



FISCAL YEAR 2010

PERFORMANCE
AND
ACCOUNTABILITY
REPORT



NATIONAL LABOR
RELATIONS BOARD

1935 - 2010

75 YEARS OF PROTECTING
EMPLOYEE RIGHTS

HOW THIS REPORT IS ORGANIZED

THIS PERFORMANCE AND ACCOUNTABILITY REPORT CONSISTS OF:

MANAGEMENT DISCUSSION AND ANALYSIS	<p>The Management Discussion and Analysis (MD&A) Section is an overview of the entire report. The MD&A presents performance and financial highlights as well as the National Labor Relations Board's (NLRB's) operational and casehandling highlights for fiscal year 2010. The MD&A also contains a discussion of compliance with legal and regulatory requirements, such as the Federal Managers' Financial Integrity Act.</p>
PERFORMANCE SECTION	<p>The Performance Section compares the NLRB's performance to its annual performance goals as set forth in the 2007-2012 Strategic Plan. In fiscal year 2007, the NLRB revised its Strategic Plan and adopted three overarching performance measures. These measures are outcome-based, aligned with the mission of the NLRB, and are meaningful to the public the Agency serves. This is the fourth year that the NLRB is reporting its performance under these three overarching measures.</p>
FINANCIAL SECTION	<p>The Financial Section is composed of the NLRB's financial statements and their related footnotes and the Independent Auditors' Report.</p>
OTHER ACCOMPANYING INFORMATION	<p>Other Accompanying Information provides an update on the Board's progress in addressing management and performance challenges identified by the Inspector General in the FY 2009 Performance and Accountability Report as well as any new challenges identified in this fiscal year. Also included is the NLRB's summary of audit and management assurances.</p>
APPENDICES	<p>The Appendices contain a glossary of the acronyms and definitions of terms used in the report.</p>

An electronic version of the NLRB FY 2010 Performance and Accountability Report is available on the Internet at www.nlr.gov. The NLRB's 2007-2012 Strategic Plan is also available at this Web site.

The NLRB's 75th Anniversary Commemorative Web site is available at <http://www.nlr.gov/75th/index.html>

TABLE OF CONTENTS

MESSAGE FROM THE PRESIDENT	3
MESSAGE FROM THE CHAIRMAN	4
BOARD MEMBERS	6
MESSAGE FROM THE ACTING GENERAL COUNSEL	7
EXECUTIVE SUMMARY	9
I. MANAGEMENT DISCUSSION AND ANALYSIS	11
ABOUT THE NLRB	12
STATUTORY STRUCTURE	12
ORGANIZATIONAL CHART	14
CASEHANDLING FUNCTIONS	15
Unfair Labor Practice Proceedings	15
Representation Proceedings	16
Compliance Proceedings	16
ADMINISTRATIVE FUNCTIONS	17
PERFORMANCE HIGHLIGHTS	18
FINANCIAL HIGHLIGHTS	20
Analysis of Financial Statements	20
Limitations of Principal Financial Statements	20
Financial Planning Committee	21
MANAGEMENT ASSURANCES	22
Federal Managers' Financial Integrity Act	22
Financial Systems Strategies	23
Statement of Assurance	24
2010 YEAR IN REVIEW	25
The NLRB Celebrates 75 Years	25
New Process Steel v. NLRB	25
The NLRB Launches 75th Anniversary Web Site	26

Kaiser Permanente Election	27
NLRB E-Filing	28
NLRB Engages Public Through Electronic and Social Media	28
Outreach Activities.	28
10 (j) Remedies For Unlawful Discharges	29
First Contract Bargaining.	30
CASEHANDLING HIGHLIGHTS	30
STATISTICAL HIGHLIGHTS	32
II. PROGRAM PERFORMANCE.	33
PERFORMANCE GOALS AND OBJECTIVES	34
Strategic Goal No. 1	34
Strategic Goal No. 2	34
MEASURING PERFORMANCE	36
FACTORS AFFECTING AGENCY PERFORMANCE	38
RELIABILITY OF PERFORMANCE DATA	40
PROGRAM EVALUATION	41
III. FINANCIAL SECTION	43
LETTER FROM THE DIRECTOR OF ADMINISTRATION	44
INSPECTOR GENERAL MEMORANDUM	46
INDEPENDENT AUDITOR'S REPORT	48
AGENCY RESPONSE	52
PRINCIPAL FINANCIAL STATEMENTS	54
NOTES TO PRINCIPAL STATEMENTS	58
IV. OTHER ACCOMPANYING INFORMATION	71
INSPECTOR GENERAL TOP MANAGEMENT & PERFORMANCE CHALLENGES	72
SUMMARY OF AUDIT AND MANAGEMENT ASSURANCES.	77
IMPROPER PAYMENTS INFORMATION ACT.	78
V. APPENDICES	79

MESSAGE FROM THE PRESIDENT



THE WHITE HOUSE
WASHINGTON

November 5, 2009

I send greetings to all those celebrating the 75th anniversary of the National Labor Relations Act (NLRA).

Throughout our Nation's history, we have relied on the firm resolve and commitment of working Americans. They are the backbone of our communities, and they power the engine of our economy.

In 1935, President Franklin D. Roosevelt recognized the right of workers to organize by signing landmark legislation which represented "an act of both common justice and economic advance." The passage of the NLRA helped create a new legal framework for relations between workers and employers and lay the foundation for a strong and equitable America.

Although our Nation has changed and our economic challenges have taken on new forms, the underlying principles of the NLRA remain as vital today as they were 75 years ago. On this occasion, we are reminded of the foresight of earlier generations, and we rededicate ourselves to fostering a sustainable working environment for all Americans.

As you mark this important anniversary, I wish you all the best.

A handwritten signature in black ink, appearing to be "Barack Obama".

MESSAGE FROM THE CHAIRMAN



November 2, 2010

On behalf of the National Labor Relations Board (NLRB), I am pleased to submit the Fiscal Year 2010 Performance and Accountability Report. This annual report provides insight into the workings of the NLRB, an independent federal agency established in 1935 to promote workplace democracy and, in the words of President Franklin D. Roosevelt, “to serve as an important step toward the achievement of just and peaceful labor relations.”

It has been an eventful 12 months for the agency. We began the year with only two Members, Member Peter Schaumber and myself, continuing a situation that had persisted since January 2008. The era of the two-member Board, during which it issued nearly 600 decisions, drew to a close on March 27, when President Obama recess-appointed two new Members, Craig Becker and Mark Gaston Pearce. In late June, an additional Member, Brian Hayes, was confirmed by the Senate, along with

Member Pearce, bringing the Board to its full five-member strength for the first time in two and a half years. In August, the term of Member Schaumber expired, leaving the Board at four Members. My term is due to expire in August 2011, nearly 14 years after I was first appointed by President Clinton.

In June, a divided Supreme Court ruled that the two-member Board did not have the authority to issue decisions. As a result, about 96 cases that were pending on appeal in the federal courts were returned to the Board for new decisions.

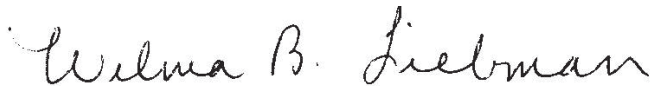
Despite the challenges presented by turnover and the returned cases, the Board had a productive year, issuing 315 decisions in contested cases through FY 2010, up from 256 the previous year. These decisions resolved some of the Agency’s oldest pending cases and tackled some of the difficult issues that had deadlocked the Board as it awaited new members.

Notwithstanding the Board’s high productivity, the inventory of pending cases rose over the year, from 193 at the beginning of FY 2010 to 264 at the end of it. Among the remaining pending cases are issues related to the immigration status of workers who were victims of unfair labor practices, union access to employer property, and statutory coverage.

Through the year, the Agency celebrated its 75th anniversary with a series of events that culminated with a two-day symposium at George Washington University Law School at the end of October on the legacy and future of the National Labor Relations Act. The symposium featured some of the nation’s top scholars in labor law, economics and history.

This year, we also redoubled our outreach efforts to the public, including the labor-management bar and community groups, and through several initiatives, set the agency on a path toward greater transparency. For instance, we created a web page listing every decision made by the two-member Board with status updates indicating which were closed, which were returned, and which resulted in new decisions. We recently created another page listing all cases in which the Board has authorized the General Counsel to seek temporary federal injunctions to stop alleged unfair labor practices while the cases move through the Board's administrative process.

As Chairman of the NLRB, I certify that the NLRB's internal controls and financial systems meet and conform to 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 22 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 the NLRB received an unqualified audit opinion on its financial statement audit, the auditors did note a significant deficiency in certain internal controls. We take such a finding seriously and have initiated a comprehensive review of this matter. We are committed to making whatever structural and other changes may be necessary or appropriate to ensure a properly controlled financial environment.



Wilma B. Liebman
Chairman

BOARD MEMBERS



Wilma B. Liebman
Chairman



Craig Becker
Board Member



Mark Gaston Pearce
Board Member



Brian E. Hayes
Board Member

MESSAGE FROM THE ACTING GENERAL COUNSEL



November 2, 2010

The Office of General Counsel of the National Labor Relations Board (NLRB) investigates and prosecutes unfair labor practice (ULP) cases, which are filed in the Agency's Regional, Sub-regional, and Resident offices. We exercise general supervisory authority over our network of field offices. Approximately 1,200 NLRB employees staff our 32 regional offices, 3 sub-regional offices, and 16 resident offices. Additionally, the Office of General Counsel handles various casehandling and administrative functions through its divisions housed at national headquarters in Washington, DC.

My immediate predecessor, Ronald Meisburg, served as General Counsel from January 2006 until June 20, 2010. President Barack Obama appointed me as Acting General Counsel the following day.

It is a great honor and privilege to serve the NLRB in my current capacity during its seventy-fifth anniversary celebration. In 1935, the US Congress passed the National Labor Relations Act (NLRA), also called the Wagner Act, as a mechanism to advance workers' rights. Similar to the laws undergirding most other New Deal agencies, the NLRA faced significant challenges in our federal court system. Ultimately, however, on April 12, 1937, the US Supreme Court declared the law constitutional.

This year is the 75th Anniversary of the passage of the Act and to appropriately commemorate this event, our Agency launched a diamond anniversary tribute Web site, which contains video introductions from our Chairman, Wilma B. Liebman, former General Counsel Meisburg, and former Board Member Peter C. Schaumber. Photographs spanning the Agency's long history are prominently featured on the Web site as well.

The Office of General Counsel, in addition to its other duties, is charged by the Board Members with supervising the administrative functions of the Agency. One of these functions directly pertains to financial management. And so it is with great pleasure that I can report that the Agency once again received an unqualified opinion from our auditors, thereby vindicating the public trust in the Agency's handling of the resources entrusted to it.

I have had the great fortune to serve the NLRB for many years and this newly acquired perspective from the position of the General Counsel allows me to appreciate even more the tremendous importance of the General Counsel role in our mission.

Three-quarters of a century ago, the National Labor Relations Board was created during the Great Depression and went on to quickly established itself as a champion of democracy in the workplace. We will remain true to that mission for the next 75 years and well beyond.

A handwritten signature in black ink that reads "Lafe E. Solomon". The signature is written in a cursive, flowing style.

Lafe E. Solomon
Acting General Counsel

EXECUTIVE SUMMARY

In 2010, the National Labor Relations Board (NLRB) celebrated its 75th year of service to the American public. In recognition of this landmark anniversary, a number of commemorative events were sponsored by various organizations throughout the year. In addition, the Agency launched a Web site which featured video introductions from Chairman Wilma B. Liebman, former Board Member Peter C. Schaumber, and former General Counsel Ronald Meisburg, photos from the NLRB's 75 years, historical events, NLRB trivia, a crossword puzzle, and a calendar of anniversary events nationwide.



The Performance and Accountability Report for fiscal year 2010 showcases continued progress in meeting the two strategic goals. In fact, due to its success in exceeding the performance targets, the NLRB revised upward all three key performance measures. In addition, the Agency continued a record of fiscal responsibility and stewardship by having received an unqualified audit opinion for the seventh consecutive year.

Another landmark event for the Agency was the Supreme Court's decision in *New Process Steel vs. the NLRB*. The case involved the authority of the Board to issue decisions absent a three-member quorum. The Supreme Court issued its decision on June 17, 2010, finding that the Board was not authorized to decide cases with only two members. During the period when the Board comprised only two members, it issued approximately 600 decisions. Of those cases, the Board immediately sought remand of 96 cases that had been pending before various courts of appeals and the Supreme Court. By September 30, 2010, 73 percent of those cases had been resolved.



PROGRAMMATIC HIGHLIGHTS

NLRB e-Filing – NLRB continued to use information technology to speed workflow and open its case content and processes to stakeholders. Electronic filing is fully matured and in daily use, while the Next Generation case management system is making significant progress in replacing 13 Agency legacy systems.

Pubic Outreach – With the creation of the Office of Public Affairs (formerly Division of Information) at the start of the fiscal year, the NLRB became far more proactive in communicating its mission and accomplishments. More than 7,000 people have signed up to electronically receive news releases, a new Facebook page has more than 1,500 followers and more than 800 followers have signed up to receive Twitter feeds.

10(j) Initiative – The NLRB has streamlined the process to seek federal injunctions when employees are unlawfully fired during an organizing campaign. This is intended to ensure that the statutory rights of unlawfully fired employees are restored “in real time.”

STATISTICAL HIGHLIGHTS

- The Board issued 315 decisions in contested cases in FY 2010.
- A 95.8 percent settlement rate was achieved in the Regional Offices in meritorious ULP cases.
- The Regional Offices won 91 percent of Board and ALJ ULP and Compliance decisions in whole or part in FY 2010.
- 95.1 percent of all initial elections were conducted within 56 days of filing of the petition.

