

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 07-03 Revised

January 3, 2007

TO: All Employees, Office of the General Counsel

FROM: Ronald Meisburg, General Counsel

SUBJECT: Summary of Operations (Fiscal Year 2006)

Attached is a copy of the Summary of Operations for Fiscal Year 2006. The annual Summary of Operations is a longstanding tradition of the Office of the General Counsel. Its purpose is to advise you and the public of the performance of the employees of the Regional and Headquarters offices that make up my office.

This is the first Summary of Operations I have issued since my appointment as General Counsel in January 2006. I am very proud of the record of performance reflected in this summary, a record in which each employee of the Office of the General Counsel may take a great deal of pride. It shows that you delivered our services in a timely, efficient, and responsive manner. The measures of that performance are the fifteen goals we set for the Office of the General Counsel pursuant to the Government Performance Results Act (GPRA). These are challenging goals that strike the appropriate balance between prompt and high quality case processing. You met and exceeded these goals with a single exception, which was narrowly missed.

You have my sincere appreciation and congratulations for the excellent manner in which you carry out the mission of the Agency year after year. Moreover, you have the gratitude and respect of the labor-relations community for a job well done

/s/
R.M.

Attachment

cc: NLRBU
NLRBPA

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MEMORANDUM GC 07-03

SUMMARY OF OPERATIONS FISCAL YEAR 2006

INTRODUCTION

This summary continues the practice of the General Counsel in providing an annual overview of the operations of the Office of the General Counsel.

As the summary reflects, the record of performance achieved by the staffs of the Headquarters and Regional Offices of the General Counsel in Fiscal Year 2006 based on preliminary statistical reports, was once again outstanding.

Of special note in FY 2006:

- A 96.7% settlement rate was achieved in the Regional Offices in meritorious unfair labor practice cases.
- Initial elections in union representation cases were conducted in a median of 39 days from the filing of the petition, with 94.2% of all elections conducted within 56 days.
- The Regions won 86.4% of Board and ALJ decisions in whole or in part.
- A total of \$110,727,428 was recovered on behalf of employees as backpay or reimbursement of fees, dues, and fines, with 2,927 employees offered reinstatement.
- In expansion of our Outreach efforts, managers and professionals from our field offices joined with the American Bar Association, and with state and local bar associations to discuss issues of mutual concern, to reflect on policies and trends in the area of labor and employment and to provide training for professional development, including the Basic NLRA Practice courses. In addition, Agency representatives participated in activities involving more than 50 academic institutions.
- Employees of the Regions and OGC Headquarters offices also have partnered with the Equal Employment Opportunity Commission and other Federal agencies in outreach activities.
- We have also established a Speakers Bureau, prominently featured on the Agency's new, redesigned website, which makes it easy for citizen groups of all kinds with an interest in learning more about the NLRB to arrange a presentation by an Agency professional.

The accomplishments of any organization, in major part, are a reflection of the talent, dedication, and industry of the individuals who serve it. The employees of the Office of the General Counsel in the 51 NLRB field locations and in Washington Headquarters offices are responsible for the success of the Office of the General Counsel in the year just past. For all these accomplishments, they have my sincere thanks and respect.

The fine record of 2006 could not have been achieved without the cooperation and assistance of those who practice before the Agency. Those practitioners also have my thanks for their contributions to the success of the Agency.

/s/
Ronald Meisburg
General Counsel

ORGANIZATION OF THE OFFICE OF THE GENERAL COUNSEL

The Office of the General Counsel is composed of six major components. These components are responsible for the various casehandling, administrative and personnel functions of the office. The six components are: the Division of Operations-Management and Regional Offices, the Division of Advice, the Division of Enforcement Litigation, the Division of Administration, the Office of Equal Employment Opportunity and the Office of Employee Development.

The Division of Operations-Management includes Headquarters and Regional Office staffs. The Headquarters staff has the responsibility on behalf of the General Counsel for the operations of the Regional, Subregional and Resident Offices, and the coordination of the casehandling of those offices with the Washington Divisions of the Office of the General Counsel and the Board.

There are 32 Regional Offices, three Subregional Offices and 17 Resident Offices. Each Regional Office is headed by a Regional Director who is responsible for the management of the office and any attached Subregional or Resident Offices and for the investigation and initial determination of the merits of unfair labor practice cases and representation cases. The Regional Director is also responsible for resolving through settlement or litigation the unfair labor practice charges found to warrant further proceedings, and for the conduct of representation elections.

