or other sacrifice of resources is probable; and
3. the future outflow or sacrifice of resources is measurable (reasonably estimated).

The NLRB recognizes material contingent liabilities in the form of claims, legal action, administrative proceedings and suits that have been brought to the attention of legal counsel, some of which will be paid by the Treasury Judgment Fund. It is the opinion of management and legal counsel that the ultimate resolution of these proceedings, actions, and claims will not materially affect the financial position or results of operations.

Contingencies are recorded when losses are probable, and the cost is measurable. When an estimate of contingent losses includes a range of possible costs, the most likely cost is reported; where no cost is more likely than any other, the lowest possible cost in the range is reported. This item will normally be paid from appropriated funds.

See Note 18 for additional information on Contingencies.

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## N. Unexpended Appropriations

Unexpended appropriations represent the amount of the NLRB's unexpended appropriated spending authority as of the fiscal year-end that is unliquidated or is unobligated and has not lapsed, been rescinded, or withdrawn.

## O. Annual, Sick, and Other Leave

Annual leave is accrued as it is earned by employees and is included in personnel compensation and benefit costs. Each year, the balance in the accrued annual leave liability account is adjusted to reflect current pay rates. Annual leave earned but not taken, within established limits, is funded from future financing sources. Sick leave and other types of non-vested leave are expensed as taken.

See Note 10 for additional information on Annual Leave.

## P. Life Insurance and Retirement Plans

### *Federal Employees Group Life Insurance (FEGLI) Program.*

Most NLRB employees are entitled to participate in the FEGLI Program. Participating employees can obtain "basic life" term life insurance, with the employee paying two-thirds of the cost and the NLRB paying one-third. Additional coverage is optional, to be paid fully by the employee. The basic life coverage may be continued into retirement if certain requirements are met. The Office of Personnel Management (OPM) administers this program and is responsible for the reporting of liabilities. For each fiscal year, OPM calculates the U.S. Government's service cost for the post-retirement portion of the basic life coverage. Because the NLRB's contributions to the basic life coverage are fully allocated by OPM to the pre-retirement portion of coverage, the NLRB has recognized the entire service cost of the post-retirement portion of basic life coverage as an imputed cost and imputed financing source.

### *Retirement Programs.*

The NLRB employees participate in one of two retirement programs, either the Civil Service Retirement System (CSRS), a defined benefit plan, or the Federal Employees Retirement System (FERS), a defined benefit and contribution plan. On January 1, 1987, FERS went into effect pursuant to Public Law 99-335. Most NLRB employees hired after December 31, 1983, are automatically covered by FERS and Social Security. Employees hired prior to January 1, 1984, could elect to either join FERS and Social Security or remain in CSRS. Employees covered by CSRS are not subject to Social Security taxes, nor are they entitled to accrue Social Security benefits for wages subject to CSRS. The NLRB contributes a matching contribution equal to 7 percent of pay for CSRS employees.

FERS consists of Social Security, a basic annuity plan, and the Thrift Savings Plan. The Agency and the employee contribute to Social Security and the basic annuity plan at rates prescribed by law. In addition, the Agency is required to contribute to the Thrift Savings Plan a minimum of 1 percent per year of the basic pay of employees covered by this system and to match voluntary employee contributions up to 3 percent of the employee's basic pay, and one-half of contributions between 3 percent and 5 percent of basic pay. For FERS employees, the Agency also contributes the employer's share of Medicare. The maximum amount of base pay that an employee

participating in FERS may contribute to the Thrift Savings Plan is \$16,500 in calendar year (CY) 2009 to this plan.

Employees belonging to CSRS may also contribute up to \$16,500 of their salary in CY 2009 and receive no matching contribution from the NLRB. The maximum for catch-up contributions for CY 2009 is \$5,500. For CY 2009, the regular and catch-up contributions may not exceed \$22,000. The sum of the employees' and the NLRB's contributions are transferred to the Federal Retirement Thrift Investment Board.

OPM is responsible for reporting assets, accumulated plan benefits, and unfunded liabilities, if any, applicable to CSRS participants and FERS employees government-wide, including the NLRB employees. The NLRB has recognized an imputed cost and imputed financing source for the difference between the estimated service cost and the contributions made by the NLRB and covered CSRS employees.

The NLRB does not report on its financial statements FERS and CSRS assets, accumulated plan benefits, or unfunded liabilities, if any, applicable to its employees. Reporting such amounts is the responsibility of OPM. The portion of the current and estimated future outlays for CSRS not paid by the NLRB is, in accordance with Statement of Federal Financial Accounting Standards (SFFAS) No. 5, Accounting for Liabilities of the Federal Government, included in the NLRB's financial statements as an imputed financing source.

Liabilities for future pension payments and other future payments for retired employees who participate in the Federal Employees Health Benefits and the FEGLI programs are reported by OPM rather than the NLRB.

SFFAS No. 5, Accounting for Liabilities of the Federal Government, requires employing agencies to recognize the cost of pensions and other retirement benefits during their employees' active years of service. OPM actuaries determine pension cost factors by calculating the value of pension benefits expected to be paid in the future, and provide these factors to the Agency for current period expense reporting. Information was also provided by OPM regarding the full cost of health and life insurance benefits.

In FY 2008, the NLRB, utilizing OPM provided cost factors, recognized \$6,688,767 of pension expenses, \$7,711,245 of post-retirement health benefits expenses, and \$27,328 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$14,427,340 as an imputed financing source to the extent that these intragovernmental expenses will be paid by OPM.

In FY 2007, the NLRB, utilizing OPM provided cost factors, recognized \$6,741,060 of pension expenses, \$9,009,924 of post-retirement health benefits expenses, and \$27,480 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$15,778,464 as an imputed financing source to the extent that these intragovernmental expenses will be paid by OPM.

See Note 14 for additional information on Imputed Financial Costs.

### **Q. Operating Leases**

The NLRB has no capital lease liability or capital leases. Operating leases consist of real and personal property leases with the General Services Administration (GSA). Regarding NLRB's



building lease, the GSA entered into a lease agreement for the NLRB's rental of building space. The NLRB pays GSA a standard level users charge for the annual rental. The standard level users charge approximates the commercial rental rates for similar properties. The NLRB is not legally a party to any building lease agreements, so it does not record GSA-owned properties. The real property leases are for NLRB's Headquarters and field offices and the personal property leases are for GSA cars.