- A total of \$86,557,683 was recovered on behalf of employees as backpay or reimbursement of fees, dues, and fines with 2,250 employees offered reinstatement.
- Agency representatives participated in 630 outreach events during FY 2010.
- In FY 2010, the NLRB's Web site attracted 2.8 million visitors with 9.3 million page views.

FINANCIAL HIGHLIGHTS

The NLRB ended fiscal year 2010 in a financially stable status, as certified by the auditors and statements of control. As of September 30, 2010, the financial position indicated:

- Balance Sheet – NLRB assets were \$49 million
- Net Cost – NLRB spent \$296 million on operations
- Changes in Net Position – From FY 2009 to FY 2010 the change was \$5 million
- Budgetary Resources – Summary:
 - Available Resources \$287 million
 - Budget Outlays \$272 million
 - Funds Remaining \$4 million
 - Obligations \$283 million



MANAGEMENT
DISCUSSION
AND ANALYSIS



PROTECTING DEMOCRACY IN
THE WORKPLACE SINCE 1935

ABOUT THE NLRB



Painting depicting President Roosevelt signing the Wagner Act, July 5, 1935

“It is one of the characteristics of a free and democratic nation that it have free and independent labor unions.”

President Franklin Delano Roosevelt

“Both our country and our world have changed a great deal over the last eight decades, but the values reflected in the National Labor Relations Act – democracy in the workplace and fairness in the economy – are still vitally important.”

Chairman Wilma Liebman

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 basic law governing relations between labor unions and business enterprises engaged in interstate commerce in the private sector. This statute originated at a time when labor disputes could and did threaten the nation’s economy. Declared constitutional by the Supreme Court in 1937, the Act was substantially amended in 1947, 1959, and 1974, each amendment increasing the scope of the NLRB’s regulatory powers.

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.

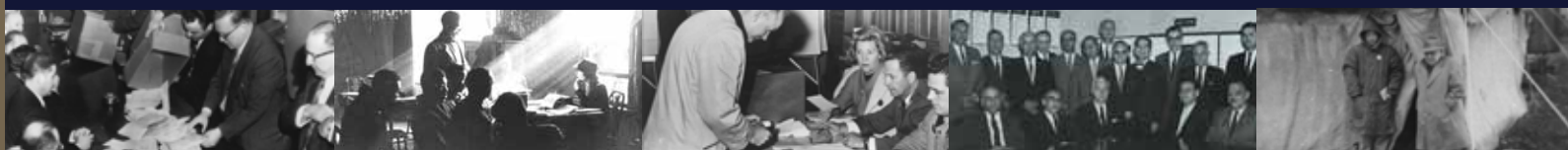
MISSION STATEMENT

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.

STATUTORY STRUCTURE

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. 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.

The five-member Board 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 five-year terms. The President



NLRB TRIVIA:

*Question: What former U.S. Senator and Vice President of the United States applied to work for the Board and was rejected? **Hubert H. Humphrey***

designates one of the Board Members as Chairman. Member Wilma B. Liebman was designated as Chairman by President Obama on January 20, 2009.

From January 2008 through March 2010, there were three vacant seats on the Board. During this period, the Board operated as a two-member quorum, composed of Chairman Wilma B. Liebman and Member Peter C. Schaumber. Nominated in July 2009 by President Obama were Craig Becker, Mark Gaston Pearce, and Brian E. Hayes. On March 27, 2010, Craig Becker and Mark Gaston Pearce received recess appointments as Board Members. On June 22, 2010, the Senate confirmed Board Member Pearce to a full term as Board Member that will expire on August 27, 2013, and Brian E. Hayes to a term expiring on December 16, 2012. With the confirmation of Brian E. Hayes, the Board, for the first time in over two years, had a full complement of five Board Members. However Board Member Peter C. Schaumber's term expired on August 27, 2010, leaving the Board to operate with four members.

The General Counsel is appointed by the President to a four-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. 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. General Counsel Ronald Meisburg resigned effective June 20, 2010, two months before the expiration of his term. The following day, the President designated Lafe E. Solomon, Director of the Office of Representation Appeals, to serve as Acting General Counsel.



ORGANIZATION

BOARD		OFFICE OF THE GENERAL COUNSEL
Wilma B. Liebman <i>Chairman</i>		Lafe E. Solomon <i>Acting General Counsel</i>
Craig Becker <i>Board Member</i>	INSPECTOR GENERAL	John E. Higgins, Jr. <i>Deputy General Counsel</i>
Mark Gaston Pearce <i>Board Member</i>	David P. Berry <i>Inspector General</i>	DIVISION OF OPERATIONS MANAGEMENT
Brian E. Hayes <i>Board Member</i>	OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY	Richard A. Siegel <i>Associate General Counsel</i> (REGIONAL OFFICES)
Vacant <i>Board Member</i>	Robert J. Poindexter <i>Director</i>	DIVISION OF ENFORCEMENT LITIGATION
OFFICE OF THE EXECUTIVE SECRETARY	OFFICE OF EMPLOYEE DEVELOPMENT	John H. Ferguson <i>Associate General Counsel</i>
Lester A. Heltzer <i>Executive Secretary</i>	Thomas J. Christman <i>Director</i>	DIVISION OF ADVICE
OFFICE OF REPRESENTATION APPEALS	DIVISION OF ADMINISTRATION	Barry J. Kearney <i>Associate General Counsel</i>
Lafe Solomon <i>Director</i>	Gloria J. Joseph <i>Director</i>	
OFFICE OF THE SOLICITOR	OFFICE OF THE CHIEF INFORMATION OFFICER	
William B. Cowen <i>Solicitor</i>	Bryan Burnett <i>Chief Information Officer</i>	
DIVISION OF JUDGES		
Robert A. Giannasi <i>Chief, ALJ</i>		
OFFICE OF PUBLIC AFFAIRS		
Nancy Cleeland <i>Director</i>		

CASEHANDLING FUNCTIONS

The NLRA is the nation's primary labor relations law, and its purpose is to serve the public interest by reducing interruptions in commerce caused by industrial strife. The Act seeks to do this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another.

For 75 years, the overall job of the NLRB has been to achieve this goal through administration, interpretation, and enforcement of the NLRA. Its primary function is the effective and efficient resolution of charges and petitions filed by individuals, employers, or unions. The two major goals of the NLRB are:

- To promptly resolve all questions concerning representation
- To promptly investigate, prosecute, and remedy unfair labor practices by employers or unions

UNFAIR LABOR PRACTICE PROCEEDINGS

The NLRA contains a code of conduct for employers and unions and regulates that conduct in unfair labor practice (ULP) 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 ULP cases.

The General Counsel investigates ULP charges through the Agency's network of Regional, Subregional, and Resident Offices (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. The decision 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 United States 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, under Section 10(l) of the Act, when a Region's investigation of a charge yields reasonable cause

NLRB TRIVIA:

Question: What is the significance of the date August 27? It is the anniversary of the appointment of the original three Wagner Act Board Members. To this day, three of the Members have an August 27 expiration date for their terms.

to believe that a union has committed certain specified unfair labor practices such as a work stoppage or picketing with an unlawful secondary objective, the Regional Director or Regional Attorney is required, on behalf of the Board, to seek an injunction from a federal district court to halt the alleged unlawful activity.

REPRESENTATION PROCEEDINGS

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 a secret-ballot 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.

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 the General Counsel 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.

EMPLOYEE RIGHTS UNDER THE NLRA

The National Labor Relations Act extends rights to many private-sector employees, including the right to organize and to bargain collectively with their employer. Employees covered by the Act are protected from certain types of employer and union misconduct and have the right to attempt to form a union where none currently exists.

Examples of Employee Rights Under the NLRA Are:

- Forming, or attempting to form, a union among the employees of an employer.
- Joining a union whether the union is recognized by the employer or not.
- Assisting a union in organizing employees.
- Engaging in protected concerted activities. Generally, “protected concerted activity” is group activity that seeks to change wages or working conditions.
- Refusing to do any or all of these things. However, the union and employer, in a State where such agreements are permitted, may enter into a lawful union-security clause requiring employees to pay union dues and fees.

The NLRA forbids employers from interfering with, restraining, or coercing employees in the exercise of rights relating to organizing, forming, joining or assisting a labor organization for collective bargaining purposes, or engaging in protected concerted activities, or refraining from these activities. Similarly, unions may not restrain or coerce employees in the exercise of these rights.

PERFORMANCE HIGHLIGHTS



The Board and the General Counsel share a common goal of ensuring that the NLRA is fully and fairly enforced. Although they have separate statutory functions, the Board and the General Counsel work together in developing one comprehensive Strategic Plan and annual Performance Plan. The NLRB's Strategic Plan was updated in FY 2007 and covers fiscal years 2007–2012.

The NLRB's Strategic Plan states the Agency's Strategic Goals and Performance Measures.

Strategic Goal No. 1

Resolve all questions concerning representation impartially and promptly.

Performance Measure No. 1

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

Strategic Goal No. 2

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

Performance 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.

Performance Measure No. 3

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

The NLRB's annual Performance Plan is integrated into its budget request to form the basis of its Performance Budget. 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 through the daily actions of individual managers leading programs and activities throughout the Agency.

The two goals of the NLRB's Strategic Plan represent the core functions of the Agency that have existed for 75 years in its enforcement of 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.



The NLRB's two strategic goals are supported by three overarching performance measures. The Agency's performance measures focus on the time it takes to process an entire case, from beginning to end. They are outcome-based, aligned with the mission of the NLRB, and are meaningful to the public the Agency serves. The performance measures were instituted in the latter part of FY 2007 and the Agency



has either met or exceeded the targets set for all of the performance measures in the first full three years of this program. In recognition of this, the Agency increased the annual targets for FY 2010 through FY 2012.

Measure No. 1, the performance measure associated with Goal No. 1, focuses on the total time taken to resolve a representation case, from beginning to end, including time spent on the case on both the General Counsel and Board sides of the Agency. In representation cases, elections result from petitions filed by unions, employees, or employers seeking a secret ballot determination as to whether a majority of employees wish union representation. Included in this measure are withdrawals, dismissals, settlements, hearings, and elections, which occur in the field. It also includes requests by aggrieved parties for review of Regional decisions by the Board in Washington, DC.

Measures No. 2 and No. 3, the performance measures associated with Goal No. 2, address the timely resolution of ULP cases, including time spent on the case by both the General Counsel and Board sides of the Agency. On a yearly basis, there are more than six times as many ULP cases as representation cases, usually involving more complicated issues for Regions to address.

We are pleased to report that the NLRB exceeded the goals for its three performance measures for FY 2010.

Measure No. 1: By 2012, resolve questions concerning representation in at least 85.2 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%
FY 2008	80.0%	83.5%
FY 2009	81.0%	84.4%
FY 2010	85.0%	86.3%

Measure No. 2: By 2012, resolve at least 72 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%
FY 2008	68.0%	68.0%
FY 2009	68.5%	71.0%
FY 2010	71.2%	73.3%

Measure No. 3: By 2012, close 80.2 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%
FY 2008	75.0%	76.0%
FY 2009	75.5%	79.7%
FY 2010	80.0%	84.6%

FINANCIAL HIGHLIGHTS

The NLRB prepares annual financial statements in accordance with Generally Accepted Accounting Principles (GAAP) for federal government entities and subjects the statements to an independent audit to ensure their integrity and reliability in assessing performance. 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).

ANALYSIS OF FINANCIAL STATEMENTS

Balance Sheet—The NLRB assets were \$49 million as of September 30, 2010. The Fund Balance with Treasury, which was \$37 million, represents the NLRB's largest asset. The Fund Balance consists of unspent appropriated and unappropriated funds from the past six fiscal years and in prior fiscal years included backpay funds. Backpay funds are funds 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 United States Treasury market-based securities. Effective for the period beginning after September 30, 2008, the investments made for backpay funds and related cash will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide information about these fiduciary activities.

The NLRB Property, Plant and Equipment was over \$12 million and was primarily related to information technology.

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 \$296 million net cost of operations in FY 2010, 16 percent was used for representation case activities and 84 percent was used to resolve ULP charges.

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 2009

to FY 2010, there was a change in net position of \$5.1 million.

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 2010, the NLRB had available budgetary resources of \$287 million, the majority of which were derived from new budget authority. This represents a \$20 million increase from FY 2009, when available budgetary resources were \$267 million. For FY 2009 and FY 2010, the status of budgetary resources shows obligations of \$263 million and \$283 million, respectively, or about 98 percent of funds available in each year. Total outlays for FY 2010 were \$272 million, which is a \$16 million increase from FY 2009.

Of the budget appropriation received by the NLRB, 90 percent of the payments are for employees' salaries and benefits, space rent, and building security. The remaining 10 percent is 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 Office of Management and Budget, 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.

NLRB TRIVIA:

Question: Who was the first African-American Board Member? Howard Jenkins, Jr., who was Assistant Solicitor of Labor when he was first appointed to the Board by President Kennedy in 1963. He was reappointed to successive terms by Presidents Johnson, Nixon, and Carter.

FINANCIAL PLANNING COMMITTEE

The NLRB's Financial Planning Committee has met annually since 1992 to review and update the NLRB's Five-year Financial Management Plan. The committee met in FY 2010 to assess the Agency's performance under the FY 2009 goals and to review and approve the goals for FY 2010. After reviewing the goals, and the tasks and milestones associated with each goal, the committee determined that the NLRB's five-year financial management goals should be:

- 1) Improved financial accountability
- 2) Improved financial management systems
- 3) Development of financial staff
- 4) Improved administration of credit card program
- 5) Use of electronic commerce to improve financial management

To improve the administration of the NLRB's Credit Card Program, oversight of the Purchase Card Program was moved from the Facilities and Property Branch to the Acquisitions Management Branch. A comprehensive training program was developed to train both approving officials and users of the purchase cards in the appropriate use of the card. One hundred percent of the approving

officials and users received the training. Furthermore, documentation of purchases was improved and quality control processes instituted. Oversight of the Travel Card Program remained within the Finance Branch.

