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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FREEDOM OF INFORMATION ACT BRANCH
Washington, D.C. 20570

Via email

June 7, 2021

Re: FOIA Case No. NLRB-2021-000823

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on May 3, 2021, in which you request the "NLRB response to the incoming Administration-Agency Review Team (ART) Information Requests submitted to NLRB on 11/24/2020." You limited the date range of your request to records dated between 11/24/2020 and 01/01/2021. You assumed fees up to \$37.00 to process your request.

We acknowledged your request on May 3, 2021. In a telephone conversation with a member of the FOIA staff on May 28, 2021, you modified your request to the response letters and records released in FOIA Case Nos. NLRB-2021-000388 and NLRB-2021-000567.

A search of the Agency's FOIA case processing system, FOIAonline, has been conducted, which located the two responsive FOIA request numbers. I have attached the records and response letters from these FOIA requests, consisting of multiple attachments totaling 749 pages. Regarding the records in NLRB-2021-000567, there was only one production of records, all of which are provided here. Please be advised that the final records were previously redacted and are being provided to you here just as they were released at the time of the requests.

For the purpose of assessing fees, we have placed you in Category D, the "all other requesters" category, because you do not fall within any of the other fee categories. Consistent with this fee category, you will be assessed charges to recover the reasonable direct costs for searching for the requested records, except that you will not be charged for the first two hours of search. NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(2)(ii)(D). Charges for all categories of requesters are \$9.25 per quarter hour of professional time. 29 C.F.R. § 102.117(d)(2)(i).

Less than two hours of professional time was expended in searching for the requested material. Accordingly, there is no charge assessed for this request.

You may contact Ed Hughes, the FOIA attorney who processed your request, at (202) 273-1773 or by email at ed.hughes@nrlrb.gov, as well as the Agency's FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the FOIA Attorney, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the Agency's FOIA Public Liaison is:

FOIA Public Liaison
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: FOIAPublicLiaison@nrlrb.gov
Telephone: (202) 273-0902
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
Telephone: (202) 741-5770
Toll free: (877) 684-6448
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at:
<https://foiaonline.gov/foiaonline/action/public/home>
or by mail or email at:

Nancy E. Kessler Platt
Chief FOIA Officer
National Labor Relations Board
1015 Half Street, S.E., 4th Floor

June 7, 2021

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Washington, D.C. 20570

Email: DLCFOIAAppeal@nlrb.gov

Any appeal must be postmarked or electronically submitted within 90 days of the date of this letter, such period beginning to run on the calendar day after the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the FOIA Attorney, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ Synta E. Keeling

Synta E. Keeling

Freedom of Information Act Officer

Attachments: 2021-000388 final response letter
2021-000388 final records set one
2021-000388 final records set two
2021-000567 final response letter
2021-000567 Board side requests
2021-000567 Congressional records 2017
2021-000567 Congressional records 2018 set 1
2021-000567 Congressional records 2018 set 2
2021-000567 Congressional records 2018 set 3
2021-000567 Congressional records 2018 set 4
2021-000567 Congressional records 2018 set 5
2021-000567 Congressional records 2018 set 6
2021-000567 Congressional records 2018 set 7
2021-000567 OCIO Budget

From: [Jacob, Fred](#)
To: [Chris Lu](#); [Hamilton, Lasharn](#)
Subject: RE: NLRB Agency Review (Biden-Harris Transition)
Date: Tuesday, November 24, 2020 11:04:05 AM
Attachments: [NLRB 2020 Presidential Transition Briefing Book \(Final 11-1-2020\).pdf](#)

Chris –

Thank you for your note. Lasharn and I are happy to help the ART with its transition efforts and stand ready to provide resources and assistance. I have attached the NLRB's Transition Briefing Book to help get you started.

For a call or video conference, I have availability between 2 p.m. and 4 p.m. today, and between 9 a.m. and 3 p.m. tomorrow. (b) (6) but I suspect she will try to join us for the call if she is available. Once we settle on a time, we can set up the call with the NLRB's Zoom or Skype platforms.

Please let us know if we can provide any further information at this point, and we look forward to meeting with you.

Best,

Fred

FRED B. JACOB • SOLICITOR
National Labor Relations Board
(202) 273-1711 (office) • (b) (6) (cell) • fred.jacob@nlrb.gov

From: Chris Lu <clu@jbrpt.org>
Sent: Tuesday, November 24, 2020 6:28 AM
To: Jacob, Fred <Fred.Jacob@nlrb.gov>; Hamilton, Lasharn <Lasharn.Hamilton@nlrb.gov>
Subject: NLRB Agency Review (Biden-Harris Transition)

Dear Fred and Lasharn:

On behalf of the Biden-Harris Transition Team, I am reaching out as the Agency Review Team Lead for Federal Labor and Employment Agencies.

I look forward to engaging with you and your team, and am grateful for the time and effort that has gone into preparing transition briefings and reference materials. **To start, I would like to arrange for a call or video conference to discuss next steps, including logistics for the review. Please let me know some dates and times that would be convenient for you today or tomorrow.**

This list of authorized team members has been provided to the Federal Transition Coordinator, Mary

Gibert, and is available on [our Biden-Harris Transition website](#).

If you are able to share any unclassified briefing or reference materials by email, I would welcome your doing so at your earliest convenience.

I look forward to working with you. Thank you again.

Kind regards,

Chris Lu

NATIONAL LABOR RELATIONS BOARD



2020 SECOND TERM PRESIDENTIAL TRANSITION BRIEFING BOOK

November 1, 2020



United States Government

NATIONAL LABOR RELATIONS BOARD

1015 Half Street, SE

Washington, DC 20570

November 1, 2020

When President Washington decided not to run for a third term in 1796, but to instead turn over the reins of our young government to a democratically elected successor, England's King George was heard to say (at least, according to the lyrics of Lin Manuel-Miranda's *Hamilton*), "I wasn't aware that was something a person could do."

Presidential transition is one of the foundations of our democratic government, and, through the Presidential Transition Act, Congress has codified the government's commitment to the efficient implementation of the people's choice to lead the country. As the Office of Management and Budget has explained, "[t]he Presidential Transition Act promotes the orderly transfer of Executive powers in connection with the expiration of the term of office of a President and the inauguration of a new President" and is "helpful to prepare for leadership transitions that occur between the first and second terms of Administrations."

The National Labor Relations Board (NLRB) is an independent federal agency with responsibility for enforcing the National Labor Relations Act, 29 U.S.C. §§ 151-164, which governs private sector labor-management relations in the United States. Under the Act, the NLRB supervises elections for labor union representation and investigates and remedies unfair labor practices. The NLRB's mission is to protect workplace democracy and the rights of employees, unions, and employers under the Act, in order to promote commerce and strengthen the Nation's economy.

As an agency that guarantees freedom of choice through democratic processes, the National Labor Relations Board is pleased to provide these briefing materials to assist with the transition to a second term or new Presidential administration. The NLRB has established an email address, transition@nlrb.gov, for the five members of its Presidential Transition team responsible for these briefing materials. The Transition Team is proud to be part of this important process and stands ready to assist in the transition to second term or new Presidential administration.

If you have any questions, please do not hesitate to reach out to the team at transition@nlrb.gov or at their contact information below.

Fred B. Jacob
Solicitor and
Agency Transition Director
fred.jacob@nlrb.gov
(202) 273-1711

Lasharn Hamilton
Director of Administration
Lasharn.hamilton@nlrb.gov
(202) 273-3936

Dolores K. Boda
Special Adviser to the
General Counsel
dolores.boda@nlrb.gov
(202) 273-2887

Lawrence Patterson
Director of Human Resources
Lawrence.patterson@nlrb.gov
(202) 273-3939

Roxanne L. Rothschild
Executive Secretary
Roxanne.rothschild@nlrb.gov
(202) 273-2917

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THE NATIONAL LABOR RELATIONS ACT

AGENCY MISSION STATEMENT

Protecting workplace democracy and the rights of employees, unions, and employers under the National Labor Relations Act, to promote commerce and strengthen the Nation's economy.

THE NATIONAL LABOR RELATIONS ACT (NLRA)

- Basic law governing relations between labor unions and business enterprises engaging in interstate commerce in the private sector.
- Purpose is to serve the public interest by reducing interruptions in commerce caused by conflict between employers and employees.
- Embodies a bill of rights, which establishes freedom of association for purposes of collective bargaining and concerted activities to improve terms and conditions in the workplace.
- Addresses the rights and obligations of employees, labor unions, and private-sector employers.

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 support union representation in a workplace where none currently exists or to attempt to improve their wages and working conditions through other group action. Under the NLRA, employees have the right to:

- Form, or attempt to form, a union among the employees of an employer.
- Join a union whether the union is recognized by the employer or not.
- Assist a union in organizing employees.
- Engage in protected concerted activity. Generally, “protected concerted activity” is group activity that seeks to improve wages or working conditions in a particular workplace.
- Refuse 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 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, engaging in protected concerted activities, or refraining from these activities. Similarly, unions may not restrain or coerce employees in the exercise of these rights.

THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board is an independent federal agency created in 1935 to administer and enforce the NLRA. Under the NLRA, the NLRB has two primary functions:

- to conduct secret-ballot elections among employees to determine whether or not the employees wish to be represented by a union; and
- 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-sector employers, or other private parties. In its 85-year history, the NLRB has counted millions of votes, investigated hundreds of thousands of unfair labor practice charges, and issued thousands of decisions. These numbers tell an important part of the Agency's story.

- **Charges and Complaints** – Data related to charges of unfair labor practices received by Regional Offices and their disposition over time, including withdrawals, dismissals, complaints, and settlements.
- **Petitions and Elections** – Data related to petitions for representation, decertification, unit amendment and clarification, and rescission of union security agreements received by Regional Offices; elections held; and outcomes.
- **Decisions** – Data related to decisions by the Board and NLRB Administrative Law Judges.
- **Litigation** – Data related to litigation by Board attorneys in federal court, including petitions for temporary injunctions, defending Board decisions in court, and pursuing enforcement, contempt and compliance actions.
- **Remedies** – Data related to remedies obtained to resolve unfair labor practices, including backpay and offers of reinstatement NLRB Performance and Accountability Report.

The Agency tracks this information in its agency-wide NxGen electronic case management system, and we can provide public data for transition purposes as needed.

STATUTORY STRUCTURE

Agency leadership consists of 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 among the Chairman, the Board, and the General Counsel. The Board and the General Counsel maintain a Headquarters in Washington, D.C., and the Agency also maintains a network of Regional (“Field”) offices and three satellite Judges’ offices. The NLRA assigns separate and independent responsibilities to the Board and the General Counsel. The General Counsel’s role is chiefly prosecutorial, and the Board’s is adjudicative.

THE FIVE-MEMBER BOARD

The five-member Board primarily acts as a quasi-judicial body, 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 designates one of the Board Members as Chairman.

THE GENERAL COUNSEL

Congress created the position of General Counsel in its current form in the Taft-Hartley Act of 1947. The General Counsel is appointed by the President to a four-year term, with Senate advice and consent. The GC is responsible for the investigation and prosecution of unfair labor practice cases and for the general supervision of the NLRB Regional Offices, as well as of the administrative, financial and human capital operations of the Agency. In performing delegated and some statutory 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 Board.

TERMS OF AGENCY PRESIDENTIAL APPOINTEES

THE BOARD:

Board Member Seat	Current Member	Current Term Began	Current Term Expires
The Smith Seat <i>Term expires on August 27 of years ending in 6 and 1</i>	William J. Emanuel	Sworn in 9/26/2017	8/27/2021
The Madden Seat <i>Term expires on August 27 of years ending in 5 and 0</i>	Marvin E. Kaplan	Sworn in 8/10/2020	8/27/2025
The Carmody Seat <i>Term expires on August 27 of years ending in 8 and 3</i>	Vacant	<i>Vacant since</i> 8/27/2018	
The Murdock Seat <i>Term expires on December 16 of years ending in 7 and 2</i>	John F. Ring	Sworn in and designated Chairman 4/16/2018	12/16/2022
The Gray Seat <i>Term expires on December 16 of years ending in 9 and 4</i>	Lauren McFerran	Sworn in 8/10/2020	12/16/2024

Even though Board Members have five-year-terms, a new five-year term begins running immediately upon the expiration of the previous Member's term even if the seat is vacant. The seat remains vacant until an individual is nominated and confirmed by the Senate. When an individual is sworn in for a seat, they serve out the remainder of the term for that seat. Therefore, a lapse of time could occur between when a term expires and a new Board Member is confirmed, which means that the new Board Member might serve only a portion of a five-year term.

THE GENERAL COUNSEL:

Peter B. Robb, sworn in 11/17/2017, term expires 11/16/2021. The General Counsel serves a fixed, four-year term.

AGENCY LEADERSHIP

JOHN F. RING



Chairman

John F. Ring was sworn in as a Member of the National Labor Relations Board on April 16, 2018 for a term ending on December 16, 2022. Mr. Ring was confirmed by the Senate on April 11, 2018.

On April 12, 2018, President Donald J. Trump named Mr. Ring Chairman of the National Labor Relations Board.

Prior to his appointment to the NLRB, Mr. Ring was a partner with the Morgan, Lewis & Bockius law firm in Washington, D.C. He was with Morgan Lewis for almost 30 years, where he served as co-chair of the firm's Labor/Management Relations practice and Practice Group Leader for the Washington Office Labor and Employment Law Practice. In his labor law practice, he has represented client interests in collective bargaining, workforce restructuring, employee benefits, labor-management related counseling, litigation and litigation avoidance strategies. Mr. Ring has an extensive background negotiating and administering collective bargaining agreements, most notably in the multiemployer bargaining context, as well as experience with multi-employer pension plans. Mr. Ring received his J.D. and B.A. from Catholic University of America.

Mr. Ring is a Fellow in the College of Labor and Employment Lawyers.

MARVIN E. KAPLAN



Board Member

Marvin E. Kaplan has served as a Member of the National Labor Relations Board since August 10, 2017. On July 29, 2020, the Senate confirmed him for another term of five years expiring August 27, 2025. Mr. Kaplan served as Chairman of the NLRB from December 21, 2017 to April 15, 2018.

Prior to his appointment to the NLRB, Mr. Kaplan served as Chief Counsel to the Chairman of the Occupational Safety and Health Review Commission. Before his work with the Occupational Safety and Health Review Commission, he served as counsel for the House of Representatives' Oversight Government Reform Committee and as policy counsel for the House of Representatives' Education and the Workforce Committee. He also worked at the U.S. Department of Labor's Office of Labor Management Standards and with the law firm McDowell Rice Smith & Buchanan. Mr. Kaplan received his J.D. from Washington University in St Louis, and his B.S. from Cornell University.

WILLIAM J. EMANUEL



Board Member

William J. Emanuel was sworn in as a Member of the National Labor Relations Board on September 26, 2017 for a term ending on August 27, 2021. Mr. Emanuel was confirmed by the Senate on September 25, 2017.

Prior to his appointment to the NLRB, Mr. Emanuel served as a shareholder with the law firm Littler Mendelson, P.C. Before joining Littler Mendelson, he practiced management labor law at several other firms, including Jones Day and Morgan, Lewis & Bockius.

Mr. Emanuel has authored labor publications and several amicus curiae briefs. He served as the former Chairman of the Labor Relations Advisory Committee and as the former Chair of the Employers Group Legal Committee. Mr. Emanuel received his J.D. from Georgetown University, and his B.A. from Marquette University.

Mr. Emanuel is a Fellow in the College of Labor and Employment Lawyers.

LAUREN MCFERRAN



Board Member

Lauren McFerran served as a Member of the NLRB from December 17, 2014 until December 16, 2019. On July 29, 2020, the Senate confirmed her renomination as a Board Member for a term expiring on December 16, 2024.

Previous to her appointment to the NLRB, Ms. McFerran served as Chief Labor Counsel for the Senate Committee on Health, Education, Labor, and Pensions (HELP Committee) and had also served the Committee as Deputy Staff Director. She began on the HELP Committee as Senior Labor Counsel for Senator Ted Kennedy and Senator Tom Harkin. Before her work in the United States Senate, Ms. McFerran was an associate at Bredhoff & Kaiser, P.L.L.C.. She served as a law clerk for Chief Judge Carolyn Dineen King on the United States Court of Appeals for the Fifth Circuit. Ms. McFerran received a B.A. from Rice University and a J.D. from Yale Law School.

PETER B. ROBB



General Counsel

The General Counsel, appointed by the President to a 4-year term, is independent from the Board and is responsible for the investigation and prosecution of unfair labor practice cases and for the general supervision of the NLRB field offices in the processing of cases.

Peter B. Robb was sworn in as General Counsel of the National Labor Relations Board on November 17, 2017 for a four-year term. Mr. Robb was nominated by President Donald J. Trump in September 2017 and was confirmed by the U.S. Senate on November 8, 2017.

Mr. Robb previously was a Director at the northern New England law firm Downs Rachlin Martin PLLC (DRM). He joined DRM as a Director in 1995. He chaired the firm's Labor and Employment Practice Group from 2000 to 2009 and served as Deputy Managing Partner from 2009 to 2012. He also served on the American Bar Association's Practice and Procedures Committee for the National Labor Relations Board.

Mr. Robb received his Juris Doctor, cum laude, from the University of Maryland School of Law; and a Bachelor of Arts from Georgetown University.

ORGANIZATIONAL CHART



ORGANIZATIONAL OVERVIEW

I. BOARD-SIDE OFFICES

A. Office of the Executive Secretary

The Executive Secretary, a position created by Congress in Section 4(a) of the NLRA, is the chief administrative and judicial management officer of the Board. The Executive Secretary is Roxanne L. Rothschild. The functions and responsibilities of the **Office of the Executive Secretary** (OES) are similar to those of a clerk of the court. OES receives and docketes all formal documents filed with the Board, assigns all cases to the appropriate Board staff, and issues and serves on the parties to cases all Board decisions, orders, rulings, and other case documents. OES is the exclusive point of contact for communications by the parties regarding cases pending before the Board, particularly with respect to questions or guidance sought on Board procedure and case status inquiries, and generally is the principal point of contact for employers, unions, employees, Congressional offices, other Federal agencies, and the public. OES, uses the Board's electronic case management system to ensure that documents filed and issued are included in the case record, monitors the progress of cases through the casehandling process, and tracks overall Board case production. OES also issues all Board and Administrative Law Judge decisions. Through the Editorial and Publication Services Section, OES formats and edits Board decisions for inclusion in bound volumes, and, for both the Board and the General Counsel, formats and edits manuals, guides, research tools, and other materials.

B. Office of Representation Appeals

The **Office of Representation Appeals** (R-Unit) handles all requests for review of Regional Director decisions, whether pre- or post-election. In addition, the R-Unit handles various motions (such as requests for extraordinary relief, including impounding ballots or staying the election) filed in Representation cases. The Acting Director of the Office of Representation Appeals is Terence Schoone-Jongen.

C. Office of the Solicitor

The **Solicitor** serves as the chief legal adviser and consultant to the Board on all questions of law arising in connection with the Board's general operations and on major questions of law and policy arising in connection with enforcing and defending Board orders in the Courts of Appeals and the U.S. Supreme Court and in regard to achieving compliance with Board Orders. The Solicitor is Fred B. Jacob.

The Solicitor also serves as the Board's legal representative and spokesperson in liaison contacts with the General Counsel's office and other offices of the Board's organization, and with the Board's Division of Legal Counsel, the White House, Members of Congress, and Congressional Committees. The Office of the Solicitor processes, reviews, researches, provides written recommendations to the Board, and drafts appropriate orders with respect to various unfair labor practice case matters that require expedited consideration. When necessary, the Office of the Solicitor proposes changes to the Board's procedural rules, provides written recommendations for Board action with respect to requests from "interested persons" for Board rulemaking, and coordinates with the Office of the Executive Secretary in preparing and reviewing drafts of final rules for publication in the Federal Register. In addition, the Office provides written recommendations to the Board concerning petitions raising jurisdictional matters, including petitions for Advisory Opinions, and processes referrals to the National Mediation Board (airline and railway cases) and referrals from the Office of Management and Budget for possible Board comment, including making written recommendations for possible Board action when appropriate.

D. Division of Judges

The **Division of Judges** (DOJ) docket, hears, settles, and decides unfair labor practice cases throughout the country. The DOJ operates through three offices: Washington, D.C., New York, and San Francisco. The Chief Judge and the Deputy Chief Judge have offices in Washington and two Associate Chief Judges head the other two offices. The DOJ currently employs 30 administrative law judges, including the chief judges mentioned above.

E. Office of Congressional and Public Affairs

The primary function of the **Office of Congressional and Public Affairs** (OCPA), one of the five original NLRB divisions established in 1935, is to act as an official gateway through which the media, general public, and Congress learn about the Agency's activities. The purpose of the office is to centralize the handling of public inquiries and the dissemination of statements by the Board and the General Counsel. The Office of Congressional and Public Affairs coordinates the Agency's information and public relations programs by conducting briefings and disseminating information of Agency activities through all news media and to Congress, companies, unions, law firms, academic groups, and others; and arranges for distribution of decisions and summaries of decisions.

While writing and disseminating press releases to generate and facilitate news coverage is the most visible part of OCPA's work, a big responsibility is answering phone and written inquiries from the general public regarding, for example, the parties' rights under the NLRA, the status of pending cases, NLRB administrative procedures, Board decisions, or Agency statistics. The public may

also submit online inquiries via the Agency's website (www.nlr.gov) using a Q&A system and e-mail messages. Thousands of online questions are submitted annually for response by the OCPA staff.

II. GENERAL COUNSEL-SIDE DIVISIONS

A. Division of Operations-Management

The **Division of Operations-Management** (Operations) is one of the five divisions in Agency headquarters that comprise the General Counsel's Washington staff. The Associate to the General Counsel for Operations-Management assists in the coordination and integration of Washington operations with the field offices; develops systematic methods for the integration of case processing activities in all field and Washington operational units and for the implementation of General Counsel and Board policies, including time and quality standards for case processing at all stages; and is responsible for continuing liaison with field offices and for supervising and coordinating both substantive and administrative phases of their operations.

In furtherance of its responsibilities, Operations performs both line and staff duties for the General Counsel. Operations has overall management responsibility, on behalf of the General Counsel, for the operation of the Agency's field offices. Operations is headed by Beth Tursell, Associate to the General Counsel.

Operations plays a major role in ensuring that the General Counsel's initiatives and directives are administered in a consistent fashion, including through coordinating cases that cross Regional lines so as to avoid inconsistent decisions on like or identical facts. To ensure high quality casehandling, Operations performs an extensive annual quality review of Regional work identifying deficiencies and directing they be cured. Operations also plays a major role in assisting Regional Directors in the sound administration of their compliance programs. It augments their efforts to obtain compliance with Board orders and settlements through a Compliance Unit, which works to ensure consistency and that compliance cases are handled as promptly as possible, often transferring them from understaffed Regions to those with less acute staffing issues.

B. Regional Offices

The NLRB's field offices include 26 Regional offices, 9 Subregional offices, and 13 Resident Offices located throughout the United States. The staff in a Regional office consists of a Regional Director, managers, supervisors, attorneys, examiners, and administrative professionals. As of the close of fiscal year 2020 there were 800 employees in our field offices.

The processing of all unfair labor practice charges and representation petitions begins in a Regional Office. Operating under the general supervision of the Office of the General Counsel, Regional Directors are the face of the Agency to the general public they serve in their various geographic areas. Regional Directors have independent authority to supervise investigations of unfair labor practices and, where meritorious, issue administrative complaints against employers and labor unions absent settlement. Regional Directors, on behalf of the General Counsel, manage extensive litigation programs in their respective Regions to ensure that meritorious cases are properly presented to the Agency's Administrative Law Judges consistent with the given theory of any case and extant General Counsel directives.

Similarly, Directors are responsible for instituting comprehensive settlement programs in their respective offices with an eye toward eliminating unnecessary litigation and facilitating prompt resolution and remedies for the violations found. Directors are fully responsible for securing compliance with NLRB settlements and Board orders, recommending enforcement proceedings, as well as contempt proceedings for contumacious conduct after a circuit court order has been obtained. In addition, they exercise independent authority to initiate and pursue injunctions under Section 10(l) of the Act in federal district courts for unlawful secondary boycott, recognition picketing, and other activity proscribed by Sections 8(b)(4), 8(e), or 8(b)(7) of the Act.

Regional Directors also possess extensive responsibilities in the representation case area on behalf of the Board. Again under the general supervision of the Office of the General Counsel, Regional Directors oversee the processing of representation case petitions, investigating whether there exists a question concerning representation in any given case, including through pre-election administrative hearings where appropriate. In addition, Regional Directors oversee and administer secret ballot elections for employees to, among other things, determine whether they wish to be represented by a union. Regional Directors act as agents of the Board when taking decisional actions after the conclusion of such hearings, as well as in connection with post-election challenges and objections under the Board's Rules and Regulations.

C. Division of Enforcement Litigation

The **Division of Enforcement Litigation** consists of two branches, the Appellate and Supreme Court Litigation Branch, and the Office of Appeals.

The **Appellate and Supreme Court Litigation Branch** (Appellate Court) has the responsibility for preparing the briefs, petitions, and other documents that are required for handling the Agency's enforcement and defense of the Board's Orders before the courts of appeals and, acting through the Office of the Solicitor

General, in the U.S. Supreme Court. In addition, the Branch, upon assignment from the Solicitor General, prepares, after obtaining the Board's authorization, amicus briefs on behalf of the United States in non-Board cases which present issues involving federal preemption or a problem of harmonizing the policies of the NLRA with those of other federal statutes. This Branch maintains an active settlement program, as almost every court of appeals has established a mediation program, and many of them require mandatory appellate court participation. The Acting Deputy Associate General Counsel for Appellate Court is Ruth Burdick.

The **Office of Appeals** (Appeals) reviews cases in which a Regional Director has refused to issue complaint, as well as compliance appeals and appeals from refusals to order 10(k) hearings in Section 8(b)(4)(D) cases. Because a Regional Director's decision not to issue a complaint is not reviewable in court, Appeals is the only recourse for employers, unions, and individuals who believe their claims have been wrongly dismissed. The Director of the Office of Appeals is Mark Arbesfeld.

D. Division of Legal Counsel

The **Division of Legal Counsel** consists of three branches: (1) the Contempt, Compliance, and Special Litigation Branch; (2) the E-Litigation Branch; and (3) the Freedom of Information Act Branch. The Associate General Counsel for the Division is Nancy Platt.

The **Contempt, Compliance, and Special Litigation Branch (CCSLB)** was formed in August 2013 by merging the Contempt Litigation and Compliance Branch with the Special Litigation Branch. With respect to contempt and compliance activities, CCSLB conducts civil and criminal contempt litigation in the U.S. Courts of Appeals to coerce compliance or to punish non-compliance with judgments enforcing orders of the Board. In appropriate cases, it also obtains protective orders or institutes and monitors ancillary collection proceedings to ensure assets will not be dissipated in an effort to avoid the payment of backpay judgments. The Deputy Assistant General Counsel for CCSLB is Dawn Goldstein.

CCSLB also protects the Board's remedial orders in bankruptcy courts or against attachments, garnishments, or liens. And CCSLB proactively assists the Regions in their compliance work by, for example, assisting in the investigations of derivative liability, including that of other entities, as well as the personal liability of owners and officers.

CCSLB is also responsible for a variety of other offensive and defensive litigation. For example, it conducts litigation and provides the Board and the General Counsel with advice and assistance when programs, statutes, or outside proceedings threaten the Agency's ability to carry out its mission. These matters may include actions to restrain or compel issuance of complaint by the General

Counsel, restrain or compel particular Board proceedings, challenge Board rulemaking, compel disclosure under the Freedom of Information Act (FOIA), award attorney fees under the Equal Access to Justice Act (EAJA), enforce Board subpoenas under Section 11 of the National Labor Relations Act, or enforce federal, state, or tribal court subpoenas issued to Agency personnel. In addition, based on the recommendation of the General Counsel, and upon authorization by the Board, CCSLB may initiate an action or intervene in ongoing litigation in federal district court to protect the Board's jurisdiction and the primacy of its decisions. In conjunction with the Department of Justice, CCSLB also assists in defending Agency employees when they have been sued in their individual capacity for actions taken within the scope of their authority and employment.

The **E-Litigation Branch (E-Lit)** provides guidance to the Agency with respect to policy and procedures related to managing electronic discovery, e-litigation, litigation support regarding these matters, and information governance for the Agency. E-Lit provides strategic guidance and support for the Agency's identification, production and management of its own electronically stored information (ESI); for assisting the Board's litigation arms (both in headquarters and the field) in the determination and use of the most appropriate litigation support strategies and tools to facilitate efficient case processing and other internal processes relating to the exchange, collection and processing of ESI; for assisting with e-discovery in federal court litigation related to ESI, both as a requesting party and a producing party; for assisting FOIA with responding to FOIA requests that involve ESI; and for providing needed support to the Office of Congressional and Public Affairs to the extent it needs assistance gathering electronic records to respond to Congressional inquiries. In addition, E-Lit develops and implements e-litigation training programs for Agency personnel in the use of e-litigation strategies to enforce the NLRA and defend the Agency, particularly as related to technology and evidence, including but not limited to litigation holds. E-Lit also is responsible for coordinating with the Office of the Chief Information Officer (OCIO) to develop, modernize, and promulgate information governance and records management policies and practices and provides advice and assistance throughout the Agency, including but not limited to the Chairman and the Board, on information governance issues. The Branch Chief is David Gaston.

The **Freedom of Information Act Branch (FOIA)** is responsible for processing all FOIA requests for the Agency, nationwide, and all FOIA appeals, except that FOIA appeals are decided by the Agency's Chief FOIA Officer, who is the Associate General Counsel for the Division of Legal Counsel. In addition, FOIA provides advice to the Agency concerning FOIA policy, prepares FOIA guideline memoranda and related materials, and prepares the Agency's Annual Chief FOIA Officer's report to Congress, as well as the FOIA Annual Report and FOIA Quarterly Reports, which are filed with the United States Department of Justice. Synta Keeling is the head of the Agency's FOIA Branch.

E. Office of Special Counsel and Labor Relations & Ethics Office

The **Office of the Special Counsel and Labor Relations** at the NLRB provide legal advice and assistance to both the General Counsel-side and Board-side of the Agency, including managers and supervisors throughout Headquarters and the field.

The attorneys in this office advise managers with respect to a broad array of workplace issues, such as requests for reasonable accommodation, employee performance and attendance problems, and other disciplinary matters, often in consultation with the Office of Human Resources, Labor Relations, or other appropriate offices as discussed below. They also represent the Agency and its managers in litigation involving adverse employment actions (typically, in arbitrations and Merit Systems Protection Board cases); “whistleblower” complaints and complaints involving other prohibited personnel practices (U.S. Office of Special Counsel); discrimination and retaliation complaints (EEOC and federal district courts); other grievances and arbitrations; unfair labor practice charges before the Federal Labor Relations Authority; and procurement protests or contract appeals. They also advise management on a variety of administrative claims, such as tort claims, unemployment insurance, and workers’ compensation claims.

In addition, this office is responsible for managing all labor relations matters involving the Agency’s two incumbent labor organizations. The National Labor Relations Board Union (NLRBU), which is the larger of the two organizations, represents Regional Office professionals and administrative professionals and Headquarters administrative professionals. On the Board-side, the NLRBU represents a very small number of employees, most of whom work in the Office of the Executive Secretary, the Division of Judges, and the Office of the Chief Information Officer. The other incumbent labor organization is the National Labor Relations Board Professional Association (NLRBPA), which represents Headquarters professionals who work in the offices of the Board and General Counsel. There are two separate NLRBPA bargaining units – one on the Board-side and one on the General Counsel-side. The Board-side unit consists of attorneys who work on the Board Member staffs, in the Office of Representation Appeals and in the Office of the Executive Secretary.

The **Ethics Office** provides guidance to Agency employees on government ethics rules and the application of the varying and conflicting state bar ethics rules that govern their conduct in investigating and litigating cases on behalf of the Agency. The office is headed by the Designated Agency Ethics Official, Lori Ketcham.

E. Division of Advice

The **Division of Advice** is the office through which the General Counsel decides and oversees the legal and policy aspects of important unfair labor practice cases. The Division is headed by Associate General Counsel Richard Bock and is divided into the following two branches.

The **Regional Advice Branch** provides legal direction to Regional offices on behalf of the General Counsel in novel or complex unfair labor practice cases or other cases warranting the General Counsel's attention. Most frequently, Advice's guidance is in the form of answers to individual matters submitted by Regional offices. The General Counsel from time to time identifies specific issues of particular concern which the Regions are required to submit to Advice. Regions also submit other difficult legal issues at their discretion. Advice also briefs the General Counsel on emerging issues and significant developments in the law, such as Supreme Court or Board decisions. As appropriate, it prepares General Counsel "Guideline Memoranda (GC)" and "Operations Management (OM)" Memoranda that provide general guidance on how to deal with such issues. Occasionally, in significant cases, Branch staff will itself prepare litigation documents and present oral argument to the Board.

The **Injunction Litigation Branch** administers substantive aspects of the General Counsel's injunction litigation program for obtaining preliminary relief in federal district courts, pending the Board's adjudication of unfair labor practice complaints. This Branch evaluates all requests from Regional offices for authorization to seek Section 10(j) injunctive relief. When the Branch concludes that interim relief is warranted, it drafts a recommendation from the General Counsel to the Board seeking authorization to proceed in district court. The Branch also advises and assists Regions in the litigation of both Section 10(j) and Section 10(l) injunction cases in federal district courts. It directly handles all appellate litigation of Section 10(j) and Section 10(l) cases, including brief preparation and oral arguments.

III. ADMINISTRATIVE OFFICES

A. Office of the Chief Information Officer

The Office of the Chief Information Officer (OCIO) is responsible for providing strategic direction and leadership for the Agency's information management programs, including its information technology (IT) systems, in support of the mission and goals of the NLRB. The CIO jointly reports to the Board and General Counsel. The CIO is Prem Aburvasamy.

The OCIO handles Computer Services, Records Management, and Library

Services. The Computer Services office is responsible for Enterprise Support Services, Enterprise Application Services, Mission and Administrative, Information Assurance, Infrastructure Management, and Planning and Governance. The Records Management Section (RMS) is responsible for the overall NLRB Records Management Program in accordance with the requirements of the Federal Records Act and National Archives and Records Administration (NARA) records regulations. The NLRB Library is the Agency's research and information center. It provides research and reference assistance on legal and non-legal subjects and manages access to research databases such as Westlaw, LEXIS, and HeinOnline. The Library provides training regarding use of these databases and on a variety of other legal research topics. The physical library collection includes monographs, historical texts, and labor law treatises. The Library also maintains a special collection of oral history transcripts, special reports generated by various committees and commissions, and a print repository of federal court briefs.

B. Division of Administration

The **Division of Administration** is responsible, on behalf of the General Counsel, for the overall planning, direction, and coordination of major administrative management functions for the Agency. Full authority and responsibility for such functions have been vested in the General Counsel by the Board to more fully release the Board for the performance of its adjudicatory responsibilities, and in accordance with the General Counsel's statutory responsibilities under Section 3(d) of the National Labor Relations Act. The Director of Administration is Lasharn Hamilton.

The Division provides management support functions for human resources, security, facilities and property management, and employee development as follows:

The **Human Resources Management Branch** provides Agency-wide human resources management, programs, policies, procedures, and services, through the following HR programs: Recruitment and Placement, Position Management and Classification, Salary and Wage Administration, Human Capital and Workforce Planning, Employee Benefits and Work Life, Employee Relations, and Payroll policy and practices.

The **Security Branch** provides Agency-wide physical and personnel security programs to (1) ensure the employment and retention of those individuals whose employment or retention in employment is found to be clearly consistent with the interests of the "national security;" (2) protect any "classified" material, documents, and data from misuse; (3) protect and conserve the human and material resources of the Agency; and (4) ensure the Continuity of Operations Planning in coordination with the Federal Emergency Management Agency.

The **Facilities and Property Branch** provides Agency-wide facilities, property, and occupational safety programs that meet the efficiency and safety standards of the Agency and comply with controlling laws, while ensuring proper internal controls and accurate reporting. The Branch also provides acquisition and utilization of space services, equipment, physical facility maintenance and operations, including repair program planning, design and construction support, alterations and improvements, facilities condition inspection, energy and environmental impact management, and facilities maintenance and repair service contracts. It also provides fleet management, printing, postage, Headquarters mail, and copier acquisition and repair services.

The **Office of Employee Development** provides an employee development program and curricula that address Agency-wide occupations such as the Management Development, Professional Development, and Administrative Professionals programs; helps managers of all occupational areas identify and locate resources for helping staff manage their careers and seek developmental opportunities; and provides guidance on a variety of employee development support services, such as conference planning and coordination and creation of educational media and online resources.

C. Office of the Chief Financial Officer

The **Office of the Chief Financial Officer** is responsible for formulating and directing the NLRB's budget, as well as preparing a variety of statutorily required programmatic reports and plans for the Office of Management and Budget (OMB). The CFO is Isabel McConnell.

The budget process involves estimating, planning, and monitoring the usage of resources, both in terms of dollars and personnel. A single budget cycle consists of three phases: budget formulation, budget approval and enactment, and budget execution. Budget formulation is the preparation and justification of estimated budgetary requirements needed to accomplish the Agency's mission, and the presentation of those estimates to Agency management and OMB for review. The budget approval and enactment phase involves Congressional review of the Agency's budget request, and final approval of an appropriation for the Agency. Budget execution comprises two primary processes: (1) finalizing an Agency Operating Plan, which details the allocation of budget authority to accomplish the NLRB mission; and (2) ongoing monitoring and reviewing of expenditures, and reallocating of funds as necessary, in order to ensure adherence to the Plan, and achievement of program needs. The programmatic reports prepared by the Office include the Agency's Performance Accountability Report (PAR), Strategic Plan, Federal Activities Inventory Reform (FAIR) Act Inventory, and the Federal Managers' Financial Integrity Act (FMFIA) submission.

The Office of the Chief Financial Officer also provides a full complement of financial management services, which includes making disbursements for Agency-wide purchases and backpay settlements, collections, and execution of the travel management program. These services are covered by the Fiscal Operations Section and the Systems and Procedures Section.

The Office of the Chief Financial Officer is also responsible for acquisition management.

IV. OFFICE OF THE INSPECTOR GENERAL

The Inspector General Act of 1978, as amended, created the National Labor Relations Board **Office of Inspector General** (OIG). The statutory mission of the Board's OIG is to:

- Conduct and supervise audits and investigations relating to the programs and operations of the NLRB;
- Provide leadership and coordination and recommend policies for activities designed to promote economy, efficiency, and effectiveness in the administration of, and prevent and detect fraud and abuse in, agency programs and operations; and
- Provide a means for keeping the head of the Agency and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for, and progress of, corrective action.

David P. Berry is the Inspector General.

Each year, OIG solicits input from Congress and management on potential audits. With that input, OIG creates an annual audit plan. In making the plan, OIG also considers the time since the last audit, vulnerability to waste, fraud and abuse, and the importance of the program or operation to the Agency. The audit of NLRB financial statements is statutorily required and is included in the plan each year.

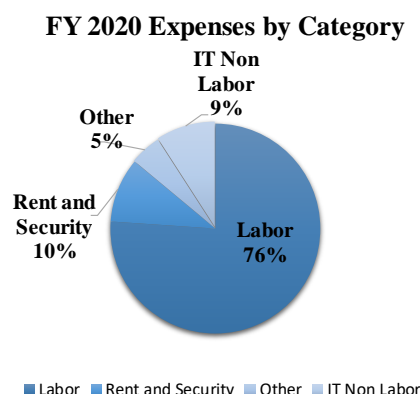
Besides conducting audits, OIG maintains a telephone and Internet Hotline to receive reports of misconduct and mismanagement. OIG also proactively initiates investigative activity when it determines that there is a reasonable basis to believe that misconduct has occurred. Although most of the investigations involve NLRB personnel, other individuals doing business with the NLRB may be the subject of an OIG investigation. Investigative reports are subject to the Privacy Act and are issued only to the management official who is responsible for the employee who was investigated. If an investigation involves criminal activity, OIG is required to notify the Department of Justice.

BUDGET OVERVIEW

Funding for the NLRB:

- FY 2020 Budget was enacted at \$274,224,000 under Public Law 116-94 on December 20, 2019, making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2020. The House Appropriations Committee passed H.R. 116-62 for \$341,500,000
- FY 2021 President's Budget Request is \$246,876,000
- FY 2022 Office of Management and Budget (OMB) Budget Request was submitted on September 14, 2020 at the OMB guidance level of \$251,814,000

The NLRB relies primarily on skilled and experienced professional employees, most of whom are attorneys. Of the FY 2020 enacted budget of \$274.2 million, approximately 76 percent (\$209 million) supported annual staff compensation (salaries and benefits); 10 percent (\$27 million) funded rent and security; 9 percent (\$25 million) funded information technology systems, infrastructure, and enhancements; and about 5 percent (\$13.2 million) funded other mission critical activities including, but not limited to, administrative, personnel, financial management, budget, acquisition, court reporting, case-related travel, witness fees, interpreters, training, and compliance with government-wide statutory and regulatory mandates.



National Labor Relations Board			
(Dollars in Thousands)			
Detail	FY 2020 Enacted	FY 2021 President's Budget	FY 2022 Request
Appropriation	\$ 274,224	\$ 246,876	\$ 251,814
FTE	1,237	1,237	1,237

Budget Authority by Object Class (Dollars in Millions)			
Object Class Categories	FY 2020 Enacted	FY 2021 President's Budget	FY 2022 Request
Personnel Compensation	\$156.6	\$154.6	\$157.9
Personnel Benefits	\$52.4	\$51.0	\$52.6
<i>Subtotal Personnel Compensation</i>	\$209.0	\$205.6	\$210.5
Travel and Transportation of Persons	\$0.8	\$0.8	\$1.0
Rental Payments to GSA	\$23.5	\$19.0	\$19.0
Printing and Publications	\$0.4	\$0.0	\$0.0
Communication, Utilities, and Miscellaneous Charges	\$4.5	\$1.5	\$1.5
Other Services	\$33.4	\$20.0	\$19.7
Supplies and Materials	\$0.6	\$0.0	\$0.1
Equipment and Furniture	\$2.0	\$0.0	\$0.0
<i>Subtotal Direct Budget Authority</i>	\$65.2	\$41.3	\$41.3
Total	\$274.2	\$246.9	\$251.8

HUMAN CAPITAL SNAPSHOT

The Board's most valuable resource is its dedicated and experienced staff. As noted above, personnel and compensation costs constitute 70 percent of the agency's budget, and it is money well spent. As of September 30, 2020, the NLRB staff consists of 1,253 full and part-time employees. Of those 1,253 employees, 453 work for the Board's Washington, D.C. headquarters and the remaining 800 support the Board's field offices.

A full human capital snapshot, containing demographic breakdown, active recruitments, hiring trends, and retirement information, is attached as an appendix to these briefing materials at Tab 4.

OPERATIONAL ITEMS

I. CONTINUITY OF OPERATIONS DURING THE COVID-19 PANDEMIC

The COVID-19 pandemic presented numerous operational challenges during FY 2020 that will continue into FY 2021. The NLRB was forced to convert nearly all employees to telework in mid-March, and the Agency then converted all mission-related activities to a virtual environment. Although the Agency possessed only limited videoconferencing capacity prior to the onset of the pandemic, the Agency quickly expanded its capacity via the Zoom for Government platform, and adapted interactions with stakeholders and the public to this new medium. Specifically, the Regional Offices began conducting videoconference hearings in representation cases and holding ballot counts via videoconference. The agency's administrative law judges employed the technology to adjudicate unfair labor practice hearings. With the exception of a two-week suspension of representation elections in March, the Agency continued to process representation petitions and conduct elections throughout the course of the year. The Board and General Counsel issued decisions and memoranda, respectively, to provide public guidance on handling matters during the pandemic.*

Despite these significant challenges, the Agency remained focused on carrying out its important work. In FY 2021, the Board and General Counsel will continue managing continuity of operations during the next phase of the pandemic. Those efforts will need to ensure that the NLRB carries out its mission effectively, efficiently and safely for its stakeholders nationwide while accounting for the pandemic's trajectory, guidance from state and local authorities in areas in which the Board's field offices are located and in which the Board is operating, and ensuring safety of NLRB employees engaged in essential work for the federal government, among many others.

II. DECREASE IN CASE FILINGS AND THE EFFECT ON STAFFING AND BUDGET

The Agency has experienced a steady drop in case intake from 2012 to 2019, continuing an earlier trend that can be traced back to 1980, when the overall intake

* See *William Beaumont Hospital*, 370 NLRB No. 9 (2020); *XPO Cartage, Inc.*, 370 NLRB No. 10 (2020); *Morrison Healthcare*, 369 NLRB No. 76 (2020); *Remote Unfair Labor Practice Hearings During COVID-19 Pandemic*, [GC Memo 20-12](#) (Aug. 25, 2020); *Suggested Manual Election Protocols*, [GC Memo 20-10](#) (July 6, 2020); see also Advice Memoranda and Emails Dealing with COVID-19, available at <https://www.nlr.gov/guidance/memos-research/advice-memos/advice-memoranda-dealing-covid-19> (last visited Oct. 27, 2020).

was 57,381 total representation and unfair labor practice cases, as compared to 17,633 in 2020. The pandemic has only accelerated that decline. At the end of FY 2020, total case intake was down an additional 14.6% from the previous year. This issue has caused significant management challenges, including the imbalance of personnel across the field, and it raises questions regarding optimal staffing Agency-wide. With an Agency budget that is primarily dedicated to its payroll costs, changes in personnel numbers also weigh heavily in determining the Agency's budget.

While the decline in case filings has been remarkably steady on a national level, in various localities, there have occasionally been very sharp drops or temporary spikes in filings. Historically, the Agency's approach had been to add staff in field locations where filings spiked. Where filings dropped off, the Agency has reduced staff only through ordinary attrition. This has resulted in imbalances in staffing across the country. Because attrition frequently lags the decline in case filings, this has resulted in some Regional Offices being more optimally staffed than others.

Addressing the decline in case filings and the related effect on staffing remains an important management initiative.

III. STRATEGIC PLANNING

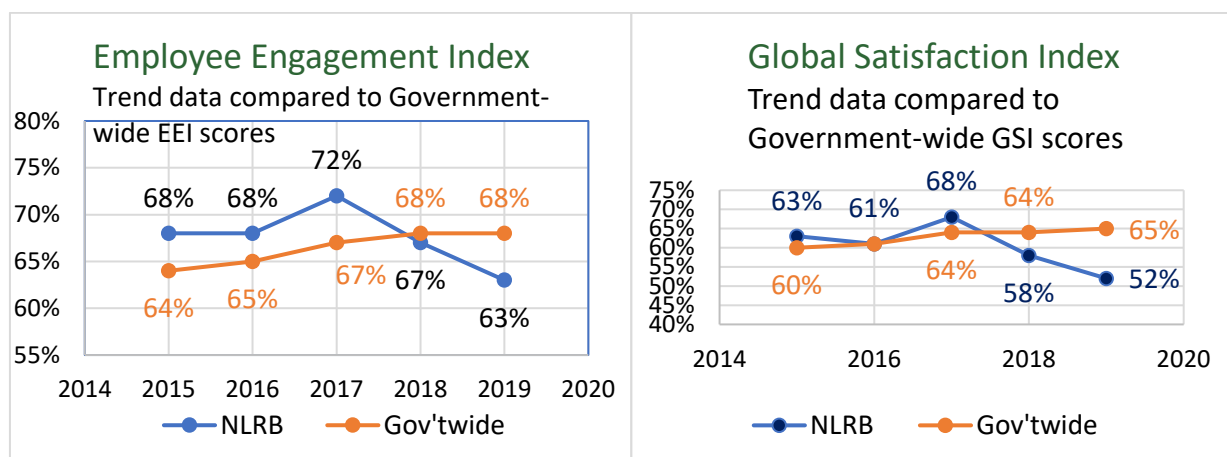
Enacted in 1993, the Government Performance and Results Act (GPRA) ([Pub.L.103-62](#)) was designed to improve program management throughout the Federal government. Agencies were required to develop a five-year strategic plan outlining their mission, long-term goals for the agency's major functions, performance measures, and reporting results. The GPRA Modernization Act of 2010 ([Pub.L. 111-352](#)) modified the schedule for agencies to revise their strategic plans. Agencies are now to prepare strategic plans to align with presidential terms. Strategic plans are to cover a period of no less than four years, and agencies may make adjustments to the plan to reflect significant changes in its operating environment based on changes in political leadership, which may result in new objectives.

The NLRB Strategic Plan for FY 2018 – FY 2022 identified specific time targets for resolution of unfair labor practice charges. The updated NLRB Strategic Plan for FY 2019 – FY 2022 replaced the previous time target goals for processing unfair labor practice cases with goals to enhance performance by achieving specified decreases in the average time required to accomplish specific milestones in unfair labor practice case processing. The goals set for the timely processing of representation cases did not change in the NLRB's FY 2019 – FY 2022 Strategic Plan. The current strategic plan is attached as an appendix to these briefing

materials.

IV. EMPLOYEE VIEWPOINT SURVEY

The Federal Employee Viewpoint Survey (EVS) is an annual government-wide assessment of employee engagement and satisfaction. It is not atypical for EVS results to ebb and flow from year-to-year. The EVS results for the Agency, however, show in the two charts below an upward trend except for the last few years, where results declined sharply across the two major workforce climate indices.



Notwithstanding the recent declines in the Employee Engagement Index (EEI), the Global Satisfaction Index (GSI), and the Best Places to Work (BPTW) rankings, the NLRB surpassed its performance goals due in large part to the dedication of its workforce. In this regard, the NLRB's workforce continued to be extremely committed to putting in extra effort to get the job done, viewed the work of the NLRB as very important, believed the quality of work was very high, understood how the work related to the NLRB's goals, felt they are held accountable for achieving results, continued to work collaboratively while looking for ways to do the job better, and held very positive views of their direct supervisors.

The 2019 EVS results revealed key challenges facing the NLRB, however. Specifically, respondents identified dissatisfaction related to perceptions that the organization does not have sufficient resources to get the job done; the availability of growth and advancement opportunities; issues concerning personal autonomy over work processes; and concerns over personal involvement in decisions that impact the work and information received from management about agency operations. Moreover, 2019 FEVS results identified a need to improve employees' perceptions of senior agency leadership and their interface with the workforce. If the NLRB is going to be successful in improving employee engagement in the future, the challenges identified above will need to be effectively addressed with a

sustained focus on strategic human capital management.

V. PENDING LEASE ACTIONS

The General Services Administration (GSA) serves as the real estate agent for the National Labor Relations Board (NLRB) by providing office space in federal and leased facilities. GSA is the organization that makes the final determination for NLRB office locations. Federal building occupancy is the preferred choice. GSA determines which space is the most cost effective for the government. GSA lease actions start approximately 18 months prior to lease expiration. The lease is signed between the lessor and GSA. The agency signs an occupancy agreement (OA) with GSA for all space type, leased or federal.

The Division of Administration, Facilities and Property Branch manages headquarters and field offices OAs and NLRB's \$24M rent budget. Currently, GSA has begun working on NLRB space actions for headquarters and eighteen field offices. The headquarters lease is the only NLRB location that is considered prospectus level. This means that the lease exceeds an annual rent of \$3.1M, and GSA must obtain approval to proceed from Office of Management and Budget (OMB) and Congress.

NLRB has been right-sizing both headquarters and field office space up to and exceeding 30% in accordance with the guidelines established by GSA per numerous Executive Orders issued from 2012 through 2018, which require agencies to reduce their footprint. This has been accomplished by submitting requirements in sequence based on lease expirations and other GSA initiated space actions such as forced moves. For leased facilities, if any delays occur with awarding a new lease or construction of the office space, GSA negotiates a short extension with the current landlord. A summary of these actions to include financial impact to the agency is as follow:

NLRB Right-Sizing Projects								
	Current Building Type	Region	OA Expiration	Current Rentable SF	Proposed Rentable SF	Current Annual Rent	Proposed Rent	Cost Savings
1	Leased	R-10 Atlanta	2/27/2021	11,528.85	7,117.78	\$281,810.04	\$173,986.29	\$107,823.75
2	Leased	RO-21 San Diego	6/30/2021	1,965	1,568.00	\$63,006.60	\$50,277.02	\$12,729.58
3	Leased	SR-26 Memphis	7/9/2021	9,791.01	6,559.00	\$205,027.32	\$137,347.85	\$67,679.47
4	Leased	R-20 San Francisco	7/31/2021	17,029	9,978.0	\$561,330.72	\$263,705.78	\$297,624.94
5	Leased	DOJ-San Francisco	7/31/2021	8,091	2,001.76	\$275,883.72	\$68,255.22	\$207,628.50
6	Leased	R-29 Brooklyn	9/10/2021	23,238	10,175.00	\$1,178,407.44	\$515,977.95	\$662,429.49
7	Leased	R-28 Phoenix	11/30/2021	13,253.04	7,617.97	\$320,672.64	\$184,325.60	\$136,347.04
8	Leased	SR-11 Winston Salem	12/18/2021	10,209.00	5,790.00	\$106,901.04	\$60,628.57	\$46,272.47
9	Leased	R-5 Baltimore	6/13/2022	20,050	8,992.2	\$531,093.00	\$293,324.91	\$237,768.09
10	Leased	SR-24 Hato Rey	6/30/2022	9,343	5,690.00	\$331,238.76	\$157,328.50	\$173,910.26
11	Leased	RO-10 Birmingham	8/13/2022	3,853.00	3,031.33	\$94,932.84	\$74,687.97	\$20,244.87
12	Leased	R-31 West Los Angeles	2/18/2023	18,971.42	10,349.60	\$570,911.76	\$311,453.14	\$259,458.62
13	Leased	R-12 Tampa	3/31/2023	11,702	7,246.1	\$331,218.84	\$205,097.83	\$126,121.01
14	Leased	RO-26 Nashville	4/14/2023	3,605	2,700.00	\$50,295.36	\$37,669.20	\$12,626.16
15	Leased	SR- 30 Milwaukee	8/31/2023	10,226	5,830.73	\$16,040.82	\$9,146.26	\$6,894.56
16	Leased	Headquarters	6/29/2025	152,872.00	125,000.00	\$7,520,272.84	\$6,149,158.15	\$1,371,114.69
17	Federal	R-1 Boston	9/30/2026	18,177.39	8,790.62	\$813,219.60	\$383,271.03	\$429,948.57
18	Federal	R-22 Newark	10/1/2026	17,653.04	11,394.00	\$463,661.40	\$299,266.19	\$164,395.21
19	Federal	R-32 Oakland	10/31/2028	17,744.53	8,024.63	\$665,661.72	\$301,032.99	\$364,628.73
				379,302.28	247,856.73	\$14,381,586.46	\$9,675,940.48	\$4,705,645.98

VI. OPERATING UNDER CONTINUING RESOLUTIONS (CR)

The government experiences continuing resolutions almost every year. The CRs are operational and budgetary challenges to the Agency because the Agency is obligated to operate at only a minimum level of funding, but is required to timely meet its mission and objectives. The Agency is also prevented from engaging in longer-term planning as financial obligations cannot exceed the end date of the CR. If the CR is lifted by the end of the second quarter, the Agency is required to obligate all its funding within six months, facing the risk of leaving a significant funding unexecuted. This is usually scrutinized by the U.S. Congress, the Office of Management and Budget (OMB), and the Government Accountability Office (GAO). The Agency has faced CRs every year in recent memory, with the exception of fiscal year 2019.

It is important that the Office of the Chief Financial Officer works closely with the Agency Leadership to identify any CR concerns and promptly communicate the Agency funding status. In addition, CRs also create an operational challenge to management because the Budget Branch, Acquisition Management Branch, and Program Areas have to assess and coordinate the funding requirements for the Agency programs and contracts multiple times during each different CR, on a potentially shifting budgetary landscape.

VII. STATUS OF AGENCY LABOR RELATIONS - CONTRACT NEGOTIATIONS WITH AGENCY UNIONS

A. National Labor Relations Board Union (NLRBU) Term Negotiations

On December 6, 2013, the National Labor Relations Board (NLRB or Agency) and NLRBU or (Union) executed two (2) collective bargaining agreements

(Agreements) for three-year terms through December 6, 2016. After this date, the Agreements continued to be in effect on a year to year basis. Pursuant to the applicable contract provisions, on October 5, 2018, the NLRB provided notification to the NLRBU of its intent to terminate the parties' Agreements, effective December 6, 2018. However, the "terms and conditions" of the Agreements remain in effect. The parties' two Agreements with the NLRBU cover the following employees employed at the Agency:

1. Professional employees of the Office of the General Counsel in Regional, Sub-regional and Resident Offices; and
2. Non-professional employees of the Office of the General Counsel of the National Labor Relations Board.

Ground rules bargaining between the parties began in February 2019 and continued through September 2019. The NLRB's proposal on ground rules sought to ensure the parties' negotiations over new Agreements are conducted in an efficient manner, and that the parties outline their respective positions at the outset of bargaining.

In the absence of agreement on ground rules, mediation assistance was sought from a mediator with the Federal Mediation and Conciliation Service (FMCS). Mediation assistance was provided to the parties until November 4, 2019, when the NLRBU refused to participate in mediation proceedings. In response, on November 7, 2019, the Agency proceeded with requesting assistance from the Federal Service Impasses Panel (FSIP or Panel). However, citing the parties' failure to exhaust mediation, on February 4, 2020, the Panel declined the Agency's request for assistance. The parties' subsequently resumed bargaining in April 2020 and returned to mediation in July 2020. The parties remained unable to reach an agreement on ground rules, and the NLRB submitted a follow-up request for assistance to FSIP on September 3, 2020, which is currently pending. FSIP is considering whether to accept jurisdiction over the parties' ground rules bargaining dispute. In addition to the Panel proceeding, on July 20, 2020, the NLRBU filed a negotiability appeal, challenging the legality of its ground rules proposals. On October 14, 2020, the Federal Labor Relations Authority (FLRA) issued a Show Cause Order to the NLRBU, citing a lack of evidence to support the NLRBU's contentions raised in its appeal. The NLRBU's appeal before the FLRA remains pending, as well.

B. National Labor Relations Board Professional Association (NLRBPA) Term Negotiations

In October 2018, the General Counsel and Board notified the Professional Association (PA) of its intent to renegotiate the term agreement. The last term agreement was negotiated in 2002 and covers the following employees:

1. All attorneys and other professional employees performing comparable legal work in Headquarters.
2. All permanent part-time employees, and all law student employees other than those holding summer appointments only and those on work-study programs.

From December 2018 to May 2019, the parties engaged in bargaining and mediation concerning ground rules for the term agreement; however, no agreement was reached. On May 20, 2019, the Agency requested assistance from the Federal Service Impasses Panel (FSIP). FSIP asserted jurisdiction and issued a decision on November 29, 2019.

From January 2020 to July 2020, the parties engaged in negotiations to reach a new collective bargaining agreement. The parties tentatively agreed to some proposals; however, no agreement was reached on all the proposals. Following a two-day FMCS mediation, the Agency and NLRBPA were released by the mediator to the FSIP. Accordingly, on July 29, 2020, the Agency requested assistance from FSIP because the Agency believed the parties were at impasse. On September 24, 2020, FSIP asserted jurisdiction over the matter. On October 13, 2020, FSIP informed the parties that the impasse would be decided via written submissions that are due on November 13, 2020.

The resolution of the pending collective bargaining negotiations remains a management priority.

CONGRESSIONAL CONSIDERATIONS

The Congressional and Public Affairs Office (OCPA) is the primary point of contact for Congress, the media, and the public at the NLRB. OCPA informs and educates Congress and other stakeholders on Agency actions and major case decisions. In addition, OCPA responds to Congressional casework inquiries and media and other press requests.

OVERSIGHT COMMITTEES

- Senate Committee on Health, Education, Labor and Pensions (HELP)
- House Education and Labor Committee
- Senate Appropriations (Subcommittee on Labor, Health and Human Services, Education, and Related Agencies)
- House Appropriations (Subcommittee on Labor, Health and Human Services, Education, and Related Agencies)

Senate HELP Committee

In the 117th Congress, Senator Rand Paul (KY) will likely be assuming the Chair, while Senator Patty Murray (WA) will remain Ranking Member if Republicans retain control of the Senate. If Democrats have the Senate majority, their roles would be reversed.

Key Republican Staff: (Unclear at this time due to Chairman Alexander's retirement.)

Key Democratic Staff: Nikki McKinney, Yeongsik Kim (Mr. Kim is a former NLRB staff attorney.)

House Education and Labor Committee

In the 117th Congress, Representative Bobby Scott (VA) is expected to remain as Chairman, while Ranking Member Virginia Foxx (NC) is expected to remain in her position.

Key Republican Staff: Rob Green, John Martin, John Witherspoon

Key Democratic Staff: Kyle deCant, Katelyn Mooney, Cathy Yu, Janice Nsor

Senate Appropriations (Subcommittee on Labor, Health and Human Services, Education, and Related Agencies)

In the 117th Congress, Senator Roy Blunt (MO) is expected to retain his

Chairmanship if the Republicans hold the Senate Majority, and Senator Patty Murray (WA) is expected to continue as Ranking Member. If Democrats have the Senate majority, their roles would be reversed.

Key Republican Staff: Ashley Palmer

Key Democratic Staff: Kathryn Toomajian

House Appropriations (Subcommittee on Labor, Health and Human Services, Education, and Related Agencies)

In the 117th Congress, Representative Rosa DeLauro (CT) is expected to remain as Chairman while Ranking Member Tom Cole (OK) is expected to remain in his position as Ranking Member.

Key Republican Staff: Kathryn Salmon

Key Democratic Staff: Philip Tizzani

Other Notable Members

Senate: T. Scott (SC), Loeffler (GA), Murkowski (AK)

House: Pocan (WI-02), Lee (CA-13), Walberg (MI-7), Stefanik (NY-21)

NLRB BOARD MEMBERS & SENATE CONFIRMATION

The Board is comprised of 5 members, appointed by the President with the advice and consent of the Senate. Per tradition, there are two Republican members and two Democratic members. The third member is filled by the President with a member of his political party. The President designates the Chairman. There is currently one vacancy on the Board, which traditionally would be a Democratic slot, that the next President could fill. As noted previously, the other four Board members and the General Counsel's terms will not expire with a change in Presidential administration. OCPA has traditionally assisted nominees of both parties during the confirmation process.

NLRB LEGISLATION IN CONGRESS

FY 2021 Continuing Appropriations Act, 2021 and Other Extensions Act H.R. 8337

On September 22, 2020, the House Appropriations Committee passed, on a 359 to 57 votes, a bipartisan continuing resolution to extend federal government funding through December 11, 2020 and avoid a government shutdown at the end of the month (September 30, 2020). The bill goes next to the Senate for consideration.



**PROTECTING WORKPLACE
DEMOCRACY**

STRATEGIC PLAN

FY 2019—FY 2022

GOVERNMENT PERFORMANCE and RESULTS ACT (GPRAMA) of 2010

I. MESSAGE FROM THE CHAIRMAN AND GENERAL COUNSEL

On behalf of the National Labor Relations Board, we are pleased to present the NLRB's Strategic Plan for Fiscal Years 2019-2022. This strategic plan includes the NLRB's strategic goals, objectives, initiatives, strategies and associated performance measures for managing operations and assessing the NLRB's achievements.

The NLRB is an independent federal agency established in 1935 to promote workplace democracy and, in the words of President Franklin Delano Roosevelt, "to foster the development of the employee contract on a sound and equitable basis ." For more than 80 years, the NLRB has been at the forefront of the effort to promote and protect the rights and obligations of employees, unions, and employers under the National Labor Relations Act. This Strategic Plan will permit the NLRB to continue to adopt best practices for long-range planning.

This Strategic Plan contains four mission-related goals to support our mission and vision. It addresses the Agency's current challenges as well as outlining what we hope to accomplish. Through use of the performance measures for the supporting goals, as well as the mission-related goals, the NLRB aims to demonstrate transparency and accountability, along with providing a way to assess its progress.

Dated November 27, 2018

John Ring
Chairman

Peter Robb
General Counsel

II. NATIONAL LABOR RELATIONS BOARD (NLRB) AT A GLANCE

FISCAL YEAR 2018 INFORMATION **	
Established:	1935
Number of Employees:	Approximately 1,327
Overall Case Intake:	
Unfair Labor Practice Cases:	18,870
Representation Cases:	2,090
Public Inquiries:	51,613
Toll Free Phone Inquiries:	25,171
** As of 9/30/2018	
NLRB MISSION	
<p>Protecting workplace democracy by promoting and enforcing the rights and obligations of employees, unions and employers under the National Labor Relations Act, in order to promote commerce and strengthen the Nation's economy.</p>	
NLRB VISION	
<p>Achieving our mission through efficient stewardship of resources and creation of a highly motivated, productive, talented and diverse workforce.</p>	
STRATEGIC GOALS	
<ol style="list-style-type: none">1. Promptly resolve labor disputes affecting commerce by fairly and efficiently investigating, settling, processing and adjudicating unfair labor practices under the National Labor Relations Act.2. Promptly and fairly resolve all questions concerning representation of employees.3. Achieve organizational excellence and productivity in the public interest.4. Manage agency resources in a manner that instills public trust.	

III. ORGANIZATIONAL DISCUSSION/OVERVIEW

The National Labor Relations Board (NLRB) is an independent federal agency created in 1935 to administer and enforce the National Labor Relations Act (NLRA). The NLRA is the primary federal statute governing the labor relations of employees and employers in the private sector. The NLRA protects the right of employees to choose for themselves without interference by employers or unions whether or not to form, join, assist or bargain through a labor organization to join together to improve, or bargain concerning their working conditions, or to refrain from such activity. The NLRB seeks to promote commerce and strengthen the Nation's economy by eliminating certain unfair labor practices on the part of employers and unions.

The NLRB has two primary functions:

- To investigate and resolve (through settlement, prosecution or dismissal) allegations of statutorily defined unfair labor practices by employers and unions; and
- To investigate and resolve questions concerning representation by conducting secret-ballot elections among employees in an appropriate unit to determine whether or not the employees wish to be represented by a union.

The Board also may engage in rulemaking as appropriate to carry out the provisions of the NLRA.

Top Agency leadership consists of the five Board Members and the General Counsel, each of whom is appointed by the President with the advice and consent of the Senate. The President designates one of the five Board Members as Chairman. Day-to-day management of the Agency is divided between the Chairman, the full Board, and the General Counsel. Board members serve staggered five-year terms and the General Counsel serves a term of four years from commission. The NLRA assigns separate and independent responsibilities to the Board and the General Counsel. The General Counsel's role is administrative and prosecutorial.

The five-member Board primarily acts as a quasi-judicial body in deciding cases on the basis of formal records in administrative proceedings.

Neither the Board nor the General Counsel may initiate cases or investigations. All NLRB proceedings originate with the filing of charges or petitions by employees, labor unions, employers or other private parties. Unlike some other federal agencies, Board remedial orders are not self-enforcing. There is no time limit requiring parties to petition for court review. If the parties do not voluntarily comply with Board orders remedying unfair labor practices, the Board must request that the appellate courts enforce its orders.

The Board and the General Counsel maintain a headquarters in Washington, D.C., and the Agency also maintains a network of Field offices and three satellite offices of administrative law judges. Approximately 70 percent of the Agency's staff is employed in the field, where all unfair labor practice charges and representation petitions are initiated. Currently, the Field offices include 26 Regional Offices, 9 Sub-Regional Offices, and 13 Resident Offices.

IV. STRATEGIC FIVE-YEAR GOALS

For detailed information regarding the performance measures please see Appendix A.

GOAL # 1 (MISSION): PROMPTLY AND FAIRLY RESOLVE THROUGH INVESTIGATION, SETTLEMENT OR PROSECUTION, UNFAIR LABOR PRACTICES UNDER THE NATIONAL LABOR RELATIONS ACT

Objective 1: Achieve established performance measures for the resolution of meritorious unfair labor practice charges.

Initiative 1: Achieve a collective 20% increase in timeliness of case processing under established performance measures for the resolution of all meritorious unfair labor practice charges.

Measure 1: Realize a 5% annual decrease in the average time required to resolve meritorious unfair labor practice charges through adjusted withdrawal, adjusted dismissal, settlement or issuance of complaint.

Measure 2: Realize a 5% annual decrease in the average time between issuance of complaint and settlement by administrative law judge or issuance of administrative law judge decision.

Measure 3: Realize a 5% annual decrease in the average time between issuance of an administrative law judge decision and a Board order.

Measure 4: Realize a 5% annual decrease in the average time between issuance of a Board order and the closing of the case.

Initiative 2: Achieve enhanced performance for the resolution of all unfair labor practice charges.

Measure 1: Realize a 5% annual decrease in the average time required to resolve unfair labor practice charges through withdrawal, dismissal, settlement or issuance of complaint.

Measure 2: Realize a 5% annual decrease in the average time between issuance of complaint and settlement by administrative law judge or issuance of administrative law judge decision.

Measure 3: Realize a 5% annual decrease in the average time between issuance of an administrative law judge decision and a Board order.

Measure 4: Realize a 5% annual decrease in the average time between issuance of a Board order and the closing of the case.

Initiative 3: Ensure that all matters before the Agency are handled in a fair and consistent manner.

Measure 1: Ensure that Regional case processing procedures evolve with the Agency's strategic goals and technological advancements.

Management Strategies:

- Continually review staff suggestions for improvement and modify case processing procedures to ensure more timely and efficient resolution of cases.

Measure 2: Conduct annual quality reviews of Regional unfair labor practice case files and institute modifications to case processing as appropriate.

Management Strategies:

- Maintain and enhance alternative decision-making procedures to expedite Regional, Board and ALJ decisions in unfair labor practice cases.
- Utilize Compliance Unit to identify and coordinate compliance in merit cases.
- Discontinue existing interregional assistance program and replace it with a program that will ensure unfair labor practice cases in offices with backlogs are transferred to offices with available staff.
- Share best practices in unfair labor practice processing to assist regions in resolving unfair labor practice case issues promptly and fairly.

GOAL # 2 (MISSION): PROMPTLY AND FAIRLY INVESTIGATE AND RESOLVE ALL QUESTIONS CONCERNING REPRESENTATION OF EMPLOYEES

Objective 1: Achieve established performance measures for the timely resolution of all questions concerning representation of employees.

Initiative 1: Achieve established performance measures for the resolution of representation cases.

Measure 1: The percentage of representation cases resolved within 100 days of filing the election petition.

Initiative 2: Ensure that all matters before the Agency are handled in a fair and consistent manner.

Measure 1: Ensure that Regional case processing procedures evolve with the Agency's strategic goals and technological advancements.

Management Strategies:

Continually review staff suggestions for improvement and modify case processing procedures to ensure more timely and efficient resolution of cases.

Measure 2: Conduct annual quality reviews of Regional representation case files and institute modifications to case processing as appropriate.

Management Strategies:

- Maintain and enhance alternative decision-making procedures to expedite Board decisions in representation cases.
- Discontinue existing interregional assistance program and replace it with a program that will ensure that representation cases in offices with backlogs are transferred to offices with available staff.
- Identify and utilize procedures to ensure careful and timely processing of Requests for Review, Special Appeals, and Hearing Officer Reports.
- Share best practices in representation case processing to assist regions in resolving representation case issues promptly and fairly.

GOAL # 3 (SUPPORT): ACHIEVE ORGANIZATIONAL EXCELLENCE AND PRODUCTIVITY IN THE PUBLIC INTEREST

Objective 1: Recruit, develop, and retain a highly motivated, productive, talented, and diverse workforce to accomplish our mission.

Initiative 1: Invest in and value all employees through professional development, workplace flexibilities, fair treatment, and recognition of performance in the public interest.

Management Strategies:

- Maintain a current human capital plan that includes human capital goals, objectives, and strategies and a workforce plan that is consistent with the Human Capital Assessment and Accountability Framework (HCAAF) of the Office of Personnel Management (OPM).
- Ensure that the Agency's performance management system is results-oriented and aligned with the Agency's goals and objectives as to quality and productivity.
- Demonstrate significant improvement in OPM's assessment of the Agency's performance management system.
- Ensure that managers collaborate with the Agency's employees and unions to implement Agency policies and collective bargaining agreements that balance performance, productivity and workplace flexibilities.
- Reduce the number of pending background investigations.
- Enhance employee development and learning opportunities through Skillport, West Legal Ed, Training Tuesdays, and other on-line and blended media.
- Develop Individual Development Plans for training and succession planning.
- Identify, through updating the workforce plan, core competencies for managers and actions

necessary to close skill gaps as required by OPM.

Initiative 2: Develop and implement recruitment strategies to ensure a highly qualified, productive and diverse workforce.

Management Strategies:

- Comply with OPM's hiring reform, which tracks time spent to fill vacancies.
- Identify areas in which the Agency can enhance its diversity and talent through annual analysis of MD-715 guidance.
- Attract qualified and diverse applicants, including veterans and persons with disabilities, by following OPM and Equal Employment Opportunity Commission (EEOC) guidance and utilizing best practices of similar agencies.
- Establish working relationships with veteran's groups and Veterans Administration and Department of Labor veterans' programs to ensure that outreach efforts to veterans are consistent with OPM, congressional and Presidential directives.

Objective # 2: Promote a culture of professionalism, mutual respect, and organizational pride.

Initiative 1: Improve employee satisfaction and employee engagement.

Management Strategies:

- Strive to achieve improved internal communications.
- Identify and implement strategies to increase the number of employees who respond to the Federal Employee Viewpoint Survey.
- Develop a collaborative program to encourage employee creativity and innovation, including the Agency's suggestion program.
- Enhance internal and external recognition programs to acknowledge employee contributions (for example: Honorary Awards).

Initiative 2: Ensure that employees understand the Agency's mission and how they contribute to its accomplishments.

Management Strategies:

- Review and enhance the employee on boarding program.
- Ensure that each employee is provided with a performance plan and a clear understanding of management's expectations.
- Enhance publicity of significant organizational accomplishments.

Initiative 3: Cultivate and promote Agency programs that encourage collaboration, flexibility, diversity and mutual respect to enable individuals to contribute to their full potential.

Management Strategies:

- Demonstrate leadership accountability, commitment, and involvement regarding diversity and inclusion.
 - Fully and timely comply with all federal laws, regulations, executive orders, management directives and policies related to promoting diversity and inclusion in the workplace.
 - Provide on-going diversity and inclusion training for senior leadership.
 - Evaluate all levels of management on their proactivity in maintaining an inclusive work environment.
- Involve employees as participants and responsible agents of diversity, mutual respect and inclusion.
 - Reassess Agency mentoring programs to ensure they are used as tools to maintain a diverse workforce by affording a consistency of opportunity throughout all organizational units.
- Encourage participation in special emphasis observances.

GOAL # 4 (SUPPORT): MANAGE AGENCY RESOURCES EFFICIENTLY AND IN A MANNER THAT INSTILLS PUBLIC TRUST

Objective # 1: Use information and technology to monitor, evaluate, and improve programs and processes in order to accomplish the agency's mission and increase transparency.

Initiative 1: Improve the productivity of the Agency's case management by standardizing business processes in a single unified case management system.

Measure 1: Increase the rates of electronic service, delivery, and filings, thereby reducing the paperwork burden on constituents, including individuals, labor unions, businesses, government entities and other organizations.

Measure 2: Increase the information shared electronically with the public, making the Agency's case processes more transparent.

Management Strategies:

- Focus on most critical business needs first.
- Split projects into smaller, simpler segments with clear deliverables.
- Employ ongoing, transparent project oversight from the NxGen Integrated Project Team.

Initiative 2: Achieve more effective and efficient program operations in the NLRB administrative functions by automating and improving processes and information sharing within the Agency.

Measure 1: Streamline the Agency transactional processes by providing employees ready access to the tools, data and documents they require from anywhere, at any time.

Measure 2: Continue to enhance and utilize a modern single unified communications platform and network to empower Agency personnel to communicate with voice, video and data from all locations including the office, at home and on the road.

Measure 3: Fully utilize a dynamic social collaborative environment for employee engagement.

Management Strategies:

- Focus on most critical business needs first.
- Split projects into smaller, simpler segments with clear deliverables.
- Increase information sharing within the Agency through mechanisms that are easy for employees to contribute to and access.
- Employ ongoing, transparent project oversight from the Administrative Systems Integrated Project Team.

Initiative 3: Effective management of fiscal resources.

Measure 1: Develop and/or support the development of the Agency's budget.

Measure 2: Produce financial reports as required by OMB, Treasury, and Congress.

Measure 3: Conduct quarterly Program Management reviews on requirements development and execution to ensure programs stay on time and on budget.

Measure 4: Monitor unliquidated obligations quarterly for current year execution and re-allocate to other unfunded mission requirements.

Measure 5: Increase the use of strategic sourcing, purchase card program, and in sourcing to minimize waste and abuse. Continue to support minority business enterprises for contract awards.

Initiative 4: Right-sizing and closing Field Offices and Headquarters office space by up to 30% over the next five years in accordance with GSA guidelines.

Measure 1: Develop five-year Project Plan that identifies field offices for reductions in square footage or for closure.

Objective #2: Evaluate and improve the Agency's Outreach Program

Initiative 1: Enhance Agency's Outreach Program.

Management Strategies:

- Employ further non-traditional outreach to the following populations:
 - Unrepresented employees
 - Unions, Small Business Owners
- Engage with organizations, such as those listed below, to better educate workers and employers:
 - Joint outreach with sister agencies
 - Memorandums of Understanding (MOU) with other agencies related to co-extensive investigations

Objective # 3: Conduct all internal and external Agency business in an ethical and timely manner.

Initiative 1: Promote an ethical culture within the NLRB through leadership, communications, awareness, resources, and oversight.

Measure 1: Involve Agency leadership in promoting visibility and commitment to the NLRB Ethics Program.

Measure 2: Increase employee awareness of ethics responsibilities by maintaining an education program that reaches all NLRB employees at all levels and uses internet technology to expand access to program materials.

Measure 3: Respond to at least 85% of ethics inquiries within 5 days of receipt.

Measure 4: Review and certify financial disclosure reports within 60 days of receipt and notify filers of real or potential conflicts.

Measure 5: Use technology to improve financial disclosure reporting and review process.

Initiative 2: Respond to internal audits in a timely manner.

Measure 1: Prepare responses to internal audit reports as required by the auditor, meeting the deadlines specified in the reports.

Initiative 3: Respond to external audits in a timely manner.

Measure 1: Prepare responses to external audit reports as required by the auditor, meeting the deadlines specified in the reports.

Initiative 4: Respond to FOIA and other public inquiries in a timely manner.

Measure 1: Respond to at least 60% of initial FOIA requests within 20 working days.

Measure 2: Seek a statutory extension for less than 15% of requests.

Measure 3: Respond to at least 95% of statutory appeals within 20 working days.

Measure 4: Seek a statutory extension for less than 20% of appeals.

V. EXTERNAL FACTORS AFFECTING ACHIEVEMENT OF STRATEGIC PLAN

Various factors can affect each goal, objective, and performance measure contained in the NLRB's strategic plan. These factors include budget, case intake, settlements, Board member vacancies, and the potential effect of statutory changes.

BUDGET

Our goals and measures assume appropriate funding of Agency budgets as submitted by the President to Congress. As a labor-intensive agency, over 90% of our budget is dedicated to fixed costs, including about 80% for salaries and benefits. If less than appropriate funding requested is authorized, the Agency's ability to produce the results and benefits set forth in this plan may be impacted.

CASE INTAKE

While the Agency projects caseload based on known factors and recent history, it cannot control the number of cases filed. Public perceptions about unionization and the role of the Agency, employment trends, stakeholder strategies, globalization of the economy, industrial economic trends, corporate reorganizations and the level of labor-management cooperation efforts can all have an impact on case intake and the complexity of the work. Difficult issues can arise when companies relocate or close, dissipate or hide assets, file for bankruptcy, reorganize or operate through a different corporate entity. Based on historical data, it is projected that overall case intake will reduce by between 500 and 1,000 cases in FY2019.

SETTLEMENTS

While the Agency has experienced outstanding success in achieving voluntary resolutions of representation and ULP cases, it will make early settlement of cases more of a priority. It is estimated that a one percent drop in the settlement rate will cost the Agency more than \$2 million as the process becomes formal and litigation takes over. Accordingly, factors affecting the Agency's ability to settle cases may directly affect its budgetary and performance goals and will be closely monitored.

VI. PROGRAM EVALUATION

It is difficult for an Agency such as the NLRB to measure “outcomes” in the sense intended by the authors of the Government Performance and Results Act. In the representation case area, 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 or not they wish to be represented by a labor organization. In the unfair labor practice area, the aim of the Agency is to timely address and resolve charges that represent industrial strife and unrest that burdens the free flow of commerce. An indicator of success in the achievement of these aims is timeliness and quality of case processing, from the filing of a representation case petition or unfair labor practice charge to the closing of the case.

The NLRB uses various techniques and mechanisms to evaluate whether programs are achieving their GPRA goals and other performance targets. The Board monitors the status of all of its cases to determine performance against yearly targets that support the Agency’s overarching measures and strategic goals. A committee composed of senior management officials, including the deputy chief counsels of each of the Board Members, meets at the beginning of each month to review the status of cases, to prioritize cases, and to develop lists of cases that the Board Members will jointly focus on each week in order to facilitate the issuance of decisions in those cases. These representatives also 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 case production reports are generated. The Board Members also regularly meet and communicate with each other to discuss cases.

Further, the General Counsel has an evaluation program to assess the performance of its Regional operations. The Quality Review Program of the Division of Operations-Management reviews unfair labor practice, 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, and compliance with Agency decisions. Additionally, complaints and Administrative Law Judges’ and Board decisions that constitute significant losses are reviewed to ensure quality casehandling, and the litigation success rate before the Board and before district courts with regard to injunction litigation is monitored. Further, Regional site visits are conducted during which Regional casehandling and administrative procedures are evaluated, and Regional Offices’ performance in implementing the General Counsel’s priorities is incorporated into the Regional Directors’ annual performance appraisals. Finally, the Division of Operations-Management periodically issues case processing suggestions based on feedback and recommendations from the field and headquarters staff of the Agency.

In addition to the Division of Operations-Management’s regular review of case decisions to determine the quality of litigation, other branches and offices, such as the Office of Appeals, Division of Advice, Contempt, Compliance and Special Litigation 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 practice and procedure committees of the American Bar Association and with organizations representing

various labor employers or other third-party interests, to obtain feedback on their members' experiences when practicing before the NLRB.

VII. OFFICE OF INSPECTOR GENERAL STRATEGIC PLAN

GOAL #1: PROMOTE ECONOMY, EFFICIENCY, AND EFFECTIVENESS IN THE ADMINISTRATION OF THE AGENCY'S PROGRAMS AND OPERATIONS.

OBJECTIVES

1. Conduct timely audits and inspections of the issues, programs and operations of most importance to the Agency.
2. Achieve positive change by presenting findings, identifying causes of identified and/or 2 problems, and making recommendations that are useful to the Agency.

STRATEGIES

- Ensure that the audit program is aligned with the Agency's Strategic Plan.
- Solicit input from heads of Agency Branches to prepare an annual audit work plan.

GOAL #2: PREVENT OR DETECT FRAUD AND ABUSE IN THE AGENCY'S PROGRAMS AND OPERATIONS.

OBJECTIVES

1. Evaluate all referrals to the OIG in an objective, timely, and lawful manner.
2. Conduct investigations in a thorough, efficient, timely, and lawful manner.
3. Monitor referrals under investigation by other offices where appropriate action is taken.

STRATEGIES

- Operate a fraud hotline and advertise its existence and other means for referring matters of possible fraud or abuse to the OIG.
- Refer matters within the jurisdiction of other Agency offices, e.g., EEO, security, or ethics, to those offices for action.
- Conduct investigations in accordance with Council of Inspectors General on Integrity and Efficiency (CIGIE) Quality standards, identify program vulnerabilities and recommend ways to prevent program abuse as part of the investigative process.
- Report immediately to the Chairman and/or the General Counsel any serious or flagrant problems, abuses, or deficiencies.
- Report expeditiously to the Attorney General potential violations of Federal criminal law.
- Present findings of wrongdoing to the appropriate officials for action.

GOAL #3: ESTABLISH A COLLABORATIVE RELATIONSHIP WITH THE CONGRESS, THE BOARD, AND AGENCY EMPLOYEES TO IMPROVE AGENCY OPERATIONS.

OBJECTIVES

1. Keep the Chairman, General Counsel, Board, and Congress informed of program or operational vulnerabilities and significant issues.
2. Operate in a manner that demonstrates values such as fairness, courtesy, professionalism, empathy, openness, access, and a willingness to listen.

STRATEGIES

- ☐ Issue semiannual reports by April 30 and October 31 each year.
- ☐ Participate in CIGIE projects to improve financial and program operations.

APPENDIX

The appendix provides additional information regarding Agency performance measures, outlines of the types of cases arising under the Labor Management Relations Act, the basic procedures in the processing of cases within the Agency and overviews of each strategic goal.

Appendix

PERFORMANCE MEASURES

In support of our mission-related goals, objectives, and initiatives, the Agency has a long, successful history of performance measurement focusing on timeliness and effectiveness in our case handling process timeliness, because we firmly believe that "justice delayed is justice denied," and effectiveness, because we strive to give customers a response that provides a thorough and reasoned solution to the issue(s) presented.

In support of the mission-related goals that appeared in the Fiscal Years 2007-2012 strategic plan, the Agency developed two goals that help drive the mission and the vision of the agency. These goals are tied to either management strategies some of which do not have annual percentage targets or specific projects or deliverables that can be accounted for with a "yes" or a "no".

GOAL 1, Objective 1, Initiative 1: Achieve a cumulative 20% increase in timeliness of case processing under established performance measures for the resolution of all meritorious unfair labor practice charges over the next 5 years.

Measure 1: Realize a 5% annual decrease in the average time to resolve meritorious unfair labor practice charges by adjusted withdrawal, adjusted dismissal, deferral or settlement or issuance of complaint.

Baseline:	FY 2018	106 days
Long-term target:	FY 2022	85 days
Annual targets:	FY 2019	101 days
	FY 2020	95 days
	FY 2021	90 days
	FY 2022	85 days

Measure 2: Realize a 5% annual decrease in the average time between issuance of complaint and settlement by administrative law judge or issuance of administrative law judge decision.

Baseline:	FY 2018	242 days
Long-term target:	FY 2022	194 days
Annual targets:	FY 2019	230 days
	FY 2020	218 days
	FY 2021	206 days
	FY 2022	194 days

Measure 3: Realize a 5% annual decrease in the average time between issuance of an administrative law judge decision and a Board order.

Baseline:	FY 2018	585 days
Long-term target:	FY 2022	468 days
Annual targets:	FY 2019	556 days
	FY 2020	527 days
	FY 2021	497 days
	FY 2022	468 days

Measure 4: Realize a 5% annual decrease in the average time between issuance of a Board order and the closing of the case.

Baseline:	FY 2018	648 days
Long-term target:	FY 2022	518 days
Annual targets:	FY 2019	616 days
	FY 2020	583 days
	FY 2021	556 days
	FY 2022	518 days

GOAL 1, Objective 1, Initiative 2: Achieve enhanced performance for the resolution of all unfair labor practice charges.

Measure 1: Realize a 5% annual decrease in the average time to resolve unfair labor practice charges by withdrawal, dismissal, deferral, settlement, or issuance of complaint.

Baseline:	FY 2018	90 days
Long-term target:	FY 2022	72 days
Annual targets:	FY 2019	86 days
	FY 2020	81 days
	FY 2021	77 days
	FY 2022	72 days

Measure 2: Realize a 5% annual decrease in the average time between issuance of complaint and settlement by administrative law judge or issuance of administrative law judge decision.

Baseline:	FY 2018	242 days
Long-term target:	FY 2022	194 days
Annual targets:	FY 2019	230 days
	FY 2020	218 days
	FY 2021	206 days
	FY 2022	194 days

Measure 3: Realize a 5% annual decrease in the average time between issuance of an administrative law judge decision and a Board order.

Baseline:	FY 2018	585
Long-term target:	FY 2022	468
Annual targets:	FY 2019	556
	FY 2020	527
	FY 2021	497
	FY 2022	468

Measure 4: Realize a 5% annual decrease in the average time between issuance of a Board order and the closing of the case.

Baseline:	FY 2018	648 days
Long-term target:	FY 2022	518 days
Annual targets:	FY 2019	616 days
	FY 2020	583 days
	FY 2021	551 days
	FY 2022	518 days

Goal 1, Initiative 3: This initiative consists of management strategies that are not measured by performance; they will be measured by actions and reflected in the Agency Performance Management System. See management strategies on page 5 for Goal 1, Initiative 3.

Definitions:

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

GOAL 2, Objective 1, Initiative 1: Achieve established performance measures for the timely resolution of all questions concerning representation of employees.

Measure 1: The percentage of representation petitions resolved within 100 days of filing the election petition.

Baseline:		85.9%
Long-term target:	FY 2022	85.9%
Annual targets:	FY 2019	85.8%
	FY 2020	85.8%
	FY 2021	85.9%
	FY 2022	85.9%

Goal 2, Objective 2, Initiative 2: This initiative consists of management strategies that are not measured by performance; they will be measured by actions and reflected in the Agency Performance Management System. See management strategies on page 6 for Goal 2, Objective 2, and Initiative 2.

Definitions:

Resolve -- When a case has been finally processed with no further rights of appeal or administrative action required. The question as to whether or not the labor organization will represent the employees has been finally resolved. Representation cases are resolved in a number of ways:

- Cases may be dismissed before an election is scheduled or conducted. Dismissals at an early stage in the processing may be based on a variety of reasons, for example, the employer not meeting our jurisdictional standards, the petitioner's failure to provide an adequate showing of interest to support the petition and/or the petition being filed in an untimely manner.
- Cases may also be withdrawn by the petitioner for a variety of reasons including lack of support among the bargaining unit and/or failure to provide 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 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.

Counting of Days -- The Agency starts counting the 100 days on the date that the petition is formally docketed.

GOAL 3: This goal consists of management strategies that are not measured by performance; they will be measured by actions and reflected in the Agency Performance Management System. See Management Strategies on pages 7-9 for Goal 3.

GOAL 4, Objective 1, Initiative 1:

Measure 1: Increase the rates of electronic service, delivery, and filings, thereby reducing the paperwork burden on constituents, including individuals, labor unions, businesses, government entities and other organizations. (Y, N)

Measure 2: Increase in the information shared electronically with the public, making the Agency's case processes more transparent. (Y, N)

Goal 4, Objective 1, Initiative 2:

Measure 1: Document the streamlined Agency transactional processes wherein employees were provided with ready access to the tools, data and documents they require from anywhere, at any time. (Y, N)

Measure 2: Document the full usage of a modern single unified communications platform and network to empower Agency personnel to communicate with voice, video and data from all locations including the office, at home and on the road. (Y, N)

Measure 3: Document the full usage of dynamic social collaborative environments for employee engagement. (Y, N)

Goal 4, Objective 1, Initiative 3: Effective management of fiscal resources

Measure 1: Produce annual budget with the input of Program areas.

Measure 2: Produce financial reports as required by OMB, Treasury, and Congress. (Y, N)

Measure 3: Conducted quarterly Program Management reviews on requirements development and execution to ensure programs stay on time and on budget. (Y, N)

Measure 4: Monitor unliquidated obligations quarterly for current year execution and re-allocate to other unfunded mission requirements. (Y, N)

Measure 5: Increase the use of strategic sourcing, purchase card program, and in sourcing to minimize waste and abuse. Continue to support minority business enterprises for contract awards. (Y, N)

Goal 4, Objective 2, Initiative 1: This initiative consists of management strategies that are not measured by performance; they will be measured by actions and reflected in the Agency Performance Management System. See management strategies on page 11 for Goal 4, Objective 2, and Initiative 1.

Goal 4, Objective 3, Initiative 1:

Measure 1: Involve agency leadership promoting visibility of NLRB ethics program (Y, N)

Measure 2: Increase employee awareness of ethics responsibilities by maintain an education program that reaches all NLRB employees at all levels (Y, N)

Measure 3: Respond to 85 % of ethics inquiries within 5 days of receipt (Y, N)

Measure 4: Review and certify financial disclosure reports within 60 days of receipt and notify filers of real or potential conflicts

Measure 5: Use technology to improve financial disclosure reporting and review process (Y, N)

Goal 4, Objective 3, Initiative 2:

Measure 1: Prepare responses to internal audits as required by the auditor, meeting the deadlines specified in the reports. (Y, N)

Goal 4, Objective 3, Initiative 3:

Measure 1: Prepare responses to external audit reports as required by the auditor, meeting the deadlines specified in the reports. (Y, N)

Goal 4, Objective 3, Initiative 4:

Measure 1: Respond to at least 65% of initial FOIA requests within 20 working days (Y, N)

Measure 2: Seek a statutory extension for less than 15% of requests (Y, N)

Measure 3: Respond to at least 95% statutory appeals within 20 working days (Y, N)

Measure 4: Seek a statutory extension for less than 20% of appeals (Y, N)

National Labor Relations Board

Performance and Accountability Report

FY 2019



Protecting Democracy in
the Workplace Since 1935



HOW THIS REPORT IS ORGANIZED

This Performance and Accountability Report (PAR) (revised as of 12/09/2019) consists of the following sections:

01

The Management's Discussion and Analysis (MD&A) Section provides an overview of the National Labor Relations Board's (NLRB's) mission, organization, mission-related goals, performance and financial system highlights as well as the Agency's operational and casehandling highlights for Fiscal Year (FY) 2019. The MD&A also contains an analysis of financial statements and a discussion of compliance with legal and regulatory requirements, such as the Federal Managers' Financial Integrity Act (FMFIA).

The Performance Section compares the NLRB's performance to its strategic goals as set forth in its FY 2019 to FY 2022 Strategic Plan. The Strategic Plan includes two mission-related goals and two support goals to help achieve the Agency's vision and mission. The performance measures associated with the mission-related goals are outcome-based. The Agency has several outcome-based performance measures for the support goals combined with those that are management strategy driven to ensure alignment with the mission and needs of the customer.

The Financial Section is composed of the NLRB's financial statements, their related footnotes, and the Independent Auditors' Report.

Other Information provides the Top Management and Performance Challenges identified by the Inspector General in this FY, and the NLRB's summary of audit and management assurances, which details the Agency's review of compliance with the Improper Payments Elimination and Recovery Improvement Act (IPERIA). For an update on the Board's progress in addressing management and performance challenges from FY 2019 please see <https://www.nlr.gov/reports-guidance/reports/oig-semiannual-reports>.

Appendix A lists the acronyms cited throughout this report, Appendix B is a glossary of terms cited throughout this report, Appendix C presents historical performance data and Appendix D represents the complete strategic goal structure.

An electronic version of the NLRB FY 2019 Performance and Accountability Report is available on the NLRB's website at www.nlr.gov.

The NLRB's Strategic Plan is also available at this website along with graphs and data that reflect the NLRB's work.

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MESSAGE FROM THE CHAIRMAN



As Chairman of the National Labor Relations Board (NLRB), I am pleased to submit the Performance and Accountability Report for Fiscal Year 2019. This annual report provides insight into the finances and activities of the NLRB, an independent federal agency established in 1935, which serves the interests of employees, employers, and unions. Contained in this report are the NLRB's audited financial statements and performance information related to the goals set forth in the Agency's Strategic Plan.

I have had the privilege of serving on the NLRB and as Chairman since April 2018. I am honored to work alongside hardworking professionals dedicated to the even-handed enforcement of our statute, the National Labor Relations Act (NLRA). I am proud to have the opportunity to work with such talented colleagues who make significant sacrifices in their public service. Working

together, our dedicated Agency promotes labor-management stability that allows for job creation and the opportunity for improved wages, benefits and working conditions.

Fiscal Year 2019 was an active and transitional year for the NLRB. The Board focused on more-efficiently and expeditiously processing its cases and was able to reduce the median age of pending cases from 233 days to 157 days, a nearly 33% reduction. In addition to issuing over 303 decisions in contested cases during the year, the Board embarked on an ambitious rulemaking agenda, which included issuing a notice of proposed rulemaking addressing the joint employer standard, election protections and coverage of student workers under the NLRA.

As Chairman, I certify that the NLRB's internal controls and financial systems meet and conform to the requirements of the Federal Managers' Financial Integrity Act, and I have made every effort to verify the accuracy and completeness of the financial and performance data presented in this report. A more detailed discussion of the Agency's internal controls can be found starting on page 43 of this report.

A handwritten signature in black ink that reads "John F. Ring". The signature is fluid and cursive, with the first and last names being more prominent.

John F. Ring
Chairman

BOARD MEMBERS

From Left to Right:
Chairman John F. Ring
Board Member Lauren McFerran
Board Member William J. Emanuel
Board Member Marvin E. Kaplan



MESSAGE FROM THE GENERAL COUNSEL



Introduction

It is my continued privilege to serve as the General Counsel of the National Labor Relations Board. As I enter my third year in this position, I am pleased to report on the Agency's many accomplishments during Fiscal Year 2019 in pursuing and effectuating the Agency's mission of protecting the rights of employees to choose whether or not to bargain collectively with their employers and to engage in concerted activities in aid of these rights, of establishing reasonable collective bargaining rules for employers and unions, and of resolving labor disputes.

As General Counsel, I have a dual role in prosecuting cases under the Act in legal proceedings at the administrative, Board, and the federal district, appellate and Supreme Court levels as well as overseeing the operations of approximately

90% of the Agency. The General Counsel is responsible for prosecuting unfair labor practice charges brought before the Agency, processing representation petitions filed with our regional offices, enforcing the Board's orders, and for supervising the operations of our Regional and satellite offices throughout the nation as well as our staff at Headquarters who are responsible for case-handling, operational, administrative, financial, security, facilities, technology and personnel functions. It has been my goal, while ensuring the maintenance of quality case processing, to improve the efficiency and effectiveness of the Agency's operations at all levels and the management of our resources in order to better serve the public.

The prompt resolution of labor disputes is an essential purpose of the National Labor Relations Act (the Act) and a key part of the Agency's mission. Expedient case processing by the Agency is necessary to achieve the early resolution of labor disputes. Over the years, Agency case processing times have increased, causing the delayed resolutions of disputes. One of my major objectives as General Counsel is to reverse this trend and to ensure the processing of cases in a timely manner and to improve our service to the public while maintaining the quality of our investigations and prosecutions.

To that end, at the beginning of Fiscal Year 2019, the Agency issued the FY 2019 - FY 2022 Strategic Plan in which I established case processing objectives for the investigation, and settlement or prosecution of unfair labor practice charges in our Regional offices. The goal was to reduce average case processing time by 5% each year for four years, for a total reduction in case

processing time at the end of the fourth year of 20%. I am pleased to report that in just one year, the Regional offices far exceeded the first annual 5% goal and reduced the average case processing time from filing to disposition by 17.5%. I also instituted measures to ensure that, despite fluctuations in case load within and among Regional offices, all facets of the case handling process will be met, primarily by the increased sharing of resources among regions.

In addition to improving case processing and our service to the public, I have also continued to focus on the substantive legal issues to present to the Board to ensure the fair treatment of employees by their employers and unions. We have striven to ensure that our decision-making is fair to the interests of all parties coming before the Agency and that employees' rights and free choice are considered and protected. As I reflect on the second year that I have served as General Counsel, I am pleased to present this report because of the Agency's outstanding achievements in case processing improvements, case accomplishments and increased efficiency of operations. The collaborative and dedicated efforts of the Agency's employees at all levels and in all offices enabled these successes and our increased level of service to the public. These efforts to achieve the goals we established ensure the effective and efficient pursuit of the mission of this Agency, the continued health of the Agency's operations, and the accomplishment of the substantive goals of the Agency to resolve labor disputes and protect employee free choice.