See Note 12 for additional information on Operating Leases.

#### **R. Net Position**

Net position is the residual difference between assets and liabilities and is composed of unexpended appropriations and cumulative results of operations. Unexpended appropriations represent the amount of unobligated and unexpended budget authority. Unobligated balances are the amount of appropriations or other authority remaining after deducting the cumulative obligations from the amount available for obligation. The cumulative results of operations are the net result of the NLRB's operations since inception.

#### **S. Use of Management Estimates**

The preparation of the accompanying financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make certain estimates and assumptions that directly affect the results of reported assets, liabilities, revenues, and expenses. Actual results could differ from these estimates.

#### **T. Tax Status**

The NLRB as an independent Board of the Executive Branch, a Federal agency, is not subject to federal, state, and local taxes, and, accordingly, no provision for income tax is recorded.

#### **U. Comparative Data**

Comparative data for the prior year have been presented for the principal financial statements and their related notes.

**Note 2. Fund Balance With Treasury**

Treasury performs cash management activities for all Federal agencies. The net activity represents Fund Balance with Treasury. The Fund Balance with Treasury represents the right of the NLRB to draw down funds from Treasury for expenses and liabilities. Fund Balance with Treasury by fund type as of September 30, 2008, and September 30, 2007, consists of the following:

**Fund Balance with Treasury by Fund Type:**

(in thousands)	FY 2008 Entity Assets	Non- Entity Assets	Total	FY 2007 Entity Assets	Non- Entity Assets	Total
General Funds	\$ 21,810		\$ 21,810	\$ 21,708	-	\$ 21,708
Escrow Funds		\$ 3,085	\$ 3,085	-	\$ 886	\$ 886
<b>Total Fund Balance with Treasury</b>	<b>\$ 21,810</b>	<b>\$ 3,085</b>	<b>\$ 24,895</b>	<b>\$ 21,708</b>	<b>\$ 886</b>	<b>\$ 22,594</b>

The status of the fund balance may be classified as unobligated available, unobligated unavailable, and obligated but not yet distributed. Unobligated available funds, depending on budget authority, are generally available for new obligations in current operations. The unavailable balance includes amounts appropriated in prior fiscal years which are not available to fund new obligations. The obligated but not yet disbursed balance represents amounts designated for payment of goods and services ordered but not yet received or goods and services received for which payment has not yet been made.

Obligated and unobligated balances reported for the status of Fund Balance with Treasury do not agree with obligated and unobligated balances reported on the Statement of Budgetary Resources because the Fund Balance with Treasury includes items for which budgetary resources are not recorded, such as deposit funds and miscellaneous receipts.

Status of Fund Balance with Treasury as of September 30, 2008, and September 30, 2007, consists of the following:

**Fund Balance with Treasury by Availability:**

(in thousands)	FY 2008	FY 2007
<b>Unobligated Balance</b>		
Available	\$ 544	\$ 258
Unavailable	4,067	5,102
Obligated balance not yet disbursed	17,199	16,348
Non-budgetary fund balance with Treasury	3,085	886
<b>Totals</b>	<b>\$ 24,895</b>	<b>\$ 22,594</b>

### Note 3. Investments, Net

#### Investments in Treasury Securities:

The NLRB invests backpay funds that are authorized by the Regional Compliance Officers and other management officials in market-based Treasury securities issued by the Federal Investment Branch of the Bureau of Public Debt.

The maturity value of the investment as of September 20, 2008 was \$4.4 million as compared to \$3.2 million as of September 30, 2007.

There exists a signed MOU between the NLRB and Treasury establishing the policies and procedures that the NLRB and the Treasury agree to follow for investing monies in, and redeeming investments held by, the deposit fund account in Treasury.

Investments as of September 30, 2008, and September 30, 2007, consist of the following:

#### Investment Value at Investment Market Value

(in thousands)	Investment Type	Value at Maturity	Investment Net	Market Value Disclosure
<b>FY 2008</b>				
Treasury Securities	Marketable	\$ 4,358	\$ 4,350	\$ 4,350
<b>FY 2007</b>				
Treasury Securities	Marketable	\$ 3,239	\$ 3,197	\$ 3,197

The discount on the marketable securities as of September 20, 2008, and September 30, 2007, amounted to \$8 and \$42, respectively (in thousands).

### Note 4. Advances

#### Intragovernmental

Intragovernmental Advances to the United States Postal Service (USPS) as of September 30, 2008 were \$968 and \$11,291 as of September 30, 2007.

#### Commercial

Advances to Others of \$-0- as of September 30, 2008, and \$20,969 as of September 30, 2007, represent advances to a commercial vendor for postage.

**Note 5. Accounts Receivable, Net**

The FY 2008 intragovernmental accounts receivable is zero and the FY 2007 amount was also zero:

(in thousands)	FY 2008	FY 2007
<b>With the public</b>		
Accounts receivable	\$ 45	\$ 40
Allowance doubtful accounts	(2)	(2)
<b>Accounts receivable-net</b>	<b>\$ 43</b>	<b>\$ 38</b>

**Note 6. General Property, Plant and Equipment, Net**

General property, plant and equipment consist of that property which is used in operations and consumed over time. The table below summarizes the cost and accumulated depreciation for general property, plant and equipment.

Depreciation expense for the years ended September 30, 2008, and September 30, 2007 was \$1,462,108 and \$505,669, respectively.

(in thousands) FY 2008	Asset Cost	Accumulated Depreciation/ Amortization	Net Asset Value
Equipment	\$ 1,866	\$ 1,239	\$ 627
Internal Use Software	5,038	2,354	2,684
Internal Use Software in Development	5,600	-	5,600
<b>Totals</b>	<b>\$ 12,504</b>	<b>\$ 3,593</b>	<b>\$ 8,911</b>

(in thousands) FY 2007	Asset Cost	Accumulated Depreciation/ Amortization	Net Asset Value
Equipment	\$ 1,609	\$ 902	\$ 707
Internal Use Software	3,654	1,230	2,424
Internal Use Software in Development	2,863	-	2,863
<b>Totals</b>	<b>\$ 8,126</b>	<b>\$ 2,132</b>	<b>\$ 5,994</b>

### Note 7. Intragovernmental Accounts Payable

These accounts payable are with our Federal trading partners of whom the largest amounts are with the General Services Administration (GSA).