In support of the NLRB's five-year financial management goals, a number of other new initiatives were instituted to improve financial management at the NLRB. They include:

- Purchase of special software for the NLRB's Backpay System for preparation of W-2's to discriminatees and 1099s to vendors
- Implementation of updated vendor file for employees in the Federal Payroll and Personnel System to hide portions of personally-identifiable data
- Institution of a cross-training program for employees of the Finance Branch
- Succession planning for financial management personnel
- Provision of Momentum training to Budget staff, allottees, and budget allowance holders
- Encouraging the use of electronic funds transfer by both employees and witnesses
- Education of vendors on requirement to enroll in the Central Contracting Registry
- Encouraging travelers to use eTravel and book reservations online



MANAGEMENT ASSURANCES

FEDERAL MANAGERS' FINANCIAL INTEGRITY ACT

The Federal Managers' Financial Integrity Act (FMFIA) requires federal agencies to develop and implement appropriate and cost-effective internal controls for results-oriented management, assess the adequacy of those internal controls, identify needed areas of improvement, take corresponding corrective action, and provide an annual statement of assurance regarding internal controls and financial systems. This annual statement of assurance is provided in the PAR.

NLRB management is responsible for establishing and maintaining an environment throughout the Agency that is positive and supportive of internal controls and conscientious management. The NLRB is committed to management excellence and recognizes the importance of strong financial systems and an internal control system that promotes integrity, accountability, and reliability.

Internal control systems are expected to provide reasonable assurance that the following objectives are being achieved:

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

In assessing whether these objectives are being achieved, the NLRB used the following standards in accordance with OMB Circular A-123, *Management's Responsibility for Internal Control*, dated December 21, 2004.

Control Environment
Risk Assessment
Control Activities
Information and Communications
Monitoring

The NLRB's approach to assessing its internal controls included the identification and assessment of risks by 24 designated managers on an Agency-wide basis. 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. These 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 2010 provide reasonable assurance that NLRB systems and internal 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 written assessments by the 24 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, 2010, 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.

FINANCIAL SYSTEMS STRATEGIES

The NLRB obtains the majority of its financial systems and services from the Department of the Interior's National Business Center (NBC). NBC provides the following systems:

- Momentum Financials and Momentum Acquisitions – Integrated systems which allow the sharing of data and information between the NLRB's Finance Branch and its Acquisitions Management Branch.
- Finmart Reporting System – A system of various accounting and budgetary reports that are used by staff in the Finance and Budget Branches and the Budget Allowance Holders to monitor the Agency's financial activities. The reports in this system are custom designed for the NLRB's use.
- Hyperion – Hyperion is the system used for the preparation of the Agency's audited Financial Statements which are contained in the Performance and Accountability Report. Statements are prepared annually and quarterly.

- FPPS – Federal Payroll and Personnel System – Integrated with the Momentum, system, providing for more efficient payroll processing.
- E2Solutions – eTravel system provided by Carlson Wagonlit, the NLRB's Travel Management Service.

The integration of the various accounting and payroll systems and functions has enhanced the NLRB's financial reporting capabilities, facilitated more efficient and effective programs and administrative performance, and enabled continued compliance with the Chief Financial Officers Act of 1990.

In FY 2009, the NLRB contracted for a major upgrade to Momentum which will further improve functionality and financial reporting. The NLRB is currently using a much older version of Momentum. Staff has spent the better part of FY 2010 meeting with NBC and the system developer to define system functionality and scope, and to refine the costs of the upgrade, which will take place in mid-FY 2011. As part of this upgrade, the Agency will obtain a much-improved integrated acquisitions module which will not only enhance the procurement function, but provide a direct interface with FPDS-NG (government-wide procurement data system) and FedBizOps. It is an improvement the Agency has long needed.





UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
WASHINGTON, DC

November 1, 2010

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, 2010, was operating effectively and no material weaknesses were found in the design or implementation of internal controls.

Handwritten signature of Wilma B. Liebman in cursive.

Wilma B. Liebman
Chairman

Handwritten signature of Lafe E. Solomon in cursive.

Lafe E. Solomon
Acting General Counsel

The Statement of Assurance is required by the Federal Managers' Financial Integrity Act (FMFIA) and OMB Circular A-123, *Management's Responsibility for Internal Control*. The assurance is for internal controls over operational effectiveness (we do the right things to accomplish our mission) and operational efficiency (we do things right).

2010 YEAR IN REVIEW

THE NLRB CELEBRATES 75 YEARS

When President Franklin Roosevelt signed the National Labor Relations Act (Wagner Act) on July 5, 1935, it signaled the beginning of a new national labor policy. The struggle to establish a national policy dated back to World War I when President Woodrow Wilson established the tripartite War Labor Board in 1918 to promote labor peace. After World War I, Congress paved the way toward further reform by passing legislation such as the Railway Labor Act of 1926, the Norris-LaGuardia Act, and the National Recovery Act of 1933 (NRA). These pieces of legislation promoted such workplace ideals as the right to organize and join a union without employer interference, collective bargaining, minimum wages, maximum hours, and other conditions of employment.

There were two previous attempts to establish a national labor board – in 1933 President Roosevelt created the National Labor Board (NLB) and then Congress authorized in 1934 the President to establish a new board to replace the NLB called the National Labor Relations Board (now known as the “Old NLRB”). Both of those boards, however, lacked any real enforcement power, but the decisions of the “Old NLRB” did provide a foundation for an emerging national labor policy on collective bargaining.

Frustrated by these boards’ lack of enforcement power to gain compliance, Senator Robert Wagner of New York, who served as the chair of the NLB, introduced legislation in 1935 to create a new independent agency—the National Labor Relations Board, made up of three members appointed by the President and confirmed by the Senate—to enforce employee rights rather than to mediate disputes. It gave employees the right to form and join unions, and it obligated employers to bargain collectively with unions selected by a majority of the employees in an appropriate bargaining unit. Wagner’s bill passed the Senate in May 1935, cleared the House in June, and was signed into law by President Roosevelt on July 5, 1935.



The NLRB as we know it today, with its five-member Board and a Presidentially-appointed General Counsel, traces its roots back to the passage of the Taft-Hartley Act in 1947.

To commemorate this landmark diamond anniversary, the NLRB has held a number of special events throughout 2010. The Board Members and the General Counsel have attended and spoken at a number of special functions held in the Regional Offices, attended by both labor and management representatives. These events culminated with a two-day conference held in Washington, DC at George Washington University in October. This conference was not only a retrospective of the Board’s history and its place in enforcing the nation’s labor policy, but also a look at the future of the NLRB and labor in the United States.

NEW PROCESS STEEL V. NLRB THE TWO-MEMBER BOARD AND THE SUPREME COURT DECISION

For 27 months, beginning in January 2008, the Board had three vacancies and only two members, Chairman Wilma B. Liebman and (former Chairman and) Member Peter C. Schaumber. That period ended in March, 2010, when President Obama recess-appointed two additional members, Craig Becker and Mark Gaston Pearce. The two-member Board continued to issue decisions during this period, relying upon Section 3(b) of the NLRA as well as an opinion issued by the US Department of Justice’s Office of Legal Counsel. Section 3(b) of the NLRA permits “the Board to delegate to any group of three or more members any or all of the powers which it may itself exercise.” This Section also provides that, where the Board has delegated its power to a group of three or more members, a quorum of the group shall be two members. Furthermore, Section 3(b) states that “[a] vacancy on the Board shall not impair the right of the remaining members to exercise all of the powers of the Board.

A four-member Board consisting of then-Member Wilma B. Liebman and Member Peter C. Schaumber, and former Board Members Dennis P. Walsh and Peter C. Kirsanow delegated its powers to a three-member panel consisting of Members Liebman, Schaumber, and Kirsanow on December 28, 2007. When the recess appointments of Members Walsh and Kirsanow expired on December 31, 2007, the three-member Board began operating as a two-member quorum.

During the period, the two-member Board issued nearly 600 decisions, but its authority to issue those decisions was challenged in dozens of requests for review in the courts of appeals. The courts of appeals split on the issue, with five circuits ruling in the Board's favor and the D.C. Circuit ruling against it.

On September 29, 2009, the U.S. Department of Justice, on behalf of the NLRB, asked the Supreme Court to settle the question of the two-member Board. The request was made in two actions: a petition for *certiorari* in the *Laurel Baye Healthcare* case and a response to a *certiorari* petition filed by the employer in *New Process Steel*. The Supreme Court agreed to grant *certiorari* in *New Process Steel* on November 2, 2009.

On June 17, 2010, the Supreme Court in a 5-4 decision resolved the split in the circuit courts of appeals and ruled that the NLRB was not authorized to issue decisions during the 27-month period when three of its five seats were vacant. In the majority opinion, written by Justice Stevens, the Court noted that:

"We are not insensitive to the Board's understandable desire to keep its doors open despite vacancies. Nor are we unaware of the costs that delay imposes on the litigants. If Congress wishes to allow the Board to decide cases with only two members, it can easily do so. But until it does, Congress' decision to require that the Board's full power be delegated to no fewer than three members, and to provide for a Board quorum of three, must be given practical effect rather than be swept aside in the face of admittedly difficult circumstances."

At the time of the June 17 Supreme Court decision, 96 of the two-member Board decisions were pending on appeal before the federal courts-six at the Supreme Court and 90 in various courts of appeals. The Board sought to have each of these cases remanded to the Board for further consideration. Each of the remanded cases was to be decided by a three-member panel of the Board which included Chairman Liebman and Board Member Schaumber. Consistent with Board practice, the other two Board Members not on the panel had the opportunity to participate in a case if they so desired. The Board issued its first decisions in these 96 returned cases on August 5, 2010¹ and, to date, has issued 70 decisions.

In the interest of transparency, the Board created a public web page listing all of the contested cases decided by the two-member Board, with links to the original documents and daily status updates indicating which cases were returned and resulted in new decisions.

As the list reveals, a majority of the cases had already been closed through compliance with the original Board decision, settlement, withdrawal or other means. Still more are in some stage of litigation and compliance stemming from the original decision; those rulings could still be contested.

THE NLRB LAUNCHES 75TH ANNIVERSARY WEB SITE

One of the Board's more prominent activities as part of the year-long celebration of its 75th Anniversary was the launching of a commemorative Web site. The site contains video introductions from Chairman Wilma B. Liebman, former General Counsel Ronald Meisburg, and former Board Member Peter C. Schaumber, along with photos from the NLRB's 75 years and historical events. It also contains NLRB trivia, an NLRB-themed crossword puzzle, and a calendar of anniversary events nationwide.



The NLRB chose April 12, 2010 as the date to launch its commemorative Web site because it was on this date that the Supreme Court upheld the constitutionality of the NLRA. On that day in 1937, via a 5-4 decision, the Supreme Court reversed the judgments of the courts of appeals in two cases, *Jones & Laughlin Steel* and *Friedman-*

¹ The cases were: SPE Utility Contractors, LLC 7-CA-50767 (unlawful discharge); Chrysler LLC, 7 CA-51553 (refusal to provide information); ADF Inc., 1-CA-45068 (repudiation of collective bargaining agreement and withdrawal of recognition); and Regal Health and Rehabilitation Center 13-CA-44481, et al. (unlawful conduct during organizing campaign, with bargaining order granted).

75TH ANNIVERSARY COMMEMORATIONS

In celebration of the Board's 75th Anniversary, the Board and General Counsel hosted an open house on November 4, 2009. The Open House offered an opportunity for Agency guests to meet and visit with the Board Members and the General Counsel in their offices, to meet NLRB staff, and to join in welcoming back former Board Members and General Counsels.



One of the distinguished guests at the Open House was former Member Sam Zagoria, now 92, the oldest living Board Member. He was appointed to the Board by President Lyndon Baines Johnson and served from 1965 to 1969.

Pictured Left to Right: Former Board Member Peter C. Schaumber, Sam Zagoria, and former Chairman Robert J. Battista

On the evening of Friday, November 6, 2009, The American Bar Association's (ABA) Section of Labor and Employment Law held a celebration dinner in honor of the 75th Anniversary of the Wagner Act. On hand were guests from as far away as Australia; NLRB Board Members and General Counsels, past and present; as well many representatives of the Board's regional offices throughout the country; and many members of the labor and management bars.

Welcoming remarks were delivered by Nora L. Macey, Chair of the ABA Section of Labor and Employment Law; Carolyn B. Lamm, President of the ABA; and General Counsel Ron Meisburg. After Board Member Peter Schaumber introduced the distinguished guests, Chairman Wilma Liebman presided over the event as Mistress of Ceremonies. The dinner featured three guest speakers: Hon. Hilda Solis, US Secretary of Labor and former member of the U.S. House of Representatives; Hon. Ray Marshall, Professor Emeritus at the Lyndon B. Johnson School of Public Affairs, Austin TX, and former US Secretary of Labor; and Peter J. Hurtgen, a former NLRB Board Member and Chairman.

Harry Marks, to find the NLRA constitutional. Until then, the NLRB, like many of the agencies that were part of President Roosevelt's New Deal, found its existence in doubt. During the early years of the New Deal, the Supreme Court had invalidated some federal agencies, finding that Congress did not possess power under the Constitution's Commerce Clause to regulate commercial activities, such as labor disputes and wages, unless they directly affected interstate commerce. On April 12, 1937, the Supreme Court ruled that the NLRA was a valid exercise of Congressional power.