The Division of Advice has the function of rendering substantive legal advice to the General Counsel and to Regional Offices in cases presenting novel or complex issues, cases of national interest or cases that involve developing and changing areas of the law. The Division also processes requests for injunctive relief under Section 10(j) of the Act, litigates injunction cases in Federal appellate courts under Section 10(l) and 10(j) and indexes and classifies Board and Court decisions under the Act.

The Division of Enforcement Litigation is responsible for the Agency's litigation in the United States Court of Appeals and the Supreme Court of the United States as well as for contempt and miscellaneous litigation in Federal and State Courts.

The Office of Appeals is a major component of the Division of Enforcement Litigation. This office reviews appeals from Regional Directors' refusals to issue complaint in unfair labor practice cases and recommends proposed action to be taken thereon by the General Counsel. It also processes appeals from the Regional Directors' denial of requests for documents under the Freedom of Information Act.

The Division of Administration is under the general supervision of the General Counsel and has been delegated responsibility for the development, direction and coordination of administrative staff support functions for both the Board and the General Counsel.

The Office of Equal Employment Opportunity is dedicated to providing timely professional assistance and advice to Agency managers, supervisors, and employees with respect to understanding and promoting diversity in the workplace. Its mission includes providing assistance to all Agency employees to avoid or resolve discrimination and harassment complaints. In so doing, the OEEO serves as EEO counselor to Agency employees and manages the EEO complaint processing system for the Agency.

The Office of Employee Development reports directly to the General Counsel and is responsible for the training needs of Agency employees. It is the mission of the OED to develop an agency-wide approach to training, to assist managers in providing employees with needed development opportunities and to help managers and supervisors manage their own careers and obtain developmental opportunities.

I. General Information

The information set forth below reflects the work of the various case handling Divisions during Fiscal Year 2006 based on preliminary statistical reports.

II. Regional Offices

Case Intake

The NLRB's processes can be invoked only by the filing of an unfair labor practice charge or a representation petition by a member of the public. The Agency has no authority to initiate proceedings on its own. Total case intake during FY 2006 was 26,723, compared to 29,620 cases in FY 2005, representing a 9.8% decline in intake. Unfair labor practice case intake was 23,080, a 6.7% decrease from the FY 2005 intake of 24,726. Representation case intake was 3,643, a 25.6% decrease of over the FY 2005 intake of 4,894¹. Petitions filed in unit deauthorization, unit amendment and unit clarification (UD, AC and UC) cases increased by 11.7% from the previous year's intake with the filing of 283 petitions in FY 2006 compared to 257 petitions filed in FY 2005.

Regional Professional Staff

The average professional staff handling the workload in the Regional Offices decreased during FY 2006 to 882.9 employees as compared to 899.4 in FY 2005. During FY 2006, the Agency engaged in limited hiring. Despite the decrease in field office professional staff, we achieved a decrease in situations pending under investigation from 3,940 at the end of FY 2005 to 3,808 at the end of FY 2006.

Outreach

The General Counsel's Outreach Program helps to educate citizens and provide needed services to those who seek assistance from the Agency. Last year, managers and professionals from our field offices joined with the American Bar Association, and with state and local bar associations to discuss issues of mutual concern, to reflect on policies and trends in the area of labor and employment, and to provide training for professional development, including the Basic NLRA Practice courses. In addition,

¹ Representation case intake rose in FY 2005 from FY 2004, due to approximately 800 petitions filed in a single Regional Office seeking to convert representative status previously established under Section 8(f) of the NLRA to representation status under 9(a) of the Act. No such uncommon occurrence took place in FY 2006.

Agency representatives participated in activities involving more than 50 academic institutions. We regularly joined with employers, unions, the EEOC, FMCS and local Labor and Employment Relations Associations to inform the public about the National Labor Relations Act.

As a part of the General Counsel's efforts to expand outreach, the Agency created a centralized Speakers Bureau in the Division of Operations-Management to handle requests for Agency representatives to make presentations. NLRB representatives are available on a limited no cost basis to speak at and participate in meetings, conferences and seminars with employee and employer groups, professional associations, student groups, non-profit entities, community organizations and other members of the general public. Agency professionals referred by the Speakers Bureau provide general information about the NLRB, its mission, and the process for filing charges and petitions.

Information Officer Inquiries

The Agency's Public Information Program continued to provide assistance to members of the public by referring inquiries not covered by the NLRA to appropriate agencies or organizations, thus preventing a large number of non-meritorious charges from being filed with the Agency.

