

**OFFICE OF THE GENERAL COUNSEL**

**MEMORANDUM GC 11-03**

**January 10, 2011**

TO: All Employees, Office of the General Counsel

FROM: Lafe E. Solomon, Acting General Counsel

SUBJECT: Summary of Operations (Fiscal Year 2010)

The Office of the General Counsel in the Field and Headquarters has concluded another successful fiscal year enforcing the National Labor Relations Act. The preliminary figures for FY 2010, set forth in the attached Summary of Operations, reflect another year of excellent casehandling performance.

Please accept my sincere respect and appreciation for the exemplary manner in which you carry out the mission of the Agency.

/s/  
L.S.

Attachment

cc: NLRBU  
NLRBPA

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Regional Offices  
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**MEMORANDUM GC 11-03**

## **SUMMARY OF OPERATIONS FISCAL YEAR 2009**

### **INTRODUCTION**

In keeping with the practice of former General Counsels, I am providing an overview of the operations of the Office of the General Counsel in the just concluded fiscal year.

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 2010 based on preliminary statistical reports, was once again outstanding.

Of special note in FY 2010:

- 95.1% of all initial elections were conducted within 56 days of the filing of the petition.
- Initial elections in union representation elections were conducted in a median of 38 days from the filing of the petition.
- A 95.8% settlement rate was achieved in the Regional Offices in meritorious unfair labor practice cases.
- The Regional Offices won 91.0% of Board and Administrative Law Judge unfair labor practice and compliance decisions in whole or in part in FY 2010.
- A total of \$86,557,684 was recovered on behalf of employees as backpay or reimbursement of fees, dues, and fines, with 2,250 employees offered reinstatement.
- The Agency surpassed all three of its ambitious overarching goals, closing 86.3% of all representation cases within 100 days (target 85%), 73.3% of all unfair labor practice cases within 120 days (target 71%), and 84.6% of all meritorious unfair labor practice cases within 365 days (target 80%). The target for each overarching goal was higher than in FY 2009 and is scheduled to be increased in fiscal years 2011 and 2012.
- Agency representatives participated in over 630 outreach events during FY 2010.

I extend my sincere appreciation to all staff members for their continued hard work and dedication to public service and for the cooperative manner in which they have responded to the priorities in casehandling. My thanks also to those who practice before us for the cooperation and assistance extended to us in our efforts to administer the Act effectively and efficiently.

/s/  
Lafe Solomon  
Acting 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 16 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 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 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 which 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), manages the General Counsel's Freedom of Information Act program and indexes and classifies Board and Court decisions under the 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 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. The OEEO also appoints trains and manages the Agency's collateral duty EEO Counselors assigned in each Regional office and manages specific case assignments handled at the informal stage of the federal sector EEO process.

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 casehandling Divisions during Fiscal Year 2010 based on preliminary statistical reports of case actions during the year.<sup>1</sup>

During the last quarter of FY 2007, the Agency implemented three overarching casehandling goals. These goals complement the interim goals under which the Office of the General Counsel has operated for over 45 years. I am pleased to report that the Agency surpassed all three of its overarching goals, closing:

- 86.3% of all representation cases within 100 days (target 85%),
- 73.3% of all unfair labor practice cases within 120 days (target 71.2%), and
- 84.6% of all meritorious unfair labor practice cases within 365 days (target 80%).

## 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 2010 was 26,585, compared to 25,413 cases in FY 2009, representing a 4.6% increase in overall intake. Unfair labor practice case intake was 23,381, a 3.8% increase from the FY 2009 intake of 22,501. Total representation case intake was 3,204, a 10% increase from the FY 2009 intake of 2,912.

Petitions filed in certification and decertification (RC, RD, and RM) cases increased 10.1% from 2,696 in FY 2009 to 2,969 in FY 2010. Petitions filed in unit deauthorization, unit amendment and unit clarification (UD, AC and UC) cases decreased by 4.0% from the previous year's intake with the filing of 235 petitions in FY 2010 compared to 245 filed in FY 2009.

There were 4,137 situations<sup>2</sup> pending at the end of FY 2009. At the end of FY 2010, that number decreased to 4,063.