Thus April 12, 1937 has become known in NLRB history as "Constitutionality Day," the day the Board commemorates its validation.

KAISER PERMANENTE ELECTION

The NLRB conducted its largest mail ballot election in the agency's history this fall in an election that asked more than 40,000 Kaiser Permanente health care workers in



California if they wished to be represented by their current union, a new union, or no union at all. The election was requested by the National Union of Healthcare Workers (NUHW), which had broken away from the existing union, United Healthcare Workers, part of the Service Employees International Union (SEIU). The election presented logistical challenges because of the large number of voters and the fact that facilities are scattered throughout the state. The NLRB used a contractor to prepare and mail the ballots, which were returned in two color-coded envelopes

to protect voter confidentiality. Ballots were mailed September 13 and returned by October 4. Slightly more than 30,000 ballots were returned. The vote count was conducted at the NLRB's Oakland office by agency personnel and was completed in two days, with results announced late October 7. UHW/SEIU won the election with 18,290 votes, while the NUHW took 11,364 votes, and 365 votes were cast for no union. Objections to the election have been filed.

NLRB E-FILING

Since its launch as a pilot program in 2003, the NLRB's E-Filing program has matured into a fully-integrated system allowing parties with cases before the Board and General Counsel to use a Web site interface to file almost all case documents, except charges and petitions. Agency-wide E-filing was made possible in 2006 with the deployment of the Web portal, MyNLRB (mynlr.gov). Since then, approximately 26,000 documents have been E-Filed and stored in a database. All documents disclosed to the public that are filed electronically with the Board are immediately available through MyNLRB.

E-Filing is not a standalone system, but a component of the Next Generation Case Management System or NxGen, an enterprise-wide case management system platform that the NLRB is building using the latest technologies for interfacing with the public and managing cases across all of the NLRB's offices. NxGen integrates into a single unified system multiple technologies, including five distinct software solutions for customer relationship management, document management, collaboration, business analytics, and Web-based services for external constituents. NXGen is the most comprehensive technology project ever undertaken by the NLRB and its success is essential to the Agency's mission.

When fully deployed, NxGen will replace 13 legacy systems. In FY 2010, the Agency made significant progress in replacing its main legacy system—the Regional Office Case Activity Tracking System (CATS)—and retiring the Board's Pending Case List system. In FY 2011, the Agency's efforts will focus on retiring CATS, replacing headquarters case tracking applications, and modernizing its records management system.

THE NLRB ENGAGES WITH THE PUBLIC THROUGH ELECTRONIC AND SOCIAL MEDIA

Under the guidance of the Office of Public Affairs, the NLRB has moved increasingly toward the use of electronic and

social media to convey its messages and engage with the public. The Office launched an e-mail subscription service that allows attorneys, journalists, academics, members of the general public and others to sign up to electronically receive news releases, announcements of personnel changes, and weekly summaries of case decisions. This feature has allowed the agency to quickly inform the public about timely events such as the appointment of new Board members, election results, and important case decisions. In less than a year, more than 7,000 subscribers have signed up for the service. More features are expected to be added soon.

The NLRB also created a Facebook page to allow for a two-way conversation with the public. All news releases and weekly summaries are posted to the page, and new material is being developed. More than 1,500 Facebook users have signed on to the page, and nearly every entry results in comments or 'likes'. Every week, the page hosts "Trivia Fridays" in which trivia questions about the agency are displayed and users are encouraged to post their answers. The agency also created a Twitter account and regularly tweets developments – such as election results – as well as links to news releases and events. That information is automatically downloaded to the person's email or rss feed. The agency Twitter account currently has more than 800 followers.

OUTREACH ACTIVITIES

The NLRB's Regional Offices continue to engage in significant outreach to our stakeholders and the community at large. The Agency's Speaker's Bureau (available on the Agency's Web site) continues to attract requests from diverse members of the public within and outside the United States.

Board agents participated in 630 outreach events during FY 2010. The events reported in FY 2010 included outreach



activities that were directed at local communities, bar associations, labor organizations, employer/management organizations, government organizations, and educational institutions. A number of these events such as Detroit's NAACP Freedom Weekend; Minnesota Human Rights Day; Cleveland's Noble-Monroe Counties' Community Economic Adjustment Program; Los Angeles' Collective Bargaining Project for Low Income Students; Indianapolis' Fiesta and Black Expo Festival; participation on radio talk shows and press conferences; videotaped presentations; and public service announcements in publications have reached several hundred, if not thousands, of people.

In addition to those mentioned above, some significant outreach events in which Agency representatives participated included:

- Educating attorneys at a New York Urban Justice Center for a Korean workers group.
- Providing a presentation to employees of Hispanic United, a nonprofit organization that assists Buffalo, NY's Hispanic community.
- Conducting a question and answer session on Protected Concerted Activity, Investigations, and Remedies at Baltimore's Legal Aid Bureau's Low Wage Workers Task Force.
- Addressing workers at Atlanta's Literacy Volunteers of America.
- Conducting a training session at Boston's Chelsea Collaborative involving Spanish-speaking community members in training to become leaders in labor, housing, benefits, immigration and family matters.
- Discussing NLRB law and procedure at Long Island's Workplace Project for Latino immigrant workers.
- Discussions about protected concerted and union activities with workers and managers at specific businesses, workers' rights centers, and with community advocacy groups.
- Overviews of the Agency and the Act to elected officials, attorneys, professionals, federal and state agencies, mediators, human resource professionals, union stewards, educators, and students.

During FY 2010, 19 Regional Offices published and disseminated newsletters within their individual communities, targeted to the specific interests of constituents in their geographic areas. These newsletters are posted on the Agency's Web site under "About Us" at http://www.nlr.gov/about_us/regional_news/regional_newsletters.aspx.

In addition to the Outreach Program, the Agency's Public Information Program is one of the critical services provided to employers, unions, and employees. Under this

program, officers in the field provide information directly to individuals or entities that contact the Agency seeking assistance. In responding to these inquiries, Board agents spend considerable time explaining the coverage of the NLRA, accepting charges, or referring parties to other federal or state agencies.

The public can also contact the Agency through a toll-free telephone service (1-866-667-NLRB) designed to provide easy and cost-free access to information. 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 Information Officers located in the Agency's Regional Offices.

The Regional Offices received and responded to 137,000 telephone inquiries pertaining to workplace issues, through either direct contacts to an office or the Agency's toll-free number. In addition, Regional Offices are continuing their efforts to obtain air time on radio and public television stations, including Spanish-language stations.

10(J) REMEDIES FOR UNLAWFUL DISCHARGES

One of the core employee rights under the NLRA is the right to engage in union organizing activities in the workplace. Discharging employees for exercising their right to self-organization can send a message to other employees that they too risk retaliation by exercising their rights.

Over the years, the NLRB has developed a variety of effective strategies for minimizing the consequences of this unfair labor practice. First, the Agency focuses on prompt investigation of and settlement of meritorious charges. Such settlements are timely and effective. In addition, where settlement is not obtained, the General Counsel will consider whether to seek Board authorization to initiate Section 10(j) proceedings in federal district court to obtain an injunction, requiring employers to offer interim reinstatement to unlawfully discharged employees pending the Board's order.

To ensure that all unlawful discharges in organizing cases are given priority and that a speedy remedy is sought, the Acting General Counsel has initiated a streamlined process for handling these ULP cases. The program covers all stages of processing – from identification of cases as potential 10(j) cases by Regional Offices, through Board authorization and litigation of Section 10(j) cases, to trial and decisions of the merits of the case.

The NLRB has been committed to a vigorous Section 10(j) injunction program for years and has found it to be a highly effective tool for achieving meaningful remedies. This streamlined process for identifying and processing potential 10(j) cases ensures that discharged employees are provided relief in “real time.”

FIRST CONTRACT BARGAINING

Initial contract bargaining constitutes a critical stage of the negotiation process because it forms the foundation for the parties’ future labor-management relationship. Additionally, when employees are collectively bargaining for the first time, 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 Regional Offices accord high priority investigation status to ULP charges dealing with first contract bargaining. For those charges that are found to have merit, special remedies have also been instituted based upon the facts of each case.

As a result of this initiative, nearly 200 first contract cases have been 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 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.

CASEHANDLING HIGHLIGHTS

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, or private employers who are engaged in interstate commerce. During fiscal year 2010, the public filed 23,509 charges alleging that employers or labor organizations committed unfair labor practices prohibited by the Act, adversely affecting employees. Also, in FY 2010, the NLRB received 3,044 representation petitions, including 2,969 petitions to conduct secret-ballot elections in which workers in appropriate groups select or reject unions to represent them in collective bargaining with their employers, as well as 75 petitions for elections in which workers voted on whether to rescind existing union-security agreements. The NLRB also received 7 petitions to amend the certification of existing collective bargaining and 153 petitions seeking clarification of an existing bargaining unit.

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.

The following cases highlight this philosophy and reflect the NLRB’s 75-year mission of protecting democracy in the workplace:

MJ Metal Products (Case 27-CA-15523, et al) – The Board ordered a make whole remedy for four discriminatees, amounting to \$50,000. The NLRB’s Regional Office in Denver (Region 27), together with the NLRB’s Division of Enforcement Litigation’s Contempt Litigation and Compliance Branch, located the Respondent’s principal who had evaded responsibility for the liability, located assets to pay the amount due, and used the Federal Debt Collection Procedure Act and the Treasury Offset Program to obtain full compliance with the Board’s Order.

Tradesmen International (Case 25-CA-30929) – This was a case from the Indianapolis Regional Office (Region 25) that was resolved using the appellate court mediation process to bring to a close 15 years of litigation. The case arose out of a salting campaign conducted by the Sheet

Metal Workers' International Association Local Union No. 20 (Local 20), between January 1995, and November 1997. The Board found that the General Counsel met his initial burden under FES, 331 NLRB 9, 12 (2000), of showing that the employer was aware of applicants' union affiliation, that the Respondent was hiring, that the alleged discriminatees had experience relevant to requirements of the positions for hire, and that antiunion animus motivated the Respondent's refusals to hire. The Board further found that the Respondent violated Section 8(a) (3) of the NLRA by its discharge of four union salts and its failure to refer for employment one member of another union (the Carpenters Union) because of their union activity.

Finally, the Board found that the Respondent unlawfully failed to consider the above-referenced applicants and other discriminatees for future openings. The settlement resulted in the payment of more than \$143,000 in backpay to 18 individuals and included Respondent's agreement to include language on its employment applications and advertisements indicating its acknowledgement of the rights of applicants/employees under the NLRA.

Foxwood Resorts (Case 34-CA-12040, et al) – In January 2010, the United Auto Workers and Foxwoods Resort Casino entered into a historic collective bargaining agreement covering over 2,500 dealers at the largest casino complex in the world. Although the agreement was ultimately negotiated under tribal law, it resulted directly from Region 34's (Hartford, CT) timely and efficient processing of a representation petition where Region 34 determined that Foxwoods, which is owned and operated by the Mashantucket Pequot Tribal Nation and located on the Tribe's reservation, was subject to Board jurisdiction. Thereafter, it conducted an election wherein a majority of workers voted for union

representation and the Board subsequently certified the United Auto Workers (UAW) as the employees' collective-bargaining representative. Although Foxwoods initially appealed the jurisdictional determination, it ultimately negotiated a contract with the UAW.

Church Homes (Case 34-CA-9168) – A Region 34 (Hartford, CT) case, resolved after nearly 10 years of litigation, awarded \$2.1 million in backpay and interest to 133 current and former employees of Church Homes. The employees also received over \$500,000 in pension contributions. The case involved the employer's failure to reinstate strikers who offered unconditionally to return to work following an economic strike. The employer failed to reinstate the workers, arguing that it had permanently replaced them. Region 34 determined that hiring replacements in secret was meant to punish the strikers and dilute support for the union. The Board agreed and found that Church Homes violated the Act by replacing striking employees "secretly" without providing the union an opportunity to consider ending a strike or changing tactics. All of the striking employees were eventually re-hired.

Affiliated Computer Services, Inc. (Case 29-RC-11709) – A Region 29 (Brooklyn, NY) case involving an employer operating the E-ZPass electronic toll system. The Board denied review of the Regional Director's Supplemental Decision on Objections in which the Regional Director overruled the employer's objections to an election and issued a certification of representative for the Communication Workers of America (CWA). Specifically, three of the employer's objections concerned letters to the employer from a U.S. congressman and a New York State senator that were distributed to employees by unnamed union supporters. One letter expressed concern over the employer's relations



with its employees due to trimmed benefits and alterations in salary structure and offered to work with the employer and the CWA to ensure workers were treated fairly. Another letter raised concerns that the employer's plan to impose new compensation to employees might result in layoffs and noted a desire to ensure that employees were treated fairly. A third letter to the employer offered to host an open forum for the parties to discuss the issues in an atmosphere free from innuendo or threats. The Board determined that the employer failed to show by specific evidence that there was prejudice to the election, rejecting the employer's arguments that the aforementioned letters by third parties would mislead reasonable employees into believing that the Government supported the union in the election and/or that the letters threatened adverse economic consequences if the union lost the election.

Texas Dental Association (Case 16-CA-25840) – The Regional Office in Fort Worth, TX (Region 16) distributed \$900,000 in backpay awards to two former employees who were fired in relation to a petition complaining of poor management and unfair treatment. The Texas Dental Association also agreed to post a notice informing employees that they cannot be fired for acting together for mutual benefit and protection. One employee who had helped write the petition was fired after a fragment of it was found

on his computer. The second employee, a supervisor who refused to divulge the names of employees involved in the petition, was also fired. An ALJ found the first employee was unlawfully fired for engaging in protected activity, and that the supervisor was fired for refusing to engage in unlawful activity by divulging the employees' identities. The Judge's ruling was upheld by the Board. The matter was settled when the case was pending before the 5th Circuit.