The Agency's 51 Field Offices received 182,161 public inquiries in FY 2006, a 16% decrease from the 216,723 received during FY 2005. In addition, the public can contact the Agency through a toll-free telephone service designed to provide easy and cost-free access to information about the NLRA to the public. Callers to the toll-free number may listen to messages recorded in English and Spanish that provide a general description of the Agency's mission and connections to other government agencies or to Information Officers located in the Agency's Regional Offices. In FY 2006, the toll-free telephone service received 68,018 calls, of which 25,849 were connected to Regional Offices for further assistance.

To extend its public services efforts across the Internet, the Agency added a public information "Frequently Asked Questions" page to its website, www.nlrb.gov, designed to provide answers to frequently asked questions involving the NLRA and NLRB procedures. Since its inception on February 28, 2005, this new feature has received 1,447,969 "hits," 523,799 of which involved inquiries that could be satisfied by answers provided through the site's electronic search system. In addition, Agency personnel provided 13,179 direct email responses to specific inquiries from the public.

The rate of charge acceptance (percent of inquiries from the public in which the contact results in the filing of an unfair labor practice charge) was approximately 3.8% in FY 2006, which is slightly lower than the 4.1% rate experienced in FY 2005. Since the inception of the Public Information Program in 1978, the Agency has reduced its charge acceptance rate from 9.2% to 3.8%.

Unfair Labor Practice Cases

Settlements

The Agency's effectiveness and efficiency in administering the Act is greatly enhanced by its ability to obtain voluntary resolution of unfair labor practice cases that it has investigated and deemed worthy of prosecution. (See merit factor, below.) Over the years, the Agency has achieved an excellent settlement record due to the efforts of staff and the cooperation of the Bar. In FY 2006, the Regions obtained 7,667 settlements of unfair labor practice cases, representing a rate of 96.7 % of total merit cases, compared to 8,232 settlements in FY 2005 and a rate of 97.2%. Over the last 10 years the settlement rate has ranged from between 91.5% and 99.5%.

Complaints

In FY 2006 the Regional Offices issued 1,329 complaints as compared to 1,440 in FY 2005. The median time to issue complaints was 94 days in FY 2006, compared to the median of 93 days in FY 2005. The median number of days from issuance of complaint to opening of the unfair labor practice hearing was 84 in FY 2006, as compared to a median of 96 days in FY 2005.

Merit Factor

The percentage of unfair labor practice cases in which a Regional Director achieves a settlement, adjustment, or determines that formal proceedings are warranted is called the merit factor. In FY 2006 the merit factor was 37.1%, compared to 36.5% in FY 2005. Since 1980, the merit factor has fluctuated between 32% and 40%.

Litigation Results

The Regional Offices won 86.4% of Board and Administrative Law Judge decisions in whole or in part in FY 2005, slightly under the 87.2% rate experienced in FY 2005. Over the last 10 years, the percentage of wins ranged between 78% and 88%.

Remedies

The Regional Offices recovered \$110,727,428 on behalf of employees as backpay or reimbursement of fees, dues, and fines in FY 2006, compared to \$84,628,885 in FY 2005. In FY 2006, a total of 2,927 employees were offered reinstatement, compared to 2,842 in FY 2005.²

² Remedies secured often vary greatly from year-to-year because occasional cases involve extraordinarily large amounts of money or large numbers of employees.

Section 10(l) Activity

The Regional Offices filed three petitions for 10(l) injunctions with the appropriate district courts in FY 2006, the same number filed in FY 2005. One of the petitions was granted in full, a second was denied in full, and the third was withdrawn pursuant to settlement.

Representation cases

Elections

The Regions conducted 2,296 initial elections in FY 2006, of which 91.1% were held pursuant to agreement of the parties, compared to 2,715 initial elections and an 89.0% election agreement rate for FY 2005. In FY 2006, the median time to proceed to an election from the filing of a petition was 38 days, a slight improvement from the 39-day median in FY 2005. 94.2% of all initial representation elections were conducted within 56 days of the filing of the petition in FY 2006, compared to 93.6% in FY 2005.

Regional Director Decisions

In FY 2006, Regional Directors issued 214 decisions in contested representation cases after hearing in a median of 36 days from the filing of the petition. In FY 2005, Regional Directors had issued 287 decisions in a median time of 36 days.