### Note 8. Liabilities Not Covered by Budgetary Resources

Liabilities not covered by budgetary resources represent amounts owed in excess of available congressionally appropriated funds or other amounts. The custodial liability represents amounts collected from the public for court costs, freedom of information requests and other miscellaneous amounts that must be transferred to the Treasury. The composition of liabilities not covered by budgetary resources as of September 30, 2008, and September 30, 2007, is as follows:

(in thousands)	FY 2008	FY 2007
<b>Intragovernmental:</b>		
FECA-Unfunded	\$ 931	\$ 978
<b>Total Intragovernmental</b>	931	978
Estimated Future - FECA	1,666	2,507
Accrued Annual Leave	13,688	13,216
Backpay Settlement Due to Others	7,338	3,681
Custodial Liability	96	402
<b>Total Liabilities not covered by budgetary resources</b>	23,719	20,784
<b>Total Liabilities covered by budgetary resources</b>	12,651	12,833
<b>Total Liabilities</b>	<b>\$ 36,370</b>	<b>\$ 33,617</b>

### Note 9. Non-Entity Assets

Non-entity assets, restricted by nature, consist of miscellaneous receipt accounts and Backpay Settlement Due to Others. These amounts represent cash collected and accounts receivable (net of allowance for doubtful accounts). The miscellaneous receipts represent court costs, freedom of information requests and closed out backpay cases that must be transferred to the Treasury. The Backpay Settlement Due to Others represents monies to be disbursed to discriminatees at a later date. The composition of non-entity assets as of September 30, 2008, and September 30, 2007, is as follows:

(in thousands)	FY 2008	FY 2007
<b>Non-entity assets</b>		
<b>Intragovernmental</b>		
Fund Balance with Treasury	\$ 96	\$ 402
<b>Total Intragovernmental</b>	\$ 96	\$ 402
Backpay Settlement Due to Others	7,338	3,681
<b>Total Non-entity assets</b>	\$ 7,434	\$ 4,083
<b>Entity Assets</b>	30,766	27,772
<b>Total Assets</b>	<b>\$ 38,200</b>	<b>\$ 31,855</b>

Note 10. Cumulative Results of Operations

(in thousands)	FY 2008	FY 2007
FECA paid by DOL	\$ (348)	\$ (444)
FECA - Unfunded	(931)	(978)
Estimated Future FECA	(1,666)	(2,507)
Accrued Annual Leave	(13,688)	(13,216)
General Property, Plant & Equipment, Net	8,911	5,994
Other	392	481
<b>Cumulative Results of Operations</b>	<b>\$ (7,330)</b>	<b>\$(10,670)</b>

Note 11. Intragovernmental Costs and Exchange Revenue

For the intragovernmental costs, the buyer and seller are both Federal entities. The earned revenue is the reimbursable costs from other Federal entities. The NLRB provided administrative law judges' services to other Federal entities. There is no exchange revenue with the public.

(in thousands)	FY 2008	FY 2007
<b>Resolve Representation Cases</b>		
Intragovernmental Costs	\$ 8,474	\$ 8,497
Costs with the Public	34,293	35,092
<b>Total Net Cost - Resolve Representation Cases</b>	<b>\$ 42,767</b>	<b>\$ 43,589</b>
<b>Resolve Unfair Labor Practices</b>		
Intragovernmental Costs	\$ 42,869	\$ 42,980
Costs with the Public	175,257	179,076
<b>Total Net Cost - Resolve Unfair Labor Practices</b>	<b>\$ 218,126</b>	<b>\$ 222,056</b>
<b>Other</b>		
Intragovernmental Costs	\$ 103	59
Less: Intragovernmental Earned Revenue	103	59
<b>Total Net Cost - Other</b>	<b>\$ -</b>	<b>\$ -</b>
<b>Net Cost of Operations</b>	<b>\$ 260,893</b>	<b>\$ 265,645</b>

## Note 12. Operating Leases

**GSA Real Property.** Most of NLRB's facilities are rented from the GSA, which charges rent that is intended to approximate commercial rental rates. The terms of NLRB's occupancy agreements (OA) with GSA will vary according to whether the underlying assets are owned by GSA or another Federal agency or rented by GSA from the private sector. The NLRB has OAs with GSA, which set forth terms and conditions for the space the Agency will occupy for an extended period of time. Included within the OAs are 120 to 180 day notification requirements for the Agency to release space. For purposes of disclosing future operating lease payments in the table below, Federally owned leases are included in years 2009 through 2013.

Rental expenses for operating leases for the year ended September 30, 2008 were \$27,288,522 for Agency lease space and \$2,319,835 for Agency building security. For FY 2007 the operating lease costs were \$27,713,149 and the Agency building security portion was \$1,777,993.

(in thousands) Fiscal Year	GSA Real Property
2009	\$ 28,057
2010	28,920
2011	29,643
2012	30,385
2013	31,457
After 5 Years	-
<b>Total Future Lease Costs</b>	<b>\$ 148,462</b>

## Note 13. Correction of Errors

In FY 2007, Management discovered a mistake in accounting principles for FY 2006 and prior years. Specifically, IUS was expensed but should have been capitalized.

The cumulative effect of the change on prior periods has no material affect on the previous overall financial statements.