Alden Leeds (Case 22-CA-29188) – Region 22 (Newark, NJ) obtained a temporary injunction and reinstatement for about 50 employees, who were unlawfully locked out during bargaining for a successor collective bargaining agreement. The ALJ similarly found the lockout to be unlawful.

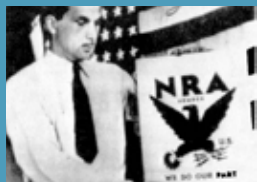
Independent Residences, Inc. (Case 29-RC-10030) – Region 29 (Brooklyn, NY) deftly handled a representation case where the employer filed objections to the election based on the existence of a state law that precluded state funds being used to encourage or discourage union organization or participation in an organizing drive. The Board applied a third-party analysis and determined that the state law did not interfere with the conduct of the Board election because it did not bar any form of campaign speech or conduct and the evidence demonstrated that the employer did engage in a vigorous campaign to defeat the union.

STATISTICAL HIGHLIGHTS

- The Board issued 315 decisions in contested cases in FY 2010.
- 95.1 percent of all initial elections were conducted within 56 days of filing of the petition.
- Initial elections in union representation cases were conducted in a median of 38 days from the filing of the petition.
- Acting on the results of professional staff investigations, which produced a reasonable cause to believe unfair labor practices had been committed, Regional Offices of the NLRB issued 1,243 complaints, setting the cases for hearing.
- A 95.8 percent settlement rate was achieved in the Regional Offices in meritorious ULP cases.
- The Regional Offices won 91 percent of Board and ALJ ULP and Compliance decisions in whole or part in FY 2010.
- A total of \$86,557,683 was recovered on behalf of employees as backpay or reimbursement of fees, dues, and fines with 2,250 employees offered reinstatement.
- The Agency received in FY 2010 116,223 inquiries through its Public Information Program.
- Agency representatives participated in 630 outreach events during FY 2010.
- In FY 2010, the NLRB's Web site attracted 2.3 million visitors with over 9.3 million page views.
- The Agency received 27,129 calls through its toll-free number in FY 2010.



PROGRAM PERFORMANCE



PROTECTING DEMOCRACY IN
THE WORKPLACE SINCE 1935

PROGRAM PERFORMANCE

PERFORMANCE GOALS AND OBJECTIVES

This section of the PAR details the NLRB's efforts to meet its strategic and performance goals. The two goals of the NLRB's Strategic Plan represent the core functions of the Agency in enforcing the NLRA. 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. The Agency exceeded the interim targets for all three performance measures in FY 2010. In recognition of this, the Agency increased the annual targets for FY 2010 through FY 2012.

STRATEGIC GOAL No. 1

Resolve all questions concerning representation impartially and promptly.

Objectives

The NLRA 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. The Agency seeks to ensure that the process used to resolve such questions allows employees to express their choice in an open, un-coerced 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 processes representation cases promptly in order to avoid unnecessary disruptions to commerce and to 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.

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.
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. Ensure that due process is accorded in representation cases by careful review of Requests for Review, Special Appeal and Hearing Officer Reports, and, where appropriate, the records in the cases.
7. Analyze and prioritize the critical workforce skill gaps 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 equip NLRB employees with technology tools and access to research and professional information comparable to that of their private-sector counterparts.

STRATEGIC 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 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.

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.
- 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 in order 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.
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 give NLRB employees technology tools and access to research and professional information comparable to that of their private-sector counterparts.



MEASURING PERFORMANCE

The NLRB has three overarching performance measures that support the two strategic goals. These performance measures were instituted in FY 2007 upon the updating of the NLRB's Strategic Plan.

The NLRB is an agency with a long history of performance measurement that dates back to the inception of the Agency, and before Congress passed the Government and Performance Results Act (GPRA). Traditionally, the NLRB's performance measurement approach was to emphasize individual segments of case processing to promote timely, efficient, and well-managed casehandling. These measures are still used by the NLRB as internal guides in assessing performance. The three overarching performance measures introduced in FY 2007 emphasize outcomes, and best serve 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?

It should be noted that it is difficult for an Agency such as the NLRB to measure "outcomes" in the sense intended by the authors of GPRA. In the representation case area, for instance, the Agency does not control or seek to influence the results of elections, but strives instead to ensure the rights of employees to freely and democratically determine, through a secret ballot election, whether they wish to be represented by a labor organization. If the Agency concludes that all of the necessary requirements for the conduct of an election have been met, it will either direct an election or approve the parties' agreement to have an election. The performance measure the Agency has established for the conduct of elections is objective and is not dependent on the results of the election. The true outcome of properly conducted elections is employees, employers, and unions voluntarily and freely exercising their statutory rights as set out in the NLRA.

The same difficulty is inherent in any attempt to define "outcomes" in the prevention of unfair labor practice conduct. The aim of the Agency is to prevent industrial strife and unrest that burdens the free flow of commerce. An indicator of success in the achievement of this aim is labor peace. In the absence of a mechanism to accurately gauge "labor peace" or the impact of Agency activities among a range of variables influencing that goal, the NLRB established two performance measures. In particular, the timeliness and quality of case processing, from the filing of an ULP charge to the closing of a case upon compliance with a litigated or agreed-to remedy, are the focus of those performance measures.

The tables in this section show the proposed annual targets for the three overarching measures for the five-year period covered by the current Strategic Plan (2007-2012), and the actual results achieved for FY 2007, FY 2008, FY 2009, and FY 2010.

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.

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 conducting an election. 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. When a case has been finally processed with no further rights of appeal or administrative action required, the question as to whether or not a labor organization will represent employees has been finally resolved.

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 obtain an adequate showing of interest.
- The majority of cases are resolved upon either a certification of representative (the union prevails in the election) or a certification of results (the union loses the election).
- In a small percentage of cases, there are post-election challenges or objections to the election. These cases are not considered resolved 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.

In FY 2010, the Agency closed 86.3 percent of its representation cases within 100 days of the filing of a petition, a 1.9 percent increase over FY 2009's results. The Agency exceeded the interim goal of 85 percent by 1.3 percent.

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

Year	TARGET	ACTUAL
FY 2007	79.0%	79.0%
FY 2008	80.0%	83.5%
FY 2009	81.0%	84.4%
FY 2010	85.0%	86.3%
FY 2011	85.0%	
FY 2012	85.2%	

Counting of days: The 100 days is calculated from the date the petition is formally docketed.

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.

This measure focuses on the time taken to resolve a ULP charge, including time spent on both the General Counsel and the Board sides.

After an individual, employer, or union files a ULP charge, a Regional Director evaluates it for merit and decides whether to issue a complaint. Complaints not settled or withdrawn, or dismissed, are litigated before an ALJ, whose decision may be appealed to the Board.

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 2010, the NLRB closed 73.3 percent of all ULP cases within 120 days of the docketing of the charge, an increase of 2.3 percent over the FY 2009 achievement of 71 percent. The Agency exceeded the FY 2010 goal of 71.2 percent by 2.1 percent.

GOAL NO. 2, TABLE 2
Percentage of ULP Charges Resolved Within 120 Days

Year	TARGET	ACTUAL
FY 2007	67.5%	66.0%
FY 2008	68.0%	68.5%
FY 2009	68.5%	71.0%
FY 2010	71.2%	73.3%
FY 2011	71.2%	
FY 2012	72.0%	

Counting of days: The 120 days is calculated from the date the charge is docketed.

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

This measure focuses on meritorious (prosecutable) ULP cases, and the time taken to close them on compliance, including time spent on both the General Counsel and Board sides. Compliance marks the point where an employer or union has ceased engaging in the ULP conduct being prosecuted and has taken appropriate affirmative action, including the payment of backpay, to make whole those injured by the ULP.

Once a Regional Director has determined an ULP charge has merit, it is scheduled for a hearing date before an ALJ. However, efforts to obtain voluntary compliance or appropriate settlements begin immediately and continue throughout the course of any necessary litigation. Most settlements are achieved before trial. Once the ALJ issues a decision, the decision can then be appealed to the Board. The Board, in turn, will consider the case and issue a final order resolving the ULP case. Ordinarily, the Regional Office will attempt to secure compliance in the 30-day period following the Board's order. If compliance cannot be obtained, the Region will refer the case to the Appellate and Supreme Court Litigation Branch of the Division of Enforcement Litigation, which, if it is unable to secure voluntary compliance or a settlement meeting established standards, will proceed to seek a judgment from an appropriate U.S. Court of Appeals enforcing the Board's order.

Following final court judgment, any disagreements about what steps are necessary before the case can be closed on compliance are resolved either in compliance proceedings before the Board and reviewing court proceedings, or in extreme cases, in contempt of court proceedings. 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 appealed to the circuit courts of appeals.

In FY 2010, the NLRB closed 84.6 percent of all prosecutable ULP cases in 365 days from the docketing of the charge. Thus, the Agency exceeded the interim goal of 80 percent by 4.6 percent. This was also a 4.9 percent increase over the actual results achieved in FY 2009.

GOAL NO. 2, TABLE 3

Percentage of ULP Cases Closed on Compliance Within 365 Days

Year	TARGET	ACTUAL
FY 2007	74.0%	73.5%
FY 2008	75.0%	76.0%
FY 2009	75.5%	79.7%
FY 2010	80.0%	84.6%
FY 2011	80.2%	
FY 2012	80.3%	

Counting of days: The 365 days is calculated from the date the charge is docketed.

FACTORS AFFECTING 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 budget, case intake, settlements, board member vacancies, and the potential effect of statutory changes.

BUDGET

In FY 2010, the NLRB's budget was \$283.4 million, an increase of \$20.8 million over FY 2009 funding. This increase was the largest increase the NLRB had received since FY 2003. Since 80 percent of the Agency's total budget is devoted to personnel costs, budget shortfalls, such as those experienced by the NLRB between fiscal years 2003 and 2008, and delays in receiving full funding (beginning each fiscal year operating under a Continuing Resolution), directly influence staffing resources and limit the Agency's ability to facilitate casehandling.

The requested funding for FY 2011, \$287.1 million, if enacted by Congress, will provide the resources necessary to cover staffing, training, 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.

Because the Agency exceeded its FY 2009 performance targets it increased its annual performance targets for FY 2010 through FY 2012. These increases assume funding at the 2010 level or above.

CASE INTAKE

During FY 2010, 23,509 ULP cases were filed with the NLRB, of which 35.6 percent were found to have merit, and 3,044 representation cases were filed, of which the merit factor rate was 68.1 percent. In FY 2010, the Agency's representation case intake increased by 2.5 percent and ULP case intake increased by 4.5 percent, with overall case intake increasing by 2.7 percent.

Based on current trends, it is estimated that the total of ULP and representation cases will increase in FY 2011 to 27,100. Of that total, it is estimated that ULP cases will increase to 24,000 cases and representation cases to 3,100.

Several factors could affect case intake, thus 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 such as immigration reform or focused organizing drives in protected communities or

industries could affect Agency caseload levels. Recent increases in union organizing among the service industries shows no sign of diminishing as organizing activities continue in the health care, hotel, janitorial, and casino sectors. Furthermore, the passage of new labor law legislation, such as the Employee Free Choice Act bill currently pending in Congress, would most likely result in an even greater increase in case intake.

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, economic globalization, 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.

Also, for the first time in more than two years, the Board operated with a full complement of five members, and historical trends show that Agency case intake increases when there is a new Board.

SETTLEMENTS

Currently, of those cases in which merit is found, approximately 96 percent 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 to fill vacancies in Board Member positions, thus causing prolonged vacancies on the Board. The assigned caseload of individual Board Members rises and decisions can be delayed because of 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.

As noted earlier, the Board operated as a two-member quorum between January 2008 and March 2010. During that period, the Board issued approximately 600 decisions, but the lack of a full Board, or even a three-member Board panel, prevented issuance of decisions in approximately 20 to 25 percent of cases. Furthermore, the Supreme Court decision in June 2010, that the Board did not have the authority to operate as a two-member quorum, meant that the Board would have to reconsider some of those 600 decisions.

At the time of the Supreme Court's decision, there were 96 cases pending before the federal courts. The Board sought to have those 96 cases returned to the Agency. Many of these cases have been reconsidered by a three-member panel of the Board. However, of the 600 cases, there are still more in some stage of litigation and compliance stemming from the original decision and those rulings could and may still be contested. Depending on the outcome of these contested cases, the productivity of the Board could be further impacted due to the increase in its backlog of cases.

POTENTIAL EFFECT OF STATUTORY CHANGES

As a general matter, changes in the law affect NLRB operations and could have consequences on the Agency's case load. Statutory changes, for example, could lead to an increase in ULP charges and/or election petitions filed with the Agency, with resulting increases in investigations and proceedings conducted by Agency personnel, especially if the settlement rate declines. Statutory changes may also directly mandate additional litigation by the Agency, e.g., seeking injunctive relief in federal district court. However, the overall impact of any pending labor law amendments is purely speculative.



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 information for the 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 called the Judicial Case Management System. This system, supported by Documentum, 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 uses various techniques and mechanisms to evaluate whether programs are achieving their GPRA and other performance targets. The Board regularly tracks the status of all of its cases to determine performance against yearly targets that support the Agency's overarching measures and strategic goals. A standing committee (Triage Committee) composed 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 regularly meet and communicate with each other to discuss cases.