In *Dana Corp.*, 351 NLRB No. 28 (September 29, 2007), the Board modified its recognition-bar doctrine, holding that an employer's voluntary recognition of a labor organization does not bar a decertification or rival union petition that is filed within 45 days of unit employees' receiving notice of the voluntary recognition. The Board crafted a new procedure for providing unit employees with notice of a voluntary recognition sufficient to trigger the 45-day period.

For FY 2010, the Agency received 254 requests for Dana notices. In two instances a petition for certification (RC) was filed after notices to employees were posted. In eleven of these matters, a petition for decertification (RD) was filed after the notices were posted. Seven

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<sup>1</sup> Our experience is that despite the preliminary nature of these reports, the final statistics vary only slightly.

<sup>2</sup> A situation is one or more unfair labor practice cases involving the same facts or related facts. These cases are processed as a single unit of work.

elections were conducted pursuant to these petitions, with the recognized union prevailing in four. Four petitions were withdrawn or dismissed.<sup>3</sup>

### Outreach Activities

The Agency's field representatives participated in over 630 outreach events during FY 2010, exceeding their total of 575 events in FY 2009. The events reported in FY 2010 included outreach activities that involved local community groups, 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 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; making a presentation to employees of Hispanic United, a nonprofit organization that assists Buffalo's Hispanic community; conducting a question and answer session on Protected Concerted Activity, Investigations and Remedies to 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, at workers' rights centers and with community advocacy groups; and 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 posed on the Agency's Web site under "About Us" at [http://www.nlr.gov/about\\_us/regional\\_news/regional\\_newsletters.aspx](http://www.nlr.gov/about_us/regional_news/regional_newsletters.aspx).

### Information Officer Inquiries

The Agency's Public Information Program continues to provide assistance to members of the public by answering questions posed, aiding them in filing charges and petitions with the Agency and by referring inquiries not covered by the NLRA to appropriate agencies or organizations. The Public Information Program is particularly beneficial to the public because of the information and assistance it provides. It also prevents a large number of non-meritorious charges from being filed with the Agency.

The Agency's 51 field offices received 116,223 public inquiries in FY 2010, a 6.6% decrease from the 124,389 received during FY 2009. The public can contact the Agency through a toll-free telephone service designed to provide easy and cost-free access to information (1-866-667-NLRB). Callers to the toll-free number may listen to messages recorded

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<sup>3</sup> On August 31, 2010 the Board invited the parties and the public to file briefs addressing the issues raised in several pending cases, including whether the Board should modify or overrule *Dana*.

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 2010, the toll-free telephone service received 27,129 calls, 18,749 of which were connected to Regional Offices for further assistance. In FY 2009, the toll-free telephone service received 50,336 calls, of which 20,364 were forwarded for further assistance by the Regions.

The rate of charge acceptance (percent of inquiries from the public in which the contact results in an unfair labor practice charge being filed) was approximately 7.9% in FY 2010, as compared to 7.6% experienced in FY 2009. Since the inception of the Public Information Program in 1978, the Agency charge acceptance rate has declined from 9.2%.

In addition to traditional Public Information Program activities, the Agency has endeavored to increase our accessibility to the public through our website [www.nlr.gov](http://www.nlr.gov). In FY 2010, the NLRB's website attracted 2.8 million visitors with 9.3 million page views. It is the increased content and growing popularity of the Agency's Webpage that may account for the decline in the number of inquiries the Regions have received in the last several years.

### 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, which, after investigation, are deemed worthy of prosecution. (See merit factor, below.) Over the years, the Agency has achieved an excellent settlement record due to the efforts of Agency staff and the cooperation of the Bar. In FY 2010, the Regions obtained 7,246 settlements of unfair labor practice cases, representing a rate of 95.8% of total merit cases, compared to 7,175 settlements in FY 2009 and a rate of 95.2%. Over the last 10 years the settlement rate has ranged from between 91.5% and 99.5%.

#### Complaints

In FY 2010 the Regional Offices issued 1,243 complaints as compared to 1,166 in FY 2009. The median time to issue complaints was 101 days in FY 2010, a slight increase over the median of 100 days experienced in FY 2009. The median number of days from issuance of complaint to opening of the unfair labor practice hearing was 87 days in FY 2010, compared to a median of 75 days in FY 2009.

#### Merit Factor

The percentage of unfair labor practice cases in which a Regional Director determines that formal proceedings are warranted is called the merit factor. In FY 2010 the merit factor was 35.6%, slightly lower than the merit factor of 36.2% in FY 2009. Since 1980, the merit factor has fluctuated between 32% and 40%.