Case Processing

In my first year as General Counsel, I analyzed the Agency's case processing statistics and processes over the years. That analysis revealed that during the past decades, the amount of time to process cases at all levels of the Agency had lengthened and case backlogs had increased. In the 1980s, the median processing time from the filing of a charge to the issuance of a merit complaint was between 44 and 55 days. By the end of the 2018 Fiscal Year, the median processing time had risen to 128 days. The number of unresolved cases grew, which resulted in increased, backlogs and overage cases. For example, at the end of Fiscal Year 2012, there were 524 pending overage cases. By the end of Fiscal Year 2018, there were 724 pending overage cases pending – a 38% increase in case backlog. These lengthened case processing times and backlogs surprisingly occurred during a period in which unfair labor practice case intake dropped from 21,622 to 18,871 – a nearly 13% decrease.

To reverse this disturbing trend, the Agency adopted the Strategic Plan at the beginning of Fiscal Year 2019, calling on all General Counsel-side Agency Divisions to reduce case processing time by 5% per year for a period of four years and to take steps to reduce backlogs. As discussed in GC Memorandum 19-02, Reducing Case Processing Time, issued in December 2018, our goal was to reduce case processing time in the Regions by 20% by the end of the fourth year. To do so, I invested the General Counsel Divisions and the Regions with wide discretion to develop systems and processes to meet these Agency strategic goals.

At the end of Fiscal Year 2019, the results achieved by all of the Divisions and Regions have been outstanding – far exceeding expectations. During this Fiscal Year, as mentioned above but bears repeating, Regional Offices nearly met our four-year 20% goal by reducing the time of filing to disposition of unfair labor practice cases from 90 to 74 days – a decrease of 17.5%. The Regions also reduced the time from informal settlement to final disposition of an unfair labor practice case from 173 days to 153 days, a decrease of 11.5% and improved the timeliness of representation

case handling by processing 90.7% of representation cases in 100 days or less. The Regional Office settlement rate was 99.3% this past Fiscal Year, resolving over 5,000 cases prior to issuing complaint and over 800 cases post-complaint. Additionally, compliance was achieved in over 400 cases in which Board orders issued. The Agency also recovered \$56 million dollars in backpay, fees, dues, fines and reimbursements for employees. These are outstanding results in a Fiscal Year in which 18,552 unfair labor practice charges and 2,095 representation cases were filed in our Regional Offices. These results could not have been achieved without the dedication of all General Counsel NLRB employees, especially our field employees.

At the same time that they processed cases faster, Regions resolved a greater percentage of cases than in the past, increasing case settlement rates from 97.5% to 99.3% from Fiscal Year 2018 to 2019. Also, our 10(j) injunction success rate rose from 89% to 91% during the same period. Finally, we continued to find merit in unfair labor practice charges at the same rate as in prior years.

At Headquarters, the Agency's other Divisions also stepped up to meet our Strategic Plan objectives with excellent results. The Office of Appeals, which reviews appeals by individuals, unions and employers who believe their unfair labor practice allegations have been wrongly dismissed by a regional office, which received 1,399 cases last Fiscal Year, reduced its case backlog from 294 cases in Fiscal Year 2018 to 98 cases in Fiscal Year 2019. Overall, the Office of Appeals closed 400 more cases in Fiscal Year 2019 than in the previous year. Our Appeals Office also processed 245 more appeals than it received during the Fiscal Year.

Similarly, the Division of Advice, which provides guidance to the Agency's Regional Offices regarding difficult and novel issues arising in the processing of unfair labor practice charges, reduced the average age of closed cases for Fiscal Year 2019 to 38.6 days – a reduction of 9.8% from the previous year. The Advice office also reduced its average case processing time to 51.1 days – a 12.4% reduction in case processing time from Fiscal Year 2018.

Our other Headquarters branches also far exceeded processing targets. The Injunction Litigation Branch, which, among other things, reviews injunction requests and makes recommendations concerning such requests, closed cases in an average of 9.1 days – a 34.5% reduction from Fiscal Year 2018. Our Freedom of Information Act (FOIA) Branch, which processes FOIA requests reported that in Fiscal Year 2019, the branch responded within 20 working days to 67.5% of FOIA requests and 90% of FOIA appeals. FOIA Branch also reduced its request backlogs from 87 in Fiscal Year 2018 to 37 in Fiscal Year 2019 – a decrease of 57.5%.

These processing results are important because they have a real impact on the public we serve. The Agency's expeditious response to charging parties, prompt investigation and earlier complaint issuance provide quicker justice to wronged parties, better resolution of disputes and ultimately greater protections to employees.

Casehandling

In addition to case processing issues, during Fiscal Year 2019, I continued to focus on the various legal issues and matters I outlined in GC Memorandum 18-02 as well as others that I deemed necessary to be presented by briefing to the Board or addressed through memoranda to the Regions and the public. Many of these issues concerned the protection of employees' right to privacy and

confidentiality, their right to information from and fair representation by their unions, and their right to freely choose whether to become a member of a union. I also took positions in briefs arguing for a more equitable balancing of employee, union and employer interests with respect to, among other things, use of employers' business communications systems. The General Counsel's office also addressed perennially vexing issues concerning joint employment and employee misclassification. In all instances, the goal was to provide clearer guidance to all parties concerning their rights and obligations under the Act to enable better compliance with the law and avoid needless litigation due to unclear legal standards.

The issue of protection of employee privacy and confidentiality in the workplace arose in several different contexts this past year. It first arose in connection with the issue of the lawfulness of confidentiality provisions in arbitration agreements and whether agreements to maintain the confidentiality of arbitration proceedings were lawful under the Act. In the wake of the U.S. Supreme Court decision in *Epic Systems Corp. v. Lewis*, 584 U.S. ___, 138 S. Ct. 1612 (2018), in which the Court held that arbitration agreements requiring individual arbitration of claims in lieu of collective or class-based claims were lawful under the Act, it was necessary to re-examine the lawfulness of arbitration agreement provisions, including those requiring confidentiality of the proceedings. Pursuant to this re-examination, I argued in *Pfizer Inc.*, 10-CA-175850, 07-CA-176035 (*Pfizer*) and *California Commerce Club, Inc.* 21-CA-14969 (*California Commerce Club*) that *Epic Systems* compels the conclusion that confidentiality provisions requiring the parties to keep the information disclosed during and part of the arbitration hearing, which is not otherwise public information, are lawful provided they do not impact employees' Section 7 rights to discuss their claims. The *Pfizer* and *California Commerce Club* cases are currently pending decision by the Board.

Employee privacy and confidentiality were also central issues in the *Apogee Retail LLC d/b/a Unique Thrift Store*, 27-CA-191574, 27-CA-198058 (*Unique Thrift*) case in which I requested that the Board overturn its holding in *Banner Estrella Medical Center*, 362 NLRB No. 137 (2015) that employer workplace rules that offer confidentiality to employees who make workplace complaints are unlawful under the Act. The *Banner Estrella* decision does not give proper weight or consideration to the shared interests of employees and employers in keeping confidential sensitive workplace investigations and ignores employees' rights to be free of invasions of privacy. The inability of protecting confidentiality, including the identity of complainants, chills employees from coming forward with complaints of, among other things, discrimination, harassment, unsafe working conditions and thus undermines employees' rights to be free of those conditions. The *Unique Thrift* case is pending decision by the Board.

During Fiscal Year 2018, we saw a substantial number of charges in which employees alleged violation of the duty of fair representation against their union under Section 8(b)(1)(A) of the Act. In these charges, employees claimed that their union failed to communicate with them about their grievances or failed to respond to inquiries for information or documents or otherwise failed to pursue grievances that they had committed to pursuing. In these cases, unions had asserted a "mere negligence" defense to avoid liability for such failures. My office issued GC Memorandums 19-01 and 19-05 concerning the contours of the "mere negligence" defense as guidance to enable employees to better understand the duty owed to them by their union representative and to help unions discern their duty owed to employees in these situations. Thus, I advised that a union's

failure to communicate decisions related to a grievance or to respond to inquiries for information or documents by an employee constitutes more than mere negligence and, instead, rises to the level of arbitrary conduct unless there is a reasonable excuse or meaningful explanation.

In this same vein, we saw an increasing number of allegations by employees involving failures by unions to provide them with adequate information to determine whether to become union members or core members and to provide clear requirements for dues checkoff revocation. I therefore issued GC Memorandum 19-04 to advise employees of their rights and unions of their obligations to employees concerning employees' *General Motors* rights to be non-members of a union and their *Beck* rights to be objectors and pay only core member dues and fees. Accordingly, we advised that, in my view, unions should, when they initially sought to collect dues and fees from employees, do the following: (1) Advise employees of their rights to be members or non-members of the union; (2) advise employees of their right to be non-member objectors to the payment of fees not germane to the representational activities of their union and that they could pay reduced fees if they objected; (3) provide employees with sufficient information to determine whether they wished to be objectors, such as the amount of fee reduction; and (4) provide employees with instructions on how to file such objections to fee payments if they wished to do so. In addition, Section 302(c)(4) of the Labor Management Relations Act (LMRA) provides that employees are entitled to revoke their union dues checkoff authorization at least annually and upon expiration of their collective bargaining agreement. Union checkoff revocation procedures often provide window periods for such revocations, which are sometimes inconsistent with the requirements of the LMRA. GC Memorandum 19-04 outlined the types of procedures that the General Counsel's office believes comply with the requirements of the LMRA and which would not.

On the heels of my issuance of GC Memorandum 19-04, the Board also issued a decision involving *Beck* objector rights in *United Nurses and Allied Professionals (Kent Hospital)* 367 NLRB No. 94 (UNAP). In that decision, the Board held that lobbying activity by unions, although sometimes relating to terms of employment or incidentally affecting collective bargaining, is not part of the union's representational function, and therefore lobbying expenses are not chargeable to *Beck* objectors. Accordingly, I issued guidance to the Regional offices and the general public to assist in the interpretation and application of the case in GC Memorandum 19-06. As set forth in GC Memorandum 19-06, we will no longer require agency fee objectors to explain during an investigation why a particular expenditure is nonchargeable and to provide evidence or promising leads to support that contention. Rather, compliance with *Kent Hospital* requires that a union not only categorize its lobbying expenses as nonchargeable, but also account for any other secondary costs used to support its lobbying activities. To do so, a union may reasonably prorate a percentage of its overhead costs as nonchargeable based on the overall percentage of nonchargeable expenses.

We also addressed the issue of employee and union use of employer business communications systems when we responded to the Board's invitation in *Caesars Entertainment Corporation d/b/a Rio All-Suites Hotel and Casino*, 28-CA-060841 (*Caesars Entertainment*) case to address whether the Board should adhere to, modify, or reject the legal standard set forth in *Purple Communications, Inc.*, 361 NLRB No. 162 (2016). *Purple Communications* held that employees have a presumptive right to use their employer's email system to engage in Section 7 activities. In the *Caesars Entertainment* brief, my office urged the Board to overrule *Purple Communications* and return to the Board holding in *Register Guard*, which balanced the interests of employers in the property rights and security

interests of their electronic communications systems against the interests of employees in their ability to communicate with each other, considering the multiple means of communication employees may have to communicate outside of their employer's communications system. We thus urged that, in general, because employees have multiple means of communication, employers should not be required to make their systems available to employees for union communications, except where the Board determines that employees are unable to communicate in any way other than through the employer's email system. Finally, we argued that the *Register Guard* standard should apply not only to e-mail, but to other employer-owned computer resources not made available by the employer to the public.

In September 2018, the Board issued a Notice of Proposed Rulemaking concerning the standard that the Board should use for determining whether a joint employer relationship exists. In December 2018 and January 2019, we submitted extensive comments and supplemental comments, respectively, to the Board's proposed rules on this issue. Specifically, we endorsed the Board's proposed rule as a step in the right direction for clarity for all parties. We also recommended, among other things, even more and greater guidance in this important issue with respect to specifying and limiting the instances in which a joint employer analysis and finding is necessary and providing more specific standards based on individual industrial needs and requirements.

When I arrived at the NLRB in November 2017, prior General Counsels had put in place an initiative to a new violation alleging that the misclassification of independent contractors is a stand-alone violation of Section 8(a)(1) of the Act. I rescinded this initiative shortly after I arrived in Fiscal Year 2018. In Fiscal Year 2019, the Board agreed with my position and issued a decision in *Velox Express, Inc.*, 368 NLRB No. 61 (2019), which held that an employer's misclassification of employees as independent contractors was not in and of itself violative of Section 8(a)(1) of the Act.

Another area addressed in Fiscal Year 2019 concerned arbitration deferrals under the standards set forth in *Dubo Manufacturing Corporation* 142 NLRB 431 (1963). As set forth in GC Memorandum 19-03, I sought to correct a prior GC memorandum applying the principles in the *Babcock Wilcox Construction Company*, 361 NLRB 1127 (2014) decision to *Dubo* deferrals. GC Memorandum 15-02 opined that the Board had extended *Babcock* to Section 8(a)(3) and (1) cases where *Dubo* deferral is raised. I believe that GC Memorandum 15-02 was incorrect in this aspect and that, by its own terms, the *Babcock* decision does not apply to *Dubo* deferrals. Because *Babcock* did not modify *Dubo* deferral, which is supported by different rationales than those supporting *Collyer* deferral, I reaffirmed the role of *Dubo* in the administration of the Act and clarified the circumstances and procedures applicable to *Dubo* deferrals. As set forth in GC Memorandum 19-03, contrary to the instruction set forth in GC Memorandum 15-02, Regions were instructed to continue to defer to arbitration under *Dubo* Section 8(a)(1) and (3) cases meeting the standards for deferral set forth therein, and to otherwise consider *Dubo* deferral in any Section 8(a)(1), (3) and (5) and Section 8(b)(1)(A) and (3) case where the allegations of the charge fall within its scope and the Charging Party or individual grievant has previously filed a grievance in a contractual process leading to binding arbitration. The policy reasons for deferral under *Dubo* remain important to the mission of the Agency. As prescribed by the Act, the deferral to arbitration under *Dubo* encourages stability in labor relations and resolution of work disputes by allowing for the private disposition of claims through procedures adopted by the parties. It also recognizes the Board's long disfavor of allowing a party to force litigation in multiple forums.

I have continued to rely on Section 10(j) as an important tool for effective enforcement of the Act and will continue to do so throughout my term as General Counsel, believing that, in certain cases, temporary injunctive relief under Section 10(j) provides the only means of ensuring the protection of employees' Section 7 rights and the Board's remedial processes. During Fiscal Year 2019, my Office received from its Injunction Litigation Branch recommendations for 15 cases to be sent to the Board for 10(j) authorization. My office sent 14 cases to the Board for 10(j) authorization, receiving authorization to proceed, at least in part, in all of them. Our success rate was 91%, which included five wins in district court, one loss and six settlements. A notable settlement occurred after 10(j) proceedings were authorized in a case from our Region 16, Fort Worth, TX office. GRI Texas Towers, Inc. f/k/a Gestamp Wind Steel US, Inc. (GRI), an Amarillo, Texas based wind turbine manufacturer, entered into a settlement agreement after authorization to seek injunctive relief against GRI was authorized by the Board. In the settlement agreement, GRI agreed to pay more than \$135,000 in backpay, interest and expenses to ten employees who were either discharged or suspended during a union organizing campaign. GRI also agreed to reinstate eight workers and to recognize and bargain with the Plumbers and Pipefitters Local Union No. 404.

Administration

During this Fiscal Year the Agency has continued to review its footprint and resource utilization in an effort to realize further efficiencies. For example, field offices which moved to new locations in Fiscal Year 2019 reduced their square footage, losing unused or underutilized space. New offices were well equipped, thereby providing maximum efficiency in a smaller footprint.

We dedicated significant, overdue spending on our information technology to upgrade and in some cases replace some of our major internal systems that had been long neglected. In Headquarters and in the field, the staff of the General Counsel continues to be well connected across data, voice, video and wireless communication. Through Next Generation Case Management System (NxGen), as well as continued implementation of web-based systems for employee real-time communication, performance evaluation, timekeeping, scheduling, awards, and related human capital functions, the Agency has reached high levels of efficiency in case processing and managing its administrative responsibilities. Last year, we spent over \$25 million on the Agency's technology needs.

We also continued our commitment to improving our internal training. In the last Fiscal Year, we were pleased to provide new manager and supervisor training for the first time in many years. We also held litigation training for our field attorneys, our language specialists, Nxperfs, office managers, senior field examiners and compliance officers and held, for the second year, a senior leadership meeting that included all Headquarters managers and Regional Directors. We are committed to providing Agency employees with the training and tools to perform their job more effectively.

Financial Matters

For the first time in many years our Agency did not face the uncertainty of Continuing Resolutions but rather received an annual budget of \$274.2 million for Fiscal Year 2019 and avoided inclusion in the 35-day long partial government shutdown. Through the implementation of an early retirement and incentive offering to employees in Fiscal Year 2018, the Agency better positioned itself in Fiscal Year 2019 to make additions and adjustments to its Headquarters and Field Office staffing, thereby

improving any imbalances. During Fiscal Year 2019 we filled several positions both in the field and in headquarters that will best position the Agency for continued success.

Interagency Cooperation and Outreach

My Office has reestablished its outreach activities with the Equal Employment Opportunity Commission (EEOC) and it continues its important intergovernmental relationships with components of the Department of Labor (DOL), Department of Homeland Security (DHS), and a variety of other government and private organizations concerned with labor law matters. In addition, through our dedicated Headquarters and Field Office personnel, we regularly conduct educational outreach efforts designed to inform employees, unions, small business and other Agency stakeholders of the rights and obligations deriving from our Act, and where and how they may file charges or petitions seeking to invoke the assistance of our Agency. Through our continued enhancement of electronic capabilities, including our NLRB App., the Agency has made its services and resources available around the clock, so that employees and others may access information and case processing functions when most convenient to them.

Conclusion

In closing the second Fiscal Year of my service as General Counsel of the NLRB, I continue to be proud of the hard work of our dedicated staff and am exceedingly pleased with the excellent and, indeed, outstanding results our employees have achieved in meeting the strategic goals of the Agency. We have made great strides to position the Agency for continued health and success in the coming years. I look forward to continue building on the Agency's legacy of quality performance its mission to resolve labor and protect, provide equitable rules for collective bargaining and protect employee choice in the workplace, I look forward to reporting on our future initiatives and achievements in these areas.



Peter B. Robb

General Counsel

2019 YEAR IN REVIEW

Agency Operations

Board Pilot Program for Expediting Case Processing

The Board launched a case-processing pilot program to focus on more timely handling of pending cases and issuance of decisions. Based on a collective commitment by Board Members, the pilot program prioritizes the timely processing of cases in recognition that long delays in the issuance of Board decisions undermines the purposes of the Act and mission of the Agency. Over the course of FY 2019, the Board remained relentlessly focused on eliminating delays and moving cases as quickly as possible. In doing so, the Board also worked to identify opportunities to make the process more efficient and intends to further study ways to achieve overall improvements in its case-handling procedures. Although there is more work to do, the focus on case processing has had some initially positive results. During FY 2019, the Board successfully reduced the median age of all pending cases by 33%.

Board Engagement in Regulatory Agenda

The Board majority has expressed a strong interest in engaging in more rulemaking. Although the NLRB has not historically used rulemaking as its primary method for establishing precedent, the current Board believes there are significant advantages to doing so.

Below are the Board's current rulemaking initiatives:

Joint Employer Standard

The Board issued a Notice of Proposed Rulemaking (NPRM) regarding the standard for determining joint employer status in September 2018. The Board received nearly 29,000 comments. This significant number of comments reflects the public's strong interest in the Board providing greater clarity in this important area of the law. The Agency is reviewing those comments in its consideration of the issuance of a Final Rule on this topic.

Election Protection

On August 12, 2019, the Board issued an NPRM proposing three amendments to the representation election rules to better protect employees' statutory right of free choice by removing unnecessary barriers to the fair and expeditious resolution of such questions through the preferred means of Board-conducted secret-ballot elections:

- **Blocking Charge Policy:** The NPRM proposes replacing the current blocking charge policy with a vote-and-impound procedure. As proposed, elections would no longer be blocked by pending unfair labor practice charges (ULPs), but the ballots would be impounded until the charges are resolved.

- **Voluntary Recognition Bar:** The NPRM proposes returning to the rule of *Dana Corp.*, 351 NLRB 434 (2007). As proposed, unit employees must receive notice that voluntary recognition has been granted, and provides a 45-day open period within which to file an election petition.
- **Section 9(a) Recognition in the Construction Industry:** The NPRM proposes that in order to prove the establishment of a Section 9(a) relationship in the construction industry and the existence of a contract bar to an election, extrinsic evidence is required to demonstrate that recognition was based on a contemporaneous showing of majority employee support.

Student Rule

On September 23, 2019, the Board published a NPRM proposing to exclude from coverage under Section 2(3) of the NLRA students who perform services for financial compensation in connection with their studies at private colleges and universities. The basis for this proposed rule is the Board's current position, subject to public comment, that the relationship undergraduate and graduate students have with their school is predominately educational, rather than economic.

As announced in the Spring 2019 Unified Agenda of Regulatory and Deregulatory Actions, the Board is also considering further revisions to its current representation-case procedures and potential rulemaking to address standards for access to an employer's private property.

Technology Advances FY 2019

In FY 2019, the Office of the Chief Information Officer (OCIO) made significant strides in advancing technologies in the areas of consolidating on-premise data centers, improving security posture, advancing legacy applications to cloud technologies, and NxGen applications process enhancements.

The OCIO established a comprehensive roadmap to achieve the Office of Management and Budget (OMB) Memorandum M-16-19 initiatives for data center optimization. The OCIO established guidelines, metrics and milestones in the following areas:

- Organization and Communications
- Streamlining the Environment
- Enterprise Data Center Discovery
- Agency Data Center Optimization Plan Formulation
- Detailed Discovery
- Application and Server Migration
- System Decommissioning
- Data Center Closures

In the months from October 2018 through July 2019, the OCIO team successfully executed on the planned migration to Microsoft Azure Cloud. By August 2019, the OCIO completed 100% cloud adoption and had shut down on-premises Data Centers.

Major milestones in FY 2019:

1. Migrated 100% on-premise workloads to Microsoft Azure Cloud services
2. Shut down on-premises data centers
3. Retired and replaced legacy NxGen E-Service platform with My Account Portal and integration with login.gov
4. Refreshed NxGen product suite technology stacks and adopted latest Azure Cloud services
5. Made great strides in design and development of the new Judicial Case Management System (JCMS) application that will replace legacy JCMS
6. Redesigned and re-architected the search functionality for nlr.gov to improve legal research enhancing the search capabilities of the NLRB customers and stakeholders
7. Developed and implemented the Translation Information Management System (TIMS) which allows Agency employees the ability to request interpreting and translation services to a group of Language Specialists within the Agency. The system manages the workflow processes associated with the request and the allocation of resources to manage the requests

The OCIO will continue to strengthen NxGen applications, modernize JCMS application, and evolve its “Cloud Smart” approach, which will enable OCIO to serve and support the Agency’s mission needs with right technology solutions.

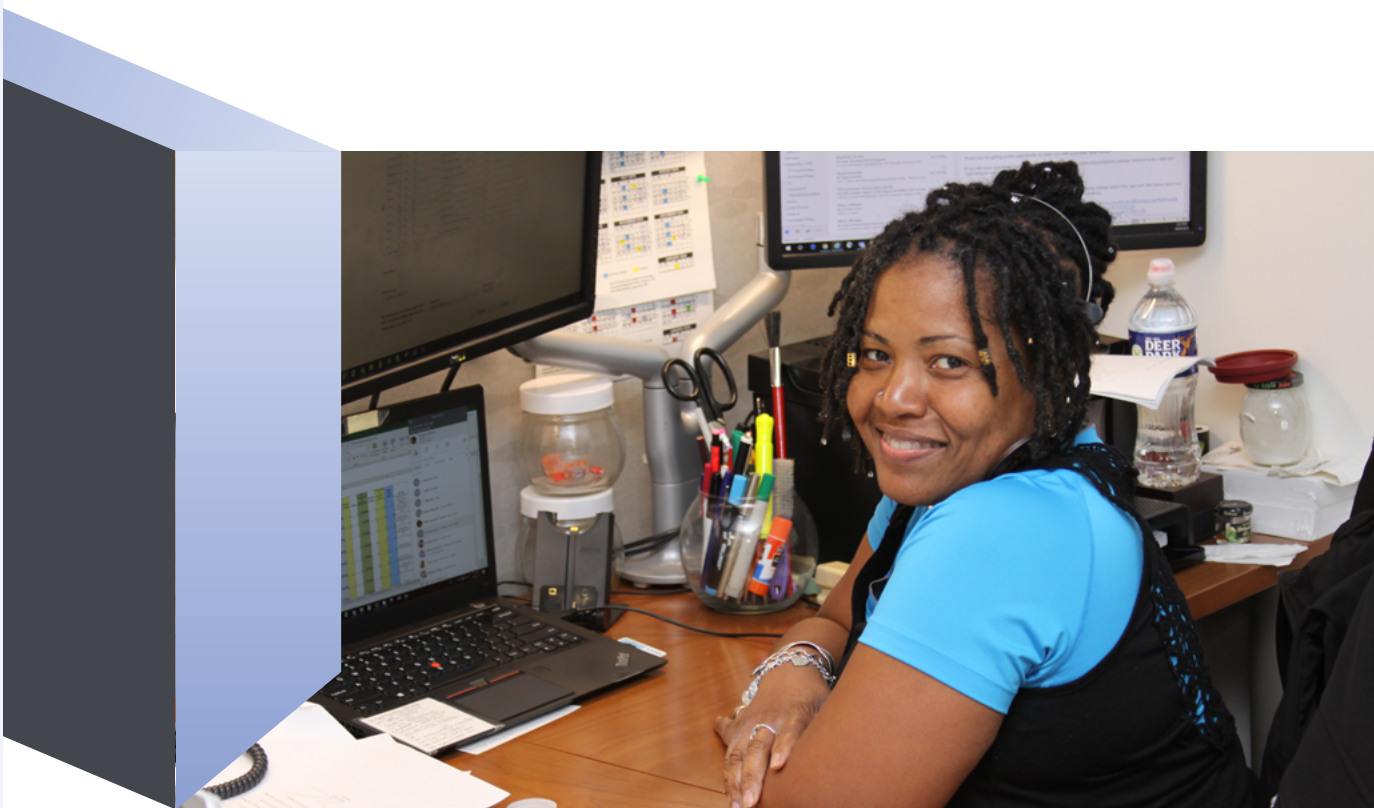
Public Information Program

The Agency’s Public Information Program is one of the critical services provided to the American Public, including employers, unions, and employees. Under this program, in addition to the services provided by the Office of Congressional and Public Affairs in Headquarters, Board agents in the field offices provide information directly to individuals or entities that contact the Agency seeking assistance. In FY 2019, the Agency’s Regional Offices received 45,773 public inquiries regarding workplace issues. In responding to these inquiries, Board agents spend a considerable amount of time explaining the rights and responsibilities under the NLRA, accepting charges, or referring parties to other federal or state agencies. 2,081 Charges and Petitions were filed through the Agency’s website without assistance from Agency personnel.

The public may 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 this number will hear messages recorded in English and Spanish that provide a general description of the Agency’s mission, contact information for other government agencies and contact information for the Regional Offices in closest geographic proximity. In FY 2019, the toll-free telephone service received 23,878 calls.

Public outreach is encouraged and has been embraced at all levels of the Agency. Over the past few years, the Board Members, General Counsels, Regional Managers, and Board agents participated in numerous speaking engagements at events sponsored by law schools, the American Bar Association, the U.S. Chamber of Commerce, and various employer, union and worker advocacy groups.

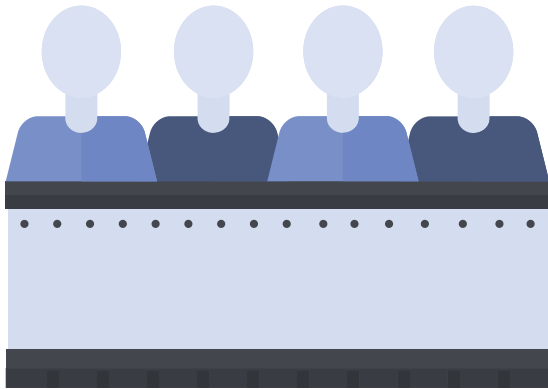
Agency representatives also engaged in outreach events involving other federal agencies, business organizations, workers’ rights centers, human resources professional groups, and labor organizations



to educate them on the NLRA and the role of the NLRB in impartially enforcing the Act. In addition, Regional Offices publish newsletters and participate in televised or radio public talk shows.

As part of the Agency's outreach to communities with limited English proficiency, in addition to the bilingual toll-free telephone service for inquiries, the NLRB employs language assistants and contracts with service providers whose job is to provide interpretation and translation services in various languages to assist our field office casehandling. The public website contains Agency publications about the NLRA and processes, which are translated into Spanish, Chinese, Creole, Korean, Russian, Somali and Vietnamese. The number of electronic document templates available in Spanish continues to increase and the database of translated representation case notices and ballots has expanded to include 31 languages. Finally, the Agency has teamed up with other federal agencies in conducting listening sessions among the Asian American and Pacific Islander community to educate them about the rights of workers and to listen to their concerns regarding treatment at their workplaces and confusion about the Agency's processes.

FY 2019 STATISTICAL HIGHLIGHTS



The Board issued
303 DECISIONS

in contested cases:

224 ULP CASES and
**86 REPRESENTATION
CASES WERE FILED.**

**98.2
PERCENT**

of all initial elections
were conducted
within

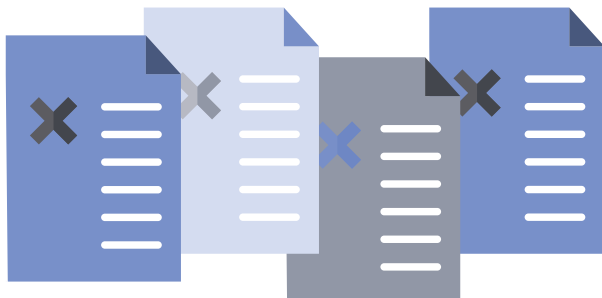
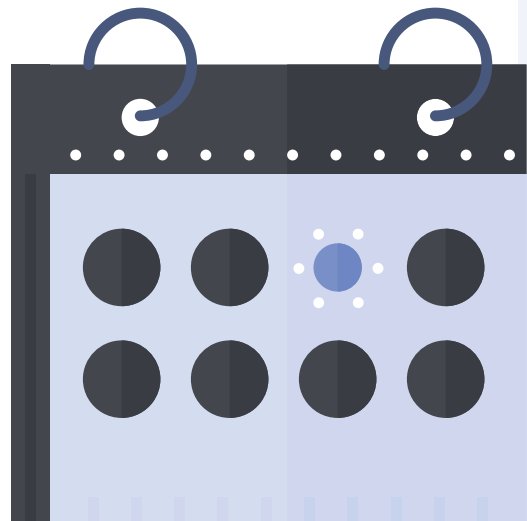
**56
DAYS**

of filing of the
petition.

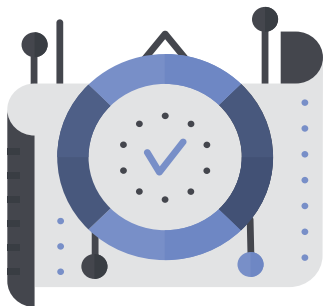
Initial elections
in union
representation
cases were
conducted in a
median of

**25
DAYS**

from the filing
of the petition.



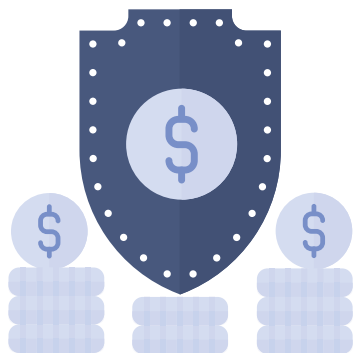
Regional Offices issued
**916
COMPLAINTS.**



**78.9
PERCENT**
of meritorious ULP
charges resolved
within 365 days.



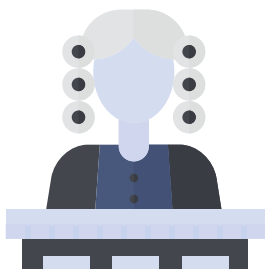
Regional Offices prevailed in
84 PERCENT
of Board and administrative law judge (ALJ)
decisions which were won, in whole or in part.



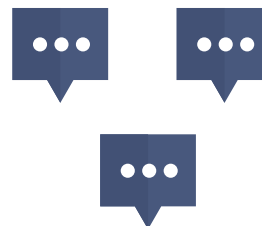
\$56,537,220

was recovered on behalf of employees
as backpay or reimbursement of fees,
dues, and fines, and **1,431** employees
were offered reinstatement.

The Division of Judges closed
141 HEARINGS, issued **159
DECISIONS**, and achieved
483 SETTLEMENTS in cases
on its trial docket.



The Agency received
45,773 inquiries through its
Public Information Program,
and **23,878** calls through its
toll-free number.



01

Management's Discussion and Analysis



Protecting Democracy in
the Workplace Since 1935

ABOUT THE NLRB

The National Labor Relations Act (NLRA)

- Basic law governing relations between labor unions and business enterprises engaging in interstate commerce in the private sector
- Serves the public interest by reducing interruptions in commerce caused by conflict between employers and employees
- Embodies a bill of rights, which establishes freedom of association for purposes of collective bargaining and concerted activities to improve terms and conditions in the workplace
- Addresses the rights and obligations of employees, labor unions, and private employers

The National Labor Relations Board (NLRB)

The NLRB is an independent federal agency created in 1935 to administer and enforce the NLRA by conducting secret-ballot elections among employees to determine whether or not the employees wish to be represented by a union; and by preventing and remedying statutorily defined ULPs by employers and unions.

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

In its 84-year history, the NLRB has counted millions of votes, investigated hundreds of thousands of charges, and issued thousands of decisions. These numbers tell an important part of the Agency's story. Specific data on the following components of the Agency's work can be found on the NLRB's web site at: <https://www.nlrb.gov>:

MISSION STATEMENT

Protecting workplace democracy and the rights of employees, unions and employers under the National Labor Relations Act, in order to promote commerce and strengthen the Nation's economy.



- **Charges and Complaints** – Data related to charges of ULPs received by Regional Offices and their disposition over time, including withdrawals, dismissals, complaints, and settlements
- **Petitions and Elections** – Data related to petitions for representation, decertification, unit amendment and clarification, and recession of union security agreements received by Regional Offices, elections held, and outcomes
- **Decisions** – Data related to decisions by the Board and NLRB Administrative Law Judges
- **Litigation** – Data related to litigation by Board attorneys in federal court, including petitions for temporary injunctions, defending Board decisions in court, and pursuing enforcement, contempt and compliance actions
- **Remedies** – Data related to remedies obtained to resolve ULPs, including backpay and offers of reinstatement

Employee Rights Under The NLRA

The NLRA 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 support union representation in a workplace where none currently exists or to attempt to improve their wages and working conditions through other group action.

Under the NLRA, employees have the right to:

- Form, or attempt to form, a union among the employees of an employer.
- Join a union whether the union is recognized by the employer or not.
- Assist a union in organizing employees.
- Engage in protected concerted activity. Generally, “protected concerted activity” is group activity that seeks to improve wages or working conditions in a particular workplace.
- Refuse 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, engaging in protected concerted activities, or refraining from these activities. Similarly, unions may not restrain or coerce employees in the exercise of these rights.

Statutory Structure

Agency leadership consists of 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 Board, and the General Counsel. The Board and the General Counsel maintain a Headquarters in Washington, D.C., and the Agency also maintains a network of Regional¹ (“Field”) offices and two satellite Judges’ offices. The NLRA assigns separate and independent responsibilities to the Board and the General Counsel. The General Counsel’s role is chiefly prosecutorial and the Board’s is adjudicative. A map depicting the regional offices can be found at: <https://www.nlrb.gov/who-we-are/regional-offices>.

The Five-Member Board

The five-member Board primarily acts as a quasi-judicial body, deciding cases based on 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 terms². The President designates one of the Board Members as Chairman. Board Member John F. Ring was designated as Chairman on April 12, 2018.

The Agency currently has four Board Members, with one vacancy.



¹Including Subregional and Resident Offices.

²Even though Board Members have five-year-terms, a new five-year term begins running immediately upon the expiration of the previous Member’s term and the seat remains vacant until an individual is nominated and confirmed by the Senate. Therefore, a lapse of time can occur between when a term expires and a new Board Member is confirmed, which means that a new Board Member would serve only a portion of a five-year term.

The General Counsel

Congress created the position of General Counsel in its current form in the Taft-Hartley Act of 1947. 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 ULP cases and for the general supervision of the NLRB Regional Offices, as well as of the administrative, financial and human capital operations of the Agency. In performing delegated functions, and in some aspects statutorily assigned functions, the General Counsel acts on behalf of the Board.

With respect to the investigation and prosecution of ULP cases, the General Counsel has sole prosecutorial authority under the statute, independent of the Board. Peter B. Robb was nominated by the President for General Counsel and appointed to a four-year term beginning on November 17, 2017.

Below is information about the terms of the current Presidential appointees of the NLRB.

	Sworn In	Term to Expire
John F. Ring Chairman	4/16/2018	12/16/2022
Lauren McFerran Member	12/17/2014	12/16/2019
Marvin E. Kaplan Member	8/10/2017	8/27/2020
William J. Emanuel Member	9/26/2017	8/27/2021
Peter B. Robb General Counsel	11/17/2017	11/16/2021

ORGANIZATION



CASEHANDLING FUNCTIONS

The NLRB strives to create a positive labor-management environment for the nation's employees, unions, and employers by assuring employees free choice regarding union representation and by preventing and remedying statutorily defined ULPs. The NLRB maintains a citizen-centered and results-oriented philosophy to best serve the needs of the American people.

The primary function of the NLRB is the effective and efficient resolution of charges and petitions filed under the NLRA by individuals, employers, or unions. In carrying out the NLRA's mandates, the NLRB supports the collective bargaining process and seeks to prevent and remedy certain ULPs on the part of employers and unions so as to promote commerce and strengthen the nation's economy.

The two mission-related goals of the NLRB are:

- Promptly and fairly resolve through investigation, settlement of prosecution, unfair labor practices under the National Labor Relations Act
- Promptly and fairly resolve all questions concerning representation of employees

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 a results-oriented philosophy to best serve the needs of the American people.

Unfair Labor Practice Proceedings

The NLRA regulates the conduct of labor-management relations between employers and unions. The NLRB enforces the provisions of the Act through ULP proceedings, which are adjudicated and remedied through procedures under the NLRA.

The General Counsel has sole responsibility—independent of the Board—to investigate charges of ULPs, and to decide whether to issue complaints with respect to such charges. The Board, in turn, acts independently of the General Counsel in deciding the merits of ULP cases.

The General Counsel investigates ULP charges through the Agency's network of Regional, Subregional, and Resident Offices (collectively known as 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, 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 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 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 ULPs 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 alleged ULP, 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 the 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 to believe that a union has committed certain specified ULPs, such as a work stoppage or picketing with an unlawful secondary objective, the Regional Director 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 adversarial³. Representation cases are initiated by the filing of a petition—by an employee, a group of employees, a labor organization acting on their behalf, or in some cases by an employer. Typically, the petitioner requests an election to determine whether a union has the support of a majority of the employees in an appropriate bargaining unit and therefore should be certified or decertified as the employees' bargaining representative. The role of the Agency in such cases is to investigate the petition and conduct a secret-ballot election, if appropriate, addressing challenges and objections to the election subsequently, and thereafter determining whether certification should issue.

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

³ Unlike ULP hearings where violations of the statute are litigated in an adversarial proceeding, representation case hearings are fact-finding proceedings regarding questions concerning representation.



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 challenges and 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

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. NLRB staff deals with employees whose rights have been violated to calculate backpay, and works with respondents regarding notice postings, reinstatement of workers, disciplinary record expungement, withdrawal of unlawful rules or policies, and bargaining remedies. Since Board orders are not self-enforcing, noncompliance or disputes on findings may require additional hearings or actions in the courts.

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, the Solicitor, the Executive Secretary 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, financial, and personnel functions of the Agency.

CASEHANDLING HIGHLIGHTS

The NLRB acts only on those cases brought before it and does not initiate cases. While charges must be filed with the Agency to begin an investigation, if merit is found to the charge allegations, the Regional Director has delegated authority from the General Counsel to issue a complaint, absent settlement.

All proceedings originate with the filing of charges or petitions by employees, labor unions, or private-sector employers engaged in interstate commerce. During FY 2019, the public filed 18,552 ULP charges of which 36 percent were found to have merit. Also, in FY 2019, the NLRB received 2,095 representation petitions, including 1,993 petitions to conduct secret-ballot elections in which workers in appropriate units select or reject unions to represent them in collective bargaining with their employers, as well as 30 petitions for elections in which workers voted on whether to rescind existing union-security agreements. The NLRB also received 3 petitions seeking amendment and 62 petitions seeking clarification of an existing bargaining unit, as well as 7 WH (wage & hour) cases.

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 cases on the following pages highlight this philosophy and reflect the NLRB's mission of protecting democracy in the workplace:

Arbitration Agreements

Cordúa Restaurants, Inc.

16-CA-160901, et al., reported at 368 NLRB No. 43 (2019)

Following the Supreme Court's decision in *Epic Systems v. Lewis*, 584 U.S. ___, 138 S.Ct. 1612 (2018), where the Supreme Court held that mandatory arbitration agreements containing class- and collective-action waivers do not violate the NLRA, the Board in *Cordúa* decided three important related issues. First, the Board found that the promulgation of a mandatory arbitration agreement containing class- and collective-action waivers is not unlawful, even in response to Section 7 activity, because under *Epic Systems*, an agreement requiring that employment-related claims be resolved through individual arbitration does not restrict Section 7 rights in any way. Second, the Board found that an employer may tell employees they will be discharged if they refuse to sign a mandatory arbitration agreement. Under *Epic Systems*, such statements are not unlawful threats; they are explanations of the lawful consequences of failing to sign the agreement. Third, consistent

with long-standing Board precedent, the Board found that employers are prohibited from disciplining or discharging employees for engaging in concerted legal activity, which includes filing a class or collective action with fellow employees over wages, hours, or other terms and conditions of employment. Chairman Ring was joined by Members Kaplan and Emanuel in the majority. Member McFerran dissented in part.

Prime Healthcare Paradise Valley, LLC

21-CA-133781 and 21-CA-133783, reported at 368 NLRB No. 10 (2019)

In a unanimous decision, the Board held that Prime Healthcare's mandatory arbitration agreement violated Section 8(a)(1) because it restricted employees' access to the NLRB and its processes. Applying the standard set forth in *Boeing Co.*, 365 NLRB No. 154 (2017), the Board found that the challenged provision, when reasonably interpreted, would interfere with the exercise of the right to file charges with the Board. In balancing the nature and extent of the potential impact on Section 7 rights with any justification for that rule, as *Boeing* requires, the Board held that, as a matter of law, there is not and cannot be any legitimate justifications for provisions that restrict employees' access to the Board or its processes. The Board noted that this complete freedom is indispensable to the effectuation of national labor policy under the Act. Chairman Ring, and Members McFerran, Kaplan, and Emanuel participated.

Chargeable Union Expenses

United Nurses and Allied Professionals (Kent Hospital)

01-CB-011135, reported at 367 NLRB No. 94 (2019)

The Supreme Court held in *Communications Workers v. Beck* that employees who are not members of a union may not be required, as a condition of employment, to pay for union expenses that do not involve its representational function, as part of their dues, if they object to such payments. In *Kent Hospital*, the Board held that lobbying activity, although sometimes relating to terms of employment or incidentally affecting collective bargaining, is not part of the union's representational function, and therefore lobbying expenses are not chargeable to *Beck* objectors. The Board also held that it is not enough for a union to provide objecting nonmembers with assurances that its compilation of chargeable and nonchargeable expenses has been appropriately audited; rather, a union must provide independent verification that the audit had been performed. The Board found that the Union violated Section 8(b)(1)(A) by both failing to provide nonmember objectors with an audit verification letter in support of the Union's claim of expenses chargeable to a *Beck* objector and by charging nonmember objectors for lobbying expenses. Chairman Ring was joined by Members Kaplan and Emanuel in the majority. Member McFerran dissented.

Duty to Bargain

MV Transportation, Inc.

28-CA-173726, reported at 368 NLRB No. 66 (2019)

The Board adopted the "contract coverage" standard for determining whether a unionized employer's unilateral change in a term or condition of employment violates the Act. In doing so, the Board overruled the "clear and unmistakable waiver" standard, which had been rejected by several federal courts of appeals. Under the "contract coverage" standard, the Board will examine the plain language

of the parties' collective-bargaining agreement to determine whether the change made by the employer was within the compass or scope of contractual language granting the employer the right to act unilaterally. If it was, the Board will honor the plain terms of the parties' agreement and the employer will not have violated the Act by making the change without bargaining. If the agreement does not cover the employer's disputed action, the employer will have violated the Act unless it demonstrates that the union waived its right to bargain over the change or that it was privileged to act unilaterally for some other reason.

Applying the contract coverage standard retroactively, the majority found that some of the Respondent's disputed changes to work policies (concerning the addition of light duty work assignments and the setting of disciplinary standards for safety, schedule adherence, security sweeps/breaches, and driving) fell within the compass or scope of language in the collective-bargaining agreement that granted the Respondent the right to assign employees, to discipline employees, and to issue reasonable rules and policies related to employee discipline. Accordingly, the Board found that the Respondent did not violate the Act by unilaterally implementing these work policies. Chairman Ring was joined by Members Kaplan and Emanuel in the majority opinion. Member McFerran concurred in part and dissented in part.

Independent Contractor

SuperShuttle DFW, Inc.

16-RC-010963, reported at 367 NLRB No. 75 (2019)

The Board overruled *FedEx Home Delivery*, 361 NLRB 610 (2014), and returned to the common-law agency test for determining independent-contractor status. The Board found that the *FedEx* majority impermissibly diminished the significance of entrepreneurial opportunity in the Board's independent-contractor analysis and had instead revived an "economic dependency" standard that Congress explicitly rejected with the Taft-Hartley amendments of 1947. Consistent with the Supreme Court's decision in *NLRB v. United Insurance Co. of America*, 390 U.S. 254 (1968), the Board reiterated that when making independent-contractor determinations, the Board will consider all of the common-law factors in the total factual context of each case.

Applying the common-law test to this case, the Board concluded that the franchisees are not statutory employees under the Act, but rather independent contractors excluded from the Act's coverage. The Board found that the franchisees' leasing or ownership of their work vans, their method of compensation, and their nearly unfettered control over their daily work schedules and working conditions provided the franchisees with significant entrepreneurial opportunity for economic gain. The Board found that these factors, along with the absence of supervision and the parties' understanding that the franchisees are independent contractors, outweighed the factors supporting employee status. Therefore, the Board dismissed the representation petition. Chairman Ring was joined by Members Kaplan and Emanuel in the majority opinion. Member McFerran dissented.

Velox Express, Inc.

15-CA-184006, reported at 368 NLRB No. 61 (2019)

The Board held that employers do not independently violate Section 8(a)(1) of the Act by misclassifying employees as independent contractors. The Board held that an employer's communication to its workers of its opinion that they were independent contractors does not, standing alone, violate the Act, even if that opinion turns out to be mistaken. The Board found that such communication does not inherently threaten those employees with termination or other adverse action if they engage in activities protected by the Act, nor does it communicate that it would be futile for them to engage in such activities.

The Board applied its recent decision in *SuperShuttle DFW, Inc.*, 367 NLRB No. 75 (2019), to find that the workers were employees, not independent contractors, and thus protected by the NLRA. Based on that determination, it held that the employer violated the NLRA when it discharged one of these employees for bringing to management's attention group complaints about the way the employer was treating its workers. The Board majority held, however, that the employer's misclassification of its employees as independent contractors was not a separate violation. Chairman Ring was joined by Members Kaplan and Emanuel in the majority opinion. Member McFerran concurred in part and dissented in part.

Property Access Cases***Bexar County for the Performing Arts Center Foundation d/b/a Tobin Center for the Performing Arts***

16-CA-193636, reported as 368 NLRB No. 46 (2019)

The Board overruled *New York New York Hotel & Casino*, 356 NLRB 907 (2011) and held that contractor employees generally are not entitled to the same Section 7 property access rights as the property owner's own employees. Instead, a property owner may exclude from its property off-duty employees of an onsite contractor seeking access to the property to engage in Section 7 activity unless (i) those employees work regularly and exclusively on the property, and (ii) the property owner fails to show that they have one or more reasonable nontrespassory alternative means to communicate their message. The Board noted that alternative means could include the use of adjacent public property, newspapers, radio, television, billboards, and social media.

Applying the new standard, the Board found that the employer did not violate Section 8(a)(1) of the Act by barring off-duty employees of the San Antonio Symphony from leafletting outside of San Antonio's Tobin Center during a performance by the local ballet. The Board found that the Symphony employees did not work exclusively at the Tobin Center and did not regularly conduct business or perform services there. The Board also found the Symphony employees had reasonable alternative nontrespassory channels of communicating their concerns to the theater-going public. Chairman Ring was joined by Members Kaplan and Emanuel in the majority opinion. Member McFerran dissented.

Kroger Mid-Atlantic

05-CA-155160, reported as 368 NLRB No. 64 (2019)

The Board overruled *Sandusky Mall Co.*, 329 NLRB 618 (1999), enf. denied in relevant part 242 F.3d 682 (6th Cir. 2001) and similar cases, which required employers to grant access to nonemployee union agents for any purpose if the employer has allowed substantial civic, charitable, and promotional activities by other nonemployees. The Board noted that *Sandusky Mall* had been roundly rejected by the courts of appeals. Under the Board's new standard, to establish that a denial of access to nonemployee union agents was unlawful, the General Counsel must prove that an employer denied access to other nonemployee union agents while allowing access to other nonemployees for activities similar in nature to those in which the union agents sought to engage.

Applying the new standard, the Board held that Kroger was within its rights to remove union representatives from the parking lot of one of its Virginia stores. The Board noted that the General Counsel did not show that Kroger has ever permitted any nonemployees to engage in protest activities on its premises comparable to the boycott solicitation at issue in the case. Chairman Ring was joined by Members Kaplan and Emanuel in the majority decision. Member McFerran dissented.

UPMC and its Subsidiary, UPMC Presbyterian Shadyside, Single Employer, d/b/a UPMC Presbyterian Hospital

06-CA-102465 et al., reported at 368 NLRB No. 2 (2019)

The Board found that, absent discrimination, an employer does not have a duty to permit the use of its public cafeteria within an employer's private property by nonemployees for promotional or organizational activity. The Board overruled *Ameron Automotive Centers*, 265 NLRB 511 (1982) and *Montgomery Ward & Co.*, 256 NLRB 800 (1981), enf. 692 F.2d 1115 (7th Cir. 1982) to the extent those cases held that nonemployee union organizers could not be denied access to cafeterias that are open to the public if the organizers used the facility in a manner consistent with its intended use. Instead, the Board found that, absent discrimination, an employer does not have a duty to permit the use of its public cafeteria by nonemployees for promotional or organizational activity. In this case, the Board found that University of Pittsburgh Medical Center Presbyterian Shadyside did not discriminate by removing a nonemployee organizer who was meeting with employees because UPMC had previously prohibited nonemployee third party organizations from soliciting and distributing in its cafeteria. Chairman Ring was joined by Members Kaplan and Emanuel in the majority decision. Member McFerran dissented in part.

Withdrawal of Recognition

Johnson Controls, Inc.

10-CA-151843, reported at 368 NLRB No. 20 (2019)

The Board addressed a recurring problem that arises when an employer receives valid evidence that a majority of employees no longer wish to be represented by a union, exercises its right to anticipatorily withdraw recognition once its contract expires, but the union thereafter acquires new evidence that allegedly re-establishes its majority status. The Board found that the new evidence is not well-suited to evaluation in an unfair labor practice case, because it necessarily involves evidence of support from employees who had previously rejected the union. Instead, the Board held

that the appropriate way to resolve this uncertainty is through an election. Accordingly, the Board held that an employer may rely on the evidence in its possession when it announced its anticipatory withdrawal, unless the union timely filed an election petition, and announced several modifications to its election rules to allow petitions to be processed in a timely manner in these situations. If no petition is timely filed, the employer may rely on its evidence to withdraw recognition.

In this case, Johnson Controls withdrew recognition after it was given a petition by its employees that showed a majority no longer wanted to be covered by the union. Because the union failed to file a timely election petition, the Board found that Johnson Controls acted lawfully. Chairman Ring was joined by Members Kaplan and Emanuel in the majority. Member McFerran dissented.

Supreme Court Cases

The Board did not have any cases heard on the merits in the Supreme Court, but successfully opposed opposing parties' petitions seeking Supreme Court review in three cases (*In-N-Out Burger v. NLRB*, 894 F.3d 707 (5th Cir. 2018), *cert. denied*, 139 S.Ct. 1259 (February 25, 2019); *Capital Medical Center v. NLRB*, 909 F.3d 427 (D.C. Cir. 2018), *cert. denied*, 139 S.Ct. 1445 (April 1, 2019); *Casino Pauma v. NLRB*, 888 F.3d 1066 (9th Cir. 2018), *cert. denied* 139 S.Ct. 2614 (May 20, 2019)).

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, representatives from the Board and the General Counsel worked together in developing the comprehensive Strategic Plan (FY 2019-FY 2022) and the Performance and Accountability Report.

The NLRB's Strategic Plan states the Agency's strategic goals, objectives, initiatives, performance measures, and management strategies. There are two mission-related goals, and two support goals. The majority of the support goals are management strategy based and will be discussed at length in the Performance Section of this report.

The NLRB's performance measurement system has been highly regarded for decades and modeled by other agencies to track case processing times. Most of the data collected tracks the time spent at each step of the case processing "pipeline". The Agency does not rely on outside sources for the data used in its performance management system. Each NLRB office is responsible for collecting and verifying performance measurement data. All of the NLRB's mission-related offices have moved fully into the NxGen system, which provides for real-time review of all case file materials and consistent data reporting.

Data regarding mission-related goals are compiled using the Agency's NxGen Case Management system. This enterprise-wide electronic case management system is used by all divisions of the Agency. Each division, including Headquarters and the Regions, has data integrity reports which help isolate and correct data errors. The Division of Operations-Management oversees the Regional offices which compile 75 percent of the case-related statistics. Each quarter, Regions are required to run various data integrity reports in NxGen and report their findings to the Division of Operations-Management for review. For more information on the program evaluation please see page 73.

The NLRB's mission-related goals represent the core functions of the Agency in its enforcement of the NLRA. Goal 1 focuses on individual segments of the casehandling process such as the average number of days from filing to disposition and average number of days from Board Order Issued to Closing. Goal 2 focuses on the overall time it takes to process an entire case. The goals are outcome-based and aligned with the mission of the Agency.

The Performance Measures for Strategic Goal 1 address the timeliness of case processing at different stages for the resolution of meritorious unfair labor practice charges and unfair labor practice charges. On an annual basis, there are typically more than six times as many ULP cases than representation cases. Both types of cases often involve complicated issues for Regions to address.

The Performance measure for Strategic Goal 2 focuses on the time taken to resolve a representation case, from beginning to end, including time spent on the case by Field and Headquarters Offices. 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 support union representation.

Goal 1, Initiative 1 - Performance Measures:

Year	Annual Goal	Actual Performance
FY 2018	Baseline	106 days
FY 2019	101 days	74 days
FY 2020	95 days	
FY 2021	90 days	
FY 2022	85 days	

Measure 1: Realize a 5% annual decrease in the average time required to resolve meritorious unfair labor practice charges through adjusted withdrawal, adjusted dismissal, settlement or issuance of complaint.

Year	Annual Goal	Actual Performance
FY 2018	Baseline	242 days
FY 2019	230 days	264 days*
FY 2020	218 days	
FY 2021	206 days	
FY 2022	195 days	

Measure 2: Realize a 5% annual decrease in the average time between issuance of complaint and settlement by administrative law judge or issuance of administrative law judge decision.

Year	Annual Goal	Actual Performance
FY 2018	Baseline	585 days
FY 2019	556 days	513 days*
FY 2020	527 days	
FY 2021	497 days	
FY 2022	468 days	

Measure 3: Realize a 5% annual decrease in the average time between issuance of an administrative law judge decision and a Board Order.

Year	Annual Goal	Actual Performance
FY 2018	Baseline	648 days
FY 2019	616 days	541 days
FY 2020	583 days	
FY 2021	556 days	
FY 2022	518 days	

Measure 4: Realize a 5% annual decrease in the average time between issuance of Board Order and the closing of the case.

Goal 2, Initiative 1 – Performance Measure:

Year	Annual Goal	Actual Performance
FY 2018	85.8%	88.8%
FY 2019	85.8%	90.7%
FY 2020	85.8%	
FY 2021	85.9%	
FY 2022	85.9%	

Measure 1: The percentage of representation cases resolved within 100 days of filing the election petition.

FINANCIAL AND SYSTEMS HIGHLIGHTS

Operational/Performance Highlights

The Office of the Chief Financial Officer (OCFO), comprised of the Budget, Acquisitions, and Finance Branches, reports directly to the Chairman and General Counsel. This structure integrates and enhances Agency financial management. Specifically, the OCFO focuses on effectiveness and efficiency in financial operations, reliability of financial reporting, transparency of financial data, and compliance with applicable laws and regulations.

The OCFO continuously seeks to infuse more discipline, structure, and internal control in the financial management lifecycle and throughout the financial management process.

Below are some highlights from FY 2019 OCFO activities:

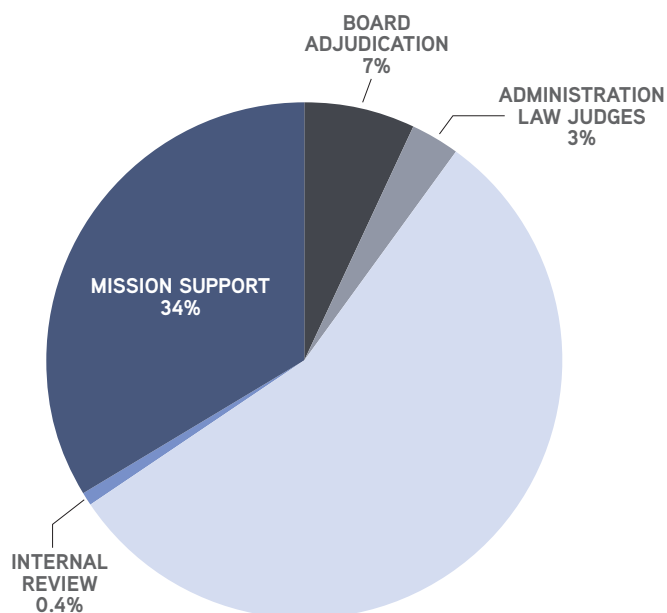
Budget

The FY 2019 Budget provided \$274.2 million for the NLRB to fund the Agency's statutory mission of resolving labor disputes through investigation, settlement, litigation, adjudication, education, and compliance. The NLRB has five Program Activities that define the major mission functions for budgetary reporting. In FY 2019, the Agency allocated \$268.5 million to support these five areas.

The Budget Office is working to track the FY 2020 Continuing Resolution by ensuring all mandatory funding needs are addressed until a full year budget is enacted.

The Agency's new Budget Officer has made process improvement a top priority for the Budget Office. During FY 2019, the Budget Office adopted an improvement strategy that establishes a transparent and repeatable process that engages the Program Areas and the Agency Leadership to create a prioritized investment plan supporting strategic outcomes and guiding hiring and resource decision making. To accomplish this strategy, the Budget Office conducted surveys by holding a series of discussions with the Programs at the workgroup level. The outreach effort was administered during the period of

FY 2019 BUDGET BY PROGRAM ACTIVITY



April through July 2019. The Budget workgroup used the survey results to develop ways to improve customer satisfaction, identify workplace issues, and take steps to resolve them as it relates to formulating and executing the Agency's budget.

As part of the Budget Office continuous improvement, earlier this Spring, the Budget Officer issued Plan Development Guidance to Program Areas to identify the budgetary requirements and provide the outyear budget estimates. During this planning phase, the Program Areas identified and submitted justification for FY 2019 requirements in priority order. The Budget Office processed those requirements for the Agency's Leadership review so resource allocation decisions can be made based on the priorities of the Agency as it aligns to achieving the goals and the objectives of the Strategic Plan.

In FY 2019, the Budget Office coordinated an unprecedented outreach effort with Program Areas to address unfunded mission critical needs. The Agency was able to award approximately \$15 million to support those prioritized mission critical requirements.

Finance

In FY 2019, the Finance Branch continued to provide customer service to its internal and external customers. The Finance Branch successfully submitted the quarterly Governmentwide Treasury Account Symbol (GTAS) reporting to the U.S. Department of the Treasury, Bureau of the Fiscal Service in a timely manner. In conjunction with the Department of the Interior – Interior Business Center (IBC), the Finance Branch conducted multiple E2 travel training sessions for Agency employees on the authorization, the voucher, and the approval processes.

Per the Federal Travel Regulations and the General Services Administration (GSA), federal government employees are required to use the GSA-contracted online services or their Travel Management Center (TMC) to arrange travel for official business. As a result of providing the aforementioned training sessions over the last two years, the Agency has improved its online usage rate in the E2 Solutions application of 76%; thereby increasing the Agency's adherence to federal regulations.

During FY 2019, the Finance Branch worked closely with the Division of Operations Management to successfully increase the accuracy of Backpay disbursement request submissions from Regional Offices with respect to payments for discriminatees.

Charge Card Program

GSA's SmartPay 3 program officially started November 30, 2018. The NLRB Purchase and Travel Card programs are in the process of being fully implemented with all the SmartPay 3 features that the NLRB did not implement in SmartPay 2 such as electronic banking. Some of the benefits for using the GSA SmartPay 3 Program as a payment solution include:

- Safety and Transparency – Provides secure solutions for efficient payment transactions
- Electronic Access to Data – Provides agencies/organizations with immediate access to complete transaction level data, helping to mitigate fraud, waste, and abuse
- Refunds – Agencies/Organizations earn refunds based on a single rate which considers both volume of spend and speed of pay

- Worldwide Acceptance – Provides access to merchants around the globe
- Tax Advantage – The SmartPay 3 travel card program is exempt from state taxes in select states

NLRB worked with Citibank to train purchase cardholders on the new online processes. Cardholders went from a manual paperwork process to an electronic online banking environment. The NLRB travel card SmartPay 3 program faced more challenges during the implementation. Nevertheless, the OCFO worked closely with its partners IBC and Citibank to provide training to travel cardholders. The Policies for both programs are being revised to include new program requirements.

Systems

The NLRB obtains the majority of its financial systems and services from the Department of the Interior's IBC and has no plans to operate its own financial systems. NLRB is responsible for overseeing IBC and ensuring that financial systems and internal controls are in place to fulfill legislated and regulatory financial management requirements. IBC provides the following systems:

- Oracle Federal Financials (OFF) – Integrated system of record for all financial transactions.
- Federal Payroll and Personnel System (FPPS) – Personnel system of record, which interfaces with the Oracle system.
- E2Solutions - eTravel system provided by Carlson Wagonlit (CWTSato), the NLRB's Travel Management Service, which also interfaces with the Oracle system.
- IPP – A Web-based system that provides one integrated, secure system to simplify the management of vendor invoices. It is offered at no charge to federal agencies and their vendors. A few benefits of IPP are as follows:
 - » IPP can help federal agencies avoid Prompt Payment penalties by supporting more efficient invoice processing while automating invoice collection, validation and approval workflows.
 - » Vendors can manage their receivables more easily using one system to transact with multiple agencies.
 - » IPP saves federal agencies and vendors time and money by automating formerly paper-based processes, and it is offered at no charge.
 - » IPP improves financial management by promoting standard processes to manage government invoices with increased controls.
 - » IPP is supported by the U.S. Department of the Treasury, which oversees all upgrades and enhancements.

Oracle Business Intelligence Enterprise Edition (OBIEE)

The NLRB is investing in a new query and reporting tool available from Oracle. The tool will replace Discoverer, which will soon no longer be supported. The Oracle Business Intelligence Application (OBIA) is a business intelligence suite, including ad hoc query and analysis, dashboards, enterprise reporting, mobile analytics, scorecards and predictive analytics, on an architecturally integrated

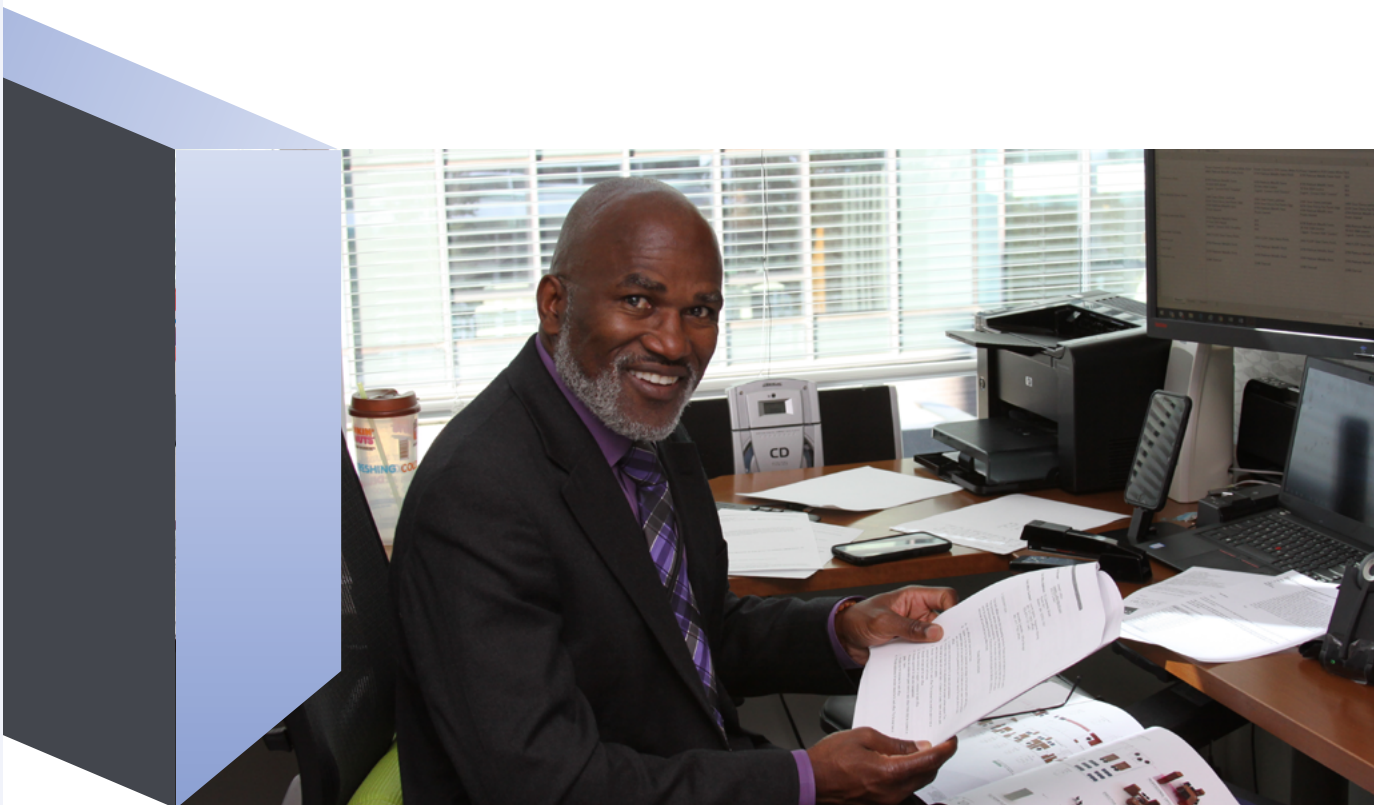
business intelligence foundation. The central component of the suite is Oracle Business Intelligence Enterprise Edition (OBIEE), which features a Common Enterprise Information Model for centralized metadata management, common query request generation and data access. The NLRB anticipates that these products will provide the information to enable our Agency to drive innovation, optimize operations, and deliver more relevant and timely information to decision makers.

Analysis Of Financial Statements

The NLRB prepares annual financial statements in accordance with U.S. 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.

Balance Sheet – The NLRB assets were \$64 million as of September 30, 2019. The Fund Balance with Treasury of \$52 million represents the NLRB's largest asset at 81 percent. The fund balance is the undisbursed balances from appropriated funds for the past six Fiscal Years.

Property, Plant, and Equipment of \$11.3 million represents the NLRB's second largest asset at 18 percent which is mostly related to internal use software and leasehold improvements. This was a \$5.2 million increase from the prior year due to additional acquisitions and leasehold improvements while still incurring depreciation and amortization for existing property, plant, and equipment.



The NLRB liabilities were \$29.2 million as of September 30, 2019. Liabilities consist of amounts owed to vendors, governmental trading partners, and Agency employees. Accounts Payable for intragovernmental activities increased 95 percent primarily due to interagency agreements, the timing of IPAC billings and accruals. Employee unfunded annual leave was 43 percent of liabilities, the NLRB's largest liability. The FECA Actuarial liability decreased by \$148 thousand or 6 percent.

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 \$273 million net cost of operations in FY 2019, 90 percent was used to resolve ULP charges and 10 percent was used for representation case activities.

Statement of Changes in Net Position – The NLRB's net position is affected by changes in its two components: Cumulative Results of Operations and Unexpended Appropriations. From FY 2018 to FY 2019, there was a change in net position of \$13.6 million. This was, in part, due to an increase in appropriations used during the year related to a decrease in interagency agreements and vendor contract services. There was also a decrease in imputed financing for employee benefits which was impacted by lowered staffing levels and cost factors adjusted for all pension plans.

Statement of Budgetary Resources – The Statement of Budgetary Resources shows budgetary resources available and the status of these resources at the end of the period. It represents the relationship between budget authority and budget outlays and reconciles obligations to total outlays. For FY 2019, the NLRB had available budgetary resources of \$280.7 million, the majority, \$274.2 million were derived from new budget authority. Obligations were \$269.3 million for FY 2019, and total outlays for FY 2019 were \$263.3 million. The status of budgetary resources had a \$2.7 million increase in apportioned funds due to several contracts that were awarded significantly under their budgeted price or were not able to be awarded prior to the close of the FY 2019.

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 U.S. 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 an understanding that they are for a component of the U.S. government, a sovereign entity.

COMPLIANCE WITH LAWS AND MANAGEMENT ASSURANCES

Antideficiency Act (ADA)

The Antideficiency Act prohibits federal agencies from:

- making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law;
- involving the government in any obligation to pay money before funds have been appropriated for that purpose, unless otherwise allowed by law;
- accepting voluntary services for the United States, or employing personal services not authorized by law, except in cases of emergency involving the safety of human life or the protection of property; and
- making obligations or expenditures in excess of an apportionment or reapportionment, or in excess of the amount permitted by Agency regulations.

There were no known violations of the Anti-Deficiency Act during FY 2019 at the NLRB.

Debt Collection Improvement Act (DCIA)

The Debt Collection Improvement Act of 1996, also known as the DCIA, is a United States' legal act, regulating the collection of bad debts owed to the U.S. government. It controls the whole debt recovery procedure and collection tools used for collection of non-tax US federal debts. As non-tax debts are considered all types of loans funded by the federal government, e.g. federal education loans, housing and urban development amounts (the so-called HUD debts), Small Business Administration (or SBA loans), unpaid child support sums, etc. The main function of the Improvement Act of 1996 is to maximize recovery of default amounts and late payments referring to federal non-tax bad debts. The DCIA acts together with the Treasury Financial Management Service (FMS) and controls US non-tax delinquent amounts, which have remained unpaid more than 180 days. After this period, such debts are to be transferred to the U.S. Department of the Treasury.

Digital Accountability And Transparency Act (DATA ACT)

The DATA Act expands the Federal Funding Accountability and Transparency Act (FFATA) of 2006 to increase accountability and transparency in federal spending, making federal expenditure information more accessible to the public. The goal of the DATA Act is to make federal spending more accessible, searchable, and reliable so taxpayers have the opportunity to understand the impact of federal funding for federal programs/entities.

As required by the OMB Memorandum M-15-12, issued on May 8, 2015, the NLRB drafted a DATA Act of 2014 Implementation Plan in order to increase transparency of federal spending as required the DATA Act and FFATA Act.

The Acquisition Management Branch (AMB) inputs contract and Interagency Agreements (IAAs) directly into the Federal Procurement Data System - Next Generation (FPDS-NG). The number of contracts and IAAs are less than 50, which has made this a manageable workload for the staff.

The NLRB's service provider, IBC, has identified 47 of the required reportable data elements that will be provided for reporting from existing systems. The remaining elements are being analyzed by the NLRB.

The NLRB has already taken steps to identify the data information needed to be captured for reporting. The FY 2017 Congressional Justification restructured the five major Program Activities and established the unique award ID as the Oracle Financial system generated Purchase Order number. The NLRB also already submits object class and program activity data from the Oracle financial system to OMB and has done this since FY 2013.

OPEN Government Data Act (Public Law 115-435)

- Directs all federal agencies to publish their information as machine-readable data, using searchable, and open format.
- Requires the federal government to use open data to improve decision making.
- Requires every agency to maintain a centralized Enterprise Data Inventory that lists all data sets.
- Mandates a centralized inventory for the whole government – codifying the platform currently known as data.gov.
- Establishes and formalizes Chief Data Officers (CDO) at federal agencies with data governance and implementation responsibilities.

Federal Information Security Management Act (FISMA)

The Federal Information Security Management Act of 2002, as amended by the Federal Information Security Modernization Act of 2014, requires federal agencies to ensure adequate security protections for federal information systems and information. Under this act, federal agencies must submit annual FISMA reports to OMB.

Government Charge Card Abuse Prevention Act

On October 17, 2014 the President signed an Executive Order (EO) directing the federal government to establish and maintain safeguards and internal controls for the charge card program. The NLRB evaluated the charge card program as directed by the guidance provided in OMB Circular A-123 Appendix B, OMB Memorandum M-12-12 *Promoting Efficient Spending to Support Agency Operations*, and OMB Memorandum M-13-21 *Implementation of the Government Charge Card Abuse Prevention Act of 2012*. The effectiveness of the Agency's purchase card and travel card program was assessed through enhanced monitoring procedures to detect fraud, waste, and abuse.

The Improper Payments Elimination And Recovery Improvement Act (IPERIA)

The Improper Payments Information Act of 2002, as amended by the Improper Payments Elimination and Recovery Act (IPERA) of 2010 and Improper Payments Elimination and Recovery Improvement Act (IPERIA) of 2012, requires agencies to review all programs and activities they administer and identify those which may be susceptible to significant erroneous payments. For all programs and activities in which the risk of erroneous payments is significant, agencies are to estimate the annual amount of erroneous payments made in those programs. The NLRB's risk assessment indicated that the salaries and expenses program was not susceptible to significant improper payments. A detailed report of the NLRB's improper payments activities is presented in the Other Information section on page 117.

Prompt Payment Act

The Prompt Payment Act was enacted in 1982 to ensure the federal government makes timely payments. Bills are to be paid within 30 days after receipt and acceptance of material and/or services – or – after receipt of a proper invoice whichever is later. When payments are not made timely, interest is paid. The Agency made late payments resulting in interest penalties of \$273.91 in FY 2019.

Federal Financial Management Improvement Act (FFMIA)

The purpose of the Federal Financial Management Improvement Act of 1996 (FFMIA) is to advance federal financial management by ensuring that federal financial management systems provide accurate, reliable, and timely financial management information to the government's managers.

Federal Managers' Financial Integrity Act (FMFIA)

The Federal Managers' Financial Integrity Act 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. The annual statement of assurance and management control over financial application controls and financial reporting submitted by the NLRB's service provider follows this section.

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 Enterprise Risk Management and Internal Control*, dated July 15, 2016.

Control Environment	Creating and maintaining an organizational structure that promotes a high level of integrity and personal and professional standards, and sets a positive and supportive attitude toward internal controls through conscientious management
Risk Assessment	Identification and analysis of risks that could impede the achievement of Agency goals and objectives
Control Activities	Policies, procedures, techniques, and mechanisms to ensure proper stewardship and accountability for government resources and for achieving effective and efficient program results
Information and Communications	Ensures the Agency's control environment, risks, control activities, and performance results are communicated throughout the Agency
Monitoring	Assessing quality of performance over time to ensure that internal control processes are appropriate and effective

The NLRB's approach to assessing its internal controls included the identification and assessment of risks by 50 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 previous management reviews. 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.

The Statement of Assurance provided on page 47 is required by the FMFIA and OMB Circular A-123, *Management's Responsibility for Internal Control*.

FMFIA Section 2, Management Control

Section 2 of the FMFIA requires federal agencies to report, based on annual assessments, any material weaknesses that have been identified in connection with their internal and administrative controls. The reviews that took place in FY 2019 provide reasonable assurance that NLRB systems and internal controls comply with the requirements of FMFIA.

FMFIA Section 4, Financial Management Systems

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, 2019 in accordance with the FMFIA and OMB Circular A-127, *Financial Management Systems*, Section 7 guidance. The NLRB's financial systems, taken as a whole, conform to the principles and standards developed by the Comptroller General, OMB, and the U.S. Department of the Treasury. The Agency also reviews the SSAE-18's for all systems operated by IBC to ensure that independent auditors have also certified that the necessary controls are in place, so the NLRB can rely on those systems.



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

November 4, 2019

ANNUAL STATEMENT OF ASSURANCE

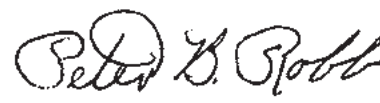
Management is responsible for establishing and maintaining effective internal control and financial management systems that meet the objectives of the Federal Managers' Financial Integrity Act (FMFIA). The NLRB assessed the effectiveness of internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations in accordance with Office of Management and Budget (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, 2019 was operating effectively, and no material weaknesses were found in the design or operation of the internal controls.

In accordance with the requirements of OMB Circular No. A-123, Appendix A, the NLRB assessed the effectiveness of internal control over financial reporting, which includes internal control related to the preparation of the annual financial statements, safeguarding of assets, and compliance with applicable laws and regulations governing the use of budget authority and other laws and regulations that could have a direct and material effect on the financial statements. The result of this evaluation provides reasonable assurance that the NLRB's internal control over financial reporting was operating effectively as of September 30, 2019.

The NLRB also conducted reviews of financial management systems. Based on the results of these reviews, the NLRB can provide reasonable assurance that the financial management systems comply with the applicable provisions of the FMFIA as of September 30, 2019.

The NLRB has submitted all of the quarterly FY 2019 procurement DATA Act submissions to Department of Treasury as required by the DATA Act.


John F. Ring
Chairman


Peter B. Robb
General Counsel

02

Performance Section



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 mission-related goals of the NLRB's Strategic Plan represent the core functions of the Agency in enforcing the NLRA as efficiently as possible and in a manner that gives full effect to the rights afforded to all parties under the Act. The two support goals further enable the Agency to accomplish its mission. Please see Appendix D for the list of performance measures for the support goals, as well as the management strategies for all the Agency goals.

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, representatives of the Board and the General Counsel worked together in developing one comprehensive Strategic Plan and Performance and Accountability Report.



MEASURING PERFORMANCE

One of the NLRB's human capital goals is to create a results-oriented performance culture that clearly links employee performance and pay to the attainment of the NLRB's strategic goals. The Agency has two mission-related goals that emphasize individual segments of case processing to promote timely, efficient, and well-managed casehandling and two support goals that give a broader picture of how the Agency achieves its mission.

As to Agency 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 the Government Performance and Results Act (GPRA) and the Government Performance and Results Modernization Act (GPRAMA). 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 the necessary requirements for conducting an election have been met, it will either direct an election or approve the parties' agreement to have an election. The performance measure that the Agency has established for the conducting of elections is objective and is not dependent on the results of the election. The true outcome of properly conducted elections is employees freely exercising their statutory rights as set out in the NLRA.

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. While it is difficult to quantify by the number of ULPs, the Agency can quantify our commitment to resolve all disputes that are brought before us, and to provide a remedy and ensure that labor peace is maintained or restored. Noting that the Agency cannot *sua sponte* investigate the actions of an employer or labor union without a charge being filed, the NLRB established two performance measures. The timeliness and quality of case processing, from the filing of an ULP charge to the closing of a case, are the focus of those performance measures.

The tables and narratives in this section show the proposed annual targets for performance measures and management strategies for the four-year period covered by the current Strategic Plan (FY 2019-2022). The actual results achieved for the performance measures and management strategies for FYs 2014-2018 can be found in Appendix C. Some of the goals below originated in FY 2019, so there is no historical data for those goals prior to 2019.

Strategic Goal 1 (Mission):

Promptly and fairly resolve through investigation, settlement or prosecution, unfair labor practices under the National Labor Relations Act.

Objective:

1. Achieve established performance measures for the resolution of meritorious unfair labor practice charges.

Initiatives:

1. Achieve a collective 20% increase in timeliness of case processing under established performance measures for the resolution of all meritorious unfair labor practice charges.
2. Achieve enhanced performance for the resolution of all unfair labor practice charges.
3. Ensure that all matters before the Agency are handled in a fair and consistent manner.

Goal 1, Initiative 1 - Performance Measures:

Measure 1: Realize a 5% annual decrease in the average time required to resolve meritorious unfair labor practice charges through adjusted withdrawal, adjusted dismissal, settlement or issuance of complaint.

This measure focuses on meritorious (prosecutable) ULP cases, and the time taken from initial filing until either effectuating a remedy or setting the case for litigation. After the filing of charges, Regions undertake investigation, determination, notification to the parties of its determination, opportunity for voluntary adjustment, and movement to the next phase of case processing. During this process the Region acquires relevant evidence from all parties, including neutral parties as appropriate, conducts legal research, and assesses whether the ULP allegations are meritorious.

For allegations the Region finds meritorious, the Region seeks appropriate remedy, such as reinstatement, backpay or back dues, and bargaining in good faith. The remedy may be effectuated by private resolution (adjusted withdrawal or adjusted dismissal) or Board-approved settlement. In the absence of a resolution, the Region issues a complaint, formalizing the allegations and sets the case for hearing before an ALJ.

In FY 2019, the NLRB realized a 22% annual decrease in the average time required to resolve meritorious unfair labor practice charges through adjusted withdrawal, adjusted dismissal, settlement or issuance of complaint. In FY 2018 the average time from filing to disposition was 94 days.

GOAL NO. 1, Initiative 1, Measure 1				
Decrease in the average time required to resolve meritorious unfair labor practice charges				
YEAR	FY 2019	FY 2020	FY 2021	FY 2022
TARGET	101 days	95 days	90 days	85 days
ACTUAL	74 days			

Measure 2: Realize a 5% annual decrease in the average time between issuance of complaint and settlement by administrative law judge or issuance of administrative law judge decision.

This measure focuses on the time between issuance of a complaint and completion of the work of the Division of Judges regarding that complaint either through settlement of the case by an administrative law judge, or issuance of a decision by an administrative law judge.

After an individual, employer, or union files a ULP charge, a Regional Director evaluates the merits of the charge and decides whether to issue a complaint. If a complaint issues, a hearing is scheduled with an administrative law judge. The Division of Judges attempts to settle cases pending before them, and if settlement efforts are unsuccessful, the case proceeds to hearing. Following the hearing, the administrative law judge issues a decision regarding the merits of the alleged ULPs.

This is a new measure the Agency is collecting data on so there is no prior year numbers to compare.

GOAL NO. 1, Initiative 1, Measure 2				
Decrease in the average time between issuance of complaint and settlement by administrative law judge or issuance of a decision				
YEAR	FY 2019	FY 2020	FY 2021	FY 2022
TARGET	230 days	218 days	206 days	194 days
ACTUAL	264 days*			

Measure 3: Realize a 5% annual decrease in the average time between issuance of administrative law judge decision and Board order.

This measure focuses on the time between when an administrative law judge issues a decision in a ULP case, and when the Board issues its subsequent decision or order.

Once an ALJ issues a decision, the decision is not final until adopted by the Board. The parties, including the GC, can choose to appeal the ALJ's decision to the Board. The Board issues a final order resolving the ULP case, which includes consideration of any appeals that may have been filed regarding the ALJ's decision.

This is a new measure the Agency is collecting data on so there is no prior year numbers to compare.

GOAL NO. 1, Initiative 1, Measure 3 Decrease in the average time between issuance of an administrative law judge decision and a Board order.				
YEAR	FY 2019	FY 2020	FY 2021	FY 2022
TARGET	556 days	527 days	497 days	468 days
ACTUAL	513 days*			

Measure 4: Realize a 5% annual decrease in the average time between issuance of a Board order and the closing of the case.

This measure focuses on the Board securing relief, such as reinstatement, backpay, back dues, rescission of discipline, resumption of bargaining in good faith, and the posting of a Notice, after the Board administratively determining that an employer or labor organization has committed a ULP.

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 typically proceeds 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 or a reviewing court, or in extreme cases, in contempt 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 U.S. Court of Appeals.

In FY 2019, the NLRB realized a 17.2% annual decrease in the average time between issuance of a Board order and closing of the case. In FY 2018 the average time from filing to disposition was 94 days.

GOAL NO. 1, Initiative 1, Measure 4				
Decrease in the average time between issuance of a Board order and the closing of the case.				
YEAR	FY 2019	FY 2020	FY 2021	FY 2022
TARGET	616 days	583 days	556 days	518 days
ACTUAL	541 days			

Goal 1, Initiative 2 - Performance Measures:

Measure 1: Realize a 5% annual decrease in the average time required to resolve unfair labor practice charges through withdrawal, dismissal, settlement or issuance of complaint.

This measure tracks the passage of time from the initial filing a ULP charge with a Region of the Board through the Region's investigation, determination, notification to the parties of its determination, opportunity for voluntary adjustment, and movement to the next phase of case processing. During this process the Region acquires relevant evidence from all parties, including neutral parties as appropriate, conducts legal research, and assesses whether the ULP allegations are meritorious. Where the allegations are not meritorious, the Region so advises the charging party and affords the charging party the opportunity to withdraw, dismissing the non-merit allegations or charge in its entirety if the charging party does not withdraw.

For allegations the Region finds meritorious, the Region seeks appropriate remedy, such as reinstatement, backpay or back dues, and bargaining in good faith. The remedy may be effectuated by private resolution (adjusted withdrawal or adjusted dismissal) or Board-approved settlement. In the absence of a resolution, the Region issues a complaint, formalizing the allegations and sets the case for hearing before an ALJ.

In FY 2019, the NLRB realized a 17.5% decrease in the average time between issuance of a complaint and settlement by administrative law judge or issuance of administrative law judge decision. In FY 2018 the average time from filing to disposition was 90 days.

GOAL NO. 1, Initiative 2, Measure 1				
Decrease in the average time required to resolve unfair labor practice charge				
YEAR	FY 2019	FY 2020	FY 2021	FY 2022
TARGET	86 days	81 days	77 days	72 days
ACTUAL	74 days			

Measure 2: Realize a 5% annual decrease in the average time between issuance of complaint and settlement by administrative law judge or issuance of administrative law judge decision.

This measure focuses on the time between issuance of a complaint and completion of the work of the Division of Judges regarding that complaint either through settlement of the case by an administrative law judge, or issuance of a decision by an administrative law judge.

After an individual, employer, or union files a ULP charge, a Regional Director evaluates the merits of the charge and decides whether to issue a complaint. If a complaint issues, a hearing is scheduled with an administrative law judge. The Division of Judges attempts to settle cases pending before them, and if settlement efforts are unsuccessful, the case proceeds to hearing. Following the hearing, the administrative law judge issues a decision regarding the merits of the alleged ULPs.

This is a new measure the Agency is collecting data on so there is no prior year numbers to compare.

GOAL NO. 1, Initiative 2, Measure 2 Decrease in the average time between issuance of complaint and settlement by administrative law judge or issuance of a decision				
YEAR	FY 2019	FY 2020	FY 2021	FY 2022
TARGET	230 days	218 days	206 days	194 days
ACTUAL	149 days*			

Measure 3: Realize a 5% annual decrease in the average time between issuance of administrative law judge decision and Board order.

This measure focuses on the time between when an administrative law judge issues a decision in a ULP case, and when the Board issues its subsequent decision or order.

Once an ALJ issues a decision, the decision is not final until adopted by the Board. The parties, including the GC, can choose to appeal the ALJ's decision to the Board. The Board issues a final order resolving the ULP case, which includes consideration of any appeals that may have been filed regarding the ALJ's decision.

This is a new measure the Agency is collecting data on so there is no prior year numbers to compare.

GOAL NO. 1, Initiative 2, Measure 3 Decrease in the average time between issuance of an administrative law judge decision and a Board order.				
YEAR	FY 2019	FY 2020	FY 2021	FY 2022
TARGET	556 days	527 days	497 days	468 days
ACTUAL	496 days*			

Measure 4: Realize a 5% annual decrease in the average time between issuance of a Board order and the closing of the case.

This measure focuses on the Board securing relief, such as reinstatement, backpay, back dues, rescission of discipline, resumption of bargaining in good faith, and the posting of a Notice, after the Board administratively determining that an employer or labor organization has committed a ULP.

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 typically proceeds 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 or a reviewing court, or in extreme cases, in contempt 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 U.S. Court of Appeals.

In FY 2019, the NLRB realized a 17.2% annual decrease in the average time between issuance of a Board order and closing of the case. In FY 2018 the average time between issuance of a Board order and the closing of the case was 653 days.

GOAL NO. 1, Initiative 1, Measure 4				
Decrease in the average time between issuance of a Board order and the closing of the case.				
YEAR	FY 2019	FY 2020	FY 2021	FY 2022
TARGET	616 days	583 days	551 days	518 days
ACTUAL	540 days			

Goal 1, Initiative 3 - Performance Measures:

Measure 1: Ensure that Regional case processing procedures evolve with the Agency's strategic goals and technological advancements.

- Migrated 100% on-premise workloads to Microsoft Azure Cloud services, providing high availability, scalability, redundancy, and increased performance.
- Replaced legacy NxGen E-Service platform with My Account Portal and integration with login.gov, enhanced E-Filing and customer notification.
- Refreshed NxGen product suite technology stacks and adopted latest Azure Cloud services, provided increased security and improved case processing procedures.

- Developed and implemented the Translation Information Management System (TIMS) which allows Agency employees the ability to request interpreting and translation services to a group of Language Specialists within the Agency, enhancing case processing.

Measure 2: Conduct annual quality reviews of Regional unfair labor practice case files and institute modifications to case processing as appropriate.

The quality review process is broken down into the three phases below. The reviewer looks at the quality of case work to ensure Regions follow current guidance and Board law.

Phase 1 – Investigation And Determination

Number of cases reviewed: TEN (10). Cases selected will include one 8(a)(1) case, two 8(a)(3) cases, one 8(a)(5) case, and two CB cases. At least one case will involve a potential 10(j) situation. The remainder will be left to the reviewer's discretion.

Phase 2 – Implementation

Number of cases reviewed: SEVEN (7). Cases selected will include two cases in which the Region issued a long form dismissal and one case in each of the following categories: complaint, non-Board settlement, informal Board settlement, litigated ULP trial, and formal compliance.

Phase 3 – R Case Review

Number of cases reviewed: THREE (3). One case in each of the following categories: pre-election hearing, post-election hearing, large election (typically <100 employees). In each of these matters, the review will cover the entire file.

Strategic Goal 2 (Mission):

Promptly and fairly investigate and resolve all questions concerning representation of employees.

Objective:

1. Achieve established performance measures for the timely resolution of all questions concerning representation of employees.

Initiatives:

1. Achieve established performance measures for the resolution of representation cases.
2. Ensure that all matter before the Agency are handled in a fair and consistent manner.

Goal 2, Initiative 1 – Performance Measures

Measure 1: The percentage of representation cases resolved within 100 days of filing the election petition.

This measure focuses on the time taken to resolve a representation case, including time spent on both the General Counsel and the Board sides of the Agency.

An employer, labor organization, employee, 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 wishes 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, as opposed to a Regional Director directing an election, if appropriate. This measure reflects the percentage of representation cases closed within 100 days. A case is closed when 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, such as lack of sufficient support among the bargaining unit.
- The majority of cases are resolved upon issuance of 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. The case is not closed until the challenges and/or objections have been resolved.

In FY 2019, the NLRB exceeded its goal of 85.8 percent by 5.0 percent to close all representation cases within 100 days from the filing of the petition.

GOAL NO. 2, Initiative 1, Measure 1				
Percentage of Representation Cases Resolved Within 100 Days				
YEAR	FY 2019	FY 2020	FY 2021	FY 2022
TARGET	85.8%	85.8%	85.9%	85.9%
ACTUAL	90.7%			

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

Goal 2, Initiative 2 - Performance Measures:

Measure 1: Ensure that Regional case processing procedures evolve with the Agency's strategic goals and technological advancements.

- Migrated 100% on-premise workloads to Microsoft Azure Cloud services, providing high availability, scalability, redundancy, and increased performance.
- Replaced legacy NxGen E-Service platform with My Account Portal and integration with login.gov, enhanced E-Filing and customer notification.
- Refreshed NxGen product suite technology stacks and adopted latest Azure Cloud services, provided increased security and improved case processing procedures.
- Developed and implemented the Translation Information Management System (TIMS) which allows Agency employees the ability to request interpreting and translation services to a group of Language Specialists within the Agency, enhancing case processing.

Measure 2: Conduct annual quality reviews of Regional representation case files and institute modifications to case processing as appropriate.

The quality review process is broken down into the three phases below. The reviewer looks at the quality of case work to ensure Regions follow current guidance and Board law.

Phase 1 – Investigation and Determination

Number of cases reviewed: TEN (10). Cases selected will include one 8(a)(1) case, two 8(a)(3) cases, one 8(a)(5) case, and two CB cases. At least one case will involve a potential 10(j) situation. The remainder will be left to the reviewer's discretion.

Phase 2 – Implementation

Number of cases reviewed: SEVEN (7). Cases selected will include two cases in which the Region issued a long form dismissal and one case in each of the following categories: complaint, non-Board settlement, informal Board settlement, litigated ULP trial, and formal compliance.

Phase 3 – R Case Review

Number of cases reviewed: THREE (3). One case in each of the following categories: pre-election hearing, post-election hearing, large election (typically <100 employees). In each of these matters, the review will cover the entire file.

Strategic Goal 3 (Support):

Achieve Organizational Excellence and Productivity in the Public Interest

Objectives:

1. Recruit, develop, and retain a highly motivated, productive, talented, and diverse workforce to accomplish our mission.
2. Promote a culture of professionalism, mutual respect, and organizational pride.

Initiatives:

1. Invest in and value all employees through professional development, workplace flexibilities, fair treatment, and recognition of performance in the public interest.
2. Develop and implement recruitment strategies to ensure a highly qualified, productive and diverse workforce.
3. Improve employee satisfaction and employee engagement.
4. Ensure that employees understand the Agency's mission and how they contribute to its accomplishments.
5. Cultivate and promote Agency programs that encourage collaboration, flexibility, diversity and mutual respect to enable individuals to contribute to their full potential.

Strategic Goal 3 is a management strategy-based goal that is comprised of two objectives with their own set of initiatives. Each initiative has a set of measures that were created in order to identify the management actions that need to be taken to achieve the goal. For the full outline of the goal please see Appendix D on page 179.

Organizational Excellence ensures the ongoing efforts to engage and motivate employees will increase the commitment to the Agency mission. These efforts will also attract qualified and diverse applicants, to improve the quality and productivity of the Agency. The continuous commitment of assessing the organizational excellence enables the Agency to proactively enhance the organization's overall service and commitment to customers and employees. Accomplishments in FY 2019 include:

Employee Development

The Agency continued to move forward with the transition to USA Performance.

- » The transition of all employees to the automated performance management system was concluded effective June 1, 2019.
- » The performance management team responded to questions and assisted all employees during their transition.

- » Office of Human Resources (OHR) continues to transition appraisals for all Agency employees to Electronic Official Personnel Folder (eOPF) from the USA Performance system.
- Office of Employee Development (OED) offered monthly webinars for administrative professionals, periodic retirement seminars, and other training topics in addition to the robust catalog of online training content covering general skills, technical topics, and legal education.
- OED launched an online Individual Development Plan (IDP) form and conducted training on the IDP process and form for employees and supervisors.
- Human Capital Planning Officer (HCPO) developed a draft Human Capital Operating Plan pursuant to the newly revised regulations at 5 CFR 250. The draft outlines human capital goals, objectives, and strategies and is currently being reviewed by management.
- The Agency continued to comply with OPM's hiring reform efforts by using the 80-day hiring model.
- The Office of Equal Employment Opportunity (OEEEO) participated as resource personnel on the General Counsel's Joint Labor-Management EEO Advisory committee, enabling employee participation as agents of diversity and inclusion, through their collective-bargaining representative.
- During FY 2019 the Security Branch reduced the number of backlogged reinvestigations from 462 to 336.

Workforce Management

- The Agency continued to provide information and pertinent training regarding disability in the workforce, workplace laws and regulations, as well as information on Agency recruitment. OHR embarked on a new partnership with the Senior Community Employment Service Program (SCSEP) affiliates for the Agency's Headquarters office and initiated a new partnership with Melwood, an organization that employs individuals with differing abilities.
- OHR continued to validate that employees have performance plans through its new USA Performance reporting system.
- OHR management team continued to revise its New Employee Orientation (NEO) to ensure a unified and stellar presentation to new employees. Some of the changes in FY 2019 include:
 - » Personalized orientation specifically to the orientee
 - » Information about the Employee Assistance Program and eOPF
 - » Included policy documents such as Equal Employment Opportunity (EEO) policy statement, Policy statement on the Prevention of Unlawful Harassment, including Sexual Harassment and the Alternative Dispute Resolution (ADR).
- OEEEO submitted the Agency's annual Management Directive (MD 715) Report to the EEOC during the 4th quarter of FY 2019.

- » OEEEO held 2 quarterly meetings with a cross section of organizational units, including the OHR, OED, the Division of Operations-Management (Ops) and the OCIO, to build a fully integrated model EEO program under MD 715 goals.
- OEEEO collaborated with OHR to develop revisions to the Agency's Reasonable Accommodation Procedures, in order to comply with guidance from the EEOC.

Motivation

- HCPO conducted 17 Employee Viewpoint Survey (EVS) organizational assessments with senior executives on the 2018 EVS results which became available in FY 2019 for review and analysis. The assessments focused on identifying Agency trends/barriers behind low survey scores; reviewing and prioritizing targeted areas of change; identifying outcomes that enable the organization to transition to higher EVS scores; identifying best practices for managing staff to higher levels of engagement; and action planning efforts for challenge areas.
- The HCPO completed a comprehensive analysis of the 2018 Federal Employee Viewpoint Survey (FEVS) results and provided each division/office with a comprehensive organizational assessment briefing of the EVS results.
 - » Included in the comprehensive analysis were discussions of strategies with leadership to promote higher employee participation.
 - » The strategies involved the HCPO building successive weekly communications with managers and supervisors during the survey administration period that encourage all employees to participate; developing a communication plan that provides division/office heads with a weekly report on their organization's participation levels; leveraging an EVS Management Toolkit for management to promote the EVS; and distributing an EVS promotional flyers in NLRB's work space that promotes the survey administration period.
 - » Additionally, the HCPO fostered greater transparency with the Agency's EVS action planning efforts surrounding EVS results and encouraged an open two-way communication between leadership and employees on the EVS results.
 - » Leadership committed to make a more concerted effort to both transmitting and receiving feedback information, which would inherently translate into a higher employee participation rate in the EVS. The NLRB's 2018 EVS participation rate exceeded the 2018 governmentwide EVS participation rate by 21 percentage points.

Strategic Goal 4 (Support):

Manage Agency resources efficiently and in a manner that instills public trust.