The NLRB also tracks how the various circuit courts 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 2010. In FY 2010, the United States Courts of Appeals ruled on Board decisions in 16 enforcement and review cases. In 100 percent of those cases the Board's order was enforced or affirmed in full. Another 72 enforcement and review cases were dismissed or remanded by courts of appeals in FY 2010 in light of the Supreme Court's decision in *New Process Steel*. In comparison to FY 2010, in FY 2009, courts of appeals decided 61 enforcement and review cases involving the Board. Of those cases, 88.5 percent were enforced or affirmed in whole or in part, 78.7 percent were won in full, 6.6 percent were remanded entirely, and 4.9 percent were lost 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 annually 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. They also conduct site visits during which they evaluate Regional casehandling and administrative procedures. In addition, to assess the quality of litigation a field and Operations-Management Committee reviews all ALJ and Board decisions that constitute a significant loss. 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.

The Division of Operations-Management regularly reviews case decisions 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. Top Agency management also meets regularly with relevant committees of the American Bar Association to obtain feedback on their members' experiences practicing before the NLRB.

In addition to the evaluation of Regional Office activities, the Office of the General Counsel monitors the litigation success rate before the Board and before district courts with regard to injunction litigation. In FY 2010, the Injunction Litigation Branch received 66 cases from Regional Offices to consider for discretionary injunctive relief under Section 10(j) of the Act, as compared to 85 cases received in FY 2009. During the fiscal year, the Board's December 2007 delegation of Section 10(j) authority to the General Counsel continued until April 5, 2010, and consequently, the General Counsel and the Board together authorized 28 cases during FY 2010 as compared to 30 that the General Counsel authorized in FY 2009. Regional Offices filed 10(j) petitions in 23 cases, the same number as in 2009. The "success rate", i.e., the percentage of authorized Section 10(j) cases in which the Agency achieved either a satisfactory settlement or substantial victory in litigation was 100 percent at the end of FY 2010, compared to 81 percent at the end of FY 2009.



FINANCIAL SECTION



PROTECTING DEMOCRACY IN
THE WORKPLACE SINCE 1935

LETTER FROM THE DIRECTOR OF ADMINISTRATION



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

This year marked the 75th Anniversary of the signing of the Wagner Act and the beginning of the NLRB as an agency. I am especially pleased to present this year's Performance and Accountability Report as it highlights this landmark event while providing information relative to the NLRB's financial integrity, operating performance, systems, and internal controls. I am also gratified to note that the NLRB has received an unqualified opinion from the auditors on its financial statements. This is the seventh consecutive year that the NLRB has received such an opinion.

During FY 2010, we began the process of upgrading our current accounting system, Momentum Financials. The NLRB obtains the bulk of its financial systems support through the Department of Interior's National Business Center (NBC), and our last system upgrade occurred in 2004 when we upgraded to the Momentum system. Last year, we considered moving to another shared service provider because of continuing system and cost issues with NBC, resulting in the postponement of the upgrade. After weighing the direct and indirect costs of such a move, we decided to remain with NBC and work with them on resolving cost, system, and service issues. These efforts resulted in sufficient success to warrant moving forward with the upgrade. FY 2010 was spent in preparation for the upgrade, with staff working with NBC and the system developer to define system functionality and scope and to refine costs. The actual upgrade will begin in mid-FY 2011. As part of this upgrade, the Agency will obtain a much-improved integrated acquisitions module which will not only enhance the procurement function but also provide a direct interface with the Federal Procurement Data System and FedBizOps. It is an improvement the Agency has long needed.

To ensure better internal control, the oversight of the NLRB's Purchase Card Program was moved to the newly-established Acquisitions Management Branch. This branch was established in the Division of Administration last year, and its mission is devoted solely to contracting and procurement. A new training program was developed to train cardholders and approving officials on the proper use of the purchase card and their roles and responsibilities. I am pleased to report that one hundred percent of our users and approving officials participated in this training.



In connection with the FY 2009 audit, the NLRB's Office of the Inspector General issued a management letter which contained two new findings and one IT-related finding that remained from a previous financial audit. The two new findings involved an expenditure of funds for postage in FY 2009. We disagreed with the Inspector General that the expenditure violated the *bona fide* needs rule and agreed to establish procedures to monitor usage throughout the year and make decisions for any end of fiscal year purchases based upon established guidelines. Those procedures were developed and implemented. In an attempt to resolve the differences over the finding which involved the *bona fide* needs rule, the Division of Administration worked with the Inspector General and the auditors throughout the year, and the Office of the Chief Information Officer continued to address the recommendations contained in the management letter.

Protecting the rights of the working men and women of this country to bargain collectively if they so choose has been the core mission of this Agency for over 75 years. The accomplishment of this mission is dependent upon the maintenance of effective and efficient systems and controls which maximize and ensure responsible stewardship of the resources provided to the National Labor Relations Board in support of that mission. We are pleased and proud to contribute in this manner to the Agency's effectuation of the National Labor Relations Act.



Gloria Joseph
Director of Administration



UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

November 9, 2010

To: Wilma B. Liebman
Chairman

Lafe E. Solomon
Acting General Counsel

From: David P. Berry
Inspector General

A handwritten signature in black ink, appearing to read "D. Berry", written over the printed name of David P. Berry.

Subject: Audit of the National Labor Relations Board Fiscal Year 2010 Financial Statements
(OIG-F-15-11-01)

This memorandum transmits Carmichael, Brasher, Tuvell & Company's (CBTC) audit report on the National Labor Relations Board (NLRB) Fiscal Year (FY) 2010 Financial Statements.

The Accountability of Tax Dollars Act of 2002 requires the 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 2010 financial statements. CBTC previously issued an unqualified audit opinion on the FY 2009 information included with the consolidated statements. The objective of the audit did not include providing assurances on internal control or on the effectiveness of NLRB's internal control over financial reporting. Consequently, CBTC did not provide an opinion on the effectiveness of NLRB's internal control over financial reporting. In its audit report, however, CBTC identified a significant deficiency in internal controls, as evidenced by the combination of deficiencies to be in compliance with laws related to the Antideficiency Act, the *bona fide* needs rule, and the recording statute, as described below, and the lack of a system to prevent or detect such violations. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe

than a material weakness, yet important enough to merit attention by those charged with governance.

As part of obtaining reasonable assurance about whether the Agency's financial statements are free of material misstatement, CBTC performed tests of the Agency's 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. As a result of that testing, CBTC also reported that the Agency did not adhere to the recording statute or the *bona fide* needs rule (31 U.S.C. § 1502) when the NLRB's Office of Employee Development recorded an obligations of \$39,000 in training costs for two participants to be trained in January 2011 at the Federal Executive Institute and when the Agency obligated \$876,374 for 36 contracts for court reporting services. CBTC also reported that the Agency violated the Antideficiency Act when the Office of Equal Employment Opportunity purchased food for meals for employees and when the Acquisitions Management Branch entered into a prohibited personal services contract for \$124,800 with a labor relations services contractor. CBTC continued to report that the Agency did not adhere to the *bona fide* needs rule when the Agency purchased \$250,000 for postage on September 29, 2009.

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 9, 2010, 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.



CERTIFIED PUBLIC ACCOUNTANTS

INDEPENDENT AUDITORS' REPORT

To David P. Berry, 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, 2010 and 2009, 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) 2010 and 2009 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, 2010 and 2009; 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 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 over financial reporting. 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 over financial reporting.

A **deficiency in internal control** 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 and correct misstatements on a timely basis. A **material weakness** is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the organization's financial statements will not be prevented, or detected and corrected on a timely basis. A **significant deficiency** is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies, or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above. However, we identified a significant deficiency in the NLRB's internal control as evidenced by the combination of deficiencies to be in compliance with laws related to the Antideficiency Act, the *bona fide* needs rule, and the recording statute, as described in the next section, and the lack of a system to prevent or detect such violations. NLRB's management response to our significant deficiency is included in Appendix A with our assessment of management's response at Appendix B.

We also identified other matters in internal control that came to our attention during our audit that we communicated in writing to the management of NLRB 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 reported in the previous fiscal year that continues to be required to be reported under U. S. generally accepted government auditing standards and OMB audit guidance.

FY 2009 and 2010

U. S. Code, Title 31, Section 1502(a), the *bona fide* needs rule, states “The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title. However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law.”

NLRB did not adhere to the *bona fide* needs rule when NLRB’s Division of Administration purchased \$250,000.00 of postage on September 29, 2009 that was neither necessary to meet the need of FY 2009 nor was it necessary to avoid a disruption of the NLRB’s operations.

In the FY 2009 Management Letter, we recommended that NLRB de-obligate the \$250,000 in prepaid postage. NLRB management did not agree with this recommendation.

FY 2010

U. S. Code, Title 31, Section 1501(a)(1), the recording statute, states that an amount shall be recorded as an obligation only when supported by documentary evidence of a binding agreement between an agency and another person or agency that is in writing, authorized by law, and executed before the end of the period of availability for obligation of the appropriation or fund used.

NLRB did not adhere to the recording statute or the *bona fide* needs rule when, on September 28, 2010, the Office of Employee Development recorded an obligation of \$39,000 in training costs for two (2) participants to be trained in January 2011 at the Federal Executive Institute. The agreement for the training was not executed prior to the end of the period of availability for the FY 2010 appropriation and the training was not a *bona fide* need of FY 2010.

NLRB did not adhere to the recording statute or the *bona fide* needs rule when, on September 28 and 29, 2010, the NLRB obligated \$876,374 for thirty-six (36) contracts for court reporting services. The contracts created a liability that is contingent upon a court reporter being scheduled for a hearing. Contingent

liabilities are not recordable as obligations under the recording statute. Additionally, the court reporting expenses for FY 2011 are not a *bona fide* need of FY 2010.

U. S. Code Title 31, Section 1301(a) states “Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.”

NLRB’s Office of Equal Employment Opportunity (OEEO) purchased food for meals for employees. This is not an allowable expenditure under NLRB’s appropriation and is a violation of the Antideficiency Act.

Furthermore, the NLRB Acquisitions Management Branch violated the Antideficiency Act when it entered into a prohibited personal services contract for \$124,800 with a labor relations services contractor.

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 9, 2010

APPENDIX A – MANAGEMENT’S RESPONSE TO SIGNIFICANT DEFICIENCY

**UNITED STATES GOVERNMENT**
NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

November 9, 2010

Carmichael, Brasher, Tuvell & Company, PC
Atlanta, Georgia

To Whom It May Concern:

We are in receipt of your draft Independent Auditor’s Report with respect to the Financial Statements of the National Labor Relations Board for the fiscal year ended September 30, 2010.

We are extremely concerned with your finding of a “significant deficiency in the NLRB’s internal control” and have initiated a comprehensive review of this matter. Please be assured that we are committed to making whatever structural and other changes may be necessary or appropriate to ensure a properly controlled financial environment. We appreciate your diligent efforts to bring this critical matter to our attention.

Sincerely,

Handwritten signature of Wilma B. Liebman in cursive.

Wilma B. Liebman
Chairman

Handwritten signature of Lafe H. Solomon in cursive.

Lafe H. Solomon
Acting General Counsel

APPENDIX B – CBTC’S ASSESSMENT OF MANAGEMENT’S RESPONSE TO SIGNIFICANT DEFICIENCY

CBTC has reviewed NLRB management's response to the reported significant deficiency made in connection with our audit of NLRB's 2010 Financial Statements which is included as Appendix A.

We believe Management's proposed actions are responsive to our significant deficiency, however; the significant deficiency will remain open pending our follow up review of NLRB's corrective actions once implemented.

PRINCIPAL FINANCIAL STATEMENTS

National Labor Relations Board		
Balance Sheet		
As of September 30, 2010 and 2009		
(in dollars)		
	FY 2010	FY 2009
Assets:		
Intragovernmental:		
Fund balance with Treasury (Note 2)	\$ 36,676,482	\$ 27,295,075
Advances (Note 4)	23,336	276,086
Total Intragovernmental	36,699,818	27,571,161
Accounts receivable, net (Note 5)	92,784	36,307
General property, plant and equipment, net (Note 6 and 10)	12,349,329	10,180,286
Total Assets	\$ 49,141,931	\$ 37,787,754
Liabilities:		
Intragovernmental:		
Accounts payable (Note 7)	\$ 1,927,377	\$ 1,439,222
Employer contributions and payroll taxes	2,155,315	1,888,037
FECA liability (Note 8 and 10)	641,628	785,013
Other	140,060	151,222
Total Intragovernmental	4,864,380	4,263,494
Accounts payable (Note 7):	10,522,138	5,311,634
Estimated future FECA liability (Note 8 and 10)	1,746,665	2,511,450
Accrued payroll and benefits	8,960,673	8,089,841
Accrued annual leave (Note 8 and 10)	15,064,659	14,691,885
Total Liabilities	\$ 41,158,515	\$ 34,868,304
Net position:		
Unexpended appropriations	\$ 12,994,255	\$ 10,691,205
Cumulative results of operations (Note 10)	(5,010,839)	(7,771,755)
Total Net Position	\$ 7,983,416	\$ 2,919,450
Total Liabilities and Net Position	\$ 49,141,931	\$ 37,787,754

The accompanying footnotes are an integral part of these financial statements

National Labor Relations Board
Statement of Net Cost
 For the Periods Ended September 30, 2010 and 2009
(in dollars)

	FY 2010	FY 2009
Program Costs:		
Resolve Representation Cases		
Total Gross Cost	\$ 48,476,133	\$ 45,368,125
Resolve Unfair Labor Practices		
Total Gross Cost	\$ 247,582,839	\$ 231,417,384
Other:		
Gross Costs	59,371	132,918
Less: Earned Revenue	59,371	132,918
Total Net Cost – Other	–	–
Net Cost of Operations (Note 11)	\$ 296,058,972	\$ 276,785,509

The accompanying footnotes are an integral part of these financial statements

National Labor Relations Board
Statement of Changes In Net Position
For the Periods Ended September 30, 2010 and 2009
(in dollars)