III. Division of Enforcement Litigation

Appellate Court Branch

In FY 2006 the Appellate Court Branch received 121 cases. Private parties filed petitions to review the Board's order in 69 of the 121 cases, and the Regional Offices referred the remaining 52 cases for court enforcement. By filing briefs in 79 cases and closing 49 cases on compliance, default judgment, or dismissal of court proceedings the Branch disposed of 128 cases in 2006. In FY 2005, the total intake of enforcement and review cases was 156 cases and dispositions totaled 160. Oral arguments were presented in 70 cases in FY 2006, compared with 68 cases in FY 2005. The median time for filing applications for enforcement was 26 days in FY 2006, compared with 25 days in FY 2005. The median time for both enforcement and review cases from receipt of cases to filings of briefs was 174 days in FY 2006, compared to 175 days in FY 2005. In FY 2006, the Board filed four petitions for rehearing and one response to a petition filed against the Agency. The Branch handled 39 summary enforcement cases and 29 consent cases. In FY 2005, the Branch handled 60 summary enforcement cases and 43 consent cases.

In FY 2006, the United States Courts of Appeals decided 79 enforcement and review cases involving the Board, compared with 73 in FY 2005. Of these cases, 79.7% were enforced in whole or in part in FY 2006, and 75.9% were won in whole, compared with success rates in whole or in part and in whole in FY 2005 of 95.9% and 78.1%, respectively. In FY 2006, 8.9% of enforcement and review cases were

remanded entirely, compared with 1.4 % in FY 2005. Also in FY 2006, 11.4% of these cases were total losses, compared with 2.7% in FY 2005.

Supreme Court Branch

In FY 2006, oppositions to private parties' petitions for certiorari were filed in four cases; in a fifth case, a waiver of response was filed. In FY 2005, seven oppositions were filed, and a waiver of response was filed in an eighth case. In addition, during FY 2006, 23 memoranda respecting certiorari were submitted to the Board, as compared to 15 memoranda in FY 2005. In FY 2006, as in FY 2005, the Board did not file any petitions for certiorari or briefs on the merits.

In FY 2006, as in FY 2005, the Supreme Court decided no Board cases on the merits. The Court denied four private party petitions for certiorari and granted none. In FY 2005, the Court denied six private party petitions for certiorari and granted none.

Special Litigation Branch

In FY 2006, the Special Litigation Branch had an intake of 206 cases and closed 203 cases. This compares with an intake of 180 cases and the closing of 170 cases in FY 2005. In FY 2006, ethics cases addressing issues arising with respect to appropriate contacts with represented persons during Board proceedings comprised 150 of the 206 cases received and 149 of the 203 cases closed.

In FY 2006 the Branch filed 30 briefs: 11 appellate court briefs, 17 district court briefs, 1 bankruptcy court brief, and 1 federal agency brief. The Branch also sent 105 memos to the Board and Regional Offices, including 85 ethics memos. This compares to FY 2005 when the Branch filed 42 briefs, 10 to the appellate courts, 12 to the district courts, 19 to the bankruptcy courts and 1 state court brief. In FY 2005 the Branch also sent 87 memos to the Board and Regional Offices, including 61 ethics memos.

In FY 2006, the Branch participated in 5 oral arguments (1 of which was by telephone) and received 15 decisions, as follows: 8 from appellate courts (7 wins/1 loss), 7 from district courts (all wins).

This compares with FY 2005 when the Branch participated in 12 oral arguments and received 12 decisions, as follows: 4 from appellate courts (3 wins/1 loss), 6 from district courts (5 wins/1 loss), and 2 from bankruptcy courts (both wins).

Contempt Litigation and Compliance Branch

In FY 2006, 318 cases were referred to the Contempt Litigation and Compliance Branch for consideration for contempt or other appropriate action to achieve compliance with the Act, compared to 355 cases in FY 2005. Of the 112 contempt or other formal submissions, voluntary compliance was achieved in 24 cases during the fiscal year, without the necessity of filing a contempt petition or other initiating papers, and 34 other cases settled after the filing of a formal pleading in court, but before trial. In 49 other cases, it was determined that contempt or other proceedings were not warranted. In FY

2005, voluntary compliance was achieved in 27 of the 139 formal submissions without the necessity of filing a contempt petition or other initiating papers, and 22 cases were settled after the filing of formal pleadings in court, but before trial. In 50 other cases, it was determined that contempt or other proceedings were not warranted.