Objectives:

1. Use information and technology to monitor, evaluate, and improve programs and processes in order to accomplish the Agency's mission and increase transparency.
2. Evaluate and improve the Agency's Outreach Program.
3. Conduct all internal and external Agency business in an ethical and timely manner.

Initiatives:

1. Improve the productivity of the Agency's case management by standardizing business processes in a single unified case management system.
2. Achieve more effective and efficient program operations in the NLRB administrative functions by automating and improving processes and information sharing within the Agency.
3. Effective management of fiscal resources.
4. Right-sizing and closing Field Offices and Headquarters office space by up to 30% over the next five years in accordance with GSA guidelines.
5. Enhance Agency's Outreach Program.
6. Promote an ethical culture within the NLRB through leadership, communications, awareness, resources, and oversight.
7. Respond to internal audits in a timely manner.
8. Respond to external audits in a timely manner.
9. Respond to FOIA and other public inquiries in a timely manner.

Strategic goal 4 consists of management strategies that are comprised of three objectives. Each set of objectives has its own set of initiatives. Each initiative has a set of measures that were created in order to identify the management actions that need to be taken to achieve the goal. For the full outline of the goal please see Appendix D on page 179.

Federal Employees are charged with managing programs and federal funds in an efficient and effective manner. As stewards of these federal funds, the Agency is making every effort to instill public trust. Accomplishment in FY 2019 include:

Information and Technology:

The Agency uses an electronic filing program (E-file) to allow constituents to electronically file documents with the Agency. In FY 2019:

Number of Documents Received	79,381
Number of E-Filings Received	49,852
Total Number of parties E-Serviced Decisions	41,689
Number of E-Deliveries of Case Documents	5,695
Number of Board and ALJ Decisions E-Served	656

Providing accessible information to the public is an important part of the NLRB's mission:

Total Number of Case Documents Available for Public Access	1,489,477
Number of NLRB Document Types Available for Public Access	560

Please see <http://www.nlr.gov/open/public-documents> for a list of the document types available to the public and <https://www.nlr.gov/news-outreach/graphs-data> for updated metrics for FY 2019 Charges & Complaints, Petitions & Elections, Decisions, Litigation, Remedies, Recent Filings and Tally of Ballots.

- To streamline Agency processing, the Administrative Systems Team focused on Business Process Automation using SharePoint as the platform. The Administrative System's team is in the process of automating over 200 of the Agency's processes/forms using SharePoint, InfoPath, web services, and Microsoft Azure components. The business analysts continue to collect requirements and document the process flows, while the developers work to complete the automation of the process. Following are the processes that were either completed or are ongoing in FY 2019:
 - » Case Records Unit Weekly Statistics
 - » Facilities Request enhancements
 - » Form 13 – Purchase Request
 - » Form 4197 – Employee Exiting
 - » Bicycle Benefits Program Reimbursement Certification
 - » HR Employee Suggestion Form
 - » HR Workforce Relations Activity Tracker
 - » HR Performance Management Activity Tracker
 - » Individual Development Plan
 - » Records Disposition
 - » Request a Photographer

- » Request for Retirement Annuity Estimate
- » Temporary Records Loan
- » Transcripts and Exhibits
- » Transportation Reimbursement Form
- The Administrative System's Team also completed the following:
 - » Deployed 95 Polycom Trio8500 conference phones in the Agency to enhance the unified communications platform.
 - » Deployed an enhancement to the Personnel Security Case Management System (PSCMS) to automate the background initiation process. NLRB sponsors enter the candidate's information which is routed to the candidate to complete the form which is then routed to the Security Branch for processing. This remediated a security risk for securely routing sensitive information.
 - » Developed and implemented the Translation Information Management System which allows Agency employees the ability to request interpreting and translation services to a group of Language Specialists within the Agency. The system manages the workflow processes associated with the request and the allocation of resources to manage the requests.
 - » Developed Google Analytics Dashboard for public website metrics which allows Agency employees the ability to view metrics related to most popular pages, number of visitors per month, most popular browsers & devices. Date ranges can be set to show trends. Added additional separate dashboards for the eFiling, eService, and Charge and Petition applications.
 - » Implemented enhancements to the Agency Events and Announcements system to assist with communication to all Agency employees.
 - » Completed the design and development of a Performance Awards Matrix system that allows for the collection of performance data from managers and supervisors to easily calculate awards for employees.

Financial Management:

- For FY 2019 the Budget Office engaged in quarterly reviews with Program Managers (PMs) throughout the Agency providing accountability to ensure the execution of funds was completed efficiently and effectively throughout the year. The quarterly reviews also provided the opportunity to take remedial action to address any budget issue identified in the 2019 Spend Plan Reviews with Leadership.
 - » The Budget Office developed a Spend Plan Analysis tool to track expenses and report on projections, allowing routine briefings to Agency Leadership on budget status, projections, and estimated funding surplus levels
- The OCFO addressed three audit recommendations from previous audits during FY 2019:

- » Audit of FY 2014 Financial Statements (OIG-F-19-15-01) – Recommended a reconciliation for each GSA agreement to ensure that the obligations were valid and the documentation existed to clearly support that the goods or services were ordered.
- » Audit of the FY 2016 Financial Statements (OIG-F-21-17-01) – Recommended an assessment of the OCFO organizational structure to ensure that the OCFO was adequately staffed to comply with accounting and financial reporting standards.
- » Audit of the Data Act: (OIG-AMR-83-18-01) – Recommended that the OCFO coordinate with other users of the Oracle financial system to determine if they had similar Data Act findings.
- The OCFO coordinated a multiple organization coalition that included OMB, IRS, and the U.S. Department of the Treasury to address questions on backpay and travel.
- The OCFO submitted all quarterly and annual reporting requirements to Congress, OMB, and the U.S. Department of the Treasury.
- In response to the OMB Directive M-19-13, strategic sourcing/category management initiatives, the Agency collects data on those initiatives and reports out annually on progress towards increasing the utilization of the initiatives.
- Small Business Goal Status

Category	Gov-Wide Goal	2019	2018	2017	2016	2015
Small Business	23%	68.78%	65%	41.70%	36.51%	39.75%
Women Owned Small Business	5%	9.83%	5%	7.47%	11.19%	12.46%
Small Disadvantaged Business	5%	58.48%	52%	28.33%	8.02%	10.71%
Service-Disabled Veteran Owned Small Business	3%	0.75%	1.62%	2.42%	0.31%	0.97%
HUBZone	3%	38.57%	23.33%	3.43%	2.13%	2.27%

Office Space Management

- In accordance with GSA guidelines, 15 field offices have been identified to undergo a space reduction as part of the five-year project plan to reduce the NLRB footprint.

Agency Outreach

The Agency furthered its outreach to unrepresented employees, unions, and small business owners in the following ways:

- Distributed newsletters describing recent case developments electronically using govdelivery in the Regional Offices.
- Produced an informational pamphlet entitled “Protecting Employee Rights,” which contained an expanded discussion of an employee’s right to engage in concerted activity and other rights under the NLRA, which is available on the NLRB website and in hard copy, in English and Spanish.

- Maintained webpages for each individual Regional office that contain news articles relevant to that region. To ensure that these pages remain fresh, news articles are tagged by the Agency's Office of Congressional and Public Affairs and automatically loaded on the Region's webpage.
- Maintained an internal SharePoint database through which the Agency outreach coordinators post and share outreach materials and participate in a discussion board sharing ideas and leads for outreach.
- Maintained an interactive smart phone app which provides information about employer and employee rights under the NLRA and contact information.
- Conducted regional outreach that provided information about the Act and the Agency's processes to unions and small business owners. This included outreach to law firms representing employers, employees, and unions, and organizations representing trade groups (such as LERA and SHRM), professional societies, and groups sponsored by various embassies and consulates, including Mexico, El Salvador, Guatemala, and the Philippines. The Agency also appeared on radio programs to discuss various aspects of the Act. Various offices also participated in Labor Rights Week, sponsored by various Central American consulates.

To better educate workers and employers the NLRB:

- Continued to partner with DHS, DOL (Wage and Hour Division (WHD), Occupational Safety and Health Administration (OSHA), and Office of Federal Contract Compliance Programs (OFCCP)), OSC, Department of Justice (DOJ), EEOC in an Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment, and Immigration Laws.
- Partnered with DOL, EEOC, and DOJ to develop and implement employer.gov, a companion site to worker.gov, to provide information about the Agency relevant to employers.

Ethics:

The Ethics Staff continued to communicate with Agency leadership about the status of ethics projects and to discuss notable ethics issues.

In coordination with the Agency's General Counsel and Chairman, the Ethics Staff:

- Prepared the 2019 Annual Ethics Briefing for all Public and Confidential Financial Disclosure filers as required by the Office of Government Ethics (OGE). Presented an in-person briefing during the Agency's Leadership Conference held in D.C. on September 18, 2019. The training covered conflicting financial interests, impartiality, misuse of position, gifts, the NLRB's Supplemental Regulations, and the importance of protecting confidential Agency information.
- Analyzed data obtained through the 2019 Ethics Survey and provided several recommendations to leadership to continue to develop a robust ethical culture at the NLRB.
- Reissued Combined Federal Campaign (CFC) guidance memo and Job Aid to all Agency employees. These documents covered the relevant rules and regulations, including those applicable to CFC events, and discussed the importance of preventing coercive activity when a supervisor serves as a campaign coordinator and/or keyworker for the CFC.

- Reissued Speaking Engagement memo to all Agency employees. This document provided general guidance about speaking engagements and emphasized the difference between speaking in an official versus a personal capacity. In addition, the memo encouraged the use of the NLRB Waiver Addendum which affirms that by consenting to the recording of a presentation, an NLRB employee is not permitting the sponsor to use their official title or likeness to advertise or endorse the recording, or endorse any other products or services offered by the organization.
- Developed a short five-question survey designed to evaluate the effectiveness of the NLRB's ethics program. The collected information will help engage Agency leadership in discussions about how to continue to build a strong and robust ethical culture at the NLRB.

The Ethics Staff continued to seek out opportunities to educate all Agency employees about their ethical obligations.

During Fiscal Year 2019, the Ethics Staff:

- Distributed reminder email which highlighted the limitations the Hatch Act places on federal employee partisan political activity. The message also summarized additional Office of Special Counsel (OSC) guidance issued in July which addressed federal employee conversations about current events, policy issues, and matters of public interest that, depending on the circumstances, could violate the Hatch Act.
- Revised and reissued the Outside Employment memo to all Agency employees which provided a reminder that outside employment includes the provision of unpaid services such as charitable work and speaking and writing engagements. This memo also served as a reminder that the NLRB's Supplemental Regulations require all employees to obtain written approval before engaging in outside employment.
- Distributed short one-page email blasts designed to remind all employees about key ethics regulations to include: misuse of position, financial conflicts, the Hatch Act limitations, impartiality in performing official duties, gifts, and the importance of protecting confidential Agency information.

Measure	Goal	2019	2020	2021	2022
Percentage of inquiries resolved within 5 business days	85%	88.9%	-	-	-
Percentage of submitted financial disclosure reports reviewed within 60 days	100%	100%	-	-	-

- During FY 2019, the Ethics Office received 839 inquiries. 743 (88.6%) were resolved within 5 business days.
- All financial disclosure reports filed in FY 2019 were reviewed within 60 days.
- In mid-January ethics staff began to receive Public (OGE 278e) and Confidential (OGE 450) Financial Disclosure reports for CY 2018. In all cases, the review of each report was completed within 60 days of receipt and filers were notified of any real or potential conflicts.

During FY 2019, the Agency completed its review of:

- 140 Monthly Transaction Reports (OGE 278T)
- 83 Annual Public Financial Disclosure Reports (OGE 278e)
- 29 Annual Confidential Financial Disclosure Reports (OGE 450)
- 12 Termination Reports (OGE 278)
- 5 New Entrant Public Financial Disclosure Reports (OGE 278e)

During FY 2019 the Ethics staff continued to use technology to help filers complete filing requirements under the Ethics in Government Act (EIGA).

Ethics staff supported filers through:

- One-on-one assistance with online filing systems.
- Job Aids and checklists to help filers accurately report their financial holdings.
- Monthly reminders which emphasize the importance of reviewing brokerage statements for transactions which are reportable under the STOCK Act.

Internal and External Audit Responses:

- Responses to internal and external auditors have been prepared and all deadlines were successfully met in 2019.

FOIA:

From October 1, 2018 to September 30, 2019, the Agency:

- Received 1,351 FOIA requests in FY 2019 and responded to 1,419 (FY 2019 + prior year backlog/pending) of those requests within 1-20 days. Thus, 69.65 percent of the FOIA requests were processed within the 20-day statutory time period.
- Sought an extension of time to process three requests beyond the 20-day period for FOIA requests received. Thus, 0.22% of the FOIA requests were extended an additional ten days on the due date.
- The Agency received 11 FOIA appeals and responded to 12 (FY 2019 + prior year backlog/pending) FOIA appeals. The average amount of days to process these appeals was 17.33 working days. The lowest number of working days to process these appeals was three. The highest number of working days to process these appeals was 22. Eleven appeals were processed within 20 days. Thus, 91.66 percent of the FOIA appeals were processed within the 20-day statutory time period.
- Did not see an extension of time for the FOIA appeals received in FY 2019.

Reports

Each year, the FOIA Branch prepares an Annual Report, which contains statistics on the number of FOIA requests and appeals received, processed, and pending during FY 2019, and the outcome of each request. The NLRB FOIA Annual Reports and the NLRB FOIA Quarterly Reports are available on the:

1. NLRB website at <https://www.nlr.gov/news-outreach/foia>,
2. DOJ website at <https://www.justice.gov/oip/reports-1>, and
3. FOIA.gov website <https://www.foia.gov/>.

The FOIA requires each agency Chief FOIA Officer to report to the Attorney General on their performance in implementing the law and the efforts to improve FOIA operations. The NLRB Chief FOIA Officer Reports are publicly available on the:

1. NLRB website at: <https://www.nlr.gov/news-outreach/foia>, and
2. DOJ website at <https://www.justice.gov/oip/reports-1>.

FACTORS AFFECTING AGENCY PERFORMANCE

Various factors can affect Agency performance as a whole, in addition to each goal, objective, and performance measure contained in the NLRB's strategic and annual performance plans. These factors include case intake, settlements, Board Member vacancies, the potential effect of case precedent and statutory changes, nationwide work-related activities by external entities, technological advances, and economic fluctuations.

Case Intake

The Agency's FY 2019 case intake totals 20,647 and includes 18,552 ULP cases and 2,095 representation cases. NLRB Board agents effectively and efficiently process all cases that are brought to the Agency by the general public. Comprehensive and complex matters that come before the Agency are often attributable to external factors, such as: ongoing nationwide efforts to improve the wages and working conditions of workers in the retail and fast food industries; the increased prevalence and evolving tools and usage by employees of technology and social media in and outside of the workplace to discuss terms and conditions of employment with one another, and the related handbook provisions and workplace rules generated therefrom; expanded use of mandatory arbitration clauses in employment matters; bankruptcies; jurisdiction over enterprises; increased understanding of statutory application in non-union workplaces; and difficult questions concerning single, joint, and successor employer relationships, and supervisory status, as well as defining employees covered under the NLRA.

Settlements

The initial processing and disposition of new case filings in the Regional Offices drives the intake for other stages of the casehandling pipeline. Over the past few years, more than 90 percent of those cases in which merit is found are settled without formal 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. When the process becomes formal and litigation takes over, Agency costs increase.

Board Member Terms

The staggering of Board Member terms and the filling of a vacant seat by an individual who will not be a Board Member for a full-term impairs Board productivity, as successive Board Members often have to get up to speed on the same case matter. Currently, the Board is not at full composition since one vacancy caused by the expiration of a Board Member's terms has not been filled.

Potential Effect Of Statutory Changes

As a general matter, changes in the law can 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 corresponding increases in investigations and proceedings conducted by Agency personnel. Statutory changes may also directly mandate additional litigation by the Agency, e.g., seeking injunctive relief in federal district court.

RELIABILITY OF PERFORMANCE DATA

Program Evaluation

The NLRB uses various governance mechanisms to evaluate whether programs are achieving their GPRA goals and other performance targets. Both the Board and General Counsel regularly track the status of all of their respective cases to determine performance against yearly targets that support the Agency's strategic goals and measures.

On the Board-side of the Agency, a group of senior management officials, including, among others, the Deputy Chief Counsels of each of the Board Members and the Executive Secretary, periodically review the status of cases, prioritize cases, and develop lists of cases that the Board Members jointly focus on in order to facilitate the issuance of decisions in those cases. These representatives also report back to the Board Members on performance data and staff workload, among other issues. The Board has an electronic case management system that captures all case events and milestones in a database from which case production reports are generated. The Board Members also regularly meet and communicate with each other to discuss case priorities and the overall processing of cases.

In FY 2019, the Division of Judges closed 141 hearings, issued 159 decisions and achieved 483 settlements. The NLRB also tracks how the various circuit courts have treated the Board's cases on appeal. In FY 2019, the United States Court of Appeals ruled on Board decisions in 50 enforcement and review cases. Of those cases, 90 percent were enforced or affirmed in whole or in part.

The General Counsel's Office has long had an evaluation program in place to assess the performance of its Headquarters and Regional operations. The Division of Operations-Management regularly reviews case decisions to determine the quality of litigation. Other NLRB offices such as the Office of Appeals, Division of Advice, Division of Legal Counsel 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.

With respect to the Regional Offices, the Quality Review Program of the General Counsel's 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 assess, among other things, the quality and completeness of the investigative file, the implementation of the General Counsel's initiatives and priorities, Impact Analysis prioritization of cases, and compliance with

Agency decisions. Personnel from the Division of Operations-Management also conduct site visits during which they evaluate Regional casehandling and administrative procedures. In addition, to assessing the quality of litigation, Operations-Management reviews all ALJ and Board decisions that constitute a significant prosecutorial loss. The Regional Offices' performance with regard to quality, timeliness, and effectiveness in implementing the General Counsel's priorities is also incorporated into the Regional Directors' annual performance appraisals.

The Office of the General Counsel regularly monitors Regional Office activities, including the settlement and litigation success rates of ULP cases. In FY 2019, Regional offices settled 99.3 percent of meritorious ULP cases and won 90 percent of ULP and Compliance matters in whole or in part. A total of over \$56 million was recovered in backpay, fines, dues and fees and over 1,400 employees were offered reinstatement. As to monitoring representation cases, in FY 2019, 98.2 percent of all initial elections were conducted within 56 days of filing.

In addition to the evaluation of Regional Office activities, the Office of the General Counsel monitors the litigation success rate before district courts with regard to injunction litigation. In FY 2019, the Injunction Litigation Branch received 77 cases from Regional Offices to consider whether to seek discretionary injunctive relief under Section 10(j) of the Act. The Board authorized the Injunction Litigation Branch to proceed with 10(j) actions in 13 cases in FY 2019, and Regional Offices filed 10(j) petitions in 10 cases. 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 91 percent. The Office of the General Counsel continues to focus its attention on "nip-in-the-bud cases," where a nascent organizing campaign is being unlawfully squelched, and on first outreach bargaining and successor cases, where the relationship between the employer and the union is most fragile.

As previously mentioned, while there are a few outcome-based performance measures associated with the two support goals, the majority of them are management strategy driven. The Agency collects quarterly performance metrics and strategies on the two Agency support goals, as well as utilizing NxGen reports for the mission-related goals. The metrics and strategies are tracked and monitored throughout the year. The compiled data is then presented in this document.

The data reported by OCIO comes from NxGen. The FOIA Branch maintains their case data in FOIAonline, which is a FOIA tracking and processing web tool. FOIAonline also generates annual, quarterly, and other workload reports to effectively monitor all aspects of FOIA case handling. The Ethics Office uses an electronic spreadsheet to track when an employee reaches out to the Office with an ethics inquiry. The Office logs the question and collects several pieces of data about the inquiry, including the date that the inquiry was made and the date that guidance was provided. The spreadsheet calculates the number of days between the two dates in order to track inquiry response times.

03

Financial Section



Protecting Democracy in
the Workplace Since 1935

A MESSAGE FROM THE CHIEF FINANCIAL OFFICER



November 14, 2019

I am pleased to present the NLRB consolidated financial statements for the Fiscal Year 2019 Performance and Accountability Report. For the sixteenth consecutive year an independent auditor has rendered an unmodified or “clean” opinion on the NLRB financial statements. The auditors identified a single significant deficiency in our financial reporting during this audit cycle.

The Office of the Chief Financial Officer (OCFO) is responsible for improving efficiency and effectiveness in financial operations, reliability of financial reporting, transparency of financial data, and compliance with applicable laws and regulations. The OCFO’s focus continues to be on process improvement and internal controls.

During my first year at the NLRB we performed an organizational assessment of the OCFO organization and matched skills with tasks to produce efficiencies, in addition to identifying capability gaps. We trained and hired new personnel to strengthen the OCFO organization.

In April 2019, the OCFO brought on board a new Budget Officer who has made significant improvements to the NLRB budget process. The Budget Office adopted a transparent and repeatable investment plan that prioritized resource allocation for the Agency.

During Fiscal Year 2019, the OCFO implemented the SmartPay 3 Program for both the purchase and travel cards. The implementation was a coordinated effort among Citibank, the IBC, and the NLRB. As part of the implementation effort, the OCFO held group training, web-training, and one-on-one training sessions.

During FY 2019, the OCFO addressed three audit recommendations from previous audits:

- Audit of FY 2014 Financial Statements (OIG-F-19-15-01) – Recommended a reconciliation for each GSA agreement to ensure that the obligations were valid and the documentation existed to clearly support that the goods or services were ordered.
- Audit of the FY 2016 Financial Statements (OIG-F-21-17-01) – Recommended an assessment of the OCFO organizational structure to ensure that the OCFO was adequately staffed to comply with accounting and financial reporting standards.

- Audit of the Data Act: (OIG-AMR-83-18-01) – Recommended that the OCFO coordinate with other users of the Oracle financial system to determine if they had similar Data Act findings.

I wish to acknowledge and thank the OCFO staff for their dedication to the NLRB's mission and their diligent efforts in maintaining an unmodified opinion on our financial statements. Their demonstrated knowledge of the NLRB programs and processes and their constant desire to provide excellent customer service is commendable.

The NLRB maintains its commitment to continuous improvement in financial management, internal controls, and in the production of timely, accurate, reliable, and transparent financial information.



Isabel Luengo McConnell
Chief Financial Officer

INDEPENDENT AUDITOR'S REPORT

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

November 15, 2019

To: John F. Ring
Chairman

Peter B. Robb
General Counsel

From: David P. Berry
Inspector General

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

Subject: Audit of the National Labor Relations Board Fiscal Year 2019 Financial Statements
(OIG-F-24-20-01)

This memorandum transmits the audit report on the National Labor Relations Board (NLRB) Fiscal Year 2019 Financial Statements with the Management Response.

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 annual audited financial statements. We contracted with Castro & Company, 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 19-03, *Audit Requirements for Federal Financial Statements*, issued by the Office of Management and Budget.

In connection with the contract, we reviewed Castro & Company'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. Castro & Company is responsible for the attached auditor's report dated November 15, 2019, and the conclusions expressed in the report. However, our review disclosed no instances where Castro & Company did not comply, in all material respects, with generally accepted government auditing standards.

We appreciate the courtesies and cooperation extended to Castro & Company and our staff during the audit.



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Phone: 703.229.4440
Fax: 703.859.7603
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Independent Auditor's Report on the Financial Statements

Inspector General
National Labor Relations Board

We have audited the accompanying balance sheets of the National Labor Relations Board (NLRB) as of September 30, 2019 and 2018 and the related statements of net cost, changes in net position, and budgetary resources for the fiscal years then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with U.S. generally accepted accounting principles; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with the 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. 19-03, *Audit Requirements for Federal Financial Statements*. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the agency's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the agency's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Opinion on the Financial Statements

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the NLRB as of September 30, 2019 and 2018, and the related statements of net cost, changes in net position, and budgetary resources for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Independent Auditor's Report

Page 2

Required Supplementary and Other Information

U.S. generally accepted accounting principles require that the information in the *Required Supplementary Information*, including *Management's Discussion and Analysis*, be presented to supplement the basic financial statements. Such information, although not part of the basic financial statements, is required by the Federal Accounting Standards Advisory Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. The supplementary information is the responsibility of management and was derived from, and relates directly to, the underlying accounting and other records used to prepare the basic financial statements. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

The information presented in the Messages from the Chairman, General Counsel, and Chief Financial Officer, list of Board Members, Other Accompanying Information, and Appendices is presented for purposes of additional analysis and are not required as part of the basic financial statements. Such information has not been subjected to auditing procedures applied by us in the audit of the basic financial statements, and accordingly, we do not express an opinion or provide any assurance on it.

Other Reporting Required by Government Auditing Standards

In accordance with U.S. *Government Auditing Standards* and OMB Bulletin No. 19-03, we have also issued our reports dated November 15, 2019, on our consideration of NLRB's internal control over financial reporting and the results of our tests of its compliance with certain provisions of laws, regulations, and other matters that are required to be reported under *Government Auditing Standards*. The purpose of those reports is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing and not to provide an opinion on the internal control over financial reporting or on compliance. Those reports are an integral part of an audit performed in accordance with U.S. *Government Auditing Standards* and OMB Bulletin 19-03 in considering the NLRB's internal control and compliance and should be read in conjunction with this report in considering the results of our audit.

This report is intended solely for the information and use of management and the NLRB Office of Inspector General, OMB, U.S. Government Accountability Office, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.



Alexandria, VA
November 15, 2019



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**Independent Auditor's Report on Internal Control over Financial Reporting Based on an
Audit of Financial Statements Performed in Accordance with
*Government Auditing Standards***

Inspector General
National Labor Relations Board

We have audited the financial statements of the National Labor Relations Board (NLRB), which comprise the balance sheets as of September 30, 2019 and 2018, and the related statements of net cost, changes in net position, and budgetary resources for the years then ended, and the related notes to the financial statements, and have issued our report thereon dated November 15, 2019. 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. 19-03, *Audit Requirements for Federal Financial Statements*.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements as of and for the year ended September 30, 2019, we considered NLRB's internal control over financial reporting by obtaining an understanding of the design effectiveness of NLRB's internal control, determining whether controls had been placed in operation, assessing control risk, and performing tests of NLRB's controls as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not to express an opinion on the effectiveness of NLRB's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of NLRB's internal control over financial reporting. We limited our internal control testing to those controls necessary to achieve the objectives described in the OMB Bulletin No. 19-03. We did not test all internal controls relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982 (FMFIA), such as those controls relevant to ensuring efficient operations.

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 combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the 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 purposes described in the first paragraph of this section and would not necessarily identify all deficiencies in internal control over financial reporting that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. We consider the following deficiency in internal control, described below, to be a significant deficiency.

Independent Auditor's Report on Internal Control
Page 2

NLRB's Response to Findings

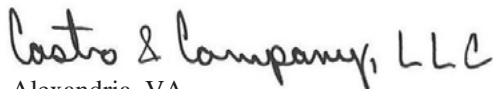
NLRB's response to the findings identified in our audit is described in the accompanying Audit Response Letter. NLRB's response was not subject to auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on it.

We noted less significant matters involving internal control and its operations which we have reported to NLRB management in a separate letter dated November 15, 2019.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and the result of that testing, and not to provide an opinion on the effectiveness of NLRB's internal control. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering NLRB's internal control. Accordingly, this communication is not suitable for any other purpose.

This report is intended solely for the information and use of the management and NLRB Office of Inspector General, OMB, the Government Accountability Office, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.



Alexandria, VA
November 15, 2019

SIGNIFICANT DEFICIENCY

I. Improvements in the Internal Controls over Accounts Payable and Quality Reviews of Related Accrued Expenses are Needed

During our interim and year-end procedures, we continued to note differences as a result of improper recording of accruals. Certain accruals recorded by Finance were incorrect, as methodologies used contained accruals for services for which invoices were already paid and recognized in the General Ledger, but for which the accrual was not adjusted, causing overstatements of Accounts Payable (A/P) and understatements of the Undelivered Orders (UDO) balance. In addition, certain accruals were incorrect as a result of NLRB not properly accruing for the correct or entire period for which services had been received, resulting in an understatement of the A/P balance and overstatement of the UDO balance.

During our testing of UDOS and A/P, we selected a sample of 31 UDO transactions as of 9/30/19. The purpose of our testing was to assess management controls and compliance with applicable laws, regulations, and procedures relative to the NLRB's open obligations and corresponding accruals to support the validity of the UDO balances. The results of our year-end testing identified the following exceptions in eight (8) of the 31 transactions tested:

- Differences noted as a result of incorrect accruals: Four (4) under-accruals totaling \$188,715 that understated the A/P balance and overstated the UDO balance and four (4) over-accruals totaling \$1,090,006 that overstated the A/P balance and understated the UDO balance as of 9/30/19. The total absolute error was \$1,278,721 as of 9/30/19.

Additionally, we selected a sample of 28 UDO transactions as of 6/30/19. The results of our interim testing identified the following exceptions in seven (7) of the 28 transactions tested. Exceptions noted included the following:

- Differences noted as a result of incorrect accruals: Six (6) under-accruals totaling \$645,090 that understated the A/P balance and overstated the UDO balance and one (1) over-accrual totaling \$72,424 that overstated the A/P balance and understated the UDO balance as of 6/30/19. The total absolute error was \$717,515 as of 6/30/19.

During our audit procedures over Property, Plant and Equipment, we also noted that NLRB recorded an accrual of \$2,290,657 for rent expense for the month of September 2019 without going back to ensure NLRB had not already been billed as of 9/30/19. This error was discovered as a result of our audit procedures and corrected by NLRB after we brought this error to management's attention.

In prior fiscal years, we recommended that the accrual methodologies be reviewed and approved by appropriate program office personnel or the Contracting Officer's Representative (COR), with quality control review procedures and approvals performed and documented by Finance personnel. However, NLRB did not perform a sufficient detailed review of accruals to ensure estimates were accurate and complete, including going back after initial accruals were calculated to verify if the amount was still correct.

Independent Auditor's Report on Internal Control
Page 4

Additionally, we recommended that NLRB management train responsible program office and Finance personnel on how to monitor obligations and report accruals on an ongoing basis to enhance compliance with the applicable requirements. However, NLRB has not conducted proper training with appropriate program office personnel or CORs, at minimum, on an annual basis.

GAO's *Standards for Internal Control in the Federal Government* states,

Internal control comprises the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity. Internal control serves as the first line of defense in safeguarding assets. In short, internal control helps managers achieve desired results through effective stewardship of public resources.

Transactions are promptly recorded to maintain their relevance and value to management in controlling operations and making decisions. This applies to the entire process or life cycle of a transaction or event from its initiation and authorization through its final classification in summary records. In addition, management designs control activities so that all transactions are completely and accurately recorded.

Management clearly documents internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination. The documentation may appear in management directives, administrative policies, or operating manuals, in either paper or electronic form. Documentation and records are properly managed and maintained.

Management perform ongoing monitoring of the design and operating effectiveness of the internal control system as part of the normal course of operations. Ongoing monitoring includes regular management and supervisory activities, comparisons, reconciliations, and other routine actions. Ongoing monitoring may include automated tools, which can increase objectivity and efficiency by electronically compiling evaluations of controls and transactions.

Management should remediate identified internal control deficiencies on a timely basis.

Statement of Federal Financial Accounting Standards No. 1, *Accounting for Selected Assets and Liabilities*, states,

Accounts payable are amounts owed by a Federal entity for goods and services received from, progress in contract performance made by, and rents due to other entities...When an entity accepts title to goods, whether the goods are delivered or in transit, the entity should recognize a liability for the unpaid amount of the goods. If invoices for those goods are not available when financial statements are prepared, the amounts owed should be estimated.

Independent Auditor's Report on Internal Control
Page 5

Not performing an accurate review of open obligations, expenditures, and accounts payable resulted in an under/overstatement in A/P and under/overstatement in the obligations. As a result, NLRB recorded an overstatement of \$3,191,948 in accounts payable and related expenditures on the financial statements originally submitted for audit as of and for the period ended September 30, 2019.

Additionally, the financial data used to generate management and financial reports required by applicable laws and regulations was not accurate. As a result, those charged with governance did not have reliable financial information to manage the operations of the Agency.

Recommendation:

1. Develop an accounts payable accrual worksheet for open contracts that is updated by the CORs to track period of performance, contract type, services/goods received, invoices received and paid, and accrual methodology used that is submitted, along with adequate supporting documentation, to Finance for discussion as part of the accrual review process.

Our testing confirmed a lack of remediation of previous years' findings; therefore, additional recommendations are not deemed necessary at this time.



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**Independent Auditor's Report on Compliance and Other Matters Based on an Audit of
Financial Statements Performed in Accordance with *Government Auditing Standards***

Inspector General
National Labor Relations Board

We have audited the financial statements of the National Labor Relations Board (NLRB), which comprise the balance sheets as of September 30, 2019 and 2018, and the related statements of net cost, changes in net position, and budgetary resources for the years then ended, and the related notes to the financial statements, and have issued our report thereon dated November 15, 2019. We conducted our audit in accordance with the 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. 19-03, *Audit Requirements for Federal Financial Statements*.

The management of NLRB is responsible for complying with laws and regulations applicable to NLRB. 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. 19-03, including the requirements referred to in the Federal Managers' Financial Integrity Act of 1982. We limited our tests of compliance to these provisions, and we did not test compliance with all laws and regulations applicable to NLRB.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the NLRB's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, and contracts, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests of compliance disclosed no instances of noncompliance or other matters that are required to be reported herein under *Government Auditing Standards* or OMB Bulletin No. 19-03.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of compliance and the results of that testing, and not to provide an opinion on the NLRB's compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the NLRB's compliance. Accordingly, this communication is not suitable for any other purpose.

This report is intended solely for the information and use of management and the NLRB Office of Inspector General, OMB, Government Accountability Office, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

Castro & Company, LLC

Alexandria, VA
November 15, 2019

NLRB RESPONSE TO AUDIT REPORT



United States Government
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570

Date: November 13, 2019

To: David Berry
Inspector General

From: Isabel Luengo McConnell
Chief Financial Officer

Subject: Response to the Audit of the National Labor Relations Board Fiscal Year 2019
Financial Statements

Purpose:

The purpose of this memorandum is to respond, on behalf of the NLRB management, to your audit report on the NLRB's fiscal year 2019 Internal Control over Financial Reporting. The Agency is proud of its success in achieving an unmodified audit opinion on the financial statements for the 16th consecutive year.

The Agency acknowledges the significant deficiency stating that *Improvements in the Internal Controls over Accounts Payable and Quality Reviews of Related Accrued Expenses are Needed*. The Agency concurs and is committed to resolving the audit finding. Below is the Agency's response to the auditor's recommendation.

Recommendation:

Develop an accounts payable accrual worksheet for open contracts that is updated by the CORs to track period of performance, contract type, services/goods received, invoices received and paid, and accrual methodology used that is submitted, along with adequate supporting documentation, to Finance for discussion as part of the accrual review process.

Response:

Management agrees with the recommendation. The Agency will develop an accrual worksheet, review the current accrual methodology, and train responsible program offices and the Office of the Chief Financial Officer personnel on how to monitor obligations and report accruals on an ongoing basis to improve the accuracy of accrual estimates.

Finally, the Agency remains committed to refining and improving the policies, processes, and procedures of financial reporting and internal controls to fully address the auditor's recommendation.



Isabel Luengo McConnell
Chief Financial Officer

PRINCIPAL FINANCIAL STATEMENTS

Auditor's Reports And Principal Financial Statements

Principal Statements

National Labor Relations Board

Balance Sheets

As of September 30, 2019 and 2018

(in dollars)

	FY 2019	FY 2018
Assets		
Intragovernmental:		
Fund Balance with Treasury (Note 2)	\$ 51,973,066	\$ 43,448,897
Advances and Prepayments (Note 4)	49,554	59,774
Total Intragovernmental Assets	52,022,620	43,508,671
Assets with the Public		
Accounts Receivable, net (Note 5)	625,898	600,481
Advances and Prepayments (Note 4)	31,004	12,243
General Property, Plant, and Equipment (Note 6)	11,316,933	6,087,336
Total Assets	\$ 63,996,455	\$ 50,208,731
Liabilities		
Intragovernmental:		
Accounts Payable	\$ 1,973,223	\$ 1,010,586
Employer Contributions and Payroll Taxes Payable	1,717,598	1,571,250
FECA Liabilities (Note 7)	399,534	334,950
Total Intragovernmental	4,090,355	2,916,786
Liabilities with the Public		
Accounts Payable	3,829,180	4,551,660
Fed Employee Benefits - FECA Actuarial Liability (Note 7)	2,273,821	2,422,305
Unfunded Annual Leave (Note 7)	12,495,788	13,204,349
Employer Contributions and Payroll Taxes Payable	6,530,974	5,979,961
Total Liabilities	29,220,118	29,075,061
Commitments and Contingencies (Note 16)		
Net Position		
Unexpended Appropriations	38,099,936	30,504,674
Cumulative Results of Operations	(3,323,599)	(9,371,004)
Total Net Position	34,776,337	21,133,670
Total Liabilities and Net Position	\$ 63,996,455	\$ 50,208,731

The accompanying notes are an integral part of the financial statements.

National Labor Relations Board**Statements of Net Cost**

For the Years Ended September 30, 2019 and 2018

(in dollars)

	FY 2019	FY 2018
Program Costs		
Resolve Unfair Labor Practices		
Net Cost	\$ 245,273,507	\$ 251,776,211
Resolve Representation Cases		
Net Cost	27,768,358	27,944,055
Total		
Costs	273,041,865	279,720,266
Net Cost of Operations	\$ 273,041,865	\$ 279,720,266

The accompanying notes are an integral part of the financial statements.

National Labor Relations Board
Statements of Changes in Net Position

For the Years Ended September 30, 2019 and 2018
(in dollars)

	FY 2019	FY 2018
Unexpended Appropriations		
Beginning Balance	\$ 30,504,674	\$ 19,008,616
Budgetary Financing Resources:		
Appropriations Received	274,224,000	274,224,000
Other Adjustments	(2,418,984)	(1,252,112)
Appropriations Used	(264,209,754)	(261,475,830)
Total Budgetary Financing Sources	7,595,262	11,496,058
Total Unexpended Appropriations	\$ 38,099,936	\$ 30,504,674
Cumulative Results of Operations		
Beginning Balances	\$ (9,371,004)	\$ (6,189,191)
Budgetary Financing Sources:		
Appropriations Used	264,209,754	261,475,830
Other	0	6,783
Other Financing Sources (Non-Exchange):		
Imputed Financing	14,879,516	15,062,623
Other	0	(6,783)
Total Financing Sources	279,089,270	276,538,453
Net Cost of Operations	(273,041,865)	(279,720,266)
Net Change	6,047,405	(3,181,813)
Cumulative Results of Operations	(3,323,599)	(9,371,004)
Net Position	\$ 34,776,337	\$ 21,133,670

The accompanying notes are an integral part of the financial statements.

National Labor Relations Board
Statements of Budgetary Resources

For the Years Ended September 30, 2019 and 2018

(in dollars)

	FY 2019	FY 2018
Budgetary Resources		
Unobligated balance from prior year budget authority, net (discretionary and mandatory)	\$ 6,523,120	\$ 6,306,237
Appropriations (discretionary and mandatory)	274,224,000	274,224,000
Total Budgetary Resources (Note 14)	\$ 280,747,120	\$ 280,530,237
Status of Budgetary Resources		
New Obligations and upward adjustments (total)	269,317,032	272,431,239
Unobligated balance, end of year:		
Apportioned, unexpired accounts	5,699,240	3,034,382
Unexpired unobligated balance, end of year	5,699,240	3,034,382
Expired unobligated balance, end of year	5,730,848	5,064,616
Unobligated balance, end of year (total)	11,430,088	8,098,998
Total Budgetary Resources	\$ 280,747,120	\$ 280,530,237
Outlays, Net:		
Outlays, net (total) (discretionary and mandatory)	\$ 263,280,846	\$ 261,654,930

The accompanying notes are an integral part of the 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; but 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 (ALJ), 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 records of the NLRB in accordance with U.S. generally accepted accounting principles (GAAP), and the form and content requirements of the Office of Management and Budget (OMB) Circular No. A-136, *Financial Reporting Requirements, revised as of June 28, 2019*. 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. 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's 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). A note disclosure is required to

provide information about its fiduciary activities. Fiduciary cash and other assets are not assets of the Federal Government.

The Statement of Net Cost presents the gross costs of programs, reported by program 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*, June 28, 2019.

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 United States Standard General Ledger (USSGL) at the transaction level. The Agency uses the Department of the Interior's financial management system and that system is FFMIA compliant. Thus, the Agency's financial management system complied with the requirements of FFMIA and produced records in accordance with USSGL at the transaction level.

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:

ULP Cases are initiated by individuals or organizations through the filing of a charge with the NLRB. Unless a settlement is reached, the NLRB Regional Office will issue and prosecute a complaint against the party being charged if it believes that the charge has merit. A complaint that is not settled or withdrawn is tried before an 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.

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.

All cases are assigned unique tracking numbers, with the letter "C" designating Unfair Labor Practices cases, and the letter "R" designating Representation cases. The percentage of new cases filed for each type of case drives the program breakout for financial reporting purposes. Please see chart below with the calculations for FY 2019 and FY 2018, through September 30.

	FY 2019	FY 2018
	Percentage	Percentage
C Cases (Unfair Labor Practices)	90%	90%
R Cases (Representation)	10%	10%
	100%	100%

C. Budgets and Budgetary Accounting

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

Budgetary accounting measures appropriation and consumption of budget/spending authority 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 an obligation is incurred. Only those liabilities for which valid obligations have been established are considered to consume budgetary resources.

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, space occupancy, travel, and contractual service costs.

For accounting purposes, appropriations are recognized as financing sources, and as 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 Treasury, and the agency's records are reconciled with those of Treasury. Funds with Treasury represent the NLRB's right to draw on the Treasury for allowable expenditures.

In addition, funds held with Treasury also include escrow funds that are not appropriated but are fiduciary in nature. The fiduciary funds are not recognized on the Balance Sheet.

F. Accounts Receivable, Net of Allowance for Doubtful Accounts

Accounts Receivable typically consists of two types of debts: payroll-related debts due to the NLRB from Agency employees and debts due to the NLRB from third party sources for invitational travel. 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.

G. General Property, Plant and Equipment

General property, plant and equipment consist primarily of telephone systems, bulk purchases, computer hardware and software, and leasehold improvements.

Personal Property. Personal property costing \$15,000 or more per unit is capitalized at cost and depreciated using the straight-line method over the useful life. Bulk purchases of large quantities of property that would otherwise fall under the individual capitalization threshold are capitalized if the total purchase is \$100,000 or more. 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 three to twelve years. There are no restrictions on the use or convertibility of general property, plant and equipment.

Real Property. Real property consists of leasehold improvements on GSA leased space which cost \$100,000 or more. Leasehold improvements are recorded as construction in progress until the Agency has beneficial occupancy of the space, and then the costs are moved to the Leasehold Improvements account for amortization over the remaining life of the lease.

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 development 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 standard useful life for IUS has been established as three years, in order to most accurately match expenses with the time period in which the benefits are received from the software. The NLRB uses the straight-line method of amortization.

The Next Generation Case Management System (NXGen) project was a multiple year undertaking in which a large portion of the system was rolled out in FY 2011. This IUS project continues to include adjustments to the asset. IUS additionally supports systems such as e-Gov, E-Filing, and provides the public with web-based access to NLRB data.

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 and amortized accordingly, as described above.

H. Non-Entity Assets

Assets held by the NLRB that are not available to the NLRB for obligation are considered non-entity assets. Non-Entity assets, restricted by nature, consist of miscellaneous receipt accounts. The

miscellaneous receipts represent court fines and fees collected for Freedom of Information Act (FOIA) requests that must be transferred to the Treasury at the end of each Fiscal Year.

I. 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 of the NLRB arising from other than contracts can be abrogated by the government, acting in its sovereign capacity.

J. Liabilities Not Covered by Budgetary Resources

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, 2019 and 2018, respectively.

Federal Employees Workers' Compensation Program

The Federal Employees 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.

Due to the small number of claimants, the NLRB uses the methodology of reviewing the ages of the claimant on a case-by-case basis to evaluate the estimated FECA liability. The determination was made to use the life expectancy of claimants of 84.0 and 86.5 years for male and female, respectively.

Accrued Annual Leave

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

K. 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.

L. 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.

M. 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.

N. Life Insurance and Retirement Plans

Federal Employees Group Life Insurance (FEGLI) Program

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

Retirement Programs

The NLRB employees participate in one of two retirement programs, either the Civil Service Retirement System (CSRS), a defined benefit plan, or the Federal Employees Retirement System (FERS), a defined benefit and contribution plan. On January 1, 1987, FERS went into effect pursuant to Public Law 99-335. Most 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. The maximum amount of base pay that an employee participating in FERS may contribute is \$19,000 in calendar year (CY) 2019 to this plan. Employees belonging to CSRS may also contribute up to \$19,000 of their salary in CY 2019 and receive no matching contribution from the NLRB. The maximum for catch-up contributions for CY 2019 is \$6,000. For CY 2019, the regular and catch-up contributions may not exceed \$25,000. The sum of the employees' and the NLRB's contributions are transferred to the Federal Retirement Thrift Investment Board. For FERS employees, the Agency also contributes the employer's share of Medicare.

OPM is responsible for reporting assets, accumulated plan benefits, and unfunded liabilities, if any, applicable to CSRS participants and FERS employee 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 SFFAS Number 4, Managerial Cost Accounting Concepts and Standards for 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 (FEHB) and the FEGLI programs are reported by OPM rather than the NLRB.

SFFAS Number 4, Managerial Cost Accounting Concepts and Standards for 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.

As of year ended September 30, 2019, the NLRB, utilizing OPM provided cost factors, recognized \$5,415,804 of pension expenses, \$9,439,315 of post-retirement health benefits expenses, and \$24,397 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$14,879,516 as an imputed financing source to the extent that these intragovernmental expenses will be paid by OPM. In comparison, in FY 2018, the NLRB recognized \$5,038,665 of pension expenses, \$9,998,886 of post-retirement health benefits expenses, and \$25,072 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$15,062,623 as an imputed financing source from OPM.

O. 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) and commercial copier leases. NLRB leases all buildings through GSA. The NLRB pays GSA a standard level user charge for the annual leases, which approximates the commercial rental rates for similar properties. The NLRB is not legally a party to any building lease agreements, and it does not record GSA-owned properties as assets. The real property leases are for NLRB's Headquarters and Regional Offices, and the personal property leases are for Fleet vehicles and copiers.

P. 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.

Q. Use of Management Estimates

The preparation of the accompanying financial statements in accordance with GAAP 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.

R. Tax Status

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

S. Subsequent Events

Subsequent events and transactions occurring after September 30, 2019 through the date of the auditor's opinion have been evaluated for potential recognition or disclosure in the financial statements. The date of the auditors' 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. NLRB's 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, 2019 and September 30, 2018 consists of the following:

<i>(in whole dollars)</i>	FY 2019	FY 2018
Entity Fund Balance with Treasury	\$51,973,066	\$43,448,897
Non-Entity Fund Balance with Treasury	0	0
Total	\$51,973,066	\$43,448,897

Fund Balance with Treasury by Fund Type:

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 (non-entity).

Status of Fund Balance with Treasury as of September 30, 2019 and September 30, 2018 consists of the following:

Fund Balance with Treasury:

<i>(in whole dollars)</i>	FY 2019	FY 2018
Status of Fund Balance with Treasury		
Unobligated Balance		
Available	\$ 5,699,240	\$ 3,034,382
Unavailable	5,730,848	5,064,616
Obligated Balance Not Yet Disbursed	40,542,978	35,349,899
Total	\$ 51,973,066	\$ 43,448,897

Note 3. Fiduciary Activities

The NLRB Escrow Accounts are fiduciary deposit funds presented in accordance with SFFAS 31, Accounting for Fiduciary Activities, and OMB Circular A-136, Financial Reporting Requirements. The Escrow Accounts, Restraining Order Cases (420X6152) and Backpay Cases (402X6154) are

authorized by Title 31 United States Code, Section 3513 and Title 29 United States Code, Section 151-169. The Escrow Account, Restraining Order Cases (420X6152) was established in FY 2019 to separate cases related to protective restraining orders.

The NLRB investigates and adjudicates disputes between private sector employees, employers, and unions. Part of the NLRB's mission is to determine if the employer (or sometimes the union), herein referred to as respondent, engaged in unfair labor practices, which resulted in a loss of employment or wages for the affected employees (discriminatees). In some cases, the respondent is ordered to pay monetary amounts to the discriminatees. These payments can be paid by respondent directly to the discriminatees or they can pay the NLRB, which disburses the funds to the discriminatees. NLRB is authorized to collect funds on behalf of discriminatees.

The fiduciary funds collected by NLRB are held in escrow and represent funds that were collected as part of the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings. The NLRB collects the funds, and then distributes them to employees, unions, pension funds, or other discriminatees in the settlement. The NLRB has the option to invest funds in Federal government securities, if the funds will remain in escrow for a lengthy period. During FY 2019, no fiduciary funds were invested.

NLRB executed a Memorandum of Understanding (MOU) with the Treasury that established agreed upon policies and procedures for investing monies in, and redeeming investments held by, the fiduciary fund account in Treasury. NLRB manages these funds in a fiduciary capacity and does not have ownership rights against its contributions and investments; the assets and activities summarized in the schedule below are not presented in the financial statements. NLRB's fiduciary activities are disclosed in this note. In FY 2019, the Escrow Account, Restraining Order Cases (420X6152) account was established and had no activity as of Fiscal Year end.

Schedule of Fiduciary Activity

As of September 30, 2019 and 2018

<i>(in whole dollars)</i>	FY 2019	FY 2018
Fiduciary net assets, beginning of year	\$7,429,889	\$2,516,279
Fiduciary revenues	2,755,845	24,018,804
Disbursements to and on the behalf of beneficiaries	(2,796,180)	(19,105,194)
Increase (Decrease) in fiduciary net assets	(40,335)	4,913,610
Fiduciary net assets, end of year	\$7,389,554	\$7,429,889

Fiduciary Net Assets

As of September 30, 2019 and 2018

Fiduciary Fund (420X6154)	FY 2019	FY 2018
Fiduciary Assets		
Fund Balance with Treasury	\$7,389,554	\$7,429,889
Total Fiduciary Net Assets	\$7,389,554	\$7,429,889

Note 4. Advances

Intragovernmental

Intragovernmental Advances were paid to the Department of Transportation for the employee transit subsidy program.

Non-Federal

Non-Federal Advances were paid for postage meter funding.

Note 5. Accounts Receivable, Net of Allowances for Doubtful Accounts

The FY 2019 intragovernmental accounts receivable is zero and the FY 2018 amount was zero.

<i>(in whole dollars)</i>	FY 2019	FY 2018
With the public		
Accounts receivable	\$733,023	\$685,067
Allowance for doubtful accounts	(107,125)	(84,586)
Accounts receivable, net	\$625,898	\$600,481

Note 6. General Property, Plant and Equipment

General property, plant, and equipment consists 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.

<i>FY 2019 (in whole dollars)</i>	Asset Cost	Accumulated Depreciation/Amortization	Net Asset Value
Equipment	\$2,771,610	\$2,733,400	\$38,210
Construction in Progress	0	0	0
Leasehold Improvements	6,935,780	2,508,908	4,426,872
Internal Use Software (IUS)	40,402,408	36,317,389	4,085,019
IUS in Development	2,766,832	0	2,766,832
Total Property, Plant and Equipment	\$52,876,630	\$41,559,697	\$11,316,933

<i>FY 2018 (in whole dollars)</i>	Asset Cost	Accumulated Depreciation/Amortization	Net Asset Value
Equipment	\$2,896,802	\$2,798,573	\$98,229
Construction in Progress	819,775	0	819,775
Leasehold Improvements	5,882,208	1,815,330	4,066,878
Internal Use Software (IUS)	35,605,934	34,503,480	1,102,454
IUS in Development	0	0	0
Total Property, Plant and Equipment	\$45,204,719	\$39,117,383	\$6,087,336

Note 7. 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 court fines and fees collected for Freedom of Information Act requests that must be transferred to the Treasury at the end of each Fiscal Year.

The composition of liabilities not covered by budgetary resources as of September 30, 2019 and September 30, 2018, is as follows:

<i>(in whole dollars)</i>	FY 2019	FY 2018
Liabilities Not Covered by Budgetary Resources		
Intragovernmental		
FECA – Unfunded	\$399,534	\$334,950
Total Intragovernmental	\$399,534	\$334,950
Liabilities with the Public		
Estimated Future FECA	\$2,273,821	\$2,422,305
Accrued Annual Leave	12,495,788	13,204,349
Total Liabilities Not Covered by Budgetary Resources	15,169,143	15,961,604
Total Liabilities Covered by Budgetary Resources	14,050,975	13,113,457
Total Liabilities	\$29,220,118	\$29,075,061

Note 8. Non-Entity Assets

Non-Entity assets represent miscellaneous receipts collected and related accounts receivable (net of allowance for doubtful accounts). The miscellaneous receipts represent court fines and fees collected for Freedom of Information Act requests that must be transferred to the Treasury at the end of each Fiscal Year.

The composition of non-entity assets as of September 30, 2019 and September 30, 2018, is as follows:

<i>(in whole dollars)</i>	FY 2019	FY 2018
Non-Entity Assets		
Fund Balance with Treasury	\$0	\$0
Accounts Receivable	0	0
Total Non-Entity Assets	0	0
Entity Assets	\$63,996,455	\$50,208,731
Total Assets	\$63,996,455	\$50,208,731

Additionally, NLRB received a remainder interest in Florida real estate valued at approximately \$46,000 as part of a ULP case settlement. This asset is not included in the table above.

Note 9. Cumulative Results of Operations

<i>(in whole dollars)</i>	FY 2019	FY 2018
FECA paid by DOL	\$(161,687)	\$ (213,567)
FECA – Unfunded	(399,534)	(334,950)
Estimated Future FECA	(2,273,821)	(2,422,305)
Accrued Annual Leave	(12,495,788)	(13,204,349)
General Property, Plant and Equipment, Net	11,316,933	6,087,336
Other	690,298	716,831
Cumulative Results of Operations	\$ (3,323,599)	\$ (9,371,004)

Note 10. 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 has the authority to provide administrative law judges' services to other federal entities. There is no exchange revenue with the public.

<i>(in whole dollars)</i>	FY 2019	FY 2018
Resolve Unfair Labor Practices		
Intragovernmental Costs	\$79,460,104	\$55,658,126
Costs with the Public	165,813,403	196,118,085
Total Net Cost – Resolve Unfair Labor Practices	\$245,273,507	\$251,776,211
Resolve Representation Cases		
Intragovernmental Costs	\$8,995,984	\$6,177,366
Costs with the Public	18,772,374	21,766,689
Total Net Cost – Resolve Representation Cases	\$27,768,358	\$27,944,055
Net Cost of Operations	\$273,041,865	\$279,720,266

Note 11. Operating Leases

GSA Real Property. 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 with GSA will vary according to whether the underlying assets are owned by GSA or rented by GSA from the private sector. The NLRB has occupancy agreements with GSA, which sets forth terms and conditions for the space the Agency will occupy for an extended period of time. Included within the occupancy agreements 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 2020 through FY 2024.

Rental expenses for operating leases for the quarter ended September 30, 2019 were \$23,014,818 for Agency lease space and \$2,546,797 for Agency building security. For FY 2018 the operating lease costs were \$22,656,352 and the Agency building security portion was \$2,202,406.

Future Space Lease Payments

<i>(in whole dollars)</i> Fiscal Year	GSA Real Property Cost
2020	\$25,120,870
2021	\$25,874,496
2022	\$26,650,731
2023	\$27,450,253
2024	\$28,273,761
After 5 Years	\$29,121,974
Total	\$162,492,085

GSA Fleet. The future fleet payments reflect the expense for 15 vehicles used for official NLRB business throughout the United States. Expenses for the fleet vehicles for the quarter ended September 30, 2019 were \$64,361; for FY 2018 the costs were \$65,066.

Future Fleet Lease Payments

<i>(in whole dollars)</i> Fiscal Year	GSA Fleet Cost
2020	\$104,030
2021	\$107,151
2022	\$110,365
2023	\$113,676
2024	\$117,087
After 5 Years	\$120,599
Total	\$672,908

Commercial Copiers. The commercial copier rental expense reflects lease contracts for copy machines located at the NLRB Headquarters and Field Offices. For FY 2019 the commercial copier yearly contract is \$381,724; for FY 2018 the cost was \$453,838.

Future Copier Lease Payments

<i>(in whole dollars)</i> Fiscal Year	Copier Lease Cost
2020	\$154,288
2021	\$154,288
2022	\$154,288
2023	\$188,290
2024	\$193,939
After 5 Years	\$199,757
Total	\$1,044,850

Note 12. Inter-Entity Costs

Goods and services are received from other federal entities at no cost or at a cost less than the full cost to the providing federal entity. Consistent with accounting standards, certain costs of the providing entity that are not fully reimbursed are recognized as imputed cost in the Statement of Net Cost and are offset by imputed revenue in the Statement of Changes in Net Position. Such imputed costs and revenues relate to employee benefits. However, unreimbursed costs of goods and services other than those identified are not included in the financial statements.

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, 2019 and 2018 consisted of:

<i>(in whole dollars)</i>	FY 2019	FY 2018
Office of Personnel Management:		
Pension Expenses	\$5,415,804	\$5,038,665
Federal Employees Health Benefits	9,439,315	9,998,886
Federal Employees Group Life Insurance Program	24,397	25,072
Total Imputed Financing Costs	\$14,879,516	\$15,062,623

Note 13. Appropriations Received

The NLRB received \$274,224,000 in warrants for both Fiscal Years ended September 30, 2019 and 2018.

Note 14. 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 \$280,747,120 as of September 30, 2019 and \$280,530,237 as of September 30, 2018, 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 amount of budgetary resources obligated for unpaid delivered and undelivered orders was \$40,542,978 for FY 2019 and \$35,349,356 for FY 2018. The NLRB's apportioned unobligated balance available at September 30, 2019 was \$5,699,240 and at September 30, 2018 was \$3,034,382.

Note 15. Reconciliation of Net Cost to Net Outlays

SFFAS No. 53, *Budget and Accrual Reconciliation*, amended SFFAS 7, *Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting* and 24, *Selected Standards for the Consolidated Financial Report of the United States Government*, and rescinded SFFAS 22, *Change in Certain Requirements for Reconciling Obligations and Net Cost of Operations*. SFFAS No. 53 provided for the budget and accrual reconciliation (BAR) to replace the statement of financing. The BAR explains the relationship between NLRB's net outlays on a budgetary basis and the net cost of operations during the reporting period. The reconciliation starts with the net cost of operations as reported on the Statement of Net Cost and will be adjusted by components of net cost that are not part of net outlays. Common components include depreciation and gains and losses on disposition of assets and changes in assets and liabilities (e.g. accounts receivable, accounts payable and salaries and benefits) not affecting budget outlays. Net cost of operations is also adjusted by budget outlays that are not part of net operating cost. Components of budget outlays that are not part of net operating cost include acquisition of capital assets, inventory and other assets. Other reconciling differences, when applicable, include timing differences.

	Intra- governmental	With the Public	Total FY 2019
NET COST	\$88,456,088	\$184,585,777	\$273,041,865
Components of Net Cost That Are Not Part of Net Outlays:			
Property, plant, and equipment depreciation			
Other	(87,083)	(196,401)	(283,484)
Increase/(decrease) in assets:			
Accounts receivable		(625,898)	(625,898)
Other assets	49,554	31,004	80,558
(Increase)/decrease in liabilities:			
Accounts payable	(1,973,223)	(3,829,180)	(5,802,403)
Salaries and benefits	(1,717,598)	(275,270)	(1,992,868)
Other liabilities (Unfunded leave, Unfunded FECA, Actuarial FECA)	399,534	(1,565,260)	(1,165,726)
Other financing sources:			
Federal employee retirement benefit costs paid by OPM and imputed to the agency			
Total Components of Net Cost That Are Not Part of Net Outlays	(3,328,816)	(6,461,005)	(9,789,821)
Components of Net Outlays That Are Not Part of Net Cost:			
Asset Activity Summary			
Acquisition of capital assets		25,843	25,843
Total Components of Net Outlays That Are Not Part of Net Cost			
Other Temporary Timing Differences		2,959	2,959
NET OUTLAYS	\$85,127,272	\$178,153,574	\$263,280,846
Related Amounts on the Statement of Budgetary Resources			
Outlays, net			263,280,846
Distributed offsetting receipts			0
Agency Outlays, Net			\$263,280,846

Note 16. Commitments and Contingencies

In addition to future commitments discussed in Note 11, Operating Leases, NLRB is committed under obligations at year end for goods and services which have been received and not yet paid or for goods and services which have been ordered but not yet received. These are unpaid delivered and undelivered orders – See Note 14, Statement of Budgetary Resources.

The NLRB is involved in various lawsuits incidental to its operations. 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.

04

Other Information



Protecting Democracy in
the Workplace Since 1935

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

October 18, 2019

To: Board and General Counsel

From: David Berry
Inspector General

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

Subject: 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 memorandum fulfills that requirement. The information provided in this report is based upon our reviews and investigations, as well as our general knowledge and observations of the National Labor Relations Board's (NLRB or Agency) operations.

For the purpose of this report, an item can be noted as a management or performance challenge even though it is not a deficiency or within the control of the Agency. The challenges noted below are not OIG findings or matters that necessarily involve mismanagement or any type of failure on the part of the NLRB's leaders or managers. In our view, a challenge is just that, a task or endeavor that is made difficult by particular circumstances, and many of the challenges at the NLRB have been consistently similar to those at other agencies. In our prior year's memorandum, we identified five management and performance challenges.

CHALLENGES

Manage the Agency

In prior reports, we explained that because of the technical expertise required to administer the enforcement of the National Labor Relations Act (NLRA), the NLRB tends to promote its employees to management rather than recruiting seasoned managers from outside the Agency. As a result, the NLRB's management team is dominated by attorneys and examiners. Those individuals are generally smart and well-intentioned public servants who time and again demonstrate a true commitment to enforcing the NLRA; however, they rarely have the opportunities to establish and hone a broad array of management skills.

The NLRB had a significant change in leadership over the last 2 years. As noted in our prior report, the change in leadership was coupled with the loss of very senior and key Senior Executive Service personnel. New leadership is generally followed by change. Affecting change and addressing legacy issues are always challenging but doing so while rebuilding a management team is all the more difficult. Although three longer-term vacant Senior Executive Services position were filled at the Headquarters in Fiscal Year (FY) 2019, 6 of the 26 Regional Director positions were vacant at the end of the fiscal year. Despite these challenges, the General Counsel reported that, for FY 2019, the Regional Offices made what he describes as “exceptional strides to meet our strategic goal to reduce case processing time by 20% over four years.”

Manage the Agency's Financial Resources

Both the FY 2010 and FY 2011 audits of the financial statements contained a finding by the independent auditing firm that there was a significant deficiency in internal control. Although the findings were largely related to problems in the procurement process, our audit of end-of-the-year spending demonstrated that there was a lack of sound budgeting and planning processes that are essential to proper fiscal management.

In July 2012, the Board created the Office of the Chief Financial Officer (OCFO), implementing the final recommendation of the FY 2010 audit of the financial statements. That office now oversees the budget, procurement, and payment processes.

The creation of the OCFO was not a quick fix. The *Audit of the NLRB Fiscal Year 2014 Financial Statements* found both a material weakness and two matters that were each a significant deficiency in internal control. The *Audit of the NLRB Fiscal Year 2015 Financial Statements* found that the matter identified as a material weakness was not fully remediated and continued as a significant deficiency, but the other two matters were remediated. The *Audit of the NLRB Fiscal Year 2016 Financial Statements* found that the matter first identified in FY 2014 as a material weakness continued as a significant deficiency through FY 2016, and added a new matter as a significant deficiency. The *Audit of the NLRB Fiscal Year 2017 Financial Statements* found that one of the two matters that was a significant deficiency in internal control was fully remediated and the other one was remediated to the point that it was appropriate for the Management Letter.

In mid FY 2018, the Chief Financial Officer (CFO) position became vacant and an operational-side manager was designated as the Acting CFO. During that vacancy and the *Audit of the NLRB Fiscal Year 2018 Financial Statements*, we did not observe significant improvement in the management of the Agency's financial processes, and we continued to identify issues in the internal control environment involving the financial management of the Agency.

In January 2019, the CFO position was filled. The new CFO, however, inherited circumstances that appear to hinder her ability to make immediate improvements to correct prior deficiencies and address new issues. We are, however, encouraged by the new CFO's

apparent grasp of the situation and her steadfast desire to implement a well-managed financial process.

Manage the NLRB's Human Capital and Maintain the Agency's Institutional Knowledge

These two challenges are interrelated. The need to maintain a stable and productive workforce is key to the NLRB's ability to fulfill its statutory mission. Factors outside the NLRB's control that may directly affect its ability to maintain a stable and productive workforce include, but are not limited to, reduced or flat appropriations and the loss of key personnel through retirements.

In our audit work we have, over an extended period of time, observed the loss of institutional knowledge in management practices as new personnel take over key positions. In some circumstances when information about historical practices is available, the context regarding why the practice was developed has been lost with personnel changes. The challenge is to recruit qualified personnel who can improve management practices while understanding the NLRB's past practices.

The hiring freeze that was imposed in the second quarter of FY 2017 and the continual annual threats of a significant reduction in the NLRB's appropriation have made the management of human capital a *Herculean* task. In FY 2018, the Board and General Counsel began to address this issue by filling critical vacancies and offering early retirements to positions that could be eliminated or restructured.

While those attempts were a start, throughout FY 2019, as discussed above, there remained vacancies in significant management positions, and we continued to hear from Field offices that they are understaffed. The perspective of the Field offices appears to be at odds with the determination by the General Counsel regarding appropriate staffing levels based upon case processing by the individual Regional Offices. While using case intake to determine appropriate staffing levels is not new, the methodology of the calculation to determine the workforce capacity needed to process cases changed. Managing that change from both a Headquarters and Field perspective while ensuring the quality of the investigative work product and maintaining a highly motivated workforce is challenging. With regard to filling vacancies, in FY 2019 we did observe that when vacant positions are posted and then filled, there appeared to be a more orderly workforce planning process than had been in place in prior years.

Manage the Agency's Information Technology Security

The FY 2016 Federal Information Security Modernization Act (FISMA) review was the start of the change from reviewing what the Agency was doing to assessing the maturity of the Agency's information technology (IT) security processes. Our FY 2016 FISMA review noted our observation that a significant number of IT security procedures were not in place and that most of what the IT security staff was doing was on an ad hoc basis – the lowest level. During the *Audit of the NLRB Fiscal Year 2017 Financial Statements*, the auditors confirmed our observations. For the FY 2017 OIG FISMA review, the entire review was

based upon assessing the maturity of the Agency's information security program. That review found that four of the five IT security functions were at an ad hoc basis and that overall the maturity level assessment was "not effective."

Our FY 2018 OIG FISMA review found improvement with the maturity levels increasing in 26 (48 percent) of the 54 metric domains from 2017. We also reported, however, that in FY 2018 all five of the IT function areas fell short of meeting the targeted Managed and Measurable maturity level. During FY 2019, the Office of the Chief Information Officer implemented 14 of 18 the IT audit recommendations.

Implement Audit Recommendations

In last year's Top Management and Performance Challenges memorandum, we reported that the Agency had 48 open audit recommendations. Since that time, we added 37 and we closed 37 recommendations. As of October 1, 2019, there was a total of 48 unimplemented recommendations. The oldest unimplemented recommendations are from audit reports issued in FY 2015. A recommendation is not closed until we verify that the implementing action appropriately addressed the issue that necessitated the recommendation.

SUMMARY OF AUDIT AND MANAGEMENT ASSURANCES

I. Summary of Financial Statement Audit

<i>Audit Opinion:</i> Unmodified					
<i>Restatement:</i> No					
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Ending Balance
Lack of Information Technology Updated Policies and Procedures	1	0	1	0	0
Lack of Quality Control Procedures Caused Financial Reporting and Accounting Discrepancies	1	0	1	0	0
Lack of Sufficient General Information Technology Controls and Monitoring	1	0	1	0	0
Total Material Weaknesses	3	0	3	0	0

II. Summary of Management Assurances

Effectiveness of Internal Control Over Operations (FMFIA §2)

<i>Statement of Assurance:</i> Unqualified						
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
	0	0	0	0	0	0

Compliance With Financial Systems Requirements (FMFIA §4)

<i>Statement of Assurance:</i> Unqualified						
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
	0	0	0	0	0	0

IMPROPER PAYMENTS ELIMINATION AND RECOVERY IMPROVEMENT ACT

Pursuant to the Improper Payments Information Act (IPIA) of 2002 (Public Law No. 107-300), dated November 26, 2002, and amended on July 22, 2010 by the Improper Payments Elimination and Recovery Act (IPERA) of 2010 (Public Law No. 111-204), and again in 2012 with the Improper Payments Elimination and Recovery Improvement Act (IPERIA) of 2012 (Public Law No. 112-248); under the Office of Management and Budget's (OMB) Circular A-123; Appendix C guidance, all agencies under the Executive Branch of the United States are required to comply with IPERIA.

IPERIA requires agencies to review all programs and activities that they administer and identify those which may be susceptible to significant erroneous payments. For all programs and activities in which the risk of erroneous payments is significant, agencies are to estimate the annual amount of erroneous payments made in those programs.

For FY 2019, \$255,185,888 in disbursements were made, of which payroll, benefits, and travel accounted for \$213,244,733, and \$31,325,560 was disbursed in the form of inter-governmental and miscellaneous payments. The NLRB paid \$10,615,595 to vendors, or about 4% of the total disbursements. The Agency's latest IPERIA assessment and review performed by an independent consultant concluded that the NLRB program and activities are at a low risk for improper payments.

The independent review evaluated the procedures in the NLRB's payment and disbursement processes, and tested and assessed the design and effectiveness of controls. Given these controls, the IPERIA assessment estimated that the improper payments rate did not exceed \$10 million and 1.5% of the programs total expenditures, or \$100 million of the total program expenditures. NLRB estimates the improper payments rate to be at most 1.5% and the improper payment amount to be no more than \$3,827,788. Furthermore, the assessment concluded that the NLRB did not have significant improper payments. Therefore, the NLRB has effective procedures and controls in place for its payment and disbursement processes. The NLRB has reasonable assurance that controls over financial and non-financial operations are sufficient. No additional reporting requirements are necessary.

Do Not Pay (DNP) Initiative

The mission of the Treasury DNP team is to "protect the integrity of the government's payment process by assisting agencies in mitigating and eliminating improper payments in a cost-effective manner while safeguarding the privacy of individuals." The NLRB echoes that sentiment and has made eliminating improper payments one of the Agency's financial management priorities. The DNP portal is a multifaceted system that embraces resources from several agency subsystems i.e. Social Security Administration's Death Master File (DMF), GSA's System for Award Management (SAM) Exclusion Records as well as Treasury's Treasury Offset Program (TOP). DNP uses this network of

systems in order to disseminate to agencies whom should or should not receive public funds in order to reduce or prevent the likelihood of improper payments.

In FY 2019, the DNP portal vetted 10,011 payments for authenticity and validity. The number of payments made amounted to \$33,548,407 in disbursements that passed through DNP's network of red flag indicating systems. As a result, DNP identified 8 payment totaling \$503.21 that required further review because of a death record match. DNP did not identify any payments which matched a vendor name on the Excluded Parties List (EPL). DNP also identified 10 payments that were matched (AIS-Obit) however, the payee was listed as deceased when that is not the case. Of the total amount of payments made for FY 2019, 6 cases totaling \$210.28 were not adjudicated.

September 2018 - August 2019*						
	Number (#) of payments reviewed for improper payments	Dollars (\$) of payments reviewed for improper payments	Number (#) of payments stopped	Dollars (\$) of payments stopped	Number (#) of improper payments reviewed and not stopped	Dollars (\$) of improper payments reviewed and not stopped
Reviews with DMF Public	10,011	\$33,548,407	N/A	N/A	0	\$0
Reviews with SAM Exclusions Public	10,011	\$33,548,407	N/A	N/A	0	\$0

*September 2018's information was not available at the time the PAR was published last year. It was available after the PAR's publication. Therefore, the information must be included in this year's PAR.

- Payments reviewed for improper payments includes the total number of payments disbursed by the Agency through the Payments, Claims and Enhanced Reconciliation (PACER) payment system minus any payments that were excluded from matching due to (1) a missing or unmatchable TIN (DMF only) or (2) a missing name.
- Payments stopped is currently not applicable since the Do Not Pay matching and adjudication process is based on post payment results.
- Improper payments reviewed and not stopped includes the total number of matches identified by the Do Not Pay Initiative that were adjudicated as proper by the Agency.

FREEZE THE FOOTPRINT

The Agency leases all buildings under occupancy agreements with the GSA, and as such does not provide square footage to the Federal Real Property Profile (FRPP).

05

Appendices



APPENDIX A

Acronyms

ABA	American Bar Association	FISMA	Federal Information Security Management Act
ADA	Antideficiency Act	FMFIA	Federal Managers' Financial Integrity Act
ADR	Alternate Dispute Resolution	FPB	Facilities and Property Branch
ALJ	Administrative Law Judge	FPDS-NG	Federal Procurement Data System – Next Generation
AMB	Acquisitions Management Branch	FPPS	Federal Payroll and Personnel System
CCSLB	Contempt, Compliance and Special Litigation Branch	FRPP	Federal Real Property Profile
CFO	Chief Financial Officer	FY	Fiscal Year
COOP	Continuity of Operations	GAAP	Generally Accepted Accounting Principles
CWTSato	(Carlson Wagonlit) NLRB's travel Management Service	GPRA	Government Performance and Results Act
Data Act	Digital Accountability and Transparency Act	GPRAMA	Government Performance and Results Modernization Act
DCIA	Debt Collection Improvement Act	GSA	General Services Administration
DHS	Department of Homeland Security	HCPO	Human Capital Planning Officer
DMF	Death Master File	IAA	Interagency Agreement
DNP	"Do Not Pay" List	IBC	Interior Business Center
DOJ	Department of Justice	IPERA	Improper Payments Elimination and Recovery Act
DOL	Department of Labor	IPERIA	Improper Payments Elimination and Recovery Improvement Act
EEO	Equal Employment Opportunity	IPIA	Improper Payments Information Act
EEOC	Equal Employment Opportunity Commission	IUS	Internal Use Software
EVS	Employee Viewpoint Survey	MD&A	Management's Discussion and Analysis
FAR	Federal Acquisition Regulation	MOU	Memorandum of Understanding
FASAB	Federal Accounting Standards Advisory Board		
FEVS	Federal Employee View Point Survey		
FFATA	Federal Funding Accountability and Transparency Act		

NLRA	National Labor Relations Act	OGE	Office of Government Ethics
NLRB	National Labor Relations Board	OHR	Office of Human Resources
NPRM	Notice of Proposed Rulemaking	OIG	Office of Inspector General
NxGen	Next Generation Case Management System	OMB	Office of Management and Budget
OBIA	Oracle Business Intelligence Application	OSC	Office of Special Counsel
OBIEE	Oracle Business Intelligence Enterprise Edition	OSHA	Occupational Safety and Health Administration
OCFO	Office of the Chief Financial Officer	PACER	Payments, Claims and Enhanced Reconciliation
OCIO	Office of the Chief Information Officer	PAR	Performance and Accountability Report
OED	Office of Employee Development	SAM	System for Award Management
OEE0	Office of Equal Employment Opportunity	SBA	Small Business Administration
OFCCP	Office of Federal Contract Compliance Programs	TOP	Treasury Offset Program
		ULP	Unfair Labor Practice
		WHD	Wage and Hour Division

APPENDIX B

Glossary

Adjudicate: Formal judgment or decision about a disputed matter.

Adversarial: Of a trial or legal procedure in which the parties in a dispute have the responsibility for finding and presenting evidence.

Backpay: Payment for work done in the past that was withheld at the time, or for work that could have been done had the worker not been prevented from doing so.

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.

Collective Bargaining: Negotiation between organized workers and their employer or employers to determine wages, hours, rules, and working conditions.

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.

Decisions: Data related to decisions by the Board and NLRB Administrative Law Judges.

Deferral: Under certain circumstances, it may be appropriate for a Regional Director to hold up making a determination on the merits of a charge pending the outcome of proceedings on related matters. Such matters may be pending in the parties’ contractual grievance procedure or before the Agency or other Federal, State or local agencies or courts.

Expungement: When a first time offender of a prior criminal conviction seeks that the records of that earlier process be sealed, making the records unavailable through the state or Federal repositories.

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.

Injunctive Relief: A temporary remedy sought in case of egregious violations of the Act pending final action by the Board in which Counsel for the General Counsel asks a district court judge to issue an order requiring the charged party to cease and desist from engaging in violations of the Act and may also seek certain affirmative actions in order to return to status quo.

Injunctive Proceedings: The adjudicatory process by which Counsel for the General Counsel seeks injunctive relief, as described directly above, from a district court judge.

Interstate Commerce: In the U.S., any commercial transaction or traffic that crosses state boundaries or that involves more than one state. Government regulation of interstate commerce is founded on the commerce clause of the Constitution (Article I, section 8), which authorizes Congress “To regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes.”

Litigation: Data related to litigation by Board attorneys in federal court, including petitions for temporary injunctions, defending Board decisions in court, and pursuing enforcement, contempt and compliance actions.

Meritorious Unfair Labor Practice Charge: Charge allegations evidencing statutory violations.

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.

Petitioner: The party who presents a petition to the court.

Prosecutorial: Acts related to the process of litigating against a charged party when meritorious charge allegations are found.

Protected Concerted Activity: The National Labor Relations Act (NLRA) protects employees' rights to engage in protected concerted activities with or without a union, which are usually group activities (two or more employees acting together) attempting to improve working conditions, such as wages and benefits.

Remedies: Data related to remedies obtained to resolve unfair labor practices, including backpay and offers of reinstatement.

Reinstatement: To put back or establish again, as in a former position or state.

Representation Cases: Initiated by the filing of a petition – by an employee, a group of employees, a labor organization acting on their behalf, or in some cases by an employer.

Secret-ballot Elections: A voting method in which voter's choices in an election or referendum are anonymous, forestalling attempts to influence the voter by intimidation and potential vote buying.

Settlements: A resolution between disputing parties about a legal case, reached either before or after court action begins.

Sua Sponte: A Latin phrase describing an act of authority taken without formal prompting from another party.

Social Media: Various online technology tools that enable people to communicate easily via the Internet to share information and resources. These tools can encompass text, audio, video, images, podcasts, and other multimedia communications.

Status Quo: A Latin phrase meaning the existing state of affairs, particularly with regards to social or political issues.

Statutory: Required, permitted, or enacted by statute.

Taft-Hartley Act: The Labor Management Relations Act, better known as the Taft-Hartley Act (enacted June 23, 1947) is a United States federal law that restricts the activities and power of labor unions. The Taft-Hartley Act amended the NLRA, informally the Wagner Act, which Congress passed in 1935.

Temporary Injunction: A court order prohibiting an action by a party to a lawsuit until there has been a trial or other court action, the purpose of which is to maintain the status quo and preserve the subject matter of the litigation until the trial is over.

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

Union: An organized association of workers formed to protect and further their rights and interests.

Withdrawals: Case resolution resulting from a charging party or petitioner deciding to withdraw the filing of an ULP charge or representation case petition.

APPENDIX C

Historical Performance Measures for Goals 1 and 2

Goal 1: Promptly and fairly investigate, prosecute, and resolve unfair labor practices under the National Labor Relations Act.

Measure: The percentage of all meritorious unfair labor practice charges resolved by settlement or compliance with a Board Order or Court judgement within 365 days of the filing of the ULP charge.

Year	Target	Actual
FY 2014	82.5%	83.9%
FY 2015	82.5%	80.4%
FY 2016	82.6%	82.7%
FY 2017	82.7%	82.4%
FY 2018	82.8%	80.00%

Measure: The percentage of all unfair labor practice charges resolved by withdrawal, dismissal, settlement or compliance with a Board order to Court judgement within 120 days of the filing of the charge.

Year	Target	Actual
FY 2014	72.3%	72.3%
FY 2015	72.3%	70.6%
FY 2016	72.4%	70.8%
FY 2017	72.4%	68.9%
FY 2018	72.5%	69.4%

Goal 2: Promptly and fairly resolve all questions concerning representation of employees.

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

Year	Target	Actual
FY 2014	85.3%	88.1%
FY 2015	85.4%	87.1%
FY 2016	85.5%	87.6%
FY 2017	85.7%	89.9%
FY 2018	85.8%	88.8%

Historical Performance Measures for Goals 3 and 4

FY 2014 Strategic Goal 3 (Support): Achieve Organizational Excellence

Management Strategies

Objective 1: Initiative 1

- The Division of Administration (DofA) established a Human Capital Planning Section (HCPS) to administer the Agency's human capital management program. The draft Plan containing human capital goals, objectives, and strategies is expected to be completed in the first quarter of FY 15.
- Office of Human Resources (OHR) partnered with OPM's Human Resources Solutions to pilot "USA Performance", a newly developed automated web-based performance appraisal system tool. It is designed to streamline the manual performance management process and increase visibility and transparency in performance management process. The use of USA Performance aligns performance plans with strategic goals, and ensures compliance with Federal performance management regulations. The pilot began in June 2014, with performance of senior executives and the next phase will involve GS and prevailing grade employees.
- OHR meets regularly with Headquarters and field managers to assist in collaborative efforts with employees and the unions on a variety of workplace issues such as maxiflex, telework, and performance management programs.
- DofA's Security branch was successful in reducing the reinvestigation backlog to approximately 750 from 1,018. The Agency expects the office to remain on target to complete the 20 percent goal, listed in the management strategies, next year.
- The DofA's Office of Employee Development (OED) expanded Skillport training software; electronically organized its developmental resources for Field Agents, including instructor modules, videos narrative resources; developed prototypes and piloted user-friendly online training for board agents; provided teambuilding to consolidated regions; and presented a 12-hour course on the "Seven Habits of Highly Effective People" to new Regional directors and a 90 minute workshop on "Promoting a Culture of Personal Accountability" that dealt with how to motivate people to take ownership of their work, an important skill for managing teleworkers.

Objective 1: Initiative 2

- OHR began developing a Quality Assurance and Quality Control Unit to assess and improve the accountability process. The following action steps will be taken as a result of OPM's hiring reform:
 - » Evaluate current designated examining authority and merit promotion hiring timeframes;
 - » Identify the impact of negotiated agreements on hiring timelines;
 - » Analyze and recommend methods for measuring improvement in timeliness;
 - » Develop a schedule to meet hiring timeliness;
 - » Identify actions needed to address barriers;
 - » Prioritize occupations within respective divisions;
 - » Train OHR staff on all tools available through USA staffing.
- OHR has begun working with stakeholders to standardize over 1,300 of the Agency's position descriptions.
- The Agency's Office of Equal Employment Opportunity (OEEEO) timely submitted the Agency's annual MD715 report for Fiscal Year 2013 to the EEOC, which provides a demographic analysis of the Agency workforce by gender, race, national origin, and disability, in all stages of employee life (e.g., hiring, grade level distribution, training, promotions, separations).
- OEEEO also provided a State of the Agency report to senior leadership to assist with strategies and enhance the diversity of its workforce.
- OEEEO and OHR initiated a collaborative work group to develop a Strategic Recruitment Plan for the Agency. As part of the plan, OEEEO posted to its web page recruitment resources for reaching out to diverse student populations of African American, Hispanic, Asian American and Pacific Islander, and Native American populations. It also sent out email communications to these resource organizations promoting recruitment through the Agency's Honors Attorneys program. OEEEO is also developing the Special Emphasis Program Manager role for each of these populations, as well as for disabled employees and veterans, to enhance the Agency's outreach initiatives to these communities.
- The Agency hired a new Disability Coordinator, who maintains applications for applicants that have contacted the Agency to be considered for employment under the "Schedule A" Hiring Authority, and OHR plans to host a number of training presentations for managers and supervisors on "Schedule A" Hiring, as well as on the Selective Placement Program.

Objective 2: Initiative 1

- DoFA's Security Branch made improvements to its webpages, such that employees can find a host of information on physical security, personnel security, continuity of operations, classes offered by Department of Homeland Security, and policies from the Interagency Security Committee, and OPM Federal Investigative Service. Further, an Administrative Policies and

Procedures Manual (APPM) on Personnel Security was updated and published and one on Physical Security is in draft form.

- DofA's Facilities and Property Branch (FPB) developed an extensive Communication Plan that continues to inform employees about the Headquarters relocation, including managing expectations related to the cultural transition to a reduced-space work environment, and it provided physical tours. The project, which is dubbed, "Total Workplace Solutions," also includes a web page devoted to all aspects of the new relocation including timing, neighborhood businesses, furniture, technology and other requirements.
- In addition, the FPB established a Headquarters Space Advisory Committee, which includes representatives from all Divisions and both employee Unions, to communicate updates on the new Headquarter Space Initiative and keep employees throughout the workforce informed on the latest project information.
- HCPS launched a Human Capital web page in order to provide a platform to distribute a wealth of information and guidance about NLRB's human capital planning efforts.
- HCPS received and analyzed the 2013 Federal Employee Viewpoint Survey results and provided an executive level briefing to Senior Management and is in the process of doing the same with the recently published FY 14 FEVS results.
- OHR developed the Honorary Awards program, where a number of employees were acknowledged during an awards ceremony, and it implemented a regular schedule for providing service awards.

Objective 2: Initiative 2

- OHR benchmarked other agencies to identify ways to improve the on boarding program, and, along with Senior Managers, revamped the Agency's on-boarding process.
- OHR provided one-on-one and group instructions to managers to assist them in providing guidance in understanding their role in communicating expectations to Agency employees on performance management.
- The former Director of Administration produced a quarterly Significant Happenings Report to report the work of the employees within the Division to senior management, and planned a Division-wide Recognition Day to celebrate the work of the Division and foster camaraderie, which was attended by the General Counsel, Deputy General Counsel, Assistant General Counsel, and Board Members.

Objective 2: Initiative 3

- The following policy statements were released to Board agents in 2014: Equal Employment Opportunity Policy Statement; Policy Statement on the Prevention of Unlawful Harassment, Including Sexual Harassment; Alternative Dispute Resolution (ADR) Policy Statement; and the Diversity and Inclusion Policy Statement.
- The MD-715 was timely submitted electronically in first quarter of 2014 calendar year to the EEOC providing FY 13 information.

- The NLRB offered Agency-wide diversity training, which was mandatory for managers and supervisors, on Transgender in the Workplace in 2012, made the sessions available on the OED website, and issued a related Agency-wide memo.
- With encouragement from senior leadership, the OEEEO, OHR, and OED have partnered to develop a more robust diversity and inclusion training program. In furtherance of this goal, senior leaders and representatives from various divisions have attended and accessed external programs.
- In 2003, the Agency established a mentoring program on the General Counsel-side for newly-hired and newly-transferred professionals and support staff in order to support the mandate that the Agency have workforce that reflects the diversity of our Nation. In FY 2014, the General Counsel asked that the program be revamped and the Mentoring Committee is working on doing so, including exploring best practices in mentoring at other federal agencies.
- The OEEEO relies on the Agency's cadre of collateral duty Special Emphasis Program Coordinators (SEPCs) to assist the Agency in its efforts to build and maintain an inclusive work environment. OEEEO conducted four-one hour videoconference training sessions in 2013 and 2014. The training supports the SEPCs in carrying out their responsibilities and duties and also provides a forum to share ideas and best practices.
- OHR has educated and encouraged management to utilize the Local Veterans Employment Representative Program to recruit for various positions. As a result, the Agency has hired at least eight veterans through the program.

FY 2014 Strategic Goal 4 (Support): Manage Agency Resources in a Manner That Instills Public Trust

Objective 1: Initiative 1

Measure:

- The Agency's enterprise case management system, Next Generation Case Management System (NxGen), was made to replace 11 separate legacy systems and integrate into a single unified solution that leverages multiple technologies.

NxGen presently manages:	
Internal Users	1,350
Cases	263,355 (+10%*)
Case Actions of the Agency	766,343 (+27%*)
Documents, images, and videos, each linked to its Action and Case	4,678,794 (+47%*)

* All percentages are year-over-year calculations

Measure:

- The Agency soon will complete the consolidation of its separate legacy case tracking systems into an enterprise case management solution, a success that is rare within the Federal government. The last remaining Agency Office, the Contempt, Compliance, and Special Litigation Branch, will be migrated into NxGen beginning in the first quarter of FY 2015.

Measure:

- In FY 2014, the Agency expanded its electronic distribution of case documents with an E-Delivery pilot involving six Regions, one party (USPS) and new 10 document types. The pilot recently has been expanded to two document types for all Regions. To date, 2,101 documents have been sent to the USPS electronically, resulting in notable savings to the NLRB and a great convenience to the USPS.

10/1/2013 – 9/30/2014	
Number of E-Filings Received	29,127 (+15%*)
Number of Documents Received	43,031 (+13%*)
Number of Board and ALJ Decisions E-Served	737
Total Number of parties E-Served Decisions	55,191 (+3%*)
Number of E-Deliveries of Case Documents	2,101 (new process)

* All percentages are year-over-year calculations

Measure:

- The NLRB is committed to achieving the goals set forth in the President's Open Government Directive. The three principles of transparency, participation, and collaboration inform current and future plans for the Agency's information systems. With the near complete implementation of the NxGen, the Agency is able to provide improved information regarding its cases and significantly increase the number and type of case documents made available to the public. In FY 2014, the Agency also made substantial progress towards a new external search interface and public data warehouse that will continue to deliver on the goals of Open Government.

Number of NLRB Document Types Available for Public Access	197
Total Number of Case Documents Available for Public Access	346,109

Please see <http://www.nlr.gov/open/public-documents> for a list of the document types available to the public.

Objective 1: Initiative 2

Measure:

- In FY 2013, the Agency made the decision to expand the capabilities of the Office 365 Suite and utilize the cloud-based SharePoint offering. The Office 365 SharePoint solution provides all of the necessary components of a technology service catalog and complements the existing Intranet. In FY 2014, the Agency's governance and development teams focused on streamlining business processes through forms automation with workflow and routing.
 - » As an example of these efforts, and to support the Agency's new Collective Bargaining Agreement, the Administrative Systems team recently completed the development of and is piloting a comprehensive solution to automate the processes for requesting, routing and approval, and reporting for the following schedules: Telework, Alternate Work (e.g., Gliding Flex, Maxi Flex and 5-4-9), and Leave. Upon approval by a supervisor or manager, the requests are created as items on a shared Outlook calendar for each individual office so that all employees can determine where to contact someone if they are working, but not physically in the office. All approved items are then made available to the individual office's timekeeper for filing, processing and record keeping. Aggregate reports are also available to HR, which will significantly reduce manual data calls that are performed each year in preparation for reports sent to the Office of Personnel Management (OPM).

Measure:

- Currently, the Agency utilizes disparate networks for its data and video conferencing services and manages 52 legacy phone systems from different voice service providers in the Field and Headquarters. The segregation of data, voice, and video services results in an inefficient use of Agency resources and creates communication and collaboration silos within critical business processes. Additionally, the Agency's present communications infrastructure provisions remote access for certain business processes only to Agency laptops, with limited support for mobile and tablet devices.
- The objectives of the Agency's Unified Communication and Collaboration (UCC) effort are to provide enhanced functionality to Agency staff while achieving cost savings through such strategies as consolidating networks and taking advantage of lower cost technical alternatives and contract vehicles. Specifically, the Agency is trying to create a modern single unified communications platform and network to empower Agency personnel to communicate with voice, video and data from all locations including the office, at home and on the road. The Agency awarded a UCC contract on September 24 and the Agency expects the implementation to take between eight and 12 months. After the initial investments in the UCC build-out and end-user equipment, the Agency expects total network services costs to be in line with the current separate allocations for data, voice and video networks, and anticipates the enhanced services to demonstrably improve administrative efficiencies.

Measure:

- With the increasing requests for collaboration, the Agency embarked upon efforts to implement SharePoint team sites to manage the need for document collaboration, discussion forums, wiki pages, and site mailboxes. Team sites are being created for all departments and divisions so that each office will have a secure place to store documents, create conversations, receive email alerts when changes occur, and collaborate on work products. Additionally, individual team sites are being created to support the various needs of the Agency. For example, to assist with the reduction of printed materials for conferences, team sites were created to review/edit presentations and conference materials and then store all materials to be made available to the participants. Furthermore, the Agency is addressing the need for document collaboration by geographically dispersed employees by providing access to the Office Online applications. This allows multiple employees the ability to simultaneously work on Word, Excel and PowerPoint documents, which provides increased collaboration and avoids confusion with managing multiple versions of documents that then need to be merged together.

Objective 1: Initiative 2

Measure:

- All required reports to external regulatory bodies were prepared in accordance with established time lines.

Measure:

- OCFO has developed a formalized annual training plan for all allowance holders. During FY14, finance-related training was held as part of the Office Managers and Field Managers trainings. Topics included Oracle Federal Financial processes, eTravel processes, and Federal Travel Regulations.

Measure:

- The OCFO Budget office has worked closely with the program offices and NLRB Senior Leadership to develop a detailed budget spend plan which serves to inform NLRB management for decision making.

Measure:

- During FY15 OCFO Finance Office plans to communicate obligation status reports to program offices through an automated monthly email. The development of the report has been completed within FY14 and the automated email generation will begin in FY 15. This report will help program managers to monitor their budgets at a more detailed level.

Measure:

- The Contracting Officers as well as the purchase card holders utilize the General Services Administration's (GSA), Federal Strategic Sourcing Initiative (FSSI) in the ordering of supplies and services. By doing so, the NLRB has increased its utilization of strategic sourcing from a savings rate of 14.47 percent in FY13 to 18 percent. In FY14, the NLRB increased its utilization of strategic sourcing higher with a savings rate of 34 percent; yielding a savings of \$106,168.

Measure:

- As demonstrated in the chart below, the NLRB increased the percentage of contract awards to small, disadvantaged owned businesses from Fiscal Year 2012 to Fiscal Year 2013 in all categories. During Fiscal Year 2014, the NLRB awarded the Unified Communications contract almost \$2M to a large business which impacted the small business categories. The Acquisition Management Branch will focus on making small businesses the supplier of choice in FY 2015.

Fiscal Year	Total Small Business	Woman Owned	Small Disadvantaged	Veteran Owned
FY 2012	31.3%	7.9%	12.3%	3.9%
FY 2013	34.2%	17.9%	7.4%	4.9%
FY 2014	29.1798%	12.4208%	10.1716%	4.4219%

Objective 2: Initiative 1**Management Strategies:**

- The Agency formed an outreach committee, comprised of board agents from divisions, branches and offices throughout the Agency. The committee continues to explore new modes and methods to educate the public, particularly those, such as youth and immigrant populations, that may be unfamiliar with the Agency and the Act and may be more vulnerable to exploitation due to their lack of knowledge of workplace rights.
- In order to educate more audiences through non-traditional outreach, particularly those prone to exploitation, the Agency is trumpeting successes and recent cases of interest, as well as including human interest stories, so that the public can more easily relate to the information being shared. The CPAO is issuing news releases of recent cases, such as Board and court decisions, settlement agreements, and cases involving injunctive relief or compliance.
- The Agency is invigorating local relationships for joint outreach and local working group forums where there are regular meetings with board agents from other agencies to work on various joint projects/materials. These federal, state and local agencies include, but are not limited to, EEOC, local Human Rights Commissions, Wage and Hour, OSHA, Whistleblower, Unemployment Compensation, and Office of Special Counsel. Two Headquarters managers are tasked with facilitating quarterly roundtable discussions with Regional outreach coordinators to ensure sharing of best practices/materials. The Agency is also reviewing MOUs entered into decades ago and re-establishing connections with counterparts.
- As to Letters of Agreement (LOA), the Agency is continuing efforts to reach out to foreign embassies/ministries/consulates and finalize letters of agreement for education of workers and business owners. In FY 2013, the Agency executed a LOA with the Mexican embassy and selective consulates, and in FY 2014, with the Ministry of Ecuador. Efforts to parlay those

national agreements into local agreements between Regions and consulates, and to provide materials to Regions for assistance with education per the LOA are ongoing.

- The Agency is culling and editing current outreach materials so that Board Agents have presentations with a uniform brand for Powerpoints and other formats in a central repository for use nationwide.

Objective 3: Initiative 1

Measure:

- Over the past year, the Chairman and General Counsel have jointly promoted several ethics program initiatives to all employees and visibly participated in the values-based training program presented in FY 2014. The training engaged employees in discussions of ethical decision making principles and considered how ethical decisions are made within the context of our own personal core values and those of the Agency. The training also stressed personal responsibility in the ethical decision making process.
- The General Counsel and Chairman also increased the staff of the Ethics Branch to ensure that sufficient resources are devoted to the program to facilitate effective program management and outreach to all employees.
- The NLRB Ethics Staff have met with the Board Members and the General Counsel collectively and separately to discuss a range of government and legal ethics issues.
- The NLRB's Designated Agency Ethics Official has full access to Agency leadership and can approach them for assistance when the need arises.
- In addition, the combining of the NLRB's Legal Ethics Program with the Government Ethics Program has provided NLRB employees with a cohesive, comprehensive program, thus raising the visibility of the program among employees. Employees now know that they have one office where they can go with ethics questions and issues, where their questions will be addressed from the perspective of the government's ethics rules and, for attorneys, within the parameters of their bar rules.

Measure:

- The ethics staff was proactive in expanding the number of training products available to all NLRB employees. They developed a number of one-page, easy-to-read Job Aids designed to help employees identify potential government ethics issues and provide additional guidance where informational gaps might exist. The Job Aids focused on conflicts of interest, including both financial conflicts and appearance issues; the acceptance of gifts from outside sources; the acceptance from and the giving of gifts to coworkers; the Hatch Act; outside employment; the outside practice of law; and the government's 14 Principles of Ethical Conduct. The Chairman and General Counsel promoted the usefulness of the Job Aids and identified them as a valuable tool for promoting an ethical culture at the NLRB in a memo to all NLRB employees. Job Aids on legal ethics topics have been prepared as well.

- The Ethics web page on the NLRB's Intranet was revamped and rebranded as the "Ethical Highway." Thru the web page, ethics guidance materials are readily available to all NLRB employees. Articles on ethics appear monthly in the NLRB's employee newsletter, the All Aboard, alternating between legal ethics topics and subjects involving the government's rules and regulations. Monthly tips on legal ethics ("On the Road with the Ethics Code") are issued to the NLRB's Field Offices, and each Region has an ethics coordinator who assists in promoting them.
- The New Employees Ethics Orientation has been converted to an online module in the Agency's learning management system and is assigned to new employees as part of the on-boarding process. Completion of the module can be tracked within the system. This ensures that all new employees receive an orientation to the government's ethics rules and regulations and provides a brief overview of the screening wall that separates the adjudicatory and prosecutorial sides of the Agency. Forty-seven new employees were trained in FY 2014. The module has also been packaged as a refresher course for incumbent employees, which they can access anytime through the same system.
- The Ethics Staff provided in-person briefings on both government and legal ethics to the Agency's summer student interns, student volunteers, and detailees, and will continue to provide briefings at Agency conferences where they can reach large, diverse audiences. In August 2014, an ethics presentation was provided at the NLRB Regional Management Conference in Washington, DC. During the latter portion of FY 2014, the Ethics Staff introduced two ethics training initiatives. In June, they began a new legal ethics training program for attorneys and field examiners in the NLRB's Field Offices that covers skip counsel issues and attorney-client privilege. During the course, Agency employees complete a "Testing Your Knowledge" quiz to test their knowledge in these areas.
- In September, the Ethics Staff launched a training campaign for all Agency employees on the benefits and pitfalls of using email in the NLRB's casehandling process. This training is being presented in weekly broadcasts and uses a variety of delivery methods, such as webcasts, podcasts, and job aids, to convey information. The Chairman and General Counsel promoted the program to employees prior to the launch of the campaign which helped to raise awareness of the importance of the training. The training campaign began in September and will conclude in December 2014. In addition, each weekly segment will be posted on the "Ethical Highway" page of the NLRB Insider after its initial broadcast.