	FY 2010	FY 2009
Cumulative Results of Operations:		
Beginning Balance	\$ (7,771,755)	\$ (7,330,398)
Budgetary Financing Sources:		
Appropriations-used	279,343,472	260,063,478
Other Financing Sources (Non-Exchange):		
Imputed financing costs (Note 13)	19,476,416	16,280,674
Total Financing Sources	\$ 298,819,888	\$ 276,344,152
Net Cost of Operations	(296,058,972)	(276,785,509)
Net Change	\$ 2,760,916	\$ (441,357)
Cumulative Results of Operations (Note 10)	\$ (5,010,839)	\$ (7,771,755)
Unexpended Appropriations:		
Beginning Balance	\$ 10,691,205	\$ 9,160,197
Budgetary Financing Sources:		
Appropriations-received	283,400,000	262,595,000
Appropriations-used	(279,343,472)	(260,063,478)
Recissions & cancelled appropriations	(1,753,478)	(1,000,514)
Total Budgetary Financing Sources	\$ 2,303,050	\$ 1,531,008
Total Unexpended Appropriations	\$ 12,994,255	\$ 10,691,205
Net Position	\$ 7,983,416	\$ 2,919,450

The accompanying footnotes are an integral part of these financial statements

National Labor Relations Board
Statement of Budgetary Resources
For the Periods Ended September 30, 2010 and 2009
(in dollars)

	FY 2010	FY 2009
Budgetary Resources:		
Unobligated balance, brought forward, October 1:	\$ 4,171,569	\$ 4,610,732
Recoveries of prior year unpaid obligations	973,430	840,433
Budget authority:		
Appropriations (Note 14)	283,400,000	262,595,000
Spending authority from offsetting collections:		
Earned		
Collected	211,226	216,802
Subtotal	283,611,226	262,811,802
Permanently not available (Note 14)	(1,753,478)	(1,000,514)
Total Budgetary Resources (Note 15)	\$ 287,002,747	\$ 267,262,453
Status of Budgetary Resources:		
Obligations incurred:		
Direct	\$ 282,467,777	\$ 262,958,149
Reimbursable	59,371	132,735
Subtotal (Note 15)	\$ 282,527,148	\$ 263,090,884
Unobligated balance:		
Apportioned (Note 15)	1,403,931	336,774
Unobligated balance not available	3,071,668	3,834,795
Total Status of Budgetary Resources	\$ 287,002,747	\$ 267,262,453
Change in Obligated Balance:		
Obligated balance, brought forward, October 1:	\$ 22,972,285	\$ 17,199,031
Obligations incurred, net	282,527,148	263,090,884
Gross Outlays	(272,465,179)	(256,477,197)
Recoveries of prior year unpaid obligations, actual	(973,430)	(840,433)
Obligated balance, net, end of period:	\$ 32,060,824	\$ 22,972,285
Net Outlays:		
Gross outlays	272,465,179	256,477,197
Offsetting collections	(211,226)	(216,802)
Net Outlays	\$ 272,253,953	\$ 256,260,395

The accompanying footnotes are an integral part of these financial statements

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 charges 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 September 29, 2010. 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). Effective for period beginning after September 30, 2008, the investments made for backpay funds will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide information about its fiduciary activities. See Note 1F, Fiduciary Activities, for additional information.

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 August 2010.

The Agency is required to be in substantial compliance with all applicable accounting principles and standards established, issued, and implemented by the FASAB, which is recognized by the American Institute of Certified Public Accountants (AICPA) as the entity to establish GAAP for the federal government. The Federal Financial Management Integrity Act (FFMIA) of 1996 requires the Agency to comply substantially with (1) federal financial management systems requirements, (2) applicable federal accounting

standards, and (3) the U.S. Government Standard General Ledger at the transaction level.

The FY 2012 Budget of the United States (also known as the President's Budget) with actual numbers for FY 2010 was not published at the time that these financial statements were issued. The President's Budget is expected to be published in February 2011 and will be available from the United States Government Printing Office. There are no differences in the actual amounts for FY 2009 that have been reported in the FY 2011 Budget of the United States and the actual numbers that appear in the FY 2009 Statement of Budgetary Resources.

OMB financial statement reporting guidelines for FY 2010 require the presentation of comparative financial statements for all of the principal financial statements. The NLRB is presenting comparative FY 2010 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 generally accepted accounting principles.

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. Effective for the period beginning after September 30, 2008, the cash received and the investments made for backpay funds will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide information about its fiduciary activities. See Note 1F, Fiduciary Activities, for further explanation.

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

F. Fiduciary Activities

Fiduciary activities are the collection or receipt, and the management, protection, accounting, and investment, and disposition by the Federal Government of cash or other assets in which non-Federal individuals or entities have an ownership interest that the Federal Government must uphold. Fiduciary cash and other assets are not assets of the Federal Government. Beginning in FY 2009, fiduciary activities will no longer be recognized on the proprietary financial statements, but they are required to be reported on schedules in the notes to the financial statements. (see SFFAS No. 31, Accounting for Fiduciary Activities).

The fiduciary funds collected by NLRB and held in escrow accounts with the Treasury are 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. The NLRB invests funds in federal government securities for backpay that are held in the escrow account at Treasury. Effective for the period beginning after September 30, 2008, the cash received and the investments made for backpay funds will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide

information about its fiduciary activities. See Note 3, Fiduciary Activities.

The federal government securities include Treasury market-based securities issued by the Federal Investment Branch of the Bureau of the 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 Fiduciary Activities.

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 systems 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 five to twelve years. There are no restrictions on the use or convertibility of general property, plant and equipment.

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 two to five 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 has been a multiple year undertaking in which a large portion of the system will be rolled out in FY 2011. The overall cost of this project is expected to exceed \$14 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.

See Note 9 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.

Intragovernmental

The U.S. Department of Labor (DOL) paid Federal Employees Compensation Act (FECA) benefits on behalf of the NLRB which had not been billed or paid by the NLRB as of September 30, 2010 and 2009, respectively.

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 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 two- to three-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 Notes 8 and 10 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 Notes 8 and 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 16 for additional information on Contingencies.

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 and Sick Leave Program.

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

Most of 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 of the 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 is \$16,500 in calendar year (CY) 2011 to this plan. Employees belonging to CSRS may also contribute up to \$16,500 of their salary in CY 2011 and receive no matching contribution from the NLRB. The maximum for catch-up contributions for CY 2011 is \$5,500. For CY 2011, 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 2010, the NLRB, utilizing OPM provided cost factors, recognized \$9,546,185 of pension expenses, \$9,901,409 of post-retirement health benefits expenses, and \$28,822 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$19,476,416 as an imputed financing source to the extent that these intragovernmental expenses will be paid by OPM.

See Note 13 for additional information

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 Regional 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, or local income 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.

V. Subsequent Events

Subsequent events and transactions occurring after September 30, 2010 through the date of the auditor's opinion have been evaluated for potential recognition or disclosure in the financial statements. The date of the auditor's opinion also represents the date that the financial statements were available to be issued.

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, 2010 and September 30, 2009 consists of the following:

Fund Balance with Treasury by Fund Type:

(in thousands)	General Funds	Escrow Funds	Total Fund Balance with Treasury
FY 2010 Entity Assests	\$ 36,537		\$ 36,537
Non-Entity Assests		139	139
Total		\$ 139	\$ 36,676
FY 2009 Entity Assests	\$ 27,144		\$ 27,144
Non-Entity Assests		151	151
Total	\$ 27,144	\$ 151	\$ 27,295

The status of the fund balance may be classified as unobligated available, unobligated unavailable, and obligated. Unobligated 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 but 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, 2010 and September 30, 2009 consists of the following:

Fund Balance with Treasury by Availability:

(in thousands)	FY 2010	FY 2009
Unobligated Balance		
Available	\$ 1,404	\$ 337
Unavailable	3,072	3,835
Obligated balance not yet disbursed	32,061	22,972
Non-budgetary fund balance with Treasury	139	151
Totals	\$ 36,676	\$ 27,295

NOTE 3. FIDUCIARY ACTIVITIES

Effective for the period beginning after September 30, 2008, the cash received and the investments made for backpay funds will not be recognized on the balance sheet of any federal entity. A note disclosure is still required to provide information about its fiduciary activities. See Note 1 F, Fiduciary Activities, for further explanation.

Backpay funds are the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings. NLRB holds these funds in an escrow account with Treasury or invests the 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.

There exists a signed MOU between the NLRB and the U.S. Treasury (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.

Schedule of Fiduciary Activity

As of September 30, 2010 and 2009

(in thousands)	FY 2010	FY 2009
Fiduciary net assets, beginning of the year	\$ 3,871	\$ 7,338
Fiduciary revenues	12,367	15,388
Investment earnings	1	7
Disbursements to and on the behalf of beneficiaries	(13,460)	(18,862)
Increase (Decrease) in fiduciary net assets	\$ (1,092)	\$ (3,467)
Fiduciary net assets, end of year	\$ 2,779	\$ 3,871

Fiduciary Net Assets

As of September 30, 2010 and 2009

(in thousands)	FY 2010	FY 2009
Fiduciary Assets		
Cash and cash equivalents	\$ 2,779	\$ 1,487
Investments		2,384
Fiduciary Liabilities		
Less: Liabilities	-	-
Total Fiduciary net assets	\$ 2,779	\$ 3,871

NOTE 4. ADVANCES**Intragovernmental**

Intragovernmental Advances to the United States Postal Service (USPS) for September 30, 2010 was \$ 23,336 and \$ 261,437 for September 30, 2009. The remainder of the balance for FY 2009 was with the Department of Transportation for the transit subsidy.

NOTE 5. ACCOUNTS RECEIVABLE, NET OF ALLOWANCES FOR DOUBTFUL ACCOUNTS

The FY 2010 intragovernmental accounts receivable is zero and the FY 2009 amount was also zero:

(in thousands)	FY 2010	FY 2009
With the public		
Accounts receivable	\$ 97	\$ 38
Allowance doubtful accounts	(4)	(2)
Accounts receivable-net	\$ 93	\$ 36

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, 2010 and September 30, 2009 was \$3,298,900 and \$1,211,053 (in dollars), respectively.

(in thousands) FY 2010	Asset Cost	Accumulated Depreciation/ Amortization	Net Asset Value
Equipment	\$ 2,395	\$ 1,839	\$ 556
Internal Use Software	15,929	6,181	9,748
Internal Use Software in Development	2,045	-	2,045
Totals	\$ 20,369	\$ 8,020	\$ 12,349

(in thousands) FY 2009	Asset Cost	Accumulated Depreciation/ Amortization	Net Asset Value
Equipment	\$ 1,854	\$ 1,543	\$ 311
Internal Use Software	5,038	3,178	1,860
Internal Use Software in Development	8,009	-	8,009
Totals	\$ 14,901	\$ 4,721	\$ 10,180

NOTE 7. INTRAGOVERNMENTAL ACCOUNTS PAYABLE

These accounts payables 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, 2010 and September 30, 2009, is as follows:

(in thousands)	FY 2010	FY 2009
Intragovernmental:		
FECA-Unfunded	\$ 642	\$ 785
Total Intragovernmental	\$ 642	\$ 785
Estimated Future – FECA	1,747	2,511
Accrued Annual Leave	15,065	14,692
Total Liabilities not covered by budgetary resources	17,454	17,988
Total Liabilities covered by budgetary resources	23,705	16,880
Total Liabilities	\$ 41,159	\$ 34,868

NOTE 9. NON-ENTITY ASSETS

Non-Entity assets, restricted by nature, consist of miscellaneous receipt accounts. These amounts represent cash collected and accounts receivable (net of allowance for doubtful accounts). The miscellaneous receipts represent court costs and freedom of information requests that must be transferred to the Treasury.

The composition of non-entity assets as of September 30, 2010 and September 30, 2009, is as follows:

(in thousands)	FY 2010	FY 2009
Non-entity assets		
Fund Balance with Treasury	\$ 139	\$ 151
Entity assets	\$ 49,003	\$ 37,637
Total Assets	\$ 49,142	\$ 37,788

NOTE 10. CUMULATIVE RESULTS OF OPERATIONS

(in thousands)	FY 2010	FY 2009
FECA paid by DOL	\$ (226)	\$ (305)
FECA – Unfunded	(642)	(785)
Estimated Future FECA	(1,747)	(2,511)
Accrued Annual Leave	(15,065)	(14,692)
General Property, Plant & Equipment, Net	12,349	10,180
Other	320	341
Cumulative Results of Operations	\$ (5,011)	\$ (7,772)

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 2010	FY 2009
Resolve Representation Cases		
Intragovernmental Costs	\$ 9,635	\$ 8,839
Costs with the Public	38,841	36,529
Total Net Cost - Resolve Representation Cases	\$ 48,476	\$ 45,368
Resolve Unfair Labor Practices		
Intragovernmental Costs	\$ 48,753	\$ 44,720
Costs with the Public	198,830	186,697
Total Net Cost - Resolve Unfair Labor Practices	\$ 247,583	\$ 231,417
Other		
Intragovernmental Costs	\$ 59	\$ 133
Less: Intragovernmental Earned Revenue	59	133
Total Net Cost - Other	-	-
Net Cost of Operations	\$ 296,059	\$ 276,785

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 sets 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 FY 2011 through FY 2015.

Rental expenses for operating leases as of September 30, 2010 were \$27,365,763 for Agency lease space and \$2,381,725 for Agency building security. For FY 2009 the operating lease costs were \$27,793,326 and the Agency building security portion was \$2,260,673.