This correction of errors was reported on the Statement of Changes in Net Position for FY 2007 and consists of the following:

(in thousands)		
Capitalization of software previously expensed	\$	2,735
Depreciation expense for above capitalized software		(1,046)
<b>Net correction of errors</b>	<b>\$</b>	<b>1,689</b>

**Note 14. Imputed Financing**

OPM pays pension and other future retirement benefits on behalf of Federal agencies for Federal employees. OPM provides rates for recording the estimated cost of pension and other future retirement benefits paid by OPM on behalf of Federal agencies. The costs of these benefits are reflected as imputed financing in the consolidated financial statements. Expenses of the NLRB paid or to be paid by other Federal agencies at September 30, 2008 and 2007 consisted of:

(in thousands)	FY 2008	FY 2007
<b>Office of Personnel Management:</b>		
Pension expenses	\$ 6,689	\$ 6,741
Federal employees health benefits	7,711	9,010
Federal employees group life insurance program	27	27
<b>Total Imputed Financing</b>	<b>\$14,427</b>	<b>\$15,778</b>

**Note 15. Appropriations Received**

The NLRB received \$256,238,000 and \$251,507,470 (net of rescission) in warrants for the fiscal years ended September 30, 2008, and 2007, respectively. The rescission for FY 2008 was \$4,476,478 and in FY 2007 the funds were already subtracted from the appropriation when it was received. The amount shown on the Statement of Budgetary Resources under caption “Permanently not available” for FY 2008 includes the rescission and the amount of \$1,703,438 for the cancelled appropriation for FY 2003. For FY 2007, the amount shown was the cancelled appropriation for FY2002 for the amount of \$709,952.

**Note 16. Statement of Budgetary Resources**

The Statement of Budgetary Resources provides information about how budgetary resources were made available as well as their status at the end of the period. It is the only financial statement exclusively derived from the entity’s budgetary general ledger in accordance with budgetary accounting rules that are incorporated into GAAP for the Federal Government. The total Budgetary Resources of \$256,296,112 as of September 30, 2008 and \$257,107,361 as of September 30, 2007, includes new budget authority, unobligated balances at the beginning of the year, spending authority from offsetting collections, recoveries of prior year obligations, and permanently not available. The NLRB’s unobligated balance available at September 30, 2008 was \$543,715 and at September 30, 2007 was \$276,311.

**Apportionment Categories of Obligations Incurred.** NLRB’s obligations incurred as of September 30, 2008 and September 30, 2007 by apportionment Category A and B are shown in the following table. Category A apportionments distribute budgetary resources by fiscal quarters and Category B apportionments typically distribute budgetary resources by activities, projects, objects, or a combination of these categories.



(in thousands) FY 2008	Apportioned		Not Subject to Apportionment	Total
	Category A	Category B		
<b>Obligations Incurred:</b>				
Direct	\$ 241,013	\$ 10,569		\$ 251,582
Reimbursable	103	-		103
<b>Total Obligations Incurred</b>	<b>\$ 241,116</b>	<b>\$ 10,569</b>		<b>\$ 251,685</b>

(in thousands) FY 2007	Apportioned		Not Subject to Apportionment	Total
	Category A	Category B		
<b>Obligations Incurred:</b>				
Direct	\$ 240,306	\$ 11,382		\$ 251,688
Reimbursable	59	-		59
<b>Total Obligations Incurred</b>	<b>\$ 240,365</b>	<b>\$ 11,382</b>		<b>\$ 251,747</b>

#### Note 17. Backpay Checks Held in the NLRB Regional Offices

The NLRB may use backpay as a remedy to settle a ULP. The backpay may be disbursed by three different methods: (1) the respondent prepares the backpay and disburses it directly to the discriminatee(s); (2) the respondent prepares the backpay and gives the check(s) to an NLRB Regional Office to deliver to the discriminatee(s); and (3) the respondent makes the backpay payable to the NLRB, who deposits the check and then issues Treasury checks to the discriminatee(s).

This footnote identifies the number (in units) and dollar value (in thousands) of checks that are received in the Regional Offices that are made payable to discriminatees. The NLRB has a fiduciary type of responsibility to safeguard these checks until they are successfully disbursed to the discriminatee(s). It should be noted that it might take months to successfully deliver the backpay.

(in thousands)	FY 2008		FY 2007	
	Number	Amount	Number	Amount
Checks on Hand, Beginning of Period	231	\$ 106	353	\$ 161
Checks Received	6,139	17,580	6,903	23,323
Less: Checks Distributed	6,055	17,471	7,025	23,378
Net Change in Checks on Hand	84	109	(122)	(55)
Checks on Hand at End of Period	315	\$ 215	231	\$ 106

**Note 18. Contingencies**

The NLRB is a party to several threatened or pending litigation claims. NLRB management believes that all the claims have a remote possibility of a cost to the Agency. The Agency has and will continue to vigorously contest these claims. In the opinion of NLRB's management, the ultimate resolution of pending litigation will not have a material effect on NLRB's financial statements.

**Note 19. Obligations**

In FY 2008, obligations totaling \$111,002 for space planning and design services, and program planning are currently under review by NLRB management and the Office of Inspector General. The ultimate outcome of this matter cannot presently be determined. In the opinion of NLRB's management, the ultimate resolution would not have a material effect on the NLRB's financial statements.

## Note 20. Reconciliation of Net Cost of Operations to Budget

(In thousands)	FY 2008	FY 2007
<b>Resources used to finance activities</b>		
Budgetary Resources Obligated:		
Obligations incurred	\$ 251,685	\$ 251,747
Less: Spending authority from recoveries	(877)	(1,281)
Net obligations	250,808	250,466
Other Resources:		
Imputed financing from costs absorbed by others	14,427	15,778
Loss on abandoned property		(6)
<b>Total resources used to finance activities</b>	<b>265,235</b>	<b>266,238</b>
<b>Resources used to finance items not part of the net cost of operations:</b>		
Change in budgetary resources obligated for goods, services and benefits ordered but not yet provided.	(1,003)	3,284
Resources that fund expenses recognized in prior periods	(887)	(279)
Resources that finance the acquisition of assets	(4,379)	(4,696)
Other adjustments to net obligated resources		220
<b>Total resources used to finance items not part of the net cost of operations</b>	<b>(6,269)</b>	<b>(1,471)</b>
<b>Total resources used to finance the net cost of operations</b>	<b>258,966</b>	<b>264,767</b>
<b>Components of the net cost of operations that will not require or generate resources in the current period:</b>		
Components requiring or generating resources in future periods		
Increase in annual leave liability	471	-
Increase in exchange revenue receivable	(11)	-
Total components requiring or generating resources in future periods	460	-
Components not requiring or generating resources:		
Depreciation	1,462	506
Increase in unfunded worker's comp expense		372
Other	5	
Total components of net cost of operations that will not require or generate resources	1,467	878
<b>Total components of net cost of operations that will not require or generate resources in the current period</b>	<b>1,927</b>	<b>878</b>
<b>Net cost of operations</b>	<b>\$ 260,893</b>	<b>\$ 265,645</b>