Measure:

- As of September 30, 2014, 87 percent of ethics inquiries were resolved within 5 business days. Of the 557 inquiries received from November 14, 2013 through September 30, 2014, 447 required guidance memos that addressed the inquiry from the perspective of the government's ethics rules and, for attorneys, within the parameters of their bar rules.

Measure:

- As of September 30, 2014, 100 percent of the financial disclosure reports received were reviewed and certified within the 60-day regulatory time period. Where a reviewer identified

either a potential or actual conflict of interest, a memo was prepared and sent to the filer providing ethics advice and guidance.

Measure:

- The NLRB uses an electronic financial disclosure system, FDOOnline, for the filing and review of the Confidential Financial Disclosure Reports which are filed by designated employees within the Agency.
- While FDOOnline contains a component for filing Public Financial Disclosure Reports (OGE Form 278), the NLRB's Designated Agency Ethics Official decided to wait to require the electronic filing of public reports until after the Office of Government Ethics unveils the new electronic system it is currently testing. Until such time as that system is made available for use, Public Financial Disclosure Reports are still filed in paper copy, even though filers are encouraged to use the online, fillable version of the OGE Form 278 developed by the Office of Government Ethics.

Objective 3: Initiative 2

Measure

- Responses to internal auditors have been prepared and all deadlines have been successfully coordinated with auditors. There are no outstanding requests that need an agency response. The OCIO responded completely and timely to internal audits and information requests, including:
 - » Audit of the NLRB Fiscal Year Financial Statements
 - » Audit of FY 2013 Sequestration – Preparation, Implementation, and Impact
 - » Cloud Computing Audit
 - » Federal Managers' Financial Integrity Act (FMFIA)

Objective 3: Initiative 3

- Responses to external auditors have been prepared and all deadlines have been successfully coordinated with auditors. There are no outstanding requests that need an agency response.
- The CFO participated in the GAO's Regulatory Cost Benefit Analysis (GAO 451043).
- The OCIO responded completely and timely to external information requests, including:
 - » Questions posed in the Office of Management and Budget Memorandum M-14-04, Fiscal Year 2013 Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management
 - » The quarterly requirements for FISMA, Trusted Internet Connection (TIC), and Senior Agency Official for Privacy (SAOP) reporting
 - » Exhibit 53 and the corresponding Information Technology section for the Congressional Budget Justification

- » NARA's Annual Records Assessment and the OMB Records Directive (M-12-18) Report
- The OCIO responded appropriately to external technology mandates, including:
 - » Having successfully consolidated its infrastructure, the Agency is taking full advantage of cloud computing's benefits (Cloud First, *Federal Cloud Computing Strategy*) to maximize capacity utilization, improve IT flexibility and responsiveness, and minimize cost. Current efforts include utilizing:
 - » Microsoft's cloud-based, software and platform as services solutions, Office 365 and Azure for:
 - Email repositories and services; the Agency repurposed the nearly one million dollar investment in its email infrastructure to extend the lifespan of its NxGen on-premises infrastructure
 - Replacing its end-of-life collaboration platform with Microsoft's SharePoint solution
 - Supplanting its near end-of-life network attached storage and desktop backup with Microsoft's Office 365 One Drive for Business solution
 - » Amazon's Elastic Compute Cloud to:
 - Host its NxGen case management development environment
 - Save approximately \$500,000 over the next 6 years by hosting its legacy Momentum financial data rather than accepting the proposal of the Department of the Interior's (DOI) Interior Business Center (IBC)
 - » The ServiceNow cloud Information Technology Services Management (ITSM) platform, which the OCIO uses to be more transparent, provides Agency staff with multiple ways to get quality support, and as the technology enabler of its internal effectiveness initiatives
 - » GovDelivery cloud services to deliver all case participant communications, including for its electronic services initiative.
- The Agency was acknowledged for having achieved compliance with OMB's TIC Initiative, version 2.0. As such, it is one of a few small civilian agencies that have complied with this mandate

Objective 3: Initiative 4

Measure:

- Based on the information in the FOIA Tracking System, the Agency responded to initial FOIA requests on an average of seven days for requests received from October 1, 2013 to September 30, 2014. The Agency received 4,458 requests for this period and responded to 4,093 of those requests in 1-20 days. Thus, 91.81 percent of the FOIA requests were processed within the 20-day statutory time period.

Measure:

- The Agency sought an extension of time to process a request beyond the 20-day period in 7.08 percent of the FOIA requests received during this time period.

Measure:

- The Agency received 20 FOIA Appeals from October 1, 2013 to September 30, 2014. The average elapsed days to process the appeal was 22 working days. In 9 of the 20 FOIA appeals, a final determination was made within 20 working days. Two of the appeals received during this period were pending as of September 30, 2014.

FOIA centralization is underway and will be expanding in the coming months. Centralization of FOIA processing will ensure greater consistency and efficiencies in FOIA handling. In August, the NLRB's FOIA Branch hired a new Branch Chief, who has provided assistance towards full centralization of the processing of Regional FOIA requests.

FY 2015 Strategic Goal 3 (Support): Achieve Organizational Excellence

Management Strategies:

Objective 1: Initiative 1:

- The Office of Human Resources (OHR) collaborated with executive officials to refine and expand its performance management program. It held training sessions for Executive staff, Regional staff and Headquarters managers and supervisors on relevant areas of the performance management system. The training focused on the significance of establishing performance plans, providing timely mid-year progress reviews, ensuring that all employees are given appraisals, aligning performance plans with the Agency's strategic goals, and ensuring that performance plans hold employees accountable for achieving results appropriate to their level of responsibility.
- A comprehensive Strategic Human Capital Plan is being developed.
- OHR and the Division of Legal Counsel collaborate regularly to ensure adherence to Agency policies and collective bargaining agreements.
- Management and union representatives successfully work on a Reasonable Accommodations Policy, which was approved by the EEOC.
- OHR issued guidance that expounded on workplace flexibilities for childbirth, adoption, foster care and elder care.
- OHR, on behalf of various NLRB organizational units, issued many recognition awards to employees during FY 2015, including length of service, project and retirement awards.
- OHR held its annual Administrative Professional Day Recognition Ceremony on April 23, 2015 to honor the Agency's outstanding administrative professionals.
- The Agency held its second annual Honorary Awards Program, which recognized eleven employees in a number of different categories.

- The Agency developed and implemented an Agency-wide Cultural Enhancement Program, which will enhance the ability of our increasingly diverse workforce to better work together, and to better understand the cultural differences among the public we serve. The program was launched with holding an “all hands” meeting which featured internal and external speakers who addressed the importance of inclusion and civility to a productive workplace. This was followed by online interactive module and podcasts in which a diverse group of employees shared their life and work experiences, as well as videos and online forums for employees to continue to discuss these topics.
- The Office of Employee Development (OED) also developed and rolled out online training materials, enabling Headquarters employees to better utilize Outlook 2013, Lync and Word 2010, and produced scenario-based videos on ethics topics.
- OED updated the Agency’s Management Training Program by developing components such as: enhanced individual development planning and mentoring; obtaining the skills needed for the next level of management; and a pre-supervisory program.
- The General Counsel and the Deputy General Counsel addressed Regional and Headquarters staff in Divisions/Branches/Offices acknowledging and congratulating them on their achievements, and seeking suggestions for Agency improvements.

Objective 1: Initiative 2:

- OHR and the Office of Equal Employment Opportunity (OEEO) worked together on the Strategic Recruitment Committee and are developing a Strategic Recruitment Plan.
- OHR routinely partnered with the Local Veterans Employment Representative Program (LVER) to recruit for commonly filled positions, and placed at least five veterans through this program this Fiscal Year.
- The Agency regularly uses the Veteran’s Recruitment Appointment (VRA) Special Hiring Authority to place disabled veterans.
- OHR worked to bolster the integrity of its recruitment process and adherence to OPM regulations. It created a series of internal procedures and manuals that are used to correctly navigate the process. It worked diligently with OPM to redraft its Excepted Service and Pathways policies to ensure that adequate consideration is provided to viable candidates. Furthermore, in direct correlation to OPM’s Hiring Reform and the 80-Day Hiring Model, OHR attained an average 74-day hiring rate from the beginning of the process to the on-boarding of the employee for FY 2015.
- OHR implemented a process for applicants with disabilities (Schedule A) which includes a specific mailbox for these applications, retention for 30 days, and focused review when a new vacancy arises in the Agency. If an applicant’s qualifications prove to be a match for the job, that information will be forwarded to the hiring manager for further consideration. Presently, applicants are made aware of the program through Agency vacancy announcements on USAJobs and OPM’s website.

- The Agency continued to utilize USAJobs in announcing vacancies to a broad category of applicants, including veterans and persons with disabilities.
- OHR entered into a Memorandum of Understanding with the Department of Veteran Affairs to participate in the “VA for Vets Program,” in order to process non-competitive hiring actions for veterans and to take part in the in “Feds for Vets” initiative.

Objective 2: Initiative 1:

- Facilities and Property Branch (FPB) continued its extensive Communication Plan to keep Headquarters staff informed on matters related to the relocation of the Headquarters facility.
- Following the move, FPB implemented a practice requiring FPB employees to courtesy copy all branch employees on building related requests to ensure that multiple staff are not working on the same task. This practice of sharing information has also resulted in staff feeling more included and aware of work matters transpiring within the branch.
- The Security Branch continued to issue its customer feedback questionnaire, soliciting information to ensure that customer assistance is timely and professional.
- OHR improved communications by distributing numerous documents and notifications via its Ask HR Program.
- The Agency analyzed the 2014 Federal Employee Viewpoint Survey results and is implementing best practices and strategies for strengthening employee engagement and organizational performance through focused leadership and increased communication.
- In response to the Federal Employee Viewpoint Survey results from FY 2014, Agency managers developed action plans that included: greater transparency, sharing of information, and solicitation of employee input.
- Guidance information on Employee Viewpoint Survey (EVS) action planning, and best practices involving effective leadership, communication, and engagement, was posted to the Human Capital Planning internal web page.
- The Human Capital Planning Officer (HCPO) developed a structured communication plan to increase employees’ awareness of the EVS. The response rate to the 2015 EVS increased by 15 percent and there was a 4 percent increase employee engagement scores and a 5 percent increase in global satisfaction scores.

Objective 2: Initiative 2:

- OHR met with incoming Honors Attorneys to seek their feedback on the onboarding process, and how it could be enhanced and improved.
- Training was provided to managers/supervisors on the appraisal process, including how to write performance appraisals, performance management requirements, and their role in communicating expectations to Agency employees on performance management protocols and processes. The training highlighted the importance of getting employees involved in creating their performance plans and having regular feedback discussions with employees.

- The Congressional and Public Affairs Office issued news releases on case successes.
- The General Counsel and the Deputy General Counsel addressed Headquarters staff in Divisions/Branches/Offices acknowledging and congratulating them in their achievements, and seeking suggestions for Agency improvements.
- Significant organizational accomplishments are also regularly highlighted to all staff in the Agency newsletter.

Objective 2: Initiative 3:

- OEEO collaborated with OED and the Division of Operations-Management to design and implement a foundational and ongoing diversity and inclusion training program for all Agency employees in alignment with Executive Order 13583.
- OHR continues to provide training to Agency hiring managers on special hiring authorities, including Schedule A, in alignment with Executive Order 13548.
- The Management Directive “MD715” is an affirmative EEO program by which federal agencies can assess, identify deficiencies and conduct barrier analysis of obstacles to equal employment opportunity and develop ongoing action plans to correct the self-identified deficiencies and work collaboratively to remove identified barriers. The NLRB submitted its report in March 2015 to the EEOC.
- Agency SES Leadership participated in external diversity and inclusion training.
- OEEO prepared four policy statements that were adopted and issued by Agency leadership on 1) Agency EEO Policy; 2) Statement on the Prevention of Unlawful Harassment; 3) Agency Statement Promoting Alternative Dispute Resolution; and 4) Diversity and Inclusion Policy Statement.
- OEEO partnered with OHR to incorporate language describing specific standards for inclusion in supervisors’ and managers’ performance appraisals to measure management accountability on building and maintaining an inclusive work environment.
- The General Counsel’s Mentoring Workgroup analyzed the Agency’s existing mentoring program and made recommendations on how mentoring can be further developed as a tool to maintain a diverse workforce. In response to the General Counsel’s request, the workgroup investigated mentoring models at other federal agencies and their best practices for implantation.
- OEEO designated staff as Special Emphasis Program Managers (SEPMs) responsible for developing program initiatives that enhance employment opportunities for specific demographic populations and tools to support employee affinity groups.
- OEEO supports programming initiatives for the Agency’s cadre of collateral duty Special Emphasis Program coordinators.

FY 2015 Strategic Goal 4 (Support): Manage Agency Resources in a Manner That Instills Public Trust

Objective 1: Initiative 1:

Measure:

- The Agency completed the consolidation of its separate legacy case tracking systems into an enterprise case management solution, a success that is rare within the Federal government. The last remaining Agency Office, the Contempt, Compliance, and Special Litigation Branch, was migrated successfully into NxGen in September. NxGen was designed and implemented to replace 11 separate legacy systems and integrate them into a single unified solution that leverages multiple technologies. This was the most comprehensive technology project undertaken at the NLRB, and its success has been essential to the Agency's mission.

NxGen presently manages:	
Internal users	1,350
Cases	286,117
Case Actions of the Agency	876,076
Documents, images, and videos, each linked to its Action and Case	6,050,259

Measure:

- In FY 2014, the Agency expanded its electronic distribution of case documents with an E-Delivery pilot involving six Regions, one party (USPS) and new 10 document types. In FY 2015, 781 documents were sent to the USPS electronically, resulting in notable savings to the NLRB and a great convenience to the USPS.
- On April 14, 2015, the Agency expanding its electronic filing program to enable constituents to E-File charges and petitions, the two initiating documents for the Agency's cases. The Agency has received 3,098 electronically filed charge and petitions from the launch of the new service through the end of the Fiscal Year. Over the course of the Fiscal Year, the Agency received 58,662 documents of all types through its E-Filing program and electronically delivered 3,422 documents to nearly sixty-thousand parties.

Measure:

The NLRB has counted millions of votes, investigated hundreds of thousands of unfair labor practice charges, and issued thousands of decisions. The numbers tell an important part of the Agency's story. Making what we do accessible to the public is an important part of the NLRB's mission. For example, the total number of case documents available for public access was 692,456, including Tally of Ballot information. This data is downloadable for analysis at <https://www.nlr.gov/news-outreach/graphs-data>.

Please see <http://www.nlr.gov/open/public-documents> for a complete list of the document types available to the public.

Objective 1: Initiative 2:**Measure:**

- Through FY 2015, the Administrative Systems (AS) team actively sought to develop automated solutions to streamline Agency processes.
- The AS team completed a development effort to streamline the enrollment and management processes for the Voluntary Leave Bank. Dynamic reporting was also delivered to the managers and committee to provide aggregate statistics on many aspects of the system.
- The AS team also developed a workflow process for authoring, routing and editing, approving and publishing of documents. This repeatable process will allow groups of users to store documents centrally in a secure authoring library, allowing documents to be finalized and then published to a separate location for consumption by a larger audience.
- The AS team completed a development effort for OHR involving organizing and categorizing all positions and position descriptions (PDs) within the Agency, modifying the PD library, assisting the OHR team with the creation of a set of standardized PD, and developing a streamlined process for OHR and Agency supervisors / managers to update all PDs every three years.
- The AS team completed a development effort and migration of content and documents into a SharePoint site for all continuity of operations (COOP) members. Authors can now create, edit, route and receive approval for yearly COOP plans, and all COOP documents are now available at any time and may be accessed remotely.

Measure:

- The Agency awarded its Unified Communications (UC) contract on September 24, 2014, and now expects the implementation to take up to 20 months. After the initial investments in the UC build-out and end-user equipment, the Agency expects total network services costs to be in line with the current separate allocations for data, voice and video networks, and anticipates the enhanced services to demonstrably improve administrative efficiencies.
- The first priorities were to upgrade networks in the Agency's Field Offices and two existing datacenters, and to add network connections to its two new voice datacenters and new Headquarters. These changes add significant bandwidth to the Field Offices, are based on a new, more modern networking technology, and provide greater redundancy to our critical infrastructure. Forty Field Offices are now live on the new network, as are the two existing datacenters, one of the new voice datacenters, and the Agency's Headquarters.
- All employees in Headquarters now use Skype for Business (SfB) for voice calls, voicemail and instant messaging, as the OCIO deployed the necessary Microsoft Office software and delivered over 775 new unified communications devices.
- OCIO and Operations Management are in the process of planning the SfB deployment to the Field Offices.

Measure:

- The AS team continued to build team sites, on request, for geographically dispersed employees to collaborate using Office Online applications, SharePoint lists and discussion forums. Enhanced capabilities continue to be added to allow for user-based filtering of content and more granular management of permissions for documents.
- The AS team completed a development effort for OHR, creating an “Ask HR” knowledge base, which consists of answers to common questions, and if no information is present, a workflow capability will allow a new question to be submitted, routed, and ultimately, become part of the knowledge base.
- The AS team also completed a development effort for the Office of the Chief Financial Officer (OCFO), creating an “Ask the CFO” knowledgebase, which consists of information related to the Acquisitions Management, Finance and Budget branches.

Objective 1: Initiative 3:

Measure:

- Required reports to external regulatory bodies were prepared in accordance with established time lines.

Measure:

- OCFO held monthly meetings with Contracting Officers and Contracting Officer Representatives (COR's) to discuss unliquidated obligation amounts, monitor burn rates, and request funding increases and deobligations.

Measure:

- OCFO continued to develop a formalized annual training plan for all allowance holders. During FY 2015, finance-related training was incorporated during the monthly obligation monitoring meetings, to include COR's who recently on-boarded with the Agency.

Measure:

- The Finance Branch hosted a training session for CORs and provided a tracking tool to enable increased accuracy and timeliness of reporting burn rates, unliquidated obligation amounts, request for increased funding, and request for de-obligation of funding.
- The Budget Branch worked closely with the program offices and senior leadership to develop a detailed budget spend plan, which is a living document of estimates and actual amounts and is updated monthly on the prior months execution.
- The Budget Branch has developed several tools for various budget execution line items to monitor timely obligation and liquidation of funds, such as monitoring GSA rent charges, individual training requests, and mass transit benefit funding levels. Some budget lines have demonstrated variable spending cycles during the year, which requires additional training to program managers on the importance of monitoring those cycles to ensure funding requests cover the requirements.

Measure:

- The Acquisitions Management Branch (AMB) provided training to Purchase Card Holders regarding electronic submission of monthly statements, and provided guidance on purchase card user registration via the Citibank portal.
- AMB also provided monthly and quarterly reports to the Associate General Counsel of Operations – Management, which provided greater insight and transparency on purchasing habits of field offices that it oversees.

Measure:

- The NLRB has increased the percentage of contracts awarded woman-owned and small disadvantaged business categories. With AMB's focus on small businesses as the suppliers of choice, continuing to increase the number of awards to small businesses is achievable.

Objective 2: Initiative 1:**Management Strategies:**Immigration Population

- The Agency met with local consulates of various countries to educate consular officials about the NLRB's protections and processes.
- The Agency provided direct outreach to immigrant populations by:
 - » Participating in Labor Rights Week activities
 - » Speaking in Spanish and other languages at events organized by the consulates or other community groups to educate the public about the rights afforded under the NLRA
 - » Holding news conferences to disseminate information helpful to immigrant communities
 - » Participating in interviews on Spanish-language radio stations
 - » Staffing phone banks to respond to inquiries from immigrant populations
 - » Staffing booths at informational fairs
 - » Responding to inquiries from individuals who seek consular services
- The Agency has joined with other federal agencies to educate the public by:
 - » participating in the Vulnerable Workers Project
 - » participating in numerous "listening sessions" with those from the Asian American and Pacific Islanders Community
 - » Other Agency activities include:
 - meeting with foreign labor and business representatives to provide information about employee rights under the NLRA and NLRB processes

- meeting with members of the Commission on Human Relations to provide an overview of NLRA rights
- making presentations about the NLRA to officials of the French, Colombian, Spanish, and German embassies
- speaking at naturalization ceremonies to new citizens from approximately 35 countries about rights they have under U.S. labor laws

Youth

- The Agency led discussions for high school and middle school classes in English and Spanish concerning the development of the NLRA and the New Deal, as well as the workers' statutory rights and the Board processes.
- The Agency held mock trials for schools to demonstrate how an unfair labor practice trial is conducted.
- The Agency engaged in the Workplace Street Law Project in Washington, DC, which educates high school students about their rights as workers.
- The Agency signed an MOU with the Ministry of Foreign Affairs of the Republic of Colombia. Various Regional offices also held local signing ceremonies with local Columbian consulates, with follow-up outreach sessions.
- The Agency partnered with DHS, DOL (WHD, OSHA and OFCCP), OSC, DOJ and EEOC in an Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws.
- The Agency presented at the national EEOC EXCEL Conference in Washington, DC, on concerted activity in social media
- DOJ's Office of Special Counsel hosted two webinars for NLRB field personnel to covering the intersection of the NLRA and immigration law.
- Internal Agency deliberations occurred concerning effective outreach methods, including targeting specific audiences through the use of twitter, You Tube, Facebook, and news aggregators.
 - » Since its release in August 2013, the NLRB app has been downloaded 19,296 times
 - » The Agency implemented a Sharepoint site available to all of its outreach officers. This site includes a centralized area for collecting outreach presentation materials and a discussion board for addressing outreach inquiries
 - » The Agency maintains a link on its public website for outreach requests, which are routed to the appropriate Region
 - » The Agency has inserted QR codes in its correspondence to direct the public to our website.
 - » More Regional Offices are considering producing newsletters in electronic format for delivery through GovDelivery

- Outreach sessions for veterans and employee advocate organizations were held explaining Protective Concerted Activity, in particular.

Objective 3: Initiative 1:

Measure:

- The NLRB requires all Public Financial Disclosure filers, who are the leadership of the Agency (SES and PAS), to complete our annual ethics briefing. This year's briefing served as a reminder to our leadership of all the available ethics training products.
- The "Braking Bad Email Habits" training series emphasized that Agency employees should use their government email in a way that complies with government and legal ethics rules, and avoids the disclosure of confidential case-related information. A related memo was sent to all field professionals to encourage those that had not yet reviewed the material to do so as it was an effective learning tool.
- The Ethics Office provided general ethics guidance to Board Members regarding the use of private social media accounts while serving as a Member of the Board, and met with the Deputy General Counsel, the Chief of Staff to the Chairman, and others to offer guidance in identifying potential conflicts of interest in an administrative program.
- At the request of the General Counsel, the Ethics Office developed and delivered a training session on Civility during the Attorney Trial Training and presented a similar session to Headquarters staff.
- The Ethics Office helped establish a reporting process that would ensure that newly hired and newly promoted employees receive required ethics training and complete required financial disclosure reports (as appropriate) in a timely manner.

Measure:

The Ethics Office continued to seek out opportunities to educate Agency employees about their ethical obligations.

During FY 2015 the following was provided:

- A conclusion to the "Braking Bad Email Habits" series that covered the ethical use of government email.
- A Skip Counsel and Attorney-Client Privilege training program was presented to nine Regional Offices.
- Monthly distribution of the "On the Road with the Ethics Code" Job Aids that provide timely legal ethics information to all board agents.
- Monthly Agency newsletter articles. These articles covered, where to find government and legal ethics information on the Agency website, how to navigate gift giving during the holiday season, and provided real-life examples of the consequences of violating criminal conflict of interest statutes.

- Ethics social media guidance for distribution to the Presidential Appointees.
- The redistribution of a Hatch Act job aid to serve as a reminder about partisan political activity.
- Presented legal ethics topics at two attorney conferences co-sponsored by the NLRB and assisted in planning the ethics programming for a conference.
- Provided ethics briefings to newly appointed Regional Directors.
- Distributed one-page Job Aid covering Seeking Other Employment.
- Partnered with the OED to begin development of two legal ethics training programs for online/on-demand distribution to all legal professionals.
- Developed and presented a training session on Civility. This program was offered to attendees at the Trial Training in August and to professionals in Enforcement Litigation, CCSLB, and the Washington Resident Office.
- Provided guidance to the General Counsel and Board Members regarding speaking events where certain topics may create an appearance issue for the Agency or lead to discussion that could put the speaker at risk of making comments that could be construed as “prejudging” a case, and lead to requests for recusal.

Measure:

- As of September 30, 2015, the Ethics staff received 622 inquiries and 87.7 percent were resolved within 5 business days.

Measure:

- As of September 30, 2015, 100 percent of the financial disclosure reports submitted were reviewed within the 60-day regulatory time period. Where a reviewer identified either a potential or actual conflict of interest, a memo was prepared and sent to the filer providing ethics advice and guidance.

Measure:

- Ethics staff rolled out the Office of Government Ethics (OGE) electronic filing system to all filers of the OGE 278. This included:
 - Meeting with OGE project managers
 - Attending user and administrator training sessions
 - Completing systems and user testing to ensure that NLRB employees would be able to use the system via the NLRB network and agency provided laptops
 - Finalization of NLRB Filer training materials to include: job aids, user guide, demonstration videos, and online training module
 - Creation of 278e Integrity webpage on the NLRB Insider where all training materials are archived

- Live training sessions on how to file your 278e in Integrity for the first time

Objective 3: Initiative 2:

- The OCIO responded timely to internal audits and information requests including:
 - » Audit of the NLRB Fiscal Year Financial Statements
 - » Fiscal Year 2014 Review of Internal Controls (FMFIA Survey)
- The OCFO submitted timely Corrective Action Plans as required in response to the Fiscal Year 2014 Financial Statement Audit and also timely prepared a corrective action plan for OIG Travel Audit OIG-AMR-75-15-02. The actions that were taken and submitted to remediate recommendations found in Audit OIG-AMR-65-11-03 "Purchase Cards" were reviewed by the OIG.

Objective 3: Initiative 3:

The OCIO responded timely to external information requests including:

- Questions posed in the Office of Management and Budget Memorandum M-15-01, Fiscal Year 2014-2015 Guidance on Improving Federal Information Security and Privacy Management Practices
- Exhibit 53 and the corresponding Information Technology section for the Congressional Budget Justification
- NARA's 2014 Records Management Self-Assessment
- FY 15 Q1 Federal Information Security Management Act (FISMA) Data Call
- Trusted Internet Connection (TIC) POA&M February 2014 Data Call
- FY 15 Q2 Federal Information Security Management Act (FISMA) Data Call
- Multiple security- and privacy-related ad hoc data calls, including for MS15-011 software "bug" and Indicators of Compromise (IOCs) related to OPM's personnel systems data breach.

Objective 3: Initiative 4:

Measure:

- Based on the information in the FOIA Tracking System, the Agency responded to initial FOIA requests on an average of fourteen days for requests received from October 1, 2014 to September 30, 2015. The Agency received 4,644 requests for this period and responded to 3,543 of those requests in 1-20 days. Thus, 78.34 percent of the FOIA requests were processed within the 20-day statutory time period.

Measure:

- The Agency sought an extension of time to process a request beyond the 20-day period in about 20 percent of the FOIA requests received during the Fiscal Year.

Measure:

- The Agency received 24 FOIA Appeals from October 1, 2014 to September 30, 2015. The average elapsed days to process the appeal was 24 business days.

FY 2016 Strategic Goal 3 (Support): Achieve Organizational Excellence

Management Strategies:

Employee Development

- The Office of Human Resources (OHR) continued its partnership with the Office of Personnel Management (OPM) on the implementation of USA Performance, a new performance management reporting system.
 - » OHR issued a memorandum titled Performance Management Validation Cycle to all Agency employees to inform that all management officials had to complete a Performance Management Validation Spreadsheet certifying that they had issued properly executed performance plans to all of their employees.
 - » OHR completed a data validation, which showed that more than 86 percent of employees were issued properly executed performance plans. OHR's goal of 100 percent execution of performance plans will be achieved with the full implementation of USA Performance in June 2017.
- The Office of Employee Development (OED) developed online content for legal writing and provided legal writing coaching for Headquarters employees.
- OED is updating the Management Development Program curriculum to align with the Federal Supervisory and Managerial Frameworks and Guidance released by OPM on September 28, 2015.
- The Security Branch worked with OED to release the 2016 Continuity of Operations Training for Agency personnel via Skillport, and also hosted an Active Shooter Training Event at NLRB Headquarters, which was internally posted for access by all employees.
- In compliance with OPM's hiring reform efforts, OHR implemented a Standard Operating Procedure to provide a detailed explanation and overview of the processes to be followed when a vacancy has been identified and when positions are filled internally.

Workforce Management

- OHR continued to utilize the Workforce Recruitment Program for College Students with Disabilities as a hiring flexibility for managers to recruit qualified postsecondary students and recent graduates with disabilities who are interested in summer internships or permanent jobs.
- OHR leveraged its relationship with U.S. Department of Veterans Affairs through the Feds for Vets Program, which allows for the recruitment of veterans under various special hiring appointing authorities, such as veterans who are 30 percent or more disabled. Under the program, approximately five special hiring appointments were completed and one appointment was converted to a career-conditional appointment.

- The Human Capital Planning Office (HCPO) implemented a communication plan to encourage employees to take the Employee Viewpoint Survey (EVS), which included guidance on monitoring the participation rates, talking points, and FAQs.
- OHR made enhancements to the New Employee Orientation that includes more information about the Agency to help new employees transition successfully.
- The Office of Equal Employment Opportunity (OEEEO) developed and implemented a training program mandatory for all supervisors' managers and senior executive leaders on whistleblower rights and protections for all Agency employees.
- OEEEO recommended that supervisors' and managers' appraisals contain more specific language to measure their efforts to maintain an inclusive work environment, as an action item from the MD715 report submitted to the EEOC.
- OEEEO, OED, and the Division of Operations- Management collaborated in the Agency workgroup on the Culture Enhancement Program and rolled out training podcasts and interviews from a diverse array of Agency employees in segments throughout the Fiscal Year.
- OEEEO sponsored the Agency's network of Asian American and Pacific Islander employees in its request for support from Agency leadership. OEEEO conducted a briefing with Agency leadership on the topic of Employee Resource Groups (ERGs).
 - » There was a briefing by OPM diversity and inclusion experts for Agency leadership to address questions about ERGs.
 - » Consultations with the unions representing Agency employees will assist OEEEO when drafting final recommendations to Agency leadership.
- OEEEO and OHR briefed leadership on the Strategic Recruitment Plan and received critical feedback for the plan. OEEEO and OHR are working to implement the plan in early Fiscal Year 2017.
- OEEEO develops and hosts special emphasis observances at Headquarters, some of which have been made available to field offices through simultaneous broadcast and/or digital recording.

Motivation

- HCPO conducted 16 EVS organizational assessments with senior executives on the 2015 EVS results focusing on: identifying Agency trends/ barriers behind low survey scores; reviewing and prioritizing targeted areas of change; identifying outcomes that enable the organization to transition to higher EVS scores; identifying best practices for managing staff to higher levels of engagement; and action planning efforts.
 - » During the organizational assessments, results were provided and the two EVS Agency-wide strategic areas of focus, effective leadership and communication, were discussed.
 - » Agency leadership will be implementing action plans/best practices designed to drive higher levels of employee satisfaction and engagement within their respective organizations, with a particular focus on improving effective leadership and communication.

- » The HCPO also developed an EVS Action Planning Toolkit for organizations to utilize in developing action strategies to effect change.

FY 2016 Strategic Goal 4 (Support): Manage Agency Resources in a Manner That Instills Public Trust

Information and Technology:

The Agency uses a legacy case tracking solution called NxGen which is an enterprise case management system.

NxGen presently manages:	
Internal users	1,368
Cases	309,700
Case Actions of the Agency	1,001,206
Documents, images, and videos, each linked to its Action and Case	7,543,929

The Agency expanded electronic distribution of case documents in FY 2016 through the USPS for 15 document types, resulting in 626 documents being sent to the USPS electronically and savings for the NLRB.

The Agency uses an electronic filing program (E-File) to allow constituents to electronically file documents with the Agency.

Number of E-Filings Received	51,229
Number of Documents Received	79,011
Number of cases filed thru E-Filing Charges and Petitions	9,958
Number of Board and ALJ Decisions E-Served	803
Total Number of parties E-Served Decisions	54,262
Number of E-Deliveries of Case Documents	3,546

The total number of case documents available for public access in FY 2016 was 984,663

In FY 2016, the Agency expanded the use and capabilities for electronic filing to enable parties to E-File charges and petitions using an online forms wizard on the NLRB website that automatically creates the charge or petition form.

Number of cases filed thru Charge and Petition Wizard was **805** in FY 2016.

Please see <http://www.nlr.gov/open/public-documents> for a complete list of the 564 document types available to the public.

- The Administrative Systems team continued its effort to migrate all content from the current intranet platform, which was mostly static, to a new intranet platform office by office.

- The team automated and launched the process of authoring, editing, approval and publishing of Operations-Management memorandums.
- The team completed the automation of the training request and approval process by developing a web-based form with routing, approval, data storage for advanced reporting, and records management.
- The Agency awarded its UCC contract on September 24, 2014. Through FY 2016, 48 Field Offices, the two existing datacenters, two new voice datacenters, and the Agency's HQ were upgraded to the new network and 47 field offices were migrated fully migrated to Skype for Business.
- In FY 2016, the OCIO deployed over 1020 iPhone 6's and 6-Pluses to the Field.

Financial Management:

- To enhance internal controls of the purchase card program, Acquisition Management Branch (AMB), in coordination with the Budget Office implemented a process by which quarterly target amounts for purchase card spending are sent to each of the Headquarters and Regional Offices. These amounts are disseminated at the beginning of each quarter to the Office of Operations- Management. Operations-Management is responsible for communicating specific dollar amounts to the respective Regional Offices, and for tracking the overall expenditures from the regional offices.
 - » In addition to quarterly target amounts sent to the Headquarters Offices, all headquarters purchase card holders submit a Form 13 (Requisition/Procurement Request Form) for certification and approval of appropriated funds prior to making any purchase via their Government issued purchase card. This process helps certify that appropriated funds are approved and available for purchase.
 - » AMB provided monthly and quarterly reports to the Budget Office which offered greater insight and transparency on purchasing habits and spending. By spending hours analyzing what was being purchased on the p-card and working with the Budget Office, senior leadership had more visibility into that budget line item on the Spend Plan. Analysis of this data also identified purchases that should be on a contract and lead to the establishment of the HQ and field office quarterly bulk purchases.
- In the Agency's continuing effort to increase its financial integrity, financial statement crosswalks were established in order to accurately and efficiently integrate general ledger account balances to the NLRB financial statements. This reduces the timeframe it takes to produce the statements.
- Updated and submitted the NLRB Travel Card Management Plan, as well as travel charge card metrics, to OMB per the A-123 Appendix B guidance.
- Developed and disseminated procedure guides for witness payment processes to allow for more timely payments.
- Developed and disseminated travel reimbursement processes internally with accounting

technicians and externally with office managers and travel arrangers to increase accuracy in travel reimbursements.

- Successfully implemented the Undelivered Orders (UDO) review process, performed on a quarterly basis that assists in liquidating obligations timely and accurately.
- As demonstrated in the chart below, the NLRB has exceeded the statutory goals established by federal executive agencies in all categories except one, namely the service-disabled veteran owned small businesses. AMB continues to focus on small businesses as the supplier of choice, and particularly on increasing the number of awards to service-disabled veteran owned small business.
- During FY 2016, the Agency reported a total of \$20.26M and 372 contract actions in the Federal Procurement Data System (FPDS). Of this amount, \$7.4M and 181 actions went to small businesses.

Fiscal Year SBA Goaling Report					
Category	Goal	2016	2015	2014	2013
Small Business	23%	36.51%	39.75%	31.65%	34.13%
Women Owned Small Business	5%	11.19%	12.46%	13.5%	17.81%
Small Disadvantaged Business	5%	8.02%	10.71%	11.05%	7.36%
Service-Disabled Veteran Owned Small Business	3%	2.42%	0.31%	0.97%	0.32%
HUBZone	3%	3.43%	2.13%	2.27%	0.84%

Agency Outreach

- Designated Immigration Coordinators in each Regional office act as a liaison between the office and Headquarters staff regarding casehandling issues that may affect the immigrant worker community.
- The Agency prepared outreach materials for immigrant communities for use during outreach events, and a letter that outreach coordinators may use to introduce themselves to organizations that serve immigrant communities and offer outreach services. The outreach coordinators have been provided with a “collaboration packet” with the contact information for their outreach counterparts with the EEOC, WHD, and OSHA.
- During FY 2016, the Agency provided direct outreach to immigrant populations by:
 - » Speaking in Spanish and other languages at events organized by the consulates or other community groups, such as the Workplace Justice Project to educate the public about the NLRB
 - » Participating in interviews on Spanish-language radio stations
 - » Responding to inquiries from individuals who seek consular services
 - » Speaking at naturalization ceremonies to new citizens
 - » Participating in Asian Public Interest and Public Service Panels

- » Meeting with foreign labor and business representatives to provide information about employee rights under the NLRA and NLRB processes
- Activities directed at the youth population include:
 - » Leading discussions for high school and middle school classes concerning the development of the NLRA and the New Deal, as well as workers' statutory rights and Board processes
 - » Holding mock trials for schools to demonstrate how an unfair labor practice trial is conducted
 - » Engaging in the Workplace Street Law Project in Washington, DC, which educates high school students about their rights as workers
 - » Participating in a union-sponsored youth-to-youth apprentice training
- The agency is Partnering with The Department of Homeland Security (DHS), DOL (Wage and Hour Division (WHD), OSHA, Office of Labor Management Standards (OLMS), and Office of Federal Contract Compliance Programs (OFCCP), OSC, DOJ and EEOC in an IAWG for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws. The work group seeks to:
 - » Ensure agencies' immigration enforcement and worker protection policies, promote workers' cooperation with labor and employment law enforcement authorities without fear of retaliation;
 - » Ensure federal enforcement authorities are not used by parties seeking to undermine worker protection laws by enmeshing immigration authorities in labor disputes; and,
 - » Ensure the consistent enforcement of federal labor, employment, and immigration laws.
- The Agency has produced a new informational pamphlet, available on the NLRB website in both English and Spanish, titled "Protecting Employee Rights," which contains an expanded discussion of an employee's right to engage in concerted activity and other rights under the NLRA.
- The Agency maintains an interactive smart phone app which provides information about employer and employee rights under the NLRA and contact information.

Ethics:

- The NLRB requires all Public Financial Disclosure filers, who are the leadership of the Agency (SES and PAS), to complete the annual ethics briefing. Scenarios were provided that demonstrated how well-meaning federal employees could violate government ethics laws and regulations when participating in outside activities, fundraising, and speaking engagements.
- The Ethics Office developed and delivered a Job Aid that covered participation as a member of a Board Directors for a non-federal organization. All employees are required to request permission from their approving official prior to accepting a position on a Board. Approving Officials are directed to consult with the Ethics Office prior to granting approval. A list of information that employees must give to their approving officials is also provided.
- The Ethics Office developed an addendum that is used by all NLRB employees and Presidential

Appointees to affirm that by consenting to the recording of a presentation, the NLRB employee or official is not permitting the sponsor to use their official title or likeness to advertise or endorse the final product. This addendum is consistent with the requirement, reinforced by the Office of Government Ethics (OGE) at its latest symposium, that Executive Branch employees take reasonable steps to ensure that a third party does not misuse a government employee's position to promote their products or events.

The Ethics Staff continued to seek out opportunities to educate all Agency employees about their ethical obligations. Throughout FY 2016 the ethics branch:

- Distributed a Speaking Engagements guidance memo to all Agency employees which provided employees with general guidance regarding speaking engagements, and explained how to distinguish between speaking in an official versus a personal capacity.
- Provided OHR with government ethics information that will be used in the OHR New Hire Orientation presentation.
- Provided guidance to the General Counsel and Board Members regarding speaking events where certain topics may create an appearance issue for the Agency or lead to discussion that could put the speaker at risk of making comments that could be construed as "prejudging" a case, and lead to requests for recusal.
- Provided legal ethics guidance regarding Immigration and Candor to the Tribunal in consultation with the Immigration Unit.

Guidance Provided				
Measure	Goal	2016	2015	2014
Percentage of inquiries resolved within 5 business days	85%	83%	87.7%	87%
Percentage of submitted financial disclosure reports reviewed within 60-days	100%	100%	100%	100%

- During FY 2016, the Ethics Office received 844 inquiries. 737 (83%) were resolved within 5 business days.
 - » The increase in the number of days to provide guidance is directly related to the significant number of cases in a new area; conflicts involving Board of Director positions. The Ethics Office identified and responded immediately to more routine matters within the targeted time frame. In order to respond more quickly to more complex situations, a template was developed in order to create customized responses for the various types of Board of Director positions. 52% of 53 cases involving Board of Directors exceeded the 5 business day benchmark. However, the Ethics Office kept everyone apprised of their progress prioritized according to need.
- All financial disclosure reports filed in FY 2016 were reviewed within 60 days. During this review we confirmed that all filers had been provided appropriate ethics guidance relating to their reportable assets, outside arrangements, and outside employment activities.

Note: Review and approval of New Entrant and Annual filings (Confidential and Public) resulted in 126 memos that remind and educate filers about their reporting obligations, potential conflicts, and recusal obligations.

Internal and External Audit Responses:

Responses to internal auditors have been prepared and all deadlines have been successfully coordinated regarding the OIG audit recommendations.

The OCIO and the OCFO responded completely and timely to external information requests including:

- Juniper ScreenOS and Firewall and VPN Server Data Call in Q1
- CISCO vulnerability Data Call in Q2

FOIA: Processing Times			
Measure	2016	2015	2014
Respond to initial FOIA requests within 20 working days	32.7 days; 36.6%	14 days; 78.34%	7 days; 91.81%
Seek a statutory extension for less than 15% of requests	25.4%	20%	7.08%
Respond to statutory appeals within 20 working days	32.35 workings days	24 workings days	20 workings days

- Based on the information in the FOIA Tracking System, the Agency responded to initial FOIA requests on an average of 32.7 working days for requests received from October 1, 2015 to June 30, 2016. The Agency received 2,682 requests for this period and responded to 982 of those requests in 1-20 days. Thus, 36.6 percent of the FOIA requests were processed within the 20-day statutory time period.
- The Agency sought an extension of time to process a request beyond the 20-day period in about 25.4 percent of the FOIA requests received during the Fiscal Year.
- The Agency received 23 FOIA Appeals from October 1, 2015 to June 30, 2016. The average elapsed days to process the appeal was 32.35 business days.

The increase in processing times correlates to the centralization. In 2014 FOIA duties were handled by Headquarters and each Field/Regional Office by their respective FOIA Points of Contacts (POCs). For uniformity and consistency in FOIA handling, it was decided to centralize FOIA processing and this began at the end of FY2014 with Headquarters processing, in addition to its own requests, those of Regions 10 and 28. By June of 2015, all FOIA requests were handled at HQ. The consolidation resulted in a very significant increase in the amount of requests handled by Headquarters. In addition, the Branch was dealing with new staff members, who required necessary training to become proficient in handling requests. There were also difficulties associated with the technology that was available to the Branch. However, the technology has been upgraded and the Branch is currently working with OCIO on making additional improvements to the technology. With the staffing and technology issues well in hand, the Agency anticipates significant improvements in processing times in FY 2017.

FY 2017 Strategic Goal 3 (Support): Achieve Organizational Excellence

Management Strategies:

Employee Development

- The Office of Human Resources (OHR) continues its partnership with the Office of Personnel Management (OPM) on the implementation and rollout of the new Agency-wide performance management reporting system, *USA Performance*. In September 2017, performance plans for all non-bargaining unit employees were fully integrated.
- The Agency continued to comply with OPM's hiring reform efforts, including the 80-day hiring model.
- Domestic Violence, Sexual Assault, and Stalking Awareness training was released to all employees and 1,452 employees have completed the training. Continuity of Operations Training was released and 1,275 employees have completed the training. The Personal Security On-the-Job Course completion is being monitored to ensure new field employees complete it within the first 90 days on the job.
- OEEO collaborated with a workgroup consisting of OHR and OED, to engage in pre-decisional involvement discussions with the NLRBU and the NLRBPA to develop and implement mandatory training for managers and supervisors on the Agency's Reasonable Accommodation Policy. The workgroup has developed a comprehensive training module and anticipates launching the training in FY 2018.
- The GC Mentoring committee, which includes OEEO, has been focused on developing ways to measure the success of the Agency's mentoring program by ensuring that the mentoring program supports Agency diversity and inclusion goals, and exploring ways to develop mentoring into a more robust individual development vehicle. OEEO's collaboration with this workgroup led to the development and launch of a revised survey for mentees, mentors and mentoring program managers that will enable management to gauge the impact of the program.

Workforce Management

- The Agency instituted a series of trainings that provides pertinent information on the history of disability in the workforce, current workplace laws and regulations, as well as information on Agency recruitment. HR Staff has taken OPM's HR University training entitled "A Roadmap to Success: Hiring, Retaining and Including People with Disabilities" and "Issues, Impacts and Implications of an Aging Workforce" by the Institute on Employment and Disability.
- OEEO led the Agency-wide effort to develop a plan for the Agency to develop into a model federal EEO employer as envisioned and implemented through the EEOC's Management Directive 715 (MD715). OEEO conducted quarterly meetings with a cross section of organizational units, including the Office of Human Resources (OHR), the Office of Employee Development (OED) and the Division of Operations-Management (OPS). Each office was required to identify, develop,

measure and report out on its progress on issues related to barriers to full opportunity. These efforts resulted in a more relevant and responsive MD715 report and plan.

- OEEO collaborated with OGC and OED to develop and launch mandatory training for all Agency managers and supervisors on issues and best practices in supporting transgender employees' transition in the workplace. The training was also made available on a voluntary basis to all Agency employees.
- The Human Capital Planning Office (HCPO) worked on developing a report detailing a deep dive analysis of the changing composition of the workforce and shifting work patterns/trends, including demographics, diversity, size, attrition, performance, and training, to inform core competency requirements for the future workforce.
- The Security Branch completed 23 percent of the backlogged investigation this Fiscal Year.

Motivation

- The HCPO conducted 18 EVS organizational assessments with Agency heads and senior executives EVS results with a focus on identifying Agency trends/barriers behind low survey scores; reviewing and prioritizing targeted areas of change; identifying outcomes that enables the organization to transition to higher EVS scores; identifying best practices for managing staff to higher levels of engagement; and engaging in action planning. During those meetings, the HCPO also discussed the two EVS Agency-wide strategic areas of focus (*effective leadership and communication*) and its impact on improving EVS scores and the workforce culture. As a result, Agency leadership endorsed an action plan, with a particular focus on enhancing employee engagement, commitment and satisfaction.
- The HCPO developed an online Employee Suggestion Box making it easier for employees to now go online and submit suggestions electronically.
- The HCPO held the first ever Sensing Session where non-supervisory personnel within the Division of Administration (DoA) assembled to discuss the customer experience based on feedback received from customers. The sessions examined mapping the customer experience and looking for fresh service ideas to improve it; getting front-line employees from each of the functional branches to collaborate on identifying the causes of problems and finding innovative solutions; and coordinating activities to maximize the speed of service from the customer's point of view. Through this method, DoA employees had an active voice in developing innovative solutions and the sessions marked an important milestone in employee engagement and communication efforts linked to the EVS. The HCPO plans to rollout Sensing Sessions to other organizations with the Agency.
- OHR also administered the annual Administrative Professional Program where six (6) Agency employees were selected for recognition.

FY 2017 Strategic Goal 4 (Support): Manage Agency Resources in a Manner That Instills Public Trust

Information and Technology:

The Agency uses a legacy case tracking solution called NxGen which is an enterprise case management system.

The NxGen System presently manages:

Internal users	1,379
Cases	331,074
Case Actions of the Agency	1,115,809
Documents, images, and videos, each linked to its Action and Case	8,977,578

The Agency expanded electronic distribution of case documents for 15 document types, resulting in 626 documents being sent to the USPS electronically and in savings for the Agency.

The Agency uses an electronic filing program (E-File) to allow constituents to electronically file documents with the Agency.

Number of E-Filings Received	51,369
Number of Documents Received	82,459
Number of cases filed thru E-Filing Charges and Petitions	23,356
Number of Board and ALJ Decisions E-Served	563
Total Number of parties E-Served Decisions	35,936
Number of E-Deliveries of Case Documents	4,848

The total number of case documents available for public access in FY 2017 was 1,146,108.

In FY 2017, the Agency expanded the use and capabilities for electronic filing to enable parties to E-File charges and petitions using an online forms wizard on the NLRB website that automatically creates the charge or petition form.

Number of cases filed through the Charge and Petition Wizard was 662.

Please see <http://www.nlr.gov/open/public-documents> for a complete list of the 564 document types available to the public.

- The Administrative Systems team continued its effort to migrate all content from the current intranet platform, which was mostly static, to a new intranet platform office by office.
- The team automated and launched the process of authoring, editing, approval and publishing of Operations-Management memorandums.
- The team completed the automation of the training request and approval process by developing a web-based form with routing, approval, data storage for advanced reporting, and records management.
- The Agency awarded its UCC contract on September 24, 2014. Through FY 2017, 49 Field Offices, the two existing datacenters, two new voice datacenters, and the Agency's Headquarters were upgraded to the new network and field offices were fully migrated to Skype for Business.
- In FY 2017, the OCIO deployed over 1,020 iPhone 6's and 6-Pluses to the Field Offices.

Financial Management:

- To enhance internal controls of the purchase card program, AMB, in coordination with the Budget Office, continues to enforce a process by which quarterly target amounts for purchase card spending are sent to each Headquarters and Regional offices. These amounts are disseminated at the beginning of each quarter to the Division of Operations Management. Operations Management is responsible for communicating specific dollar amounts to the respective Regional Offices, and for tracking the overall expenditures from the Regional offices. In addition to quarterly target amounts sent to the Headquarters Offices, all Headquarters PCHs submit a Form 13 (Requisition/Procurement Request Form) for certification and approval of appropriated funds prior to making any purchase via their Government issued purchase card. This process helps certify that appropriated funds are approved and available for purchase.
- In April 2017, AMB, in coordination with the OCIO, issued a large IDIQ award for Information Technology (IT) services, and ensured strategic sourcing opportunities were carefully effectuated. The result of this acquisition provided the Agency with a framework to promote an agile systems development life cycle, and empowered the Agency's IT personnel to adopt new technologies and automate processes which resulted in increased proficiencies and budgetary savings.
- AMB continued to utilize the bulk purchasing program for paper and toner across the Agency. The program allows for better coordination, distribution and cost-savings of required items. In FY 2017, bulk orders took place in November, February, May and August.
- AMB implemented Split Pay for travel payments, which allows vouchered transactions which utilized the agency charge card to pay Citibank directly.

As demonstrated in the chart below, the NLRB has exceeded the statutory goals established by federal executive agencies in all categories except one, namely the service-disabled veteran owned businesses.

From October 1, 2016 – September 30, 2017, a total of \$16M and 339 contract actions were reported within the Federal Procurement Data System (FPDS). Out of this amount, \$6.7M and 176 actions went to small businesses; approximately 41.7 percent of contract dollars and 51 percent of contract actions were awarded to small businesses.

Category	Goal	2017	2016	2015	2014	2013
Small Business	23%	41.7%	36.51%	39.75%	31.65%	34.13%
Women Owned Small Business	5%	7.47%	11.19%	12.46%	13.5%	17.81%
Small Disadvantaged Business	5%	28.33%	8.02%	10.71%	11.05%	7.36%
Service-Disabled Veteran Owned Small Business	3%	1.62%	2.42%	0.31%	0.97%	0.32%
HUBZone	3%	23.33%	3.43%	2.13%	2.27%	0.84%

Agency Outreach

The Agency met with local consulates of various countries to educate consular officials about the NLRB's protections and processes.

The Agency provided direct outreach to immigrant populations by:

- Speaking in Spanish and other languages at events organized by the consulates or other community and non-profit groups, such as the Mexican Embassy, Philippine Embassy, Ecuadoran Consulate, El Salvador Consulate, Labor Alliance Committee on Minority Affairs, Colorado Central Region Farmworker Project, West Harlem Development Corporation, and Workplace Justice Project, Justice, Equality & Safety in the Workplace, to educate the public about the NLRA
- Participating in Labor Rights Week activities organized by the Mexican Embassy and Consulates at various locations throughout the country
- Speaking at naturalization ceremonies
- Participating in interviews on Spanish-language radio stations
- Staffing booths at informational fairs
- Responding to inquiries from individuals who seek consular services
- Participating in Platicas en Consulado (Consul on Wheels)
- Participating in a Univision phone bank
- Speaking at the Federacion De Clubes Zatecanos event sponsored by the Mexican consulate
- Speaking at Filipino Workers Center SAMA-SAME Network Meetings

Other Agency activities directed at the immigrant population include:

- Speaking at naturalization ceremonies to new citizens
- Participating in Asian Public Interest and Public Service Panels
- Meeting with foreign labor and business representatives to provide information about employee rights under the NLRA and NLRB processes, including a delegation from South Korea

Activities directed at the youth population include:

- Leading discussions for high school and middle school classes concerning the development of the NLRA and the New Deal, as well as workers' statutory rights and Board processes
- Holding mock trials for schools to demonstrate how an unfair labor practice trial is conducted
- Leading discussions at the Hanna Boys Center/La Luz Center

- Participating in Youth to Youth Apprentice Training program

The Agency continued to partner with DHS, DOL, OSC, DOJ and EEOC in an Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws.

The Agency has joined with other state and federal agencies by:

- Participating in “listening sessions” coordinated by worker advocacy groups.
- Participating in Wage Theft Task Force discussions
- Meeting with the Illinois Attorney General’s Office
- Meeting with the Michigan Employment Relations Commission
- Participating in a forum sponsored by City of Chicago Department of Human Services
- Participating in a community outreach program sponsored by U.S. Rep. Susan Brooks
- Participating in the EEOC Training Institute Technical Assistance Program Seminar
- Participating in the California Association of Labor Relations Officers annual conference
- Participating in an FMCS open house
- Providing outreach to the New York State Department of Labor Anti Retaliation Task Force
- Participating in SBA Ombudsman roundtables and listening sessions
- Participating in DOL Prevailing Wage Seminar

Ethics

The Ethics Staff continued to meet with the General Counsel’s office to review the status of all ethics projects and to discuss notable ethics issues.

In coordination with the Office of the General Counsel, the Ethics Staff:

- Developed and distributed guidance concerning OPM’s updated Combined Federal Campaign (CFC) regulations to all Agency employees.
- Met with Agency leadership to discuss the limitations placed on CFC fundraising.
- Distributed an updated Speaking Engagements DAEO memo to all Agency employees which provided employees with general guidance regarding speaking engagements, and explained how to distinguish between speaking in an official versus a personal capacity.
- Distributed guidance to all supervisors and managers highlighting the restrictions that apply when a supervisor serves as a campaign coordinator and/or keyworker for the Combined Federal Campaign (CFC).
- Suggested updates to the Agency’s Pro Bono program to comply with government ethics regulations and the Agency’s IT policy.
- Completed a Structural Assessment of the Ethics Office to maximize resources.

- Developed and distributed a Hatch Act webcast to all Agency employees.
- Answered extensive Hatch Act hypotheticals submitted by the NLRBPA.
- Distributed a memo which was intended to remind supervisors and managers that they should not encourage their subordinates to participate in outside activities or causes, including political advocacy events and activities. The memo explained that this conduct would implicate the regulations in the Standards of Conduct concerning misuse of position, as well as the Hatch Act, if the conduct involves political activity. The DAEO discussed this memo with Agency Leadership at a General Counsel staff meeting.
- Assisted the Office of the Chief Financial Officer (OCFO) in the review of the Agency's travel policy to ensure that it is consistent with 31 U.S.C 1353 which covers Travel Reimbursement from a Non-Federal Source.

The Ethics Staff continued to seek out opportunities to educate all Agency employees about their ethical obligations.

During FY2017, the Ethics Staff:

- Developed a comprehensive ethics orientation package that is used in the onboarding of NLRB Political Appointed Senate Confirmed employees (PAS).
- Provided customized ethics briefing to newly appointed Board Members.
- Met with newly appointed Regional Directors to discuss how the Ethics Office supports each Regional Office.
- Provided Operations Management with guidance concerning the ethics limitations placed on NLRB employees who are engaged in outreach activities.
- Provided Ethics Briefings for the Professional Exchange Program and Honors Attorney Orientation.
- Developed ethics training materials that will be distributed through the Agency's SharePoint page in the first quarter of FY 2018.
- Developed comprehensive post-employment guidance which emphasizes an attorney's recusal obligations after departure from the Agency.
- Continued to participate in the Office of Human Resources (OHR) New Hire Onboarding.
- Continued to use the "Ethical Highway" webpage to archive guidance documents, newsletter articles, Tips of the Month, and Job Aids.

Measure:	Goal	2017	2016	2015	2014
Percentage of inquiries resolved within 5 business days	85%	92%	83%	87.7%	87%
Percentage of submitted financial disclosure reports reviewed within 60-days	100%	100%	100%	100%	100%

- All financial disclosure reports filed in FY 2017 were reviewed within 60 days. During this review we confirmed that all filers had been provided appropriate ethics guidance relating to their reportable assets, outside arrangements, and outside employment activities.
- The annual financial disclosure cycle began on January 1st. NLRB filers use electronic filing systems to comply with the Office of Government Ethics' filing requirement.
- In mid-January, the Ethics Office began to receive Public (OGE 278e) and Confidential (OGE 450) Financial Disclosure reports for CY 2016. In all cases, the Ethics Office completed the review of each report within 60 days of receipt and notified the filer of any real or potential conflicts.

During FY 2017, the Agency has completed its review of:

- 30 Annual Confidential Financial Disclosure Reports (OGE 450)
- 84 Annual Public Financial Disclosure Reports (OGE 278e)
- 9 New Entrant Public Financial Disclosure Reports (OGE 278e)
- 119 Monthly Transaction Reports (OGE 278T)
- 13 Termination Reports (OGE 278)

Note: Review and approval of New Entrant and Annual filings (Confidential and Public) resulted in 126 memos that remind and educate filers about their reporting obligations, potential conflicts, and recusal obligations.

Internal and External Audit Responses:

- Responses to internal auditors have been prepared and all deadlines have been successfully coordinated regarding the OIG audit recommendations.
- OCFO responded to the Data Act audit.
- OCIO responded to one C-CAR data call regarding Kaspersky software.
- OCIO responded to one C-CAR data call regarding WannaCry Ransomware.
- OCIO responded to Risk Management Assessment data calls related to Executive Order 13800 "Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure," and OMB Memorandum M-17-25.

FOIA				
Measure:	2017	2016	2015	2014
Respond to initial FOIA requests within 20 working days	46.36 days 35.9 %	32.7 days; 36.6%	14 days; 78.34%	7 days; 91.81%
Seek a statutory extension for less than 15% of requests	10.5%	25.4%	20%	7.08%

Respond to statutory appeals within 20 working days	20 working days	32.35 working days	24 working days	20 working days
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- Based on the information in the FOIAonline, the Agency responded to initial FOIA requests in an average of 46.36 working days for requests received from October 1, 2016 to September 30, 2017. The Agency received 2,217 requests this period and responded to 798 of those requests in 1-20 days. Thus, 35.9 percent of the FOIA requests were processed within the 20-day statutory time period.
- The Agency sought an extension of time to process a request beyond the 20-day period by sending a letter to the requester taking an additional ten working days to respond to the request in approximately 10.5 percent of the FOIA requests received during the Fiscal Year 2017.
- The Agency received 11 FOIA Appeals from October 1, 2016 to September 30, 2017 and responded to ten of these appeals. The Agency responded to eight of those appeals in 1-20 days. Thus, 72.7 percent of the FOIA appeals were processed within the 20-day statutory time period.
- The Agency did not seek an extension of time for the FOIA appeals received from October 1, 2016 to September 30, 2017.
- All FOIA requests and appeals are now processed in Headquarters. In FY 2017, the influx of new staff members, most of whom required significant training until they became proficient in handling requests, and difficulties associated with technology, which has since been upgraded, affected FOIA response rates.

FY 2018 Strategic Goal 3 (Support): Achieve Organizational Excellence

Management Strategies:

Employee Development

- The agency continued to move forward with the transition to USA Performance. Guidance was issued on July 3, 2018 to managers and supervisors on completing the first rating phase using USA Performance for all Non-Bargaining Unit Employees.
 - » OPM conducted an audit to make certain that the essential points of the Agency's performance management system are in compliance. This was validated by OPM staff during the Human Accountability Assessment Framework (HCAAF) audit in April 2018. OPM advised that NLRB systems provided robust tools and resources to support the process.
- Security Branch hosted Active Shooter Preparedness Training for the Headquarters employees. The Security Branch is ensuring through Office Managers that all field offices have received this critical training. The last time this was coordinated through the field offices was 2016.
- Office of Employee Development (OED) developed online content for legal writing and provide legal writing coaching for Headquarters employees.
- Office of Employee Development (OED) continued updating the Management Development Program curriculum to align with the Federal Supervisory and Managerial Frameworks and Guidance to address critical future skills needed by the Agency.

- » Additionally, upon the acquisition of additional staff, the Human Capital Planning Officer (HCPO) plans to work with leadership to develop a core set of HRstat metrics to use in tracking and analyzing competencies and skills gap data for NLRB's mission critical occupations. The Security Branch worked with OED to release the 2016 Continuity of Operations Training for Agency personnel, for the third year in row via Skillport.
- HCPO developed a draft Human Capital Operating Plan pursuant to the newly revised regulations at 5 CFR 250. The draft outlines human capital goals, objectives, and strategies and is currently being reviewed by management.
- The Agency continued to comply with OPM's hiring reform efforts by using the 80-day hiring model.

Workforce Management

- The Agency continues to provide information and pertinent training regarding disability in the workforce, workplace laws and regulations, as well as information on Agency recruitment. During the 4th Quarter, the Office of Human Resources (OHR) embarked on a new partnership with several Senior Community Employment Service Program (SCSEP) affiliates for Headquarters and Chicago and New York field offices.
- OHR continued to validate that employees have performance plans through its new USA Performance reporting system. The process is being used with all non-bargaining unit employees. The rollout for bargaining unit employee will occur during FY19.
- OHR management team finalized narratives for their program areas to ensure that all HR professionals deliver a unified New Employee Orientation (NEO).
- Office of Equal Employment Opportunity (OEEEO) continues to lead the Agency-wide effort to develop programs for the Agency through the EEOC's Management Directive 715 (MD715).
 - » OEEEO held 2 quarterly meetings with a cross section of organizational units, including OHR, OED and the Division of Operations-Management (Ops).
 - » It was determined that many EEO and inclusion efforts have a technology component, including handling EEO data, responding to Agency reporting requirements and 508 accessibility. OEEEO consulted with the Office of the Chief Information Officer (OCIO) in the 2nd quarter to ensure improved reporting in the MD715 report. It was determined that OCIO will be a regular partner in all quarterly model EEO meetings. Each office is required to identify, develop, measure and report out on its progress on issues related to barriers to full opportunity. These efforts will result in a more relevant and responsive MD715 report and plan.
- OEEEO, OHR and OED delivered comprehensive mandatory training for managers and supervisors on the Agency's revised Reasonable Accommodation Policy.
- OED led the effort to develop comprehensive mentoring and career development programs for administrative support professionals and for all employees.
 - » OED identified resources to develop Individual Development Plans for Agency employees.

- OEE0 is leading the effort to develop an Agency-wide Diversity and Inclusion Council, as a best practice among federal agencies and as part of the Agency's Diversity and Inclusion Strategic Plan (2012 and 2016), to fully engage all employees by serving as a platform for discussion of diversity and inclusion issues and to develop recommendations to leadership. This proposed council would serve as the platform for recognition of Agency Employee Resource Groups.

Motivation

- HCPO conducted 16 EVS organizational assessments with senior executives on the 2017 EVS results with a focus on identifying Agency trends/barriers behind low survey scores; reviewing and prioritizing targeted areas of change; identifying outcomes that enables the organization to transition to higher EVS scores; identifying best practices for managing staff to higher levels of engagement; engaged in root cause analyses and action planning efforts for challenge areas
 - » HCPO developed an EVS Action Planning Toolkit for organizations to utilize in developing action strategies to effect change.
 - » During the assessment meetings, the HCPO also discussed, inter alia, the two EVS Agency-wide strategic areas of focus: effective leadership and communication. As a result, leadership will continue to engage in EVS action planning efforts and implement best practices designed to drive higher levels of employee satisfaction and engagement, with a particular focus on improving the work environment.
- The HCPO completed a comprehensive analysis of the 2017 Federal Employee Viewpoint Survey (FEVS) results and provided each division/office with a comprehensive organizational assessment briefing of the EVS results. During those briefings, a target of increasing the number of employees responding to the 2018 EVS was set at a five (5) percent increase over the 2017 EVS participation rate.
 - » The implemented strategies included the HCPO building successive weekly communications with managers and supervisors during the survey administration period where they would encourage their staff to participate; a communication plan that provided division/office heads with a weekly report on their organization's participation levels; an EVS Management Toolkit to leverage in promoting the EVS; and EVS promotional flyers distributed in NLRB's work space promoting the survey administration period.

FY 2018 Strategic Goal 4 (Support): Manage Agency Resources in a Manner That Instills Public Trust

Information and Technology:

The Agency uses a legacy case tracking solution called NxGen which is an enterprise case management system.

NxGen presently manages:	
Internal users	1,242
Cases	352,032
Case Actions of the Agency	1,225,231

Documents, images, and videos, each linked to its Action and Case	10,375,671
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The Agency expanded electronic distribution of case documents for 15 document types resulting in 626 documents being sent to the USPS electronically, and in savings for the Agency.

The Agency uses an electronic filing program (E-file) to allow constituents to electronically file documents with the Agency.

Number of E-Filings Received	50,682
Number of Documents Received	79,293
Number of Board and ALJ Decisions E-Served	593
Total Number of parties E-Served Decisions	27,249
Number of E-Deliveries of Case Documents	4,148
The total number of case documents available for public access in FY 2018	1,259,762

Please see <http://www.nlr.gov/open/public-documents> for a complete list of the document types available to the public.

- To streamline Agency processing, the Administrative Systems Team focused on Business Process Automation using SharePoint as the platform. The Administrative System's team is in the process of automating approximately 100 of the Agency's processes/forms using SharePoint, InfoPath, web services and Microsoft Azure components. The processes completed in FY2018 are:
 - » Administrative Professional Award Nomination
 - » Advanced Annual and Sick Leave
 - » Duress Alarm Test
 - » Facilities Request
 - » Honorary Award Nomination
 - » Property Pass
 - » Recruitment Strategy
 - » Superior Qualifications
 - » Training Request
- The Administrative Systems team also completed the modernization of two applications; Archivalware and WIP/CiteNet, to remediate security vulnerabilities associated with end of life operating system support and allow for the continued growth of the systems with respect to access control and data management.
- The Administrative Systems team also completed several projects designed to make the SharePoint-based intranet a robust, dynamic, and secure location for employee collaboration:
 - » Development of a new Events and Announcements application was deployed. This will allow contributors the ability to input events or announcements to be posted on the Intranet

home page, the Events and Announcements home page and email notifications to be sent for greater visibility and awareness.

- » Launched a redesign of the Service Catalog to provide easy to use categorization of services and allows for growth to add additional services as processes are automated. Included in a recent updated release was an alternate view of all services alphabetized A-Z for another easy way to find and launch the services.
- » Implemented a dynamic Staff Directory which allows employees to easily find office and staff information through browse and/or search.
- » Created various private office workspaces with document libraries, discussion boards, and calendars for group collaboration.

Financial Management:

- To enhance internal controls of the purchase card program, AMB, in coordination with the Budget Office continues to enforce a process by which quarterly target amounts for purchase card spending are sent to each headquarters and regional offices. These amounts are disseminated at the beginning of each quarter to the Office of Operations Management. Operations Management is responsible for communicating specific dollar amounts to the respective regional offices, and for tracking the overall expenditures from the regional offices. In addition to quarterly target amounts sent to the Headquarters Offices, all headquarters PCHs submit a Form 13 (Requisition/Procurement Request Form) for certification and approval of appropriated funds prior to making any purchase via their Government issued purchase card. This process helps certify that appropriated funds are approved and available for purchase.
- AMB continues to utilize the bulk purchasing program for paper and toner across the agency. The program allows for better coordination, distribution and cost-savings of required items. In FY18, bulk orders have taken place in November, February, May, and August 2018.
- As demonstrated in the chart below, the NLRB has exceeded the statutory goals established by federal executive agencies in all categories except one, namely the service-disabled veteran owned businesses. NLRB will work towards achieving the statutory goal for service-disabled veteran owned businesses in FY 2019.
- From October 1, 2017 – September 30, 2018, a total of \$28,057,166.00 and 244 contract actions were reported within the Federal Procurement Data System (FPDS). Out of this amount, \$18,211,493.00 and 119 actions went to small businesses. This is a 22% increase in awards given to small business from the previous year. In FY 2017, NLRB awarded 41.70% to small businesses. In FY 2018, this percentage increased to 65%.

Category	Gov-Wide Goal	2018	2017	2016	2015	2014	2013
Small Business	23%	65%	41.7%	36.5%	39.7%	31.6%	34.1%
Women Owned Small Business	5%	5%	7.47%	11.1%	12.4%	13.5%	17.8%
Small Disadvantaged Business	5%	52%	28.3%	8.0%	10.7%	11.0%	7.3%

Service-Disabled Veteran Owned Small Business	3%	1%	1.6%	2.4%	0.3%	0.9%	0.3%
HUBZone	3%	41%	23.3%	3.4%	2.1%	2.2%	0.8%

Agency Outreach

The Agency met with local consulates of various countries to educate consular officials about the NLRB's protections and processes.

The Agency provided direct outreach to immigrant populations by:

- Speaking in Spanish and other languages at events organized by the consulates or other community and non-profit groups, such as the Mexican Embassy, the Workplace Justice Project, and workers' rights clinics, to educate the public about the NLRA
- Staffing booths at informational fairs
- Responding to inquiries from individuals who seek consular services
- Participating in Platicas en Consulado (Consul on Wheels)
- Participating in various Labor Rights Week activities in numerous locations throughout the country sponsored by different consulates, including Mexico, El Salvador, Philippines, and Guatemala
- Appearing on Spanish-radio talk show

Other Agency activities directed at the immigrant population included:

- Meeting with foreign labor and business representatives to provide information about employee rights under the NLRA and NLRB processes, including a delegation from South Korea, Shaanxi Federation of Trade Unions, and State Tobacco Monopoly Administration of China

Activities directed at the youth population include:

- Leading discussions for high school and middle school classes concerning the development of the NLRA
- Participating in the Great American Teach In

The agency continues to partner with The Department of Homeland Security (DHS), The Department of Labor (DOL) (Wage and Hour Division (WHD), Occupational Safety and Health Administration (OSHA), and Office of Federal Contract Compliance Programs (OFCCP)), OSC, DOJ and Equal Opportunity Employment Commission (EEOC) in an Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws.

The Agency has joined with other state and federal agencies by:

- Participating in the Vulnerable Workers Project
- Participating in “listening sessions” coordinated by the Asian American and Pacific Islanders community
- Participating in Wage Theft Task Force discussions
- Participating in SBA Ombudsman roundtables and listening sessions

The Agency produced an informational pamphlet entitled “Protecting Employee Rights,” which contains an expanded discussion of an employee’s right to engage in concerted activity and other rights under the NLRA, which is available on the NLRB website and in hard copy, in English and Spanish.

The Agency maintains webpages for each individual regional office. This webpage contains news articles relevant to the particular region. To ensure that these pages remain fresh, news articles are tagged by the Agency’s Office of Public Affairs and automatically loaded on the Region’s webpage.

The Agency maintains an internal Sharepoint database through which the Agency outreach coordinators post and share outreach materials and participate in a discussion board sharing ideas and leads for outreach.

The Agency maintains an interactive smart phone app which provides information about employer and employee rights under the NLRA and contact information.

The Agency inserted QR codes to its correspondence to direct the public to the website.

Ethics:

The Ethics Staff continued to communicate with Agency leadership about the status of ethics projects and to discuss notable ethics issues.

In coordination with the Agency’s General Counsel and Chairman, the Ethics Staff:

- Prepared and distributed the 2017 Annual Ethics Briefing to all Public and Confidential Financial Disclosure filers as required by the Office of Government Ethics. We presented the briefing through the Agency’s learning management system and covered conflicting financial interests, impartiality, misuse of position, gifts, and the NLRB’s Supplemental Regulations. As of the December 31st due date, 92% of Agency filers had completed the 2018 Annual Ethics Briefing. Employees who did not complete the training by the specified due date indicated that their delay was due to technical issues and schedule conflicts (mission related or scheduled leave). However, all filer employees completed the training requirement on or before January 5, 2018.
- Distributed the 2017 Annual Ethics Briefing to all Agency supervisors and managers. By making this briefing available to supervisors and managers, we ensure that all management employees are in a position to identify potential ethics issues and avoid situations that distract from the mission of the Agency.

Reissued Combined Federal Campaign (CFC) guidance memo and Job Aid to all Agency employees. These documents covered the relevant rules and regulations, including those applicable to CFC events, and discussed the importance of During FY 2018, the Ethics Staff continued to communicate

with Agency leadership about the status of ethics projects and to discuss notable ethics issues.

In coordination with the Agency's General Counsel and Chairman, the Ethics Staff:

- Reissued Combined Federal Campaign (CFC) guidance memo and Job Aid to all Agency employees. These documents covered the relevant rules and regulations, including those applicable to CFC events, and discussed the importance of preventing coercive activity when a supervisor serves as a campaign coordinator and/or keyworker for the CFC.
- Reissued Speaking Engagement memo to all Agency employees. This document provided general guidance about speaking engagements and emphasized the difference between speaking in an official versus a personal capacity. In addition, the memo encouraged the use of the NLRB Waiver Addendum which affirms that by consenting to the recording of a presentation, an NLRB employee is not permitting the sponsor to use their official title or likeness to advertise or endorse the recording, or endorse any other products or services offered by the organization.
- Distributed guidance memo to all Agency employees that addressed monetary and in-kind donations to disaster relief programs, and individual donations to coworkers who were victims of Hurricanes Maria and Irma.
- Partnered with the Office of the Chief Financial Officer (OCFO) to draft a policy statement relating to the acceptance of travel reimbursement from a non-federal source.
- Assisted Board and General Counsel in evaluating ethics recusal obligations.
- Partnered with the Office of the Chief Information Officer (OCIO) to index legal ethics Tips of the Month by subject matter. This feature of SharePoint should make it easier for Board agents to find legal ethics resources more efficiently.
- Assisted the General Counsel's office in developing a process for approving speakers for NLRB sponsored events.

The Ethics Staff continued to seek out opportunities to educate all Agency employees about their ethical obligations.

During FY2018, the Ethics Staff:

- Revised and reissued a memo to all Agency employees concerning speaking engagements and encouraged the use of the NLRB Waiver Addendum to comply with the misuse provisions in the Standards of Conduct. This document also reminded employees about the prohibition on soliciting travel reimbursement which is found in the gift regulations.
- Provided customized ethics training to newly confirmed political appointees and their front office staffs.
- Developed a post-employment webcast which is provided to all employees who retire or resign from government service. This webcast supplements the Agency's post-employment guidance documents by providing general guidance covering the Federal Government post-employment restrictions applicable to all government employees, as well as specific post-employment restrictions from the ABA Model Rules of Professional Conduct applicable to Agency attorneys.

It helps to ensure the confidentiality of information that belongs to the Agency.

- Began development of the 2018 Annual Ethics Briefing which will be offered to all financial disclosure filers, as well as all supervisors and managers, before the end of the calendar year.

Measure:	Goal	2018	2017	2016	2015	2014
Percentage of inquiries resolved within 5 business days	85%	89%	92%	83%	87.7%	87%
Percentage of submitted financial disclosure reports reviewed within 60-days	100%	100%	100%	100%	100%	100%

- During FY 2018, the Ethics Office received 927 inquiries. 826 (89%) were resolved within 5 business days.
- All financial disclosure reports filed in FY 2016 were reviewed within 60 days. During this review we confirmed that all filers had been provided appropriate ethics guidance relating to their reportable assets, outside arrangements, and outside employment activities.
- The annual financial disclosure cycle began on January 1st. NLRB filers use electronic filing systems to comply with the Office of Government Ethics' filing requirement.
- In mid-January we began to receive Public (OGE 278e) and Confidential (OGE 450) Financial Disclosure reports for CY 2017. In all cases, we completed the review of each report within 60 days of receipt and we notified the filer of any real or potential conflicts.

During FY 2018, the Agency completed its review of:

- 31 Annual Confidential Financial Disclosure Reports (OGE 450)
- 105 Annual Public Financial Disclosure Reports (OGE 278e)
- 13 New Entrant Public Financial Disclosure Reports (OGE 278e)
- 119 Monthly Transaction Reports (OGE 278T)
- 11 Termination Reports (OGE 278)

Note: Review and approval of New Entrant and Annual filings resulted in 118 memos that remind and educate filers about their reporting obligations, potential conflicts, and recusal obligations.

Internal and External Audit Responses:

- Responses to internal auditors have been prepared and all deadlines have been successfully coordinated regarding the OIG audit recommendations
- OCIO addresses data calls related to DHS Binding Operational Directive 18-01, Enhanced Email and Web Security.
- OCIO responded to data calls in relation to BOD 18-02, High Value Assets (HVA).

- OCIO submitted FISMA quarterly reports to DHS.
- Juniper ScreenOS and Firewall and VPN Server Data Call in Q1
- CISCO vulnerability Data Call in Q2

	FOIA:				
Measure:	2018	2017	2016	2015	2014
Respond to initial FOIA requests within 20 working days	41 days; 54.8%	46 days; 35.9%	33 days; 36.6%	14 days; 78.34%	7 days; 91.81%
Seek a statutory extension for less than 15% of requests	1%	10.5 %	25.4%	20%	7.08%
Respond to statutory appeals within 20 working days	20 working days	20 working days	32.25 working days	24 working days	20 working days

Summary

- From October 1, 2017 to September 30, 2018, the FOIA Branch received 1,312 requests and responded to 780 of those requests within 1-20 days. Thus, 54.8 percent of the FOIA requests were processed within the 20 day statutory time period.
- During the 2018 Fiscal Year, the FOIA Branch sought an extension of time to process a FOIA request beyond the 20 day statutory time period in 1 percent of the FOIA requests received.
- During the 2018 Fiscal Year, the FOIA Branch received 12 FOIA Appeals. The average response time was 20 working days. The Agency did not seek an extension of time to respond to the FOIA appeals.
- The NLRB had a FOIA request backlog of 294 at the end of Fiscal Year 2017. At the end of Fiscal Year 2018, the NLRB had a FOIA request backlog of 90, which reflects a backlog decrease of 69.39 %.

Reports

Each year, the FOIA Branch prepares an Annual Report, which contains statistics on the number of FOIA requests and appeals received, processed, and pending during the Fiscal Year, and the outcome of each request. The NLRB FOIA Annual Reports and the NLRB FOIA Quarterly Reports are available on the:

1. NLRB website at <https://www.nlr.gov/news-outreach/foia>,
2. DOJ website at <https://www.justice.gov/oip/reports-1>, and
3. FOIA.gov website <https://www.foia.gov/>

The FOIA requires each agency Chief FOIA Officer to report to the Attorney General on their performance in implementing the law and the efforts to improve FOIA operations. The NLRB Chief FOIA Officer Reports are publically available on the:

1. NLRB website at: <https://www.nlr.gov/news-outreach/foia>, and
2. DOJ website at <https://www.justice.gov/oip/reports-1>.

Proactive Disclosure

In response to receiving several monthly requests for certain records filed or issued by the twenty-six Regional Offices, the FOIA Branch created a webpage where requesters may directly search for these records. These records are: Representation Petitions and Certifications in RD, RM, & RC cases; and Unfair Labor Practice Charges and Dismissal Letters in CB, CC, CD, CP, CG, & CE cases. The FOIA Branch began posting the January 2017 records online at: <https://www.nlr.gov/region-monthly-uploads>. On a monthly basis, the FOIA Branch maintains and updates this webpage with new responsive records in accordance with the FOIA.

In July 2017, the FOIA Branch became a FOIAonline participating agency. As the FOIA case management system, FOIAonline provides the FOIA Branch with technology tools for FOIA tracking, processing, and posting. Additionally, the NLRB has proactively made more responsive records available to the public on the FOIAonline website <https://foiaonline.gov/foiaonline/action/public/home>.

Training

The FOIA Branch continues to promote and use the DOJ training tools such as the FOIA Professional e-Learning Module and the Federal Employee e-Learning Module, which are available to all Agency employees on the NLRB e-Learning platform.

If you are unfamiliar with the FOIA, please view the [*DOJ FOIA Training for Federal Government Employees*](#) available on the NLRB's Skillport and contact your colleagues in the FOIA Branch.

APPENDIX D

Strategic Goals:

Goal # 1 (Mission): Promptly and Fairly Resolve Through Investigation, Settlement or Prosecution, Unfair Labor Practices Under The National Labor Relations Act

Objective 1: Achieve established performance measures for the resolution of meritorious unfair labor practice charges.

Initiative 1: Achieve a collective 20% increase in timeliness of case processing under established performance measures for the resolution of all meritorious unfair labor practice charges.

Performance Measures:

- Measure 1: Realize a 5% annual decrease in the average time required to resolve meritorious unfair labor practice charges through adjusted withdrawal, adjusted dismissal, settlement or issuance of complaint.
- Measure 2: Realize a 5% annual decrease in the average time between issuance of complaint and settlement by administrative law judge or issuance of administrative law judge decision.
- Measure 3: Realize a 5% annual decrease in the average time between issuance of an administrative law judge decision and a Board order.
- Measure 4: Realize a 5% annual decrease in the average time between issuance of a Board order and the closing of the case.

Initiative 2: Achieve enhanced performance for the resolution of all unfair labor practice charges.

Performance Measures:

- Measure 1: Realize a 5% annual decrease in the average time required to resolve unfair labor practice charges through withdrawal, dismissal, settlement or issuance of complaint.
- Measure 2: Realize a 5% annual decrease in the average time between issuance of complaint and settlement by administrative law judge or issuance of administrative law judge decision.
- Measure 3: Realize a 5% annual decrease in the average time between issuance of an administrative law judge decision and a Board order.
- Measure 4: Realize a 5% annual decrease in the average time between issuance of a Board order and the closing of the case.

Initiative 3: Ensure that all matters before the Agency are handled in a fair and consistent manner.

Performance Measures:

- Measure 1: Ensure that Regional case processing procedures evolve with the Agency's strategic goals and technological advancements.

- Measure 2: Conduct annual quality reviews of Regional unfair labor practice case files and institute modifications to case processing as appropriate.

Goal # 2 (Mission): Promptly and Fairly Investigate and Resolve All Questions Concerning Representation of Employees

Objective 1: Achieve established performance measures for the timely resolution of all questions concerning representation of employees.

Initiative 1: Achieve established performance measures for the resolution of representation cases.

Performance Measure:

- Measure 1: The percentage of representation cases resolved within 100 days of filing the election petition.

Initiative 2: Ensure that all matters before the Agency are handled in a fair and consistent manner.

- Measure 1: Ensure that Regional case processing procedures evolve with the Agency's strategic goals and technological advancements.
- Measure 2: Conduct annual quality reviews of Regional representation case files and institute modifications to case processing as appropriate.

Goal # 3 (Support): Achieve Organizational Excellence and Productivity in the Public Interest

Objective 1: Recruit, develop, and retain a highly motivated, talented, and diverse workforce to accomplish our mission.

Initiative 1: Invest in and value all employees through professional development, workplace flexibilities, fair treatment, and recognition of performance in the public interest.

Management Strategies:

- Maintain a current human capital plan that includes human capital goals, objectives, and strategies and a workforce plan that is consistent with the Human Capital Assessment and Accountability Framework (HCAAF) of the Office of Personnel Management (OPM).
- Ensure that the Agency's performance management system is results-oriented and aligned with the Agency's goals and objectives as to quality and productivity.
- Demonstrate significant improvement in OPM's assessment of the Agency's performance management system.
- Ensure that managers collaborate with the Agency's employees and unions to implement Agency policies and collective bargaining agreements that balance performance, productivity and workplace flexibilities.
- Reduce the number of pending background investigations.
- Enhance employee development and learning opportunities through Skillport, West Legal Ed, Training Tuesdays, and other on-line and blended media.

- Develop Individual Development Plans for training and succession planning.
- Identify, through updating the workforce plan, core competencies for managers and actions necessary to close skill gaps as required by OPM.

Initiative 2: Develop and implement recruitment strategies to ensure a highly qualified and diverse workforce.

Management strategies:

- Comply with OPM's hiring reform, which tracks time spent to fill vacancies.
- Identify areas in which the Agency can enhance its diversity and talent through annual analysis of MD-715 guidance.
- Attract qualified and diverse applicants, including veterans and persons with disabilities, by following OPM and Equal Opportunity Commission (EEOC) guidance and utilizing best practices of similar agencies.
- Establish working relationships with veteran's groups and Veterans Administration and Department of Labor veterans' programs to ensure that outreach efforts to veterans are consistent with OPM, congressional and Presidential directives.

Objective # 2: Promote a culture of professionalism, mutual respect, and organizational pride.

Initiative 1: Improve employee satisfaction and employee engagement.

Management Strategies:

- Strive to achieve improved internal communications.
- Identify and implement strategies to increase the number of employees who respond to the Federal Employee Viewpoint Survey.
- Develop a collaborative program to encourage employee creativity and innovation, including the Agency's suggestion program.
- Enhance internal and external recognition programs to acknowledge employee contributions (for example: Honorary Awards).

Initiative 2: Ensure that employees understand the Agency's mission and how they contribute to its accomplishments.

Management Strategies:

- Review and enhance the employee on boarding program.
- Ensure that each employee is provided with a performance plan and a clear understanding of management's expectations.

- Enhance publicity of significant organizational accomplishments.

Initiative 3: Cultivate and promote Agency programs that encourage collaboration, flexibility, diversity, and mutual respect to enable individuals to contribute to their full potential.

Management Strategies:

- Demonstrate leadership accountability, commitment, and involvement regarding diversity and inclusion.
 - » Fully and timely comply with all federal laws, regulations, executive orders, management directives and policies related to promoting diversity and inclusion in the workplace.
 - » Provide on-going diversity and inclusion training for senior leadership.
 - » Evaluate all levels of management on their proactivity in maintaining an inclusive work environment.
- Involve employees as participants and responsible agents of diversity, mutual respect and inclusion.
 - » Reassess Agency mentoring programs to ensure they are used as tools to maintain a diverse workforce by affording a consistency of opportunity throughout all organizational units.
- Encourage participation in special emphasis observances.

Goal # 4 (Support): Manage Agency Resources Efficiently and in a Manner That Instills Public Trust

Objective 1: Use information and technology to monitor, evaluate, and improve programs and processes in order to accomplish the Agency's mission and increase transparency.

Initiative 1: Improve the productivity of the Agency's case management by standardizing business processes in a single unified case management system.

Performance Measures:

- Increase the rates of electronic service, delivery, and filings, thereby reducing the paperwork burden on constituents, including individuals, labor unions, businesses, government entities and other organizations.
- Increase the information shared electronically with the public, making the Agency's case processes more transparent.

Initiative 2: Achieve more effective and efficient program operations in the NLRB administrative functions by automating and improving processes and information sharing with the Agency.

Performance Measures:

- Streamline the Agency transactional processes by providing employees ready access to the tools, data and documents they require from anywhere, at any time.
- Continue to enhance and utilize a modern single unified communications platform and network to empower Agency personnel to communicate with voice, video, and data from all locations

including the office, at home and on the road.

- Fully utilize a dynamic social collaborative environment for employee engagement.

Initiative 3: Effective Management of fiscal resources.

Performance Measures:

- Develop and/or support the development of the Agency's budget.
- Produce financial reports as required by OMB, Treasury, and Congress.
- Conduct quarterly Program Management Reviews on requirements development and execution to ensure programs stay on time and on budget.
- Monitor unliquidated obligations quarterly for current year execution and re-allocate to other unfunded mission requirements.
- Increase the use of strategic sourcing, purchase card program, and in sourcing to minimize waste and abuse. Continue to support minority business enterprises for contract awards.

Initiative 4: Right-sizing and closing Field Offices and Headquarters office space by up to 30% over the next five years in accordance with GSA guidelines.

Performance Measure:

- Develop five-year Project Plan that identifies field offices for reductions in square footage or for closure.

Objective 2: Evaluate and improve the Agency's Outreach Program.

Initiative 1: Enhance Agency's Outreach Program.

Management Strategies:

- Employ further non-traditional outreach to the following populations:
 - » Unrepresented employees
 - » Unions, Small Business Owners
- Engage with organizations, such as those listed below, to better educate workers and employers:
 - » Joint outreach with sister agencies
 - » Memorandums of Understanding (MOU) with other agencies related to co-extensive investigations
 - »
 - »
 - »

»

Objective 3: Conduct all internal and external Agency business in an ethical and timely manner.

Initiative 1: Promote an ethical culture within the NLRB through leadership, communications, awareness, resources, and oversight.

Performance Measures:

- Involve Agency leadership promoting visibility and commitment to the NLRB Ethics Program.
- Increase employee awareness of ethics responsibilities by maintaining an education program that reaches all NLRB employees at all levels and uses internet technology to expand access to program materials.
- Respond to at least 85% of ethics inquiries within 5 days of receipt.
- Review and certify financial disclosure reports within 60 days of receipt and notify filers of real or potential conflicts.
- Use technology to improve financial disclosure reporting and review process.

Initiative 2: Respond to internal audits in a timely manner.

Performance Measure:

- Prepare responses to internal audit reports as required by the auditor, meeting the deadlines specified in the reports.

Initiative 3: Respond to external audits in a timely manner.

Performance Measure:

- Prepare responses to external audit reports as required by the auditor, meeting the deadlines specified in the reports.

Initiative 4: Respond to FOIA and other public inquiries in a timely manner.

Performance Measures:

- Respond to at least 60% of initial FOIA requests within 20 working days.
- Seek a statutory extension for less than 15% of requests.
- Respond to at least 95% of statutory appeals within 20 working days.
- Seek a statutory extension for less than 20% of appeals.



National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

www.nlrb.gov

NATIONAL LABOR RELATIONS BOARD

JUSTIFICATION OF PERFORMANCE BUDGET FOR THE COMMITTEE ON APPROPRIATIONS



FISCAL YEAR 2021

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FY 2021 Congressional Budget Justification

I. Foreword

The National Labor Relations Board (NLRB, Board, or Agency) is a small but important Agency to the Nation and its economy. The NLRB conducts union representation elections, investigates, prosecutes, and adjudicates alleged labor law violations involving private sector employees, unions, and employers throughout the United States.

In the FY 2021 Budget request, the NLRB seeks funding to improve the efficiency, effectiveness, and accountability of the Agency. These efforts include process improvements for casehandling, mission and business operations, and identifying functions that can be consolidated and/or eliminated. The Agency continues to upgrade and invest in compliance mandates to our Information Technology infrastructure and identify training to support our Human Capital Strategy program.

II. Mission Statement

Protect workplace democracy and the rights of employees, unions, and employers under the National Labor Relations Act (NLRA), in order to promote commerce and strengthen the Nation's economy.

III. Agency Role and Functions

The NLRB is an independent federal agency created by Congress in 1935 to administer and enforce the NLRA, the primary federal statute governing labor relations in the private sector. The purpose of the Nation's primary labor relations law is to serve the public interest by reducing interruptions in commerce caused by industrial strife. It seeks to do this by providing orderly processes for ensuring workplace stability among employees, employers, and unions in their relations with one another. The NLRA contains an employees' bill of rights, which establishes freedom of association for the purposes of participating in collective bargaining or refraining from participation in collective action. Under the Act, the NLRB has two primary functions:

- Prevent and remedy statutorily defined unfair labor practices (ULPs) by employers and labor organizations, and
- Conduct secret-ballot elections among employees to determine whether or not they wish to be represented by a labor organization.

The role of the NLRB is to support the law through the administration, interpretation, and enforcement of the Act. There is no private right of action under the NLRA; thus, the Agency is the only recourse for any employer, employee, or union to seek redress of a violation of the NLRA. Consequently, the processing of these cases assists in easing the burden on the court systems across the United States.

The Board has five members and primarily acts as a quasi-judicial body in deciding cases based on formal records in administrative proceedings. One Board member is designated as the Chairman. Independent from the Board, the General Counsel is responsible for the investigation and prosecution of unfair labor practice charges, for the processing of representation petitions, and for the oversight of the NLRB's Regional Offices, in addition to managing the day-to-day administrative, financial, personnel, human capital, and operational responsibilities of the Agency. These positions are appointed by the President and confirmed by the Senate.

The Board and the General Counsel are located in the Agency's Headquarters in Washington, D.C. The Agency also has a network of Administrative Law Judges located in Washington, D.C., New York, and San Francisco. There are 26 Regional Offices located in major cities across the United States, and a total of 48 offices located nationwide.

To fulfill the Agency's first primary function, the General Counsel has responsibility for: investigating charges of unfair labor practices; approving withdrawals or dismissing non-meritorious cases; and facilitating or obtaining settlements or issuing and prosecuting complaints in meritorious cases.

In connection with its second primary function, the Agency enforces the right of employees to choose whether to be represented by a labor organization. Representation cases are initiated by the filing of a petition – by employees, labor organizations, or employers. The Agency evaluates the petition and, if appropriate, conducts an election to determine if employees wish to have, or continue to have, a labor organization as their collective-bargaining representative. Thereafter, the Agency addresses challenges and/or objections to the election, if filed, and ultimately issues a certification of representation or results of election.

Members of the Board

JOHN F. RING, *Chairman*

CHRISTINE B. LUCY, *Chief of Staff and Special Counsel to the Chairman*

WILLIAM J. EMANUEL, *Member*

VACANT, *Member*

MARVIN E. KAPLAN, *Member*

VACANT, *Member*

ROXANNE ROTHSCHILD, *Executive Secretary*

FRED B. JACOB, *Solicitor*

TERRY SCHOONE-JONGEN, *Director of Office of Representation Appeals*

ROBERT A. GIANNASI, *Chief Administrative Law Judge*

EDWIN EGEE, *Director of Congressional and Public Affairs*

Office of the General Counsel

PETER B. ROBB, *General Counsel*

ALICE B. STOCK, *Deputy General Counsel*

DOLORES K. BODA, *Special Advisor to the General Counsel*

BETH TURSELL

*Associate to the General Counsel,
Division of Operations Management*

RICHARD BOCK

*Associate General Counsel, Division of
Advice*

NANCY PLATT

*Associate General Counsel, Division of
Legal Counsel*

MARK ARBESFELD

Director, Office of Appeals

MEREDITH JASON

*Acting Assistant General Counsel,
Appellate and Supreme Court
Litigation Branch*

BRANDI A. PETERS

*Supervisor, Special Counsel & Labor
Relations*

LORI KETCHAM

Associate General Counsel, Ethics Designated Agency Ethics Official

Operational Support Offices

DAVID P. BERRY

Inspector General

BRENDA V. HARRIS

Director of Equal Employment Opportunity

PREM ABURVASAMY

Chief Information Officer

ISABEL L. MCCONNELL

Chief Financial Officer

LASHARN HAMILTON

Director of Division of Administration

IV. Appropriations Language

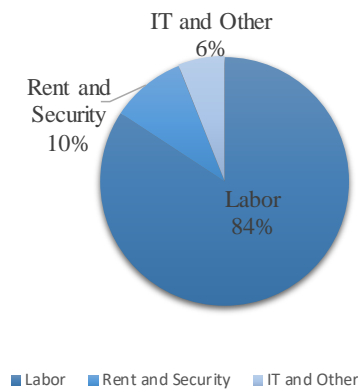
Appropriation Language	Explanation of Changes
<p data-bbox="326 367 1011 443">NATIONAL LABOR RELATIONS BOARD SALARIES AND EXPENSES</p> <p data-bbox="203 489 1133 995">For expenses necessary for the National Labor Relations Board to carry out the functions vested in it by the Labor-Management Relations Act, 1947, and other laws, [\$274,224,000] \$246,876,000. Provided, that no part of this appropriation shall be available to organize or assist in organizing agricultural laborers or used in connection with investigations, hearings, directives, or orders concerning bargaining units composed of agricultural laborers as referred to in section 2(3) of the Act of July 5, 1935, and as amended by the Labor-Management Relations Act, 1947, and as defined in section 3(f) of the Act of June 25, 1938, and including in said definition employees engaged in the maintenance and operation of ditches, canals, reservoirs, and waterways when maintained or operated on a mutual, nonprofit basis and at least 95 percent of the water stored or supplied thereby is used for farming purposes.</p> <p data-bbox="443 1037 894 1066">ADMINISTRATIVE PROVISION</p> <p data-bbox="203 1108 1117 1325">None of the funds provided by this Act or previous Acts making appropriations for the National Labor Relations Board may be used to issue any new administrative directive or regulation that would provide employees any means of voting through any electronic means in an election to determine a representative for the purposes of collective bargaining.</p> <p data-bbox="203 1367 1081 1436"><i>(Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2020.)</i></p>	

V. Overview of the FY 2021 Budget Request

The NLRB's FY 2021 Budget request is \$246.9 million. The FY 2021 request will fund the Agency's statutory mission of resolving labor disputes through investigation, settlement, litigation, adjudication, education, and compliance. This mission relies primarily on skilled and experienced professionals and administrative employees. The annual staff compensation (salaries

and benefits) accounts for approximately 84 percent of the requested funding or \$208 million; 10 percent or \$24 million is required for rent, security, and other facility and property expenses for the NLRB offices in Headquarters and across the country; and the remaining 6 percent or \$14.9 million is allocated to costs and activities that include, but are not limited to: information technology, court reporting, case-related travel, witness fees, interpreters, legal research systems, case management systems, training, compliance with government-wide statutory and regulatory mandates, and mission support offices. Additionally, the FY 2021 request includes increases of \$2.0 million to account for an estimated Federal Employees Retirement System (FERS) contribution increase of 1.3 percent of base salaries, and \$1.1 million to account for an estimated pay raise of 1 percent. The FY 2021 request also includes an increase of \$1.4 million to account for a 1 percentage point increase to support performance awards, and to support strategic workforce development to close current or projected skills gaps, as supported through workforce planning.

FY 2021 Expenses by Category



The complete NLRB FY 2019 – FY 2022 Strategic Plan, including objectives, initiatives and management strategies, can be viewed/downloaded at:

<https://www.nlr.gov/reports-guidance/reports/government-performance-and-results>

Strategic Goals

Promptly resolve labor disputes affecting commerce by fairly and efficiently investigating, settling, processing, and adjudicating unfair labor practices under the NLRA.

Promptly and fairly resolve all questions concerning representation of employees.

Achieve organizational excellence and productivity in the public interest.

Manage agency resources in a manner that instills public trust.