Fiscal Year (in thousands)	GSA Real Property
2011	\$ 28,052
2012	28,753
2013	29,472
2014	30,209
2015	30,964
Total Future Lease Costs	\$ 147,450

NOTE 13. 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, 2010 and 2009 consisted of:

(in thousands)	FY 2010	FY 2009
Office of Personnel Management:		
Pension expenses	\$ 9,546	\$ 7,086
Federal employees health benefits	9,901	9,166
Federal employees group life insurance program	29	28
Total Imputed Financing	\$19,476	\$16,280

NOTE 14. APPROPRIATIONS RECEIVED

The NLRB received \$283,400,000 and \$262,595,000 in warrants for the fiscal years ended September 30, 2010 and 2009, respectively. The amount shown on the Statement of Budgetary Resources under caption "Permanently not available" for FY 2010 was the cancelled appropriation for FY 2005 for the amount of \$1,753,478. For FY 2009, the total amount was \$1,000,514 for the cancelled appropriation for FY 2004.

NOTE 15. 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 \$287,002,747 as of September 30, 2010 and \$267,262,453 as of September 30, 2009, 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, 2010 was \$1,403,931 and at September 30, 2009 was \$336,774.

Apportionment Categories of Obligations Incurred.

NLRB's obligations incurred as of September 30, 2010 and September 30, 2009 by apportionment Category A and B is 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. Beginning in FY 2010, OMB agreed that it was not necessary for NLRB to separate its information technology funding and therefore all obligations incurred were from one funding category.

(in thousands)	Apportioned		Not Subject to Apportionment
	Category A	Category B	Total
FY 2010			
Obligations Incurred:			
Direct	\$ 282,468	–	\$ 282,468
Reimbursable	59	–	59
Total Obligations Incurred	\$ 282,527	–	\$ 282,527

(in thousands)	Apportioned		Not Subject to Apportionment
	Category A	Category B	Total
FY 2009			
Obligations Incurred:			
Direct	\$ 248,686	\$ 14,272	\$ 262,958
Reimbursable	133		133
Total Obligations Incurred	\$ 248,819	\$ 14,272	\$ 263,091

NOTE 16. CONTINGENCIES

The NLRB is involved in various lawsuits incidental to its operations. In regard to one case involving an NLRB employee, there is a reasonable possibility of an unfavorable outcome and fees may be in excess of \$100,000 but not more than \$200,000. While the ultimate outcome of these matters is not presently determinable, it is the opinion of management that the resolution of outstanding claims will not have a materially adverse effect on the financial position of the NLRB.

NOTE 17. RECONCILIATION OF NET COST OF OPERATIONS TO BUDGET

For the Month Ended September 30, 2010 and 2009

(in thousands)	FY 2010	FY 2009
Resources Used to Finance Activities		
Current Year Gross Obligations	\$ 282,527	\$ 263,091
Budgetary Resources from Offsetting Collections:		
Spending Authority from Offsetting Collections		
Earned		-
Collected	(211)	(217)
Recoveries of Prior Year Unpaid Obligations	(973)	(840)
Other Financing Resources:		
Imputed Financing Sources	19,476	16,280
Total Resources Used to Finance Activity	\$ 300,819	\$ 278,314
Resources Used to Finance Items Not Part of the Net Cost of Operations		
Budgetary Obligations and Resources not in the Net Cost of Operations:		
Change in Undelivered Orders	(1,999)	(1,970)
Current Year Capitalized Purchases	(5,468)	(2,481)
Components of the Net Cost of Operations which do not Generate or Use Resources in the Reporting Period		
Revenues without Current Year Budgetary Effect:		
Other Financing Sources Not in the Budget	(19,476)	(16,280)
Costs without Current Year Budgetary Effect:		
Depreciation and Amortization	3,299	1,211
Future Funded Expenses	229	859
Imputed costs	19,476	16,280
Bad Debt Expense	8	2
Other Expenses Not Requiring Budgetary Resources	(829)	850
Net Cost of Operations	\$ 296,059	\$ 276,785



OTHER ACCOMPANYING INFORMATION



PROTECTING DEMOCRACY IN
THE WORKPLACE SINCE 1935

INSPECTOR GENERAL'S TOP MANAGEMENT AND PERFORMANCE CHALLENGES

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

October 7, 2010

To: Wilma Liebman
Chairman

Lafe Solomon
Acting General Counsel

From: David Berry 
Inspector Gen

Subject: Issue Alert No. OIG-IA-11-01: 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. 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 or Agency) operations.

At the beginning of Fiscal Year (FY) 2010, we identified nine management and performance challenges. We have removed two challenges involving the Board's deliberative process and implementing e-government initiatives. For both of those areas, we believe that sufficient progress has been made and that there is no longer a need to highlight them as management challenges. We also combined the challenges for implementing the Next Generation Case Management System and creating more productive and efficient procedures and organizations into one challenge.

CHALLENGES

Implementation of the Next Generation Case Management System and seize opportunities to create more productive and efficient procedures and organizations.

The Agency is in the final stages of implementing an enterprise-wide electronic case management and processing system. This system will replace 13 separate legacy systems by integrating them into a single unified system using multiple technologies, including 5 distinct

software solutions for customer relationship management, document management, collaboration, business analytics, and Web-based services for external constituents. This is the most comprehensive information technology project ever undertaken at the NLRB. Its success is critical to the Agency's mission and presents a unique opportunity to create more productive and efficient procedures and organizations.

We have seen progress towards meeting this challenge. The Board completed a review of the organization of the Office of the Executive Secretary and implemented staffing changes that will hopefully allow that office to leverage technology and other resources to meet its mission.

The Board's progress is a good step, but the Agency has not yet exhausted the opportunities to achieve productive and efficient procedures. Our recent audit of the Financial Remedies and Other Settlement Terms disclosed that the controls in the Casehandling Manual are not being followed and that the quality control process has not been effective. In response to the audit, the Division of Operations-Management commented that the issues we identified with respect to data integrity and management control will be addressed by the new case processing system. We are skeptical that the new case processing system can solve any casehandling problems on its own. Now is the time to review casehandling and other processes to determine what is needed going forward.

Maintain the Agency's institutional knowledge.

There have been many changes in technology, laws and regulations, and management systems that have altered the manner in which employees perform their official duties. As change occurs, the policy and procedures are not always updated on a timely basis, 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 in an Agency of this size, specialized tasks are often performed by a limited number of employees.

We continued to see progress in this area, particularly in the training of field personnel and managers and supervisors. The Division of Operations-Management also had several rotations of the exchange program at Headquarters for field support and professional staff. These types of activities can assist in the transfer of knowledge and help prepare a new corps of Agency leaders. We also saw, however, that the loss of key personnel can affect an office when its procedures are dependent upon a manager's knowledge rather than written procedures. When change in personnel is coupled with lack of written procedures, new personnel have a particularly difficult task of meeting the mission of the office while recreating process. Sound management of the Agency cannot solely rely upon an individual.

Manage the Agency's financial resources.

In prior years, we identified this challenge as "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." We believe that challenge may have been described too narrowly. After repeated years of level funding, appropriations for the last 2 fiscal years were increased to amounts that relieved much of the fiscal pressure experienced in prior years. As a result of the increase in funding, the Agency filled vacancies and restored programs that had been curtailed in prior years. Despite the increase in funding, we continued to observe similar fiscal management issues as we saw in prior years that cannot be solely attributed to a continuing resolution. This indicates that the challenge continues to exist in the Agency's management environment.

We believe that the organizational structure of the Agency is at the core of this challenge. The division of the Agency between the Board and General Counsel creates unique issues with regard to the management of the Agency, and this is particularly true with regard to management of the Agency's appropriation or budgetary issues. We also believe that the key to resolving these issues is transparency and cooperation.

In FY 2009, we saw a period of improved transparency in the allocation and spending of fiscal resources. Part of that success came from greater participation in the fiscal management of the Agency by Board staff and part came from responsiveness of the General Counsel's staff. We believe that these efforts netted better management and stewardship of the Agency's resources.

In FY 2010, we observed even greater transparency and cooperation. Despite the improved management environment, we believe that there is work to be done particularly in the areas of planning and budgeting. We also suggest that the new processes be memorialized to ensure that they are not lost through changes in personnel.

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

In prior years, the OIG conducted audits involving the Agency's procurement function. These audits found numerous problems that could generally be attributed to some breakdown in the internal control process.

Adequate staffing, competence, and communication are critical to maintaining a well-managed procurement process. The prior years' convergence of budgetary issues and a shortage of competent candidates to fill vacant positions in a highly competitive field resulted in an understaffed procurement office. That lack of staffing created delays in processing procurement actions and greatly increased the opportunity for mistakes.

Over the last 2 years, there has been progress with this challenge. The Agency now has a stand-alone procurement office with the creation of the Acquisitions Management Branch within the Division of Administration. This is a significant step in ensuring a well-controlled procurement process. We have been told by the Chief, Acquisitions Management Branch, that the staffing issues have been recently addressed, and he is confident that the staff in place can meet the Agency's procurement needs.

Despite these improvements, we observed internal control issues during the past fiscal year involving the use of the Agency's funds, the *bona fide* needs rule, and the purchase card program. One issue we identified involved the inappropriate use of the Agency's funds that we believe violated the Antideficiency Act. We also identified multiple inappropriate charges on a purchase card that went unnoticed by management. We believe that part of the cause of the purchase card issues was related to the departure of key personnel in the Finance Branch. We are now in the process of determining the extent of those issues through an audit. One positive note with regard to the purchase card program is that the Acquisitions Management Branch conducted in-depth small group training for the purchase card holders. Because of these issues, we cannot conclude at this time that the improvements made to the Agency's procurement process sufficiently address this challenge.

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 used a significant amount of resources investigating improper use and auditing information technology control and security issues.

Wasting time on the Internet is no longer a solitary activity impacting only the performance of the employee who is engaged in that activity. The combined effect of that activity across the Agency's network can dramatically decrease the speed at which work is processed and increase the cost to operate the system. Likewise, the loss of a laptop computer or other information technology equipment can create a significant risk to the Agency's network and compromise sensitive information.

In FY 2009, the Office of the Chief Information Officer (OCIO) made progress in implementing controls over Internet use in the Agency's field offices. During FY 2010, those controls were extended to Headquarters. The OCIO also continues to work to implement the recommendations associated with an audit that identified significant weaknesses in the controls over laptop computers.

Implement audit findings in a timely manner.

We added this challenge in FY 2008 because we observed that the Agency was not implementing audit recommendations in a timely manner, there was a recurrence of audit findings, and the Agency disagreed with audit recommendations without a sufficient basis – including recommendations that would have resulted in cost-savings.

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. In July 2008, we were again asked to provide the Committee with information regarding the implementation of our recommendations. In April 2009, the Ranking Member of the Committee asked for additional information regarding our

unimplemented recommendations. In March 2010, the Ranking Member of the Committee asked for current information regarding unimplemented recommendations.

We started FY 2010 with 17 open audit recommendations and added 9 audit recommendations. During the year, 6 recommendations were closed, leaving 20 audit recommendations open. Of the open audit recommendations, 12 are more than a year old and must be reported in the Semiannual Report to Congress.

SUMMARY OF AUDIT AND MANAGEMENT ASSURANCES

I. SUMMARY OF FINANCIAL STATEMENT AUDIT

Audit Opinion			Unqualified		
Restatement			No		
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Ending Balance
	0	0	0	0	0
TOTAL	0	0	0	0	0

II. SUMMARY OF MANAGEMENT ASSURANCES EFFECTIVENESS OF INTERNAL CONTROL OVER OPERATIONS (FMFIA §2)

Statement of Assurance			Unqualified			
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

COMPLIANCE WITH FINANCIAL SYSTEMS REQUIREMENTS (FMFIA §4)

Statement of Assurance			Systems conform with financial management systems requirements			
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

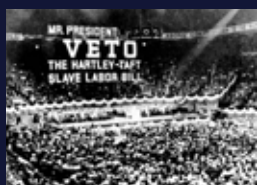
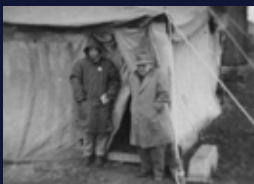
IMPROPER PAYMENTS INFORMATION ACT

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.



APPENDICES



PROTECTING DEMOCRACY IN
THE WORKPLACE SINCE 1935

APPENDIX A

ACRONYMS

ALJ	Administrative Law Judge
CATS	Case Activity Tracking System
CR	Continuing Resolution
FASAB	Federal Accounting Standards Advisory Board
FMFIA	Federal Managers' Financial Integrity Act
FY	Fiscal Year
GAAP	Generally Accepted Accounting Principles
GPRA	Government Performance and Results Act
IUS	Internal Use Software
IPIA	Improper Payments Information Act
MDA	Management Discussion and Analysis
NBC	National Business Center
NxGen	Next Generation Case Management System
NLRA	National Labor Relations Act
NLB	National Labor Board
NLRB	National Labor Relations Board
NRA	National Recovery Act Of 1933
OCIO	Office of the Chief Information Officer
OIG	Office of Inspector General
OMB	Office of Management and Budget
PAR	Performance and Accountability Report
ULP	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 that 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 or 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 that 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.

Salting Campaign: This is a strategy sometimes used by unions to organize employees by sending in paid union organizers as applicants or as employees to assist in the organizing effort.

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 Representation case, the related ULP case is a no-issue proceeding that can be resolved without a hearing or extensive consideration by the Board.

Unfair Labor Practice (ULP): An unfair labor practice is illegal conduct by either a labor organization or an employer that violates the National Labor Relations Act.

Union Security Agreement: A contractual agreement, usually part of a union collective bargaining agreement in which an employer and a trade or labor union agree on the extent to which the union may compel employees to join the union, and/or whether the employer will collect dues, fees, and assessments on behalf of the union.

NATIONAL LABOR RELATIONS BOARD
1099 14TH STREET NW
WASHINGTON, DC 20570-0001

WWW.NLRB.GOV