## IV. OTHER ACCOMPANYING INFORMATION



**PROTECTING DEMOCRACY IN THE WORKPLACE SINCE 1935**

## INSPECTOR GENERAL TOP MANAGEMENT & PERFORMANCE CHALLENGES

UNITED STATES GOVERNMENT  
*National Labor Relations Board*  
Office of Inspector General



### Memorandum

October 17, 2008

To: Peter C. Schaumber  
Chairman

Ronald Meisburg  
General Counsel

From: David Berry *D. Berry*  
Acting Inspector General

Subject: Issue Alert No. OIG-IA-09-01: Top Management and Performance Challenges

As part of the Performance and Accountability Report, the Office of Inspector General (OIG) is required by section 3516 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. This report meets that requirement and represents our assessment of the risks to the Agency's programs and mission. The information provided in this report is based upon our reviews and investigations, as well as our general knowledge of the National Labor Relations Board's (NLRB) operations.

These challenges should not be viewed as a charge of mismanagement or wrongdoing. Rather, they are situations occurring at the NLRB that could impact the ability of the Agency's leaders to either carry out the Agency's mission or properly attend to its administrative functions.

At the beginning of Fiscal Year (FY) 2008, we identified six management and performance challenges. For this report, we are addressing five of those challenges, substantially revising one challenge, and adding one new challenge. For each of the five pre-existing challenges, we have included a box titled "Action Progress" and assigned a color score for actions taken to meet the challenge. The scores are: Green for substantial progress; Yellow for progress; and Orange for not substantially addressed. New and revised challenges are not scored.

We would like to extend our appreciation to the NLRB's managers and staff for their courtesy and assistance in providing information for this report. We also appreciate the effort of many of those individuals in making considerable progress on meeting the management challenges.

## New Challenges

### **1. Engage in a meaningful deliberative process while issuing Board decisions in a timely manner so as to ensure the effective enforcement of the National Labor Relations Act.**

In prior Management Challenges reports, we stated this challenge as meeting the performance goals for the Board's issuance of cases. The problem with stating the goal in that manner is that it does not adequately address the challenge that the Board faces. Last year, the Board came very near to meeting its goal for unfair labor practice cases and surpassed its goal for representation cases. In doing so, however, the Board issued approximately 60 cases in September. Many of the cases had been pending at the Board for a considerable period of time and, when issued, some of the decisions were viewed as making significant changes in precedent. Shortly after these decisions were issued, a joint Congressional subcommittee hearing was held that focused on the more controversial decisions. Had these same decisions been issued in a timelier manner over an extended period, it is likely that the outcry over their issuance would not have been as dramatic.

The real nature of this challenge is issuing Board decisions through a collegial process in a timely manner that ensures the effective enforcement of the National Labor Relations Act (NLRA). The current two-Member Board made a significant effort toward meeting this challenge by working together to issue decisions in which they both agreed. Although that effort likely put the Board in the best possible position to address the remaining cases when it has a full complement of Members, the Board was not able to issue decisions that revisit or further define precedent and could not engage in rule making. As a result, the difficult cases that were pending when the Board went to two Members remain and the number of difficult cases awaiting a full Board increased throughout the year. The impact of these results is a diminished ability of the Board to provide both management and labor due process in resolving questions of law and fact in labor disputes.

The task facing the Board when it returns to a full complement of Members will be challenging. New cases will continue to arrive for the Board's consideration and the passage of time will have done nothing to ease the difficulty in addressing the hard issues of the older cases. We urge the current Board and its managers to begin now the task of preparing to meet this challenge and to look for ways to leverage the atmosphere of cooperation of the last 10 months into the future.

### **2. Maintain the Agency's institutional knowledge.**

There have been many changes in technology, laws and regulations, and management systems that have altered the manner that employees perform their official duties. As change occurs, the policy and procedures are not always updated and individual offices come to rely upon the collective institutional knowledge of the staff. While this may be a short-term solution, it puts far too much reliance on the skills of individual employees while lacking the safeguards of a well-managed internal control system. This problem is compounded by the fact that the NLRB's non-mission tasks are often very specialized and performed by a limited

number of employees. Also, 44 percent of the supervisors and 78 percent of the Senior Executive Service managers were eligible to retire at the beginning of FY 2008.

Within the past 2 years, we have begun to observe a loss of the Agency's institutional knowledge. We encourage the managers and supervisors to review and document changes in policy and procedures to ensure the continued effective operations of their offices. The scope of the reviews and documentation process should not be unduly burdensome, but rather should be tailored to the nature of the task, taking into consideration the factors of difficulty, importance, and risk.

**Prior Challenges**

**3. 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.**

A continuing resolution (CR) generally restricts an agency's contracting function or spending to a certain level. Over the last several years, the Agency has operated for significant periods of time under a CR at a level of funding that was equal to the prior year. When there has been an appropriation following a CR, the increases in funding have been limited. This situation creates significant challenges because approximately 90 percent of the Agency's appropriation is allocated to space rent, building security, and personnel related costs.

For FY 2009, the Agency will be operating under a CR for the first 5 months at last year's level of funding. For the last 2 months of that time period, the Agency will have to absorb a 3.9 percent pay increase out of the remaining 10 percent of its funding that is used to meet its other operating expenses.

Historically, the Agency's spending has been greatly restricted through the third quarter of the fiscal year. This has been accomplished by delays in filling vacancies, suspending benefits such as performance awards, reducing training, and restricting official travel. In the fourth quarter, the amount of savings that has occurred becomes apparent and the restrictions have often been relaxed.

Through our audit and inspection work, we made recommendations and suggestions for greater transparency in the operating plan, tighter controls on the monitoring of spending to decrease deobligations after the close of the fiscal year, and closer monitoring of the accrual of expenses. Although there has been considerable debate over the merits of these recommendations and suggestions, we have seen improvement in this area related to the size of the reserve and additional internal controls.