#### Litigation Results

The Regional Offices won 91.0% of Board and Administrative Law Judge decisions in whole or in part in FY 2009, which is slightly above the 89.8% rate experienced in FY 2009. Over the last 10 years, the percentage of wins, in whole or in part, has ranged between 78% and 91%.

#### Remedies

The Regional Offices recovered \$86,557,684 on behalf of employees as backpay or reimbursement of fees, dues, and fines in FY 2010, compared to \$77,611,322 in FY 2009. In FY 2010, a total of 2,250 employees were offered reinstatement, compared to 1,549 in FY 2009.

#### Section 10(l) Activity

The Regional Offices filed one petition for a 10(l) injunction with the appropriate district courts in FY 2010, compared to four filed in FY 2009.

### Representation cases

#### Elections

The Regions conducted 1,790 initial representation elections in FY 2010, of which 92.1% were held pursuant to agreement of the parties, compared to 1,690 initial elections and a 91.9% election agreement rate for FY 2009. Actual performance thus continues to exceed our goal, which is to conduct 85% of elections pursuant to voluntary election agreements.

In FY 2010, the median time to proceed to an election from the filing of a petition was 38 days, one day more than the 37 median days achieved in FY 2009, and well below our target median of 42 days.

Most critically, 95.1% of all initial representation elections were conducted within 56 days of the filing of the petition in FY 2010, compared to 95.5% in FY 2009, and above our target of 90%.

In 56 cases post-election objections and/or challenges were filed requiring the conduct of an investigative hearing. Decisions or Supplemental Reports issued in those cases in 70 median days. Post-election objections and/or challenges that could be resolved without a hearing were filed in 32 cases. Decisions or Supplemental Reports in those cases issued in 22 median days. The goal in hearing cases is 80 median days and in non-hearing cases 32 median days.

#### Regional Director Decisions

In FY 2010, Regional Directors issued 185 pre-election decisions in contested representation cases after hearing in a median of 37 days, well below the allowable median of 45 days. In FY 2009 Regional Directors issued 151 pre-election decisions in a median time of 34 days.

### **III. Division of Enforcement Litigation**

#### Appellate and Supreme Court Litigation Branch

In FY 2010, the Appellate and Supreme Court Litigation Branch received 109 cases and disposed of 143. Regional Offices referred 62 cases for court enforcement, and private parties filed petitions to review the Board's order in the remaining 47 cases. In FY 2009, the total intake of enforcement and review cases was 99 cases and dispositions totaled 91. Oral arguments were presented in 22 cases in FY 2010, compared with 61 cases in FY 2009. That decrease in the number of arguments was largely attributable to some courts of appeals having stayed consideration of cases in which two-member Board orders were under review, and to the subsequent removal of all pending two-member Board cases from the courts of appeals in the aftermath of the Supreme Court's June 17 decision in *New Process Steel*, which held that the two-member Board lacked authority to issue decisions. The Board filed no petitions for rehearing in FY 2010, compared to 3 in 2009. The Branch also handled 38 summary

enforcement cases and 17 consent cases in FY 2010; in FY 2009, the Branch handled 27 summary enforcement cases and 14 consent cases.

The median time for filing applications for enforcement was 5 days in FY 2010, compared with 16 days in FY 2009, and well within our goal of 30 days. The briefing schedule in appellate cases is set by the Courts and in FY 2010 the median time for both enforcement and review cases from receipt of cases to filing of briefs was 137 days, compared to 161 days in FY 2009.

In FY 2010, the United States Courts of Appeals ruled on Board decisions in 16 enforcement and review cases. In 100% 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 New Process decision holding that the two-member Board had lacked authority to issue decisions. In FY 2009, courts of appeals decided 61 enforcement and review cases involving the Board. Of those cases, 88.5% were enforced or affirmed in whole or in part, 78.7% were won in full, 6.6% were remanded entirely, and 4.9% were lost in full.

In FY 2010, the Supreme Court granted three private party petitions for certiorari. In one of those cases, the Court ruled against the Board in a decision issued later in the year. In each of the other two cases, the Court concurrently granted the petition for certiorari, vacated the judgment of the court of appeals, and remanded to the lower court. In addition, the Court denied one petition for certiorari filed by the Board. In FY 2009, the Court denied one private party petition for certiorari, granted none, and neither ruled on any petitions filed by the Board nor decided any cases in which the Board participated.