The FY 2021 Budget request will fund the NLRB in its efforts to protect the employee rights and other interests guaranteed by the Act. As reflected in its Strategic Plan, the NLRB expects that the recent, year-after-year declines in its case intake will continue in the near term, and the NLRB also expects that it will experience reduced FTEs through normal attrition. Accordingly, the NLRB has retained its focus on workforce planning and performance and has anticipated the reduction in staffing reflected below in Section VII of this FY 2021 OMB Request. The NLRB has positioned itself to realize increased productivity through substantial investments in technology, including NxGen, and training, coupled with review and adjustment of case processing procedures at both the Headquarters and Regional Office levels. This includes, among other techniques, adjusting processes to more efficiently and timely issue Board and Administrative Law Judges (ALJs) decisions; centralizing regional office decision writing and translation functions on a district or national level; consolidating administrative professional positions in regional offices, sharing management and supervisory personnel among regions and equalizing caseload by sharing resources among offices. All of this is occurring against a backdrop of the NLRB's constant self-evaluation and planning to ensure not only that its personnel are provided with the skills, equipment, and structure needed to fulfill the NLRB's mission, but that the NLRB's stakeholders and members of the public will receive appropriate support from and access to the NLRB's offices and public website.

The Field casehandling professionals and those in Headquarters offices have provided process improvement ideas to better service the public and the mission. As these improvements continue to be implemented and executed in FY 2020, the Agency will have more effective ways to engage the public through electronic media and enhanced technology platforms that will assist staff in research, intake information, tracking, and management reviews.

The FY 2021 Budget request will fund efforts in the use of technology to service the public, which will assist with decreasing associated costs such as copiers, paper, toner, mailings, and travel. The Agency is also continuing to either relocate or reduce square footage for offices as the leases become due according to the General Services Agency (GSA) guidelines.

VI. Funding Level

National Labor Relations Board			
(Dollars in Thousands)			
Detail	FY 2019 Enacted	FY 2020 Enacted	FY 2021 Request
Appropriation	\$ 274,224	\$ 274,224	\$ 246,876
FTE	1,286	1,334	1,313

VII. Program Activities

The NLRB has five (5) Program Activities that can be thought of as major mission functions for reporting. The Program Activities are Casehandling, Administrative Law Judge Hearings, Board Adjudication, Mission Support, and the Inspector General.

Program Activity	FY 2019 Actual		FY 2020 Enacted Budget		FY 2021 Request		\$Change from FY 2020 Enacted Budget		Revised 2/10/20 %Change from FY 2020 Enacted Budget	
	Amount	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount	FTE
Casehandling	\$150.0	982	\$160.2	1,005	\$146.9	994	(\$13.3)	(11)	(8.3%)	(1.1%)
Administrative Law Judges	\$8.0	40	\$9.0	40	\$8.0	40	(\$1.0)	0	(11.1%)	0%
Board Adjudication	\$19.0	93	\$19.0	99	\$18.0	97	(\$1.0)	(2)	(5.3%)	(2.0%)
Mission Support	\$91.0	165	\$85.0	182	\$73.0	174	(\$12.0)	(8)	(14.1%)	(4.4%)
Inspector General	\$1.0	6	\$1.0	8	\$1.0	8	\$0.0	0	0%	0%
Total Resources	\$269.0	1,286	\$274.2	1,334	\$246.9	1,313	(\$27.3)	(21)	(10.0%)	(1.6%)

Note: The Casehandling net change FTE of -11 are designated as supervisory or management positions. The %Change columns for Amount and FTE were revised to reflect the correct percentage calculation by Program Activity.

Casehandling

+\$146.9 million / +994 FTE

Net Change -\$13.3 / -11 FTE

The Casehandling program activity is the processing of unfair labor practices and representation cases. The Agency employees who work in the offices/branches/divisions involved in this process include: Regional Offices, Appeals, Advice, Operations-Management, E-Litigation, Appellate and Supreme Court Litigation, Injunction Litigation, and Contempt, Compliance, and Special Litigation.

Resource reduction in casehandling will be realized by normal attrition combined with workforce planning that minimizes impact and enables the Headquarters and Regional Offices to be staffed at near present levels with skillsets appropriate to ensure continued timely attention and processing of every case.

The casehandling process starts with Regional Office personnel performing intake processing of unfair labor practice charges and representation petitions filed by employees, labor organizations, or employers. These are received in the Agency's Regional and Satellite offices across the United States, which are staffed by professionals and administrative employees. Each case is investigated by docketing the original charge, contacting and taking evidence from witnesses, and requesting and reviewing relevant documents from all parties involved.

Once an initial investigation is completed, Regional Directors, who are charged with overseeing effective and efficient investigations in field offices, determine preliminarily whether a charge has merit. Historically, Regional Directors nationwide have found approximately 35 to 37% of the charges filed to be meritorious at this level. In the event of a dismissal, the charging party is entitled to appeal that decision to the General Counsel through the Office of Appeals located at Headquarters, where a determination will be made as to whether the investigation was sufficient and thorough, and the legal conclusion sound. If dismissed, the affected claimant has the right to appeal the dismissal of a compliance determination to the Board and Court. Otherwise, the dismissed case is closed, and the affected claimants have no right of further appeal. If a dismissed case is found to have merit following review at this level, a complaint will be issued if the case is not settled. Historically, the Regional Offices settle over 90 percent of charges filed. These resolutions (i.e., dismissals, withdrawals, or settlements) occur at an extremely early stage, typically within three months after the case has been initiated with the filing of a charge.

Regional Offices seek legal advice from the General Counsel through the Division of Advice located at Headquarters. Further, if there are serious violations requiring immediate relief because obtaining a remedy in due course would be too late to effectuate the purposes of the Act, the Regional Offices will petition a U.S. District Court in certain cases under Section 10(l) of the Act and will seek authorization from the Board through the Injunction Litigation Branch of the Division of Advice in certain cases under Section 10(j) of the Act. If the General Counsel believes that injunctive relief under Section 10(j) of the Act is warranted, s/he will seek authorization from the Board to institute court proceedings.

In FY 2019, the Injunction Litigation Branch received 125 cases. Of those 125 cases, 77 were 10(j) cases, and the Injunction Litigation Branch recommended to the General Counsel pursuing injunctive relief in 15 of them. The General Counsel sought authorization for injunctive relief in 14 cases and the Board authorized pursuit of injunctive relief in 13 of those cases.

The Agency strives to achieve voluntary prompt resolutions between employees, employers and labor organizations in the workplace, which also avoids costly and time-consuming litigation. The Agency's settlement program has been very successful, and as of September 30, 2019, 6,095 preliminary merit unfair labor practice cases were settled. For the same period, the

Agency issued 916 complaints, and those not settled are litigated before an Administrative Law Judge, who issues a decision and recommended order that can be appealed to the Board.

When the Board issues a decision and order, the case returns to the Regional Offices where attempts are made to obtain voluntary compliance with the Board order. Since Board orders are not self-enforcing, if the respondent does not voluntarily comply with the Board's order involving unfair labor practices, the case is referred to the Appellate and Supreme Court Litigation Branch to seek enforcement of the Board order through the Courts of Appeals, and sometimes the Supreme Court. The Appellate and Supreme Court Litigation Branch also defends challenges to Board orders filed by the parties in the Courts of Appeals, and sometimes the Supreme Court. The General Counsel may initiate contempt proceedings after a Board order is enforced by the Court of Appeals. These cases proceed to the Contempt, Compliance and Special Litigation Branch for contempt or other post-enforcement proceedings or to the Injunction Litigation Branch for consideration of whether to seek an order finding a respondent in contempt of earlier court orders providing for injunctive relief. Further, in some cases, while the case is in litigation, the respondent's financial status may change, which requires Agency personnel to be trained in bankruptcy laws and the Federal Debt Collection Procedures Act of 1990. Compliance with Board orders and court judgments is overseen by the Compliance Unit in the Division of Operations-Management. The Compliance Unit works with the Regional offices to ensure cases are handled consistently across the country and in accordance with outstanding policies and procedures.

The merit, settlement, litigation, and appeal rates for cases handled by the Agency can vary over time. Further, while the number of cases can be accurately counted, those raw numbers do not reflect the reality of case handling since the cases vary greatly in the amount of time and effort Agency staff must devote to prevent and remedy unfair labor practices and resolve questions concerning representation. The NLRB tracks the total time taken to resolve a case through the investigation, prosecution, and compliance stages. This process includes capturing the timeliness and quality of case processing.

As for representation cases, the Regional Offices process petitions on behalf of the General Counsel and conduct elections on behalf of the Board. As a result, the General Counsel and the Board have historically worked together in developing procedures for the conduct of representation proceedings. The Board ultimately may determine contested matters, such as the appropriateness of the bargaining unit, and rule on any challenges or objections to the conduct of an election.

Administrative Law Judges (ALJs)

+\$8.0 million / +40 FTE

Net Change -\$1.0 million / 0 FTE

NLRB FY 2021 Congressional Budget Justification

Meritorious charges are litigated before the Agency's ALJs, who travel around the country to conduct hearings and render decisions and recommended orders. Those decisions and recommended orders are then sent to the Board for review and issuance of a final Board decision and order. In FY 2019, the Division of Judges closed 141 hearings, issued 159 decisions, and achieved 483 settlements. Based on the most recent disposition and inventory projections, in FY 2019 and FY 2020, the NLRB will set a target of [150] closed hearing and 150 decisions for FY 2021.

Board Adjudication

+\$18.0 million / +97 FTE

Net Change -\$1.0 million / -2 FTE

Board adjudication encompasses the activities of the Board staff offices and the Office of the Executive Secretary, the Office of the Solicitor and the Office of Representation Appeals. In a ULP case, the Board adopts a judge's decision if no exceptions are filed. Historically, around 30 percent of ALJ decisions are not excepted to by the parties and are complied with voluntarily. The remaining cases, where exceptions are filed, require review and issuance of a Board decision. In FY 2019, the Board issued 303 decisions in contested cases -- 224 decisions in ULP cases and 79 decisions in representation cases. For FY 2020 and FY 2021, it is estimated that the Board will issue 300 decisions in contested ULP cases each fiscal year. In representation cases, the Board has delegated its responsibility for the administration of representation matters to the Regional Offices. Matters related to the Regional Offices' handling of representation cases, including decisions issued by Regional Directors in such cases, are reviewable by the Board.

The Executive Secretary is the chief administrative and judicial management officer of the Board. The functions and responsibilities of the Office of the Executive Secretary ("ES Office") are similar to those of a Clerk of the Court to receive and docket all formal documents filed with the Board, and issue and serve on all parties the Board's decisions, orders, rulings, and other case documents. The ES Office is the exclusive point of contact for communications by the parties to cases pending before the Board and, particularly regarding questions or guidance sought on Board procedure and case status inquiries, and is the principal point of contact for employers, unions, employees, other Federal agencies, and the public. In its role of facilitating case management, the ES Office relies upon the Board's electronic case management system to ensure that documents filed and those issued are included in the case record, and to monitor case progress and overall Board case production.

The Solicitor serves as the chief legal adviser and consultant to the Board on all questions of law arising in connection with the Board's general operations and on major questions of law and policy arising in connection with enforcing, defending, and achieving compliance with Board orders in the Courts of Appeals and the U.S. Supreme Court. The Office of the Solicitor

processes, reviews, researches, provides written recommendations to the Board, and drafts appropriate orders with respect to various unfair labor practice case matters that require expedited consideration, including motions for summary and default judgment, special appeals, formal settlement agreements, and petitions to revoke investigative subpoenas. The Office of the Solicitor serves as the Board's legal representative and spokesperson in liaison contacts with the General Counsel's office and other offices within the Board's organization. The Solicitor's Office reviews and researches relevant case law, precedent, Board policy, and provides written recommendations for action to the Board with respect to requests from the General Counsel to institute various types of litigation requiring authorization by the Board, such as seeking injunctions, intervention and contempt, and petitioning for certiorari with the Supreme Court.

Mission Support

+\$73.0 million / +174 FTE

Net Change -\$12.0 million / -8 FTE

Mission Support includes administrative, personnel, and financial management functions conducted mainly in the central Headquarters office. The various supportive offices, branches, and divisions develop standard operating procedures and protocols consistent with regulatory and legal guidance and promulgate necessary operating directives. Specifically, these organizational units assess and assist all business operations for the Regional Offices and Headquarters through guidance and support activities related to: administration, human resource management, personnel, ethics, training, recruitment, on/off-boarding, equal employment opportunity principles, labor and employee relations, budget, acquisition, accounting, financial management, facilities, property, security, technology infrastructure, congressional and public affairs, and FOIA responses.

Inspector General

+\$1.0 Million / +8 FTE)

Net Change \$0 / 0 FTE

The amount of \$1.4 million was submitted by the Inspector General (IG) for the FY 2021 Budget request for the Office of Inspector General (OIG) and included a request for three additional positions to bring the office from a staff of six to a staff of nine. The IG request amount includes payroll salaries and benefits, \$5,250 for training of OIG personnel, \$229,480 for the Agency's Financial Statement Audit contract, and \$4,200 for support of the Council of the Inspectors General on Integrity and Efficiency (CIGIE). At the request of the Inspector General, this statement is being included in the Congressional Justification:

“The amount of the Inspector General's budget request is \$225,174 (16 percent) less than would have been requested for the level of personnel that the Inspector General determined is necessary to provide adequate oversight of the NLRB's mission functions.

Since the budget request for FY 2018, the Office of Inspector General, has requested nine full-time FTEs. That level of staffing was justified by the Inspector General explaining that the requirements placed upon the Office of Inspector General have increased significantly, including the annual information security review; the DATA Act audits; annual travel and purchase card reviews; and the annual audit of the financial statements. While the Office of Inspector General continues to meet those reporting requirements, it is at the expense of providing adequate oversight of the NLRB's mission functions."

VIII. Agency Workforce Fund Plan

The NLRB Workforce Fund Plan guides the Agency spending toward the strategic use of employee awards and recognition. The plan sets forth a comprehensive strategy that develops and fosters a culture of recognition, including formal and informal recognition. For FY 2020, the Agency Workforce Plan includes funding to support estimated awards spending of \$2.8 million.

As outlined in the OMB Memorandum M-19-24 *Guidance on Awards for Employees and Agency Workforce*, the NLRB Workforce Fund Plan is as follows:

Alignment with agency strategic goals and support organization values

The purpose of the NLRB's Employee Recognition Program is to motivate and empower employees to increase productivity, creativity, and innovation with accomplishing the mission of the Agency; to encourage excellence in performance by rewarding those who demonstrate high level accomplishment and quality of performance, which benefits the agency and Federal Government; to improve Government and Agency operations services; and further the Agency's ability to better accomplish its mission. Further, the Employee Recognition Program positions the NLRB to fairly and equitably recognize and reward individuals and groups for excellence in service to the overall mission of the NLRB. As such, the program provides various means of demonstrating, through monetary and non-monetary recognition, the high values that NLRB sets for its employee contributions and achievements, and to enhance organizational goals; sustain organizational performance; and improve the organizational quality. In addition, the Employee Recognition Program places high regard and visibility in the many contributions of agency stewards in accomplishing, at an exceptional level through diligence, subject matter expertise and professionalism successful resolution to the various programs and disciplines that have a direct impact of the mission of the agency. In the recognition of such efforts to the Agency and establishment of performance measures, we have seen an increase in productivity and successful outcomes of efforts of agency professionals resolving conflicting matters of unprecedented natures through case settlements, unfair labor practice charges, fair and equitable handling of investigations and representation of employees. The program has also helped to foster an environment of a mission first mentality, by putting together program initiatives designed to attract the highest talent, motivated and success-driven workforce to thrust the agency into the

position of preparedness. In support of the mission-related workforce program, the NLRB established the following strategic goals and objectives:

Strategic Goal #1 (Mission): Promptly and fairly resolve through investigation, settlement or prosecution, unfair labor practices under the National Labor Relations Act.

Objective 1: Achieve established performance measures for the resolution of meritorious unfair labor practice charges.

Strategic Goal #2 (Mission): Promptly and fairly investigate and resolve all questions concerning representation of employees.

Objective 1: Achieve established performance measures for the timely resolution of all questions concerning representation of employees.

Strategic Goal #3 (Support): Achieve Organizational Excellence and Productivity in the public interest.

Objective 1: Recruit, develop, and retain a highly motivated, productive, talented, and diverse workforce to accomplish our mission.

Strategic Goal #4 (Support): Manage Agency resources efficiently and in a manner that instills public trust.

Objective # 1: Use information and technology to monitor, evaluate, and improve programs and processes in order to accomplish the agency's mission and increase transparency.

Address how the Agency will strategically spend its determined amount in FY 2020 and subsequent years consistent with a broader recognition plan for employee performance awards.

Chapters 43 and 45 of Title 5, United States Code, provide the basis for the Federal government and the Employee Recognition Program. Chapter 53 of Title 5 provides authority to grant quality step increases. The Federal Employees Pay Comparability Act of 1990 (FEPCA), Public Law 101-509, provides Federal agencies authority to grant employees time-off from duty without loss of pay or charge to leave, as an incentive or in recognition of performance. Chapter 45 of Title 5, United States Code permits NLRB officials with delegated authority to incur necessary expenses for the honorary recognition of employees (5 USC, Sections 4501-4506). Under Federal regulation 5 CFR Part 451.103, agencies may determine the most effective way to implement these authorities. The Office of Personnel Management encourages agencies to make maximum use of the authorities under these chapters to establish and administer awards for

performance, suggestions, inventions, and meritorious actions that best support and enhance agency and national goals and employee contributions to those goals.

The NLRB currently use a three-prong approach. First, managers are educated annually regarding the functionality of how awards are used and how to ensure performance is measured effectively and aligned with the strategic goals of the Agency. Second, approved awards are not automatic; employees are educated, our information systems are carefully updated to ensure employees are aware of how the performance awards process ties to the work that they perform. Third, performance awards are carefully vetted through performance administrators and signed off at the Agency's highest level. Awards that have been approved have received the highest level of review and authorization to ensure accountability of funding is fair and equitably.

Address the strategic spending plan and its result in improved outcomes and organizational performance

In support of mission-related goals, objectives, and initiatives, the Agency has a long, successful history of performance measurement focusing on timeliness and effectiveness in its case handling process timeliness. The NLRB strengthens budget and performance linkages by establishing a direct relationship between the performance plans of the executives in its Regional and Headquarters offices and the performance measures for their programs. These measures are implemented through the actions of the Agency's management workforce team. Additionally, to ensure unfair labor practice charges are addressed and resolved timely, the Board and the Agency Leadership uses performance measures to evaluate whether programs are achieving their Government Performance and Results Act goals.

Measure	FY 2018 Actual	FY 2019 Target	FY 2019 Actuals	FY 2020 Target	FY 2021 Target
Realize a 5% annual decrease in the average time to resolve meritorious unfair labor practice charges by adjusted withdrawal, adjusted dismissal, deferral or settlement or issuance of complaint.	106	101	74	95	90
Realize a 5% annual decrease in the average time between issuance of complaint and settlement by administrative law judge or issuance of administrative law judge decision.	242	230	266	218	206
Realize a 5% annual decrease in the average time between issuance of an administrative law judge decision and a Board order.	585	556	441	527	497
Realize a 5% annual decrease in the average time between issuance of a Board order and the closing of the case.	648	616	541	583	556
Realize a 5% annual decrease in the average time to resolve unfair labor practice charges by withdrawal, dismissal, deferral, settlement, or issuance of complaint	90	86	74	81	77
The percentage of representation petitions resolved within 100 days of filing the election petition.	88.8%	85.8%	90.7%	85.8%	85.9%

IX. Attachments

Attachment 1 - Amounts Available for Obligation

Amounts Available for Obligation (Dollars in Thousands)			
	FY2019 Enacted	FY 2020 Enacted	FY 2021 Request
Annual Appropriation	\$ 274,224	\$ 274,224	\$ 246,876

Attachment 2 - Budget Authority by Object Class

Budget Authority by Object Class (Dollars in Millions)			
Object Class Categories:	FY 2019 Enacted	FY 2020 Enacted	FY 2021 Request
Personnel Compensation	\$154.7	\$162.8	\$159.5
Personnel Benefits	\$50.2	\$51.7	\$49.0
<i>Sub Total Personnel Compensation</i>	\$204.9	\$214.5	\$208.5
Travel and Transportation of Persons	\$2.8	\$2.5	\$0.0
Rental Payments to GSA	\$23.2	\$23.5	\$20.0
Printing and Publications	\$0.3	\$0.1	\$0.0
Communication, Utilities, and Miscellaneous Charges	\$5.0	\$2.6	\$4.4
Other Services	\$35.5	\$29.2	\$14.0
Supplies and Materials	\$0.5	\$.5	\$0.0
Equipment and Furniture	\$2.0	\$1.3	\$0.0
<i>Sub-total Direct Budget Authority</i>	\$69.3	\$59.7	\$38.4
Total	\$274.2	\$274.2	\$246.9

Attachment 3 - Major Workload and Output Data

Major Activities	FY 2019 Actual	FY 2020 Estimate	FY 2021 Estimate
1. Regional Offices			
Unfair Labor Practice (ULP) Cases	18,552	18,181	17,817
Representation Cases	2,095	2,095	2,095
Regional Director Decisions	201	216	230
2. Administrative Law Judges			
Hearings Closed	141	150	150
Decisions Issued	159	150	150
3. Board Adjudication			
Contested Board ULP Decisions Issued	303	300	300
4. Board Decisions Requirement Court Enforcement	60	68	68

Attachment 4 – Open Audit Recommendations Status

Audit Number	Audit Title	Report Date	Rec #	Recommendation	Status
OIG-F-19-15-01	Audit of the NLRB Fiscal Year 2014 Financial Statements	12/12/2014	1	Establish, document, and implement policies for performing open obligation reviews on a quarterly basis, including documented quality control procedures and approvals over the reviews.	The finance branch continues to hold quarterly meetings with the COR's in the program offices to discuss open obligation accrual amounts. The CFO Front Office is leading monthly UDO meetings with budget and acquisitions to begin researching and closing out UDO's that are subject to deobligation. The desk guide for UDO process is being formulated and the accrual threshold methodology has been shared with the auditors.
OIG-F-19-15-01	Audit of the NLRB Fiscal Year 2014 Financial Statements	12/12/2014	2	Establish, document, and implement policies to ensure accruals are recorded when goods and/or services are received throughout the fiscal year, at least on a quarterly basis, rather than at only year-end. Accruals recorded should be clearly documented with detailed methodologies to support the amounts recorded. The accrual methodologies should be reviewed and approved by appropriate program office personnel, with quality control review procedures and approvals performed and documented by Finance personnel.	Created and delivered an SOP on 3/31/15. This finding will be held open until the financial statement auditors complete their review.
OIG-F-19-15-01	Audit of the NLRB Fiscal Year 2014	12/12/2014	4	Train responsible program office and Finance personnel on	This is being monitored on a quarterly basis and during the year end close out process.

Audit Number	Audit Title	Report Date	Rec #	Recommendation	Status
	Financial Statements			how to monitor obligations and report accruals on an ongoing basis to enhance compliance with the applicable requirements.	
OIG-F-19-15-01	Audit of the NLRB Fiscal Year 2014 Financial Statements	12/12/2014	15	Finalize the Financial Manual documenting the procedures needed to ensure NLRB complies with applicable accounting, financial management and reporting standards and regulations. The manual should include specific procedures required to process JVs, including: (1) Verifying the accuracy of data on the JVs, (2) Ascertaining that the JVs and supporting documentation are properly authorized, and (3) Determination that the transactions are legal.	Estimated Completion Date is 3/31/19 – Acquisitions Management Branch (AMB), Budget & Finance are reviewing all sections that involve input from all three branches, as well as working on the sections pertaining to each branch. Bi-weekly meetings will be held to check on progress.
OIG-F-19-15-01	Audit of the NLRB Fiscal Year 2014 Financial Statements	12/12/2014	16	Review, implement, and monitor control activities related to the training and appointment of cardholders.	This audit recommendation will be resolved when recommendation 17 is completed.
OIG-F-19-15-01	Audit of the NLRB Fiscal Year 2014 Financial Statements	12/12/2014	17	Establish and implement procedures for periodic review of all active cardholders to determine whether each cardholder has a need for the	The Travel Card Management Plan and Travel Card Desk Guide are currently being updated to reflect the changes under the new GSA SP3 travel card program. Travel documentation is in the process of being updated to align with SP3 and travel processing changes being

Audit Number	Audit Title	Report Date	Rec #	Recommendation	Status
				purchase/travel card, and whether all applicable documentation, including completion of initial and refresher trainings, is maintained.	made by the OCFO's office. The updates to the documentation will be completed in February 2020.
OIG-AMR-75-15-02	Travel Cards	6/16/2015	3	We recommend that the Finance Branch develop and implement procedures to identify infrequent travelers and reduce the credit limits for those travel cardholders.	The strategy for identifying and reducing travel card holder credit limits will align with the action plan for recommendation 17. With SmartPay3 the previously recommended solution will need to be changed to accommodate how the new SP3 travel card works. Recommendation 17 includes a plan to also reduce infrequent traveler credit limits. The updates to the documentation will be completed in February 2020 as part of closing out Recommendation 17.
OIG-AMR-75-15-02	Travel Cards	6/15/2015	9	We recommend that the Finance Branch develop and implement procedures to monitor the training completion by travel cardholders to ensure that travel cardholders meet the training requirements.	A new travel card training tracker has been established as part of the SP3 program and a new baseline of travel cardholders has been completed as of 12/2019 under SP3. The final tasks to close this out requires updating the Travel Card Management Plan and Travel Card Desk Guide with the SP3 changes. This is expected to be 100% in February 2020 as part of closing out Recommendation 17.
OIG-AMR-77-16-02	Training and Conferences	9/27/2016	5	We recommend that OED require continuing service agreements for all employees taking training.	OED is working with the Office of Special Counsel regarding the Continuing Service Agreement (CSA) for union members. As such, OED has not implemented CSAs for any employees. The plan is to roll-out in FY 2020 with the establishment of internal processes for CSAs, communications to employees regarding the new requirements, and

Audit Number	Audit Title	Report Date	Rec #	Recommendation	Status
					to finalize any bargaining requirements.
OIG-AMR-77-16-02	Training and Conferences	9/27/2016	7	We recommend that the Division of Administration develop and implement a Management Succession Plan.	Draft currently underway.
OIG-AMR-77-16-02	Training and Conferences	9/27/2016	11	We recommend that the OCFO develop and implement policies and procedures for the travel of employees in a local commuting area.	The Comprehensive Travel Policy, including Local Travel, is under revision and review.
OIG-F-21-17-01	Audit of NLRB Fiscal Year 2016 Financial Statements	11/3/2016	2	Develop and provide on-going training and cross-training to NLRB staff on Federal accounting and reporting requirements to enhance NLRB's ability to compile financial statements and the Performance and Accountability Report in accordance with applicable standards.	<ul style="list-style-type: none"> - NLRB in house USSGL training for reporting staff will be held in January 2020. - NLRB in house financial statement/footnote training for reporting staff will be held January 2020.
OIG-F-21-17-01	Audit of NLRB Fiscal Year 2016 Financial Statements	11/3/2016	3	Develop a process for in-depth and detailed management quality control reviews of the financial statements and notes, journal vouchers, and accounting transactions to ensure they are properly and timely	Management review checklist implemented for FY 2019 as part of the monthly and quarterly review process. The financial statement preparation guide and the SOP has an estimated completion date for 2 nd Quarter of FY 2020.

Audit Number	Audit Title	Report Date	Rec #	Recommendation	Status
				reported and recorded.	
OIG-F-21-17-01	Audit of NLRB Fiscal Year 2016 Financial Statements	11/3/2016	5	Ensure that all assets are properly recorded in the subsidiary ledger and related accounting records and depreciated in a manner that properly reflects asset, contra-asset, and expense balances.	Data Call is done on a quarterly basis to ensure that all assets are properly recorded in the subsidiary ledger and related accounting records and depreciated in a manner that properly reflects asset, contra-asset, and expense balances. Finance is in the process of finalizing the PP&E guidance which will be sent to Facilities for their review and concurrence.
OIG-F-21-17-01	Audit of NLRB Fiscal Year 2016 Financial Statements	11/3/2016	6	Develop and implement a process to enter and track all property equipment in the Oracle Fixed Asset Module.	Data Call is done on a quarterly basis to ensure that all assets are properly recorded in the subsidiary ledger and related accounting records and depreciated in a manner that properly reflects asset, contra-asset, and expense balances. Finance is in the process of finalizing the PP&E guidance which will be sent to Facilities for their review and concurrence.
OIG-F-21-17-01	Audit of NLRB Fiscal Year 2016 Financial Statements	11/3/2016	7	Develop and implement standardized policies and procedures to ensure accountability, monitoring, and oversight of the PP&E disposals and lost capitalized equipment, including notification to the Office of Inspector General for lost equipment.	Data Call is done on a quarterly basis to ensure that all assets are properly recorded in the subsidiary ledger and related accounting records and depreciated in a manner that properly reflects asset, contra-asset, and expense balances. Finance is in the process of finalizing the PP&E guidance which will be sent to Facilities for their review and concurrence.
OIG-F-21-17-01	Audit of NLRB Fiscal Year 2016 Financial Statements	11/3/2016	8	Define authorities and responsible parties for managing all capitalized assets to maintain physical control in securing	Data Call is done on a quarterly basis to ensure that all assets are properly recorded in the subsidiary ledger and related accounting records and depreciated in a manner that properly reflects asset, contra-asset,

Audit Number	Audit Title	Report Date	Rec #	Recommendation	Status
				and safeguarding NLRB assets.	and expense balances. Finance is in the process of finalizing the PP&E guidance which will be sent to Facilities for their review and concurrence.
OIG-AMR-83-18-01	Data Act Implementation	10/30/2017	1	Develop and implement internal controls to ensure that: a. Parent IDS are uniform in the data reported to FPDS and the Oracle financial system; b. Procurement awards are reported to FPDS as required by Section 4.606 of the FAR; and C. File C contains all the financial data for the procurement awards that are reported in File D1 prior to submitting the files to the DATA Act broker.	AMB will develop policy and procedures to conduct independent verification and validation (IV&V) of FPDS NG contract award reports. Policy and procedures to be effective by the end of 3rd Quarter of FY 2020. The performance plans are 100% complete.
OIG-AMR-83-18-01	Data Act Implementation	10/30/2017	3	We recommend that the Chief Financial Officer develop and implement internal controls to identify and correct data errors in the Oracle financial system and in FPDS-NG. action.	The Data Act policy is in OCFO Management review. See response to Recommendation 1.
OIG-AMR-80-18-02	Purchase Cards	8/16/18	1	Revise the Management Plan to address the noted deficiencies.	Management Plan to be completed by the end of 2nd Quarter of FY 2020
OIG-AMR-80-18-02	Purchase Cards	8/16/18	2	Establish procedures to ensure that the master files meet all of the legal and	Policy is being reworked with SmartPay 3 updates. The new program requirements satisfy all of the IG findings.

Audit Number	Audit Title	Report Date	Rec #	Recommendation	Status
				regulatory requirements.	
OIG-AMR-80-18-02	Purchase Cards	8/16/18	3	Coordinate with OED to ensure that the Agency's purchase card training meets all of OMB's requirements.	Policy is being reworked with SmartPay 3 updates. The new program requirements satisfy all of the IG findings.
OIG-AMR-80-18-02	Purchase Cards	8/16/18	4	Develop and implement controls to ensure that all participants in the purchase card program meet the training requirements.	Policy is being reworked with SmartPay 3 updates. The new program requirements satisfy all of the IG findings.
OIG-AMR-80-18-02	Purchase Cards	8/16/18	5	Develop and implement processes and procedures to ensure that reconciled statements are accurate and complete.	Policy is being reworked with SmartPay 3 updates. The new program requirements satisfy all of the IG findings.
OIG-AMR-80-18-02	Purchase Cards	8/16/18	6	Develop and implement processes and procedures regarding the content of pre-approvals.	Policy is being reworked with SmartPay 3 updates. The new program requirements satisfy all of the IG findings.
OIG-AMR-80-18-02	Purchase Cards	8/16/18	7	Develop and implement processes and procedures to ensure that purchase cards are cancelled when cardholders separate from the Agency.	Policy is being reworked with SmartPay 3 updates. The new program requirements satisfy all of the IG findings.
OIG-AMR-80-18-02	Purchase Cards	8/16/18	8	Develop procedures to ensure that purchase cardholders and approving officials follow existing Agency policies and procedures regarding the type of	Policy is being reworked with SmartPay 3 updates. The new program requirements satisfy all of the IG findings.

Audit Number	Audit Title	Report Date	Rec #	Recommendation	Status
				supporting documentation that is acceptable for statement reconciliations.	
OIG-F-23-19-01	Audit of NLRB Fiscal Year 2018 Financial Statements	11/13/2018	1	Perform detailed management quality control reviews over the processing of JVs, year-to-year account balance variances, and accrual estimates to ensure discrepancies are minimized and errors are timely corrected.	Finance is working closely with the CORs to ensure data is properly reported during the accrual process. There will be an additional level of management review of the accruals.
OIG-F-23-19-01	Audit of NLRB Fiscal Year 2018 Financial Statements	11/13/2018	2	Refine and strengthen policies, procedures, and processes over JVs and PP&E to ensure transactions are adequately supported and recorded accurately.	Finance is working closely with the Facilities management to ensure data is properly reported and is accurate and timely. There will also be an additional level of management review of the property data. Finance is finalizing the PP&E guidance to send to Facilities for their review and concurrence.
OIG-F-23-19-01	Audit of NLRB Fiscal Year 2018 Financial Statements	11/13/2018	3	Ensure that reconciliations of the BMS balance to OFF and Treasury balances are completed, documented, and reviewed by management at a minimum on a quarterly basis.	As of 6/30/19, we've implemented a reconciliation and review process for the BMS to OFF to CARS reconciliation (FBWT).
OIG-F-23-19-01	Audit of NLRB Fiscal Year 2018 Financial Statements	11/13/2018	4	Ensure reconciliations contain evidence of all appropriate reviews and approvals.	Reconciliations sent for July-September 2019. Will provide evidence of management review.
OIG-F-23-19-01	Audit of NLRB Fiscal Year 2018 Financial Statements	11/13/2018	8	Ensure that the audit logs are moved to another storage medium so that the	Implementation completion by the end of 2 nd Quarter of FY 2020. Completion is dependent upon award

Audit Number	Audit Title	Report Date	Rec #	Recommendation	Status
				audit logs are always available if needed for investigative purposes.	of the IDIQ and establishment of contract support services.
OIG-F-23-19-01	Audit of NLRB Fiscal Year 2018 Financial Statements	11/13/2018	11	Develop and implement policies and procedures to review the SOC1 reports annually.	Implementation completion by the end of 2nd Quarter of FY 2020. Completion is dependent upon award of the IDIQ and establishment of contract support services.
OIG-F-23-19-01	Audit of NLRB Fiscal Year 2018 Financial Statements	11/13/2018	12	Identify controls that are not covered by the SOC1 report for OFF and FPPS and ensure they are assessed at least annually.	Implementation completion by the end of 2nd Quarter of FY 2020. Completion is dependent upon award of the IDIQ and establishment of contract support services.
OIG-F-23-19-01 (ML)	Audit of NLRB Fiscal Year 2018 Financial Statements – Management Letter	1/8/2019	8	Schedule future maintenance and perform them according to the schedule.	Maintenance activities for internally managed systems are scheduled per patch management, Binding Order Directive 19-02, and Information Technology (IT) System release project schedules. The OCIO will track 3 rd party maintenance activities using NLRB ServiceNow change management tracking procedures.
OIG-AMR-86-19-01	SES Pay	3/15/2019	1	Establish, document and revise policies for setting and adjusting SES employee's rate of basic pay.	The agency established, documented, and revised the SES Pay Policy titled 'Performance-Based Pay System for the Senior Executive Service (SES),' which documents how to set and adjust SES employees' rate of basic pay. The SES Pay Policy was approved by OPM, with minor recommendations, on July 25, 2019, which resulted in the agency gaining its SES recertification effective July 30, 2019. In order to continually improve the agency's SES Pay Policy, we are currently in the process of updating our SES Pay Policy in accordance with OPM's recommendations.

Audit Number	Audit Title	Report Date	Rec #	Recommendation	Status
OIG-AMR-86-19-01	SES Pay	3/15/2019	5	Ensure policies over documented justification and approval for establishing and adjusting the SES rate of basic pay above the Executive Schedule Level III cap are consistently followed.	The approved SES Pay Policy titled 'Performance-Based Pay System for the Senior Executive Service (SES),' explicitly states the approval process for establishing and adjusting the SES rate of basic pay above the Executive Schedule III, which we have and will continue to follow. As a result, the agency gained its SES recertification effective July 30, 2019.
OIG-AMR-86-19-01	SES Pay	3/15/2019	6	Ensure proper justification and approval from the appointing authority/authorized agency official for establishing and adjusting the SES rate of basic pay above the Executive Schedule III cap are properly obtained, documented and maintained.	Due to a lapse in SES certification in FY 18, pay was not able to be set above the Executive Schedule III for newly appointed SES members; however, now that the agency has regained its SES certification in FY 2019, we will ensure proper justification and approval from the appointing authority/authorized agency official for establishing and adjusting the rate of basic pay above the Executive Schedule Level III cap is properly obtained, documented, and maintained.
OIG AMR-87-19-02	FY 2019 FISMA	7/12/2019	1	We recommend that the Office of the Chief Information Officer perform corrective actions to achieve a Managed and Measurable maturity level for each of the security functions. Specifically, we recommend that the Office of the Chief Information Officer: 1. Prioritize corrective action based on an assessment of the Agency's security risk; 2. Based on that priority, work to remediate the Ad Hoc and Defined metrics	Quarterly updates in process.

Audit Number	Audit Title	Report Date	Rec #	Recommendation	Status
				to Consistently Implemented; and 3. Implement quantitative and qualitative measures on the effectiveness of policies, procedures, and strategies so the Agency can meet the targeted Managed and Measurable maturity level for its overall security program.	
OIG-AMR-82-19-03	Internal Control over Backpay Disbursements	9/20/2019	1	Develop and implement a system of controls to address NxGen data accuracy and reliability.	Action Plan has been submitted.
OIG-AMR-82-19-03	Internal Control over Backpay Disbursements	9/20/2019	2	Provide training to Regional Office personnel who are involved in the backpay process on the requirements of the internal controls related to backpay payments.	Action Plan has been submitted.
OIG-AMR-82-19-03	Internal Control over Backpay Disbursements	9/20/2019	3	Update the internal controls related to documenting the receipt of discriminatee backpay checks to leverage the current practices and capabilities of NxGen.	Action Plan has been submitted; quarterly updates to start in FY 2020.
OIG-AMR-82-19-03	Internal Control over Backpay Disbursements	9/20/2019	5	Develop a process to promptly notify a Regional Office when a backpay payment is cancelled and obtain instructions on the	SOP in development.

Audit Number	Audit Title	Report Date	Rec #	Recommendation	Status
				disposition of the returned funds.	
OIG-AMR-82-19-03	Internal Control over Backpay Disbursements	9/20/2019	6	Develop, document, and implement procedures for performing Finance scans on all backpay reimbursements.	SOP in development.
OIG-AMR-82-19-03	Internal Control over Backpay Disbursements	9/20/2019	7	Conduct periodic reviews of backpay disbursements to ensure that all backpay disbursements, prior to being finalized through the U.S. Treasury, were scanned for known fraud indicators.	Procedures in the process of being implemented on a monthly basis.
OIG-AMR-82-19-03	Internal Control over Backpay Disbursements	9/20/2019	8	Create and implement a process to reconcile the backpay deposit fund account to the financial system and BMS.	Action Plan has been submitted; quarterly updates to start in FY 2020.
OIG-F-24-20-01	Audit of NLRB Fiscal Year 2019 Financial Statements	11/15/2019	1	Develop an accounts payable accrual worksheet for open contracts that is updated by the CORs to track period of performance, contract type, services/good received, invoices received and paid, and accrual methodology used that is submitted, along with adequate supporting documentation, to finance for discussion	Action Plan is being created.

Audit Number	Audit Title	Report Date	Rec #	Recommendation	Status
				as part of the accrual review process.	
OIG-F-24-20-01 ML	Audit of NLRB Fiscal Year 2019 Financial Statements – Management Letter	11/15/2019	1	Ensure approved reconciliation statements including request forms, invoices and receipts are maintained in the file.	Action Plan is being created.
OIG-F-24-20-01 ML	Audit of NLRB Fiscal Year 2019 Financial Statements – Management Letter	11/15/19	2	Refine and strengthen policies, procedures, and processes to ensure that reconciling differences identified are corrected in a timely manner.	Action Plan is being created.
OIG-F-24-20-01 ML	Audit of NLRB Fiscal Year 2019 Financial Statements – Management Letter	11/15/19	3	Refine and strengthen policies, procedures, and processes over the timely removal of separated and transferred users’ access. Industry best practices are to remove separated users within five (5) business days and update transferred users within five (5) business days. Ensure that the timely removal of separated and transferred users’ access is documented.	Action Plan is being created.
OIG-F-24-20-01 ML	Audit of NLRB Fiscal Year 2019 Financial Statements – Management Letter	11/15/2019	4	Ensure that the timely removal of separated and transferred users’ access is documented.	Action plan is being created.
OIG-AMR-88-20-03	Backpay Accounting	12/10/2019	1	We recommend that the OCFO develop procedures to	Action plan is being created.

Audit Number	Audit Title	Report Date	Rec #	Recommendation	Status
				implement the requirements of handling unclaimed money.	
OIG-AMR-88-20-03	Backpay Accounting	12/10/2019	2	We recommend that the OCFO review all the backpay cases with funds in the deposit account and disburse any funds that are being held as either being unclaimed or a fine should be remitted to the U.S Treasury as appropriate.	Action plan is being created.
OIG-AMR-88-20-03	Backpay Accounting	12/10/2019	3	We recommend that the Finance Branch reconcile the backpay cases with recurring journal voucher entries and take appropriate action to correct the accounting errors.	Action plan is being created.
OIG-AMR-88-20-03	Backpay Accounting	12/10/2019	4	We recommend that the Finance Branch determine if any funds can be recovered from the miscellaneous receipts and: a. If funds can be recovered, make appropriate accounting entries and disburse the funds; or b. If funds cannot be recovered, obtain a decision from the General Counsel on whether to seek authority to use appropriated	Action plan is being created.

Audit Number	Audit Title	Report Date	Rec #	Recommendation	Status
				funds to make the discriminatees whole.	
OIG-AMR-88-20-03	Backpay Accounting	12/10/2019	5	We recommend that the Finance Branch reconstruct the three backpay files with appropriate documentation of the receipt and disbursements of backpay funds and then reconcile the cases.	Action plan is being created.
OIG-AMR-88-20-03	Backpay Accounting	12/10/2019	6	We recommend that the Finance Branch officials consult with the Internal Revenue Service and then develop and implement internal controls to address the tax payments and refunds.	Action plan is being created.
OIG-AMR-88-20-03	Backpay Accounting	12/10/2019	7	We recommend that the Finance Branch provide training to its accountants and approving officials on the requirements of its journal voucher documentation requirements and process.	Action plan is being created.
OIG-AMR-88-20-03	Backpay Accounting	12/10/2019	8	We recommend that the Finance Branch develop and implement a documented process to reconcile BMS to Oracle and Oracle to the U.S. Treasury deposit account.	Action plan is being created.

Workforce Data as of 9/30/2020
Total Workforce - 1253

Full Time	1209
Part Time	44
	<hr/> 1253

Board	186
General Counsel	1067
	<hr/> 1253

Headquarters (include ALJ)	453
Regional Offices	800
	<hr/> 1253

Administrative Law Judges	30
Executive (Members)	5
Senior Executive Service	47
General Schedule	1171
	<hr/> 1253

NLRBU	625
NLRBPA	116
Non-Bargaining	512
	<hr/> 1253

MISSION CRITICAL POSITIONS

		Total	Total Males	Total Females
GENERAL ATTORNEY(0905) Total	#	576	250	326

		Total	Total Males	Total Females
LABOR-MANAGEMENT RELATIONS EXAMINING(0244) Total	#	221	84	137

			Total	HISPANIC OR LATINO MALES	HISPANIC OR LATINO FEMALES	WHITE MALES	WHITE FEMALES	BLACK OR AFRICAN AMERICAN MALES	BLACK OR AFRICAN AMERICAN FEMALES	ASIAN MALES	ASIAN FEMALES	NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER MALES	AMERICAN INDIAN OR ALASKA NATIVE FEMALES	TWO OR MORE RACES MALES	TWO OR MORE RACES FEMALES	NONE SPECIFIED MALES	NONE SPECIFIED FEMALES
GENERAL ATTORNEY(0905) Total	#		576	22	47	188	204	18	40	14	31	1	1	1	2	1	0
GENERAL ATTORNEY(0905)	ES/00	#	19			9	8		1							1	
	GM/15	#	1			1											
	GS/11	#	5			2	2				1						
	GS/12	#	3		1	1	1										
	GS/13	#	34	3	4	9	10		2	2	4						
	GS/14	#	346	16	37	105	117	14	28	7	19	1	1	1			
	GS/15	#	162	3	5	61	66	4	9	5	7				2		
	ES/00	#	1			1											
	EX/03	#	1			1											
	EX/04	#	4			2	1									1	

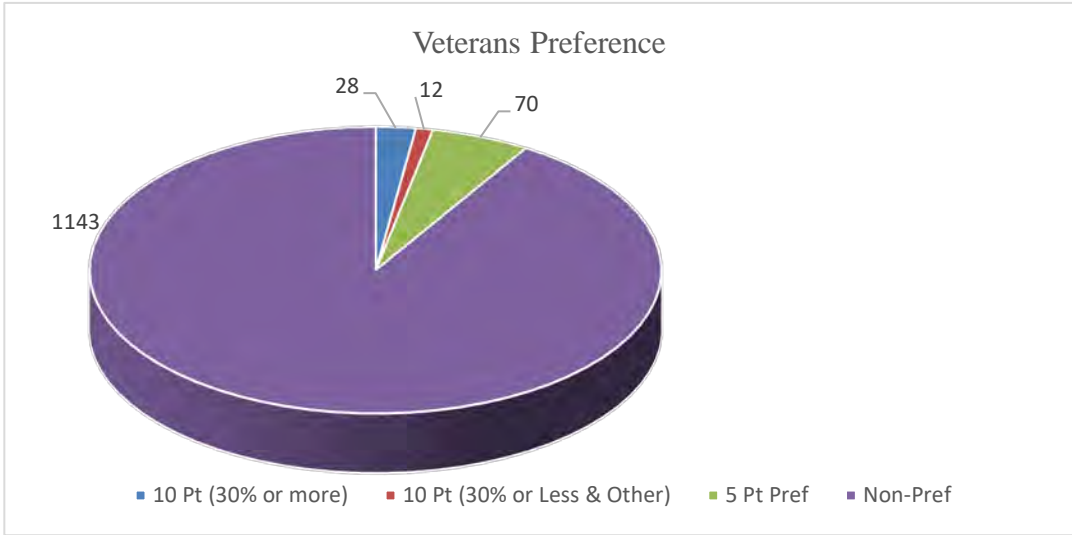
			Total	HISPANIC OR LATINO MALES	HISPANIC OR LATINO FEMALES	WHITE MALES	WHITE FEMALES	BLACK OR AFRICAN AMERICAN MALES	BLACK OR AFRICAN AMERICAN FEMALES	ASIAN MALES	ASIAN FEMALES	NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER MALES	AMERICAN INDIAN OR ALASKA NATIVE FEMALES	TWO OR MORE RACES MALES	TWO OR MORE RACES FEMALES	NONE SPECIFIED MALES	NONE SPECIFIED FEMALES
LABOR-MANAGEMENT RELATIONS EXAMINING(0244) Total			221	15	25	61	92	4	13	2	5	0	1	2	0	0	1
	GS/05	#	3	3													
	GS/07	#	3	1		1	1										
	GS/09	#	1		1												
	GS/11	#	8		1	5	1	1									
	GS/12	#	11	1	2	4	2		2								
	GS/13	#	123	6	14	30	50	3	9	2	5		1	2			1
	GS/14	#	23	1	3	4	14		1								
	GS/15	#	49	3	4	17	24		1								

Workforce Data as of 9/30/2020

Total Workforce - 1253

NLRB Gender	
Female	797
Male	456
Total	1253

Veteran Populations				
10 Pt (30% or more)	10 Pt (30% or Less & Other)	5 Pt Pref	Non-Pref	
28		12	70	1143



NLRB Disability				
	Total	NATIONAL LABOR RELATIONS BOARD		
		Summary		
		Not Identified	No Disability	Disability
	1,253	103	1,039	111

Ethnicity		
American Indian or Alaska Native	Female	4
	Male	0
Asian	Female	52
	Male	22
Black or African American	Female	225
	Male	61
Hispanic or Latino	Female	110
	Male	48
Native Hawaiian or Other Pacific Islander	Female	2
	Male	1
Non Specified	Female	1
	Male	2
Two or More Races	Female	4
	Male	3
White	Female	399
	Male	319
Total		1253

ACTIVE RECRUITMENTS			
NLRB Organization	Position Title	Series	Grade
BOARD STAFF OFF OF REPRESENTATION	Director Office of Representation Appeals	0905	00
ENTERPRISE SUPPORT SERVICES	SUPERVISORY INFORMATION TECHNOLOGY SPECIALIST (CUSTOMER SUPPORT)	2210	15
CONTEMPT, COMPLIANCE & SPEC LIT BR	General Attorney (Labor)	0905	11
DIV OF ENF LIT CONTEMP LIT & COMPL BR	General Attorney (Labor)	Select	13
SPECIAL COUNSEL & LABOR RELATIONS OFC	General Attorney (Labor/Employment)	0905	15
SPECIAL COUNSEL & LABOR RELATIONS OFC	General Attorney (Labor/Employment)	0905	15
DIV OF OPERATIONS MANAGEMENT	Labor Management Relations Examiner (Field Examiner Trainee(Bridge))	0244	05
DOA SECURITY BRANCH	Emergency Management Specialist	0089	12
BOARD STAFF	Attorney-Adviser (Labor)	0905	13
OFFICE OF BOARD MEMBER KAPLAN	Attorney Advisor (Labor)	0905	13
BOARD STAFF	Attorney-Adviser (Labor)	0905	13
OFFICE OF BOARD MEMBER KAPLAN	Attorney Advisor (Labor)	0905	13
DIV OF ENF LIT APP & SUP CT LIT BR LS	Paralegal Specialist	0950	09
DOA FACILITIES AND PROPERTY BR	Space Management Specialist	0301	13
DIV OF OPER MGT REG 04 PHILADELPHIA	Regional Director, Philadelphia	0340	00
DIV OF OPERATIONS MANAGEMENT	Language Specialist	1040	07
DOA FACILITIES AND PROPERTY BR	Space Management Specialist	0301	12
DOA FACILITIES AND PROPERTY BR	Space Management Specialist	0301	12
OFFICE OF BOARD MEMBER KAPLAN	Attorney Advisor (Labor)	0905	11
OFFICE OF BOARD MEMBER KAPLAN	Attorney Advisor (Labor)	0905	11
DIV OF OPER MGT REG 03 BUFFALO	Program Support Assistant (OA)	0303	08
DIV OF OPER MGT REG 01 BOSTON	Program Support Assistant (OA)	0303	08
DIV OF OPER MGT REG 02 NEW YORK	Program Support Assistant (OA)	0303	08
DIV OF OPER MGT REG 04 PHILADELPHIA	Program Support Assistant	0303	08
DIV OF OPER MGT REG 05 BALTIMORE	Program Support Assistant	0303	08
DIV OF OPER MGT REG 07 DETROIT	Program Support Assistant (OA)	0303	08
DIV OF OPER MGT REG 08 CLEVELAND	Program Support Assistant (OA)	0303	08
DIV OF OPER MGT REG 10 ATLANTA	Program Support Assistant (OA)	0303	08
DIV OF OPER MGT REG 13 CHICAGO	Program Support Assistant (OA)	0303	08
DIV OF OPER MGT REG 14 ST LOUIS	Program Support Assistant (OA)	0303	08
DIV OF OPER MGT REG 15 NEW ORLEANS	Program Support Assistant (OA)	0303	08
DIV OF OPER MGT REG 18 MINNEAPOLIS	Program Support Assistant (OA)	0303	08
DIV OF OPER MGT REG 22 NEWARK	Program Support Assistant	0303	08
DIV OF OPER MGT REG 29 BROOKLYN	Program Support Assistant (OA)	0303	08
DIV OF OPERATIONS MANAGEMENT	Labor Management Relations Examiner (Compliance Officer)	0244	13
DIV OF OPER MGT REG 12 SR 24 PUERTO R	Program Support Assistant	0303	06
DIV OF OPER MGT REG 13 CHICAGO	Program Support Assistant (OA)	0303	06
DIV OF OPER MGT REG 18 MINNEAPOLIS	Program Support Assistant (OA)	0303	06
DIVISION OF LEGAL COUNSEL	Attorney-Adviser (Privacy Counsel)	0905	13
DIV OF OPER MGT REG 04 PHILADELPHIA	Law Clerk (Trainee)	0904	11
DIV OF OPER MGT REG 25 INDIANAPOLIS	Law Clerk (Trainee)	0904	11
OFFICE OF THE GENERAL COUNSEL	Deputy Associate General Counsel	0905	00
DIV OF OPER MGT REG 10 SR 11 WINT/SAL	Law Clerk (Trainee)	0904	11
DIV OF OPER MGT REG 08 CLEVELAND	Regional Director	0340	00
DIV OF OPERATIONS MANAGEMENT	Compliance Support Assistant (OA)	1082	08
OFFICE OF THE GENERAL COUNSEL	Law Clerk (Trainee)	0904	11
BOARD STAFF	Law Clerk (Trainee)	0904	11
DIV OF OPERATIONS MANAGEMENT	Labor Management Relations Examiner	0244	13
DIV OF OPERATIONS MANAGEMENT	Labor Management Relations Examiner	0244	13
DIV OF OPERATIONS MANAGEMENT	Labor Management Relations Examiner	0244	13
DIV OF OPERATIONS MANAGEMENT	Labor Management Relations Examiner	0244	13
DIV OF ADVICE OFC OF ASSOCIATE GC	General Attorney (Labor)	0905	11
DIV OF ADVICE OFC OF ASSOCIATE GC	General Attorney (Labor)	0905	13
OFFICE OF THE GENERAL COUNSEL	Law Clerk (Trainee)	0904	11
OFFICE OF THE GENERAL COUNSEL	Law Clerk (Trainee)	0904	11

New Hires & Vacancy Announcements

	FY20
Vacancy Announcements	164
New Hires	68

HONORS PROGRAM

HONORS PROGRAM						
Appointment Date		Title		Grade		Location
9/13/2020		Law Clerk (Trainee)		GS-11		Reg 4, Philadelphia, PA
9/3/2019		General Attorney (Labor) (Honors Attorney)		GS-12		Div of Legal Counsel, CCSLB
7/19/2020		Law Clerk (Trainee)		GS-11		Reg 19, Seattle, WA
9/13/2020		General Attorney (Labor) (Honors Attorney)		GS-11		Reg 16, Ft. Worth, TX
9/13/2020		Law Clerk (Trainee)		GS-11		Div of Enf Lit, Sup CT Lit BR
9/3/2019		General Attorney (Labor) (Honors Attorney)		GS-12		Reg 16, Ft. Worth, TX
9/3/2019		General Attorney (Labor) (Honors Attorney)		GS-12		Ofc of Chairman Ring
10/13/2020		Law Clerk (Trainee)		GS-11		Ofc of Chairman Ring
9/3/2019		General Attorney (Labor) (Honors Attorney)		GS-12		Reg 13, Chicago, IL
10/13/2020		Law Clerk (Trainee)		GS-11		Div of Enf Lit, APP & SUP CT LIT BR

Total: 10 Law Clerks

PATHWAYS INTERNSHIP PROGRAM

Appointment Date		Title		Grade		Location
8/30/2020		Student Trainee (Field Examiner)		GS-07		Region 5, Baltimore, MD
8/16/2020		Student Trainee (Field Examiner)		GS-07		Region 6, Pittsburgh, PA
9/13/2020		Student Trainee (Field Examiner)		GS-07		Region 10, Atlanta, GA
8/30/2020		Student Trainee (Field Examiner)		GS-07		Region 15, New Orleans, LA
7/19/2020		Student Trainee (Field Examiner)		GS-07		Region 16, Fort Worth, TX
8/16/2020		Student Trainee (Field Examiner)		GS-07		Region 25, Indianapolis, IN
8/30/2020		Student Trainee (Field Examiner)		GS-07		Region 28, Phoenix, AZ

Total: 7 Students

Retirement Information

	FY20
Retirement	34
Deaths	4

Regional Offices

The National Labor Relations Board has 26 regional offices and is headquartered in Washington, DC. Hover over the map above to find a regional office, and click to go to the regional homepage for more information, including news and upcoming events.

Area	Areas Served	Offices
Region 01 - Boston	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	<p>Regional Office 01 - Boston, MA 10 Causeway Street Room 601 Boston, MA 02222-1001 United States Tel: (617) 565-6700 Fax: (617) 565-6725 8:30am - 5:00pm ET</p> <p>Subregional Office 34 - Hartford, CT 450 Main St Hartford, CT 06103-3503 United States Tel: (860) 240-3522 Fax: (860) 240-3564 8:30am - 5:00pm ET</p>
Region 02 - New York	New York	<p>Regional Office 02 - New York, NY 26 Federal Plaza Room 3614 New York, NY 10278-0104 United States Tel: (212) 264-0300 Fax: (212) 264-2450 8:45am - 5:15pm ET</p>

Area	Areas Served	Offices
Region 03 - Buffalo	New York, Vermont	<p>Regional Office 03 - Buffalo, NY 130 S. Elmwood Avenue Suite 630 Buffalo, NY 14202-2465 United States Tel: (716) 551-4931 Fax: (716) 551-4972 8:30am - 5:00pm ET</p> <p>Resident Office 03 - Albany, NY 11A Clinton Avenue Room 342 Albany, NY 12207-2366 United States Tel: (518) 431-4155 Fax: (518) 431-4157 8:30am - 5:00pm ET</p>
Region 04 - Philadelphia	Delaware, New Jersey, Pennsylvania	<p>Regional Office 04 - Philadelphia, PA 100 East Penn Square Suite 403 Philadelphia, PA 19107 United States Tel: (215) 597-7601 Fax: (215) 597-7658 8:30am - 5:00pm ET</p>
Region 05 - Baltimore	District of Columbia, Delaware, Maryland, Virginia, West Virginia	<p>Regional Office 05 - Baltimore, MD 100 S. Charles Street Suite 600 Baltimore, MD 21202 United States Tel: (410) 962-2822 Fax: (410) 962-2198 8:15am - 4:45pm ET</p> <p>Resident Office 05 - Washington, DC 1015 Half Street SE Washington, DC 20570-0001 United States Tel: (202) 208-3000 Fax: (202) 208-3013 8:15am - 4:45pm ET</p>

Area	Areas Served	Offices
Region 06 - Pittsburgh	Maryland, Pennsylvania, Virginia, West Virginia	Regional Office 06 - Pittsburgh, PA 1000 Liberty Avenue Room 904 Pittsburgh, PA 15222-4111 United States Tel: (412) 395-4400 Fax: (412) 395-5986 8:30am - 5:00pm ET
Region 07 - Detroit	Michigan	Regional Office 07 - Detroit, MI 477 Michigan Avenue Room 05-200 Detroit, MI 48226-2569 United States Tel: (313) 226-3200 Fax: (313) 226-2090 8:15am - 4:45pm ET Resident Office 07 - Grand Rapids, MI 110 Michigan St. NW Room 299 Grand Rapids, MI 49503-2363 United States Tel: (616) 456-2679 Fax: (616) 456-2596 8:15am - 4:45pm ET
Region 08 - Cleveland	Ohio	Regional Office 08 - Cleveland, OH 1240 East 9th Street Room 1695 Cleveland, OH 44199-2086 United States Tel: (216) 522-3715 Fax: (216) 522-2418 8:15am - 4:45pm ET
Region 09 - Cincinnati	Indiana, Kentucky, Ohio, West Virginia	Regional Office 09 - Cincinnati, OH 550 Main Street Room 3-111 Cincinnati, OH 45202-3271 United States Tel: (513) 684-3686 Fax: (513) 684-3946 8:00am - 4:30pm ET

Area	Areas Served	Offices
Region 10 - Atlanta	Alabama, Georgia, Kentucky, North Carolina, South Carolina, Tennessee, Virginia	<p>Regional Office 10 - Atlanta, GA 233 Peachtree Street N.E. Suite 1000 Atlanta, GA 30303-1531 United States Tel: (404) 331-2896 Fax: (404) 331-2858 8:00am - 4:30pm ET</p>
		<p>Resident Office 10 - Birmingham, AL 1130 South 22nd Street Suite 3400 Birmingham, AL 35205-2870 United States Tel: (205) 933-3018 Fax: (205) 933-3017 8:00am - 4:30pm CT</p>
		<p>Resident Office 10 - Nashville, TN 810 Broadway Suite 302 Nashville, TN 37203-3859 United States Tel: (615) 736-5921 Fax: (615) 736-7761 8:00am - 4:30pm CT</p>
		<p>Subregional Office 11 - Winston-Salem, NC 4035 University Parkway Suite 200 Winston-Salem, NC 27106-3325 United States Tel: (336) 631-5201 Fax: (336) 631-5210 8:00am - 4:30pm ET</p>

Area	Areas Served	Offices
Region 12 - Tampa	Florida, Georgia, Puerto Rico, U.S. Virgin Islands	<p>Regional Office 12 - Tampa, FL 201 East Kennedy Blvd Suite 530 Tampa, FL 33602-5824 United States Tel: (813) 228-2641 Fax: (813) 228-2874 8:00am - 4:30pm ET</p> <p>Resident Office 12 - Miami, FL 51 SW 1st Avenue Room 1320 Miami, FL 33130-1608 United States Tel: (305) 536-5391 Fax: (305) 536-5320 8:00am - 4:30pm ET</p> <p>Subregional Office 24 - San Juan, PR 525 F. D. Roosevelt Avenue Suite 1002 Hato Rey, PR 00918-1002 United States Tel: (787) 766-5347 Fax: (787) 766-5478 8:30am - 5:00pm AT</p>
Region 13 - Chicago	Illinois, Indiana	<p>Regional Office 13 - Chicago, IL 219 South Dearborn Street Suite 808 Chicago, IL 60604-5208 United States Tel: (312) 353-7570 Fax: (312) 886-1341 8:30am - 5:00pm CT</p>

Area	Areas Served	Offices
Region 14 - St. Louis	Illinois, Iowa, Missouri, Oklahoma	<p> Regional Office 14 - St. Louis, MO 1222 Spruce Street Room 8.302 St. Louis, MO 63103-2829 United States Tel: (314) 539-7770 Fax: (314) 539-7794 8:00am - 4:30pm CT </p> <p> Resident Office 14 - Tulsa, OK 224 South Boulder Avenue Room 322 Tulsa, OK 74103-3027 United States Tel: (918) 581-7951 Fax: (918) 581-7970 8:15am - 4:45pm CT </p> <p> Subregional Office 17 - Overland Park, KS 8600 Farley Street Suite 100 Overland Park, KS 66212-4677 United States Tel: (913) 967-3000 Fax: (913) 967-3010 8:15am - 4:45pm CT </p>

Area	Areas Served	Offices
Region 15 - New Orleans	Alabama, Florida, Mississippi, Tennessee	<p> Regional Office 15 - New Orleans, LA 600 South Maestri Place 7th Floor New Orleans, LA 70130-3413 United States Tel: (504) 589-6362 Fax: (504) 589-4069 8:00am - 4:30pm CT </p> <p> Resident Office 15 - Little Rock, AR 425 West Capitol Avenue Suite 1615 Little Rock, AR 72201-3453 United States Tel: (501) 324-6311 Fax: (501) 324-5009 8:00am - 4:30pm CT </p> <p> Subregional Office 26 - Memphis, TN 80 Monroe Avenue Suite 350 Memphis, TN 38103-2481 United States Tel: (901) 544-0019 Fax: (901) 544-0008 8:00am - 4:30pm CT </p>

Area	Areas Served	Offices
Region 16 - Fort Worth	Arkansas, Texas	<p> Regional Office 16 - Fort Worth, TX 819 Taylor Street Room 8A24 Fort Worth, TX 76102-6178 United States Tel: (817) 978-2921 Fax: (817) 978-2928 8:15am - 4:45pm CT </p> <p> Resident Office 16 - Houston, TX 1919 Smith Street Suite 1545 Houston, TX 77002 United States Tel: 281-228-5600 Fax: 281-228-5619 8:00am - 4:30pm CT </p> <p> Resident Office 16 - San Antonio, TX 615 East Houston Street Suite 559 San Antonio, TX 78205-1711 United States Tel: (210) 472-6140 Fax: (210) 472-6143 8:00am - 4:30pm CT </p>
Region 18 - Minneapolis	Iowa, Michigan, Minnesota, North Dakota, South Dakota, Wisconsin	<p> Regional Office 18 - Minneapolis, MN Federal Office Building 212 3rd Avenue S, Suite 200 Minneapolis, MN 55401 United States Tel: (612) 348-1757 Fax: (612) 348-1785 8:00am - 4:30pm CT </p> <p> Subregional Office 30 - Milwaukee, WI 310 West Wisconsin Avenue Ste. 450W Milwaukee, WI 53203-2211 United States Tel: (414) 297-3861 Fax: (414) 297-3880 8:00am - 4:30pm CT </p>

Area	Areas Served	Offices
Region 19 - Seattle	Alaska, Montana, Oregon, Washington	<p> Regional Office 19 - Seattle, WA 915 2nd Avenue Room 2948 Seattle, WA 98174-1078 United States Tel: (206) 220-6300 Fax: (206) 220-6305 8:15am - 4:45pm PT </p> <p> Subregional Office 36 - Portland, OR 1220 SW 3rd Ave. Suite 605 Portland, OR 97204-2170 United States Tel: 503-326-3085 Fax: (503) 326-5387 8:00am - 4:30pm PT </p>
Region 20 - San Francisco	California, Hawaii, Northern Mariana Islands	<p> Regional Office 20 - San Francisco, CA 901 Market Street Suite 400 San Francisco, CA 94103-1735 United States Tel: (415) 356-5130 Fax: (415) 356-5156 8:30am - 5:00pm PT </p> <p> Subregional Office 37 - Honolulu, HI 300 Ala Moana Boulevard Room 7-245 Honolulu, HI 96850-4980 United States Tel: (808) 541-2814 Fax: (808) 541-2818 8:00am - 4:30pm HAT </p>

Area	Areas Served	Offices
Region 21 - Los Angeles	California	<p> Regional Office 21 - Los Angeles, CA 312 N Spring Street Suite 10150 Los Angeles, CA 90012 United States Tel: (213) 894-5200 Fax: (213) 894-2778 8:30am - 5:00pm PT </p> <p> Resident Office 21 - San Diego, CA 555 West Beech Street Suite 418 San Diego, CA 92101-2939 United States Tel: (619) 557-6184 Fax: (619) 557-6358 8:30am - 5:00pm PT </p>
Region 22 - Newark	New Jersey	<p> Regional Office 22 - Newark, NJ 20 Washington Place 5th Floor Newark, NJ 07102-3110 United States Tel: (973) 645-2100 Fax: (973) 645-3852 8:30am - 5:00pm ET </p>
Region 25 - Indianapolis	Illinois, Indiana, Iowa, Kentucky	<p> Regional Office 25 - Indianapolis, IN 575 N. Pennsylvania Street Room 238 Indianapolis, IN 46204-1577 United States Tel: (317) 226-7381 Fax: (317) 226-5103 8:30am - 5:00pm ET </p> <p> Subregional Office 33 - Peoria, IL 101 SW Adams Street Suite 400 Peoria, IL 61602 United States Tel: (309) 671-7080 Fax: (309) 671-7095 8:00am - 4:30pm CT </p>

Area	Areas Served	Offices
Region 27 - Denver	Colorado, Idaho, Montana, Nebraska	<p>Regional Office 27 - Denver, CO 1961 Stout Street Suite 13-103 Denver, CO 80294 United States Tel: (303) 844-3551 Fax: (303) 844-6249 8:30am - 5:00pm MT</p>
Region 28 - Phoenix	Arizona, Nevada, New Mexico, Texas	<p>Regional Office 28 - Phoenix, AZ 2600 North Central Avenue Suite 1400 Phoenix, AZ 85004-3099 United States Tel: (602) 640-2160 Fax: (602) 640-2178 8:15am - 4:45pm MT</p> <p>Resident Office 28 - Albuquerque, NM 421 Gold Avenue SW Suite 310 Albuquerque, NM 87103-2181 United States Tel: (505) 248-5125 Fax: (505) 206-5695 8:15am - 4:45pm MT</p> <p>Resident Office 28 - Las Vegas, NV 300 Las Vegas Boulevard South Suite 2-901 Las Vegas, NV 89101 United States Tel: (702) 388-6416 Fax: (702) 388-6248 8:30am - 5:00pm PT</p>
Region 29 - Brooklyn	New York	<p>Regional Office 29 - Brooklyn, NY 100 Myrtle Avenue Suite 5100 Brooklyn, NY 11201-4201 United States Tel: (718) 330-7713 Fax: (718) 330-7579 9:00am - 5:30pm ET</p>

Area	Areas Served	Offices
Region 31 - Los Angeles	California	Regional Office 31 - Los Angeles, CA 11500 West Olympic Blvd Suite 600 Los Angeles, CA 90064 United States Tel: (310) 235-7352 Fax: (310) 235-7420 8:30am - 5:00pm PT
Region 32 - Oakland	California, Nevada	Regional Office 32 - Oakland, CA 1301 Clay Street Suite 300-N Oakland, CA 94612-5224 United States Tel: (510) 637-3300 Fax: (510) 637-3315 8:30am - 5:00pm PT

From: [Jacob, Fred](#)
To: [Jennifer Abruzzo](#); [Seema Nanda](#)
Cc: [Hamilton, Lasharn](#)
Subject: Agency Review Team - Requests for Information (11-24-2020) (Back to ART for confirmation)
Date: Tuesday, November 24, 2020 6:54:30 PM
Attachments: [Agency Review Team - Requests for Information \(11-24-2020\) \(Back to ART for confirmation\).docx](#)

Jennifer and Seema –

It was nice to talk to you today, and I'm glad you both are doing well. As promised, Lasharn and I have compiled our notes into the attached list of information requests. If you could review to make sure we have captured our conversation correctly, we'd appreciate it. In the meantime, we will start compiling documents and data.

Thanks so much,

Fred

Agency Review Team – Information Requests, 11/24/2020

1. Please list any agency organizational/regional restructuring since FY 2017
2. Please list any regional offices that have closed or are slated to be closed. (Jennifer Abruzzo recalled 49 regional offices in FY 2017; agency briefing materials reported 48 offices in the regions.)
3. Any planned activities regarding office closures or consolidations.
4. Centralization of Regional Office Functions.
 - a. Information on Centralizing Compliance Officer functions
 - b. Information on the Centralized Decision Writing Pilot
 - c. Whether the centralized functions have affected regional office capacity to manage case handling.
 - d. Information on all completed centralizations and any upcoming centralization of offices
5. Personnel Questions. (Could be Admin/HR question.) Since January 2017:
 - a. What positions have become vacant and were not backfilled; where are those positions located; and what classifications.
 - b. Current hiring authorizations listed in briefing book: Mostly are HQ or field hiring for support staff. Have field attorney/field examiner positions been authorized?
 - c. RD Vacancies:

Is the agency currently in the process of filling any of these vacancies?

If so, are they planned to be filled by 1/2020?

Any plans for consolidating RD oversight of multiple regions, like R1 and R3.
 - d. Have any Schedule C positions been converted to career, and is there the possibility of doing so by 1/20/2021?
6. Any elections still on hold from the March 2020 two-week suspension? [I said no, but I would confirm.]

7. Outreach Efforts.
 - a. ART reported that GC prevented field employees other than HQ leaders (and maybe RDs/RAs) from participating in outreach activities.
 - b. Field attorneys have an outreach element; has this affected their evaluations?
 - c. ART request for outreach tracking data, kept in Operations. (used to be David Kelley or Aaron Karsh?)

Advice Matters

1. According to the ART, when GC Robb took office, he changed the GC's position on several pending cases; what is the status of those cases? [Unclear which cases specifically from the conversation.]
2. Guidance memoranda with expectation of issuance by January 2021.
3. Mandatory submissions to Advice (GC Memo 18-2, and any updates); list of cases currently in Advice pursuant to the mandatory submission instructions. (This list is typically provided to P&P each year.)

Appellate Court

1. Notable enforcement matters.

Labor Relations Matters

1. BU and PA bargaining: Copies of any grievances, arbitrations, impasse proceedings/awards, and lawsuits arising out of bargaining.

Administration, Human Capital, and Facilities

1. Any office space reduction plans.
2. Current written Covid protocols in the field and HQ, especially surrounding whether agency employees are required to come into the office or telework. [Sent.]
3. Health units. What is the status of the Agency's health unit contracts, and are there any plans for health units and/or FOH contracts when people return to the office.
4. FEVS: FEVS scores have fallen since 2016. What efforts has the agency taken to improve staff morale and improve FEVS scores?

Budget

1. Information on the GAO and OIG investigations into budget execution in FY 18 and FY 19. For GAO audits, ART requested any information we provided to GAO, and documents GAO provided to us.
2. Congressional Budget Justification for FY 2022.
3. The Board is on a continuing resolution. Are there any issues meeting budgetary obligations under the CR, which is due to expire December 11, 2020?
4. Requested FY20 PAR

Congressional Affairs

Correspondence with Congress (letters to, and letters from) from December 2019-present.

Board-side info

1. Information on case processing pilot on Board-side, to meet strategic plan case processing goals.
2. Information on Court litigation concerning NLRB Rulemaking.
3. Status of letter request from AFL-CIO and SEIU to postpone the Joint Employer Final Rule and reconsider whether to include health and safety as an essential term and condition of employment.

Case data:

ART requested the following data for FY 2017-2021:

- CA/CB cases filed
- Merit factors (CA/CB cases separately)
- Appeals filed and sustaining rate (CA/CB cases separately)
- Backpay and remedies
- Settlements (non-Board informal settlements, formal Board settlements)

- Number of 10(j) requested/number authorized/win rates
- Number of 10(l) sought/win rates
- Deferred cases under:
 - *Collyer*
 - *Dubo*
- Merit factor and litigation win rate (court enforcement)
- Case processing times (statistics on meeting GC-side strategic goals)
- Petitions filed
- Elections held

From: [Jennifer Abruzzo](#)
To: [Jacob, Fred](#)
Cc: [Seema Nanda](#); [Hamilton, Lasharn](#)
Subject: Re: Agency Review Team - Requests for Information (11-24-2020) (Back to ART for confirmation)
Date: Tuesday, November 24, 2020 7:46:18 PM
Attachments: [Agency Review Team - Requests for Information \(11-24-2020\) \(Back to ART for confirmation\)j.docx](#)

Thanks so much for capturing much of what we said. I added some additional info -- apologies but couldn't get track changes to work, so it's in comment bubbles. Please feel free to reach out if you have any questions. Take care and thanks again.

On Tue, Nov 24, 2020 at 6:54 PM Jacob, Fred <Fred.Jacob@nlrb.gov> wrote:

Jennifer and Seema –

It was nice to talk to you today, and I'm glad you both are doing well. As promised, Lasharn and I have compiled our notes into the attached list of information requests. If you could review to make sure we have captured our conversation correctly, we'd appreciate it. In the meantime, we will start compiling documents and data.

Thanks so much,

Fred

Agency Review Team – Information Requests, 11/24/2020

1. Please list any agency organizational/**regional** restructuring since FY 2017
2. Please list any regional offices that have closed or are slated to be closed. (Jennifer Abruzzo recalled 49 regional offices in FY 2017; agency briefing materials reported 48 offices in the regions.)
3. Any planned activities regarding office closures or consolidations.
4. Centralization of Regional Office Functions.
 - a. Information on Centralizing Compliance Officer functions
 - b. Information on the Centralized Decision Writing Pilot
 - c. Whether the centralized functions have affected regional office capacity to manage case handling.
 - d. Information on all completed centralizations and any upcoming centralization of **offices**
5. Personnel Questions. (Could be Admin/HR question.) Since January 2017:
 - a. What positions have become vacant and were not backfilled; where are those positions located; and what classifications.
 - b. Current hiring authorizations listed in briefing book: Mostly are HQ or field hiring for support staff. Have field attorney/field examiner positions been authorized?
 - c. RD Vacancies:

Is the agency currently in the process of filling any of these vacancies?

If so, are they planned to be filled by 1/2020?

Any plans for consolidating RD oversight of multiple regions, like R1 and R3.
 - d. Have any Schedule C positions been converted to career, and is there the possibility of doing so by 1/20/2021?
6. Any elections still on hold from the March 2020 two-week suspension? [I said no, but I would confirm.]

Commented [O1]: And headquarters

Commented [O2]: functions

7. Outreach Efforts.

- a. ART reported that GC prevented field employees other than HQ leaders (and maybe RDs/RAs) from participating in outreach activities.
- b. Field attorneys have an outreach element; has this affected their evaluations?
- c. ART request for outreach tracking data, kept in Operations. (used to be David Kelley or Aaron Karsh?)

Commented [O3]: Since FY 17

Advice Matters

1. According to the ART, when GC Robb took office, he changed the GC's position on several pending cases; what is the status of those cases? [Unclear which cases specifically from the conversation.]
2. Guidance memoranda with expectation of issuance by January 2021.
3. Mandatory submissions to Advice (GC Memo 18-2, and any updates); list of cases currently in Advice pursuant to the mandatory submission instructions. (This list is typically provided to P&P each year.)

Commented [O4]: Cases in Circuit Courts

Commented [O5]: This includes ICG, GC and Ops Memos. Also, would like to see ICGs that have issued since FY 17.

Appellate Court

1. Notable enforcement matters.

Commented [O6]: And list and brief description of cases pending in circuit and district court.

Labor Relations Matters

1. BU and PA bargaining: Copies of any grievances, arbitrations, impasse proceedings/awards, and lawsuits arising out of bargaining.

Administration, Human Capital, and Facilities

1. Any office space reduction plans.
2. Current written Covid protocols in the field and HQ, especially surrounding whether agency employees are required to come into the office or telework. [Sent.]
3. Health units. What is the status of the Agency's health unit contracts, and are there any plans for health units and/or FOH contracts when people return to the office.
4. FEVS: FEVS scores have fallen since 2016. What efforts has the agency taken to improve staff morale and improve FEVS scores?

Commented [O7]: Copies of documents regarding any external assessments that have been done to review operations in divisions, offices, and/or field offices.

Commented [O8]: Personnel actions or issues, initiated by management or employees since FY 17

Personnel actions

Performance Standards

Commented [O9]: Performance standards and performance management plans

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Budget

1. Information on the GAO and OIG investigations into budget execution in FY 18 and FY 19. For GAO audits, ART requested any information we provided to GAO, and documents GAO provided to us.
2. Congressional Budget Justification for FY 2022.
3. The Board is on a continuing resolution. Are there any issues meeting budgetary obligations under the CR, which is due to expire December 11, 2020?
4. Requested FY20 PAR

Congressional Affairs

Correspondence with Congress (letters to, and letters from) from December 2019-present.

Commented [O10]: I think this is 2017

Board-side info

1. Information on case processing pilot on Board-side, to meet strategic plan case processing goals.
2. Information on Court litigation concerning NLRB Rulemaking.
3. Status of letter request from AFL-CIO and SEIU to postpone the Joint Employer Final Rule and reconsider whether to include health and safety as an essential term and condition of employment.

Commented [O11]: And plans to implement rules with pending NPRMs before Jan 20.

Case data:

ART requested the following data for FY 2017-2021:

Commented [O12]: Also, data about reduction of case handling times

- CA/CB cases filed
- Merit factors (CA/CB cases separately)
- Appeals filed and sustaining rate (CA/CB cases separately)

- Backpay and remedies
- Settlements (non-Board informal settlements, formal Board settlements)
- Number of 10(j) requested/number authorized/win rates
- Number of 10(l) sought/win rates
- Deferred cases under:
 - *Collyer*
 - *Dubo*
- Merit factor and litigation win rate (court enforcement)
- Case processing times (statistics on meeting GC-side strategic goals)
- Petitions filed
- Elections held

Technology

Commented [O13]: Detailed explanation of IT expenditures and obligations since FY 17, as well as proposed expenditures with description of enhancements

From: [Jacob, Fred](#)
To: [Jennifer Abruzzo](#)
Cc: [Hamilton, Lasharn](#); [Seema Nanda](#)
Subject: RE: Briefing for Member McFerran
Date: Monday, November 30, 2020 7:21:34 PM

Jennifer –

Thanks so much for the quick reply. I'll pass along your information to Member McFerran. I'd expect a call tomorrow or Wednesday.

Best,

Fred

From: Jennifer Abruzzo <jabruzzo@jbrpt.org>
Sent: Monday, November 30, 2020 6:56 PM
To: Jacob, Fred <Fred.Jacob@nlrb.gov>
Cc: Hamilton, Lasharn <Lasharn.Hamilton@nlrb.gov>; Seema Nanda <snanda@jbrpt.org>
Subject: Re: Briefing for Member McFerran

Hi there,

I know that Seema is tied up in a number of DOL meetings this week, but I would be happy to speak with Member McFerran, as I did with GC Robb today. Please let her know she should feel free to call me at any time. My cell is (b) (6).

Take care,
Jennifer

On Mon, Nov 30, 2020 at 6:44 PM Jacob, Fred <Fred.Jacob@nlrb.gov> wrote:

Jennifer and Seema:

I hope you had nice holidays. Member McFerran would like to take up your kind offer for a briefing on transition efforts. If you could let me know some convenient time slots over the next several days, I would appreciate it.

Thank you in advance!

Fred

Get [Outlook for iOS](#)

From: [Jacob, Fred](#)
To: [Jennifer Abruzzo](#); dchen@jbrpt.org; [Seema Nanda](#); [Lynn Rhinehart](#); [Platt, Nancy](#); [Tursell, Beth](#); [Hamilton, Lasharn](#); [Rubin, Mori](#); [Nachand, Patricia](#); [Ohr, Peter S.](#); [Leach, David E.](#); [Wilson, Nancy](#)
Subject: ART Briefing from RD Committee

Fred Jacob is inviting you to a scheduled ZoomGov meeting.

Join ZoomGov Meeting

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Passcode: (b) (6)

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Dial by your location

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Join by SIP

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Join by Skype for Business

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From: [Google Calendar](#) on behalf of [John@johnd.com](#)
To: [John@johnd.com](#)
Subject: Accepted: AET Drafting from RD Committee at Wind Date: 9, 2020 12:30pm - Open (5/7) (Unarchived)
Attachments: [image.png](#)

john@johnd.com
on Google Calendar
AET Drafting from RD Committee

When:
Wed Dec 9, 2020 12:30pm - Open Event Time: New York

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Location:

Location: Free

Who:

Event:

john@johnd.com

john@johnd.com

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From: [Google Calendar](#) on behalf of [Google Calendar](#)
To: [David Lipton](#)
Subject: Accepted: AET Drafting from RD Committee @ Wed Dec 9, 2020 12:30pm - 3pm (EST) (local, Fri)
Attachments: [AET Draft](#)

blakea@piper.org
for copyright information
AET Drafting from RD Committee

When:
Wed Dec 9, 2020 12:30pm - 3pm Eastern Time - New York

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David Lipton

David Lipton

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Chen, Peiwen B.

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From: [Jacob, Fred](#)
To: jabruzzo@jbrpt.org
Subject: Responses to ART Requests for Information (as of 12-7-2020)
Date: Tuesday, December 8, 2020 7:23:00 PM
Attachments: [Responses to ART Requests for Information \(as of 12-7-2020\).docx](#)

Fyi.

Responses to Agency Review Team Information Requests (as of 12/7/2020)

Items in Italics are (or could be) non-public information, requiring MOU protocols

Division of Operations

1. Please list any agency organizational HQ or regional restructuring since FY 2017.

[Added 12/7.]

During FY 17, a Cost Savings Work Group was convened to develop a plan that would allow the Agency to continue to operate if given the expected \$258M in FY 2018. Former Deputy General Counsel Jennifer Abruzzo led this Work Group. In the Operations SharePoint Folder is a copy of the August 3, 2017 Cost Savings Work Group report. Footnote 21 mentions the potential closure of smaller offices.

Pursuant to the Cost Savings Work Group recommendations, the General Counsel submitted the following recommendations to the Board (copies of recommendations attached):

1. Recommendation to close the Anchorage Resident Office submitted on November 21, 2017.
2. Recommendation to close the Tulsa Resident Office submitted on November 27, 2017.
3. Recommendation to close the San Antonio Resident Office submitted on November 28, 2017.
4. Recommendation to close the San Diego Resident Office submitted on November 28, 2017

To date, the only Resident Office that was closed pursuant to the Cost Savings Work Group recommendation is the Anchorage Resident Office. Since closure of the office, the area continues to be served by a Resident Agent located in Anchorage, Alaska.

2. Please list any regional offices that have closed *or are slated to be closed*. (Jennifer Abruzzo recalled 49 regional offices in FY 2017; agency briefing materials reported 48 offices in the regions.) [Updated 12/7.]

The Anchorage office closed on December 29, 2017 (not January 2017, as originally stated). There are no other regional offices slated to be closed.

3. *Any planned activities regarding office closures or consolidations.* [Added 12/7.]

Not at this time.

4. Centralization of Regional Office Functions.

- a. Information on Centralizing Compliance Officer functions
- b. Information on the Centralized Decision Writing Pilot
- c. Whether the centralized functions have affected regional office capacity to manage case handling.
- d. Information on all completed centralizations *and any upcoming centralization of offices or functions*

5. Personnel Questions. (Could be Admin/HR question.) Since January 2017:

- a. What positions have become vacant and were not backfilled; where are those positions located; and what classifications.

Where a departure has occurred and there is a need for that position in that office, the Agency has given authorization to hire for that position and the position has been posted. To the extent that a position has not been posted, a determination was made that there is no present need to fill that position.

- b. Current hiring authorizations listed in briefing book: Mostly are HQ or field hiring for support staff. Have field attorney/field examiner positions been authorized?

- c. RD Vacancies:

Is the agency currently in the process of filling any of these vacancies?

With respect to the Regional Director positions, currently there are 22 Regional Directors out of 26 Regions. The Agency has posted to fill every Regional Director vacancy that has arisen – in some cases more than once. This process led to the recent appointments of Regional Directors in Region 5 (Baltimore) Region 9 (Cincinnati) and Region 4 (Philadelphia). As to Region 1 (Boston) and Region 10 (Atlanta), the Agency has posted each position twice, but there were no viable applicants either time. With respect to Region 8 (Cleveland), the Agency's initial posting of the position did not result in an appointment, and the Agency has since reposted. The Agency's re-posting in Region 8 (Cleveland) is active, and I hope it will lead to an appointment. The Agency's posting for a Regional Director in Region 14 (St. Louis) did not produce any viable candidates. The Regions without Directors have been led on interim basis either by a sitting Director from another Region or by a manager or supervisor designated as

Acting Regional Director. This arrangement has yielded important developmental opportunities for the Agency's managers and supervisors.

If so, are they planned to be filled by 1/2020? Possibly

Any plans for consolidating RD oversight of multiple regions, like R1 and R3.

- d. Have any Schedule C positions been converted to career, and is there the possibility of doing so by 1/20/2021?

We have not converted any political appointees to permanent competitive positions, non-political excepted service positions, or career Senior Executive Service (SES).

- 6. Any elections still on hold from the March 2020 two-week suspension? [I said no, but I would confirm.]

Only one election is still pending – ABC Transit, Inc, Case 06-RD-255829. [Added 12/7]

- 7. Outreach efforts. [Added 12/7]

- a. **ART reported that GC prevented field employees other than HQ leaders (and maybe RDs/RAs) from participating in outreach activities.**

This information is incorrect. OM 20-06 Outreach, Speaking Engagements, and Recruiting Activities was issued on January 16, 2020 by the Division of Operations-Management not the General Counsel. A copy of the memo is attached in the Division of Operations Folder on SharePoint. Section A of this memo addresses Outreach to Promote a Broader Awareness of the Act and states:

Memorandum OM 06-66, Outreach to Promote a Broader Awareness of the Act introduced an initiative for proactive communication with citizen and community groups to educate those who may not be aware of the Act, including those just entering the work force. Those efforts continue to an be important Agency function and have been reinforced by the Agency's information-rich public website. The objective of such activities is communicating with the public about the Agency's existence, how individuals can file charges or petitions, and where more information about the Agency is available. We contemplate that **Board Agents**, as well as **supervisors, managers**, (emphasis added) and Regional Directors may engage in these activities, with approval from the Regional Director or designee.

Additionally, Section C of the memo addresses Speaking Engagements and states:

Generally, **supervisors, managers**, (emphasis added) and Regional Directors, rather than non-supervisory employees, should represent field offices in speaking engagements other than basic presentations to groups unfamiliar with the Agency.¹ It is the responsibility of the supervisory and managerial team to promote the Agency's mission by such engagements. Supervisors have greater access to a variety of legal and case-handling issues. This greater access is important in providing accurate information when, as often is the case, participants raise unexpected questions before, during or after a presentation.

b. Field attorneys have an outreach element; has this affected their evaluations?

Again, this information is incorrect. The Field Attorney performance plan contains four critical elements:

- Quality
- Effectiveness and Efficiency
- Establish/Maintain Effective Working Relationships
- Demonstrate Proficiency in Communication

Only two critical elements discuss communication with parties:

Establish/Maintain Effective Working Relationships

Revised effective 6/1/2016 Establish and maintain effective working relationships. Alignment Statement: This element relates to and supports the goals and objectives in the Agency's Strategic Plan. The work performed contributes to the Field offices' ability to promptly and fairly investigate, prosecute, and resolve unfair labor practice cases and to expeditiously resolve representation questions. The established performance standards reflect the specific results, outcomes, and/or accomplishments expected. a) Meet and deal effectively with the public and representatives of other agencies; b) Develop rapport and cooperative working relationships with practitioners, parties, and witnesses where practicable; c) Cooperate and deal effectively with Agency staff at all levels, including respectful, collegial, and collaborative relations with peers, superiors, and supporting staff members alike; d) Demonstrate appropriate civility and sensitivity in all dealings with public and with Agency staff.

Demonstrate Proficiency in Communication

Revised effectively 6/1/2016 Demonstrate proficiency in oral and written communication necessary to the performance of assignments. Alignment Statement: This element relates to and supports the goals and objectives in the Agency's Strategic Plan. The work performed contributes to the Field offices' ability to promptly and fairly investigate, prosecute, and resolve unfair labor practice cases and to expeditiously resolve representation questions. The established performance standards reflect the specific results, outcomes, and/or accomplishments expected. a) Compose, draft, and complete case-related written communication and special projects, including, but not limited to, internal memoranda, correspondence, formal documents, pleadings, reports and briefs; b) Write precisely and concisely, deploying good grammatical structure, logical organization; c) Orally communicate with Agency personnel, parties and members of the public, including, but not limited to, initiating communications, responding to questions, presenting facts and participating in meetings; d) Organize oral presentations in a logical manner, projecting confidently so that listeners can hear and understand.

As reflected above, the Field Attorney performance plan does not have an outreach element.

c. ART request for outreach tracking data since FY 2017, kept in Operations.

See spreadsheet in Division of Administration Requests folder on SharePoint.

Division of Advice Requests

1. According to the ART, when GC Robb took office, he changed the GC's position on several pending court cases; what is the status of those cases?
2. *Guidance memoranda (including ICG, GC, and Ops memos) with expectation of issuance by January 2021.*
Nothing at this time. [Added 12/7.]
3. ICG, GC, and Ops memos issued since FY 2017. [In Operations SharePoint Folder; added 12/7.]
4. Mandatory submissions to Advice (GC Memo 18-2, and any updates); list of cases currently in Advice pursuant to the mandatory submission instructions. (This list is typically provided to P&P each year.)
5. List of cases sent into Advice with brief description of the legal issues for each one, and flagging those that are COVID related
6. Briefs to the Board in cases where the GC is arguing to modify or overturn Board law.
7. Position statements that the GC has filed with the Board pursuant to rulemaking efforts.

ASCLB/CCSLB Requests

1. Notable enforcement matters and list and brief description of cases pending in circuit and district court.

Labor Relations Requests

1. BU and PA bargaining: Copies of any grievances, arbitrations, impasse proceedings/awards, and lawsuits arising out of bargaining.
 - NLRBPA v. FSIP, NLRB pleadings in SharePoint folder.

Division of Administration Requests

1. Any office space reduction plans. *[Draft plans would be nonpublic.]* [In SharePoint folder.]
2. Current written Covid protocols in the field and HQ, especially surrounding whether agency employees are required to come into the office or telework. [In SharePoint folder.]
3. Health units. What is the status of the Agency's health unit contracts, and are there any plans for health units and/or FOH contracts when people return to the office. [In SharePoint folder.]
4. FEVS: FEVS scores have fallen since 2016. What efforts has the agency taken to improve staff morale and improve FEVS scores? Copies of documents regarding any external assessments that have been done to review operations in divisions, offices, and/or field offices. [In SharePoint folder.]
5. Personnel actions or issues, initiated by management or employees since FY 17. [Agreed to start with high level statistics.] [In SharePoint folder.]
6. Performance standards and performance management plans. [Agreed to provide mission critical plans.]

In SharePoint folder are copies of the requested Performance Plans for the following positions:

GS-0905 GENERAL ATTORNEY (LABOR) – (BU 1175 - GC Side) Note - These Plans are all different based on the assigned Branch.

GS-0905 GENERAL ATTORNEY (LABOR) - (BU 1206 - GC Side)

GS-0905 ATTORNEY-ADVISER (LABOR) - (BU 1032 - Board Side)

GS-0244 LABOR MANAGEMENT RELATIONS EXAMINER - (BU 1206 - GC Side)

7. The extent to which the agency may be using Schedule F for staffing purposes and any documents reflecting any steps the Agency has considered or taken with regard to implementing Schedule F.

No action has been taken at this time.

8. Regional and Headquarters staffing numbers for GC-side and Board-side broken down into managers, supervisors, professionals and support staff for each Region, for each Division/Office/Branch in HQ, and for each Board member office.

[In DoA SharePoint Folder (added 12/6)]

Budget Requests

1. Information on the GAO and OIG investigations into budget execution in FY 18 and FY 19. For GAO audits, ART requested any information we provided to GAO, and documents GAO provided to us. [OIG has custody of its documents, and we do not have control over them.]
2. Congressional Budget Justification for FY 2022.
3. The Board is on a continuing resolution. Are there any issues meeting budgetary obligations under the CR, which is due to expire December 11, 2020?
4. Requested FY20 PAR [Sent.]

OCIO Requests

Detailed explanation of IT expenditures and obligations since FY 17, as well as proposed expenditures with description of enhancements

[Excel Spreadsheet with budget obligations in SharePoint folder, added 12/4]

Congressional Committee Correspondence

Correspondence with Congress (letters to, and letters from) from December 2017-present. [Not seeking constituent letters.]

Board-side Requests

[All answers these requests are in the SharePoint folder “Board-side Requests,” and/or answered in the Word document in that folder titled, “Board Case Handling and Rulemaking (12-1-2020).”]

1. Information on case processing pilot on Board-side, to meet strategic plan case processing goals; Documents regarding Board case processing protocols and processes, including but not limited to those involving the Executive Secretary's Office. [ES Memos 18-3, 20-1; In SharePoint folder.]
2. Information on Court litigation concerning NLRB Rulemaking. [In doc.]
3. Status of letter request from AFL-CIO and SEIU to postpone the Joint Employer Final Rule and reconsider whether to include health and safety as an essential term and condition of employment. [Letter from ES in SharePoint folder and description in Word document.]
4. *Plans to implement rules with pending NPRMs before January 20, 2021.* [Description of Unified Agenda items in Word document on SharePoint folder.]
5. All internal Board delegations of authority over the past four years. [In SharePoint folder.]

Case Handling Data

ART requested the following data for FY 2017-2021:

- CA/CB cases filed
- Merit factors (CA/CB cases separately)

- Appeals filed and sustaining rate (CA/CB cases separately)

- Backpay and remedies
- Settlements (non-Board informal settlements, formal Board settlements)

- Number of 10(j) requested/number authorized/win rates
- Number of 10(l) sought/win rates
- The number of 10j cases submitted to ILB from Regions (broken down by "go" and "no go"), as well as the number of "go" memos that ILB sent to the GC, how many were approved by the GC, and how many were authorized by the Board

- Number of Investigative Subpoenas, broken down by SAT and SDT

- Deferred cases under:
 - *Collyer*
 - *Dubo*

- Merit factor and litigation win rate (court enforcement)

- Case processing times (statistics on meeting GC-side strategic goals) and/or
- Data on reduction of case handling times (board + GC side) [Sent in 2020 PAR]

- Petitions filed
- Elections held

To: jabruzzo@jbrpt.org; [Seema Nanda](#); [Dora Chen](#); [Lynn Rhinehart](#)
Cc: [Tursell, Beth](#); [Hamilton, Lasharn](#)
Subject: Additional Documents on the SharePoint Site
Date: Thursday, January 28, 2021 8:49:40 PM
Attachments: [Responses to ART Requests for Information \(as of 12-14-2020\).docx](#)

All –

We wanted to let you know we have uploaded another batch of documents to the SharePoint site over the last several days, including ASCLB and CCSLB documents, Congressional Correspondence, and Advice memos and briefs. The attached Word document flags what we've uploaded and highlights the date of upload for your convenience.

I hope you all have been able to obtain regular access to the SharePoint site. If you are having any trouble, please let me know.

And I know there are still a handful of documents that we're still assembling. If you have urgent need of anything outstanding, please let me know and I'll prioritize getting it to you.

Thanks,

Fred

FRED B. JACOB • SOLICITOR

National Labor Relations Board

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Responses to Agency Review Team Information Requests (as of 12/7/2020)

Items in Italics are (or could be) non-public information, requiring MOU protocols

Division of Operations

1. Please list any agency organizational HQ or regional restructuring since FY 2017.

[Added 12/7.]

During FY 17, a Cost Savings Work Group was convened to develop a plan that would allow the Agency to continue to operate if given the expected \$258M in FY 2018. Former Deputy General Counsel Jennifer Abruzzo led this Work Group. In the Operations SharePoint Folder is a copy of the August 3, 2017 Cost Savings Work Group report. Footnote 21 mentions the potential closure of smaller offices.

Pursuant to the Cost Savings Work Group recommendations, the General Counsel submitted the following recommendations to the Board (copies of recommendations attached):

1. Recommendation to close the Anchorage Resident Office submitted on November 21, 2017.
2. Recommendation to close the Tulsa Resident Office submitted on November 27, 2017.
3. Recommendation to close the San Antonio Resident Office submitted on November 28, 2017.
4. Recommendation to close the San Diego Resident Office submitted on November 28, 2017

To date, the only Resident Office that was closed pursuant to the Cost Savings Work Group recommendation is the Anchorage Resident Office. Since closure of the office, the area continues to be served by a Resident Agent located in Anchorage, Alaska.

2. Please list any regional offices that have closed *or are slated to be closed*. (Jennifer Abruzzo recalled 49 regional offices in FY 2017; agency briefing materials reported 48 offices in the regions.) [Updated 12/7.]

The Anchorage office closed on December 29, 2017 (not January 2017, as originally stated). There are no other regional offices slated to be closed.

3. *Any planned activities regarding office closures or consolidations.* [Added 12/7.]

Not at this time.