We continue to hear complaints from Board and General Counsel's managers that they do not understand the Agency's budget planning process. While it is true that there is a lot of budget information available to the managers, and even to the employees, it does not equate to transparency. We understand that there is an effort underway to improve the

understanding of this process, and we look forward to assessing that improvement in the coming year.

Action Progress	
Develop a system to effectively monitor the accrual of expense.	Green
Address the issue of a reserve at the end of the fiscal year.	Yellow
Create greater transparency in the operating plan.	Orange

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

In each of the last 3 fiscal years, the OIG conducted an audit involving the Agency's procurement function. These audits found numerous problems that could generally be attributed to some breakdown in the internal control process. Although we believe that through this audit process we have assisted the Agency in making positive changes, we remain concerned that the Agency's procurement function could put the Agency's budgetary resources at risk.

Adequate staffing, competence, and communication are critical to maintaining a well-managed procurement process. A convergence of budgetary issues and a shortage of competent candidates to fill vacant positions in a highly competitive field has resulted in an understaffed procurement office. The lack of staffing creates delays in processing procurement actions and greatly increases the opportunity for mistakes. This situation creates a cycle that feeds upon itself and leads to frustration and communication issues for both the procurement staff and managers who need goods and services to run the Agency. The situation also puts at risk major projects such as the development of the Next Generation Case Management System, as well as the ability of the Regions to pursue violations of the NLRA.

We are aware that the Agency continues to make a considerable effort to hire well qualified contracting officers. We are also aware that competition within the Government to hire contracting officers has resulted in grade inflation and, as a consequence, higher graded contracting officers that often do not have the judgment that comes with experience. These factors, combined with the fact that the Agency can provide little opportunity for career advancement, create a difficult recruiting and retention situation.

Action Progress	
Consolidate the procurement process.	Green
Issue a new Administrative Policy and Procedures Manual chapter for the procurement function.	Yellow ↑
Improve the legal review process.	Green
Maintain a sufficient staffing level of competent procurement officials.	Orange



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

The Agency continues to devote significant resources to improving and upgrading information technology equipment and capability. The OIG has devoted a significant amount of resources to investigating employees and contractors for the improper use of the Agency's Internet access and e-mail systems.

Despite having software that could assist in the management of employee use of information technology resources, the Agency has not taken action utilize those resources. We are aware, however, that the Agency recently made improvements in its information technology structure that could be leveraged to address this challenge.

Action Progress	
Develop a method to control the use of information technology assets – including access to the Internet.	Yellow

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

In November 2006, the NLRB relaunched its Web site and deployed a companion portal, mynlrb.nlr.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. A vast amount of case processing data can be accessed by the public via the Internet. This year, the program has been expanded to allow for the electronic issuance of Board decisions. The significant progress made by the Agency in the area of e-government largely benefits practitioners who regularly interact with the NLRB. In fact, with regard to practitioners, the Agency has met this challenge and continues to leverage its information technology resources to make improvements. Although a significant amount of information is available to individual workers on the Web site, progress towards allowing the electronic submission of charges and petitions to the Regional Offices – the initiation of cases – largely remains dependent on the development of the Agency’s Next Generation Case Management System.

Action Progress	
Complete e-government initiatives.	Green

**7. Implement audit findings in a timely manner.**

We added this challenge last year because the Agency was not implementing audit recommendations in a timely manner, had a recurrence of findings for which corrective action was reported as implemented, disagreed with audit recommendations without a sufficient legal basis, and often chose not to implement cost-saving recommendations.

In December 2007, we received a request from the Chairman of the U.S. House of Representatives' Committee on Oversight and Government Reform for detailed information on all audit recommendations made by the Office of Inspector General between January 2001 and December 2007 that had not been implemented by the Agency. At that time, we reported 19 recommendations had not been implemented. Of those, 5 were closed without implementation and 14 were pending action by the Agency.

After submitting the requested information, we made a concerted effort to work with managers to address older audit recommendations and to seek common ground on a means to achieve implementation. These efforts were met with success. In July 2008, we were asked by the committee's staff to update the information on the recommendations. At that time, we reported that the Agency implemented 4 of the 14 pending recommendations and took action that was consistent with our recommendations on two of the previously closed recommendations. Since that time, four additional recommendations have been implemented. In the audit reports issued since January 2008, we have reached agreement on the recommendations in a collegial manner and the Agency has begun implementing those recommendations.

<b>Action Progress</b>	
Implement audit recommendations in a timely manner.	Green
Work in a collegial manner to reach agreement on recommended actions.	Green
Avoid reoccurrence of audit findings.	Not Observed

**I. SUMMARY OF FINANCIAL STATEMENT AUDIT**

<b>Audit Opinion</b>	<b>Unqualified</b>				
<b>Restatement</b>	<b>No</b>				
<b>Material Weaknesses</b>	<b>Beginning Balance</b>	<b>New</b>	<b>Resolved</b>	<b>Consolidated</b>	<b>Ending Balance</b>
	0	0	0	0	0
<b>TOTAL</b>	0	0	0	0	0

**II. SUMMARY OF MANAGEMENT ASSURANCES**

<b>Effectiveness of Internal Control Over Operations (FMFIA § 2)</b>						
<b>Statement Assurance</b>	<b>Unqualified</b>					
<b>Material Weaknesses</b>	<b>Beginning Balance</b>	<b>New</b>	<b>Resolved</b>	<b>Consolidated</b>	<b>Reassessed</b>	<b>Ending Balance</b>
	0	0	0	0	0	0
<b>TOTAL</b>	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
<b>TOTAL</b>	0	0	0	0	0	0

***IMPROPER PAYMENTS INFORMATION ACT***

The Improper Payments Information Act (IPIA) defined requirements to reduce improper/erroneous payments made by the Federal Government. OMB has also established specific reporting requirements for agencies with programs that possess a significant risk of erroneous payments and for reporting on results of recovery auditing activities. A significant erroneous payment as defined by OMB guidance is an annual erroneous payment in a program that exceeds both 2.5 percent of the program payments and \$10 million.

As such, the NLRB does not make program payments as described in the IPIA and has no information to report with respect to erroneous program payments.