Thirteen civil contempt or equivalent adjudications were awarded in favor of the Board in FY 2006, (including one assessing fines and two issuing writs of body attachment), compared to 17 in FY 2005. During FY 2006, the Contempt Litigation and Compliance Branch also obtained 24 other court orders in aid of compliance, the same number as in FY 2005. During FY 2006, the Branch collected \$4,066,434 in backpay or other compensatory damages, while recouping \$148,088 in court costs and attorneys' fees incurred in contempt litigation.³ In FY 2005, the Branch collected \$26,000 in fines and \$9,219,219 in backpay or other compensatory damages, while recouping \$8,400 in court costs and attorneys' fees incurred in contempt litigation. In FY 2006, the Branch also conducted 207 asset/entity database investigations, pursuant to requests from the Regions, as compared to 153 in FY 2005.

Office of Appeals

In FY 2006, the Office of Appeals received 2,224 appeals from Regional Directors' refusals to issue complaints, a 9.3% decrease from the 2,453 appeals received in FY 2005. In FY 2006, the office disposed of 2,123 appeals, a 20.2% decrease from the 2,661 cases decided in FY 2005. The rate of reversal of Regional Directors' dismissals was 1.3%, the same as in FY 2005. Median time to process appeals in FY 2006 was 15 days, a 16.7% decrease in the time it took in FY 2005, when the median was 18 days. Median time to process 27 sustained appeals was 73 days in FY 2006, a 12% decrease from the 83 days in FY 2005 necessary to process 34 sustained appeals. In FY 2006, the Office of Appeals also received 24 appeals under the Freedom of Information Act, and closed 23, compared with 36 appeals received under the Freedom of Information Act in FY 2005 with 38 closed.

IV. Division of Advice

Regional Advice Branch

During FY 2006, the Division of Advice processed its cases in a median of 21 days, compared to 19 days in FY 2005. Also, during FY 2006, the Division received 787 cases and closed 744 cases, compared to 705 cases received and 716 cases closed in FY 2005. The median age of cases pending at the end of FY 2006 was 21 days, as compared to 24 days in FY 2005.

³ Monetary remedies obtained through the efforts of the Contempt and Compliance Branch are recorded by the field offices and thus are included in the figures presented in the Remedies section above on page 6.

Injunction Litigation Branch

In FY 2006, the Injunction Litigation Branch received 69 cases to consider for discretionary injunctive relief under Section 10(j) of the Act, as compared to the 61 cases received in FY 2005. Section 10(j) relief was authorized in 25 cases, or 36% of the cases in FY 2006, compared to 15 cases, or 25% of the cases in FY 2005. In addition, the success rate, i.e., the percentage of authorized 10(j) cases in which the Agency achieved either a satisfactory settlement or substantial victory in litigation was 94% in FY 2006, compared to 93% in FY 2005.

In addition to requests for Section 10(j) authorization, the Injunction Litigation Branch handled 88 other cases during FY 2006, compared to 47 such cases in FY 2005. These cases involved appeals from district court decisions in 10(j) or 10(l) cases, contempt of district court decrees, first contract bargaining cases submitted under GC 06-05, and litigation advice to Regions in their litigation of 10(j) and 10(l) cases. The Branch handled six appeals that were pending at the beginning of the fiscal year and five appeals that were filed during FY 2006, compared to five appeals that were pending at the beginning of FY 2005 and four appeals that were filed during FY 2005. Of these 11 appeal cases in FY 2006, the Branch lost two decisions, satisfactorily resolved five others before decision, and had four remaining pending at the end of FY 2006. This compares to nine cases in FY 2005, in which the Branch won one decision, lost one decision and satisfactorily resolved two others before decision; five were pending at the end of FY 2005. The Branch also handled two requests for contempt proceedings in FY 2006, the same number experienced in FY 2005.

V. The Office of Equal Employment Opportunity (OEEO)

The Office of Equal Employment Opportunity (OEEO) handled twelve (12) complaints of alleged discrimination filed during FY 2006. At the beginning of the fiscal year, there were no cases pending investigation. At the end of FY 2006, there were seven cases pending investigation. The median number of days pending for cases under investigation was 122 days in FY 2006, as compared to 128 days in FY 2005. It should be noted that during FY 2006, the OEEO issued one final Agency decision and settled three formal complaints. Currently, there are no cases pending appeal at the Equal Employment Opportunity Commission (EEOC), 2 cases pending hearing at the EEOC, and 4 cases filed in United States District Court.