Responses to private parties' petitions for certiorari were filed in six cases in FY 2010; in FY 2009, four responses were filed, and a waiver of response was filed in one case. In FY 2010, the Board filed no petitions for certiorari in the Supreme Court; it filed one petition for certiorari in 2009.

#### Special Ethics Counsel

The Office of Special Ethics Counsel provides ethics guidance to Agency staff. In FY 2010, Special Ethics Counsel received 242 new cases concerning contacts with represented persons or other ethics issues during Board proceedings, compared to 176 cases in FY 2009. Special Ethics Counsel closed 239 ethics cases in FY 2010, compared to 175 in FY 2009. These cases were handled in a median response time of one day. In addition, in FY 2010 Special Ethics Counsel once again conducted 12 training programs for regional and headquarters employees.

#### Contempt Litigation and Compliance Branch

In FY 2010, 281 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 282 cases in FY 2009. Of the 140 contempt or other formal submissions, voluntary compliance was achieved in 32 cases during the fiscal year, without the necessity of filing a contempt petition or other initiating papers, and 28 other cases settled after the filing of a formal pleading in court, but before trial. In 60 other cases, it was determined that contempt or other proceedings were not warranted. In FY 2009, voluntary compliance was achieved in 46 of the 110 formal submissions without the necessity of filing a contempt petition or other initiating papers, and 16 cases were settled after the filing of formal pleadings in court, but before trial. In 40 other cases, it was determined that contempt or other proceedings were not warranted.



Seven civil contempt or equivalent adjudications were awarded in favor of the Board in FY 2010 (including one ordering a writ of body attachment), compared to 4 in FY 2009. During FY 2010, the Contempt Litigation and Compliance Branch also obtained 29 other court orders in aid of compliance, the same number obtained in FY 2009. During FY 2010, the Branch collected \$2,015,805 in backpay or other compensatory damages, while recouping \$34,144 in court costs and attorneys' fees incurred in contempt litigation. In FY 2009, the Branch collected \$4,585,089 in backpay or other compensatory damages, while recouping \$35,445 in court costs and attorneys' fees incurred in contempt litigation. In FY 2010, the Branch also conducted 171 asset/entity database investigations, pursuant to requests from the Regions or other Agency offices, as compared to 144 in FY 2009.

#### Office of Appeals

In FY 2010, the Office of Appeals received 2,146 appeals from Regional Directors' refusals to issue complaint, a nearly 5% increase over the 2,046 appeals received in FY 2009. In FY 2010, the Office processed 2,036 appeals, also nearly a 5% increase from the 1,944 appeals decided in FY 2009. The Office closed 95% of its intake; the goal is to close at least 90%. The rate of reversal of Regional Directors' dismissals was 1.4%, almost the same as the 1.5% reversal rate in FY 2009.

Median time to process all appeals in FY 2010 was 34 days, a decrease by 2 days from the time it took in FY 2009, when the median was 36 days. Median time to process 30 sustained appeals was 71 days, 19 fewer days than the 90 days in FY 2009 necessary to process 29 sustained appeals. The goal for processing all appeals is 45 median days and for processing sustained appeals is 90 median days.

In FY 2010, the Office of Appeals received 24 appeals under the Freedom of Information Act; in FY 2009, the Office had received 23 appeals. The Office of Appeals closed 25 appeals in FY 2010, in contrast to the 22 FOIA appeals closed in FY 2009, an increase of 13%.

#### Special Litigation Branch

In FY 2010, the Special Litigation Branch experienced an intake of 95 cases and closed 97 cases. This compares with an intake of 77 cases and closing of 76 in FY 2009. In both years, the Branch settled or resolved most issues upon advice being given to a Regional or Headquarters Board Office.

In FY 2010, the Branch also filed 47 briefs: 16 appellate court briefs, 17 district court briefs, and 14 bankruptcy court briefs. This compares to FY 2009 when the Branch filed 24 briefs, 8 to the appellate courts, 10 to the district courts, and 6 to bankruptcy courts. The Branch sent 17 memos to the Board and Regional offices in FY 2010, compared to 13 in FY 2009.