## V. APPENDICES



**PROTECTING DEMOCRACY IN THE WORKPLACE SINCE 1935**

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# APPENDIX A

## ACRONYMS

<b>ADR</b>	Alternative Dispute Resolution
<b>ALJ</b>	Administrative Law Judge
<b>CATS</b>	Case Activity Tracking System
<b>FMFIA</b>	Federal Managers' Financial Integrity Act
<b>FFMIA</b>	Federal Financial Management Improvement Act
<b>FOIA</b>	Freedom of Information Act
<b>FY</b>	Fiscal Year
<b>GAAP</b>	Generally Accepted Accounting Principles
<b>GPRA</b>	Government Performance and Results Act
<b>IPIA</b>	Improper Payments Information Act
<b>MD&amp;A</b>	Management Discussion and Analysis
<b>NxGen</b>	Next Generation Case Management System
<b>NLRA</b>	National Labor Relations Act
<b>NLRB</b>	National Labor Relations Board
<b>OCIO</b>	Office of the Chief Information Officer
<b>OIG</b>	Office of Inspector General
<b>OMB</b>	Office of Management and Budget
<b>PAR</b>	Performance and Accountability Report
<b>PMA</b>	President's Management Agenda
<b>ULP</b>	Unfair Labor Practice

# APPENDIX B

## Definitions

**Case:** The general term used in referring to a charge or petition filed with the Board. Each case is numbered and carries a letter designation indicating the type of case.

**Charge:** A document filed by an employee, an employer, a union, or an individual alleging that a ULP has been committed by a union or employer.

**Complaint:** A document which initiates “formal” proceedings in a ULP case. It is issued by the Regional Director when he or she concludes on the basis of a completed investigation that any of the allegations contained in the charge have merit and the parties have not achieved settlement. The complaint sets forth all allegations and information necessary to bring a case to hearing before an administrative law judge pursuant to due process of law. The complaint contains a notice of hearing, specifying the time and place of the hearing.

**Compliance:** The carrying out of remedial action as agreed-upon by the parties in writing; as recommended by the administrative law judge in the decision; as ordered by the Board in its decision and order; or as decreed by the court.

**Dismissed Cases:** Cases may be dismissed at any stage. For example, following an investigation, the Regional Director may dismiss a case when he or she concludes that there has been no violation of the law, that there is insufficient evidence to support further action, or for other legitimate reasons. Before the charge is dismissed, the charging party is given the opportunity to withdraw the charge by the Regional Director. A dismissal may be appealed to the Office of the General Counsel.

**Formal Action:** Formal actions may be documents issued or proceedings conducted when the voluntary agreement of all parties regarding the disposition of all issues in a case cannot be obtained, and where dismissal of the charge or petition is not warranted. Formal actions are those in which the Board exercises its decision-making authority in order to dispose of a case or issues raised in a case. “Formal action” also describes a Board decision and consent order issued pursuant to a stipulation, even though a stipulation constitutes a voluntary agreement.

**Impact Analysis:** Provides an analytical framework for classifying cases so as to differentiate among them in deciding both the resources and urgency to be assigned each case. All cases are assessed in terms of their impact on the public and their significance to the achievement of the Agency’s mission. The cases of highest priority, those that impact the greatest number of people, are placed in Category III. Depending on their relative priority, other cases are placed in Category II or I.

**Overage Case:** To facilitate/simplify Impact Analysis, case processing time goals—from the date a charge is filed through the Regional determination—are set for each of the three categories of cases, based on priority. A case is reported “overage” when it is still pending disposition on the last day of the month in which its time target was exceeded. Cases which cannot be processed within the timelines established under the Impact Analysis program for reasons that are outside the control of the Regional Office are not considered to be overage.

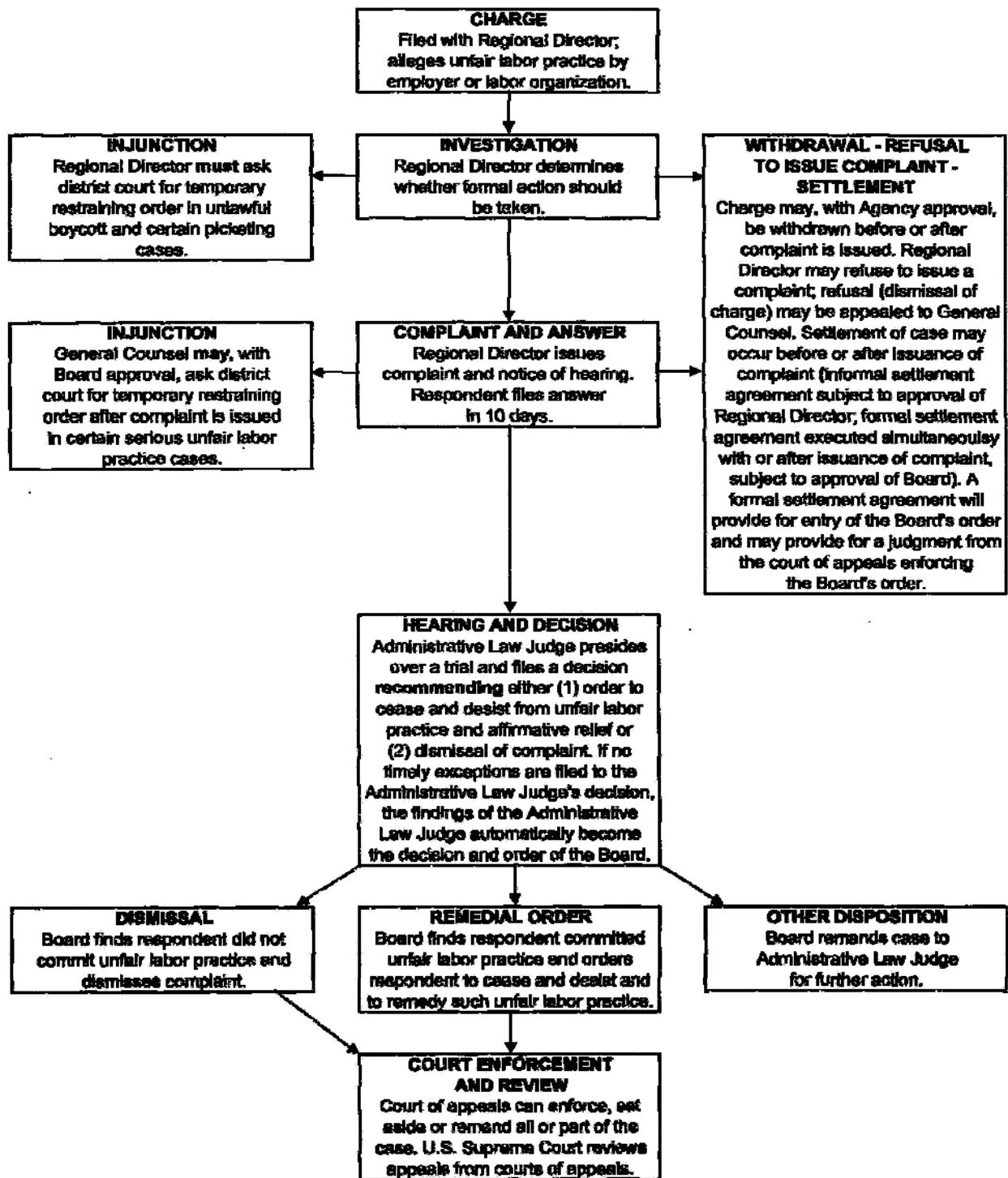
**Petition:** A petition is the official NLRB form filed by a labor organization, employee or employer. Petitions are filed primarily for the purpose of having the Board conduct an election among certain employees of an employer to determine whether they wish to be represented by a particular labor organization for the purposes of collective bargaining with the employer concerning wages, hours, and other terms and conditions of employment.