4. Centralization of Regional Office Functions.
[Added 12/14]

Information on Centralizing Compliance Officer functions

In June 2020, the Centralized Compliance Unit (CCU) was created to centralize the work needed to obtain compliance with informal settlement agreements and Board orders. The CCU is supervised by four supervisors in Regional field offices and is managed remotely by a member of the Division of Operations-Management, who is based on Phoenix, Arizona. Over the years, an imbalance in the workload developed since some Regions litigated more cases than other Regions. As a result, some Compliance Officers (COs) had an extremely heavy compliance case load while other COs handled only a few compliance cases. Since compliance work is portable, i.e., the work can be done in a Region other than the Region that litigated the case, efforts were undertaken to move compliance cases around to different Regions to even out the compliance case load. These efforts were met with strong resistance from the Regional Directors. Regional Directors did not want to “give up” the cases that they had litigated even though it meant more timely compliance for employees adversely affected by the unfair labor practices. Regional Directors also did not want to “pick up” additional compliance cases because they had their COs handling investigations and representation cases.

In the past, Regional Directors assigned ULP investigations and representation cases to COs. As a matter of fact, in FY 19, one Director recommended their CO for a performance quality step increase because of the amount of non-compliance work the CO assisted with. The use of COs by Regional Directors to do work other than compliance work, if there is other compliance work available that needs to be done, is not efficient, economical or a good use of Agency resources. COs are GS-13/14 level positions. The duties of this position are obtaining compliance with informal settlement agreements, Board orders and court judgments. The position description does not include investigating unfair labor practices or handling representation cases. These duties are handled by GS-11/12 & 13 Field Examiners. Despite this, Regional Directors in the past routinely assigned investigations and representation cases to the COs. The end result of this improper assignment was delays in obtaining compliance with settlements and orders because COs were busy with other work.

The centralization of compliance work has resulted in a better balance of the work so that it can be more performed in a more efficient and effective manner. The following are other benefits of the CCU:

1. The CCU now makes it possible for teams of COs to work together and allows for a more open dialogue during which there can be brainstorming of issues.
2. The open dialogue promotes more creativity in our compliance resolutions.
3. The Agency is now better able to provide training for the COs so that they can develop their skills.
4. Assistance is now more readily available to Regions and their staffs to assist and provide training on compliance
5. Having supervisors who are knowledgeable and comfortable in compliance will strengthen the compliance work and ensure consistency across the Regions.
6. Field supervisors and managers do not have the specialized skills needed to effectively handle compliance cases. By centralizing compliance, the managers and supervisors can better focus on unfair labor practice and representation investigations, elections and hearings – their areas of expertise.

In the first several months, the CCU has made great strides in obtaining quicker compliance with informal settlement agreements (ISAs).

FY 2020

*1243 ISAs closed

*Average number of days between approval and closing was **137.6**

*904 ISAs closed prior to 6/1/20 in an average of **127**

*339 ISAs closed after 6/1/20 in an average of **163** days

271 ISA closed after 6/1/20 but approved prior to 6/1/20 in an average of **184 days

68 ISA closed after 6/1/20 and approved after 6/1/20 in an average of **78 days – reducing the time it took to secure compliance with an ISA by approximately 42%.

FY 2021

*141 ISAs closed in average of **220.2** days

*51 ISAs approved prior to 6/1/20 closed in average of **454** days

*90 ISA approved after 6/1/20 closed in average of **90** days

449 ISAs currently pending compliance

*137 approved prior to 6/1/20 pending an average of **1006** days

*312 approved on or after 6/1/20 pending an average of **55** days

Once the CCU closes out the backlog of ISA cases that were approved prior to June 1, 2020, they are on track with securing compliance well under 90 days from the approval of the ISA, which would be about 47 days quicker than in previous years.

The CCU has had similar successes with formal compliance cases. A formal compliance case is defined as a case in which a Board order issue. An active formal compliance case

is a case that is being worked on by a Compliance Officer. Within the first month of its existence, the CCU found approximately 50 formal cases that had either had not been worked on or had “fallen between the cracks”. Having a central location where the notifications of issuance of Board orders and court judgments are sent ensures that all cases are immediately put onto the Compliance Report and immediately assigned to either a CO or Compliance Assistant.

In the short six months of its existence, the CCU has also made strides in reducing the backlog of formal compliance cases.

As of 6/1/20, the beginning of the CCU, there were 270 active formal compliance cases pending
*cases were pending an average of **754.6** days from issuance of Board order or court judgment

Since 6/1/20 101 formal compliance cases have been closed

*closed cases had been pending an average of **743** days from the issuance of Board order or court judgment

305 active formal compliance cases currently pending compliance

*166 active formal compliance cases where Board order/court judgments issued prior to 6/1/20 (before the CCU took over)

*cases pending an average of **1029.7** day from issuance of Board order/court judgment

* 139 active formal compliance cases where Board order/court judgments issued after 6/1/20

*cases pending an average of **64** days from issuance of Board order/court judgment

In FY 20, the CCU relied on the Regions to assist with mailing of Notices and backpay checks because the Regions’ supply budgets already accounted for these expenses. In FY 21, in light of the pandemic and everyone working remotely, these expenses and responsibilities have been transferred to the CCU.

In the upcoming months, the CCU will conduct compliance related training sessions for the Regions and establish a network by which Regions can obtain assistance with compliance related tasks.

Information on the Centralized Decision Writing Pilot

The Centralized Decision Writing Program was announced on July 30, 2018 in ICG 18-06, Changes to Case Processing Part 1 and was implemented on March 2, 2020. The goal of centralizing decision-writing is to have a cadre of skilled decision-writers who possess the time, resources, and specialized skills to efficiently draft decisions, the quality of which will be more consistent across Regional and District lines. By having certain Board Agents designated on a rotating basis to write decisions, they can focus on writing the decisions and complete them faster than a Board Agent who also has a full case load of cases to investigate. Prior to the centralization, Board Agents wrote so few decisions that they needed to “relearn” the skills needed to complete the task. Having individuals focus only on decision writing gives them an opportunity to develop the expertise in decision writing which results in higher quality and more timely decisions. At the present time, there are four Centralized Decision Writing Managers, one in each District, and ten Decision Writers, three in Districts I and III and two in Districts II and IV. From time to time, Decision Writers may be assigned to write decisions for Regions outside of their home District. However, the decisions concerning these cases continue to be made by the Regional Director from the Region in which the case arose.

Whether the centralized functions have affected regional office capacity to manage case handling.

Centralization of these functions have not affected regional offices capacity to manage case handling. The FY 20 Strategic Goal for the reduction in the average number of days from filing to disposition was 10%. Even with the challenges of COVID-19 and mandatory/non-mandatory telework, the Regions exceeded this goal with an average of 17.9% reduction in the average number of days between filing to disposition.

As reflected in the chart below, the average number of cases per Board agent has stayed steady over the years even with the centralization:

Fiscal Year	Case Intake	Case/Agent w/ Compliance*	Case/Agent w/o Compliance**
FY 2011	25,003	38	39
FY 2012	24,186	37	39
FY 2013	23,867	39	42
FY 2014	23,099	38	40
FY 2015	23,018	39	41
FY 2016	23,861	43	45
FY 2017	21,637	39	41
FY 2018	20,954	41	43
FY 2019	20,643	43	45
FY 2020	17,633	38	40

Information on all completed centralizations *and any upcoming centralization of offices or functions*

Centralized Language Specialist Program

In FY 18, the Agency began the Centralized Language Specialist Pilot Program. The pilot involved centralizing the assignments of interpreting and translating services assisted the Agency in many ways. At the time, the Language Specialist reported to the Regional Director/Office Manager in the Region where they were assigned. Most often, Field Offices shared the language specialists based on needs. However, from time to time, when a Region with no specialist contacted a Region with a language specialist, the responding Region stated that “its” specialist was needed for services in “its” Region. Still, other Regions with specialists stated inappropriately that the specialist is needed to perform administrative tasks. Further, the isolation of specialists by Regions with no centralized review of performance did not ensure a consistency of quality in the work product in this area. Finally, it appeared that certain specialists are routinely contacted to perform duties outside of their assigned office. Thus, certain specialists had more work and others were underutilized. During the pilot, the Language Specialist reported to an acting Lead Language Specialists. Four individuals were selected from a Notice of Vacancy to rotate into the acting Lead Language Specialist Pilot Program. The Pilot Program was such a success, it became a permanent program and a Lead Language Specialist was selected.

The Centralized Language Specialist Program has improved the quality of translations/interpretations and the timeliness of the work. Language Specialists now spend 100% of their time performing mission assistance work for the Regional Offices. The Program has also reduced the amount the Agency pays to outside contractors. The Language Specialists are supervised by the Lead Language Specialist, who is based in Region 5, Baltimore. There has been no impact on how much they are performing mission assistance work because 100% of their work is mission assistance work, and, when called upon to do so, they perform information and outreach work. With regards to providing “information” assistance, the existence of the centralized Language Specialist Program ensures the availability of a Spanish speaking Language Specialists when Spanish speaking members of the public call. This service was not available prior to the Centralized Language Specialist Program.

Centralized Docketing

OM 17-20 announced a centralized docketing pilot program for unfair labor practice charges. The program is still in existence today. Region 20 provides docketing assistance as needed for Regions 27, 31 and 32. Region 25 provides docketing assistance for Regions 13 and 18. The Regional Directors and Office Managers appear to be extremely satisfied with this program.

5. Personnel Questions. (Could be Admin/HR question.) Since January 2017:

- a. What positions have become vacant and were not backfilled; where are those positions located; and what classifications.

Where a departure has occurred and there is a need for that position in that office, the Agency has given authorization to hire for that position and the position has been posted. To the extent that a position has not been posted, a determination was made that there is no present need to fill that position.

- b. Current hiring authorizations listed in briefing book: Mostly are HQ or field hiring for support staff. Have field attorney/field examiner positions been authorized?

[Added 12/14]:

The Agency has experienced a steady drop in intake from 2012 to 2020, continuing an earlier trend that can be traced back to 1980, when the overall intake was 57,381 total representation and unfair labor practice cases, as compared to 17,633 in 2020. While the decline has been remarkably steady on a national level, in various localities there have occasionally been very sharp drops or temporary spikes in filings. Historically, the Agency’s approach had been to add staff in field locations

where filings spiked, and where filings dropped off to reduce staff only by ordinary attrition. This has resulted in the current imbalances seen across the country.

The Regional offices have very different caseloads, ranging from approximately 400 to over 1,000 cases per year. Additionally, caseloads fluctuate within each Region. These fluctuations impact the staffing levels needed in the various Regions. In some instances, a lower caseload of a Region compared to other Regions does not warrant full-time staffing of a position without additional duties. Indeed, the overall decline of the number of cases filed with the Agency over the past decade also affects staffing decisions.

The Division of Operations-Management has hire authorization, if needed, for field attorney/field examiner positions. In FY20, total case intake (representation and unfair labor practices) was 17,633, while for the same period in FY19, total cases were 20,643. This represents a 14.5% decrease in cases for FY20. In light of the unprecedented 14.5% decline in cases, additional hiring for the field, except for a few critical positions, was not justified.

To date, the case intake in FY 21 does not support hiring for the field. FY21 through November 31, 2020, total case intake (representation and unfair labor practices) was 2,593, while for the same period in FY20, total cases were 3,455. This represents a 25% decrease in cases for FY21. The current number of FTEs in the field is 4% lower than the number of FTEs (830) employed in the field on September 30, 2019. If the number of FTEs were to be reduced by the same decrease in case intake (25%), the number of FTEs would be 623.

At the present time due to the COVID-19 pandemic, the entire Agency is working non-mandatory telework. This means all investigations are being handled remotely. In light of this, since March, the emphasis has been to share resources, both professional and administrative professional, rather than hiring FTEs. As of November 19, 2020, the national average case load per agent was six. The case load per agent in each Region was as follows:

Region	Pending C Cases	Pending R Cases*	Cases Per Agent
01	128	23	7
02	129	24	7
03	46	20	5
04	161	19	11
05	161	38	10
06	54	22	8
07	173	22	8
08	70	9	7
09	98	10	6
10	115	13	5
12	193	8	8
13	140	15	7
14	52	12	4
15	180	4	13
16	153	12	9
18	91	25	6
19	138	35	8
20	80	21	5
21	92	16	5
22	187	13	12
25	83	12	9
27	38	7	5
28	131	15	8
29	41	21	3
31	99	18	7
32	42	17	5

*Using R case intake from 8/10/20-11/10/20

c. RD Vacancies:

Is the agency currently in the process of filling any of these vacancies?

With respect to the Regional Director positions, currently there are 22 Regional Directors out of 26 Regions. The Agency has posted to fill every Regional Director vacancy that has arisen – in some cases more than once. This process led to the recent appointments of Regional Directors in Region 5 (Baltimore) Region

9 (Cincinnati) and Region 4 (Philadelphia). As to Region 1 (Boston) and Region 10 (Atlanta), the Agency has posted each position twice, but there were no viable applicants either time. With respect to Region 8 (Cleveland), the Agency's initial posting of the position did not result in an appointment, and the Agency has since reposted. The Agency's re-posting in Region 8 (Cleveland) is active, and I hope it will lead to an appointment. The Agency's posting for a Regional Director in Region 14 (St. Louis) did not produce any viable candidates. The Regions without Directors have been led on interim basis either by a sitting Director from another Region or by a manager or supervisor designated as Acting Regional Director. This arrangement has yielded important developmental opportunities for the Agency's managers and supervisors.

If so, are they planned to be filled by 1/2020? Possibly

Any plans for consolidating RD oversight of multiple regions, like R1 and R3.

- d. Have any Schedule C positions been converted to career, and is there the possibility of doing so by 1/20/2021?

We have not converted any political appointees to permanent competitive positions, non-political excepted service positions, or career Senior Executive Service (SES).

6. Any elections still on hold from the March 2020 two-week suspension? [I said no, but I would confirm.]

Only one election is still pending – ABC Transit, Inc, Case 06-RD-255829. **[Added 12/7]**

7. Outreach efforts. **[Added 12/7]**

- a. **ART reported that GC prevented field employees other than HQ leaders (and maybe RDs/RAs) from participating in outreach activities.**

This information is incorrect. OM 20-06 Outreach, Speaking Engagements, and Recruiting Activities was issued on January 16, 2020 by the Division of Operations-Management not the General Counsel. A copy of the memo is attached in the Division of Operations Folder on SharePoint. Section A of this memo addresses Outreach to Promote a Broader Awareness of the Act and states:

[Memorandum OM 06-66, Outreach to Promote a Broader Awareness of the Act](#) introduced an initiative for proactive communication with citizen and community groups to educate those who may not be aware of the Act, including those just entering the work force. Those efforts continue to an be important Agency function and have been reinforced by the Agency's

information-rich public website. The objective of such activities is communicating with the public about the Agency's existence, how individuals can file charges or petitions, and where more information about the Agency is available. We contemplate that **Board Agents**, as well as **supervisors, managers**, (emphasis added) and Regional Directors may engage in these activities, with approval from the Regional Director or designee.

Additionally, Section C of the memo addresses Speaking Engagements and states:

Generally, **supervisors, managers**, (emphasis added) and Regional Directors, rather than non-supervisory employees, should represent field offices in speaking engagements other than basic presentations to groups unfamiliar with the Agency.¹ It is the responsibility of the supervisory and managerial team to promote the Agency's mission by such engagements. Supervisors have greater access to a variety of legal and case-handling issues. This greater access is important in providing accurate information when, as often is the case, participants raise unexpected questions before, during or after a presentation.

b. Field attorneys have an outreach element; has this affected their evaluations?

Again, this information is incorrect. The Field Attorney performance plan contains four critical elements:

- Quality
- Effectiveness and Efficiency
- Establish/Maintain Effective Working Relationships
- Demonstrate Proficiency in Communication

Only two critical elements discuss communication with parties:

Establish/Maintain Effective Working Relationships

Revised effective 6/1/2016 Establish and maintain effective working relationships. Alignment Statement: This element relates to and supports the goals and objectives in the Agency's Strategic Plan. The work performed contributes to the Field offices' ability to promptly and fairly investigate, prosecute, and resolve unfair labor practice cases and to expeditiously resolve representation questions. The established performance standards reflect the specific results, outcomes, and/or accomplishments expected. a) Meet and deal effectively with the public and representatives of other agencies; b) Develop

rapport and cooperative working relationships with practitioners, parties, and witnesses where practicable; c) Cooperate and deal effectively with Agency staff at all levels, including respectful, collegial, and collaborative relations with peers, superiors, and supporting staff members alike; d) Demonstrate appropriate civility and sensitivity in all dealings with public and with Agency staff.

Demonstrate Proficiency in Communication

Revised effectively 6/1/2016 Demonstrate proficiency in oral and written communication necessary to the performance of assignments. Alignment Statement: This element relates to and supports the goals and objectives in the Agency's Strategic Plan. The work performed contributes to the Field offices' ability to promptly and fairly investigate, prosecute, and resolve unfair labor practice cases and to expeditiously resolve representation questions. The established performance standards reflect the specific results, outcomes, and/or accomplishments expected. a) Compose, draft, and complete case-related written communication and special projects, including, but not limited to, internal memoranda, correspondence, formal documents, pleadings, reports and briefs; b) Write precisely and concisely, deploying good grammatical structure, logical organization; c) Orally communicate with Agency personnel, parties and members of the public, including, but not limited to, initiating communications, responding to questions, presenting facts and participating in meetings; d) Organize oral presentations in a logical manner, projecting confidently so that listeners can hear and understand.

As reflected above, the Field Attorney performance plan does not have an outreach element.

c. ART request for outreach tracking data since FY 2017, kept in Operations.

See spreadsheet in Division of Administration Requests folder on SharePoint.

Division of Advice Requests

1. According to the ART, when GC Robb took office, he changed the GC's position on several pending court cases; what is the status of those cases?
2. *Guidance memoranda (including ICG, GC, and Ops memos) with expectation of issuance by January 2021.*

Nothing at this time. [Added 12/7.]

3. ICG, GC, and Ops memos issued since FY 2017. [In Operations SharePoint Folder; added 12/7.]
4. Mandatory submissions to Advice (GC Memo 18-2, and any updates); list of cases currently in Advice pursuant to the mandatory submission instructions. (This list is typically provided to P&P each year.) [Added 12/11.]

We have provided all GC memos concerning mandatory submissions to Advice as well as emails sent to the Regions concerning Advice submissions.

5. List of cases sent into Advice with brief description of the legal issues for each one, and flagging those that are COVID related [Added 12/11.]

Advice tracks current cases only (which is what is requested in question 4). The COVID related cases indicate such in the short case summaries.

6. Briefs to the Board in cases where the GC is arguing to modify or overturn Board law. [Added 12/11.]

We have added Advice briefs. Operations may need to work with the Regions to collect briefs the Regions may have filed.

7. Position statements that the GC has filed with the Board pursuant to rulemaking efforts. [Added 12/11.] We have added Advice briefs only. Operations will check for additional briefs which it may have drafted, such as briefs/comments filed regarding the 2014 Election Rule.

ASCLB/CCSLB Requests

1. Notable enforcement matters and list and brief description of cases pending in circuit and district court.

[Added 12/14]:

From CCSLB:

1. List of all pending district and appellate court cases.

From ASCLB:

1. List of all pending cases. The list contains over 120 entries. It was not feasible to provide a summary of these pending case.
2. List of all significant pending cases with summary of each case. This document contains non-public information and is watermarked as such.

Labor Relations Requests

1. BU and PA bargaining: Copies of any grievances, arbitrations, impasse proceedings/awards, and lawsuits arising out of bargaining.
 - NLRBPA v. FSIP, NLRB pleadings in SharePoint folder.

Division of Administration Requests

1. Any office space reduction plans. *[Draft plans would be nonpublic.]* [In SharePoint folder.]
2. Current written Covid protocols in the field and HQ, especially surrounding whether agency employees are required to come into the office or telework. [In SharePoint folder.]
3. Health units. What is the status of the Agency's health unit contracts, and are there any plans for health units and/or FOH contracts when people return to the office. [In SharePoint folder.]
4. FEVS: FEVS scores have fallen since 2016. What efforts has the agency taken to improve staff morale and improve FEVS scores? Copies of documents regarding any external assessments that have been done to review operations in divisions, offices, and/or field offices. [In SharePoint folder.]
5. Personnel actions or issues, initiated by management or employees since FY 17. [Agreed to start with high level statistics.] [In SharePoint folder.]
6. Performance standards and performance management plans. [Agreed to provide mission critical plans.]

In SharePoint folder are copies of the requested Performance Plans for the following positions:

GS-0905 GENERAL ATTORNEY (LABOR) – (BU 1175 - GC Side) Note - These Plans are all different based on the assigned Branch.

GS-0905 GENERAL ATTORNEY (LABOR) - (BU 1206 - GC Side)

GS-0905 ATTORNEY-ADVISER (LABOR) - (BU 1032 - Board Side)

GS-0244 LABOR MANAGEMENT RELATIONS EXAMINER - (BU 1206 - GC Side)

7. The extent to which the agency may be using Schedule F for staffing purposes and any documents reflecting any steps the Agency has considered or taken with regard to implementing Schedule F.

No action has been taken at this time.

8. Regional and Headquarters staffing numbers for GC-side and Board-side broken down into managers, supervisors, professionals and support staff for each Region, for each Division/Office/Branch in HQ, and for each Board member office.

[In DoA SharePoint Folder (added 12/6)]

Budget Requests

1. Information on the GAO and OIG investigations into budget execution in FY 18 and FY 19. For GAO audits, ART requested any information we provided to GAO, and documents GAO provided to us. [OIG has custody of its documents, and we do not have control over them.]

2. Congressional Budget Justification for FY 2022.

The Chief Financial Officer reports that we do not currently have a Congressional Justification document for FY2022. We are expecting the OMB FY2022 Budget Passback soon, however. Based on the OMB FY2022 Budget Passback, the NLRB will develop the Congressional Justification document that will be submitted to Congress the first Monday of February. [Added 12/11.]

3. The Board is on a continuing resolution. Are there any issues meeting budgetary obligations under the CR, which is due to expire December 11, 2020?

The Chief Financial Officer reports she is not aware of any issues with meeting budgetary obligations under this CR. Funds were allocated to the Program Areas according to the approved CR Plan. [Added 12/11.]

4. Requested FY20 PAR [Sent.]

OCIO Requests

Detailed explanation of IT expenditures and obligations since FY 17, as well as proposed expenditures with description of enhancements

[Excel Spreadsheet with budget obligations in SharePoint folder, added 12/4]

Congressional Committee Correspondence

Correspondence with Congress (letters to, and letters from) from December 2017-present. [Not seeking constituent letters.]

[Added to SharePoint folder 12/9, 12/10.]

Board-side Requests

[All answers these requests are in the SharePoint folder "Board-side Requests," and/or answered in the Word document in that folder titled, "Board Case Handling and Rulemaking (12-1-2020)."]

1. Information on case processing pilot on Board-side, to meet strategic plan case processing goals; Documents regarding Board case processing protocols and processes, including but not limited to those involving the Executive Secretary's Office. [ES Memos 18-3, 20-1; In SharePoint folder.]
2. Information on Court litigation concerning NLRB Rulemaking. [In doc.]
3. Status of letter request from AFL-CIO and SEIU to postpone the Joint Employer Final Rule and reconsider whether to include health and safety as an essential term and condition of employment. [Letter from ES in SharePoint folder and description in Word document.]
4. *Plans to implement rules with pending NPRMs before January 20, 2021.* [Description of Unified Agenda items in Word document on SharePoint folder.]
5. All internal Board delegations of authority over the past four years. [In SharePoint folder.]
[2016 Budget delegation to Chairman added 12/9]

Case Handling Data

ART requested the following data for FY 2017-2021:

- CA/CB cases filed
- Merit factors (CA/CB cases separately)

- Appeals filed and sustaining rate (CA/CB cases separately)

- Backpay and remedies
- Settlements (non-Board informal settlements, formal Board settlements)

- Number of 10(j) requested/number authorized/win rates
- Number of 10(l) sought/win rates
- The number of 10j cases submitted to ILB from Regions (broken down by "go" and "no go"), as well as the number of "go" memos that ILB sent to the GC, how many were approved by the GC, and how many were authorized by the Board

- Number of Investigative Subpoenas, broken down by SAT and SDT

- Deferred cases under:
 - *Collyer*
 - *Dubo*

- Merit factor and litigation win rate (court enforcement)

- Case processing times (statistics on meeting GC-side strategic goals) and/or
- Data on reduction of case handling times (board + GC side) [Sent in 2020 PAR]

- Petitions filed
- Elections held

Responses to ART Questions Regarding Board Case Handling and Rulemaking
12-1-2020

1. Information on case processing pilot on Board-side; Documents regarding Board case processing protocols and processes, including but not limited to those involving the Executive Secretary's Office.

The Board's case handling memoranda are contained in ES Memo 18-3 and ES Memo 20-1, which set time targets for case processing. (Those memoranda are in the Board-side Request folder on the SharePoint site.) The results of the case handling pilot, which has dramatically reduced the Board's backlog and the average age of pending cases, are available in the PAR and in Board press releases for [here](#) (FY 2020) and [here](#) (FY 2019).

2. Information on Court litigation concerning NLRB Rulemaking.

Three federal court cases are currently pending challenging Board rulemaking proceedings.

a. *Representation Case Procedures*, 79 Fed. Reg. 74307 (Dec. 15, 2014) ("2014 Representation Rules")

RadNet Management, Inc., d/b/a Orange Advanced Imaging, 368 NLRB No. 53, Board Case No. 21-CA-242665 (Aug. 28, 2019) (Ring, Kaplan and Emanuel) *petition for review and cross-application for enforcement pending*, Nos. 19-1180, 19-1184 (D.C. Cir.).

RadNet Management, Inc. d/b/a West Coast Radiology-Irvine, 368 NLRB No. 55, Board Case No. 21-CA-242660 (Aug. 27, 2019) (Ring, Kaplan and Emanuel), *petition for review and cross-application for enforcement pending*, Nos. 19-1181, 19-1195 (D.C. Cir.).

RadNet Mangement, Inc. d/b/a Anaheim Advanced Imaging, 386 NLRB No. 56, Board Case No. 21-CA-242668 (Aug. 28, 2019) (Ring, Kaplan, and Emanuel), *petition for review and cross-application for enforcement pending*, Nos. 19-1181, 19-1191 (D.C. Cir.).

RadNet Management, Inc. d/b/a West Coast Radiology – Santa Ana, 368 NLRB No. 57, Board Case No. 21-CA-242697 (Aug. 28, 2019) (Ring, Kaplan, and Emanuel), *petition for review and cross-application for enforcement pending*, Nos. 19-1183, 19-1192 (D.C. Cir.).

RadNet Management, Inc. d/b/a Garden Grove Advanced Imaging, 368 NLRB No. 58, Board Case No. 21-CA-243181 (Aug. 27, 2019) (Ring, Kaplan, and Emanuel),

petition for review and cross-application for enforcement pending, Nos. 19-1184, 19-1193 (D.C. Cir.).

RadNet Management, Inc. d/b/a La Mirada Imaging, 368 NLRB No. 89, Board Case No. 21-CA-242664 (Oct. 2, 2019) (Ring, Kaplan, and Emanuel), *petition for review and cross-application for enforcement pending*, Nos. 19-1203, 19-1207 (D.C. Cir.).

These six technical 8(a)(5) cases are consolidated before the Court. In all six cases, the Employer has mounted facial challenges to the Board's 2014 amendments to its representation election procedures, claiming they are arbitrary and capricious, fail to give employers a full opportunity to be heard on representation questions, restrict employee or employer speech, and disregard employee privacy. The Employer also claims that the Board's 2019 amendments render the Board's application of the 2014 amendments to these cases arbitrary and capricious. The Board's brief is available [here](#); oral argument is scheduled for January 12, 2021.

Alaska Communications Systems Holdings, Inc., 369 NLRB No. 17, Board Case No. 19-CA-241609 (Jan. 30, 2020) (Ring, Kaplan, Emanuel), *pending review*, Nos. 20-1032, 20-1069 (D.C. Cir.). The Company (1) raises a facial challenge to the representation rules; (2) advances an as-applied challenge to the rules; and (3) argues that its asserted due process concerns show that the Board ran afoul of 5 U.S.C. § 706(2)(A) of the Administrative Procedures Act. The case was argued on Nov. 16, 2020 and is awaiting decision.

b. *Representation Case Procedures*, 84 Fed. Reg. 69524 (Dec. 18, 2019) (“2019 Representation Rules”)

AFL-CIO v. NLRB, 20-cv- 0675-KBJ (D.D.C.); 20-5223 and 20-5226 (D.C. Cir.) (“*AFL-CIO I*”)

District court issued order on 5/30/20, invalidating five portions of rule which it found should have gone through notice and comment, and denying the Board's motion to transfer. (On 6/7/20, the Court issued an opinion explaining its 5/30/20 order.) After AFL-CIO's 6/9/20 motion for reconsideration, the Court issued a supplemental opinion on 7/1/20, ruling against the AFL-CIO on the remaining counts.

Board filed a notice of appeal on 7/16/20, and the AFL-CIO filed its notice of cross- appeal on 7/24/20. NLRB filed opening brief 11/3/20; AFL-CIO opening and cross-appellee brief due 12/3/20; NLRB opposing brief and reply now due 1/25/21; AFL-CIO reply now due 2/15/21.

- c. ***Representation-Case Procedures: Election Bars; Proof of Majority Support in Construction-Industry Collective-Bargaining Relationships*, 85 Fed. Reg. 18366 (Apr. 1, 2020) (“Election Protection Rule”)**

AFL-CIO v. NLRB, 1:20-cv- 01909-BAH (D.D.C.) (“*AFL-CIO II*”)

AFL-CIO filed complaint in District Court for District of Columbia on 7/15/20. Board filed motion to transfer venue on 8/11/20. Plaintiffs opposed on 9/1/20, and reply was filed 9/11/20. Certified index to administrative record was filed 9/11/20.

After receiving the parties’ positions on 10/23/20, the district court stayed briefing until the D.C. Circuit resolves the jurisdictional issue in *AFL-CIO I* – the 2019 Representation Rule litigation.

3. **Status of letter request from AFL-CIO and SEIU to postpone the Joint Employer Final Rule and reconsider whether to include health and safety as an essential term and condition of employment.**

On April 20, 2020, the AFL-CIO and SEIU filed a letter asking the Board to reconsider the joint employer rule’s exclusion of health and safety measures from “essential” terms and conditions of employment and to postpone the effective date of the rule from April 27, 2020 to July 31, 2020. Both changes would require additional notice and comment. By letter on April 29, 2020 (in the SharePoint folder), the Office of the Executive Secretary informed the AFL-CIO and SEIU that its letter would be construed as a petition for rulemaking. The petition is still pending before the Board.

4. **Plans to implement rules with pending NPRMs before January 20, 2021.**

The Board’s current submission to the Spring 2020 Unified Agenda of Regulatory and Deregulatory Actions is available [at this link](#). For the Fall 2020 Unified Agenda, projected to be published on December 9, 2020, the Board has submitted the following time targets:

RIN	Subject	Action	Projected Date
3142-AA14	Access Rule	NPRM	12/2020
3142-AA15	Student/Employee Status	Final Rule	1/2021
3142-AA17	Revision of Representation Case Rules (2) (Voter List and Military Ballots)	Final rule	2/2021

3142-AA18	Revision of Representation Case Rules (3)	NPRM	2/2021
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In addition to what is published in the Unified Agenda, the Board also intends to issue an Organizational Disclosure Rule, which will require parties in proceedings before the Board to identify parent/subsidiary organizations, similar to what is required by federal and state courts. This rule was announced in the Board's *Ethics Recusal Report* in November 2019. The Board expects to issue this rule by February 2021.

5. **Delegations of Authority from the Board**

The Board delegated administrative authority to the Chairman in November 2018. The minute of Board action is the SharePoint folder.

In 2017, we believe the Board issued a limited delegation of authority over budgetary matters to the Chairman. The Board minute for this action is in hard copy in the Board's offices, and we are working to obtain and scan a version for your review.



UNITED STATES GOVERNMENT
National Labor Relations Board

MINUTE OF BOARD ACTION

November 5, 2018

On November 5, 2018, a majority of the Board (Chairman John F. Ring and Members Marvin E. Kaplan and William J. Emanuel) approved the following delegation of authority from the Board to the Chairman:

DELEGATION OF AUTHORITY

The Board agrees to formally delegate to Chairman Ring the authority to act on behalf of the Board with regard to the day-to-day management of the administrative functions of the Agency, including matters pertaining to labor relations, human resources, facilities, security and congressional affairs. The Chairman will update the Board with respect to any matters of a significant nature, including major administrative policy changes.

The Board also agrees to delegate to Chairman Ring the authority to act on behalf of the Board with regard to all budgetary and financial matters, with the exception that the Board shall retain authority to approve the Agency's annual budget/spend plan and any significant modifications thereof.


This delegation shall remain in effect through the end of Chairman Ring's term on December 12, 2022, unless otherwise revoked by a vote of a majority of the Board before that date.

A handwritten signature in black ink, reading "Christine B. Lucy", is written over a horizontal line.

Christine B. Lucy
Special Counsel and Chief of Staff to the Chairman

MINUTE OF BOARD ACTION

On September 30, 2016, the Board unanimously agreed to delegate to the Chairman the authority to approve an interim budget and interim spending through and including December 9, 2016. This delegation does not affect any authority previously delegated to the General Counsel.


Gary Shippers, Executive Secretary



UNITED STATES GOVERNMENT
National Labor Relations Board

MEMORANDUM

E.S. MEMO 18-3(A)

To: Board Front Offices

From: Gary Shinnars, Office of the Executive Secretary

Date: September 19, 2018

Subject: Expediting Board Case Handling

The Board has reaffirmed its intention and full commitment to expedite the issuance of both full Board and panel cases in order to better serve the parties to the cases and the American public. It is recognized that the purposes of the Act and the mission of the Agency are undermined by long delays in the issuance of Board decisions. Accordingly, consistent with prior efforts to expedite case handling (including ES Memos 73-1, 74-5, 76-1 and 01-1), the Board has decided that the following procedures shall be effective immediately as a pilot program:

Panel Cases:

In any panel case, a majority draft shall be circulated and approved by at least two Panel Members within 60 days¹ from the date the majority Panel Members vote. Upon approval on or before the 60th day, as reflected by votes recorded in JCMS, the Executive Secretary will advise the remaining Board Member of the requirement to act on the case within the next 60 days, or seek a substitute. If majority draft approval occurs after the 60th day, the remaining Board Member will have one additional day, up to a maximum of 15 days, to act for each day of delay in majority approval.

The Executive Secretary will provide the remaining Board Member a "10 day warning" prior to the end of either the 60-day period or such additional days as allowed due to a delay in the majority approval. During the "10 day" warning period, the Board Member can decide whether to: (1) complete the dissent within the 10 day timeframe; (2) ask the Executive Secretary to seek a substitute; (3) request an extension of time from colleagues due to the complexities of the drafting and/or negotiate for a specific schedule for the completion of that case (failure to comply with the revised negotiated schedule will result in automatic assignment of a substitute if applicable); or (4) allow the case to issue at the end of the 10 day period with a statement that the Board

¹ Throughout this memorandum, the reference to days refers to calendar days.

Member dissents without opinion.² If a substitute Board Member is named, and that substitute approves the draft, the case will issue forthwith. If the substituting Board Member does not act within 30 days, the majority decision shall be issued, simply noting the substituting Member's dissent or separate concurrence without a dissenting or concurring opinion. If necessary, the Executive Secretary will enter a vote to that effect for the substituting Board Member in JCMS.

When a timely dissent or concurring opinion is circulated by the original Panel Member, or by the substitute, the majority shall have 14 days in which to respond, which response shall be limited to addressing issues raised by the dissent or concurrence. Following circulation of a revised majority, if any, the dissenting or concurring Board Member will have 7 days to respond, which response shall be limited to revisions made by the majority. Following circulation of the revised dissent or concurring opinion, if any, the majority shall have 7 days to respond, which response shall be limited to revisions made in the separate opinion. Upon completion of this cycle, the Executive Secretary will note the last revisions for the non-majority member and move the case to Conformance, unless all panel members agree to provide additional time for further responses. If a timely response is not made at any stage in this decisional cycle following circulation and approval of a majority and circulation of a separate opinion, the non-responding Board Member(s) shall be deemed to have noted off on the last document circulated and the Executive Secretary will enter a vote to that effect in JCMS.

While every Board Member has the right to elect to participate in a case, Board Members should be encouraged to be proactive in electing to participate in cases as soon as they become aware of a decision with which they might have strong disagreements. To this end, any Board Member who elects to participate in a case within 10 days of circulation of the initial draft should be able to join and will be subject to the timetables applicable to the Full Board Case procedures outlined below (i.e., 75 days). Conversely, if a Board Member not assigned to a panel waits until a case is in conformance to decide to participate, the following timelines shall apply: If the Board Member indicates an interest in joining the case during the first 7 days of the noting off stage, the Board Member will be permitted by the Executive Secretary to join the panel for that case. In this situation, the case will be returned to Stage 3 in JCMS and the Board Member will circulate any separate opinion within 30 days or shall be deemed to have noted off on the last decision document circulated in the case, and the Executive Secretary will enter a vote to that effect in JCMS. If a timely separate opinion is circulated, the timeframes and limitations outlined above for majority and dissent responses will be followed (i.e., the majority has 14 days to respond; the Member joining the case during the note-off stage will have 7 days to respond limited to revisions made by the majority; and, the majority will have 7 days to respond limited to revisions). If a nonparticipating Board Member has failed to indicate an interest in joining the case

² One of the staff counsels for the other Board Members on the panel may be asked to act as Outside Counsel for the substituting Board Member to enable that Board Member to be briefed on the case more expeditiously.

during the first 7 days of the noting off stage but has not noted the panel decision, the Executive Secretary will enter a vote for that Board member noting the conformed draft.

Full Board Cases:

In full Board cases, a majority draft shall be circulated and approved by three Board Members within 75 days from the date the Board Members vote. Upon approval on or before the 75th day, as reflected by votes recorded in JCMS, the Executive Secretary will advise the remaining Board Member(s) of the requirement to act on the case within the next 75 days. If majority draft approval occurs after the 75th day, the remaining Board Member(s) will have one additional day, up to a maximum of 30 days, to act for each day of delay in majority approval.

The Executive Secretary will provide the remaining Board Member a “10 day warning” prior to the end of either the 75-day period or such additional days as allowed due to a delay in the majority approval. During the “10 day” warning period, the Board Member can decide whether to: (1) complete the dissent within the 10 day timeframe; (2) request an extension of time from colleagues due to the complexities of the drafting and/or negotiate for a specific schedule for the completion of that case (failure to comply with the revised negotiated schedule will result in the Executive Secretary notifying the Board that the case will be sent to conformance for issuance); or (3) allow the case to issue at the end of the 10 day period with a statement that the Board Member dissents without opinion. The Board Member failing to timely approve the draft or circulate a dissent shall be deemed to have noted off on the case, and the Executive Secretary will issue the case without the Board Member’s written opinion.

When a timely dissent or concurring opinion is circulated, the majority shall have 21 days in which to respond. Following circulation of a revised majority, if any, the dissenters/concurren will have 14 days to respond, which response shall be limited to revisions made by the majority. Following circulation of the revised dissent or concurring opinion, if any, the majority shall have 7 days to respond, which response shall be limited to revisions made in the separate opinion. Upon completion of this cycle, the Executive Secretary will note the last revisions for the non-majority members and move the case to Conformance, unless all Board members agree to provide additional time for further responses. If a timely response is not made at any stage in this decisional cycle following circulation and approval of a majority and circulation of a separate opinion, the non-responding Board Member or Members shall be deemed to have noted off on the last document circulated and the Executive Secretary will enter a vote to that effect in JCMS.

Under either the Panel or Full Board procedures outlined above, any Board Member desiring a Panel or Full Board discussion should seek it promptly. Requests for such discussions will not serve to extend the deadlines.

If a decision issues without a separate written opinion of any Board members(s) under either the Panel or Full Board procedures outlined above, the Executive Secretary is not authorized to release any subsequent dissents, special concurrences or

any opinion other than the issued decision, absent agreement from the Board otherwise.

These procedures are intended to address chronic casehandling delays in cases where there are split votes among participating Board members on significant issues that result in separate opinions. At present, these procedures do not apply in panel cases where individual Board members may circulate modifications or separate footnote statements in a draft decision. It is expected that in such cases a final decision will be achieved in far less time than is provided for cases involving separate opinions. We recognize that questions will arise which are not answered by these procedural guidelines. We contemplate handling questions that arise on a case-by-case basis, and will update the procedures in the future on the basis of experience. For good cause, the Board has the discretion to allow departure from these procedures. Specifically, it is understood that there will be complex cases that may require extended timetables, which the Board will consider on a case-by-case basis.

The Board will reevaluate these procedures on a regular and ongoing basis, and there will be a formal review of the program in six months. The Executive Secretary will prepare a report detailing the impact of the new process on case handling statistics to enable assessment of the pilot program.

Panel/Full Board Draft Circulation Due Dates

Document due	Timelines for Panel Decisions	Timelines for Full Board Decisions
Majority draft achieved	60 days after Stage 1 votes	75 days after Stage 1 votes
Dissent/Separate Opinion circulates	60 days after majority achieved (or after Board Member joins the panel within 10 days of majority draft), plus the number of days equal to delay in achieving majority (up to 15 days); (30 days after Board Member joins if during noting off process)	75 days after majority achieved plus the number of days equal to delay in achieving majority (up to 30 days)
Substitute Panel Member acts	30 days after joining panel	N/A
Majority response to D/SO	14 days	21 days
Dissent/SO response to Majority	7 days	14 days
Majority response	7 days	14 days



UNITED STATES GOVERNMENT
National Labor Relations Board

MEMORANDUM

E.S. MEMO 20-1

To: Board Front Offices

From: Roxanne L. Rothschild, Executive Secretary

Date: July 15, 2020

Subject: Board Case Handling – Pilot Program #2

Consistent with prior efforts to establish expectations in case processing (as memorialized in ES Memos 73-1, 74-5, 76-1, and 01-1), and building on the success with the pilot program under ES Memo 18-3(A), the Board has decided that the following procedures shall be effective immediately as a pilot program:

Assignment of Cases to Board Member Offices

Starting in late 2019, the Executive Secretary changed the practice of assigning cases to Board member offices as soon as cases are initially docketed (commonly referenced as “pushing” cases) and instead instituted the practice of Board member staffs requesting cases for assignment as offices have staff available to assume new work (“pulling” cases). The Executive Secretary’s Office will continue to assign cases on the same randomized basis as previously occurred. The ESO Office will report to the Board the number of unassigned cases on a regular basis.

Front Office Case Assessment and Scheduling

Once a case has been assigned to a Board member staff, the Front Office will establish a schedule for the case within 7 days. The schedule will set all target dates for the case through completion based on the timetables contained in this ES Memo 20-1. This will allow each Front Office to manage staff and plan for deadlines and provide Board members with transparency of workflow. The Front Office will report the established schedule to the Executive Secretary, who will immediately record all target dates on the Board’s Case Expediting Spreadsheet.

Circulation of Bench Memo and Voting Issues

Although a Front Office may set any target date for bench memo completion, scheduling typically should provide a target of **30, 45 or 60 days**. 30 days will typically be used for less-complex cases and 60 days will typically be used for more complex cases. 45 days will be the default target date entered by the

Executive Secretary for case processing purposes absent another date provided by a Front Office. The 30, 45 or 60 day target dates generally should be set to commence following the 7 day Front Office assessment period. Note: It is expected that the practice of circulating (posting to JCMS) the bench memo and issues will continue to be done as soon as the bench memo and issues are completed and the applicable Deputy is notified.

Agenda Scheduling and Voting

Based on the target date set for completion of the bench memo, the Executive Secretary, in consultation with the originating Front Office, will establish a "Stage 2 Target Date," which is the target deadline for the case to advance to Stage 2 (when all Stage 1 votes are due to be completed). Unless otherwise requested, that date ordinarily will be **21 days** from the date the bench memo is to be completed. This target date will be adjusted, if necessary, to allow at least 7 days for voting following the Agenda date. That is, it is expected that the participating Board members will cast their votes on the Stage 1 issues in JCMS no later than 21 days following completion of the bench memo, or 7 days following the actual Agenda date, whichever is later.

The 21-day period allows for the normal notice prior to scheduling a case for agenda as well as for time thereafter to permit Board members an opportunity to vote on the issues.

Additionally, to ensure timely voting, the Board has directed the Executive Secretary to schedule in-person discussion at weekly Board meetings for Stage 1 cases in which all votes have not been recorded by the Stage 2 Target Date.

Circulation of Majority Draft Decision by Originating Front Office

The target date for the circulation of a majority draft decision (moving the case into Stage 3) will ordinarily be **40 days** from the date scheduled for the case to move into Stage 2, unless the originating Front Office establishes a different date. The 40 day target date will be the default deadline entered by the Executive Secretary for case processing purposes absent another agreed upon deadline.

Finalizing Circulated Majority Drafts

Once a draft decision has been circulated in Stage 3 by the originating Front Office, other participating Board member(s) shall finalize the majority draft decision within **20 days** from the date the draft was scheduled to be circulated. This 20 day target date will be the default deadline entered by the Executive Secretary for case processing purposes absent another agreed upon deadline.

Note: The draft circulation target date is in line with ES 18-3(A), as the time set for achieving a majority on a draft remain 60 days and 75 days for a panel case

or a full-Board case, respectively.¹

Dissenting or Separate Concurring Opinions

In the event of a dissent or separate concurring opinion, the dissenting or concurring Board member(s) will set a target date for circulation of the dissenting or concurring opinion(s). The target date set for circulation of a dissenting or concurring opinion(s) ordinarily will be 30, 60 or 75 days. 30 days will be used for less complicated cases; 60 and 75 days will be used for panel or full-Board cases, respectively, in accordance with ES 18-3(A). **60 days** will be the default target date entered by the Executive Secretary for case processing purposes absent another agreed upon deadline. A longer period for finalizing the draft can be agreed to for complex cases. Conversely, a shorter period may be agreed to in those cases that do not require as much time.

Absent an agreement otherwise, majority responses to the dissent and dissenting/concurring responses to the majority response will be scheduled in accordance with ES 18-3(A). The Executive Secretary will enter that schedule once the circulation date for the dissenting or concurring opinion(s) have been set.

Drafts-in-Lieu

Cases identified to be handled as drafts-in-lieu will be scheduled for circulation of a draft decision by the originating Front Office. The originating Front Office will provide the Executive Secretary with the date a draft is expected to be circulated. Other participating Board Members will act on the draft within **20 days** of the scheduled circulation date.

Depending on the nature of a newly assigned case and/or the workload of the staff attorneys, the originating Front Office may determine that an alternative schedule is appropriate. In those circumstances, the originating Front Office will alert the Executive Secretary of the alternate schedule. The Executive Secretary will immediately modify the Case Processing Spreadsheet accordingly and notify all Front Offices of the scheduling change.

* * *

The procedures in ES Memo 18-3(A) remain in effect unless specifically modified in this ES Memo 20-1. We recognize that questions will arise that are not answered by these procedural guidelines. We contemplate handling questions that arise on a case-by-case basis, and the Board will update the procedures in the future on the basis of experience. It is understood that there will be complex cases or long record cases that may require extended timeframes for completion of the case processing milestones, and that competing priorities may require original target dates to be adjusted. In those

¹ For purposes of this ES Memo 20-1, while the Board operates with 3 members, cases decided shall be considered under the panel rather than full Board time targets.

circumstances, Originating Offices have the discretion to set and revise appropriate target dates for case processing milestones.



United States Government

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April 29, 2020

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Re: Letter requesting reconsideration of, and postponement of, the Board's Joint Employer Rule

Dear Mr. Becker and Ms. Berner:

The Board is in receipt of your letter dated April 20, 2020 in which you request, on behalf of the AFL-CIO and its 55 affiliated national and international unions, and the SEIU and its affiliated local unions, that the Board reconsider its joint employer rule's exclusion of health and safety measures from among the "essential" terms and conditions of employment, and postpone the effective date of the rule, which is to take effect April 27, 2020, until July 31, 2020.

Please be advised that the Board will be considering your request as a petition for rulemaking, and it has been docketed as such.

Sincerely,

Roxanne L. Rothschild

Roxanne L. Rothschild
Executive Secretary

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051
<http://oversight.house.gov>

March 8, 2017

The Honorable Mark G. Pearce
Acting Chairman
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570

Dear Mr. Pearce:

Federal recordkeeping and government transparency laws such as the Federal Records Act and the Freedom of Information Act (FOIA) ensure the official business of the government is properly preserved and accessible to the American public.¹ As the Committee with legislative jurisdiction over these laws, we have a longstanding interest in ensuring compliance with their provisions.² Over the past decade, our oversight has included monitoring trends in federal employees' use of technology in order to ensure the statutory requirements of these laws keeps pace with their original purpose. The Committee has authored several updates to these laws, such as the Presidential and Federal Records Act Amendments of 2014 and the FOIA Improvement Act of 2016.³ We plan to pursue additional efforts to update these laws.

Federal Records Act challenges have spanned across administrations. A 2013 report by the Inspector General for the Commodities Futures Trading Commission found that former Chairman Gary Gensler used his personal email consistently.⁴ Documents produced as part of the Committee's investigation into the Department of Energy's disbursement of funds under the Recovery Act showed that the former Executive Director of the Loan Program Office Jonathan Silver often used his personal email account to conduct official business.⁵

¹ Pub. L. No. 81-754 (1950); Pub. L. No. 89-487 (1967).

² See, e.g., letter from Hon. Henry Waxman, Chairman, Comm. on Oversight & Gov't Reform, to Hon. Michael Astrue, Comm'r, U.S. Soc. Sec. Admin., *et al.* (Apr. 12, 2007); letter from Hon. Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform, to Hon. Jeffrey Zients, Acting Dir. for Mgmt., Office of Mgmt. & Budget, *et al.* (Dec. 13, 2012); MAJORITY STAFF OF H. COMM. ON OVERSIGHT & GOV'T REFORM, 114TH CONG., FOIA IS BROKEN: A REPORT (2016).

³ Pub. L. No. 113-187 (2014); Pub. L. No. 114-185 (2016).

⁴ OFFICE OF INSPECTOR GEN., COMMODITY FUTURES TRADING COMM'N, REVIEW OF THE COMMODITY FUTURES TRADING COMMISSION'S OVERSIGHT AND REGULATION OF MF GLOBAL, INC. (May 16, 2013).

⁵ See Carol D. Leonnig and Joe Stephens, *Energy Department loan program staffers were warned not to use personal e-mail*, WASH. POST, Aug. 14, 2012, http://articles.washingtonpost.com/2012-08-14/politics/35490043_1_personal-e-mail-e-mails-email.

Where a federal employee conducts any business related to the work of the government from a non-governmental email account, such as a personal email account, the Federal Records Act requires that the employee copy their official account or forward the record to their government email account within 20 days.⁶ Official business must be conducted in such a way as to preserve the official record of actions taken by the federal government and its employees.

Recent news reports suggest federal employees may increasingly be turning to new forms of electronic communication, including encrypted messaging applications like Signal, Confide, and WhatsApp, that could result in the creation of federal records that would be unlikely or impossible to preserve.⁷ The security of such applications is unclear.⁸ Generally, strong encryption is the best defense against cyber breaches by outside actors, and can preserve the integrity of decision-making communications. The need for data security, however, does not justify circumventing requirements established by federal recordkeeping and transparency laws.

To assist the Committee in better understanding your agency's policies on these issues, please provide the following information as soon as possible, but by no later than March 22, 2017:

1. Identify any senior agency officials who have used an alias email account to conduct official business since January 1, 2016. Include the name of the official, the alias account, and other email accounts used by the official to conduct official business.
2. Identify all agency policies referring or relating to the use of non-official electronic messaging accounts, including email, text message, messaging applications, and social media platforms to conduct official business, including but not limited to archiving and recordkeeping procedures.
3. Identify all agency policies referring or relating to the use of official text message or other messaging or communications applications, and social media platforms to conduct official business, including but not limited to archiving and recordkeeping procedures.
4. Identify agency policies and procedures currently in place to ensure all communications related to the creation or transmission of federal records on official electronic messaging accounts other than email, including social networking platforms, internal agency instant messaging systems and other communications applications, are properly captured and preserved as federal records.

⁶ 44 U.S.C. § 2911 (2017).

⁷ Andrew Restuccia, Marianne Levine, and Nahal Toosi, *Federal workers turn to encryption to thwart Trump*, POLITICO, Feb. 2, 2017, <http://www.politico.com/story/2017/02/federal-workers-signal-app-234510>; Jonathan Swan and David McCabe, *Confide: The app for paranoid Republicans*, AXIOS, Feb. 8, 2017, <https://www.axios.com/confide-the-new-app-for-paranoid-republicans-2246297664.html>.

⁸ Sheera Frenkel, *White House Staff Are Using A "Secure" App That's Not Really So Secure*, BUZZFEED NEWS, Feb. 16, 2017, <https://www.buzzfeed.com/sheerafrenkel/white-house-staff-are-using-a-secure-app-thats-really-not-so>.

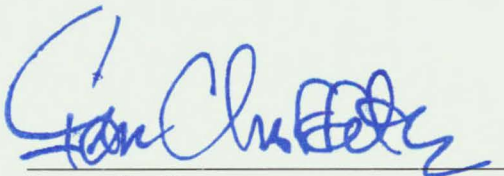
5. Explain how your agency complies with FOIA requests that may require searching and production of documents stored on non-official email accounts, social networking platforms, or other messaging or communications.
6. Provide the status of compliance by the agency with the Managing Government Records Directive issued by the Office of Management and Budget on August 24, 2012.⁹

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committee's request. Please note that Committee Rule 16(b) requires counsel representing an individual or entity before the Committee or any of its subcommittees, whether in connection with a request, subpoena, or testimony, promptly submit the attached notice of appearance to the Committee.

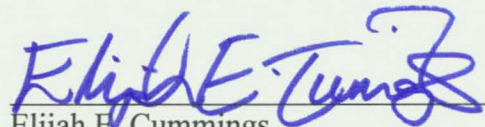
The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

For any questions about this request, please have your staff contact Jeff Post of the Majority staff at (202) 225-5074 or Krista Boyd of the Minority staff at (202) 225-9493. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz
Chairman



Elijah E. Cummings
Ranking Member

Enclosures

⁹ Jeffrey D. Zients, Acting Director, Office of Management and Budget and David S. Ferriero, Archivist of the United States, National Archives and Records Administration, *Managing Government Records Directive* (Aug. 24, 2012) (M-12-18).

United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

April 14, 2017

The Honorable Jason Chaffetz, Chairman
Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives
2471 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Chaffetz and Ranking Member Cummings:

I write in response to your letter dated March 8, 2017 regarding the National Labor Relations Board's (NLRB) compliance with federal recordkeeping and transparency laws.

The NLRB has always strived to manage its records effectively and in compliance with all federal statutes, regulations and professional standards. Understanding the crucial importance of creating and maintaining thorough agency records, the NLRB has made every effort to retain comprehensive records of the Agency's activities. With an effective records management program, the Agency has and will continue to be proactive in enhancing its electronic recordkeeping infrastructure.

Below are the answers to those questions outlined in your letter. A CD containing documents responsive to your inquiry is also enclosed with this letter.

- 1) Identify any senior agency officials who have used an alias email account to conduct official business since January 1, 2016. Include the name of the official, the alias account, and other email accounts used by the official to conduct official business.

The Agency has no record of senior officials having used an alias email account to conduct official business since January 1, 2016.

- 2) Identify all agency policies referring or relating to the use of non-official electronic messaging accounts, including email, text message, messaging

applications, and social media platforms to conduct official business, including but not limited to archiving and recordkeeping procedures.

Government ethics regulations do not prohibit executive branch employees from having personal social media accounts for personal use. However, our employees are aware that they must use their personal accounts in a way that complies with relevant ethics regulations, including the Office of Government Ethics' Standards of Conduct and the Hatch Act, and also with Agency policies, including the NLRB's policy on the Acceptable Use of Agency Information Technology Resources. When providing legal ethics advice to NLRB Board members, the Agency also looks to judicial ethics opinions for guidance. The Agency produced a memorandum in April of 2015 regarding the use of private social media accounts while serving as a Member of the National Labor Relations Board. That same memorandum was given to the General Counsel, accompanied by a separate cover email, explaining its applicability to that position. The Agency also produced a memorandum in January of 2017 regarding ethics considerations pertaining to Twitter outreach accounts while serving as a Member of the National Labor Relations Board. The documents referenced above are contained on the accompanying CD.

- 3) Identify all agency policies referring or relating to the use of official text message or other messaging or communications applications, and social media platforms to conduct official business, including but not limited to archiving and recordkeeping procedures.

The Agency has produced the following documents relating to the use of official text messaging and communications applications: an Administrative Policy and Procedures Manual section regarding the Agency's e-mail records retention policy; Tips of the Month regarding Board agent use of text messaging; Agency instructions for the use of Facebook safe accounts; Memorandum ICG 12-03 regarding social media guidelines; Memorandum ICG 12-03 regarding revised social media guidelines; and Frequently Asked Questions regarding Board agents use of social media for work-related purposes. Those documents are contained on the accompanying CD.

- 4) Identify agency policies and procedures currently in place to ensure all communications related to the creation or transmission of federal records on official electronic messaging accounts other than email, including social networking platforms, internal agency instant messaging systems and other communications applications, are properly captured and preserved as federal records.

In addition to the documents listed above, the Agency produced Memorandum OM 13-23 regarding NxGen (an internal electronic case management system) best practices. That document is contained on the accompanying CD.

- 5) Explain how your agency complies with FOIA requests that may require searching and production of documents stored on non-official email accounts, social networking platforms, or other messaging or communications.

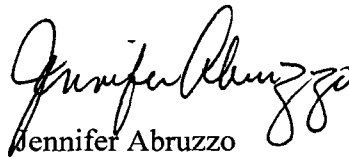
In response to FOIA requests, the Agency does not generally search or access personal e-mail or social media accounts, nor the personal cellular devices of NLRB employees. However, in some instances, the FOIA Branch utilizes an e-discovery tool to search for communications sent between an NLRB e-mail account and external e-mail addresses as a way to find communications from non-official email accounts, social media platforms or other internet based platforms. In response to specific FOIA requests for e-mails or texts, the NLRB FOIA Branch typically makes inquiries to the Office of the Chief Information Officer (OCIO). OCIO staff uses software to conduct a search of the identified NLRB custodian's Agency device(s). With respect to social media communications, the FOIA Branch makes inquiries for the Agency's official social media accounts to the Congressional and Public Affairs Office. After staff in these offices conduct the searches, the FOIA Branch staff reviews for release any responsive materials that are related to Agency business and are not otherwise exempt under the FOIA.

- 6) Provide the status of compliance by the agency with the Managing Government Records Directive issued by the Office of Management and Budget on August 24, 2012.

In order to comply with directives and guidance from the Office of Management and Budget (OMB) and the National Archives and Records Administration (NARA), the Agency is implementing a "Capstone" approach for managing Agency email records, based on NARA guidance (NARA Bulletin 2013-02 "Guidance on a New Approach to Managing Email Records"). Implementation is scheduled to begin on June 1, 2017. Under the "Capstone" approach, the Agency will manage email records based on the role of the email account user and/or office rather than on the content of each email record. Contained on the accompanying CD are two memoranda regarding the new email retention policy.

If you or any member of your staff has questions or needs additional assistance, please do not hesitate to contact the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Abruzzo", with a stylized flourish at the end.

Jennifer Abruzzo
Deputy General Counsel

Enclosure

Congress of the United States
House of Representatives
Washington, DC 20515-0552

May 8, 2017

Barry J. Kearney
Associate General Counsel, Division of Advice
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570-0001

Dear Mr. Kearney,

We are writing regarding an advice memorandum issued by your office on April 28, 2015. In that memorandum, the National Labor Relations Board's Division of Advice concluded that restaurant franchisor, Freshii Development LLC, and one of its franchise development agents were not joint employers with Freshii Nutritionality Inc., a franchised Freshii® business operating a store in Chicago.

We have heard from constituents and other stakeholders concerned about whether, and to what extent, they can rely on the Freshii memorandum as a blueprint for clear guidance on the joint employer issue in the franchisor-franchisee relationship. Uncertainty remains as to whether businesses may rely on the Freshii guidance because the memorandum appears fact-specific to Freshii's circumstances and the NLRB's new joint employer test outlined in *Browning-Ferris* created a new standard for all businesses including franchised businesses.

The Freshii memorandum concluded that the franchisor and franchisee were not joint employers under either the then-existing "old" joint employer standard or under the General Counsel's proposed new joint employer standard, which the NLRB essentially later adopted in *Browning Ferris*. However, only three non-specific paragraphs of the ten-page memorandum evaluated the Freshii-franchisee relationship under the proposed new standard; the remaining pages evaluated joint employer under the lens of the former standard. This discrepancy exacerbates the uncertainty in franchising in assessing potential liability under the joint employer concept.

Understandably, the franchisors are seeking clarity with respect to their potential exposure for franchisee misconduct, as the Freshii franchisor-franchisee relationship differs significantly from many franchise arrangements. For example, while the Freshii franchisee did not use the franchisor's sample employment policy handbook, it is common in other franchise relationships for franchisees to utilize franchisor-recommended policies and procedures to enhance their prospects for success.

Franchises, most of which are small businesses, likewise seek clarity on the memorandum's meaning and impact. They are concerned that some franchisors, fearful of the

uncertain landscape, may turn away from offering new franchisee opportunities, opting instead for corporate growth and related vertical integration, until a clear, bright line test exists for franchised businesses. Unlike the Freshii fact guidance, since first-time entrepreneurs have never owned a business before and are attracted to the franchise business model under which they will benefit from the guidance of an established experienced enterprise.

Much as the General Counsel did in his March 18, 2015, "Report Concerning Employer Rules Cases" (NLRB Office of the General Counsel Memorandum GC 15-04), we ask that your office offer guidance on this evolving area of law. Given the Board's post-Freshii decision in *Browning Ferris*, we ask that you clarify the following issues regarding the Freshii Advice memorandum:

1. May the April 28th memorandum be used as a blueprint for all franchise systems notwithstanding the joint employer standard established in late August 2015, and
2. How much flexibility will franchisors have to implement, articulate, and enforce brand standards before they are deemed to cross the line into the forbidden areas of "indirect," "unexercised," or "potential" control for joint employer purposes?

Thank you for your attention to this matter. We look forward to your response.

Sincerely,



Scott H. Peters

Member of Congress



Kurt Schrader

Member of Congress



Kyrsten Sinema

Member of Congress



Ami Bera

Member of Congress



Collin C. Peterson

Member of Congress



Vincente Gonzalez

Member of Congress



Jim Costa

Member of Congress



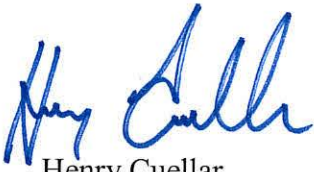
Daniel W. Lipinski

Member of Congress



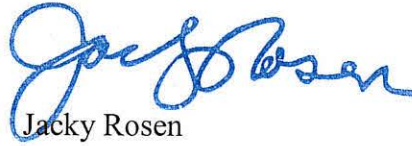
Bobby L. Rush

Member of Congress



Henry Cuellar

Member of Congress



Jacky Rosen

Member of Congress



J. Luis Correa

Member of Congress



Josh Gottheimer

Member of Congress

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AND THE WORKFORCE
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2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

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May 22, 2017

The Honorable Philip A. Miscimarra
Chairman
National Labor Relations Board
1015 Half Street SE
Washington, DC 20003

Dear Chairman Miscimarra:

The Committee on Education and the Workforce (Committee) congratulates you on President Trump's decision to name you as chairman of the National Labor Relations Board (NLRB). As you know, the NLRB's day-to-day operations, Board decisions, and the general counsel's actions are all under the Committee's jurisdiction. We are eager to establish an effective and collaborative working relationship with you and your staff during the 115th Congress. A significant part of that relationship entails the Committee's continuing oversight efforts to ensure good governance and the protection of taxpayer dollars. Working together, we can identify and abate fraud, waste, and abuse, as well as better ensure federal policies are efficient, effective, and accountable to the American people.

Congress' broad authority to conduct oversight and investigative actions is inherent in Article I of the Constitution.¹ The Supreme Court also has repeatedly ruled that the power to conduct oversight is an essential function of Congress.² Additionally, House rules provide direction to standing committees in matters of oversight. Specifically, House Rule X outlines the organization, general oversight responsibilities, and special oversight functions assigned to standing committees.³ The Committee takes these responsibilities seriously and reserves the right to review and investigate any issues within its jurisdiction.

¹ U.S. Constitution art. 1

² See, e.g., *Nixon v. Admin'r of Gen. Serv.*, 433 U.S. 435 (1977); *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491 (1975); *Barenblatt v. U.S.*, 360 U.S. 109 (1959); *Watkins v. U.S.*, 354 U.S. 178 (1957); *McGrain v. Daugherty*, 273 U.S. 135 (1927).

³ House Rule X: Clauses 1, 2, and 3.

Rigorous oversight takes many forms. Official hearings, letters, document requests, briefings, roundtables, and informal communications are all an important part of the Committee's oversight responsibilities and will help inform legislative actions throughout the 115th Congress. Further, the Committee views oversight as a tool to analyze the efficacy of federal laws, regulations, and programs and to increase transparency regarding the administration's decision-making. These practices will produce more beneficial policies and ensure tax dollars are well-spent.

Again, congratulations on your new position. We look forward to working with you, your colleagues on the Board, and the general counsel's office to help ensure that the NLRB is abiding by the law. In an effort to begin collaboration on common priorities and to build a foundation for a strong working relationship, we encourage your legislative affairs staff to schedule an introductory meeting with Committee staff. We look forward to working together in creating an efficient, accountable government that appropriately serves the American people. Our best wishes.

Sincerely,



Virginia Foxx
Chairwoman



Tim Walberg
Chairman
Subcommittee on Health, Employment,
Labor, and Pensions

CC: The Honorable Robert C. "Bobby" Scott, Ranking Member
The Honorable Mark Gaston Pearce, Board Member
The Honorable Lauren McFerran, Board Member
The Honorable Richard F. Griffin, Jr., General Counsel



United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

May 31, 2017

The Honorable Virginia Foxx
Chairwoman
Committee on Education and the Workforce
United States House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

The Honorable Tim Walberg
Chairman
Subcommittee on Health, Employment, Labor, and Pensions
Committee on Education and the Workforce
United States House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Foxx and Chairman Walberg:

Thanks very much for your May 22, 2017 letter regarding the Committee on Education and the Workforce's responsibilities for overseeing the National Labor Relations Board during the 115th Congress. I understand the Committee's role in oversight of the Board and look forward to building a cooperative relationship with you and your colleagues. In an effort to promote good governance and increase transparency, the Board welcomes the opportunity to work in collaboration with both you and your staffs.

I also appreciate your kind remarks regarding my designation as Chairman and look forward to working with you in this new capacity during the 115th Congress.

Tracey Roberts, with the Office of Congressional and Public Affairs, will be contacting your staff to schedule an introductory meeting. She can be reached by email at Tracey.Roberts@nlrb.gov or by phone at 202-273-0187.

Sincerely,

A handwritten signature in blue ink, which appears to read "Philip A. Miscimarra".

Philip A. Miscimarra
Chairman



United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

June 27, 2017

The Honorable Scott H. Peters
1122 Longworth House Office Building
Washington, DC 20515

Dear Congressman Peters:

Thank you for your May 8, 2017 letter to Associate General Counsel Barry J. Kearney concerning the National Labor Relations Board Division of Advice memorandum in Nutritionality, Inc. d/b/a Freshii, Cases 13-CA-134294, 138293, and 142297. A copy of the memorandum is attached to this letter for your ease of reference.

Advice memoranda are part of the Agency deliberative process and are generally not released to the public, with two exceptions: memoranda directing dismissal of the charge that are required to be released pursuant to NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975), and memoranda in closed cases that are not required by law to be released but are released in the General Counsel's discretion. The Agency's policy is to post Advice memoranda in both categories on the Agency's public website as soon as possible. The purpose of this policy is to provide labor law practitioners and the public with the most recent casehandling determinations for their reference. The Nutritionality, Inc. d/b/a Freshii memorandum was posted on the Agency's website in compliance with this policy. The memorandum speaks for itself and, of course, should be read in light of subsequent developments, including the Board's decision in Browning-Ferris Industries of California, Inc., d/b/a BFI Newby Island Recyclery, 362 NLRB No. 186 (2015).

I appreciate Congressional interest in the joint employer issue and the franchise industry, and have endeavored to be responsive to that interest without compromising Agency positions in pending litigation. If you or any member of your staff has questions on this matter or needs additional assistance, please do not hesitate to contact the NLRB's Office of Congressional and Public Affairs at (202) 273-1991.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard F. Griffin, Jr.", followed by a small flourish.

Richard F. Griffin, Jr.
General Counsel

Attachment

Cc: The Honorable Kurt Schrader
The Honorable Kyrsten Sinema
The Honorable Ami Bera
The Honorable Collin C. Peterson
The Honorable Vincente Gonzalez
The Honorable Jim Costa
The Honorable Daniel W. Lipinski
The Honorable Bobby L. Rush
The Honorable Henry Cuellar
The Honorable Jacky Rosen
The Honorable J. Luis Correa
The Honorable Josh Gottheimer

United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: April 28, 2015

TO: Peter Sung Ohr, Regional Director
Region 13

FROM: Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Nutritionality, Inc. d/b/a Freshii 177-1650-0100
Cases 13-CA-134294, 13-CA-138293, and
13-CA-142297

The Region submitted this case for advice as to whether Nutritionality, Inc., as a franchisee, is a joint employer with Freshii Development, LLC and/or Freshii's franchise development agent for the Chicagoland area. We conclude that neither Freshii nor its Chicagoland development agent are joint employers with Nutritionality under current Board law or the General Counsel's proposed standard.

FACTS

Freshii Development, LLC ("Freshii") is a fast-casual restaurant chain that focuses on providing fresh and nutritious meal choices. There are over 100 Freshii stores, which are operated as franchises in over a dozen countries. Freshii contracts with "development agents" in different geographic locations to cultivate new franchises and help ensure mandatory brand standards for existing franchises.

Nutritionality, Inc. ("Nutritionality") operates a single Freshii store in Chicago, Illinois. Nutritionality signed a franchise agreement around November 2010, and the store opened around May 2011. The franchise generally employs between five and nine employees. In the summer of 2014, Nutritionality terminated one employee and disciplined and terminated another employee for attempting to unionize the workforce. The Region found merit to unfair labor practice allegations regarding the terminations and discipline but requested advice as to whether Nutritionality is a joint employer with Freshii and/or with the Chicagoland development agent.

The Freshii Franchise Agreement

The Freshii franchise agreement grants a franchisee the right "to own and operate a Freshii Restaurant using [Freshii's] business system, business formats, methods, procedures, designs, layouts, trade dress, standards, specifications and [trademarks], all of which [Freshii] may improve, further develop and otherwise

modify periodically.” Under the agreement, franchisees pay an initial franchisee fee and ongoing royalties (six percent of gross monthly sales) to Freshii.

The agreement also states that Freshii may terminate the franchise agreement for twenty different reasons, including if the franchisee interferes with Freshii’s right to inspect the restaurant, if the franchisee fails to pay Freshii, or if the franchisee “fails to comply with any other provision of this Agreement or the Operations Manual, or any mandatory System Standard, and does not correct the failure within thirty (30) days after [Freshii] delivers written notice of the failure” to the franchisee.

Operations Manual, Tools, and Oversight of the Franchisee

Freshii provides its franchisees with an Operations Manual that “contains mandatory and suggested specifications, standards, operating procedures and rules that Freshii periodically prescribes for operating a Freshii Restaurant,” i.e., “System Standards.” The franchise agreement states that System Standards may regulate any aspect of the operation and maintenance of the restaurant, including, inter alia, sales, marketing, advertising and promotion materials; staffing levels, appearance, service, and job functions for restaurant employees; pricing requirements; ingredients and methods of preparing foods; standards for training managers; use of trademarks; days and hours of operation; payment systems; and any other aspects of operating and maintaining the restaurant that Freshii determines to be useful to preserve or enhance the efficient operation, image, or goodwill of Freshii.¹ On the other hand, the franchise agreement specifies that System Standards do not include “any personnel policies or procedures,” which Freshii may make available for franchisees’ optional use, and that the franchisee alone will “determine to what extent, if any, these policies and procedures might apply” to its restaurant operations. The franchise agreement also states that Freshii “neither dictates nor controls labor or employment matters for franchisees and their employees. ”

The Operations Manual also contains guidance on how to conform to the System Standards. In this regard, sections of the manual address menu item preparation, including which employees are in charge of taking an order, preparing the order, and providing samples to potential customers; food safety regulations; instructions on how to use and clean equipment; and guest service basics.

The Operations Manual also contains guidance on human resources matters, such as hiring and scheduling employees. For example, the manual includes a sample

¹ There is evidence that Freshii does not actively enforce the non-food-related requirements. For example, after Freshii updated its logo and tagline, it did not require any franchises to update their materials. The Chicagoland development agent states that he has not known Freshii to ever force franchisees to do anything.

hiring advertisement and sample interview questions to ask potential hires. Additionally, the manual explains how to calculate "labor cost percentage" based on the actual labor used and how to project labor calculations to schedule staff in advance. Freshii does not require franchisees to follow its guidance on these topics, which, as mentioned above, are outside the scope of the mandatory System Standards.

Freshii also provides franchisees with a sample employee handbook that contains personnel policies but does not require franchisees to use the handbook and policies. Although Nutritionality used the handbook provided by Freshii, other franchisees, specifically the stores owned by the Chicagoland development agent, used a different handbook that contained different employment policies.

Franchisees also must install and use equipment approved by Freshii, including computer hardware and software. While Freshii requires all franchises to use the same point-of-sale system, new franchises use one system while older franchisees use another without having to upgrade. Additionally, one Chicago franchise uses a completely different system that the franchisee uses in his other franchised Sbarro restaurants. Other than passively monitoring sales and costs, there is no evidence that Freshii is actively involved in the point-of-sale systems or any scheduling software that may or may not be incorporated, and there is no evidence that Freshii has any input into scheduling algorithms or methods used in the software.

Development Agents and Training

Freshii contracts with individuals throughout the country to be development agents. Development agents are responsible for cultivating stores in particular geographic locations, including helping potential and future franchisees find appropriate real estate for potential restaurants, architects for the restaurant design, contractors for building the restaurants, and third-party product lines for snacks.² Development agents receive a percentage of the franchise fee and royalties that a franchisee pays to Freshii. There is no contractual relationship between the development agents and the franchisee stores that they oversee. The Chicagoland development agent states that he is not involved in the hiring, firing, or scheduling of employees in any of the franchise stores in his area, other than those he owns and operates.

Additionally, a development agent's store is used to train new franchisees within the geographic area. All franchisee owners and managers are required to undergo a four-week training period before a new franchise can open. The first three weeks cover the menu, recipes, food preparation and ordering, along with showing owners

² Development agents also operate their own Freshii franchises.

how to schedule and use the point-of-sale system. During the last week of training, the franchisee owner is the manager-on-duty for the development agent's store. When a new franchise is set to open, the development agent will train the entire staff for three days prior to the opening, and will stay for the next five days to ensure that the store is organized and running smoothly. During both owner and employee trainings, development agents use digital documents provided by Freshii that outline the duties of various positions and how to make Freshii products. According to the Chicagoland development agent, other than the initial store opening training, franchisees are responsible for training their staffs without the help of development agents.

After a new store is operational, development agents, with the help of their employees, called area directors, perform monthly store evaluations for all franchisees. According to the Chicagoland development agent, the purpose of these evaluations is to ensure that everyone is wearing Freshii uniforms, the food is being made correctly, the store is clean, and proper promotional material is on the wall. To the development agent's knowledge, there are no employment-related standards. The development agent sends evaluation reports to Freshii only if it shows significant deviation from mandatory brand standards. For example, the Chicagoland development agent recommended to Freshii that action be taken against Nutritionality for failing to meet brand standards. However, there is no evidence that Freshii attempted to end Nutritionality's franchise agreement or otherwise take action against Nutritionality, other than send a few letters.

In addition to the monthly evaluations, development agents visit each franchisee store once or twice a month. The Chicagoland development agent states that he recently visited one franchise and noticed that the store was dirty and that there were four employees working during a slow time. The agent later emailed the franchisee about his concerns (no uniforms, store uncleanliness, too many employees working, etc.), and the franchisee replied by thanking him. Franchisees are not required to take any action based on such findings, and to the Chicagoland development agent's knowledge, no franchisee has ever taken action against an employee because of his feedback.

Franchise Labor Relations

Individual franchisees are exclusively responsible for hiring their staffs. Although the Freshii website allows potential applicants to apply to stores online, there is no evidence that Freshii screens or analyzes the applications in any way. Nutritionality's owner testified that he typically either hires employees through word of mouth or through Craigslist advertisements.

Additionally, individual franchisees are exclusively responsible for setting employee wages and benefits. There is no evidence that franchisees need to consult

with Freshii or a development agent in order to grant wage increases, decreases, or changes to benefits. The owner of Nutritionality has both increased and decreased specific employees' wages unilaterally without seeking approval from Freshii.

Individual franchisees are also exclusively responsible for disciplining and discharging their employees, and Nutritionality has disciplined and discharged employees without consulting Freshii. While the Operations Manual includes sections regarding coaching and counseling policies, as well as employee conduct that may warrant discharge, there is no evidence that franchisees must follow these sections. To the contrary, as stated above, the franchise agreement explicitly states that it is up to the franchisee to decide to what extent, if any, it would follow Freshii's personnel policies. Additionally, as mentioned above, during store reviews and visits, a development agent may raise an issue about an employee, but there is no evidence that any employee has ever been disciplined or discharged because of a development agent's comments.

Freshii's involvement with Nutritionality regarding the alleged unfair labor practices

There is no evidence that Freshii or its development agents are involved in Nutritionality's labor relations or provided guidance about how to deal with a possible union organizing campaign. In one instance, Nutritionality's owner told the Chicagoland development agent that if employees were more than five minutes late, he would require them to clock in and work but would not begin paying them until the next half hour. The development agent told him that if employees clock in, the franchisee has to pay them for every minute. Around the same time, Nutritionality's owner told the development agent that employees had presented Nutritionality with a letter asking it to recognize a union as their collective-bargaining representative. The development agent did not instruct him how to respond; instead, he asked Freshii about the incident and Freshii responded that it had not heard anything about unions organizing employees. Neither Freshii nor the development agent followed up with Nutritionality about the organizing effort.

ACTION

We conclude that Nutritionality and Freshii are not joint employers under the Board's current standard or under the traditional joint employer standard being urged by the General Counsel because there is no evidence that Nutritionality shares or codetermines with Freshii matters governing the essential terms and conditions of employment of Nutritionality's employees.³

³ The instant ULP charges allege that Nutritionality is a joint employer with the Chicagoland development agent, who operates an independent company that is

A. Freshii and Nutritionality are not Joint Employers under the Board's Current Standard.

The Board will find that two separate entities are joint employers of a single workforce if they “share or codetermine those matters governing the essential terms and conditions of employment.”⁴ To establish such status, a business entity must meaningfully affect matters relating to the employment relationship “such as hiring, firing, discipline, supervision, and direction.”⁵ As recently noted by the Board in *CNN*, the Board and the courts have also considered other factors in making a joint employer determination, including an employer’s involvement in decisions relating to wages and compensation, the number of job vacancies to be filled, work hours, the assignment of work and equipment, employment tenure, and an employer’s involvement in the collective bargaining process.⁶

Here, applying the current standard, the evidence does not establish that Freshii meaningfully affects any matters pertaining to the employment relationship between Nutritionality and its employees. Freshii has played no role in Nutritionality’s decisions regarding hiring, firing, disciplining or supervising employees. While potential applicants are able to submit resumes through Freshii’s website for employment at franchise locations, there is no evidence that Freshii screens the resumes or does anything other than forward them on to individual franchises. Further, there is no evidence that anyone other than Nutritionality is responsible for determining wages, raises, or benefits of its employees. Indeed, Nutritionality’s owner regularly increased and decreased employees’ wages without Freshii’s involvement. And Nutritionality uses a different employee handbook with different

involved in numerous business enterprises, including several Freshii franchises and other restaurant franchises. In his role as Freshii’s Chicagoland development agent, he helps Freshii prepare new franchises to begin operations and monitors brand standards at existing franchises. Aside from these activities, which fall strictly within the development agent’s agreement with Freshii, the investigation clearly revealed that the development agent was not a joint employer with Nutritionality. Thus, the following analysis only addresses whether Freshii and Nutritionality are joint employers.

⁴ *CNN America, Inc.*, 361 NLRB No. 47, slip op. at 3 (Sept. 15, 2014) (citing *TLI, Inc.*, 271 NLRB 798, 798 (1984), citing *NLRB v. Browning-Ferris Industries of Pennsylvania*, 691 F.2d 1117, 1123-24 (3d Cir. 1982)).

⁵ *Id.* (citing *Laerco Transportation*, 269 NLRB 324, 325 (1984)).

⁶ *CNN*, 361 NLRB No. 47, slip op. at 3 n.7 & 7.

personnel policies than the Chicagoland development agent uses for his Freshii franchises. All of this evidence is consistent with the clear language of the franchise agreement, which gives the franchisee the power to determine whether to use Freshii's personnel policies or procedures and states that Freshii "neither dictates nor controls labor or employment matters for franchisees and their employees. "

Additionally, Freshii is not involved in Nutritionality's scheduling and setting work hours of its employees. While Freshii provides guidance on how to calculate labor costs to ensure that restaurants are not over- or understaffed, there is no evidence that Freshii, directly or through scheduling software or the development agent, ever instructed Nutritionality to reduce an employee's hours or send an employee home because labor costs at a particular time were too high.⁷ Nor is there evidence that Freshii has any input into scheduling algorithms or methods used in any scheduling software. Further, since Freshii does not enforce its requirement that every franchise use the same system, there are at least three different point-of-sale systems being using by Chicago-area franchises, all of which may contain their own scheduling software.

Also, the required trainings that owners and managers must attend prior to opening a franchise deal primarily with operating a restaurant. While the trainings may also offer recommendations and guidance similar to what is outlined in Freshii's Operations Manual and handbook regarding employee personnel policies, such as hiring, scheduling, and disciplinary practices, Freshii does not require franchisees to follow those recommendations. Additionally, after the initial training, Freshii and its development agents have no involvement in any future trainings, highlighting a lack of impact on franchise employees' terms and conditions of employment.

At most, Freshii's control over Nutritionality's operations are limited to ensuring a standardized product and customer experience, factors that clearly do not evince sharing or codetermining matters governing essential terms and conditions of employment. This case is therefore similar to *Love's Barbeque Restaurant*, where the ALJ, in a decision adopted by the Board, found that materials prescribing the recipes for food preparation and the sizes and portions of the menu items offered ultimately did not tend to establish joint employer status, as they "relate[d] to the image, the historical image of the [franchisor's] chain," as opposed to labor relations.⁸ And, as in

⁷ Indeed, the Chicagoland development agent states that he communicated his concerns about staffing levels at a different store to that store's franchisee but that the franchisee's only response was to thank him.

⁸ *Love's Barbeque Restaurant No. 62*, 245 NLRB 78, 120 (1978), enforced in rel. part, 640 F.2d 1094 (9th Cir. 1981).

Love's Barbeque, Freshii's requirements regarding the "design, decoration and décor" of its franchisees' restaurants is hardly a matter that affects labor relations.⁹ Similarly, other than the recipes and décor elements, there is evidence that other parts of the Operations Manual are recommendations rather than mandatory requirements.¹⁰ Lastly, Freshii's requirements regarding uniforms, initial training of employees, and store hours, without more, are not a basis for finding a joint employer relationship.¹¹ Thus, Freshii's requirements regarding food preparation, recipes, menu, uniforms, décor, store hours, and initial employee training prior to a franchise opening are not evidence of control over Nutritionality's labor relations but rather establish Freshii's legitimate interest in protecting the quality of its product and brand.

Similarly, the monthly reviews by development agents are limited to inspecting franchisees' adherence to Freshii's mandatory brand standards described above, primarily the menu and food products, and are not used to examine any employment-related policies. Thus, franchisees are not reviewed on their hiring, discipline, scheduling, or wage policies. Freshii only obtains a report of the review if a development agent finds a significant deviation from the brand standards. And even after Freshii receives the reports, Freshii is under no obligation to follow a development agent's recommendations. There is no evidence that a review ever affected an employee's terms and conditions of employment either through discipline or discharge. In addition to the reviews, development agents try to visit each franchise once or twice a month and often email notes and suggestions to owners afterwards. But franchisees, including Nutritionality, are not required to make any changes that a development agent suggests after store visits.

Freshii additionally does not meaningfully affect Nutritionality's employees' terms and conditions through its contractual right to terminate the franchise agreement. The record evidence demonstrates that a franchise agreement could be

⁹ *Id.* at 119.

¹⁰ *Id.* at 120 (finding that descriptions of employee duties in operating manual were recommendations and not required to be followed).

¹¹ See e.g., *S. G. Tilden, Inc.*, 172 NLRB 752, 753 (1968) (requirement that franchisees' employees wear prescribed uniforms "amounts to nothing more than an implementation of [the franchisor's] advertising policy"; "offer to train prospective employees" was "not the exercise of any authority over [franchisees'] hiring policies"; and requirement that franchisees' shops be open certain hours and days of the week "in no way prescribes the hours that a particular employee must work" and was designed to "eliminate unfair competition among franchisees").

terminated for failure to maintain brand standards. Indeed, the Chicagoland development agent recommended to Freshii that Nutritionality's franchise agreement be terminated because it continually failed to meet brand standards; the recommendation was not based on labor relations, working conditions, or employee scheduling or compensation. However, Freshii has not followed the development agent's recommendation and has not attempted to terminate Nutritionality's franchise. There is no evidence that any franchise has been terminated for non-brand related reasons.

Lastly, the events that precipitated the instant ULP charges stemming from Nutritionality's employees' organizing efforts further demonstrate Freshii's lack of involvement in Nutritionality's dealings with its employees. Even after Nutritionality's owner asked Freshii, via the development agent, for advice on the situation, Freshii remained silent and did not interfere or instruct Nutritionality's owner as to how to respond to the employees' organizing efforts.¹²

B. Freshii and Nutritionality are not Joint Employers under the General Counsel's Proposed Standard.

Recently, the General Counsel has urged the Board to return to its traditional joint employer standard.¹³ Under that standard, the Board finds joint employer status where, under the totality of the circumstances, including the way the separate entities have structured their commercial relationship, the putative joint employer wields sufficient influence over the working conditions of the other entity's employees such that meaningful bargaining could not occur in its absence. This approach makes no distinction between direct, indirect and potential control over working conditions and results in a joint employer finding where "industrial realities" make an entity essential for meaningful bargaining.

Applying the General Counsel's proposed standard, we conclude that Freshii and Nutritionality are not joint employers of Nutritionality's employees. As discussed above, Freshii does not significantly influence the working conditions of Nutritionality's employees. For example, it has no involvement in hiring, firing, discipline, supervision, or setting wages. Thus, because Freshii does not directly or indirectly control or otherwise restrict the employees' core terms and conditions of employment, meaningful collective bargaining between Nutritionality and any

¹² See e.g., *Love's Barbeque*, 245 NLRB at 120 (ALJ, in decision adopted by the Board, found it significant that franchisor had not become involved in how the franchisee should handle its labor dispute with the union).

¹³ See Amicus Brief of the General Counsel at 2, 16-17, *Browning-Ferris Industries of California d/b/a BFI Newby Island Recyclery*, Case 32-RC-109684 (June 26, 2014).

potential collective-bargaining representative of the employees could occur in Freshii's absence.

Based on the above, we conclude that Freshii and Nutritionality are not joint employers, under both the Board's current joint employer standard as espoused in *CNN*, and the standard recently proposed by the General Counsel.

/s/
B.J.K.



United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

November 16, 2017

The Honorable Barry Loudermilk
United States Congress
329 Cannon House Office Building
Washington, DC 20515

Dear Representative Loudermilk:

I write in response to your inquiry regarding the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 (P.L. 115-41). The National Labor Relations Board (NLRB or Agency) appreciates your outreach and welcomes the opportunity to provide comments on whether the Agency would benefit from the new authorities extended to Secretary Shulkin under this law.

The NLRB does not believe that the extension of the authorities provided under the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 (P.L. 115-41) is necessary to improve its operational efficiency, employee accountability, and morale. The Agency regularly assesses its internal operations. Based thereon, the NLRB has successfully implemented, and will continue to implement, internal measures and controls that address and prevent fraud, waste and abuse in order to promote greater accountability and efficiency for the Agency and its employees.

Thank you again for your outreach on this matter. If you or any member of your staff have questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,

Jennifer Abruzzo
Acting General Counsel



United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

November 16, 2017

The Honorable Robert Pittenger
United States Congress
224 Cannon House Office Building
Washington, DC 20515

Dear Representative Pittenger:

I write in response to your inquiry regarding the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 (P.L. 115-41). The National Labor Relations Board (NLRB or Agency) appreciates your outreach and welcomes the opportunity to provide comments on whether the Agency would benefit from the new authorities extended to Secretary Shulkin under this law.

The NLRB does not believe that the extension of the authorities provided under the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 (P.L. 115-41) is necessary to improve its operational efficiency, employee accountability, and morale. The Agency regularly assesses its internal operations. Based thereon, the NLRB has successfully implemented, and will continue to implement, internal measures and controls that address and prevent fraud, waste and abuse in order to promote greater accountability and efficiency for the Agency and its employees.

Thank you again for your outreach on this matter. If you or any member of your staff have questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,

Jennifer Abruzzo
Acting General Counsel



United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

November 16, 2017

The Honorable Tom Rice
United States Congress
223 Cannon House Office Building
Washington, DC 20515

Dear Representative Rice:

I write in response to your inquiry regarding the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 (P.L. 115-41). The National Labor Relations Board (NLRB or Agency) appreciates your outreach and welcomes the opportunity to provide comments on whether the Agency would benefit from the new authorities extended to Secretary Shulkin under this law.

The NLRB does not believe that the extension of the authorities provided under the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 (P.L. 115-41) is necessary to improve its operational efficiency, employee accountability, and morale. The Agency regularly assesses its internal operations. Based thereon, the NLRB has successfully implemented, and will continue to implement, internal measures and controls that address and prevent fraud, waste and abuse in order to promote greater accountability and efficiency for the Agency and its employees.

Thank you again for your outreach on this matter. If you or any member of your staff have questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,

Jennifer Abruzzo
Acting General Counsel



United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

November 16, 2017

The Honorable Brian Babin D.D.S.
United States Congress
316 Cannon House Office Building
Washington, DC 20515

Dear Representative Babin:

I write in response to your inquiry regarding the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 (P.L. 115-41). The National Labor Relations Board (NLRB or Agency) appreciates your outreach and welcomes the opportunity to provide comments on whether the Agency would benefit from the new authorities extended to Secretary Shulkin under this law.

The NLRB does not believe that the extension of the authorities provided under the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 (P.L. 115-41) is necessary to improve its operational efficiency, employee accountability, and morale. The Agency regularly assesses its internal operations. Based thereon, the NLRB has successfully implemented, and will continue to implement, internal measures and controls that address and prevent fraud, waste and abuse in order to promote greater accountability and efficiency for the Agency and its employees.

Thank you again for your outreach on this matter. If you or any member of your staff have questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,

Jennifer Abruzzo
Acting General Counsel



United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

November 16, 2017

The Honorable Brad R. Wenstrup
United States Congress
2419 Rayburn House Office Building
Washington, DC 20515

Dear Representative Wenstrup:

I write in response to your inquiry regarding the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 (P.L. 115-41). The National Labor Relations Board (NLRB or Agency) appreciates your outreach and welcomes the opportunity to provide comments on whether the Agency would benefit from the new authorities extended to Secretary Shulkin under this law.

The NLRB does not believe that the extension of the authorities provided under the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 (P.L. 115-41) is necessary to improve its operational efficiency, employee accountability, and morale. The Agency regularly assesses its internal operations. Based thereon, the NLRB has successfully implemented, and will continue to implement, internal measures and controls that address and prevent fraud, waste and abuse in order to promote greater accountability and efficiency for the Agency and its employees.

Thank you again for your outreach on this matter. If you or any member of your staff have questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,

Jennifer Abruzzo
Acting General Counsel



United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

November 21, 2017

The Honorable Richard Blumenthal
United States Senate
706 Hart Senate Office Building
Washington, DC 20510

Dear Senator Blumenthal:

I write in response to your letter dated November 6, 2017 regarding clarification of my ethics obligations as a member of the National Labor Relations Board (NLRB).

As I testified before the Senate Health, Education, Labor and Pensions Committee, there is no greater honor for a labor lawyer than serving as a member of the NLRB. Having taken the oath of office on September 26, 2017, it is my privilege to serve the Board as a neutral adjudicator, ensuring the public's confidence in the Board and its processes. As a Board member and licensed attorney, I am committed to performing my official duties in an impartial manner, and have and will continue to adhere to the ethical standards set forth for political appointees, federal officials, attorneys, and adjudicators.

Below are the answers to those questions outlined in your letter.

1. Please list all "former clients" including anyone for whom you served as an attorney or consultant "within the 2 years prior to the date" of your appointment to the NLRB pursuant to Executive Order 13770.

Please find attached a list of all my "former clients," as defined in Executive Order 13770 to include any person for whom I served personally as agent, attorney, or consultant within the two years prior to the date of my appointment to the NLRB.

2. Please list all cases in which Littler Mendelson represents or has represented a party (a) before the Board or its General Counsel (including all regional offices) or (b) in any courts in a proceeding in which the Board was also a party.

As I pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself in all Board cases in which my "former employer," Littler Mendelson, or my own "former clients," are a party or represent a party. With respect to cases in which Littler Mendelson is or represents a party, I have attached a list of all such cases that are now pending before the Board.

3. Per your commitment during your July 13, 2017 confirmation hearing to recuse yourself from "all cases involving [your] law firm," please provide a list of all current clients of Littler Mendelson.

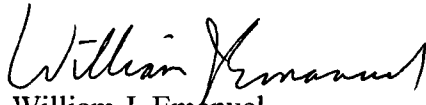
As a Member of the NLRB and neutral adjudicator, I do not have access to the current client lists of private firms, including my former employer, Littler Mendelson. As such, I am unable to provide the list requested.

4. Please confirm that you will recuse yourself from cases involving each of the companies listed in the attachment to this letter.

As I pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself in all Board cases in which my "former employer," Littler Mendelson, or my own "former clients," are a party or represent a party.

If you or any member of your staff have questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,


William J. Emanuel
Board Member

Board Member William Emanuel Recusal List

November 2017

Scope: Former Clients and Former Employers (See list below)

Source: Ethics Pledge

Duration: Two Years from Appointment – 9/26/2017 → 9/26/2019

- Littler Mendelson P.C.
- Wine and Food Society of Southern California, Inc.
- Accor Business & Leisure North America
- Alliance Data Systems
- Amazon
- AmerisourceBergen
- AmTrust Financial Services, Inc.
- APL Limited
- Arbor Pharmaceuticals, LLC
- Ashley Furniture Industries, Inc.
- Atlas Air, Inc.
- Automatic Labs, Inc.
- Ball Corporation
- Banker's Toolbox
- BDI Insulation
- Bebe Stores, Inc.
- Bio-Reference Laboratories, Inc.
- BMC Stock Holdings, Inc.
- CarMax The Auto Superstore
- Catalina Marketing
- CBRE
- CBS Corporation
- CFM Religion Publishing Group, LLC
- Chariot Transit, Inc.
- Charming Charlie
- Chubb Group Of Insurance Companies, The
- Cipriani USA, Inc.
- CNO Financial Group
- Commercial Aircraft Painting
- Community Bank
- Compass Group Usa
- Consolidated Container Company
- Consolidated Equipment Group
- Crane Co.
- Danbury Hospital
- De Nora Tech, LLC
- DirecTV Group, Inc., The
- Dollar Tree Stores, Inc.
- Duke Energy Indiana, Inc.
- Dynegy Inc.
- Edward Jones & Co.

- EMCOR Group, Inc.
- EMD Millipore
- Encore Capital Group
- Enterprise Products Partners, L.P.
- Eplus, Inc.
- Eureka Restaurant Group, LLC
- FedEx Freight, Inc.
- FGA-First Student, Inc. (Retainer)
- Genesis Healthcare LLC
- Golden Queen Mining Company, LLC
- Golden State Foods
- Guitar Center - Labor
- Gulf Oil Limited Partnership
- Gypsum Management and Supply, Inc.
- Haemonetics Corporation
- Haggen, Inc.
- Haggen, Inc. - Post Bankruptcy
- Haggen, Inc. (Employment Litigation Matters)-Post Bankruptcy
- Handy
- Healthcare Management Services, LLC
- Hearst Corporation
- Home Care Assistance Corporation
- Huntington Memorial Hospital
- Hutch's Hayward Quick Lube
- Hutch's San Lorenzo Car Wash
- Icon Aircraft
- Ikea North America Services, LLC
- Internet Brands
- Irell & Manella LLP
- JPMorgan Chase Bank, N.A.
- K&N Engineering, Inc.
- KDN Management Inc. (Usa)
- L&R Group Of Companies
- La Quinta Car Wash, LP
- Los Angeles Unified School District
- Lucero Organization
- Luxottica Retail
- Luxury Brand Partners
- M&T Bank
- Mapbox, Inc.
- Marriott Vacations Worldwide Corporation
- Mastec, Inc.
- Mclane Company, Inc.
- MCSPI, Inc.
- Meggitt - USA, Inc.
- Miasole Hi-Tech
- Miasole Hi-Tech
- Mission Hospice & Home Care

- Mistras Group
- Mobilitie Management, LLC
- National Captioning Institute, Inc.
- National Freight, Inc.
- Nissan North America, Inc.
- Nortek, Inc.
- Northbay Healthcare System
- Nourison Rug Corporation
- ODS Technologies L.P. D/B/A/ TVG Network
- Orange Coast Title Company
- Ortho-Clinical Diagnostics, Inc.
- OSI Systems, Inc.
- P & R Paper Supply Co., Inc.
- Pacific Steel Casting Company LLC
- Panda Restaurant Group, Inc.
- Pitney Bowes Inc.
- PLS Group, Inc.
- PPG Industries, Inc.
- Praxair, Inc.
- Professional Tree Care Company
- Quality Dining, Inc.
- Raymour & Flanigan Furniture
- Red Lobster
- Regency Pacific Management
- Regis Corporation
- Reign Agency
- Rite Aid Corporation
- Rite Aid Corporation (Labor Matters)
- Ruan Transport Corporation
- Rural Metro Corporation
- Ryan - Nena Community Health Center
- Safeway Inc.
- Salvation Army, The
- San Andreas Regional Center
- Santa Clara University
- SeaCastle Inc.
- Securitas Security Services USA, Inc.
- Securitas Security Services USA, Inc., Pinkerton Government
- Serta Simmons Bedding, LLC
- Sharp Healthcare
- Shriners Hospital For Children
- SolarCity - Orange County
- Sonic Automotive
- Sony Latin America, Inc.
- SSP America
- Staples, Inc.
- Starr Catering Group
- Starside Security & Investigation, Inc.