In FY 2010, the Branch participated in 6 oral arguments and received 24 decisions (all wins): nine in appellate courts, 13 in district courts, and 2 in bankruptcy courts. This compares with FY 2009, when the Branch participated in 6 oral arguments and received 13 decisions (all wins), 7 in appellate courts, 5 in district courts, 3 in bankruptcy courts, and 1 in state court.

#### **IV. Division of Advice**

##### Regional Advice Branch

During FY 2010, the Division of Advice processed its cases in a median of 18 days, as compared to 16 days in FY 2009. Also, during FY 2010, the Division received 590 cases and closed 604 cases, compared to 597 cases received and 609 cases closed in FY 2009. The median age of cases pending at the end of FY 2010 was 23 days, as compared to 24 days in FY 2009.

##### Injunction Litigation Branch

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 this 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 last fiscal year. 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% at the end of FY 2010, compared to 81% at the end of FY 2009.

In addition to requests for Section 10(j) authorization, the Injunction Litigation Branch handled 134 other cases during FY 2010, compared to 118 such cases in FY 2009. These cases involved litigation advice to Regions for their litigation of Section 10(j) and 10(l) cases, first contract bargaining cases submitted under Memoranda GC 06-05, 07-08, and 08-09, appeals from district court decisions in Section 10(j) or 10(l) cases, and contempt of district court decrees. The Branch handled 6 appeals that were pending at the beginning of the fiscal year and 6 appeals that were filed during FY 2010, compared to 6 appeals that were pending at the beginning of FY 2009 and 6 appeals that were filed during FY 2009. Of the 12 appellate cases in FY 2010, the Branch satisfactorily resolved 3 appeals before decision, won 1 appeal, lost 1 appeal, and had 7 appeals pending at the end of FY 2010. This compares to 12 appeals in FY 2009, in which the Branch satisfactorily resolved 2 appeals before decision, won 4 appeals in whole or substantial part, lost none, and had 6 appeals pending at the end of FY 2009. The Branch handled 2 requests for contempt proceedings in FY 2010, compared to no requests in FY 2009.

#### **V. Division of Administration**

The Division of Administration, comprising seven branches, provided services to the NLRB related to Acquisitions Management, Budget, Facilities and Property, Finance, Human Resources, Library and Administrative Services, and Security.

Acquisitions Management: The newest branch was established at the end of FY 2009 to focus on managing contracting and procurement. In spite of the government-wide challenge of staffing a contracting function, the new branch achieved outstanding results. While keeping on top of the daily demand for contract and procurement actions, they sponsored agency-wide training on purchase card processes and began to implement internal controls to strengthen

financial management. The feedback received from Agency customers has been universally positive.

Continuity of Operations (COOP): A new position, COOP Manager, was filled, and the agency engaged fully in the national continuity exercise simulation. The scores assigned by FEMA reflected significant gains. The COOP Manager updated the Continuity of Operations Plan to meet evolving guidance from FEMA and visited four regional offices, in four different parts of the country, to assess their needs for continuity of operations planning and to construct, with their input, a template which can be adapted to the particular needs of each region.

HR Challenges: The Agency was in recovery mode during FY 2010 after a period of several years of lean budgets. This manifested itself most visibly in the area of recruitment and hiring. Not only is there a lag in hiring to fill long vacant positions across the Agency, but there is also a dire need to staff the Human Resources Branch that provides the services related to hiring, payroll, benefits, performance management, discipline, reporting, and personnel policy. Human Resources Specialists are in great demand government-wide, and there is a shortage of qualified and experienced applicants. Retention has thus become an additional challenge as agencies vie for the same pool of specialists.

Security: A new chief of security assumed his duties after a hiatus of nearly a year since the departure of the previous chief. The new head of the Security Branch immediately visited four regional offices, undertook a review of personnel and physical security policies, and took steps to acquire systems to improve processes.

Library Modernization: As a result of the FY 2009 recommendations to modernize the library, there was a significant outreach effort to the field to market reference and other services, resulting in more visibility for the electronic and personal research services offered by the Library's staff. The vision of the committee on Advancing Information Services is being realized.

Sustainability: In FY 2010, the NLRB was an active participant in the federal response to Executive Order 13514, "Federal Leadership in Environmental, Energy, and Economic Performance." The efforts of the NLRB Green Team, representing the field and headquarters from May 2009 – January 2010, were instrumental in establishing a plan and reduction targets.