**Test of Certification:** A “test of certification” presents the issue of whether an employer has unlawfully refused to bargain with a newly-certified union. Because the Act does not permit direct judicial review of representation case decisions, the only way to challenge a certification is a refusal to bargain followed by a Board finding. However, because all relevant legal issues were or should have been litigated in the R (Representation) case, the related ULP case is a no-issue proceeding that can be resolved without a hearing or extensive consideration by the Board.



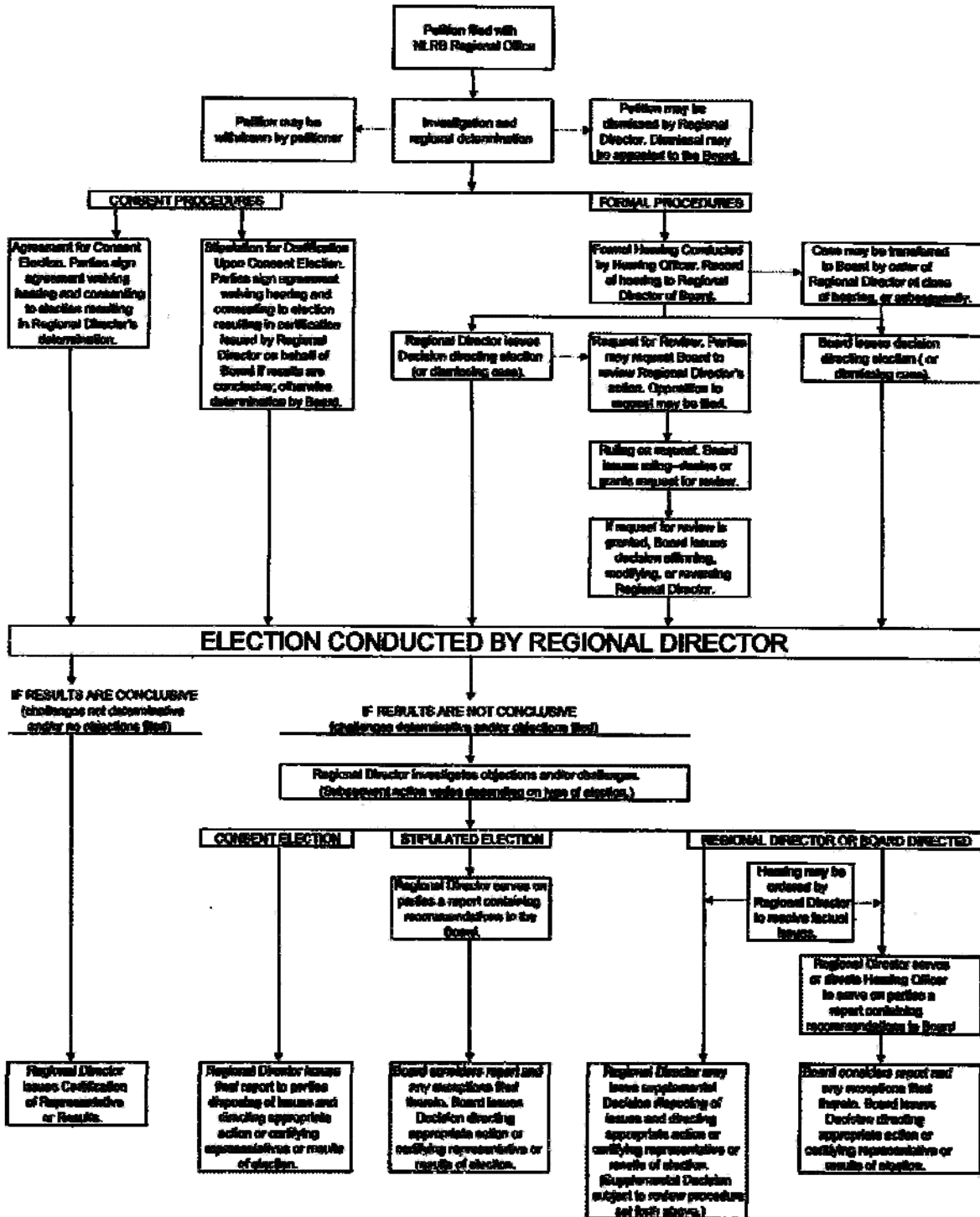
# APPENDIX C

## Unfair Labor Practice Procedures Basic Procedures in Cases Involving Unfair Labor Practices



# APPENDIX D

## Outline of Representation Procedures Under Section 9(c)



National Labor Relations Board  
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Washington, DC 20570-0001

[www.nlr.gov](http://www.nlr.gov)