- Stewart Title of California, Inc.
- Sugarfina
- Sysco Corporation
- Target Corporation
- Time Inc.
- Toshiba America Energy Systems Corporation
- Travelers
- Tripointe Homes
- U.S. Xpress, Inc.
- UBER Technologies, Inc.
- University Of Southern California
- Versa Capital Management
- Vision Express/Wrag-Time
- Vision Express/Wrag-Time
- Vista Cove Senior Living, LLC
- Walter Investment Management Corporation
- Way Service Ltd.
- Wegmans Food Markets, Inc.
- Wells Fargo Bank, N.A.
- Westlake Ace Hardware
- Wilshire West, LLC
- Worldlink, Inc.
- XPO Logistics Freight, Inc.
- XPO Logistics, Inc.
- Yusen Logistics

MEMBER EMANUEL RECUSALS - Cases currently pending before the Board in which Littler is a legal rep 11-16-2017

CASE NUMBER	CASE NAME
07-CA-157722	Adi Worldlink, LLC; Samsung Electronics America, Inc.; et al.
22-CA-125076	Alaris Health at Boulevard East
22-CA-125034	ALARIS HEALTH AT CASTLE HILL
22-CA-125023	ALARIS HEALTH AT HARBORVIEW
22-CA-124968	Alaris Health at Rochelle Park
05-CA-126739	American Eagle Protective Services Corporation and Paragon Systems, Inc., Joint Employers
05-CA-178637	AT&T Mobility, LLC
13-CA-185708	AT&T Services, Inc.
31-CE-129697	Building Trades Council, Kern, Inyo and Mono Counties (Golden Queen Mining Co., Inc.)
21-CA-135683	Con-way Freight Inc.
16-CA-154503	Cornerstone Health Care Group
08-CA-200330	Cristal USA, Inc.
08-CA-200737	Cristal USA, Inc.
19-CA-181845	Dave & Buster's Management Corporation, Inc.
20-CA-176434	Delta Sandblasting Company, Inc.
29-CA-188517	East End Bus Lines, Inc. and Floyd Bus Company, Inc., A Single Employer
07-CA-092212	First Student, Inc., a division of First Group America
09-CA-199943	FUYAO GLASS AMERICA, INC
09-CA-201391	FUYAO GLASS AMERICA, INC
08-CA-181769	GREYHOUND LINES, INC.
01-CA-158125	HANDY TECHNOLOGIES, INC.
34-CA-070823	HealthBridge Management, Care Realty (a/k/a Care One) West River HC
28-CA-166915	IGT d/b/a International Game Technology
01-RC-176909	IGT GLOBAL SOLUTIONS
32-CD-198681	International Brotherhood of Electrical Workers Local 332 (Rudolph and Sletten)
09-RC-207513	JACK CINCINNATI CASINO LLC
09-CA-194057	LEGGETT & PLATT, INC.
09-RD-200329	LEGGETT & PLATT, INC.
04-UC-200537	Lehigh Valley Hospital-Schuylkill
28-CA-023508	Lucky Cab Company
12-CA-153478	MasTec, Inc.
07-CA-150005	Michigan Bell Telephone Company
07-CA-182505	Michigan Bell Telephone Company, AT&T Services, Inc., Joint Employers
16-CA-182528	NATIONAL CAPTIONING INSTITUTE, INC.
10-CA-198732	Nissan North America, Inc.
04-CA-175450	Quality Dining, Inc. and Grayling Corporation (collectively "Quality Dining")
02-CA-136163	Raymour's Furniture Company
16-CA-176006	Securitas Security Services USA
28-CA-022836	Smith's Food & Drug Centers, Inc. d/b/a Fry's Food Stores
32-CA-180523	SOLARCITY CORP.
28-CD-000272	Southwest Regional Council of Carpenters; Carpenters Local 1780 (Image Exhibit Services)
10-CA-200556	TeleTech Healthcare Solutions, Inc.
05-CA-167137	Thesis Painting, Inc.
20-CA-181146	Uber Technologies, Inc.
20-CA-139280	United Site Services of California, Inc.
32-CA-176353	WALNUT CREEK ASSOCIATES 2, INC., D/B/A WALNUT CREEK HONDA
12-CA-200581	XPO Logistics Freight, Inc.
13-CA-197878	XPO Logistics Freight, Inc.
20-CA-147219	YP Advertising & Publishing, LLC



United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

November 21, 2017

The Honorable Cory A. Booker
United States Senate
359 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Booker:

I write in response to your letter dated November 6, 2017 regarding clarification of my ethics obligations as a member of the National Labor Relations Board (NLRB).

As I testified before the Senate Health, Education, Labor and Pensions Committee, there is no greater honor for a labor lawyer than serving as a member of the NLRB. Having taken the oath of office on September 26, 2017, it is my privilege to serve the Board as a neutral adjudicator, ensuring the public's confidence in the Board and its processes. As a Board member and licensed attorney, I am committed to performing my official duties in an impartial manner, and have and will continue to adhere to the ethical standards set forth for political appointees, federal officials, attorneys, and adjudicators.

Below are the answers to those questions outlined in your letter.

1. Please list all "former clients" including anyone for whom you served as an attorney or consultant "within the 2 years prior to the date" of your appointment to the NLRB pursuant to Executive Order 13770.

Please find attached a list of all my "former clients," as defined in Executive Order 13770 to include any person for whom I served personally as agent, attorney, or consultant within the two years prior to the date of my appointment to the NLRB.

2. Please list all cases in which Littler Mendelson represents or has represented a party (a) before the Board or its General Counsel (including all regional offices) or (b) in any courts in a proceeding in which the Board was also a party.

As I pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself in all Board cases in which my "former employer," Littler Mendelson, or my own "former clients," are a party or represent a party. With respect to cases in which Littler Mendelson is or represents a party, I have attached a list of all such cases that are now pending before the Board.

3. Per your commitment during your July 13, 2017 confirmation hearing to recuse yourself from "all cases involving [your] law firm," please provide a list of all current clients of Littler Mendelson.


As a Member of the NLRB and neutral adjudicator, I do not have access to the current client lists of private firms, including my former employer, Littler Mendelson. As such, I am unable to provide the list requested.

4. Please confirm that you will recuse yourself from cases involving each of the companies listed in the attachment to this letter.

As I pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself in all Board cases in which my "former employer," Littler Mendelson, or my own "former clients," are a party or represent a party.

If you or any member of your staff have questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Emanuel". The signature is fluid and cursive, with a large initial "W" and a long, sweeping underline.

William J. Emanuel
Board Member

Board Member William Emanuel Recusal List
November 2017

Scope: Former Clients and Former Employers (See list below)

Source: Ethics Pledge

Duration: Two Years from Appointment – 9/26/2017 → 9/26/2019

- Littler Mendelson P.C.
- Wine and Food Society of Southern California, Inc.
- Accor Business & Leisure North America
- Alliance Data Systems
- Amazon
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- Dollar Tree Stores, Inc.
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United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

November 21, 2017

The Honorable Sherrod Brown
United States Senate
713 Hart Senate Office Building
Washington, DC 20510

Dear Senator Brown:

I write in response to your letter dated November 6, 2017 regarding clarification of my ethics obligations as a member of the National Labor Relations Board (NLRB).

As I testified before the Senate Health, Education, Labor and Pensions Committee, there is no greater honor for a labor lawyer than serving as a member of the NLRB. Having taken the oath of office on September 26, 2017, it is my privilege to serve the Board as a neutral adjudicator, ensuring the public's confidence in the Board and its processes. As a Board member and licensed attorney, I am committed to performing my official duties in an impartial manner, and have and will continue to adhere to the ethical standards set forth for political appointees, federal officials, attorneys, and adjudicators.

Below are the answers to those questions outlined in your letter.

1. Please list all "former clients" including anyone for whom you served as an attorney or consultant "within the 2 years prior to the date" of your appointment to the NLRB pursuant to Executive Order 13770.

Please find attached a list of all my "former clients," as defined in Executive Order 13770 to include any person for whom I served personally as agent, attorney, or consultant within the two years prior to the date of my appointment to the NLRB.

2. Please list all cases in which Littler Mendelson represents or has represented a party (a) before the Board or its General Counsel (including all regional offices) or (b) in any courts in a proceeding in which the Board was also a party.

As I pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself in all Board cases in which my "former employer," Littler Mendelson, or my own "former clients," are a party or represent a party. With respect to cases in which Littler Mendelson is or represents a party, I have attached a list of all such cases that are now pending before the Board.

3. Per your commitment during your July 13, 2017 confirmation hearing to recuse yourself from "all cases involving [your] law firm," please provide a list of all current clients of Littler Mendelson.

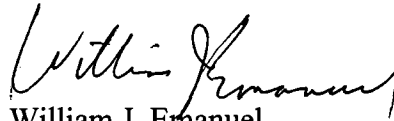
As a Member of the NLRB and neutral adjudicator, I do not have access to the current client lists of private firms, including my former employer, Littler Mendelson. As such, I am unable to provide the list requested.

4. Please confirm that you will recuse yourself from cases involving each of the companies listed in the attachment to this letter.

As I pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself in all Board cases in which my "former employer," Littler Mendelson, or my own "former clients," are a party or represent a party.

If you or any member of your staff have questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Emanuel". The signature is fluid and cursive, with a large initial "W" and a long, sweeping underline.

William J. Emanuel
Board Member

Board Member William Emanuel Recusal List
November 2017

Scope: Former Clients and Former Employers (See list below)

Source: Ethics Pledge

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United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

November 21, 2017

The Honorable Richard J. Durbin
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

Dear Senator Durbin:

I write in response to your letter dated November 6, 2017 regarding clarification of my ethics obligations as a member of the National Labor Relations Board (NLRB).

As I testified before the Senate Health, Education, Labor and Pensions Committee, there is no greater honor for a labor lawyer than serving as a member of the NLRB. Having taken the oath of office on September 26, 2017, it is my privilege to serve the Board as a neutral adjudicator, ensuring the public's confidence in the Board and its processes. As a Board member and licensed attorney, I am committed to performing my official duties in an impartial manner, and have and will continue to adhere to the ethical standards set forth for political appointees, federal officials, attorneys, and adjudicators.

Below are the answers to those questions outlined in your letter.

1. Please list all "former clients" including anyone for whom you served as an attorney or consultant "within the 2 years prior to the date" of your appointment to the NLRB pursuant to Executive Order 13770.

Please find attached a list of all my "former clients," as defined in Executive Order 13770 to include any person for whom I served personally as agent, attorney, or consultant within the two years prior to the date of my appointment to the NLRB.

2. Please list all cases in which Littler Mendelson represents or has represented a party (a) before the Board or its General Counsel (including all regional offices) or (b) in any courts in a proceeding in which the Board was also a party.

As I pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself in all Board cases in which my "former employer," Littler Mendelson, or my own "former clients," are a party or represent a party. With respect to cases in which Littler Mendelson is or represents a party, I have attached a list of all such cases that are now pending before the Board.

3. Per your commitment during your July 13, 2017 confirmation hearing to recuse yourself from "all cases involving [your] law firm," please provide a list of all current clients of Littler Mendelson.


As a Member of the NLRB and neutral adjudicator, I do not have access to the current client lists of private firms, including my former employer, Littler Mendelson. As such, I am unable to provide the list requested.

4. Please confirm that you will recuse yourself from cases involving each of the companies listed in the attachment to this letter.

As I pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself in all Board cases in which my "former employer," Littler Mendelson, or my own "former clients," are a party or represent a party.

If you or any member of your staff have questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,


William J. Emanuel
Board Member

Board Member William Emanuel Recusal List

November 2017

Scope: Former Clients and Former Employers (See list below)

Source: Ethics Pledge

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United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

November 21, 2017

The Honorable Al Franken
United States Senate
309 Hart Senate Office Building
Washington, DC 20510

Dear Senator Franken:

I write in response to your letter dated November 6, 2017 regarding clarification of my ethics obligations as a member of the National Labor Relations Board (NLRB).

As I testified before the Senate Health, Education, Labor and Pensions Committee, there is no greater honor for a labor lawyer than serving as a member of the NLRB. Having taken the oath of office on September 26, 2017, it is my privilege to serve the Board as a neutral adjudicator, ensuring the public's confidence in the Board and its processes. As a Board member and licensed attorney, I am committed to performing my official duties in an impartial manner, and have and will continue to adhere to the ethical standards set forth for political appointees, federal officials, attorneys, and adjudicators.

Below are the answers to those questions outlined in your letter.

1. Please list all "former clients" including anyone for whom you served as an attorney or consultant "within the 2 years prior to the date" of your appointment to the NLRB pursuant to Executive Order 13770.

Please find attached a list of all my "former clients," as defined in Executive Order 13770 to include any person for whom I served personally as agent, attorney, or consultant within the two years prior to the date of my appointment to the NLRB.

2. Please list all cases in which Littler Mendelson represents or has represented a party (a) before the Board or its General Counsel (including all regional offices) or (b) in any courts in a proceeding in which the Board was also a party.

As I pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself in all Board cases in which my "former employer," Littler Mendelson, or my own "former clients," are a party or represent a party. With respect to cases in which Littler Mendelson is or represents a party, I have attached a list of all such cases that are now pending before the Board.

3. Per your commitment during your July 13, 2017 confirmation hearing to recuse yourself from "all cases involving [your] law firm," please provide a list of all current clients of Littler Mendelson.

As a Member of the NLRB and neutral adjudicator, I do not have access to the current client lists of private firms, including my former employer, Littler Mendelson. As such, I am unable to provide the list requested.

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If you or any member of your staff have questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,

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William J. Emanuel
Board Member

Board Member William Emanuel Recusal List

November 2017

Scope: Former Clients and Former Employers (See list below)

Source: Ethics Pledge

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- Alliance Data Systems
- Amazon
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- Serta Simmons Bedding, LLC
- Sharp Healthcare
- Shriners Hospital For Children
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- Starside Security & Investigation, Inc.

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- Sugarfina
- Sysco Corporation
- Target Corporation
- Time Inc.
- Toshiba America Energy Systems Corporation
- Travelers
- Tripointe Homes
- U.S. Xpress, Inc.
- UBER Technologies, Inc.
- University Of Southern California
- Versa Capital Management
- Vision Express/Wrag-Time
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- Way Service Ltd.
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United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

November 21, 2017

The Honorable Kirsten Gillibrand
United States Senate
478 Russell Senate Office Building
Washington, DC 20510

Dear Senator Gillibrand:

I write in response to your letter dated November 6, 2017 regarding clarification of my ethics obligations as a member of the National Labor Relations Board (NLRB).

As I testified before the Senate Health, Education, Labor and Pensions Committee, there is no greater honor for a labor lawyer than serving as a member of the NLRB. Having taken the oath of office on September 26, 2017, it is my privilege to serve the Board as a neutral adjudicator, ensuring the public's confidence in the Board and its processes. As a Board member and licensed attorney, I am committed to performing my official duties in an impartial manner, and have and will continue to adhere to the ethical standards set forth for political appointees, federal officials, attorneys, and adjudicators.

Below are the answers to those questions outlined in your letter.

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As I pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself in all Board cases in which my "former employer," Littler Mendelson, or my own "former clients," are a party or represent a party. With respect to cases in which Littler Mendelson is or represents a party, I have attached a list of all such cases that are now pending before the Board.

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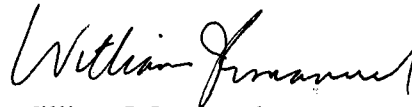
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If you or any member of your staff have questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,

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William J. Emanuel
Board Member

Board Member William Emanuel Recusal List

November 2017

Scope: Former Clients and Former Employers (See list below)

Source: Ethics Pledge

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United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

November 21, 2017

The Honorable Mazie K. Hirono
United States Senate
730 Hart Senate Office Building
Washington, DC 20510

Dear Senator Hirono:

I write in response to your letter dated November 6, 2017 regarding clarification of my ethics obligations as a member of the National Labor Relations Board (NLRB).

As I testified before the Senate Health, Education, Labor and Pensions Committee, there is no greater honor for a labor lawyer than serving as a member of the NLRB. Having taken the oath of office on September 26, 2017, it is my privilege to serve the Board as a neutral adjudicator, ensuring the public's confidence in the Board and its processes. As a Board member and licensed attorney, I am committed to performing my official duties in an impartial manner, and have and will continue to adhere to the ethical standards set forth for political appointees, federal officials, attorneys, and adjudicators.

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3. Per your commitment during your July 13, 2017 confirmation hearing to recuse yourself from "all cases involving [your] law firm," please provide a list of all current clients of Littler Mendelson.

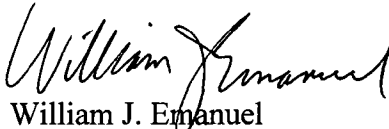
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If you or any member of your staff have questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,


William J. Emanuel
Board Member

Board Member William Emanuel Recusal List

November 2017

Scope: Former Clients and Former Employers (See list below)

Source: Ethics Pledge

Duration: Two Years from Appointment – 9/26/2017 → 9/26/2019

- Littler Mendelson P.C.
- Wine and Food Society of Southern California, Inc.
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- Alliance Data Systems
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- Chariot Transit, Inc.
- Charming Charlie
- Chubb Group Of Insurance Companies, The
- Cipriani USA, Inc.
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- Commercial Aircraft Painting
- Community Bank
- Compass Group Usa
- Consolidated Container Company
- Consolidated Equipment Group
- Crane Co.
- Danbury Hospital
- De Nora Tech, LLC
- DirecTV Group, Inc., The
- Dollar Tree Stores, Inc.
- Duke Energy Indiana, Inc.
- Dynegy Inc.
- Edward Jones & Co.

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- EMD Millipore
- Encore Capital Group
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- Yusen Logistics

MEMBER EMANUEL RECUSALS - Cases currently pending before the Board in which Littler is a legal rep 11-16-2017

CASE NUMBER	CASE NAME
07-CA-157722	Adi Worldlink, LLC; Samsung Electronics America, Inc.; et al.
22-CA-125076	Alaris Health at Boulevard East
22-CA-125034	ALARIS HEALTH AT CASTLE HILL
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20-CA-147219	YP Advertising & Publishing, LLC



United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

November 21, 2017

The Honorable Chris Murphy
United States Senate
136 Hart Senate Office Building
Washington, DC 20510

Dear Senator Murphy:

I write in response to your letter dated November 6, 2017 regarding clarification of my ethics obligations as a member of the National Labor Relations Board (NLRB).

As I testified before the Senate Health, Education, Labor and Pensions Committee, there is no greater honor for a labor lawyer than serving as a member of the NLRB. Having taken the oath of office on September 26, 2017, it is my privilege to serve the Board as a neutral adjudicator, ensuring the public's confidence in the Board and its processes. As a Board member and licensed attorney, I am committed to performing my official duties in an impartial manner, and have and will continue to adhere to the ethical standards set forth for political appointees, federal officials, attorneys, and adjudicators.

Below are the answers to those questions outlined in your letter.

1. Please list all "former clients" including anyone for whom you served as an attorney or consultant "within the 2 years prior to the date" of your appointment to the NLRB pursuant to Executive Order 13770.

Please find attached a list of all my "former clients," as defined in Executive Order 13770 to include any person for whom I served personally as agent, attorney, or consultant within the two years prior to the date of my appointment to the NLRB.

2. Please list all cases in which Littler Mendelson represents or has represented a party (a) before the Board or its General Counsel (including all regional offices) or (b) in any courts in a proceeding in which the Board was also a party.

As I pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself in all Board cases in which my "former employer," Littler Mendelson, or my own "former clients," are a party or represent a party. With respect to cases in which Littler Mendelson is or represents a party, I have attached a list of all such cases that are now pending before the Board.

3. Per your commitment during your July 13, 2017 confirmation hearing to recuse yourself from "all cases involving [your] law firm," please provide a list of all current clients of Littler Mendelson.

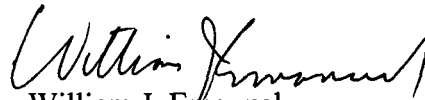
As a Member of the NLRB and neutral adjudicator, I do not have access to the current client lists of private firms, including my former employer, Littler Mendelson. As such, I am unable to provide the list requested.

4. Please confirm that you will recuse yourself from cases involving each of the companies listed in the attachment to this letter.

As I pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself in all Board cases in which my "former employer," Littler Mendelson, or my own "former clients," are a party or represent a party.

If you or any member of your staff have questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,


William J. Emanuel
Board Member

Board Member William Emanuel Recusal List

November 2017

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United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

November 21, 2017

The Honorable Patty Murray
United States Senate
154 Russell Senate Office Building
Washington, DC 20510

Dear Senator Murray:

I write in response to your letter dated November 6, 2017 regarding clarification of my ethics obligations as a member of the National Labor Relations Board (NLRB).

As I testified before the Senate Health, Education, Labor and Pensions Committee, there is no greater honor for a labor lawyer than serving as a member of the NLRB. Having taken the oath of office on September 26, 2017, it is my privilege to serve the Board as a neutral adjudicator, ensuring the public's confidence in the Board and its processes. As a Board member and licensed attorney, I am committed to performing my official duties in an impartial manner, and have and will continue to adhere to the ethical standards set forth for political appointees, federal officials, attorneys, and adjudicators.

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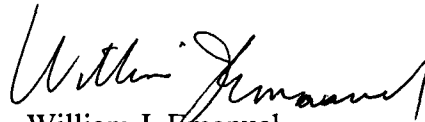
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Sincerely,

A handwritten signature in black ink, appearing to read "William J. Emanuel", written in a cursive style.

William J. Emanuel
Board Member

Board Member William Emanuel Recusal List

November 2017

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United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

November 21, 2017

The Honorable Bernard Sanders
United States Senate
332 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Sanders:

I write in response to your letter dated November 6, 2017 regarding clarification of my ethics obligations as a member of the National Labor Relations Board (NLRB).

As I testified before the Senate Health, Education, Labor and Pensions Committee, there is no greater honor for a labor lawyer than serving as a member of the NLRB. Having taken the oath of office on September 26, 2017, it is my privilege to serve the Board as a neutral adjudicator, ensuring the public's confidence in the Board and its processes. As a Board member and licensed attorney, I am committed to performing my official duties in an impartial manner, and have and will continue to adhere to the ethical standards set forth for political appointees, federal officials, attorneys, and adjudicators.

Below are the answers to those questions outlined in your letter.

1. Please list all "former clients" including anyone for whom you served as an attorney or consultant "within the 2 years prior to the date" of your appointment to the NLRB pursuant to Executive Order 13770.

Please find attached a list of all my "former clients," as defined in Executive Order 13770 to include any person for whom I served personally as agent, attorney, or consultant within the two years prior to the date of my appointment to the NLRB.

2. Please list all cases in which Littler Mendelson represents or has represented a party (a) before the Board or its General Counsel (including all regional offices) or (b) in any courts in a proceeding in which the Board was also a party.

As I pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself in all Board cases in which my "former employer," Littler Mendelson, or my own "former clients," are a party or represent a party. With respect to cases in which Littler Mendelson is or represents a party, I have attached a list of all such cases that are now pending before the Board.

3. Per your commitment during your July 13, 2017 confirmation hearing to recuse yourself from "all cases involving [your] law firm," please provide a list of all current clients of Littler Mendelson.


As a Member of the NLRB and neutral adjudicator, I do not have access to the current client lists of private firms, including my former employer, Littler Mendelson. As such, I am unable to provide the list requested.

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If you or any member of your staff have questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,


William J. Emanuel
Board Member

Board Member William Emanuel Recusal List

November 2017

Scope: Former Clients and Former Employers (See list below)

Source: Ethics Pledge

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- Catalina Marketing
- CBRE
- CBS Corporation
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- Safeway Inc.
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- Sharp Healthcare
- Shriners Hospital For Children
- SolarCity - Orange County
- Sonic Automotive
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- SSP America
- Staples, Inc.
- Starr Catering Group
- Starside Security & Investigation, Inc.

- Stewart Title of California, Inc.
- Sugarfina
- Sysco Corporation
- Target Corporation
- Time Inc.
- Toshiba America Energy Systems Corporation
- Travelers
- Tripointe Homes
- U.S. Xpress, Inc.
- UBER Technologies, Inc.
- University Of Southern California
- Versa Capital Management
- Vision Express/Wrag-Time
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- Vista Cove Senior Living, LLC
- Walter Investment Management Corporation
- Way Service Ltd.
- Wegmans Food Markets, Inc.
- Wells Fargo Bank, N.A.
- Westlake Ace Hardware
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United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

November 21, 2017

The Honorable Elizabeth Warren
United States Senate
317 Hart Senate Office Building
Washington, DC 20510

Dear Senator Warren:

I write in response to your letter dated November 6, 2017 regarding clarification of my ethics obligations as a member of the National Labor Relations Board (NLRB).

As I testified before the Senate Health, Education, Labor and Pensions Committee, there is no greater honor for a labor lawyer than serving as a member of the NLRB. Having taken the oath of office on September 26, 2017, it is my privilege to serve the Board as a neutral adjudicator, ensuring the public's confidence in the Board and its processes. As a Board member and licensed attorney, I am committed to performing my official duties in an impartial manner, and have and will continue to adhere to the ethical standards set forth for political appointees, federal officials, attorneys, and adjudicators.

Below are the answers to those questions outlined in your letter.

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3. Per your commitment during your July 13, 2017 confirmation hearing to recuse yourself from "all cases involving [your] law firm," please provide a list of all current clients of Littler Mendelson.

As a Member of the NLRB and neutral adjudicator, I do not have access to the current client lists of private firms, including my former employer, Littler Mendelson. As such, I am unable to provide the list requested.

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If you or any member of your staff have questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Emanuel". The signature is fluid and cursive, with a long horizontal stroke at the end.

William J. Emanuel
Board Member

Board Member William Emanuel Recusal List

November 2017

Scope: Former Clients and Former Employers (See list below)

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United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

November 21, 2017

The Honorable Sheldon Whitehouse
United States Senate
530 Hart Senate Office Building
Washington, DC 20510

Dear Senator Whitehouse:

I write in response to your letter dated November 6, 2017 regarding clarification of my ethics obligations as a member of the National Labor Relations Board (NLRB).

As I testified before the Senate Health, Education, Labor and Pensions Committee, there is no greater honor for a labor lawyer than serving as a member of the NLRB. Having taken the oath of office on September 26, 2017, it is my privilege to serve the Board as a neutral adjudicator, ensuring the public's confidence in the Board and its processes. As a Board member and licensed attorney, I am committed to performing my official duties in an impartial manner, and have and will continue to adhere to the ethical standards set forth for political appointees, federal officials, attorneys, and adjudicators.

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Sincerely,

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William J. Emanuel
Board Member

Board Member William Emanuel Recusal List

November 2017

Scope: Former Clients and Former Employers (See list below)

Source: Ethics Pledge

Duration: Two Years from Appointment – 9/26/2017 → 9/26/2019

- Littler Mendelson P.C.
- Wine and Food Society of Southern California, Inc.
- Accor Business & Leisure North America
- Alliance Data Systems
- Amazon
- AmerisourceBergen
- AmTrust Financial Services, Inc.
- APL Limited
- Arbor Pharmaceuticals, LLC
- Ashley Furniture Industries, Inc.
- Atlas Air, Inc.
- Automatic Labs, Inc.
- Ball Corporation
- Banker's Toolbox
- BDI Insulation
- Bebe Stores, Inc.
- Bio-Reference Laboratories, Inc.
- BMC Stock Holdings, Inc.
- CarMax The Auto Superstore
- Catalina Marketing
- CBRE
- CBS Corporation
- CFM Religion Publishing Group, LLC
- Chariot Transit, Inc.
- Charming Charlie
- Chubb Group Of Insurance Companies, The
- Cipriani USA, Inc.
- CNO Financial Group
- Commercial Aircraft Painting
- Community Bank
- Compass Group Usa
- Consolidated Container Company
- Consolidated Equipment Group
- Crane Co.
- Danbury Hospital
- De Nora Tech, LLC
- DirecTV Group, Inc., The
- Dollar Tree Stores, Inc.
- Duke Energy Indiana, Inc.
- Dynegy Inc.
- Edward Jones & Co.

- EMCOR Group, Inc.
- EMD Millipore
- Encore Capital Group
- Enterprise Products Partners, L.P.
- Eplus, Inc.
- Eureka Restaurant Group, LLC
- FedEx Freight, Inc.
- FGA-First Student, Inc. (Retainer)
- Genesis Healthcare LLC
- Golden Queen Mining Company, LLC
- Golden State Foods
- Guitar Center - Labor
- Gulf Oil Limited Partnership
- Gypsum Management and Supply, Inc.
- Haemonetics Corporation
- Haggen, Inc.
- Haggen, Inc. - Post Bankruptcy
- Haggen, Inc. (Employment Litigation Matters)-Post Bankruptcy
- Handy
- Healthcare Management Services, LLC
- Hearst Corporation
- Home Care Assistance Corporation
- Huntington Memorial Hospital
- Hutch's Hayward Quick Lube
- Hutch's San Lorenzo Car Wash
- Icon Aircraft
- Ikea North America Services, LLC
- Internet Brands
- Irell & Manella LLP
- JPMorgan Chase Bank, N.A.
- K&N Engineering, Inc.
- KDN Management Inc. (Usa)
- L&R Group Of Companies
- La Quinta Car Wash, LP
- Los Angeles Unified School District
- Lucero Organization
- Luxottica Retail
- Luxury Brand Partners
- M&T Bank
- Mapbox, Inc.
- Marriott Vacations Worldwide Corporation
- Mastec, Inc.
- Mclane Company, Inc.
- MCSPI, Inc.
- Meggitt - USA, Inc.
- Miasole Hi-Tech
- Miasole Hi-Tech
- Mission Hospice & Home Care

- Mistras Group
- Mobilitie Management, LLC
- National Captioning Institute, Inc.
- National Freight, Inc.
- Nissan North America, Inc.
- Nortek, Inc.
- Northbay Healthcare System
- Nourison Rug Corporation
- ODS Technologies L.P. D/B/A/ TVG Network
- Orange Coast Title Company
- Ortho-Clinical Diagnostics, Inc.
- OSI Systems, Inc.
- P & R Paper Supply Co., Inc.
- Pacific Steel Casting Company LLC
- Panda Restaurant Group, Inc.
- Pitney Bowes Inc.
- PLS Group, Inc.
- PPG Industries, Inc.
- Praxair, Inc.
- Professional Tree Care Company
- Quality Dining, Inc.
- Raymour & Flanigan Furniture
- Red Lobster
- Regency Pacific Management
- Regis Corporation
- Reign Agency
- Rite Aid Corporation
- Rite Aid Corporation (Labor Matters)
- Ruan Transport Corporation
- Rural Metro Corporation
- Ryan - Nena Community Health Center
- Safeway Inc.
- Salvation Army, The
- San Andreas Regional Center
- Santa Clara University
- SeaCastle Inc.
- Securitas Security Services USA, Inc.
- Securitas Security Services USA, Inc., Pinkerton Government
- Serta Simmons Bedding, LLC
- Sharp Healthcare
- Shriners Hospital For Children
- SolarCity - Orange County
- Sonic Automotive
- Sony Latin America, Inc.
- SSP America
- Staples, Inc.
- Starr Catering Group
- Starside Security & Investigation, Inc.

- Stewart Title of California, Inc.
- Sugarfina
- Sysco Corporation
- Target Corporation
- Time Inc.
- Toshiba America Energy Systems Corporation
- Travelers
- Tripointe Homes
- U.S. Xpress, Inc.
- UBER Technologies, Inc.
- University Of Southern California
- Versa Capital Management
- Vision Express/Wrag-Time
- Vision Express/Wrag-Time
- Vista Cove Senior Living, LLC
- Walter Investment Management Corporation
- Way Service Ltd.
- Wegmans Food Markets, Inc.
- Wells Fargo Bank, N.A.
- Westlake Ace Hardware
- Wilshire West, LLC
- Worldlink, Inc.
- XPO Logistics Freight, Inc.
- XPO Logistics, Inc.
- Yusen Logistics

MEMBER EMANUEL RECUSALS - Cases currently pending before the Board in which Littler is a legal rep 11-16-2017

CASE NUMBER	CASE NAME
07-CA-157722	Adi Worldlink, LLC; Samsung Electronics America, Inc.; et al.
22-CA-125076	Alaris Health at Boulevard East
22-CA-125034	ALARIS HEALTH AT CASTLE HILL
22-CA-125023	ALARIS HEALTH AT HARBORVIEW
22-CA-124968	Alaris Health at Rochelle Park
05-CA-126739	American Eagle Protective Services Corporation and Paragon Systems, Inc., Joint Employers
05-CA-178637	AT&T Mobility, LLC
13-CA-185708	AT&T Services, Inc.
31-CE-129697	Building Trades Council, Kern, Inyo and Mono Counties (Golden Queen Mining Co., Inc.)
21-CA-135683	Con-way Freight Inc.
16-CA-154503	Cornerstone Health Care Group
08-CA-200330	Cristal USA, Inc.
08-CA-200737	Cristal USA, Inc.
19-CA-181845	Dave & Buster's Management Corporation, Inc.
20-CA-176434	Delta Sandblasting Company, Inc.
29-CA-188517	East End Bus Lines, Inc. and Floyd Bus Company, Inc., A Single Employer
07-CA-092212	First Student, Inc., a division of First Group America
09-CA-199943	FUYAO GLASS AMERICA, INC
09-CA-201391	FUYAO GLASS AMERICA, INC
08-CA-181769	GREYHOUND LINES, INC.
01-CA-158125	HANDY TECHNOLOGIES, INC.
34-CA-070823	HealthBridge Management, Care Realty (a/k/a Care One) West River HC
28-CA-166915	IGT d/b/a International Game Technology
01-RC-176909	IGT GLOBAL SOLUTIONS
32-CD-198681	International Brotherhood of Electrical Workers Local 332 (Rudolph and Sletten)
09-RC-207513	JACK CINCINNATI CASINO LLC
09-CA-194057	LEGGETT & PLATT, INC.
09-RD-200329	LEGGETT & PLATT, INC.
04-UC-200537	Lehigh Valley Hospital-Schuylkill
28-CA-023508	Lucky Cab Company
12-CA-153478	MasTec, Inc.
07-CA-150005	Michigan Bell Telephone Company
07-CA-182505	Michigan Bell Telephone Company, AT&T Services, Inc., Joint Employers
16-CA-182528	NATIONAL CAPTIONING INSTITUTE, INC.
10-CA-198732	Nissan North America, Inc.
04-CA-175450	Quality Dining, Inc. and Grayling Corporation (collectively "Quality Dining")
02-CA-136163	Raymour's Furniture Company
16-CA-176006	Securitas Security Services USA
28-CA-022836	Smith's Food & Drug Centers, Inc. d/b/a Fry's Food Stores
32-CA-180523	SOLARCITY CORP.
28-CD-000272	Southwest Regional Council of Carpenters; Carpenters Local 1780 (Image Exhibit Services)
10-CA-200556	TeleTech Healthcare Solutions, Inc.
05-CA-167137	Thesis Painting, Inc.
20-CA-181146	Uber Technologies, Inc.
20-CA-139280	United Site Services of California, Inc.
32-CA-176353	WALNUT CREEK ASSOCIATES 2, INC., D/B/A WALNUT CREEK HONDA
12-CA-200581	XPO Logistics Freight, Inc.
13-CA-197878	XPO Logistics Freight, Inc.
20-CA-147219	YP Advertising & Publishing, LLC

United States Senate

WASHINGTON, DC 20510

November 6, 2017

The Honorable William Emanuel
Member
National Labor Relations Board
1015 Half Street S.E.
Washington, D.C. 20570-0001

Dear Member Emanuel:

We write today to clarify your ethics obligations as a newly confirmed member of the National Labor Relations Board (NLRB). As you know, this position carries enormous importance for workers and the strength of the American economy. Millions of working Americans, whether or not they belong to unions, are now looking to you and your fellow board members to aggressively protect their right to join together to seek higher pay, better working conditions, and a brighter future for themselves and their families.

One element of serving as an NLRB member in a manner that is faithful to the law and to the American public is ensuring that you are not faced with any conflicts of interest, such as conflicts with any parties that come before the Board with whom you previously had a relationship. We are concerned about your long history of representing employers wishing to make it harder for workers to bargain collectively. Your record presents a number of conflicts, particularly with regard to the many clients of your former law firm, Littler Mendelson.

The ethics pledge that you signed pursuant to Executive Order 13770 prohibits you from participating in “any particular matter involving specific parties that is directly and substantially related to [your] former employer or former clients, including regulations and contracts.”¹ That Order specifies that “former clients” include anyone for whom you served as an attorney or consultant “within the 2 years prior to the date” of your appointment.² “Directly and substantially related to [your] former employer” is defined as “matters in which the appointee’s former employer or a former client is a party or represents a party.” Thus, in order to adhere to these commitments, you will need to recuse from any matter in which your former employer, Littler Mendelson, is representing a party. In addition, under federal regulations, you are required to “endeavor to avoid any actions creating that appearance that [you] are violating the law...” or

¹ Exec. Order No. 13770, 3 C.F.R. 9333 (2017). Online at: [https://www.oge.gov/web/oge/nsf/aExecutive%20Orders/A43C4DBAB9EC4DC7852580BC006FBA83/\\$FILE/Exec%20Order%2013770.pdf](https://www.oge.gov/web/oge/nsf/aExecutive%20Orders/A43C4DBAB9EC4DC7852580BC006FBA83/$FILE/Exec%20Order%2013770.pdf).

² *Id.*

failing to “act impartially and not give preferential treatment to any private organization or individual.”³ Your involvement in any form in a case involving a client of your former law firm would clearly create, at minimum, the appearance of the kind of conflict of interest that this regulation prohibits.

During your July 13, 2017 confirmation hearing, you said that if you were confirmed, you would be “an excellent board member and an honest Board member and an objective one,” and said: “[A]s I understand the recusal rule, I have to recuse myself from all cases involving my law firm.”⁴ But in questions for the record following your confirmation hearing asking you to specify which parties that might come before the board may require your recusal, you simply said, “I have provided the financial information required by law. Please see my 278 filing.”

The financial information you’ve provided, however, does not give a full picture of your potential conflicts. Section 4 of the Office of Government Ethics Form 278e, or “Public Financial Disclosure Report,” that you submitted during your confirmation process lists 49 companies as “Filer’s Sources of Compensation Exceeding \$5,000 in a Year,” including major employers like JPMorgan Chase Bank, Nissan North America, PPG Industries, Securitas Security Services USA, Rite Aid Corporation, and Uber Technologies.⁵ Staff have identified dozens of pending cases before the NLRB that each involve one of these 49 companies, listed in the attachment to this letter, and more will presumably arise during your tenure on the Board that will require your recusal. But when it comes to determining which parties would require your recusal based on ethics regulations and the commitments you have made to the Senate, this list is incomplete, because it only includes sources of more than \$5,000 in compensation for “personal services” for the current and the past two calendar years.⁶ For the purposes of fully understanding your recusal obligations, it is missing clients from which you did not receive compensation, clients that compensated you with less than \$5,000, and, most notably, clients of your law firm, Littler Mendelson, for which you did not provide personal services.

In order for the public to evaluate your ability to impartially apply the law, you will need to publicly disclose all potential conflicts created by your former clients and those of your firm. To help us understand the full extent of the conflicts of interest your record poses and the cases you will need to recuse yourself from, we respectfully request that you answer the following requests by November 24, 2017.

1. Please list all “former clients” including anyone for whom you served as an attorney or consultant “within the 2 years prior to the date” of your appointment to the NLRB pursuant to Executive Order 13770.

³ Basic obligation of public service. 5 CFR 2635.101. Online at: <https://www.gpo.gov/fdsys/pkg/CFR-2005-title5-vol3/pdf/CFR-2005-title5-vol3-sec2635-101.pdf>.

⁴ “Senator Warren Questions NLRB Nominee William Emanuel” [video]. Senator Elizabeth Warren. *Youtube* (July 17, 2017). Online at: <https://www.youtube.com/watch?v=1fxyRkrJX6Q>.


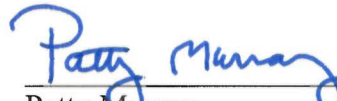

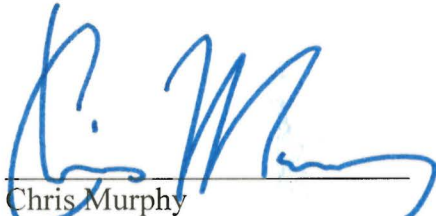

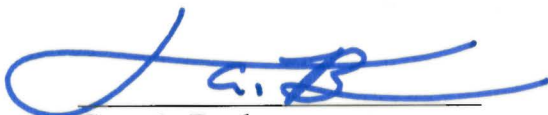
⁵ Emanuel, W. J. “Public Financial Disclosure Report (OGE Form 278e).” *U.S. Office of Government Ethics* (May 2, 2017).

⁶ “Your Sources of Compensation Exceeding \$5,000 in a Year (Nominee and New Entrant Reports Only).” Public Financial Disclosure Guide. *U.S. Office of Government Ethics* (accessed Nov. 3, 2017). Online at: [https://www.oge.gov/Web/278eGuide.nsf/Chapters/Your%20Sources%20of%20Compensation%20Exceeding%20\\$5,000%20in%20a%20Year%20\(Nominee%20and%20New%20Entrant%20Reports%20Only\)?opendocument](https://www.oge.gov/Web/278eGuide.nsf/Chapters/Your%20Sources%20of%20Compensation%20Exceeding%20$5,000%20in%20a%20Year%20(Nominee%20and%20New%20Entrant%20Reports%20Only)?opendocument).

2. Please list all cases in which Littler Mendelson represents or has represented a party (a) before the Board or its General Counsel (including all regional offices) or (b) in any courts in a proceeding in which the Board is or was also a party.
3. Per your commitment during your July 13, 2017 confirmation hearing to recuse yourself from "all cases involving [your] law firm," please provide a list of all current clients of Littler Mendelson.
4. Please confirm that you will recuse yourself from cases involving each of the companies listed in the attachment to this letter.

Thank you for your attention to this matter. We hope the answers to these questions will be a first step toward ensuring the public that you will be faithful to the law.

Sincerely,


Elizabeth Warren
United States Senator
Patty Murray
United States Senator
Sherrod Brown
United States Senator
Al Franken
United States Senator
Chris Murphy
United States Senator
Richard Blumenthal
United States Senator
Cory A. Booker
United States Senator
Kirsten Gillibrand
United States Senator



Bernard Sanders
United States Senator



Sheldon Whitehouse
United States Senator



Mazie K. Hirono
United States Senator



Richard J. Durbin
United States Senator

Attachment: Open NLRB Cases in Which a Party is “Source of Compensation Exceeding \$5,000 in a Year,” According to Member Emanuel’s *Public Financial Disclosure Report* (OGE Form 278e)¹

Former Client	Case Number
CBRE, Inc.	01-RC-205981
	21-CA-182368
EMCOR Group, Inc.	20-CA-206203
	20-RC-205892
Enterprise Products Company	16-CA-206932
FedEx Freight, Inc.	32-CA-166913
	32-CA-176171
	32-CA-196037
	32-CA-166909
	32-CA-164946
	32-CA-164936
Genesis Healthcare	06-CB-208790
	04-CA-198944
Handy Technologies, Inc.	01-CA-158125
	01-CA-158144
Mastec, Inc.	16-CA-086102
	12-CA-153478
	31-CA-205653
	01-CA-161183
	12-CA-154795
	01-CA-168468
	15-CA-204600
	12-CA-024979
	12-CA-062983
Nissan North America, Inc.	10-CA-198732
	15-CA-150431
	15-CA-171184
	15-CA-175295
	15-CA-194155
	15-CA-145043
	15-CA-197194
	15-CA-203808
	15-CA-203802
	15-CA-203818
	15-CA-195326
	15-CA-203813
	15-CA-190791
	15-CA-203796

¹ Emanuel, W. J. “Public Financial Disclosure Report (OGE Form 278e).” *U.S. Office of Government Ethics* (May 2, 2017).

	15-CA-201390
	15-CA-203806
Rite Aid	31-RD-001591
	07-CA-206549
	31-CA-203737
	31-CA-207383
	31-CA-205905
	31-CA-200038
	31-CA-200040
	31-CA-205485
	31-CA-206226
	31-CA-200912
	31-CA-205908
	31-CB-207931
	31-CA-187065
	02-CA-160384
	02-CA-189661
	02-CA-182713
Rural/Metro Corporation	19-RC-189869
	28-CA-165387
	12-CA-189787
	28-CA-164048
	32-CA-204800
	28-CA-208936
	28-CA-206365
	28-CA-200674
Safeway	19-CA-189221
	27-RC-206225
	05-CA-209090
	27-CA-207934
	32-CA-204008
	20-CB-206871
	27-CA-203383
	05-CB-206962
	19-CA-182503
	20-CB-203758
	32-CA-206839
	19-CB-009660
	19-CB-192630
	32-CA-207667
	19-CA-208745
	19-CB-178098
	19-CB-168283
	32-CB-207460
	05-CB-207752

	20-CB-201594
Securitas Security Services	16-CA-176006
	16-CA-183494
	31-CA-088082
	31-CA-072180
	31-CA-088081
	31-CA-072179
	19-AC-206531
	19-CA-191814
Serta Simmons Bedding	10-CA-202722
	27-CA-202059
Uber Technologies, Inc.	20-CA-160717
	20-CA-181146
	13-CA-174693
	29-CA-177483
	22-CA-178936
	19-CA-199000
	12-CA-173125
	20-CA-160720
	14-CA-158833
	13-CA-163062
	12-CA-181961
	19-CA-205263



United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

January 26, 2018

The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions
428 Dirksen Senate Office Building
Washington, DC 20510

Dear Ranking Member Murray:

I write in response to your letter dated December 21, 2017 regarding the National Labor Relations Board's decision in *Hy-Brand Industrial Contractors (Hy-Brand)* and the remand of *Browning-Ferris Industries (BFI)* and *Volkswagen Group of America (Volkswagen)*.

I was sworn in as a member of the NLRB on September 26, 2017. As a member of the Board, I joined the majority's decision and order in *Hy-Brand Industrial Contractors*, which issued on December 14, 2017. As such, I do not agree with your criticism of the Board's decision in this case. The majority opinion in *Hy-Brand*, which explains my reasoning, also notes that the Board has overruled previous decisions numerous times over the past decade without inviting briefs from the public. I have included a copy of the Board decision and order for your reference.

The answers to the questions in your letter are set forth below.

1. When were you assigned to the *Hy-Brand* case?

September 27, 2017.

2. Were you on the original three-member panel in *Hy-Brand*?

No.

3. Did you request to participate in *Hy-Brand*?

No. I was automatically assigned to the *Hy-Brand* case because the case had already been designated as a full-Board case prior to my arrival.

4. Given that the parties in *Hy-Brand* did not brief the question of whether the *BFI* joint employer standard should be revisited, what briefs or other materials did you review in deciding *Hy-Brand*?

4. Given that the parties in *Hy-Brand* did not brief the question of whether the *BFI* joint employer standard should be revisited, what briefs or other materials did you review in deciding *Hy-Brand*?

I reviewed the exceptions, briefs, and other public documents that the parties in *Hy-Brand* filed with the Board, as well as the Board's internal casehandling documents pertaining to that case. I also reviewed drafts of the majority and dissenting opinions in *Hy-Brand*, which contained detailed statements of the arguments in favor of and against the decision. I have attached the public documents that were reviewed.

5. Did the Board hold a vote to determine whether to invite briefs, arguments, or other information from the public regarding consideration of overturning the holding of *BFI*?

The Board in *Hy-Brand* did not overturn the holding of *BFI*, and instead overruled the standard for determining joint employer status articulated in *BFI*. The Board members discussed whether briefs should be solicited with respect to a number of cases that the Board was considering including, among others, *Hy-Brand*, and a majority of the members (former Chairman Miscimarra, then-Member Kaplan, and Member Emanuel) decided that soliciting briefs was unnecessary. Both the majority and dissenting opinions in *Hy-Brand* and other lead decisions issued at that time address the decision not to solicit briefs.

6. If so, please provide any record, vote tally sheet, meeting minutes, and any other document concerning any such vote among Board members.

To my knowledge, there are no responsive documents.

7. Please provide in full, and provide any documents relating to, your participation in the *Hy-Brand* case.

See number 4 above. Public documents reviewed while participating in the case are attached. Internal casehandling documents and drafts of the majority and dissenting opinions are being withheld pursuant to the deliberative process privilege as they are both pre-decisional and a part of the Board's deliberations in that they make recommendations or express opinions on legal or policy matters.

8. Please provide any communication that occurred after January 19, 2017 between you, or a member of your Board staff, and any attorney or staff member of Littler Mendelson that represented a party in the *BFI* matter.

None occurred.

9. Please provide any communication that occurred after January 19, 2017 between you, or a member of your office, and any person or entity not employed by the Board, concerning *BFI* or any legal issue involved in *BFI*.

In November, 2017, I was invited to meet the Secretary of Labor, Alex Acosta. When I met Secretary Acosta, I mentioned that the Board had a pending case involving the joint employer issue, but I did not identify the case, and I stated that I was not able to discuss it. This was a reference to the *Hy-Brand* case.

10. Please provide any communication that occurred after January 19, 2017 between you, or a member of your staff, and any attorney or staff member of Littler Mendelson that represented a party in the *Volkswagen* matter.

None occurred.

11. Please provide any communications that occurred after January 19, 2017 between you, or a member of your office, and any person or entity not employed by the Board, concerning *Volkswagen* or any legal issue involved in *Volkswagen*.

None occurred.

12. Given that your former partners at Littler Mendelson P.C. represented a party in *BFI* before the Board, did you recuse yourself from the Board's decision to move to remand the *BFI* case from the U.S. Court of Appeals for the D.C. Circuit back to the Board? If not, why not?

See answer to Question No. 13 below.

13. Please describe in full, and provide any documents, including vote sheets, relating to your participation in the Board's decision to move to remand *BFI* to the Board.

On December 15, I voted to direct the General Counsel to seek a remand of several Board decisions pending before the courts of appeals, including *BFI*. By unanimous vote of the Board members, that directive was rescinded on December 19. Copies of my email votes are attached, with redactions of deliberative process material. At the same time, the Board recognized that the General Counsel, as an officer of the court, has an independent ethical duty to notify the courts of recent Board decisions that bear on cases pending before the courts, including *BFI*, and stated its expectation that the General Counsel would continue to perform that ethical duty. These communications with the General Counsel are protected by the attorney client privilege. On December 19, 2017, the General Counsel filed a motion with the D.C. Circuit seeking a remand of the pending *BFI* case.

At the time of these events, I was unaware that the Littler Mendelson firm represented Leadpoint Business Services, a party in the *BFI* case, when that case was previously pending before the Board. Littler Mendelson is a huge law firm of more than 1,000 lawyers, and I was involved in only a small fraction of the firm's practice. In any event, under Section 10(e) of the NLRA, the Board no longer had jurisdiction over the case as of the filing of the record in the related D.C. Circuit cases on March 14, 2016 (D.C. Cir. Case Nos. 16-1028, 16-1063, 16-1064). Leadpoint did not contest the Board's *BFI*

decision in these proceedings before the D.C. Circuit, nor did Littler Mendelson enter an appearance with the court.

As I stated in response to your November 21, 2017 inquiry and pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself in all Board cases in which my "former employer," Littler Mendelson, or my own "former clients," are a party or represent a party. If Littler represents Leadpoint in the *BFI* case after it is remanded to the Board, I will recuse myself from participation in that case, subject to the time limit in the Ethics Pledge. However, I was not required to recuse myself from voting for the directive to the General Counsel because, as noted above, Littler did not represent Leadpoint in the *BFI* case before the D.C. Circuit, the Board did not have jurisdiction over the case, and I was unaware that Littler had ever represented any party when the case was before the Board.

14. Given that your former partners at Littler Mendelson P.C. represented a party in *BFI* before the Board, and that you have previously stated that you will recuse yourself from any Board cases in which Littler Mendelson represents a party, will you recuse yourself from *BFI* in the event that case is remanded to the Board?

Yes, I will recuse myself if Littler Mendelson represents a party in the case, subject to the time limit in the Ethics Pledge. Further, even if Littler Mendelson does not represent a party if the case is remanded to the Board, or the time limit has expired, I will consult with the NLRB's DAEO before participating in the case.

15. Given that your former partners at Littler Mendelson P.C. represent Volkswagen, did you recuse yourself from the Board's decision to move to remand the *Volkswagen* case from the U.S. Court of Appeals for the D.C. Circuit back to the Board? If not, why not?

I took no part in any decision to seek remand in the *Volkswagen* case.

16. Please describe in full, and provide any documents, including vote sheets, relating to your participation in the Board's decision to move to remand *Volkswagen* to the Board.

See number 15 above; there are no documents to provide.

17. Given that your former partners at Littler Mendelson P.C. represent Volkswagen, and that you have previously stated that you will recuse yourself from any Board cases in which Littler Mendelson represents a party, will you recuse yourself from *Volkswagen* in the event that case is remanded to the Board.

Yes, if Littler Mendelson represents *Volkswagen* before the Board, subject to the time limit in the Ethics Pledge. Further, even if Littler Mendelson does not represent a party if the case is remanded to the Board, or the time limit has expired, I will consult with the NLRB's DAEO before participating in the case.

18. Please provide any guidance or other documents or communications that you received from the Board's Designated Agency Ethics Official concerning your recusal obligations.

There are no guidance documents from the DAEO pertaining to the cases discussed in your inquiry.

If you or any members of your staffs have questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Emanuel". The signature is fluid and cursive, with a large initial "W" and a stylized "E".

William J. Emanuel
Board Member



United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

January 26, 2018

The Honorable Donald Norcross
U.S. House of Representatives
1531 Longworth House Office Building
Washington, DC 20515

Dear Congressman Norcross:

I write in response to your letter dated December 21, 2017 regarding the National Labor Relations Board's decision in *Hy-Brand Industrial Contractors (Hy-Brand)* and the remand of *Browning-Ferris Industries (BFI)* and *Volkswagen Group of America (Volkswagen)*.

I was sworn in as a member of the NLRB on September 26, 2017. As a member of the Board, I joined the majority's decision and order in *Hy-Brand Industrial Contractors*, which issued on December 14, 2017. As such, I do not agree with your criticism of the Board's decision in this case. The majority opinion in *Hy-Brand*, which explains my reasoning, also notes that the Board has overruled previous decisions numerous times over the past decade without inviting briefs from the public. I have included a copy of the Board decision and order for your reference.

The answers to the questions in your letter are set forth below.

1. When were you assigned to the *Hy-Brand* case?

September 27, 2017.

2. Were you on the original three-member panel in *Hy-Brand*?

No.

3. Did you request to participate in *Hy-Brand*?

No. I was automatically assigned to the *Hy-Brand* case because the case had already been designated as a full-Board case prior to my arrival.

4. Given that the parties in *Hy-Brand* did not brief the question of whether the *BFI* joint employer standard should be revisited, what briefs or other materials did you review in deciding *Hy-Brand*?

I reviewed the exceptions, briefs, and other public documents that the parties in *Hy-Brand* filed with the Board, as well as the Board's internal casehandling documents pertaining to that case. I also reviewed drafts of the majority and dissenting opinions in *Hy-Brand*, which contained detailed statements of the arguments in favor of and against the decision. I have attached the public documents that were reviewed.

5. Did the Board hold a vote to determine whether to invite briefs, arguments, or other information from the public regarding consideration of overturning the holding of *BFI*?

The Board in *Hy-Brand* did not overturn the holding of *BFI*, and instead overruled the standard for determining joint employer status articulated in *BFI*. The Board members discussed whether briefs should be solicited with respect to a number of cases that the Board was considering including, among others, *Hy-Brand*, and a majority of the members (former Chairman Miscimarra, then-Member Kaplan, and Member Emanuel) decided that soliciting briefs was unnecessary. Both the majority and dissenting opinions in *Hy-Brand* and other lead decisions issued at that time address the decision not to solicit briefs.

6. If so, please provide any record, vote tally sheet, meeting minutes, and any other document concerning any such vote among Board members.

To my knowledge, there are no responsive documents.

7. Please provide in full, and provide any documents relating to, your participation in the *Hy-Brand* case.

See number 4 above. Public documents reviewed while participating in the case are attached. Internal casehandling documents and drafts of the majority and dissenting opinions are being withheld pursuant to the deliberative process privilege as they are both pre-decisional and a part of the Board's deliberations in that they make recommendations or express opinions on legal or policy matters.

8. Please provide any communication that occurred after January 19, 2017 between you, or a member of your Board staff, and any attorney or staff member of Littler Mendelson that represented a party in the *BFI* matter.

None occurred.

9. Please provide any communication that occurred after January 19, 2017 between you, or a member of your office, and any person or entity not employed by the Board, concerning *BFI* or any legal issue involved in *BFI*.

In November, 2017, I was invited to meet the Secretary of Labor, Alex Acosta. When I met Secretary Acosta, I mentioned that the Board had a pending case involving the joint employer issue, but I did not identify the case, and I stated that I was not able to discuss it. This was a reference to the *Hy-Brand* case.

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11. Please provide any communications that occurred after January 19, 2017 between you, or a member of your office, and any person or entity not employed by the Board, concerning *Volkswagen* or any legal issue involved in *Volkswagen*.

None occurred.

12. Given that your former partners at Littler Mendelson P.C. represented a party in *BFI* before the Board, did you recuse yourself from the Board's decision to move to remand the *BFI* case from the U.S. Court of Appeals for the D.C. Circuit back to the Board? If not, why not?

See answer to Question No. 13 below.

13. Please describe in full, and provide any documents, including vote sheets, relating to your participation in the Board's decision to move to remand *BFI* to the Board.

On December 15, I voted to direct the General Counsel to seek a remand of several Board decisions pending before the courts of appeals, including *BFI*. By unanimous vote of the Board members, that directive was rescinded on December 19. Copies of my email votes are attached, with redactions of deliberative process material. At the same time, the Board recognized that the General Counsel, as an officer of the court, has an independent ethical duty to notify the courts of recent Board decisions that bear on cases pending before the courts, including *BFI*, and stated its expectation that the General Counsel would continue to perform that ethical duty. These communications with the General Counsel are protected by the attorney client privilege. On December 19, 2017, the General Counsel filed a motion with the D.C. Circuit seeking a remand of the pending *BFI* case.

At the time of these events, I was unaware that the Littler Mendelson firm represented Leadpoint Business Services, a party in the *BFI* case, when that case was previously pending before the Board. Littler Mendelson is a huge law firm of more than 1,000 lawyers, and I was involved in only a small fraction of the firm's practice. In any event, under Section 10(e) of the NLRA, the Board no longer had jurisdiction over the case as of the filing of the record in the related D.C. Circuit cases on March 14, 2016 (D.C. Cir. Case Nos. 16-1028, 16-1063, 16-1064). Leadpoint did not contest the Board's *BFI* decision in these proceedings before the D.C. Circuit, nor did Littler Mendelson enter an appearance with the court.

As I stated in response to your November 21, 2017 inquiry and pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself

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14. Given that your former partners at Littler Mendelson P.C. represented a party in *BFI* before the Board, and that you have previously stated that you will recuse yourself from any Board cases in which Littler Mendelson represents a party, will you recuse yourself from *BFI* in the event that case is remanded to the Board?

Yes, I will recuse myself if Littler Mendelson represents a party in the case, subject to the time limit in the Ethics Pledge. Further, even if Littler Mendelson does not represent a party if the case is remanded to the Board, or the time limit has expired, I will consult with the NLRB’s DAEO before participating in the case.

15. Given that your former partners at Littler Mendelson P.C. represent Volkswagen, did you recuse yourself from the Board’s decision to move to remand the *Volkswagen* case from the U.S. Court of Appeals for the D.C. Circuit back to the Board? If not, why not?

I took no part in any decision to seek remand in the *Volkswagen* case.

16. Please describe in full, and provide any documents, including vote sheets, relating to your participation in the Board’s decision to move to remand *Volkswagen* to the Board.

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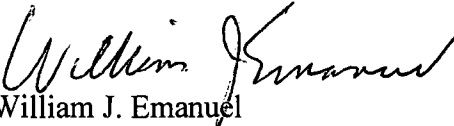
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Sincerely,



William J. Emanuel
Board Member



United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

January 26, 2018

The Honorable Gregorio Kilili Camacho Sablan
U.S. House of Representatives
2411 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Sablan:

I write in response to your letter dated December 21, 2017 regarding the National Labor Relations Board's decision in *Hy-Brand Industrial Contractors (Hy-Brand)* and the remand of *Browning-Ferris Industries (BFI)* and *Volkswagen Group of America (Volkswagen)*.

I was sworn in as a member of the NLRB on September 26, 2017. As a member of the Board, I joined the majority's decision and order in *Hy-Brand Industrial Contractors*, which issued on December 14, 2017. As such, I do not agree with your criticism of the Board's decision in this case. The majority opinion in *Hy-Brand*, which explains my reasoning, also notes that the Board has overruled previous decisions numerous times over the past decade without inviting briefs from the public. I have included a copy of the Board decision and order for your reference.

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See answer to Question No. 13 below.

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William J. Emanuel
Board Member



United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

January 26, 2018

The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions
428 Dirksen Senate Office Building
Washington, DC 20510

Dear Ranking Member Murray:

I write in response to your letter dated December 21, 2017 regarding the National Labor Relations Board's decision in *Hy-Brand Industrial Contractors (Hy-Brand)* and the remand of *Browning-Ferris Industries (BFI)* and *Volkswagen Group of America (Volkswagen)*.

I was sworn in as a member of the NLRB on September 26, 2017. As a member of the Board, I joined the majority's decision and order in *Hy-Brand Industrial Contractors*, which issued on December 14, 2017. As such, I do not agree with your criticism of the Board's decision in this case. The majority opinion in *Hy-Brand*, which explains my reasoning, also notes that the Board has overruled previous decisions numerous times over the past decade without inviting briefs from the public. I have included a copy of the Board decision and order for your reference.

The answers to the questions in your letter are set forth below.

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September 27, 2017.

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No.

3. Did you request to participate in *Hy-Brand*?

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5. Did the Board hold a vote to determine whether to invite briefs, arguments, or other information from the public regarding consideration of overturning the holding of *BFI*?

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12. Given that your former partners at Littler Mendelson P.C. represented a party in *BFI* before the Board, did you recuse yourself from the Board's decision to move to remand the *BFI* case from the U.S. Court of Appeals for the D.C. Circuit back to the Board? If not, why not?

See answer to Question No. 13 below.

13. Please describe in full, and provide any documents, including vote sheets, relating to your participation in the Board's decision to move to remand *BFI* to the Board.

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William J. Emanuel
Board Member



United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

January 26, 2018

The Honorable Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce
U.S. House of Representatives
2101 Rayburn House Office Building
Washington, DC 20515

Dear Ranking Member Scott:

I write in response to your letter dated December 21, 2017 regarding the National Labor Relations Board's decision in *Hy-Brand Industrial Contractors (Hy-Brand)* and the remand of *Browning-Ferris Industries (BFI)* and *Volkswagen Group of America (Volkswagen)*.

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11. Please provide any communications that occurred after January 19, 2017 between you, or a member of your office, and any person or entity not employed by the Board, concerning *Volkswagen* or any legal issue involved in *Volkswagen*.

None occurred.

12. Given that your former partners at Littler Mendelson P.C. represented a party in *BFI* before the Board, did you recuse yourself from the Board's decision to move to remand the *BFI* case from the U.S. Court of Appeals for the D.C. Circuit back to the Board? If not, why not?

See answer to Question No. 13 below.

13. Please describe in full, and provide any documents, including vote sheets, relating to your participation in the Board's decision to move to remand *BFI* to the Board.

On December 15, I voted to direct the General Counsel to seek a remand of several Board decisions pending before the courts of appeals, including *BFI*. By unanimous vote of the Board members, that directive was rescinded on December 19. Copies of my email votes are attached, with redactions of deliberative process material. At the same time, the Board recognized that the General Counsel, as an officer of the court, has an independent ethical duty to notify the courts of recent Board decisions that bear on cases pending before the courts, including *BFI*, and stated its expectation that the General Counsel would continue to perform that ethical duty. These communications with the General Counsel are protected by the attorney client privilege. On December 19, 2017, the General Counsel filed a motion with the D.C. Circuit seeking a remand of the pending *BFI* case.

At the time of these events, I was unaware that the Littler Mendelson firm represented Leadpoint Business Services, a party in the *BFI* case, when that case was previously pending before the Board. Littler Mendelson is a huge law firm of more than 1,000 lawyers, and I was involved in only a small fraction of the firm's practice. In any event, under Section 10(e) of the NLRA, the Board no longer had jurisdiction over the case as of the filing of the record in the related D.C. Circuit cases on March 14, 2016 (D.C. Cir. Case Nos. 16-1028, 16-1063, 16-1064). Leadpoint did not contest the Board's *BFI*

decision in these proceedings before the D.C. Circuit, nor did Littler Mendelson enter an appearance with the court.

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14. Given that your former partners at Littler Mendelson P.C. represented a party in *BFI* before the Board, and that you have previously stated that you will recuse yourself from any Board cases in which Littler Mendelson represents a party, will you recuse yourself from *BFI* in the event that case is remanded to the Board?

Yes, I will recuse myself if Littler Mendelson represents a party in the case, subject to the time limit in the Ethics Pledge. Further, even if Littler Mendelson does not represent a party if the case is remanded to the Board, or the time limit has expired, I will consult with the NLRB's DAEO before participating in the case.

15. Given that your former partners at Littler Mendelson P.C. represent Volkswagen, did you recuse yourself from the Board's decision to move to remand the *Volkswagen* case from the U.S. Court of Appeals for the D.C. Circuit back to the Board? If not, why not?

I took no part in any decision to seek remand in the *Volkswagen* case.

16. Please describe in full, and provide any documents, including vote sheets, relating to your participation in the Board's decision to move to remand *Volkswagen* to the Board.

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There are no guidance documents from the DAEO pertaining to the cases discussed in your inquiry.

If you or any members of your staffs have questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,

A handwritten signature in cursive script, appearing to read "William J. Emanuel".

William J. Emanuel
Board Member



United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

January 26, 2018

The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions
428 Dirksen Senate Office Building
Washington, DC 20510

Dear Ranking Member Murray:

I write in response to your letter dated December 21, 2017 regarding the National Labor Relations Board's decision in *Hy-Brand Industrial Contractors (Hy-Brand)* and the remand of *Browning-Ferris Industries (BFI)* and *Volkswagen Group of America (Volkswagen)*.

I was sworn in as a member of the NLRB on September 26, 2017. As a member of the Board, I joined the majority's decision and order in *Hy-Brand Industrial Contractors*, which issued on December 14, 2017. As such, I do not agree with your criticism of the Board's decision in this case. The majority opinion in *Hy-Brand*, which explains my reasoning, also notes that the Board has overruled previous decisions numerous times over the past decade without inviting briefs from the public. I have included a copy of the Board decision and order for your reference.

The answers to the questions in your letter are set forth below.

1. When were you assigned to the *Hy-Brand* case?

September 27, 2017.

2. Were you on the original three-member panel in *Hy-Brand*?

No.

3. Did you request to participate in *Hy-Brand*?

No. I was automatically assigned to the *Hy-Brand* case because the case had already been designated as a full-Board case prior to my arrival.

4. Given that the parties in *Hy-Brand* did not brief the question of whether the *BFI* joint employer standard should be revisited, what briefs or other materials did you review in deciding *Hy-Brand*?

I reviewed the exceptions, briefs, and other public documents that the parties in *Hy-Brand* filed with the Board, as well as the Board's internal casehandling documents pertaining to that case. I also reviewed drafts of the majority and dissenting opinions in *Hy-Brand*, which contained detailed statements of the arguments in favor of and against the decision. I have attached the public documents that were reviewed.

5. Did the Board hold a vote to determine whether to invite briefs, arguments, or other information from the public regarding consideration of overturning the holding of *BFI*?

The Board in *Hy-Brand* did not overturn the holding of *BFI*, and instead overruled the standard for determining joint employer status articulated in *BFI*. The Board members discussed whether briefs should be solicited with respect to a number of cases that the Board was considering including, among others, *Hy-Brand*, and a majority of the members (former Chairman Miscimarra, then-Member Kaplan, and Member Emanuel) decided that soliciting briefs was unnecessary. Both the majority and dissenting opinions in *Hy-Brand* and other lead decisions issued at that time address the decision not to solicit briefs.

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See answer to Question No. 13 below.

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Yes, I will recuse myself if Littler Mendelson represents a party in the case, subject to the time limit in the Ethics Pledge. Further, even if Littler Mendelson does not represent a party if the case is remanded to the Board, or the time limit has expired, I will consult with the NLRB's DAEO before participating in the case.

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If you or any members of your staffs have questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Emanuel". The signature is fluid and cursive, with the first name "William" and last name "Emanuel" clearly distinguishable.

William J. Emanuel
Board Member



United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

January 26, 2018

The Honorable Margaret Wood Hassan
U.S. Senate
330 Hart Senate Office Building
Washington, DC 20510

Dear Senator Hassan:

I write in response to your letter dated December 21, 2017 regarding the National Labor Relations Board's decision in *Hy-Brand Industrial Contractors (Hy-Brand)* and the remand of *Browning-Ferris Industries (BFI)* and *Volkswagen Group of America (Volkswagen)*.

I was sworn in as a member of the NLRB on September 26, 2017. As a member of the Board, I joined the majority's decision and order in *Hy-Brand Industrial Contractors*, which issued on December 14, 2017. As such, I do not agree with your criticism of the Board's decision in this case. The majority opinion in *Hy-Brand*, which explains my reasoning, also notes that the Board has overruled previous decisions numerous times over the past decade without inviting briefs from the public. I have included a copy of the Board decision and order for your reference.

The answers to the questions in your letter are set forth below.

1. When were you assigned to the *Hy-Brand* case?

September 27, 2017.

2. Were you on the original three-member panel in *Hy-Brand*?

No.

3. Did you request to participate in *Hy-Brand*?

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Sincerely,

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William J. Emanuel
Board Member



United States Government
NATIONAL LABOR RELATIONS BOARD
Washington, D. C. 20570

January 26, 2018

The Honorable Elizabeth Warren
U.S. Senate
317 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Warren:

I write in response to your letter dated December 21, 2017 regarding the National Labor Relations Board's decision in *Hy-Brand Industrial Contractors (Hy-Brand)* and the remand of *Browning-Ferris Industries (BFI)* and *Volkswagen Group of America (Volkswagen)*.

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At the time of these events, I was unaware that the Littler Mendelson firm represented Leadpoint Business Services, a party in the *BFI* case, when that case was previously pending before the Board. Littler Mendelson is a huge law firm of more than 1,000 lawyers, and I was involved in only a small fraction of the firm's practice. In any event, under Section 10(e) of the NLRA, the Board no longer had jurisdiction over the case as of the filing of the record in the related D.C. Circuit cases on March 14, 2016 (D.C. Cir. Case Nos. 16-1028, 16-1063, 16-1064). Leadpoint did not contest the Board's *BFI* decision in these proceedings before the D.C. Circuit, nor did Littler Mendelson enter an appearance with the court.

As I stated in response to your November 21, 2017 inquiry and pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself

in all Board cases in which my "former employer," Littler Mendelson, or my own "former clients," are a party or represent a party. If Littler represents Leadpoint in the *BFI* case after it is remanded to the Board, I will recuse myself from participation in that case, subject to the time limit in the Ethics Pledge. However, I was not required to recuse myself from voting for the directive to the General Counsel because, as noted above, Littler did not represent Leadpoint in the *BFI* case before the D.C. Circuit, the Board did not have jurisdiction over the case, and I was unaware that Littler had ever represented any party when the case was before the Board.

14. Given that your former partners at Littler Mendelson P.C. represented a party in *BFI* before the Board, and that you have previously stated that you will recuse yourself from any Board cases in which Littler Mendelson represents a party, will you recuse yourself from *BFI* in the event that case is remanded to the Board?

Yes, I will recuse myself if Littler Mendelson represents a party in the case, subject to the time limit in the Ethics Pledge. Further, even if Littler Mendelson does not represent a party if the case is remanded to the Board, or the time limit has expired, I will consult with the NLRB's DAEO before participating in the case.

15. Given that your former partners at Littler Mendelson P.C. represent Volkswagen, did you recuse yourself from the Board's decision to move to remand the *Volkswagen* case from the U.S. Court of Appeals for the D.C. Circuit back to the Board? If not, why not?

I took no part in any decision to seek remand in the *Volkswagen* case.

16. Please describe in full, and provide any documents, including vote sheets, relating to your participation in the Board's decision to move to remand *Volkswagen* to the Board.

See number 15 above; there are no documents to provide.

17. Given that your former partners at Littler Mendelson P.C. represent Volkswagen, and that you have previously stated that you will recuse yourself from any Board cases in which Littler Mendelson represents a party, will you recuse yourself from *Volkswagen* in the event that case is remanded to the Board.

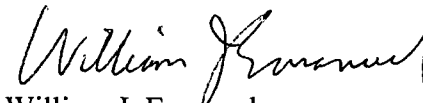
Yes, if Littler Mendelson represents *Volkswagen* before the Board, subject to the time limit in the Ethics Pledge. Further, even if Littler Mendelson does not represent a party if the case is remanded to the Board, or the time limit has expired, I will consult with the NLRB's DAEO before participating in the case.

18. Please provide any guidance or other documents or communications that you received from the Board's Designated Agency Ethics Official concerning your recusal obligations.

There are no guidance documents from the DAEO pertaining to the cases discussed in your inquiry.

If you or any members of your staffs have questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs, at 202-273-1991.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Emanuel". The signature is fluid and cursive, with the first name "William" being more prominent.

William J. Emanuel
Board Member

Congress of the United States

Washington, DC 20510

February 6, 2018

Hon. William Emanuel
Member
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dear Member Emanuel:

We write to follow-up on your January 26, 2018 response to our December 21, 2017 letter regarding your participation in a series of National Labor Relations Board (“the Board”) actions, including the vote to remand the *Browning Ferris Industries* (“BFI”) case. These actions include a December 14, 2017 Board decision in *Hy-Brand Industrial Contractors*, 365 NLRB No. 156 (2017) (“*Hy-Brand*”), overturning the Board’s previous decision regarding its joint employer standard in *BFI*. On December 15, 2017, the Board directed the General Counsel to request the United States Court of Appeals for the D.C. Circuit to remand *BFI* back to the Board for reconsideration. For reasons that have yet to be explained, the Board voted unanimously to rescind that direction on December 19. Nonetheless, the General Counsel filed the remand motion later that day. By participating in the Board’s action to bring *BFI* back to the Board, you are likely in violation of both federal regulations and the Administration’s Ethics pledge.

Prior to your tenure on the Board, you were a senior partner in the labor and employment practice at Littler Mendelson, P.C. (Littler) for 13 years. Littler represents a party to the *BFI* matter, Leadpoint Industries.¹ As you know, Executive Order 13770 (the “Ethics Pledge”) prohibits Executive Branch employees from “participat[ing] in any particular matter involving specific parties that is directly and substantially related to [a] former employer . . .” Exec. Order. No. 13770(1). A matter is “directly and substantially related” to a former employer if the former employer represents a party in the matter. Exec. Order. No. 13770(2)(d).

Additionally, federal regulations require employees to “endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part.” 5 C.F.R. § 2635.101(b)(14). Executive branch employees “should not participate” in a matter when “the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter.” 5 C.F.R. § 2635.502(a). That is why in your signed ethics agreement with the Office of Government Ethics you state that “[f]or a period of one year after [your] resignation [from Littler], [you] will not participate personally and substantially in any

¹ Littler has publicly acknowledged this representation. See, e.g., Michael Lotito, Maury Baskin, and Missy Parry, *NLRB Imposes New “Indirect Control” Joint Employer Standard in Browning Ferris*, LITTLER MENDELSON, P.C., Aug. 28, 2015, at page 1, n.2 available at https://www.littler.com/files/2015_8_insight_nlrp_imposes_new_.pdf.

particular matter involving specific parties in which [you] know the firm is a party or represents a party”

Accordingly, you should not have participated in any case where Littler represents a party. However, in your January 26 letter to Members of Congress, you stated that you participated in directing the General Counsel to ask the Court to remand *BFI* back to the Board for reconsideration consistent with precedent set out in the *Hy-Brand* decision and more favorable to Littler’s client. The court granted the remand request, which benefits the interests of your former firm and its client. This action appears to be in direct contravention of your commitments to the Office of Government Ethics, to the requirements of the Ethics Pledge, and to the requirements of federal regulations.

In your letter, you attempt to explain your actions by saying that you did not know that Littler represented a party in the *BFI* case. We would like to remind you that at the time of your confirmation in July 2017, you did in fact know that Littler represented a party in the *BFI* matter. Following your confirmation hearing, on July 14, 2017, we sent you a series of written questions. Senator Murray’s Question 18 specifically asked that you provide a list of all cases decided by the Board and that are currently on appeal in which Littler Mendelson represents a party. In response you produced a list of cases. *BFI* is clearly indicated on that list. (Attachment A). As a result, it would appear that you did in fact know that Littler was a party to *BFI*, and that your action in joining the request for remand violates both the Ethics Pledge and the federal regulations.

During your confirmation process, you further committed to Senator Murray in writing that in addition to signing the ethics pledge, you would “request advice regarding recusal issues from the Board’s ethics office.” However, you have now acknowledged that you had *not* received any guidance from the ethics office regarding your recusal obligations in *BFI* or other cases.

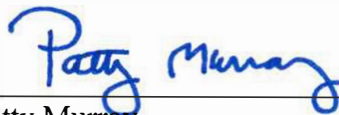
In order to more fully understand the circumstances surrounding your apparent violation of the pledge and the ethics regulations please provide the following by February 20, 2018:

1. Please provide a copy of the Board’s case management system list of the parties and counsel in the *BFI* case.
2. Please provide a copy of the Board’s December 15, 2017 directive and the December 19, 2017 rescission of that directive.
3. Please provide a detailed timeline of events between the Board’s action to request the remand of *BFI* on December 15, 2017, and the Board’s action to rescind that directive on December 19, 2017. Include the time and date of any conversations that you or any member of your staff had with Designated Agency Ethics Officials or with the General Counsel or any member of his staff.
4. With regard to the events of December 19, provide the time that the General Counsel filed the request for remand with the D.C. Circuit Court of Appeals, and the time that the Board acted to rescind the request for remand.

5. Please provide all communications between you or any member of your staff and the General Counsel or members of his staff that refer to or reference timing of the filing of the *BFI* remand.
6. Please provide the full list of all matters you are currently recused from and specify whether you are recused from any participation in the *Murphy Oil* case currently pending before the Supreme Court.
7. Please list all of the cases affected by the Board's December 15, 2017 directive.
8. Please state if you will recuse yourself from any further Board consideration or action on *BFI* or *Volkswagen Grp. Of Am. v. NLRB*, Nos. 16-1309, 16-1353 (D.C. Cir.) given the appearance issues that these cases represent with regard to your participation.

If you have any questions about this request, please contact John_DElia@help.senate.gov, Carly_Rush@help.senate.gov, Kyle.deCant@mail.house.gov, and Lindsay_Owens@warren.senate.gov. We look forward to hearing from you.

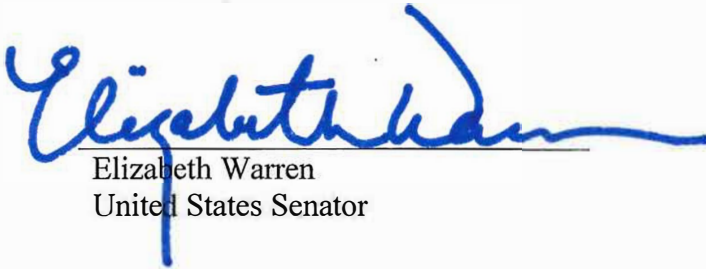
Sincerely,



Patty Murray
Ranking Member
Senate Committee on Health,
Education, Labor and Pensions



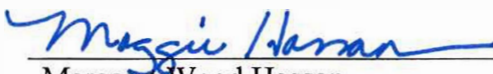
Robert C. "Bobby" Scott
Ranking Member
House Committee on Education and
the Workforce



Elizabeth Warren
United States Senator



Gregorio Kilili Camacho Sablan
Ranking Member on Health,
Employment, Labor and Pensions



Margaret Wood Hassan
United States Senator



Donald Norcross
United States Representative

United States Senate

WASHINGTON, DC 20510

February 26, 2018

The Honorable William Emanuel
Member
National Labor Relations Board
1015 Half Street S.E.
Washington, D.C. 20570

Dear Member Emanuel:

Last week, the National Labor Relations Board's Inspector General released a report finding "a serious and flagrant problem and/or deficiency in the Board's administration of its deliberative processes and the National Labor Relations Act..." related to your involvement in the Board's consequential December 2017 decision in *Hy-Brand Industrial Contractors, Ltd.*⁹ We write to express our serious concerns with your involvement in this case, and to inquire about your knowledge of the *Hy-Brand* case's readily apparent ties to the *Browning-Ferris Industries (BFI)* case, a matter in which your former law firm's involvement mandates your recusal.

In December, the Board's *Hy-Brand* decision purported to reverse *Browning-Ferris Industries (BFI)*, an important 2015 decision ensuring that workers could bargain with employers that have indirect control over their working conditions.¹⁰ The *BFI* decision was important because it helped prevent large employers from avoiding their legal obligation to negotiate in good faith with their workers over subjects including fair pay and good working conditions. Large corporations have attempted to evade their responsibility to respect workers' statutory rights by contracting out work while maintaining significant control over those employees. In *BFI*, the Board made clear that companies cannot benefit from work they control while evading their legal obligations to the people doing that work. Industry groups and other special interests strongly opposed the *BFI* ruling, and the Board moved to overturn it as soon as it obtained a Republican majority in 2017.

Because your former law firm, Littler Mendelson P.C., represents a party in the *BFI* case, which was before the U.S. Court of Appeals for the D.C. Circuit before the Board issued its decision in *Hy-Brand*, federal ethics regulations and the Ethics Pledge you signed require your

⁹ Office of the Inspector General, National Labor Relations Board, *Notification of a Serious and Flagrant Problem and/or Deficiency in the Board's Administration of its Deliberative Process and the National Labor Relations Act with Respect to the Deliberation of a Particular Matter* 3-4 (Feb. 9, 2018) available at <https://www.nlrb.gov/sites/default/files/attachments/basic-page/node-1535/OIG%20Report%20Regarding%20Hy-Brand%20Deliberations.pdf> (emphasis added).

¹⁰ See *Hy-Brand Indus. Contractors*, 365 NLRB No. 156 (Dec. 14, 2017); *Browning-Ferris Indus.*, 362 NLRB No. 186 (Aug. 27, 2015).

recusal from the *BFI* matter. As we noted in our February 6 letter, you appear to have violated those rules by participating in a decision to ask the Board's General Counsel to seek a remand of the *BFI* case from the Court of Appeals. As we also noted, it is clear that you were aware that Littler Mendelson represented a party in the *BFI* case, because you listed that case among those in which Littler Mendelson represents in responses to questions from Sen. Murray following your confirmation hearing in July 2017.¹¹

The IG's analysis found that you should also have recused yourself from the entirety of the *Hy-Brand* decision-making process, but you did not. He found that because former Chairman Philip Miscimarra effectively consolidated the *Hy-Brand* and *BFI* matters, they formed the same "particular matter involving specific parties" requiring your recusal. The IG concluded that the Board's *Hy-Brand* decision, which you participated in, was "merely the vehicle to continue the deliberations of *Browning-Ferris*."¹²

These findings by the Inspector General are extremely concerning. They indicate that you directly participated in an extraordinarily consequential decision from which the law required your recusal. Though the IG's report does not contain a determination that you engaged in misconduct (that will be the subject of a separate, forthcoming report from the IG), it does make clear that your actions created a serious flaw in the *Hy-Brand* decision-making process, tainted the outcome of that process, and undermined the ability of the public to trust in the integrity of the Board's decision-making processes.

In order to better understand why and how you participated in matters from which you should have been recused, we request that you provide answers to the following information no later than March 12, 2018.

1. Were you personally involved in authoring the majority opinion in the *Hy-Brand* case?
2. Why did you sign an opinion overturning the *BFI* case despite the fact that no party in the *Hy-Brand* case requested such a result? In light of this fact, do you agree with the IG's assertion that "the Board was in fact not deciding *Hy-Brand* on the merits of that case, but was continuing the deliberative proceedings of the *BFI* decision?"¹³
3. When you signed the *Hy-Brand* decision, were you aware that it overturned *BFI*?
4. Do you agree with the IG that because of the *Hy-Brand* decision, now that *BFI* has been remanded for the Board, "there is literally no reason for further

¹¹ Congress of the United States, [letter to NLRB Member Emanuel from Members of Congress] (Dec. 21, 2017) available at <https://www.help.senate.gov/imo/media/doc/12.21.17%20Letter%20from%20Members%20of%20Congress%20to%20NLRB%20Member%20Emanuel.pdf>

¹² See Report, Office of Inspector General, *supra* note 1


¹³ *Id.*

deliberations...and a determination of the law to facts for the *Browning-Ferris* parties was established in the *Hy-Brand* decision?”¹⁴

5. When you signed the majority *Hy-Brand* decision, were you aware that it incorporated “wholesale” the dissent from the *BFI* case?¹⁵
6. When you signed the majority *Hy-Brand* decision, were you aware that its response to the dissent included the sentence, “the issue we decided today was the subject of amicus briefing when the Board decided *Browning-Ferris*?”¹⁶
7. Please provide all communications with, between you and the Board’s Designated Agency Official (or any other official from whom you sought advice on recusal) related to the *Hy-Brand* or *BFI* cases.
8. If the Board revisits the *Hy-Brand* case, will you commit to recusing yourself from the entirety of that process? Even if subsequent events could make your participation in *Hy-Brand* or *BFI* consistent with the Ethics Pledge (e.g., the expiration of the two-year time bar), given the pall of impropriety your participation has cast over the Board’s deliberative process in these matters, will you continue to recuse yourself from all participation going forward in order to dispel any *appearance* of impartiality?

Thank you for your attention to this important matter.

Sincerely,


Elizabeth Warren
United States Senator
Patty Murray
United States Senator

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

February 1, 2018

The Honorable Patty Murray
Committee on Health, Education, Labor, and
Pensions
U.S. Senate
428 Dirksen Senator Office Building
Washington, DC 20510

The Honorable Elizabeth Warren
U.S. Senate
317 Hart Senate Office Building
Washington, DC 20510

The Honorable Margaret Wood Hassan
U.S. Senate
330 Hart Senate Office Building
Washington, DC 20510

The Honorable Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce
U.S. House of Representatives
2101 Rayburn House Office Building
Washington, DC 20515

The Honorable Gregorio Kilili Camacho Sablan
U.S. House of Representatives
2411 Rayburn House Office Building
Washington, DC 20515

The Honorable Donald Norcross
U.S. House of Representatives
1531 Longworth House Office Building
Washington, DC 20515

Dear Members of Congress:

I have reviewed my responses to your questions that were forwarded to you by the NLRB's Office of Congressional Affairs on January 26th and believe they require clarification. Accordingly, I will be providing you with a further response, clarification or correction soon.

Sincerely,

A handwritten signature in black ink, which appears to read "William J. Emanuel". The signature is fluid and cursive, with a large initial "W".

William J. Emanuel
Board Member

Congress of the United States

Washington, DC 20510

December 21, 2017

Hon. William Emanuel
Member
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dear Member Emanuel:

We write with regard to your participation in the National Labor Relations Board's (Board) decision in *Hy-Brand Industrial Contractors (Hy-Brand)*¹ and the Board's motions for remand in *Browning-Ferris Industries (BFI)*² and *Volkswagen Group of America (Volkswagen)*.³ Last week, you provided a determinative vote in *Hy-Brand* to overturn the Board's previous decision in *BFI*, which held that companies with indirect or reserved control of the terms and conditions of employment could be a "joint employer" under the National Labor Relations Act (NLRA).⁴

The *Hy-Brand* decision represents a low-point for the Board. The Board broke with its long established practice by failing to invite briefs from the public regarding this significant reversal. The Board took this step although the *BFI* decision itself remains under review by a federal court of appeals. The Board took this action although no party in *Hy-Brand* sought such a step, and did so in a case involving a *single* employer that could have been easily resolved on the facts. This decision by you and the two other Republican Members of the Board is a rushed and ill-considered action that will have long-term repercussions for the Board's reputation as a neutral administrator of the NLRA. This headlong rush to nullify the *BFI* decision without fair process or consideration of the collateral impact will strip away the NLRA's protections from millions of workers.

Additionally, we note that Littler Mendelson, the law firm where you were a shareholder until joining the Board less than three months ago, represented one of the parties in both *BFI* and *Volkswagen* when they were before the Board.

Accordingly, we request that you provide us the following information by January 12, 2018:

1. When were you assigned to the *Hy-Brand* case?
2. Were you on the original three-member panel in *Hy-Brand*?

¹ 365 NLRB No. 156 (2017).

² *Browning Ferris Indus. v. NLRB*, Nos. 16-1028, 16-1063, 16-1064 (D.C. Cir.) (motion for remand filed Dec. 19, 2017).

³ *Volkswagen Grp. Of Am. v. NLRB*, Nos. 16-1309, 16-1353 (D.C. Cir.) (motion for remand filed Dec. 19, 2017).

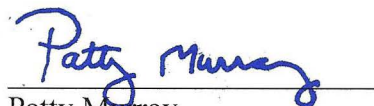
⁴ 362 NLRB No. 186 (2015).

3. Did you request to participate in *Hy-Brand*?
4. Given that the parties in *Hy-Brand* did not brief the question of whether the *BFI* joint employer standard should be revisited, what briefs or other materials did you review in deciding *Hy-Brand*?
5. Did the Board hold a vote to determine whether to invite briefs, arguments, or other information from the public regarding consideration of overturning the holding in *BFI*?
6. If so, please provide any record, vote tally sheet, meeting minutes, and any other document concerning any such vote among Board members.
7. Please describe in full, and provide any documents relating to, your participation in the *Hy-Brand* case.
8. Please provide any communications that occurred after January 19, 2017 between you, or a member of your Board staff, and any attorney or staff member of Littler Mendelson that represented a party in the *BFI* matter.
9. Please provide any communications that occurred after January 19, 2017 between you, or a member of your office, and any person or entity not employed by the Board, concerning *BFI* or any legal issue involved in *BFI*.
10. Please provide any communications that occurred after January 19, 2017 between you, or a member of your staff, and any attorney or staff member of Littler Mendelson that represented a party in the *Volkswagen* matter.
11. Please provide any communications that occurred after January 19, 2017 between you, or a member of your office, and any person or entity not employed by the Board, concerning *Volkswagen* or any legal issue involved in *Volkswagen*.
12. Given that your former partners at Littler Mendelson P.C. represented a party in *BFI* before the Board, did you recuse yourself from the Board's decision to move to remand the *BFI* case from the U.S. Court of Appeals for the D.C. Circuit back to the Board? If not, why not?
13. Please describe in full, and provide any documents, including vote sheets, relating to your participation in the Board's decision to move to remand *BFI* to the Board.
14. Given that your former partners at Littler Mendelson P.C. represented a party in *BFI* before the Board, and that you have previously stated that you will recuse yourself from any Board cases in which Littler Mendelson represents a party, will you recuse yourself from *BFI* in the event that case is remanded to the Board?
15. Given that your former partners at Littler Mendelson P.C. represent Volkswagen, did you recuse yourself from the Board's decision to move to remand the *Volkswagen* case from the U.S. Court of Appeals for the D.C. Circuit back to the Board? If not, why not?

16. Please describe in full, and provide any documents, including vote sheets, relating to your participation in the Board's decision to move to remand *Volkswagen* to the Board.
17. Given that your former partners at Littler Mendelson P.C. represent Volkswagen, and that you have previously stated that you will recuse yourself from any Board cases in which Littler Mendelson represents a party, will you recuse yourself from *Volkswagen* in the event that case is remanded to the Board?
18. Please provide any guidance or other documents or communications that you received from the Board's Designated Agency Ethics Official concerning your recusal obligations.

Please contact our staff at John_DElia@help.senate.gov, and Kyle.deCant@mail.house.gov if you have any questions about this request. We look forward to hearing from you.

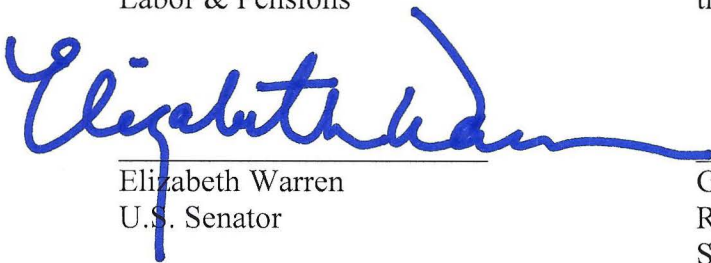
Sincerely,



Patty Murray
U.S. Senator
Ranking Member
Committee on Education,
Labor & Pensions



Robert C. "Bobby" Scott
U.S. Representative
Ranking Member
Committee on Education and
the Workforce



Elizabeth Warren
U.S. Senator



Gregorio Kilili Camacho Sablan
Ranking Member
Subcommittee on Health, Employment,
Labor and Pensions



Margaret Wood Hassan
U.S. Senator



Donald Norcross
U.S. Representative

cc: The Honorable Lamar Alexander
Chairman
U.S. Senate Committee on Health, Education, Labor and Pensions

The Honorable Virginia Foxx
Chairwoman
U.S. House of Representatives Committee on Education and the Workforce

Lori W. Ketcham
Associate General Counsel, Ethics
Designated Agency Ethics Official
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Questions for the Record
“William Emanuel Nomination for Member of the National Labor
Relations Board”
Hearing Date: July 13, 2017

Questions for the Record from Ranking Member Patty Murray

- 1. What, in your view, is the mission of the agency to which you have been nominated?**

To enforce the National Labor Relations Act as enacted by Congress.

- 2. Do you believe that the purpose of the National Labor Relations Act (NLRA), enforced by the National Labor Relations Board (NLRB or Board), is to encourage and protect workers’ rights to organize and engage in collective bargaining with their employers? If not, please describe in detail your views on the purpose of the NLRA and the Board.**

As stated in Section 1 of the NLRA, one purpose is “to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by promoting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.”

In 1947, the NLRA was amended to add several additional purposes:

- (1) “to prescribe the legitimate rights of both employees and employers in their relations affecting commerce,”
- (2) “to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other,”
- (3) “to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce,”
- (4) “to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare,” and
- (5) “to protect the rights of the public in connection with labor disputes affecting commerce.”

- 3. During your confirmation hearing before the committee, I asked you whether protecting and promoting workers' right to organize was the mission of the NLRB. You responded that this was one of the Board's missions, along with protecting employers, individual employees and the public. Are all of these interests of equal weight, or are some of them more important than others?**

It is up to Congress to decide the relative importance of these statutory goals. The Board's responsibility is to enforce the NLRA as enacted by Congress.

- 4. During your confirmation hearing before the committee, you were asked whether your work ever benefitted workers or unions. In response, you stated that you have engaged in collective bargaining and that workers benefited from this process through higher wages and benefits. Has an employer you have represented in collective bargaining ever been charged with a failure to bargain in good faith in violation of section 8(a)(5) of the National Labor Relations Act? If yes, please provide additional details.**

I have represented employers for many years. It is possible that such a charge has been filed although I do not recall a specific case where that has occurred. Of course, a charge is only an allegation, and not a decision by the Board that a violation of the Act has occurred.

- 5. Arthur Mendelson, the founder of your firm Littler Mendelson once said of your firm's specialization in union avoidance tactics: "our clients pay a lot of money...if they want aggressiveness, they are entitled to it." If you are confirmed, please describe the steps that you will take to transition from a practitioner and senior partner at a firm with this philosophy to a neutral arbiter as a Member on the NLRB?**

Attorneys have a responsibility to zealously represent their clients' interests. I understand that, if confirmed, my role and responsibilities as a member of the NLRB will be different than my role and responsibilities as an advocate in private practice. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

- 6. In a 2012 podcast, you indicated that you “come from” a perspective of valuing worker protection laws far less than creating an employer-friendly legal climate. You said, “My topic is California employment laws from a broad brush prospective and how the employment laws in California create a horrible anti-employer climate. It’s a terrible climate for job creation and job retention. Now you know at the outset where I come from.” Is this the perspective you will bring to the Board?**

Based on my experience, there is a consensus among employers that many of the state employment laws in California are as I described them. However, this is not relevant to how I would decide cases under the NLRA, which is a separate federal statute that is unrelated to state employment laws.

If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court’s precedent, the Board’s precedent, the arguments of the parties, and the views of the other members of the Board.

- 7. Please describe your views on the role and importance of labor unions in today’s workplaces and economy.**

Unions have certain rights under the NLRA, and I will enforce that statute faithfully and impartially.

- 8. What, in your view, would be a scenario in which it would be appropriate for the NLRB to take action against a company who is unfairly retaliating against workers based on antiunion hostility?**

If a violation of the NLRA by an employer is proven, an appropriate remedy should be ordered.

- 9. Do you agree that the workplace and the employer-employee relationship has changed dramatically in recent years? If so, can you describe what you see as the key changes affecting workers’ ability to join together and engage in collective bargaining? What are some of those challenges and how would you go about addressing them?**

These questions would be beyond the scope of my responsibilities as a Board member, if I am confirmed. The responsibility of Board members is to enforce the NLRA.

- 10. Do you believe that the designation of workers as independent contractors rather than employees is a practice that is increasing?**

This would be beyond the scope of my responsibilities as a Board member if I am confirmed. The responsibility of Board members is to enforce the NLRA.

11. Please provide your view on when the NLRB should overturn settled precedents, and what the standard should be in doing so.

By tradition, the Board does not change precedent without the votes of three Board members. Otherwise, precedent has not been treated as binding. My view is that precedent should not be followed if it is in conflict with the NLRA as enacted by Congress. The Board's responsibility is to enforce that statute.

12. What specific considerations do you intend to rely upon in deciding whether to authorize petitions to have a recidivist violator of the NLRA held in contempt of court for violating a court order?

If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

13. Do you believe that there were instances where the Board has exceeded its authority during the Obama Administration? If so, when?

If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

14. The Board has been the target of criticism for its use of adjudication rather than rulemaking to establish policy. Under President Obama, the Board conducted two major notice-and-comment rulemakings for the first time in decades. If confirmed, do you intend to continue this practice of making new rules or altering existing rules through notice-and-comment procedures?

It would be inappropriate for me to comment on this question. If rulemaking proposals are submitted, I will consider them at that time.

15.The Administrative Conference of the United States has recommended that agencies “should develop processes for systematic review of existing regulations” and that they “should provide adequate opportunity for public involvement in both the priority-setting and review processes.” If confirmed, will you conduct robust, transparent retrospective reviews prior to any revision or reversal of existing NLRB law?

I am not familiar with this recommendation, but I will study the issue, if confirmed.

16.Do you believe that existing doctrines and regulations should only be changed when there is empirical evidence suggesting that they are flawed, or is it appropriate to revise rules even if such revisions are not supported by concrete evidence?

They should be changed if they are contrary to the NLRA. The Board’s responsibility is to enforce that statute.

17.Please provide a list of all cases currently pending before the NLRB in which Littler Mendelson represents a party. For each of these cases, please indicate whether you authored, edited, revised, or reviewed materials related to the case. If yes, please describe the services you performed and indicate at what stage of the process you participated.

A list of these cases is attached to this document. I did not author, edit, revise or review materials related to any of the cases.

18.Please provide a list of all cases decided by the NLRB and that are currently on appeal in which Littler Mendelson represents a party. For each of these cases, please indicate if you authored, edited, revised, or reviewed materials related to the case. If yes, please describe the services you performed and indicate at what stage of the process you participated.

A list of these cases is attached to this document. I did not author, edit, revise or review materials related to any of the cases.

19.Please provide a list of cases pending before the NLRB, or on appeal, in which you provided pro bono services including any case or matter in which you authored, edited, revised, or reviewed materials related to the case without receiving compensation.

I do not recall providing pro bono services in such a case.

20. Please confirm that you intend to recuse yourself for two years from all cases that come before the NLRB in which Littler Mendelson represents a party.

That is my understanding of the requirement. I will do whatever is required by law.

21. Leadpoint Services, a party in the Board's *Browning-Ferris* case, is represented by Littler Mendelson. Will you recuse yourself for the required period from any action by the Board that involves Leadpoint Services?