SES Certification: The Office of Personnel Management, in concurrence with the Office of Management and Budget (OMB), awarded FULL certification to the Senior Executive Service (SES) performance appraisal system from October 1, 2010, to September 30, 2012.

## **VI. Office of Equal Employment Opportunity (OEEO)**

The Office of Equal Employment Opportunity (OEEO) handled fourteen complaints of alleged discrimination filed during FY 2010. At the beginning of the fiscal year, there were four cases pending investigation. At the end of FY 2010, there were six cases pending investigation. The median number of days that cases were pending under investigation was 141 days in FY 2010, as compared to 109 days in FY 2009. In FY 2010, the OEEO issued final Agency decisions in two complaints and achieved settlements in two formal complaints. At the close of FY 2010, there were three cases pending hearing at the EEOC, two cases on appeal to the EEOC's Office of Federal Operations, and no cases pending in the United States District Court.

The OEEEO also provided annual refresher training for each of the 33 Regional office counselors, biannual Agency-wide No FEAR Act training required for all Agency employees, and EEO training for new managers and supervisors. In addition, the OEEEO sponsored special emphasis observances in headquarters and field offices in furtherance of its mission of creating and maintaining an environment free of hostility that values diversity.

## **VII. Office of Employee Development (OED)**

The Agency's Office of Employee Development (OED) has initiated and developed numbers of programs to ensure ongoing development for the managers, supervisors, professionals, and support staff in our 51 field offices as well as in Headquarters. Included among these programs is a comprehensive legal writing training program tailored to the work of the Agency and a cutting edge program to develop and publish Professional Development Modules on labor law topics for office leaders in the field and Headquarters to present to professionals.

In partnership with the Division of Operations Management, OED continued to issue Instructor Guides on the proper execution of the National Labor Relations Act's provisions. The 35 professional development modules developed to date include instructor notes for the core presentation on the particular training topic, an exercise or other practice activity, plus checklists and resource materials for the participants' use. All modules are made available on the Agency's internal website. The substantive material is first developed by field and Headquarters managers, reviewed by technical experts at Headquarters, and then prepared for publication by OED staff. The Agency also continued its mentoring program for all new employees and for employees new to their positions. Field and Headquarters presentations to summer interns and law clerks were recorded and placed on the Agency's internal website to provide all employees access to these presentations at their work stations.

The Agency's comprehensive Legal Writing program has provided instructor led writing and editing training in Headquarters by members of the Georgetown Legal Writing Academy and individual coaching for writers and editors. Previously, for Field employees, OED provided facilitator led training using a videotaped Legal Writing Program by an Emory University professor that was developed to meet the Agency's particular needs. Most recently OED recorded a panel of the Agency's Chief and Associate Chief Administrative Law Judges providing advice on how to enhance legal writing and trial skills. This last program was made available to the Agency's attorneys on the Agency's intranet.

The Agency provides a variety of training opportunities to all staff. For example, the Agency's Field Division provides weekly "Training Tuesday" video and internet conference training conducted by subject matter experts on information technology topics, substantive issues, and administrative topics. At least forty-eight of these sessions were conducted in FY 2010. The Agency also published videos of Headquarters presentations for just-in-time use by all Agency employees at their desktops on a variety of topics ranging from Legal Issues to Special Emphasis Programs. In FY 2010, the Agency was also able to provide training conferences on trial advocacy training, advanced trial advocacy training, compliance, senior field professional employee training, headquarters manager training, and field office management team training. OED located speakers and provided equipment support for all of these conferences.

The Agency continues to employ the NLRB Management Development Program (MDP), a flexible program designed to ensure that the Agency has well-qualified candidates for future managerial vacancies. OED continued to offer a variety of management training including: training for new supervisors; attendance at external private vendor seminars, OPM's Management Development Centers and Federal Executive Institute seminars; on-line training from Harvard and Ninth House; and a 360 degree assessment/executive coaching program and assisted with conferences for Regional Directors (RD's) and for Office and Assistant Office Managers and RD Secretaries. Business skills training was provided to support staff through Element K online training and additional training was presented to address common employee needs such as email etiquette, mentoring for new employees, EEO/Diversity, and retirement. Video-conferencing and on-line technology was used to deliver training nationwide to all employees.