If recusal questions arise with regard to any particular matter, I will request the advice of the Board's ethics office.

22. Please provide a list of all writings and all matters during the past ten years that involve arbitration agreements or class action litigation. Please include matters that were not litigated but on which you advised or otherwise engaged with a client on these subjects. Do not include client names but provide a number of matters and a general description of the issue.

The requested articles are attached to this document. I have represented several employers in cases involving class and collective action waivers in employment arbitration agreements.

23. In your view are there limits to an employer's ability to require employees to waive their rights to class actions/group actions as a condition of employment?

It would be inappropriate for me to comment on this subject. If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

- 24. Your writings include at least six articles critical of the NLRB's decision in *D.R. Horton*, including one article entitled "NLRA v. FAA: Why the NLRB Got It Wrong in *D.R. Horton*." Do you believe that you can be a neutral arbiter on the issue of arbitration clauses limiting employees' rights in class action cases?**

If I am confirmed, I will do my best to objectively decide the issues that come before the Board after considering the facts of each case, the intent of Congress as expressed in the NLRA, the Supreme Court's precedent, the Board's precedent, the arguments of the parties, and the views of the other members of the Board.

- 25. Given the extent of your personal views, and your involvement in the issue of arbitration agreements and class action litigation, do you believe you will be free of an appearance of a conflict should these issues come before you as a Member of the NLRB?**

If recusal questions arise with regard to any particular matter, I will request the advice of the Board's ethics office.

- 26. As a specific example to the preceding question, you have expressed views that *D.R. Horton* and *Murphy Oil*, currently pending before the Supreme Court, was wrongly decided. You also filed an amicus brief in the case on behalf of the National Retail Federation. Will you recuse yourself from involvement with these cases with regard to action by the Board?**

If recusal questions arise with regard to any particular matter, I will request the advice of the Board's ethics office.

- 27. Please provide a list of all writings and all matters during the past ten years that involve union activity and private property and/or trespass. Please include matters that were not litigated but on which you advised or otherwise engaged with a client on these subjects. Do not include client names but provide a number of matters and a general description of the issue.**

Copies of the articles are attached to this document. This question involves state trespass laws and it does not involve the NLRB. I have advised various employers on the absence of private property rights for employers in California.

This is distinct from the right of unions and employees to engage in union activity on private property under the NLRA, which has not been involved in the articles referred to above.

- 28. Your writings include at least seven articles that discuss your views that employers should have broad rights to limit access for union supporters to the employer's private property. In a 2009 article titled "Union Trespassers Roam Corridors of California Hospitals—Is a Return to the Rule of Law Possible?" you wrote "the trespass laws are not adequately enforced against labor unions. Many employers suffer from this unequal protection of the laws. [...] This situation is unfair." Given the extent of your personal views, and your involvement as a client advocate in this issue, do you believe that you will be free of an appearance of a conflict should these issues come before you as a Member of the NLRB?**

If recusal questions arise with regard to any particular matter, I will request the advice of the Board's ethics office.

- 29. With regard to the *Specialty Healthcare* case, involving rules for determining the make-up of bargaining units, when the case was pending in the U.S. Court of Appeals for the Sixth Circuit, you authored a brief on behalf of a group of House and Senate Republicans. Please provide additional details regarding the brief including whether you were compensated for the work, and if so by whom.**

I assisted in writing the brief, but I was not involved in the client relationship, and I am not aware of the extent of compensation.

- 30. What is the appropriate role of an NLRB Member in facilitating oversight by Members of Congress?**

Because I do not have prior experience with responding to congressional oversight requests, I plan to work with other members of the Board, as well as the Board's professional staff, to ensure that the Board responds to oversight requests received from Congress in an appropriate manner.

- 31. Is it appropriate for a single NLRB member to respond to an oversight request without working with counsel's office and working with the other NLRB Members?**

Board members should attempt to work together, and with the guidance and input of the Board's professional staff, to the fullest extent possible to respond to oversight requests received from Congress in an appropriate manner.

32.If confirmed, will you commit to working with other NLRB Members to fully respond to Congressional oversight requests made during your tenure at NLRB?

If confirmed, I will attempt to work together with other Board members and the Board's professional staff to the fullest extent possible to respond to oversight requests received from Congress in an appropriate manner.

33.Please provide copies of your contribution to the following publications:

- a. California Employment Law, a Guide to California Laws Regulating Employment in the Private Sector, Merchants and Manufacturers Association, 1990**
- b. California Employment Law, a Guide to California Laws Regulating Employment in the Private Sector, 2d edition, Merchants and Manufacturers Association, 1992**
- c. California Employment Law, a Guide to California Laws Regulating Employment in the Private Sector, 3d edition, The Employers Group, 1997**
- d. Model Affirmative Action Program for Hospitals, California Hospital Association, 1973**
Supreme Court Bans the Use of Sex-Based Mortality Tables in Employee Fringe Benefit Plans, Corporate Law Departments Section Newsletter, Los Angeles County Bar Association, December 1983

The first three items above are three editions of a book written several decades ago, which consist of five volumes and would be very difficult to copy. The last edition of the book was published in 1997. Copies of the other items requested above are attached to this document.

Littler Mendelson - Cases Pending in Circuit Crt

CASE_FILE_DT	CASE_NUMBER	CASE_NAME	CIRCUIT_COURT
11/14/2012	28-CA-093183	Gunderson Rail Services, LLC d/b/a Greenbrier Rail Services	DC: DC Circuit
6/10/2014	20-CA-130613	Adams & Associates, Inc. and McConnell, Jones Lanier & Murphy, LLP, Joint Employers	05: Fifth Circuit
9/24/2015	20-CA-160717	Uber Technologies, Inc.	09: Ninth Circuit
4/11/2017	13-CA-196637	XPO Logistics Freight, Inc.	07: Seventh Circuit
5/16/2008	33-CA-015584	Camelot Terrace	DC: DC Circuit
2/15/2011	20-CA-035419	24 Hour Fitness USA, Inc.	05: Fifth Circuit
5/1/2014	22-CA-127746	AT&T MOBILITY SERVICES, LLC.	04: Fourth Circuit
8/21/2014	08-CD-135243	International Union of Operating Engineers Local 18 (Nerone & Sons Inc)	DC: DC Circuit
4/11/2017	13-CA-196637	XPO Logistics Freight, Inc.	07: Seventh Circuit
5/5/2006	12-CA-024979	MasTec Advanced Technologies, a Division of MasTec, Inc.	DC: DC Circuit
6/9/2010	34-CA-012715	HealthBridge Management, Care Realty (a/k/a CareOne), et al.	02: Second Circuit
10/18/2011	32-CA-066979	FAA CONCORD H, INC. d/b/a CONCORD HONDA	09: Ninth Circuit
10/2/2014	32-CA-138015	PRICE-SIMMS, INC. D/B/A TOYOTA SUNNYVALE	DC: DC Circuit
7/10/2015	16-CA-156147	IN-N-OUT BURGER, INC.	05: Fifth Circuit
6/21/2016	22-CA-178936	Uber Technologies, Inc.	03: Third Circuit
5/5/2006	12-CA-024979	MasTec Advanced Technologies, a Division of MasTec, Inc.	DC: DC Circuit
10/21/2011	01-CA-067303	SOUTHCOAST HOSPITALS GROUP, INC.	01: First Circuit
9/18/2012	22-CA-089596	H&M INTERNATIONAL TRANSPORTATION, INC.	DC: DC Circuit
11/14/2012	28-CA-093183	Gunderson Rail Services, LLC d/b/a Greenbrier Rail Services	DC: DC Circuit
10/2/2014	32-CA-138015	PRICE-SIMMS, INC. D/B/A TOYOTA SUNNYVALE	DC: DC Circuit
11/21/2014	10-CA-141407	U.S. Xpress Enterprises, Inc. and U.S. Xpress, Inc., A Single Employer	05: Fifth Circuit
12/9/2016	13-CA-189647	XPO Logistics Freight, Inc.	DC: DC Circuit
9/13/2011	22-CA-064426	1621 Route 22 West Operating Company LLC, d/b/a Somerset Valley Rehabilitation and Nursing Center.	03: Third Circuit
10/9/2012	21-CA-090894	Covenant Care California, LLC; Covenant Care La Jolla, LLC d/b/a La Jolla Nursing & Rehabilitation C	05: Fifth Circuit
12/12/2013	28-CA-118801	AWG Ambassador, LLC	09: Ninth Circuit
6/5/2014	25-CA-130127	INDUSTRIAL CONTRACTORS SKANSKA INC.	07: Seventh Circuit
11/21/2014	10-CA-141407	U.S. Xpress Enterprises, Inc. and U.S. Xpress, Inc., A Single Employer	05: Fifth Circuit
7/10/2015	16-CA-156147	IN-N-OUT BURGER, INC.	05: Fifth Circuit
6/24/2010	34-CA-012735	FedEx Home Delivery	DC: DC Circuit
12/12/2013	28-CA-118801	AWG Ambassador, LLC	09: Ninth Circuit
8/21/2014	08-CD-135243	International Union of Operating Engineers Local 18 (Nerone & Sons Inc)	DC: DC Circuit
9/25/2015	32-CA-160759	Browning-Ferris Industries of California, Inc., d/b/a BFI Newby Island Recyclery and FPR-II, LLC, d/	DC: DC Circuit
4/8/2016	10-CA-173537	PruittHealth-Virginia Park, LLC	DC: DC Circuit
3/5/2012	28-CA-075857	Quicken Loans, Inc.	DC: DC Circuit
5/25/2012	08-CD-081840	INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 18 AND ITS BRANCHES	06: Sixth Circuit
9/24/2015	20-CA-160720	Uber Technologies, Inc.	09: Ninth Circuit
12/21/2015	10-CA-166500	Volkswagen Group of America, Inc.	DC: DC Circuit
4/11/2017	13-CA-196637	XPO Logistics Freight, Inc.	07: Seventh Circuit
5/7/2010	31-CA-029713	Veritas Health Services, Inc. d/b/a Chino Valley Medical Center	09: Ninth Circuit
6/24/2010	34-CA-012735	FedEx Home Delivery	DC: DC Circuit
11/17/2011	22-CA-069152	1621 ROUTE 22 WEST OPERATING COMPANY , LLC D/B/A SOMERSET VALLEY REHABILITATION AND NURSING CENTER	03: Third Circuit
11/14/2012	28-CA-093183	Gunderson Rail Services, LLC d/b/a Greenbrier Rail Services	DC: DC Circuit
10/30/2014	13-CA-139974	Minteq International, Inc., and Specialty Minerals, Inc., wholly owned subsidiaries of Mineral Techn	DC: DC Circuit
9/9/2015	16-CA-159605	Con-way Freight Inc.	05: Fifth Circuit
3/30/2016	05-CA-172905	Thesis Painting, Inc.	04: Fourth Circuit

Little Mendelson - Open Cases

CASE_FILE_DT	CASE_NUMBER	CASE_NAME
8/29/2005	22-CA-027066	Atrium at Princeton, LLC D/B/A Pavilion at Forrestal and Princeton Healthcare, LLC D/B/A Pavilions a
5/5/2006	12-CA-024979	MasTec Advanced Technologies, a Division of MasTec, Inc.
6/29/2006	12-CA-025055	DirecTV, Inc.
5/16/2008	33-CA-015584	Camelot Terrace
2/5/2009	13-CA-045108	NBC Universal (WMAQ)
3/27/2009	31-RD-001591	Rite Aid
12/28/2009	28-CA-022836	Smith's Food & Drug Centers, Inc. d/b/a Fry's Food Stores
5/7/2010	31-CA-029713	Veritas Health Services, Inc. d/b/a Chino Valley Medical Center
5/17/2010	15-RC-008841	Outokumpu Stainless USA f/k/a ThyssenKrup Stainless USA, LLC
6/9/2010	34-CA-012715	HealthBridge Management, Care Realty (a/k/a CareOne), et al.
6/21/2010	34-CA-012732	Healthbridge Management, Care Realty (aka CareOne), et al.
6/24/2010	34-CA-012735	FedEx Home Delivery
8/9/2010	34-CA-012768	Newington Health Care, HealthBridge Management, Care Realty (aka CareOne)
8/9/2010	34-CA-012766	Danbury Health Care, HealthBridge Management, Care Realty (aka CareOne)
8/9/2010	34-CA-012771	Westport Health Care, HealthBridge Management, Care Realty (aka CareOne)
8/9/2010	34-CA-012769	West River Health Care, HealthBridge Management, Care Realty (aka CareOne)
8/9/2010	34-CA-012770	Wethersfield Health Care, HealthBridge Management, Care Realty (aka CareOne)
9/22/2010	22-CA-029628	Somerset Vallley Rehabilitation and Nursing Center.
11/15/2010	29-CA-030485	Rose Fence, Inc.
12/7/2010	31-CA-030055	Prime Healthcare Centinela, LLC dba Centinela Hospital Medical Center
12/13/2010	29-CA-030537	Rose Fence Inc
2/15/2011	20-CA-035419	24 Hour Fitness USA, Inc.
3/1/2011	22-CA-029868	Somerset Valley Rehabilitation and Nursing Center
4/13/2011	32-CA-025677	MI PUEBLO FOODS, INC.
5/12/2011	28-CA-023508	Lucky Cab Company
6/28/2011	22-CA-030045	Michael J. Malpere Company, Inc.
9/13/2011	22-CA-064426	1621 Route 22 West Operating Company LLC, d/b/a Somerset Valley Rehabilitation and Nursing Center.
10/18/2011	32-CA-066979	FAA CONCORD H, INC. d/b/a CONCORD HONDA
10/21/2011	01-CA-067303	SOUTHCOAST HOSPITALS GROUP, INC.
11/1/2011	31-CA-068109	Prime Healthcare Centinela, LLC dba Centinela Hospital Medical Center
11/17/2011	22-CA-069152	1621 ROUTE 22 WEST OPERATING COMPANY , LLC D/B/A SOMERSET VALLEY REHABILITATION AND NURSING CENTER
11/22/2011	02-CB-069460	Local 340, New York New Jersey Regional Joint Board
12/7/2011	15-CA-070319	OUTOKUMPU STAINLESS USA, LLC f/k/a THYSSENKRUPP STAINLESS USA, LLC
12/7/2011	32-CA-070343	FAA CONCORD H, Inc. d/b/a Concord Honda
12/15/2011	34-CA-070823	HealthBridge Management, Care Realty (a/k/a Care One) West River HC
1/4/2012	28-CA-071847	Walldesign, Inc.
1/9/2012	31-CA-072179	Securitas Security Services USA, Inc.
1/9/2012	31-CA-072180	Securitas Security Services USA, Inc.
1/11/2012	32-CA-072231	FAA CONCORD H, INC. d/b/a Concord Honda
1/19/2012	34-CA-072875	HealthBridge Management, Care Realty (aka CareOne), et al.
1/23/2012	22-RC-072946	CARE ONE AT MADISON AVENUE
1/24/2012	15-CA-073053	OUTOKUMPU STAINLESS USA, LLC f/k/a THYSSENKRUPP STAINLESS USA, LLC
1/26/2012	34-CA-073303	HEALTHBRIDGE MANAGEMENT, LLC; 710 LONG RIDGE ROAD OPERATING COMPANY II, LLC D/B/A LONG RIDGE OF STAM
2/24/2012	34-CA-075226	HealthBridge Management, et al.
3/5/2012	28-CA-075857	Quicken Loans, Inc.
3/21/2012	22-CA-077185	COMMUNITY COACH
4/3/2012	28-CA-078200	Walldesign, Inc.

5/25/2012	06-CA-081896	UPMC and its Subsidiaries UPMC Presbyterian Shadyside and Magee-Womens Hospital of UPMC, Single Empl
5/25/2012	08-CD-081837	Laborers' Local 894 (Donley's, Inc.)
5/25/2012	08-CD-081840	INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 18 AND ITS BRANCHES
6/18/2012	34-CA-083335	HealthBridge Management, et al.
7/6/2012	34-CA-084717	HealthBridge Management, et al.
7/11/2012	22-CA-085127	CARE ONE AT MADISON AVENUE LLC d/b/a CARE ONE AT MADISON AVENUE AND CARE ONE MANAGEMENT LLC
7/26/2012	16-CA-086102	Mastec Services Company, Inc.
9/14/2012	22-CA-089333	Care One at Madison Avenue LLC d/b/a Care One at Madison Avenue and Care One Management LLC
9/18/2012	22-CA-089596	H&M INTERNATIONAL TRANSPORTATION, INC.
10/9/2012	21-CA-090894	Covenant Care California, LLC; Covenant Care La Jolla, LLC d/b/a La Jolla Nursing & Rehabilitation C
10/18/2012	08-CD-091637	INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 18 AND ITS BRANCHES (DONLEYS INC)
10/19/2012	08-CD-091683	INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 18 AND ITS BRANCHES (HUNT CONSTRUCTION GROUP)
10/19/2012	08-CD-091686	INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 18 AND ITS BRANCHES (CONSTRUCTION EMPLOYERS ASSOCIA
10/19/2012	08-CD-091770	International Union of Operating Engineers Local 18 and its Branches (B&B Wrecking and Excavating, I
10/19/2012	08-CD-091684	INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 18 AND ITS BRANCHES (PRECISION ENVIRONMENTAL CO.)
10/19/2012	08-CD-091773	International Union of Operating Engineers Local 18 and its Branches (Cleveland Cement Contractors,
10/29/2012	07-CA-092212	First Student, Inc., a division of First Group America
11/14/2012	28-CA-093183	Gunderson Rail Services, LLC d/b/a Greenbrier Rail Services
12/12/2012	28-CA-094752	The GEO Group, Inc.
12/14/2012	32-CA-095025	On Assignment Staffing Services, Inc.
12/18/2012	22-CA-095095	H&M INTERNATIONAL TRANSPORTATION, INC.
2/12/2013	09-CA-098236	COMMUNICARE OF CLIFTON
4/26/2013	09-CA-103855	COMMUNICARE OF CLIFTON
4/29/2013	28-CA-103909	Gunderson Rail Services, LLC d/b/a Greenbrier Rail Services
4/30/2013	01-CA-104118	HealthBridge Management, Care Realty, Care One LLC, Care One Management, LLC, Danbury HC, Long Ridge
5/2/2013	28-CA-104184	GUNDERSON RAIL SERVICES LLC DBA GREENBRIER RAIL SERVICES
5/29/2013	22-CB-106127	LOCAL 312, UFCW (H&M INTERNATIONAL TRANSPORTATION, INC.)
6/5/2013	28-CA-106613	Gunderson Rail Services, LLC d/b/a Greenbrier Rail Services
9/6/2013	28-CA-112806	Gunderson Rail Services, LLC d/b/a Greenbrier Rail Services
9/24/2013	12-CA-114020	MVM, Inc.
11/12/2013	04-CA-116773	Garda CL Atlantic, Inc.
11/13/2013	19-CA-116991	Clearwater Paper
12/12/2013	28-CA-118801	AWG Ambassador, LLC
2/3/2014	21-CA-121776	MAGIC LAUNDRY SERVICES, INC.
3/21/2014	22-CA-124968	ALARIS HEALTH AT ROCHELLE PARK
3/21/2014	22-CA-125034	ALARIS HEALTH AT CASTLE HILL
3/21/2014	22-CA-125023	ALARIS HEALTH AT HARBORVIEW
3/25/2014	22-CA-125076	ALARIS HEALTH AT BOULEVARD EAST
3/28/2014	14-CA-125416	Essig & Associates, Inc. d/b/a McDonald's & McDonald's USA LLC as Joint or Single Employer
4/3/2014	22-CA-125882	ALARIS HEALTH AT HARBORVIEW
4/3/2014	22-CA-125886	ALARIS HEALTH AT BOULEVARD EAST
4/3/2014	22-CA-125866	ALARIS HEALTH AT CASTLE HILL
4/4/2014	22-CA-125889	ALARIS HEALTH AT ROCHELLE PARK
4/4/2014	28-CA-126024	ISS FACILITY SERVICES, INC.
4/16/2014	05-CA-126739	American Eagle Protective Services Corporation and Paragon Systems, Inc., Joint Employers
4/22/2014	14-CA-127084	King's Management Co., Inc., a McDonald's Franchisee, and McDonald's USA, LLC, Joint Employers
5/1/2014	22-CA-127727	AT&T MOBILITY SERVICES, LLC.
5/1/2014	22-CA-127746	AT&T MOBILITY SERVICES, LLC.
5/1/2014	22-CA-127781	AT & T MOBILITY SERVICES, LLC

5/30/2014	31-CE-129697	Building Trades Council, Kern, Inyo and Mono Counties (Golden Queen Mining Co., Inc.)
6/5/2014	08-CD-130178	International Union of Operating Engineers Local 18 (Cleveland Cement Contractors, Inc.)
6/5/2014	25-CA-130127	INDUSTRIAL CONTRACTORS SKANSKA INC.
6/10/2014	13-CA-130446	Guitar Center Stores, Inc.
6/10/2014	20-CA-130613	Adams & Associates, Inc. and McConnell, Jones Lanier & Murphy, LLP, Joint Employers
6/23/2014	22-CA-131372	ALARIS HEALTH AT BOULEVARD EAST
8/1/2014	08-CD-133957	INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 18 (DONLEY'S INC.)
8/21/2014	08-CD-135243	International Union of Operating Engineers Local 18 (Nerone & Sons Inc)
8/28/2014	05-RC-135621	Baker DC, LLC
8/28/2014	21-CA-135683	Con-way Freight Inc.
9/8/2014	14-CA-136194	King's Management Co., Inc. a McDonald's Franchisee, and McDonald's USA, LLC, Joint Employers
9/8/2014	02-CA-136163	Raymour's Furniture Company, Inc.
9/11/2014	21-RC-136546	Con-way Freight Inc.
9/16/2014	02-CA-136753	THE PLAYERS, INC.
10/1/2014	20-CA-138046	Adams & Associates, Inc. and McConnell, Jones Lanier & Murphy, LLP, Joint Employers
10/2/2014	32-CA-138015	PRICE-SIMMS, INC. D/B/A TOYOTA SUNNYVALE
10/6/2014	31-CA-138311	Clear Vision Foods, Inc., A McDonald's Franchisee, and McDonald's USA, LLC, Joint Employers
10/7/2014	03-CA-138264	Occidental Chemical Corporation
10/20/2014	20-CA-139280	United Site Services of California, Inc.
10/30/2014	13-CA-139974	Minteq International, Inc., and Specialty Minerals, Inc., wholly owned subsidiaries of Mineral Techn
10/31/2014	31-CA-140383	Alexandria Care Center LLC, Skilled Healthcare LLC, Skilled Healthcare Group, Inc.
11/6/2014	21-CA-140545	Con-way Freight Inc.
11/7/2014	22-CA-140591	ALARIS HEALTH AT HARBORVIEW
11/7/2014	12-CB-140517	1199 SEIU United Healthcare Workers East, Florida Region (Consulate Healthcare)
11/7/2014	22-CA-140619	ALARIS HEALTH AT CASTLE HILL
11/7/2014	22-CA-140560	ALARIS HEALTH AT ROCHELLE PARK
11/7/2014	22-CA-140582	ALARIS HEALTH AT BOULEVARD EAST
11/21/2014	10-CA-141407	U.S. Xpress Enterprises, Inc. and U.S. Xpress, Inc., A Single Employer
12/17/2014	13-CA-143107	PMA, LLC, a McDonald's Franchisee, and McDonald's USA LLC, joint employers
12/19/2014	19-CA-143322	MaxSent Security
12/23/2014	08-CD-143412	International Union of Operating Engineers Local 18 (R.G. Smith Company, Inc.)
1/12/2015	16-CA-144325	Con-way Freight Inc.
1/26/2015	20-CA-145147	Golden Arch Enterprises, Inc., a McDonald's Franchisee, and McDonald's USA, LLC, as Joint Employers
1/26/2015	15-CA-145043	Nissan North America, Inc.
1/26/2015	19-CA-145058	MaxSent Security, Inc.
1/29/2015	14-CA-145293	King's Management Co., Inc. a McDonald's Franchisee, and McDonald's USA, LLC Joint Employers
2/26/2015	20-CA-147219	YP Advertising & Publishing, LLC
2/27/2015	20-CA-147317	Golden Arch Enterprises, Inc., a McDonald's Franchisee, and McDonald's USA, LLC, as Joint Employers
3/5/2015	19-CA-147764	MaxSent Security, Inc.
3/6/2015	10-CA-147703	Ready Mix USA, LLC
3/9/2015	08-CD-147696	International Union of Operating Engineers Local 18 and its Branches (Various)
3/26/2015	31-CA-148999	Skilled Healthcare LLC
4/3/2015	20-CA-149509	United Site Services
4/13/2015	07-CA-150005	Michigan Bell Telephone Company
4/16/2015	01-CA-150261	SOUTHCOAST HOSPITALS GROUP, INC.
4/16/2015	19-CA-150552	Maxsent Security
4/20/2015	15-CA-150431	Nissan North America, Inc.
4/21/2015	32-CA-150567	San Leandro Ford and Lincoln
4/24/2015	21-CA-150878	XPO Port Services, Inc.

4/24/2015	21-CA-150873	XPO Cartage, Inc.
4/29/2015	12-CA-151322	MVM, Inc.
5/4/2015	32-CA-151449	HACIENDA MOTORS LTD. D/B/A MERCEDES BENZ OF PLEASANTON
5/5/2015	28-CA-151599	Greyhound Lines, Inc.
5/7/2015	32-CA-151826	Loomis Armored, US, Inc.
5/27/2015	21-CA-153014	PARKVIEW COMMUNITY HOSPITAL MEDICAL CENTER
6/3/2015	12-CA-153478	MasTec, Inc.
6/12/2015	28-CA-154094	CCA of Tennessee, LLC
6/24/2015	12-CA-154795	MasTec Services Co.
6/25/2015	20-RC-154840	Arden Post Acute Rehab
7/10/2015	16-CA-156147	IN-N-OUT BURGER, INC.
7/16/2015	20-CA-156284	Adi Worldlink, LLC; Samsung Electronics America Inc.; Samsung Telecommunications
7/16/2015	21-CA-156140	PARKVIEW COMMUNITY HOSPITAL MEDICAL CENTER
7/20/2015	20-CA-156378	MEK ARDEN, LLC, d/b/a Arden Post Acute Rehab
7/20/2015	19-CA-156385	Lakeside School
7/20/2015	20-CA-156362	MEK ARDEN, LLC, d/b/a Arden Post Acute Rehab
7/20/2015	20-CA-156352	MEK ARDEN, LLC d/b/a Arden Post Acute Rehab
7/20/2015	20-CA-156408	MEK ARDEN, LLC, d/b/a Arden Post Acute Rehab
8/3/2015	14-CA-157217	AT&T Mobility
8/4/2015	20-CA-157363	MEK ARDEN, LLC, d/b/a Arden Post Acute Rehab
8/6/2015	14-CA-157475	AT&T Mobility
8/10/2015	07-CA-157722	Adi Worldlink, LLC; Samsung Electronics America, Inc.; Samsung Telecommunications Americas, LLC
8/14/2015	28-CA-158063	Ruan Transport
8/17/2015	01-CA-158125	HANDY TECHNOLOGIES, INC.
8/17/2015	01-CA-158144	HANDY TECHNOLOGIES, INC.
8/27/2015	14-CA-158833	Uber Technologies, Inc.
9/2/2015	32-CA-159357	HACIENDA MOTORS LTD, D/B/A MERCEDES BENZ OF PLEASANTON
9/3/2015	20-CA-159477	S&C Ramirez Enterprises, Inc. d/b/a McDonald's of Laguna Creek and McDonald's USA, LLC, as Joint Emp
9/3/2015	31-CA-159348	Pacific Bell Telephone Company d/b/a AT&T
9/9/2015	16-CA-159605	Con-way Freight Inc.
9/17/2015	31-CA-160206	Pacific Bell Telephone Company dba AT&T
9/17/2015	31-CA-160207	Pacific Bell Telephone Company d/b/a AT&T
9/18/2015	20-CA-160321	Bauer's Intelligent Transportation, Inc.
9/24/2015	20-CA-160720	Uber Technologies, Inc.
9/24/2015	20-CA-160717	Uber Technologies, Inc.
9/25/2015	32-CA-160759	Browning-Ferris Industries of California, Inc., d/b/a BFI Newby Island Recyclery and FPR-II, LLC, d/
9/28/2015	31-CA-160949	Doubletree by Hilton Ontario Airport Hotel and Extreme Services, Inc., a joint employer
9/28/2015	31-CA-160950	Doubletree by Hilton Ontario Airport Hotel and Extreme Services, Inc., a joint employer
9/28/2015	01-RC-160788	W.B. MASON CO., INC.
9/28/2015	31-CA-160952	Doubletree by Hilton Ontario Airport Hotel and Extreme Services, Inc., a joint employer
9/28/2015	31-CA-160946	DT Management LLC d/b/a Doubletree by Hilton Ontario Airport Hotel and Extreme Services, Inc., a Joi
10/1/2015	01-CA-161120	W.B. MASON CO., INC.
10/2/2015	04-RC-161250	SR-73 and Lakeside Avenue Operations LLC d/b/a PowerBack Rehabilitation, 113 South Route 73
10/2/2015	01-CA-161183	MASTEC SERVICES COMPANY INC.
10/6/2015	01-CA-161428	W.B. MASON CO., INC.
10/7/2015	20-CA-161534	Bauer's Intelligent Transportation, Inc.
10/9/2015	20-CA-161965	S&C Ramirez Enterprises, Inc. d/b/a McDonald's of Laguna Creek and McDonald's USA, LLC, as Joint Emp
10/9/2015	20-CA-161990	S&C Ramirez Enterprises, Inc. d/b/a McDonald's of Laguna Creek and McDonald's USA, LLC, as Joint Emp
10/9/2015	01-CA-161697	W.B. MASON CO., INC.

10/15/2015	32-CA-161992	HACIENDA MOTORS LTD, D/B/A MERCEDES BENZ OF PLEASANTON
10/19/2015	14-CA-162155	AT&T Mobility
10/19/2015	28-CA-162138	SW General, Inc. d/b/a Southwest Ambulance
10/21/2015	01-CA-162391	W.B. MASON CO., INC.
10/26/2015	09-RD-162692	GARDAWORLD D/B/A GARDA CL CENTRAL, INC.
10/28/2015	01-CA-162884	W.B. MASON CO., INC.
10/28/2015	21-CA-162854	PARKVIEW COMMUNITY HOSPITAL MEDICAL CENTER
10/28/2015	21-CA-162885	PARKVIEW COMMUNITY HOSPITAL MEDICAL CENTER
10/28/2015	21-CA-162886	PARKVIEW COMMUNITY HOSPITAL MEDICAL CENTER
10/29/2015	28-CA-163008	Asarco, LLC
10/30/2015	13-CA-163062	Uber Technologies Inc.
10/30/2015	13-CA-163079	Postmates, Inc.
10/30/2015	07-CA-163131	Sysco Detroit LLC
10/30/2015	16-CA-163251	IN-N-OUT BURGER, INC.
11/5/2015	02-CA-163407	Alphabet Plaza LLC
11/6/2015	31-CA-163615	Doubletree by Hilton Ontario Airport Hotel and Extreme Services, Inc., a joint employer
11/6/2015	21-CA-163614	XPO Port Services, Inc.
11/12/2015	28-CA-164048	Rural/Metro Corporation d/b/a Southwest Ambulance
11/16/2015	04-CA-164351	Kiss Electric LLC
11/17/2015	21-CA-164419	PARKVIEW COMMUNITY HOSPITAL MEDICAL CENTER
11/17/2015	21-CA-164423	PARKVIEW COMMUNITY HOSPITAL MEDICAL CENTER
11/18/2015	21-CA-164483	XPO Cartage, Inc.
11/20/2015	31-CA-164719	Pacific Bell Telephone Company d/b/a AT&T
11/23/2015	12-CA-164804	Coastal International Security, Inc. and COGAR Group, LTD., as joint employers
11/30/2015	12-CA-165310	Riverwood Health NH LLC, d/b/a Riverwood Health & Rehabilitation Center
12/3/2015	07-CA-165384	Michigan Bell Telephone Company
12/3/2015	31-CA-165442	Doubletree by Hilton Ontario Airport Hotel
12/15/2015	07-CA-166130	Michigan Bell Telephone Company
12/21/2015	10-CA-166500	Volkswagen Group of America, Inc.
12/31/2015	28-CA-166915	IGT d/b/a International Game Technology
1/4/2016	04-CA-166954	Kiss Electric LLC
1/5/2016	05-CA-167137	Thesis Painting, Inc.
1/12/2016	20-CA-167627	Bauer Intelligent Transportation, Inc.
1/14/2016	16-CA-167774	Blanchard Refining Company LLC (Marathon Petroleum, Galveston Bay Refinery)
1/14/2016	16-CA-167783	Blanchard Refining Company LLC (Marathon Petroleum, Galveston Bay Refinery)
1/14/2016	16-CA-167837	Blanchard Refining Company LLC (Marathon Petroleum, Galveston Bay Refinery)
1/14/2016	16-CA-167857	BLANCHARD REFINING COMPANY LLC (MARATHON PETROLEUM, GALVESTON BAY REFINERY)
1/27/2016	01-CA-168468	MASTEC NORTH AMERICA, INC.
2/1/2016	18-CA-168834	MAYO CLINIC HEALTH SYSTEM
2/12/2016	21-CA-169753	XPO Port Services, Inc.
2/18/2016	12-CA-169882	The Cogar Group LTD.
2/24/2016	12-CA-170537	Greystone Healthcare Management Corp.
2/29/2016	07-CA-170664	Michigan Bell Telephone Company
3/3/2016	22-CA-171078	Phillips 66 BAYWAY REFINERY
3/7/2016	15-CA-171184	Nissan North America, Inc.
3/7/2016	09-CA-171227	HORSESHOE CINCINNATI MANAGEMENT, LLC
3/7/2016	05-CA-171820	Canam
3/8/2016	28-CA-171391	Hilton Worldwide, Inc. d/b/a Hilton Phoenix Suites / Hospitality Ventures Management - Phoenix, LLC
3/16/2016	15-CA-171931	Electrolux Home Products Inc

3/21/2016	31-CA-172508	AT&T Corporation
3/21/2016	31-CA-172486	AT&T Corporation
3/21/2016	31-CA-172878	AT&T Corporation
3/21/2016	13-CA-172224	Air Express International USA, Danzas Corporation and DHL Global Forwarding, a Single Integrated Ent
3/23/2016	31-CA-172880	AT&T Corporation
3/25/2016	01-CB-172600	INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 251 (Rhode Island Hospital)
3/28/2016	05-CA-172941	Certified Building Services, Inc.
3/30/2016	05-CA-172905	Thesis Painting, Inc.
3/31/2016	28-CA-172968	Smith's Food & Drug Centers, Inc. d/b/a Fry's Food Stores, Fry's Marketplace, and Fry's Mercado
4/1/2016	12-CA-173125	Uber Technologies, Inc.
4/6/2016	16-CA-173485	BLANCHARD REFINING COMPANY LLC (MARATHON PETROLEUM, GALVESTON BAY REFINERY)
4/8/2016	10-CA-173537	PruittHealth-Virginia Park, LLC
4/13/2016	18-CA-174200	MAYO CLINIC HEALTH SYSTEM
4/15/2016	16-CA-174370	Blanchard Refining Company LLC
4/20/2016	21-RC-174486	K&N Engineering, Inc.
4/20/2016	28-CA-174526	IGT d/b/a International Game Technology
4/22/2016	21-RC-174700	K&N Engineering, Inc.
4/22/2016	15-CA-174689	Electrolux Home Products, Inc.
4/25/2016	25-CA-174860	ATT
4/25/2016	28-CA-174792	Hilton Worldwide, Inc. d/b/a Hilton Phoenix Suites
4/26/2016	22-CA-175081	ATLANTIC NORTHEAST TRANSPORT, INC.
4/28/2016	22-CA-175208	Roman Security Agency, LLC
5/2/2016	15-CA-175295	Nissan North America, Inc.
5/3/2016	21-CA-175414	XPO Cartage, Inc.
5/3/2016	04-CA-175450	Quality Dining, Inc. and Grayling Corporation (collectively "Quality Dining")
5/9/2016	16-CA-176006	Securitas Security Services USA
5/11/2016	13-CA-176020	Republic Services, Inc.
5/12/2016	20-CA-176151	YP Advertising & Publishing, LLC
5/16/2016	20-CA-176434	Delta Sandblasting Company, Inc.
5/16/2016	32-CA-176353	WALNUT CREEK ASSOCIATES 2, INC., D/B/A WALNUT CREEK HONDA
5/18/2016	05-CA-176501	CarMax Auto Super Stores, Inc.
5/19/2016	07-CA-176618	Michigan Bell Telephone Company
5/24/2016	01-RC-176909	IGT GLOBAL SOLUTIONS
5/24/2016	12-CA-176913	Greystone Healthcare Management Corp.
5/24/2016	22-CA-177315	Gargiulo Produce
5/26/2016	07-CA-177201	Michigan Bell Telephone Company
6/1/2016	01-CA-177470	BROWN UNIVERSITY
6/1/2016	01-CA-177383	W.B. MASON CO., INC.
6/1/2016	22-CA-177431	GARGIULO PRODUCE
6/2/2016	29-CA-177483	Uber Technologies, Inc.
6/3/2016	05-RC-177566	Certified Building Services, Inc.
6/7/2016	05-CA-177884	Certified Building Services, Inc. (CBS)
6/8/2016	01-CA-177957	HEYWOOD HOSPITAL
6/15/2016	01-CA-178445	BROWN UNIVERSITY
6/15/2016	13-CA-178386	XPO Logistics Freight, Inc.
6/16/2016	28-CA-178430	Hospitality Ventures Management - Phoenix, LLC d/b/a Hilton Phoenix Suites
6/20/2016	05-CA-178637	AT&T Mobility, LLC
6/20/2016	22-CA-178676	Roman Security Agency, LLC
6/21/2016	22-CA-178936	Uber Technologies, Inc.

6/21/2016	13-CA-178720	XPO Logistics Freight, Inc.
6/23/2016	05-CA-179000	Certified Building Services, Inc.
6/28/2016	15-CA-179156	Electrolux Home Products, Inc.
7/5/2016	22-CA-179479	Roman Security Agency, LLC
7/6/2016	02-CA-179606	Alphabet Plaza LLC
7/8/2016	13-CA-179835	XPO Logistics Freight, Inc.
7/11/2016	12-CA-179859	XPO Logistics Freight, Inc.
7/12/2016	04-CA-180051	Kiss Electric LLC
7/13/2016	28-CA-180066	Hilton Worldwide, Inc. d/b/a Hilton Phoenix Suites
7/13/2016	09-CA-180079	U.S. BANK CORP
7/18/2016	15-CA-180460	Electrolux Home Products, Inc.
7/19/2016	10-CA-180400	AMICO
7/20/2016	32-CA-180490	Delta Sandblasting Co., Inc.
7/20/2016	02-CA-180470	Arbor Recycling and Arbor Lite Logistics, A Singler Employer
7/20/2016	32-CA-180523	SOLARCITY CORP.
7/21/2016	28-CA-180650	DirectEnergy
7/21/2016	01-CA-180555	Norwalk Hospital
7/22/2016	31-CA-180922	AT&T Corporation
7/22/2016	16-CA-180656	Blanchard Refining Company LLC
7/26/2016	20-CA-181043	Tavistock Freebirds, LLC, d/b/a Freebirds World Burrito
7/27/2016	20-CA-181146	Uber Technologies, Inc.
7/27/2016	20-CA-181140	YP Advertising & Publishing, LLC
7/27/2016	02-RC-180977	Arbor Recycling Inc. and Arbor Lite Logistics Inc., a Single Employer
7/28/2016	13-CA-181085	Hilton Management, LLC
8/2/2016	15-CA-181339	Advanced Distributor Products, d/b/a ADP and EMI Staffing, as joint and/or single employers
8/4/2016	16-CA-181784	BLANCHARD REFINING COMPANY (MARATHON PETROLEUM, DBA GALVESTON BAY REFINERY)
8/5/2016	02-CA-181662	Alphabet Plaza LLC
8/8/2016	08-CA-181769	GREYHOUND LINES, INC.
8/8/2016	19-CA-181918	Coca-Cola Refreshment
8/8/2016	02-CA-181671	Trinet, Inc.
8/10/2016	19-CA-181845	Dave & Buster's Management Corporation, Inc.
8/11/2016	12-CA-181961	Uber Technologies, Inc.
8/12/2016	05-CA-182120	Certified Building Services, Inc. (CBS)
8/17/2016	21-CA-182368	CBRE, INC.; CBRE GROUP, INC.
8/17/2016	12-CA-182269	The Cogar Group Ltd.
8/17/2016	13-CA-182280	XPO Logistics Freight, Inc.
8/18/2016	07-CA-182490	Michigan Bell Telephone Company and AT & T Services, Inc., Joint Employers
8/18/2016	07-CA-182505	Michigan Bell Telephone Company, AT&T Services, Inc., Joint Employers
8/19/2016	16-CA-182528	NATIONAL CAPTIONING INSTITUTE, INC.
8/24/2016	22-CA-182929	Raymour & Flanagan
8/29/2016	25-CA-183118	Industrial Contractors SKANSKA Inc.
8/31/2016	12-CA-183426	Sumter Electric Co-op, Inc.
9/1/2016	21-CA-183490	XPO Cartage, Inc.
9/6/2016	22-RC-183715	Fond Du Lac Cold Storage, Inc.
9/7/2016	15-CA-183758	Electrolux Home Products, Inc.
9/9/2016	31-CA-187065	Thrifty Payless, Inc. d/b/a Rite Aid
9/12/2016	29-CB-184174	1199SEIU Healthcare Workers East (Home Health Care Services of NY)
9/15/2016	07-CA-184466	NES Management Services
9/19/2016	07-CA-184669	Michigan Bell Telephone Company

9/26/2016	08-RC-184947	Cristal USA, Inc.
9/27/2016	12-CA-185128	The Cogar Group, Ltd.
9/27/2016	12-CA-185131	The Cogar Group, Ltd.
9/29/2016	13-CA-185269	XPO Logistics Freight, Inc.
9/30/2016	16-CA-185396	Fred Meyer Jewelers, Inc.
9/30/2016	32-CA-185336	HACIENDA MOTORS LTD, D/B/A MERCEDES BENZ OF PLEASANTON
10/5/2016	13-CA-185708	AT&T Services, Inc.
10/7/2016	16-CA-185894	EFH/Luminant Generation, Luminant Mining and Oak Grove Management Company LLC
10/17/2016	19-CA-186426	Coca-Cola
10/18/2016	31-CA-186791	AT&T Corporation
10/20/2016	31-CA-187104	Torrance Memorial Medical Center
10/20/2016	25-CA-186577	AT&T Mobility
10/20/2016	31-CA-186782	AT&T Corporation
10/21/2016	25-CA-186676	AT&T Mobility Service, LLC
10/21/2016	25-CA-186900	Industrial Contractors SKANSKA
10/24/2016	18-CA-186808	The Pavilion at Glacier Valley and Fundamental Administrative Services, LLC as joint employers and/o
10/24/2016	02-CA-186760	ARBOR LITE LOGISTICS, LLC.
10/24/2016	08-CA-186742	Renzenberger, Inc./ Hallcon, inc.
10/24/2016	14-CA-186718	Continental Carbon Company
10/25/2016	02-CA-186930	Arbor Recycling/Arbor Lite Logistics
10/25/2016	09-CA-186932	COCA COLA REFRESHMENTS
10/27/2016	12-CA-187130	XPO Logistics Freight, Inc.
10/31/2016	02-CA-187364	Grand Central Partnership
11/1/2016	13-CA-187408	XPO Logistics Freight, Inc.
11/1/2016	28-CA-187389	First Transit, Inc.
11/8/2016	18-CA-187960	RAILPROS FIELD SERVICES, INC.
11/9/2016	18-CA-187896	ST. PAUL PARK REFINING CO. LLC D/B/A WESTERN REFINING
11/15/2016	09-CA-188189	COCA-COLA BOTTLING CO., CONSOLIDATED
11/18/2016	10-CA-188435	Ecolab
11/18/2016	02-CA-188504	Arbor Recycling/Arbor Lite Logistics
11/21/2016	29-CA-188517	East End Bus Lines, Inc. and Floyd Bus Company, Inc., A Single Employer
11/21/2016	08-RC-188482	Cristal USA Inc.
11/25/2016	06-CA-188763	Duquesne Light Company
11/28/2016	22-CA-188891	Alarm & Suppression Company t/a ASCO Fire
11/29/2016	01-CA-188907	New Milford Hospital of the Western Connecticut Health Network
11/29/2016	01-CA-188905	Danbury Hospital of the Western Connecticut Health Network
12/1/2016	29-CA-189103	Home Health Care Services of NY d/b/a HCS Home Care
12/5/2016	05-CA-189287	Capital Health Care Associates, Inc. d/b/a Capital City Nurses, LLC
12/8/2016	29-CA-189537	Michigan Logistics Inc. and Northeast Logistics, Inc et. al.
12/9/2016	25-CA-189600	Independent Federal Credit Union
12/9/2016	13-CA-189647	XPO Logistics Freight, Inc.
12/12/2016	13-CA-189641	American Drug Stores, Inc. d/b/a Osco Drug
12/13/2016	31-CA-190062	AT&T Corporation
12/13/2016	28-CA-189731	XPO Freight
12/15/2016	13-CA-189910	AT&T Mobility, LLC
12/15/2016	12-CA-190122	GMRI, Inc. d/b/a Olive Garden Italian Restaurant #1069
12/15/2016	13-CA-190099	XPO Logistics Freight, Inc.
12/21/2016	01-CA-190228	RHODE ISLAND HOSPITAL
12/21/2016	09-CB-190291	INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO (IAM) LOCAL LODGE 619 (Legget

12/21/2016	16-CA-190316	EFH/Luminant Generation, Luminant Mining and Oak Grove Management Company LLC
12/22/2016	09-CA-190483	AVI FOOD SYSTEMS INC.
12/22/2016	13-CA-190344	XPO Logistics Freight, Inc.
12/23/2016	21-CA-190505	Pacific Bell Telephone Company d/b/a AT&T California
1/3/2017	01-CA-190701	RHODE ISLAND HOSPITAL
1/4/2017	15-CA-190791	Nissan North America, Inc., Nissan Canton Mississippi Vehicle Plant
1/9/2017	19-CA-191053	MaxSent Security
1/9/2017	19-CA-191066	MaxSent Security
1/11/2017	32-CA-191145	HACIENDA MOTORS LTD D/B/A MERCEDES BENZ OF PLEASANTON
1/17/2017	09-CA-191313	LEGGETT & PLATT INC
1/18/2017	05-CA-191546	Spectrum-CBS JV LLC
1/20/2017	10-CA-191620	Volkswagen Group of America Chattanooga Operations, LLC
1/20/2017	18-CA-191570	The Pavilion at Glacier Valley and Fundamental Administrative Services, LLC as joint employers and/o
1/20/2017	10-CA-191622	Ecolab
1/23/2017	28-CA-191628	AT&T Mobility, LLC
1/23/2017	05-CA-191850	Golden Svcs, LLC
1/25/2017	04-CA-191770	XPO Logistics Freight, Inc.
1/26/2017	01-CA-191903	XPO Logistics, Inc.
1/26/2017	05-CA-192328	American Security Programs, Inc.
1/30/2017	28-CA-192062	IGT d/b/a International Game Technology
1/31/2017	01-CA-192172	Stop and Shop
1/31/2017	31-CA-192346	Torrance Memorial Medical Center
2/1/2017	15-CA-192249	Waste Management of Mississippi, Inc.
2/1/2017	22-CA-192191	The Manischewitz
2/2/2017	06-CA-192407	Dynegy Fayette II, LLC
2/3/2017	21-CA-192602	XPO CARTAGE, INC.
2/3/2017	18-CA-192436	ST. PAUL PARK REFINING CO. LLC
2/10/2017	20-CA-192922	The Bohemian Club
2/14/2017	29-CA-193074	Michigan Logistics Inc. and Northeast Logistics, Inc. d/b/a Diligent Delivery System; KKLDS, Inc. an
2/14/2017	20-CA-193158	Pacific Gas & Electric Company
2/15/2017	06-CA-193355	Cumberland Health Care, LLC and Fundamental Administrative Services, LLC, an agent of Cumberland Hea
2/15/2017	31-CA-193210	Neovia
2/16/2017	10-RC-193205	The Vanderbilt University
2/17/2017	28-CA-193314	Freedomroads, LLC and Arizona RV Centers, LLC, Joint Employers
2/21/2017	18-CA-193476	LAND O'LAKES, INC.
2/21/2017	28-CA-193521	Hilton Grand Vacations Company, LLC d/b/a Elara
2/22/2017	10-CA-193518	First Transit
2/24/2017	28-CA-193733	IGT d/b/a International Game Technology
2/27/2017	05-CA-194058	XPO Drayage, Inc.
2/28/2017	08-CA-193878	CoreCivic
2/28/2017	32-CA-193928	SOC Nevada, LLC
3/1/2017	09-CA-194057	LEGGETT & PLATT, INC.
3/2/2017	29-CA-194097	East End Bus Lines, Inc. and Floyd Bus Company, Inc. as a single employer (Teamsters Local Union No.
3/3/2017	15-CA-194155	Nissan North America, Inc.
3/3/2017	21-CA-194320	K & N ENGINEERING, INC.
3/8/2017	15-CA-194543	GSE FACILITY SERVICES, LLC
3/8/2017	19-CA-194484	The GEO Group
3/8/2017	15-CA-194530	GSE Facility Services, LLC
3/10/2017	18-CA-194588	ST. PAUL PARK REFINING CO. LLC

3/15/2017	18-CA-194923	ST. PAUL PARK REFINING CO. LLC
3/15/2017	04-CA-194863	TenEx Technologies, LLC; Prime Rock Energy Capital, LLC; and Preferred Proppants, LLC d/b/a Preferre
3/16/2017	14-UD-194983	Bilfinger Industrial Services, Inc.
3/16/2017	15-CA-195155	E & A Protective Services - Bravo, LLC
3/16/2017	28-CA-195042	Hilton Grand Vacations Club, LLC d/b/a Elara by Hilton
3/17/2017	29-CA-195131	Fortune Metal, Inc.
3/20/2017	28-CA-195173	Hearts with Helping Hands
3/20/2017	01-CB-195100	Connecticut Health Care Associates (Norwalk Hospital)
3/20/2017	07-CA-195085	Coca-Cola Refreshments USA, Inc.
3/22/2017	15-CA-195326	Nissan North America, Inc., Nissan Canton Mississippi Vehicle Assembly Plant
3/22/2017	31-CA-195414	Terminix
3/23/2017	19-CA-195581	National Container Group
3/27/2017	02-CA-195794	Arbor Recycling and Arbor Lite Logistics, as a single employer
3/27/2017	12-CB-195550	United Government Security Officers of America, Local 270 (The COGAR Group Ltd., Inc.)
3/27/2017	29-CA-195556	Santander Bank
3/27/2017	29-CB-195668	1199 SEIU United Healthcare Workers East
3/27/2017	20-CA-195762	DS Cargo Inc. d/b/a Clock Freight
3/30/2017	12-CA-195911	The Cogar Group Ltd.
3/30/2017	13-CA-195831	XPO Logistics Freight
3/30/2017	13-CA-195933	XPO Logistics Freight, Inc.
4/3/2017	09-CA-196106	AT & T/OHIO BELL TELEPHONE COMPANY
4/4/2017	01-CA-196326	AT&T Mobility
4/4/2017	31-CA-196355	Hallcon Corporation
4/5/2017	04-CA-196296	Fed Ex Supply Chain
4/6/2017	09-CA-196426	LEGGETT & PLATT, INC.
4/6/2017	18-CA-196385	Ascension - All Saints
4/7/2017	13-CA-196455	Jewel Food Stores, Inc.
4/7/2017	13-CA-196437	Northern Indiana Public Service Company (NIPSCO)
4/10/2017	29-RC-196704	Astra Home Care d/b/a True Care Home Care
4/10/2017	13-CA-196557	Chicago Hilton and Towers
4/10/2017	09-CA-196608	LEGGETT & PLATT, INC.
4/10/2017	15-CA-196609	Waste Management, Inc.
4/11/2017	10-CA-196647	Bright Horizons Children Centers LLC
4/11/2017	13-CA-196637	XPO Logistics Freight, Inc.
4/12/2017	01-CA-196743	Western Connecticut Health Network d/b/a Norwalk Hospital
4/12/2017	13-CA-196718	XPO Logistics Freight, Inc.
4/12/2017	13-CA-196766	XPO Logistics Freight, Inc.
4/12/2017	31-CA-196793	BEVERLY HILTON HOTEL
4/12/2017	12-CA-196657	The Cogar Group Ltd.
4/13/2017	19-CA-196883	Security Industry Specialists, Inc.
4/13/2017	15-CA-196765	Baptist East Hospital
4/17/2017	32-CA-197058	Tesla Motors Corporation
4/17/2017	02-CA-197086	Xi'an Famous Foods
4/17/2017	32-CA-197020	Tesla Motors Corporation
4/18/2017	29-CA-197215	Clare Rose, Inc.
4/18/2017	32-CA-197091	Tesla Motors Corporation
4/19/2017	29-CA-197222	Clare Rose, Inc.
4/19/2017	32-CA-197197	Tesla Motors Corporation
4/20/2017	15-CA-197194	Nissan North America, Inc., Nissan Canton Mississippi Vehicle Assembly Plant

4/20/2017	29-CA-197364	Clare Rose, Inc.
4/20/2017	29-CA-197371	Clare Rose, Inc.
4/21/2017	15-CA-197410	Waste Management of Tennessee
4/21/2017	20-CA-197592	Clock Freight
4/21/2017	15-CA-197400	Waste Management of Tennessee
4/21/2017	21-CA-197434	KINDRED HOSPITAL RIVERSIDE
4/24/2017	21-RC-197484	Eagle Marine Services, LTD
4/27/2017	32-CA-197697	Hacienda Motors LTD dba Mercedes Benz of Pleasanton
4/27/2017	20-CA-197848	The Bohemian Club
4/28/2017	14-CA-197789	Waste Management
4/28/2017	29-CB-197793	1199 SEIU United Healthcare Workers East (Astra Home Care, Inc. d/b/a True Care Home Care)
4/28/2017	12-CA-197854	The Cogar Group Ltd.
5/1/2017	03-CA-197821	Frontier Telephone of Rochester Inc. and/or its parent Frontier Telecommunications
5/1/2017	13-CA-197878	XPO Logistics Freight, Inc.
5/1/2017	18-CA-197847	Milwaukee Forge
5/1/2017	22-CA-197915	ROMAN SECURITY AGENCY, LLC.
5/3/2017	19-CA-198064	Security Industry Specialists, Inc.
5/3/2017	13-CA-198098	Pacific Rail Services
5/4/2017	01-CA-198121	Tufts New England Medical Center
5/4/2017	12-CA-198184	Leapforce, Inc. and Google, Inc., Joint Employers
5/4/2017	32-CA-198129	Hacienda Motors LTD dba Mercedes Benz of Pleasanton
5/4/2017	16-CA-198389	On Center Software, Inc.
5/5/2017	15-CA-198227	National Park Medical Center
5/5/2017	12-CA-198259	Pratt & Whitney
5/5/2017	20-CA-198303	Clock Freight
5/8/2017	25-CA-198287	Fuyao Glass Illinois
5/8/2017	16-CA-198468	Southstar
5/9/2017	25-CA-198405	Novelis Corporation
5/9/2017	25-CA-198420	Novelis Corporation
5/10/2017	31-CA-198789	AT&T Corporation
5/10/2017	31-CA-198787	AT&T Corporation
5/11/2017	13-CA-198642	XPO
5/12/2017	29-CA-198727	Clare Rose, Inc.
5/12/2017	32-CD-198681	International Brotherhood of Electrical Workers Local 332 (Rudolph and Sletten)
5/15/2017	10-CA-198732	Nissan North America, Inc.
5/15/2017	21-CA-198932	ATT
5/15/2017	12-CA-198840	Target Corporation
5/16/2017	28-CA-198964	Hilton Scottsdale Resort & Villas
5/16/2017	28-CA-198960	Hilton Scottsdale Resort & Villas
5/16/2017	28-CA-198966	Hilton Scottsdale Resort & Villas
5/17/2017	05-CA-198996	Trader Joe's
5/17/2017	19-CA-199000	Uber Technologies Inc.
5/18/2017	19-CA-199094	Leapforce Inc. and Google, Inc, Joint Employers
5/22/2017	31-CA-199405	AT&T Corporation
5/23/2017	01-CA-199338	Western Connecticut Health Network
5/24/2017	08-CA-199384	Hilton Hotel
5/26/2017	20-CA-199740	AT&T Mobility Services LLC
5/26/2017	01-CA-199588	AT&T Mobility
5/26/2017	20-CA-199781	AT&T Mobility Services LLC

5/26/2017	20-CA-199773	AT&T MOBILITY SERVICES LLC
5/26/2017	22-CA-199648	Hilton Newark Airport
5/26/2017	20-CA-199734	AT&T Mobility Services LLC
5/26/2017	20-CA-199778	AT&T Mobility Services LLC
5/26/2017	20-CA-199729	AT&T Mobility Services LLC
5/26/2017	20-CA-199742	Performance Mechanical, Inc.
5/26/2017	20-CA-199746	AT&T Mobility Services LLC
5/30/2017	14-CA-199642	AT&T
5/30/2017	20-CA-199767	AT&T Mobility Services LLC
5/30/2017	20-CA-199777	AT&T Mobility Services LLC
5/30/2017	04-CA-199687	New England Motor Freight
5/31/2017	06-CA-199753	Robert Morris University
6/1/2017	13-CA-199905	XPO Logistics Freight, Inc.
6/1/2017	32-CA-199929	Community Solutions for Children, Families and Individuals
6/1/2017	21-CA-199963	PRIME HEALTHCARE SERVICE LLC-WEST ANAHEIM MEDICAL CENTER
6/1/2017	02-CA-199877	Alphabet Plaza, LLC
6/2/2017	09-CA-199943	FUYAO GLASS AMERICA, INC
6/2/2017	12-CA-199967	The Cogar Group Ltd.
6/5/2017	31-CA-200038	Rite Aid (Thrifty Payless)
6/5/2017	10-CB-200075	Air Engineering Metal Trades Council
6/5/2017	21-CA-200165	DR PEPPER SNAPPLE GROUP (DPSG)
6/5/2017	20-CA-200185	AT&T Mobility Services LLC
6/5/2017	31-CA-200040	Rite Aid (Thrifty Payless)
6/5/2017	01-CA-200087	Western Connecticut Health Network d/b/a Norwalk Hospital
6/7/2017	21-CA-200323	DR PEPPER SNAPPLE GROUP (DPSG)
6/7/2017	15-CA-200249	Outokumpu Stainless USA, LLC f/k/a Thyssenkrupp Stainless USA, LLC
6/7/2017	15-CA-200289	Sasol (USA) Corporation
6/7/2017	22-CA-200286	Fond Du Lac Cold Storage
6/8/2017	20-CA-200394	Mondelez Global, LLC(Nabisco)
6/8/2017	08-CA-200330	Cristal USA, Inc.
6/8/2017	08-CA-200335	Millennia/ Summit Ridge
6/9/2017	09-RD-200329	LEGGETT & PLATT, INC.
6/9/2017	19-CA-200451	Matson Navigation Company of Alaska, LLC
6/9/2017	20-CA-200459	Bohemian Club
6/9/2017	25-CA-200480	AT&T SERVICES, INC.
6/9/2017	05-CA-200597	AT&T Mobility
6/9/2017	20-CA-200467	Bohemian Club
6/9/2017	05-CA-200589	AT&T Mobility
6/9/2017	05-CA-200895	American Security Programs
6/12/2017	04-UC-200537	Lehigh Valley Hospital -Schuylkill
6/12/2017	32-CA-200530	Tesla Motors Corporation
6/12/2017	04-UC-200541	Lehigh Valley Hospital-Schuylkill
6/13/2017	10-CA-200558	TeleTech Healthcare Solutions, Inc., and United Healthcare, Inc., joint employers
6/13/2017	10-CA-200556	TeleTech Healthcare Solutions, Inc. and United Healthcare Inc., joint employers
6/14/2017	12-CA-200581	XPO Freight
6/14/2017	03-CA-200631	Orange County Transit, LLC
6/14/2017	28-CB-200644	Teamsters, Chauffeurs, Warehousemen and Helpers Local 631 (Aggregate Industries, Inc. Southwest Regi
6/15/2017	12-CA-200709	Select Staffing and Hit Promotional Products, Inc., Joint Employers
6/15/2017	08-CA-200737	Cristal USA, Inc.

6/15/2017	19-CA-200734	Security Industry Specialists, Inc.
6/15/2017	12-CB-200784	International Brotherhood of Electrical Workers, system Council U-8, Representing IBEW Locals 433, 6
6/16/2017	31-CA-200912	Rite Aid Corporation
6/16/2017	01-CA-200830	Pratt & Whitney
6/16/2017	08-CA-200788	DialAmerica Marketing, Inc.
6/16/2017	28-CA-200805	AT&T Mobility LLC
6/16/2017	28-CA-200802	AT&T Mobility LLC
6/19/2017	10-CA-200964	Bright Horizons Children Centers LLC
6/19/2017	08-CB-200869	Communications Workers of America, Local 4320 (AT&T)
6/20/2017	08-CA-200944	AT&T
6/20/2017	06-RC-200922	Gulf Management Services, L.P.
6/21/2017	13-CA-201053	Turano Baking Company
6/21/2017	20-CA-201070	Seven-Up Bottling Co.
6/22/2017	18-CA-201134	MINERS INC, SUPER ONE HARBOR VIEW AND SUPER ONE OAKS SUPERIOR WISCONSIN
6/23/2017	29-CA-201456	Astra Home Care d/b/a True Care Home Care
6/23/2017	09-CA-201391	FUYAO GLASS AMERICA, INC
6/23/2017	16-CA-201396	Argos USA LLC
6/26/2017	32-RC-201317	Sierra Pacific Power Company d/b/a NV Energy
6/26/2017	12-CA-201338	Best Buy
6/27/2017	20-CA-201603	AT&T Mobility Services, LLC
6/27/2017	31-CA-201503	ServiceMaster
6/27/2017	32-CA-201455	AT&T Mobility Services, LLC
6/27/2017	21-CA-201523	AT&T MOBILITY SERVICES, LLC
6/27/2017	09-CA-201335	COCA COLA BOTTLING CO. CONSOLIDATED
6/27/2017	20-CA-201607	AT&T Mobility Services, LLC
6/28/2017	01-RC-201501	RHODE ISLAND HOSPITAL
6/28/2017	13-CA-201505	Ruan
6/30/2017	18-CA-201746	AT&T MOBILITY
6/30/2017	25-RC-201695	Central Processing Corp.
6/30/2017	06-RM-201714	Dynegy Fayette II, LLC
7/5/2017	08-CA-201806	Cristal USA Inc.
7/6/2017	21-CA-201970	ONTRAC (COMMERCE FACILITY)
7/7/2017	05-RC-201968	The Cogar Group, Ltd.
7/10/2017	15-RC-202101	Nissan North America, Inc., Nissan Canton, Mississippi Vehicle Assembly Plant
7/10/2017	10-CA-202066	Bright Horizons Children Centers LLC
7/12/2017	21-CB-202349	SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 2015 (Buena Ventura Post Acute Care Center)



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

February 12, 2018

The Honorable Patty Murray
Committee on Health, Education, Labor, and
Pensions
U.S. Senate
428 Dirksen Senator Office Building
Washington, DC 20510

The Honorable Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce
U.S. House of Representatives
2101 Rayburn House Office Building
Washington, DC 20515

The Honorable Elizabeth Warren
U.S. Senate
317 Hart Senate Office Building
Washington, DC 20510

The Honorable Gregorio Kilili Camacho Sablan
U.S. House of Representatives
2411 Rayburn House Office Building
Washington, DC 20515

The Honorable Margaret Wood Hassan
U.S. Senate
330 Hart Senate Office Building
Washington, DC 20510

The Honorable Donald Norcross
U.S. House of Representatives
1531 Longworth House Office Building
Washington, DC 20515

Dear Members of Congress:

This will clarify certain answers in my letter dated January 26, 2018, relating to the National Labor Relations Board's decision in *Hy-Brand Industrial Contractors (Hy-Brand)* and the remand of *Browning-Ferris Industries (BFI)* and *Volkswagen Group of America (Volkswagen)*. All of the answers provided in that letter were provided to the best of my knowledge and recollection and I wish to amend that letter to add this statement. In addition, the following numbered responses are also clarified and amended as follows:

Response to Question 8:

To best of my knowledge and recollection, none occurred.

Response to Question 9:

To best of my knowledge and recollection, there was only one such communication as of the date of my January 26 letter, which I described in my earlier response and is incorporated by reference.

Response to Question 10:

To best of my knowledge and recollection, none occurred.

Response to Question 11:

To best of my knowledge and recollection, none occurred.

Response to Question 13:

I also wish to clarify and amend my response to question number 13. In response to that question, I originally stated that I was unaware that my former law firm had represented a party in the *BFI* case when it was pending before the Board approximately two years ago. Since the preparation of that response, it has come to my attention that two brief references to the *BFI* matter were made in the context of my confirmation hearing during the summer of 2017. I had not recalled these references when preparing my January 26, 2018 responses. I have now reviewed the two earlier references to the *BFI* case made following my confirmation hearing and clarify and amend my response to Question 13 as follows:

On December 15, 2017, I voted to direct the General Counsel to seek a remand of several Board decisions pending before the courts of appeals, including *BFI*. By unanimous vote of the Board members, that directive was rescinded on December 19, 2017. Copies of my email votes were previously provided, with redactions of deliberative process material. At the same time the directive was rescinded, the Board recognized that the General Counsel, as an officer of the court, has an independent ethical duty to notify the courts of recent Board decisions that might bear on holdings of cases pending before the courts, including *BFI* which was pending before the D.C. Circuit at that time, and stated its expectation that the General Counsel would continue to perform that ethical duty. It is my understanding that communications with the General Counsel are protected by the attorney-client privilege. On December 19, 2017, the General Counsel, on his own initiative and pursuant to his independent ethical duties, filed a motion with the D.C. Circuit seeking a remand of the pending *BFI* case.

During the December 15 – 19, 2017 timeframe—and also during the timeframe when I prepared the initial response to Question 13 as set forth in my January 26, 2018 letter—I did not recall learning that my former law firm (Littler Mendelson) represented Leadpoint Business Services, a party in the *BFI* case, when that case was previously pending before the Board. Since my January 26, 2018 letter, it has come to my attention that two brief references to the *BFI* matter were made to me in the context of my confirmation hearings during the summer of 2017. Specifically, when preparing the answers set forth in my January 26, 2018 letter, I did not recall that during my confirmation process in July 2017, Senator Murray included a statement as part of one of the many confirmation questions I received noting that a party in the *BFI* case was represented by my former firm. In my response to another one of Senator Murry's confirmation questions, I enclosed a list, prepared by my former law firm, of more than 500 cases worked on by attorneys at my former firm. If I had noticed the *BFI* matter on this lengthy list of cases worked on by attorneys at my former law firm (I do not believe I did notice it during my confirmation process), I did not recall that fact over six months later at the time I prepared the original responses to my questions that are contained in my January 26, 2018 letter.

Littler Mendelson is a huge law firm of more than 1,000 lawyers, and I was involved in only a small fraction of the firm's practice. To the best of my recollection, I had no involvement in the *Browning Ferris* case, and to my knowledge none of the work on that case was performed in the firm's Los Angeles office, where my office was located. If the fact that my former firm had a role in the *BFI* case ever came to my attention while I was working at the firm, I did not have any recollection of that fact when I prepared the responses contained in my January 26 letter. In any event, it is my understanding that under Section 10(e) of the NLRA, the Board no longer had jurisdiction over the case as of the filing of the record in the related D.C. Circuit cases on March 14, 2016 (D.C. Cir. Case Nos. 16-1028, 16-1063, 16-1064). It is also my understanding that Leadpoint did not contest the Board's *BFI* decision in these proceedings before the D.C. Circuit, nor did Littler Mendelson enter an appearance with that court.

As I stated in response to your November 21, 2017 inquiry and pledged under Executive Order 13770, for two years following my appointment to the NLRB, I will recuse myself in all Board cases in which my "former employer," Littler Mendelson, or my own "former clients," are a party or represent a party. If Littler represents Leadpoint in the *BFI* case after being remanded to the Board, I will recuse myself from participation in that case, subject to the time limit in the Ethics Pledge. However, I firmly believe that I was

not required to recuse myself from voting for the directive to the General Counsel because, as noted above, Littler did not represent Leadpoint in the *BFI* case before the D.C. Circuit, the Board did not have jurisdiction over the case, and I had not recalled that Littler had ever represented any party when the case was before the Board. I also note that the directive to the NLRB's General Counsel at issue in this case was unanimously rescinded by the Board within three days and was not acted upon. In addition, the NLRB's Designated Agency Ethics Official has informed me in the presence of another Board official that, in her opinion, the directive did not result in an obligation that I recuse myself.

I trust that this information is helpful in satisfying your inquiry on this subject.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Emanuel". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

William J. Emanuel
Board Member

Congress of the United States
Washington, DC 20515

January 16, 2018

The Honorable Marvin Kaplan
Chairman
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dear Chairman Kaplan:

We write to respectfully request an extension of sixty days—until April 13, 2018—to the response deadline in the National Labor Relations Board’s (NLRB) Request for Information (RFI) on whether to retain, rescind, or modify the 2014 Representation-Case Procedures rule (Election Rule).¹

The NLRB published the RFI in the *Federal Register* on December 14, 2017 and required that any responses be submitted by February 12, 2018—sixty days after the RFI was published. The RFI provided no data, and neither cited nor solicited any information on how the NLRB’s representation case procedures function in practice.

On December 21, a week after the NLRB published the RFI, we requested data regarding the Election Rule’s implementation by January 19, 2018, in order to provide enough time to analyze the data and ensure the comments you receive are empirically grounded. However, discussions between NLRB staff and our Committee staff have made clear that the NLRB will be unable to provide any of the information requested by the deadline. Moreover, staff has been informed that the NLRB will be unable to produce the requested information until mid-to-late February, after the close of the comment period. We request that, in order to take advantage of the requested data in a meaningful way, the deadline for comments be extended to April 13, 2018—an additional 60 days from the current deadline.

We hope you will agree that the RFI’s current deadline is problematic given the NLRB’s inability to produce the requested data in a timely manner. Extending the RFI response deadline to April 13 would furnish Congress with the information and the time necessary to provide informed responses to the RFI.

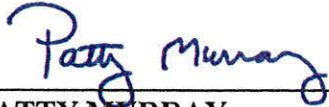
Thank you for your consideration of this request.

Please contact John D’Elia, Labor Counsel for the Senate Committee on Health, Education, Labor & Pensions (HELP) at John_DElia@help.senate.gov, Carly Rush, Deputy General Counsel for the Senate HELP Committee at Carly_Rush@help.senate.gov, and Kyle deCant, Labor Policy Counsel for the House Committee on Education and the Workforce at Kyle.deCant@mail.house.gov, if you have any questions about this request for an extension of time.

¹ 82 Fed. Reg. 58783 (Dec. 14, 2017).

The Honorable Marvin Kaplan
January 16, 2018
Page 2

Sincerely,



PATTY MURRAY
U.S. Senator
Ranking Member
Committee on Health, Education, Labor
and Pensions



ROBERT C. "BOBBY" SCOTT
U.S. Representative
Ranking Member
Committee on Education and the Workforce

cc: The Honorable Lamar Alexander
Chairman
U.S. Senate Committee on Health, Education, Labor and Pensions

The Honorable Virginia Foxx
Chairwoman
U.S. House of Representatives Committee on Education and the Workforce

Gary Shinnery
Executive Secretary
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

February 15, 2018

The Honorable Lamar Alexander
Chairman
Committee on Health, Education, Labor, and
Pensions
U.S. Senate
428 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and
Pensions
U.S. Senate
428 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Ron Johnson
Chairman
Ranking Member
Committee on Homeland Security and
Governmental Affairs
U.S. Senate
340 Dirksen Senate Office Building
Washington, DC, 20510

The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security and
Governmental Affairs
U.S. Senate
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Virginia Foxx
Chairwoman
Committee on Education and the Workforce
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

The Honorable Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce
U.S. House of Representatives
2101 Rayburn House Office Building
Washington, DC 20515

The Honorable Trey Gowdy
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

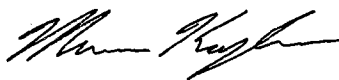
The Honorable Elijah Cummings
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives
2471 Rayburn House Office Building
Washington, DC 20515

Dear Members of Congress:

The Board is in receipt of the Inspector General's February 9, 2018, memorandum reporting the existence of "a Serious and Flagrant Problem and/or Deficiency in the Board's Administration of its Deliberative Process and the National Labor Relations Act with Respect to the Deliberation of a Particular Matter." We are evaluating the Inspector General's findings, considering appropriate actions related to Hy-Brand Industrial Contractors, Ltd.,

365 NLRB No. 156 (2017), and reviewing current procedures for highlighting and addressing recusal issues with the assistance of the Board's Designated Agency Ethics Official.

Sincerely,

A handwritten signature in black ink, appearing to read "Marvin Kaplan", written in a cursive style.

Marvin E. Kaplan
Chairman

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

February 9, 2018

To: Chairman Marvin E. Kaplan
Member Lauren McFerran
Member Mark Gaston Pearce

From: David P. Berry
Inspector General

A handwritten signature in dark ink, appearing to read "D. Berry", is written over the printed name and title of the sender.

Subject: Notification of a Serious and Flagrant Problem and/or Deficiency in the Board's
Administration of its Deliberative Process and the National Labor
Relations Act with Respect to the Deliberation of a Particular Matter

I have determined that there is a serious and flagrant problem and/or deficiency in the Board's administration of its deliberative process and the National Labor Relations Act with respect to the deliberation of a particular matter involving specific parties. In accordance with section 5(d) of the Inspector General Act, as amended, I am immediately providing this report to the Board. Section 5(d) requires that within seven calendar days of the date of this report, the Board shall transmit it to National Labor Relations Board's Congressional oversight committees, together with any report by the Board containing any comments that the Board deems appropriate.

Issue

During the course of investigating OIG-I-541, a matter involving the President's ethics pledge found in Executive Order 13770, it was necessary to determine if the Board's decision in *Hy-Brand Industrial Contractors, Ltd.*, 365 NLRB No. 156 (*Hy-Brand*), is the same "particular matter" as the "particular matter" in *Browning-Ferris Industries of California, Inc. d/b/a BFI Newby Island Recyclery*, 362 NLRB No 186 (*Browning-Ferris* or *BFI*). The necessity arises because Leadpoint, a party in *Browning-Ferris*, is represented by Member Emanuel's former law firm.

Executive Order 13770, the President's ethics pledge, prohibits an appointee from participating in a "particular matter involving specific parties" when the appointee's former employer or client is a party or represents a party. The ethics pledge defines "particular matter involving specific parties" as having the same definition found in 5 C.F.R. 2641.201(h)(1). That regulation is part of the regulatory guidance regarding post-employment restrictions found in 18 U.S.C. § 207. The pertinent part of the definition is as follows:

Particular Matter involving a specific party or parties . . . include[s] any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest or judicial or other proceedings, . . . only those particular matters that involve a specific party or parties fall within the prohibition . . . Such a matter typically includes a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license, product approval application, enforcement action, administrative adjudication, or court case.

The U.S. Office of Government Ethics provided guidance for the determination of whether two proceedings are in fact the same “particular matter:”

The same particular matter may continue in another form or in part. In determining whether two particular matters are the same, the agency should consider the extent to which the matters involve the same basic facts, related issues, the same or related parties, time elapsed, the same confidential information, and the continuing existence of an important Federal interest.

This guidance is also found in 5 C.F.R. 2641.201(h)(5) and is used by the courts in analyzing facts when determining if 18 U.S.C. § 207 was violated. *See United States v. Montemayor*, 2017 WL 2493906 (U.S. District Court, N.D. Georgia, Atlanta Division).

Analysis

Using the guidance provided by the U.S. Office of Government Ethics and the courts, I determined that, given the totality of the circumstances, the *Hy-Brand* and *Browning-Ferris* matters are the same “particular matter involving specific parties.”

Although the two cases started out as two distinct and separate matters, the manner in which the former Chairman marshaled *Hy-Brand* through the Board’s deliberative process effectively resulted in a consolidation of the two matters into one “particular matter involving specific parties.” In short, the practical effect of the *Hy-Brand* deliberative process was a “do over” for the *Browning-Ferris* parties.

On October 18, 2017, the former Chairman sent an email message with an attached majority decision draft to the Members who joined in the decision stating the following:¹

(b) (5)

(b) (5)

¹ The email text is deliberative information. I am including a summarization of the text because I determined that it is essential to show how the consolidation of the deliberative process occurred at the inception of the *Hy-Brand* deliberations and the tone that was set.

(b) (5)



The wholesale incorporation of the dissent in *Browning-Ferris* into the *Hy-Brand* majority decision consolidated the two cases into the same “particular matter involving specific parties.” The dissent in *Browning-Ferris* resulted from the Board’s deliberative process following the adjudication of the facts and determination of law at the Regional level and the submission of briefs by the parties, including Member Emanuel’s former law firm, and amici providing legal arguments for the Board’s consideration. Because of the level of the incorporation of the *Browning-Ferris* dissent into what became the Board’s decision in *Hy-Brand*, it is now impossible to separate the two deliberative processes. Rather, the Board’s deliberation in *Hy-Brand*, for all intents and purposes, was a continuation of the Board’s deliberative process in *Browning-Ferris*.

Because of this level of consolidation and the fact that the *Browning-Ferris* parties were engaged in an enforcement proceeding, the deliberations of the *Hy-Brand* case involved and affected the legal rights of the parties of *Browning-Ferris*. This is illustrated by the majority decision’s factual analysis and application of the law found at pages 18 and 19 of the *Hy-Brand* decision that included the following statements:

The evidence relied on by the *Browning-Ferris* majority amounted to a collection of general contract terms and business practices common to most contracting entities . . . , plus a few actions by BFI that had some routine impact on Leadpoint employees;

Browning-Ferris effected a sweeping change in the law without any substantive discussion of significant adverse consequences raised by the parties and amici in the case;

The *Browning-Ferris* majority nevertheless attempted to distinguish the facts of *Browning-Ferris* based on an “apparent requirement of BFI approval over . . . pay increases” for the supplier employer’s employees;

The expansive nature of the *Browning-Ferris* test was demonstrated by the evidence the *Browning-Ferris* majority relied on to find joint-employer status in that case, which involved a “cost-plus” arrangement common in user-supplier contracts [followed by a list of nine factual statements regarding the *Browning-Ferris* parties]; and

[T]he Regional Director correctly decided under then-extant law that it was not enough to show BFI was the joint employer of Leadpoint's employees.

When analysis at pages 18 and 19 of the *Hy-Brand* decision is paired with the statement “we overrule *Browning-Ferris* and return to the principles governing joint-employer status that existed prior to that decision” at page 2, it is apparent that the majority considered the facts and arguments of the *Browning-Ferris* parties and amici and used those facts and arguments to reissue a *Browning-Ferris* majority decision that stated a new outcome for the parties of *Browning-Ferris* under the re-established principles governing joint-employer status. Additionally, there is no material discussion of the *Hy-Brand* matter in the part of the decision that overrules *Browning-Ferris*. For all intents and purposes, *Hy-Brand* was merely the vehicle to continue the deliberations of *Browning-Ferris*.

After the Board issued the decision, the majority Members immediately directed the General Counsel to request that the circuit court remand the *Browning-Ferris* case. The direction was later rescinded after the Board was informed that the General Counsel had an ethical obligation to notify the court that the *Browning-Ferris* decision was overruled by *Hy-Brand*. Thereafter, the court did in fact remand the case and then denied a motion for reconsideration of the remand. Now that the *Browning-Ferris* matter has been remanded to the Board, there is literally no reason for further deliberations before issuing a decision because the law is settled and a determination of the law to facts for the *Browning-Ferris* parties was established in the *Hy-Brand* decision. Alternatively, if the court had not granted the request for remand, the General Counsel would have been precluded from taking a position before the court in the *Browning-Ferris* enforcement proceeding that was contrary to *Hy-Brand* decision.

The *Hy-Brand* majority decision also acknowledges that the two deliberative processes are consolidated. In response to the dissent's criticism of not seeking amicus briefing, the majority included the following:

Additionally, the issue we decided today was the subject of amicus briefing when the Board decided *Browning-Ferris*.

That sentence was included to specifically address the issue of whether the prior deliberative material was available to the majority Members who were not Members when the *Browning-Ferris* decision was issued. This was necessary because the *Hy-Brand* parties did not seek to overturn *Browning-Ferris*, a further illustration that the Board was in fact not deciding *Hy-Brand* on the merits of that case, but was continuing the deliberative proceedings of the *Browning-Ferris* decision.

Because the *Hy-Brand* deliberation was a continuation of the *Browning-Ferris* deliberative proceedings and involved the application of the *Browning-Ferris* facts to the law for the *Browning-Ferris* parties, Member Emanuel should have been recused from participation in deliberations leading to the decision to overturn *Browning-Ferris*. This determination is limited to very specific facts as to what actually occurred in the deliberative process of *Hy-Brand*, and it is the totality of those specific facts that drives the decision.

Our determination that the *Hy-Brand* and *Browning-Ferris* matters are the same “particular matter involving specific parties” for the purpose of Executive Order 13770 is not a determination that Member Emanuel engaged in misconduct.² The issue of whether misconduct occurred involves a number of considerations, and the resolution of those issues is not appropriate in this type of notification.

Effect

Member Emanuel’s participation in the *Hy-Brand/Browning-Ferris* matter when he otherwise should have been recused exposes a serious and flagrant problem and/or deficiency in the Board’s administration of its deliberative process and the National Labor Relations Act with respect to the deliberation of a particular matter that should be immediately brought to the attention of Congress and addressed by the Board.

In order to maintain industrial peace, the Board’s decisions must be issued in a manner consistent with due process that ensures that those engaged in interstate commerce can rely upon them. In part, that reliance is obtained when the Members perform their duties in a manner that is free of conflicts of interest or the appearance of such, and is accomplished in accordance with all of the Government’s ethics requirements. When the Board falls short of that standard, the whole of the Board’s deliberative process is called into question.

Corrective Action

To remedy the serious and flagrant problem and/or deficiency in the Board’s administration of its deliberative process and the National Labor Relations Act with respect to the deliberation of a particular matter, I recommend the following corrective action:

Member Emanuel’s participation in the *Hy-Brand* decision, when he otherwise should have been recused as outlined above, calls into question the validity of that decision and the confidence that the Board is performing its statutory duties. I recommend that the Board consult with the Designated Agency Ethics Official to determine the appropriate action to take to resolve that issue and restore confidence in the Board’s deliberative process; and

Member Emanuel’s participation in the *Hy-Brand* decision demonstrates that the Board’s current practice of highlighting and addressing recusal issues should be reviewed to determine if it is adequate to protect the Board’s deliberative process from actual conflicts of interest and the appearance of such. I recommend that the Board consult with the Designated Agency Ethics Official to conduct that review and resolve any issues.

² In reaching that determination we have taken into account Member Emanuel’s response to a Congressional inquiry that is related to his participation in the *Hy-Brand* decision and other written matters that he provided to the Office of Inspector General. We have also consulted with the Board’s Designated Agency Ethics Official.

LAMAR ALEXANDER, TENNESSEE, CHAIRMAN

MICHAEL B. ENZI, WYOMING
RICHARD BURR, NORTH CAROLINA
JOHNNY ISAKSON, GEORGIA
RAND PAUL, KENTUCKY
SUSAN M. COLLINS, MAINE
BILL CASSIDY, M.D., LOUISIANA
TODD YOUNG, INDIANA
ORRIN HATCH, UTAH
PAT ROBERTS, KANSAS
LISA MURKOWSKI, ALASKA
TIM SCOTT, SOUTH CAROLINA

PATTY MURRAY, WASHINGTON
BERNARD SANDERS (I), VERMONT
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CHRISTOPHER S. MURPHY, CONNECTICUT
ELIZABETH WARREN, MASSACHUSETTS
TIM KAINE, VIRGINIA
MARGARET WOOD HASSAN, NEW HAMPSHIRE
TINA SMITH, MINNESOTA
DOUG JONES, ALABAMA

United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

DAVID P. CLEARY, STAFF DIRECTOR
EVAN SCHATZ, DEMOCRATIC STAFF DIRECTOR

<http://help.senate.gov>

March 26, 2018

The Honorable Marvin Kaplan
Chairman
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Dear Chairman Kaplan:

On February 26, 2018, the National Labor Relations Board (Board) vacated its decision in *Hy-Brand Industrial Contractors, Ltd.* According to the Board's Order, it did so because "[t]he Board's Designated Agency Ethics Official...determined that [Board] Member Emanuel is, and should have been, disqualified from participating in [*Hy-Brand*]." According to conversations my staff has had with the Board's Designated Agency Ethics Official (DAEO), she provided a written analysis to the Board to explain why she concluded that Member Emanuel should have been recused from *Hy-Brand*. I write to request the DAEO's written analysis that was provided to the Board. Please have your staff contact my staff as soon as possible to provide the analysis. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Lamar Alexander". The signature is written in a cursive, flowing style.

Senator Lamar Alexander
Chairman
U.S. Senate Committee on Health,
Education, Labor, and Pensions



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

March 12, 2018

The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions
U.S. Senate
428 Dirksen Senator Office Building
Washington, DC 20510

The Honorable Elizabeth Warren
U.S. Senate
317 Hart Senate Office Building
Washington, DC 20510

Dear Ranking Member Murray and Senator Warren:

I write in response to your letter dated February 26, 2018 regarding the National Labor Relations Board (NLRB) Inspector General's February 9, 2018, memorandum. As Chairman, I take seriously the NLRB's obligation to comply with both legal and government ethics requirements. These requirements help to ensure that the NLRB fulfills its responsibilities to fairly adjudicate cases and safeguard the integrity of the adjudicatory process.

Below are the answers to the questions you outlined in your letter:

1. Will you reconsider the Board's *Hy-Brand* decision without Member Emanuel's participation? If not, how will you address the fact that Member Emanuel's improper involvement tainted the decision's validity and the process by which the Board reached the decision?

On February 26, 2018, the Board issued an order to vacate the Board's decision in *Hy-Brand Industrial Contractors, Ltd. and Brandt Construction Co.*, 365 NLRB No. 156 (2017). This decision was made after the Board's Designated Agency Ethics Official (DAEO) determined that Member Emanuel is, and should have been, disqualified from participating in this matter due to the manner in which the adjudication proceeded. Member Emanuel did not participate in the order.

2. If you do plan to reconsider the *Hy-Brand* matter, please describe your intended process for doing so.
 - a. Will you require Member Emanuel's recusal?
 - b. Will you invite and consider briefs from the public before issuing a decision?

Hy-Brand Industrial Contractors, Ltd. and Brandt Construction Co., 365 NLRB No. 156 (2017) is now under active consideration by the Board. Member Emanuel is recused from the *Hy-Brand* case.

3. What will the Board do to address the fact that Mr. Emanuel's involvement in ordering Mr. Robb to seek a remand in the *BFI* case itself appears to be a clear violation of federal ethics regulation and Mr. Emanuel's ethics pledge?

The effort to instruct the General Counsel to seek a remand in *BFI* was initiated informally by the then-Chairman, whose term expired on December 16, 2017, and not processed through the offices that are responsible for case assignments to Board members. These offices have existing processes and controls in place to identify recusals. Board members are aware of the importance of following these procedures for case assignments. The manner in which the remand issue was addressed is an aberration.

4. Have you attempted to determine how Mr. Emanuel was allowed to participate in the *Hy-Brand* case despite his obvious conflicts of interest?

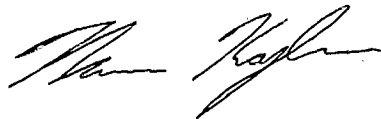
The DAEO determined that the initial assignment of the case to Member Emanuel did not raise ethics concerns. However, the manner in which the case was adjudicated created an appearance issue that was not identified until after the *Hy-Brand* decision issued.

5. What specific steps will you take to ensure that public confidence in the Board's decision-making process is not undermined by conflicts of interest in the future?

The NLRB has a robust system in place to identify recusals and potential ethics concerns prior to the assignment of a case to a Board member. The DAEO is engaged in ongoing communication with persons involved in this process to ensure that recusal lists are updated and that sufficient controls are in place. *Hy-Brand* was an unprecedented situation where all of the relevant events that raised ethics concerns occurred outside of the customary assignment process.

If you or a member of your staffs have any questions or need additional assistance, please do not hesitate to contact the Office of Congressional and Public Affairs at (202) 273-1991.

Sincerely,

A handwritten signature in black ink, appearing to read "Marvin Kaplan", with a stylized, cursive script.

Marvin E. Kaplan
Chairman



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

April 13, 2018

The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and
Pensions
U.S. Senate
428 Dirksen Senator Office Building
Washington, DC 20510

The Honorable Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce
U.S. House of Representatives
2101 Rayburn House Office Building
Washington, DC 20515

The Honorable Gregorio Kilili Camacho
Sablan
U.S. House of Representatives
2411 Rayburn House Office Building
Washington, DC 20515

The Honorable Donald Norcross
U.S. House of Representatives
1531 Longworth House Office Building
Washington, DC 20515

Dear Senator Murray and Representatives Scott, Sablan, and Norcross:

Thank you for your March 28, 2018 letter requesting additional information regarding the National Labor Relations Board's (NLRB) 2014 Election Rule, which modified the Board's representation-election procedures located at 29 CFR parts 101 and 102.

Your request seeks data from representation (RC) petitions, decertification (RD) petitions, and employer-filed (RM) petitions from April 14, 2015, to the most recent date for which data is available, and for a period of equal length going back from April 14, 2015. It should be noted that April 14, 2015, is the date that the 2014 Election Rule took effect; petitions filed on and after April 14, 2015, are processed under the 2014 Election Rule.

The time period for the included data is July 26, 2012, through December 31, 2017. For the purposes of this response, "Group A" petitions were filed between July 6, 2012 and April 13, 2015 and "Group B" petitions were filed between April 14, 2015 and December 31, 2017.

In your letter, you requested that the Agency run the following search:

For each of the two sets of representation cases identified as Group A or Group B, please query NxGen using the terms *postpone*, or *reschedule*, or *continuance* **and** *hearing* or *motion* or *order*. Please provide the number of results or “hits” for each group of representation cases. To the extent that there are fewer than 200 results within either group, please provide the information sought by Requests 3-8 in Attachment A with respect to such results. If there are more than 200 results, please include the production of all outstanding requests as set forth above.

The Agency ran a word search for the relevant case logs using the terms suggested in the above request. The search yielded over 5,000 results. With such broad search terms, these results did not accurately reflect those cases where continuances had been sought.

In an attempt to extricate the data requested, the Agency ran two additional sets of document searches:

- 1) All Motions for Postponement/Rescheduling of Hearing filed in Pre-Election Hearings. These Motions are identified by the party filing. This data is reflected in the chart below and the file attached.
- 2) All Orders issued in Pre-Election Hearing Actions. This includes all Orders Rescheduling, Orders Denying, and Miscellaneous Orders issued. Miscellaneous Orders were reviewed individually to determine if the Order was an Order Rescheduling or Order Denying. This data is reflected in the chart below and the file attached.

	Group A	Group B
	7/16/2012 to 4/13/2015	4/14/2015 to 12/31/2017
Total Motions to Postpone	455	242
Filed by Employer	392	197
Filed by Union	63	45
No. Cases Resulting in Hearing	93	56
No. Orders Rescheduling Hearing	2,380	1,018
No. Orders Denying Requests for Postponement	18	44

As you can see from the data attached, the results of the search for the Motions to Postpone differ from the results of the search for Orders Rescheduling/Orders Denying. There are several possible reasons for the variations in these data sets. First, a Region could have rescheduled the case sua sponte due to scheduling conflict or other circumstances. Second, one or both parties could have made a request for postponement that was not in writing. Those requests may not be reflected in the case file.

Because of the varying circumstances under which continuances are requested and granted, the Agency cannot produce data in a way that would comprehensively respond to your request.

In regards to your request to extend the deadline for comments until May 16, 2018, the Board has unanimously voted to deny your request.

If you or a member of your staffs have any questions or need additional assistance, please do not hesitate to contact the Office of Congressional and Public Affairs at (202) 273-1991.

Sincerely,

A handwritten signature in blue ink, appearing to read "Marvin Kaplan", with a stylized flourish at the end.

Marvin E. Kaplan
Chairman

United States Senate
WASHINGTON, DC 20510

February 26, 2018

The Honorable Marvin Kaplan
Chairman
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dear Chairman Kaplan:

Last week, the National Labor Relations Board's Inspector General (IG) released a report finding "a serious and flagrant problem and/or deficiency in the Board's administration of its deliberative process and the National Labor Relations Act..." related to the Board's consequential December 2017 decision in *Hy-Brand Industrial Contractors*.¹ We write to express our serious concerns with the problems identified by the IG and to inquire about your plans for rectifying these problems and restoring public confidence in the integrity of the Board's decisions and deliberative process.

In December, the Board's *Hy-Brand* decision purported to reverse *Browning-Ferris Industries (BFI)*, an important 2015 decision ensuring that workers could bargain with employers that have indirect control over their working conditions.² The *BFI* decision was important because it helped prevent large employers from avoiding their legal obligation to negotiate in good faith with their workers over subjects including fair pay and good working conditions. Large corporations have attempted to evade their responsibility to respect workers' statutory rights by contracting out work while maintaining significant control over those employees. In *BFI*, the Board made clear that companies cannot benefit from work they control while evading their legal obligations to the people doing that work. Industry groups and other special interests strongly opposed the *BFI* ruling, and the Board moved to overturn it as soon as it obtained a Republican majority in 2017.

The facts indicate that the Board rushed to issue this decision with little regard for the facts of the *Hy-Brand* case itself in order to effectuate the majority's pre-existing determination to overrule *BFI*. In so doing, the Board failed to conduct the "reasoned decision-making"

¹ Office of the Inspector General, National Labor Relations Board, *Notification of a Serious and Flagrant Problem and/or Deficiency in the Board's Administration of its Deliberative Process and the National Labor Relations Act with Respect to the Deliberation of a Particular Matter* 3-4 (Feb. 9, 2018) available at <https://www.nlrb.gov/sites/default/files/attachments/basic-page/node-1535/OIG%20Report%20Regarding%20Hy-Brand%20Deliberations.pdf> (emphasis added).

² See *Hy-Brand Indus. Contractors*, 365 NLRB No. 156 (Dec. 14, 2017); *Browning-Ferris Indus.*, 362 NLRB No. 186 (Aug. 27, 2015).

required by the Administrative Procedure Act.³ For example, in a break with long-established precedent, the Board did not accept public comments on this decision, and it issued the decision despite the fact that no party in the *Hy-Brand* case urged the Board to overturn BFI. The Board's majority abandoned its obligation to decide *Hy-Brand* on its own facts, and chose instead to use it as a vehicle to reach its preferred result: overturning BFI. It is no surprise then, that the Board's independent watchdog found that "*Hy-Brand* was merely the vehicle to continue the deliberations of *Browning-Ferris*" and "[t]he wholesale incorporation of the dissent in *Browning-Ferris* into the *Hy-Brand* majority decision consolidated the two cases into the same 'particular matter involving specific parties.'"⁴

Perhaps most concerning, the law firm Littler Mendelson P.C.—which employed the Board's newest member, William Emanuel, just a few months ago—represents a party in the BFI case.⁵ This presented an egregious conflict of interest for Mr. Emanuel, who voted on a case in a manner benefitting his recent employer. We raised concerns about this in letters to Mr. Emanuel on December 21, 2017⁶ and February 6, 2018.⁷

The IG's findings confirm that Mr. Emanuel should not have participated in the *Hy-Brand* or BFI cases, finding that the two matters are in fact the same "particular matter involving specific parties," from which federal ethics regulation required Mr. Emanuel to recuse himself. The fact that Mr. Emanuel did not do so, according to the IG, "exposes a serious and flagrant problem and/or deficiency" with the Board's decision-making process.

The IG concluded that, "the Board's decisions must be issued in a manner consistent with due process," and that when "the Board falls short of that standard" due to its failure to deliberate free from conflicts of interest, "the whole of the Board's deliberative process is called into question."⁸ As Chairman, it is your responsibility to take any all actions necessary to restore the public's confidence in the integrity of the Board's decision-making process. The first and most obvious step you should take is reconsidering the tainted *Hy-Brand* decision with Mr. Emanuel

³ See *Allentown Mack Sales and Service, Inc. v. NLRB*, 522 U.S. 359, 374 (1998) ("The Administrative Procedure Act, which governs the proceedings of administrative agencies and related judicial review, establishes a scheme of 'reasoned decisionmaking.' Not only must an agency's decreed result be within the scope of its lawful authority, but the process by which it reaches that result must be logical and rational.") (internal citations omitted); *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (administrative agencies "must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156 (1962))).

⁴ See Report, Office of Inspector General, *supra* note 1

⁵ Ian MacDougall, ProPublica, *NLRB Member is Under Investigation for a Conflict of Interest* (Feb. 1, 2018) available at <https://www.propublica.org/article/william-emanuel-nlr-member-is-under-investigation-for-a-conflict-of-interest>

⁶ Congress of the United States, [letter to NLRB Member Emanuel from Members of Congress] (Dec. 21, 2017) available at <https://www.help.senate.gov/imo/media/doc/12.21.17%20Letter%20from%20Members%20of%20Congress%20to%20NLRB%20Member%20Emanuel.pdf>

⁷ *Id.*

⁸ See Report, Office of Inspector General, *supra* note 1


recused, as it is now clear he should have been in the first place. In addition to addressing the legitimacy of the *Hy-Brand* decision, you will need to make sure that the Board's deliberative processes are not contaminated by Members' conflicts of interest in the future. Also, you will need to demonstrate to affected stakeholders and the public at large that the Board's deliberative process will not be compromised by any predetermined, results-oriented approach to adjudication, but rather will be guided only by the facts of the cases the Board is called upon to decide.

In order to ensure that the Board is acting to restore confidence in its processes and addressing the serious concerns raised by the IG's findings, we request that you provide answers to the following questions by March 12, 2018.

1. Will you reconsider the Board's *Hy-Brand* decision without Member Emanuel's participation? If not, how will you address the fact that Member Emanuel's improper involvement tainted the decision's validity and the process by which the Board reached the decision?
2. If you do plan to reconsider the *Hy-Brand* matter, please describe your intended process for doing so.
 - a. Will you require Member Emanuel's recusal?
 - b. Will you invite and consider briefs from the public before issuing a decision?
3. What will the Board do to address the fact that Mr. Emanuel's involvement in ordering Mr. Robb to seek a remand in the *BFI* case itself appears to be a clear violation of federal ethics regulation and Mr. Emanuel's ethics pledge?
4. Have you attempted to determine how Mr. Emanuel was allowed to participate in the *Hy-Brand* case despite his obvious conflicts of interest?
5. What specific steps will you take to ensure that public confidence in the Board's decision-making process is not undermined by conflicts of interest in the future?

Thank you for your attention to this important matter.

Sincerely,


Elizabeth Warren
United States Senator
Patty Murray
United States Senator



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

May 24, 2018

The Honorable Steve Chabot
Chairman
Committee on Small Business
U.S. House of Representatives
2361 Rayburn House Office Building
Washington, DC 20515

The Honorable Nydia Velázquez
Ranking Member
Committee on Small Business
U.S. House of Representatives
2069 Rayburn House Office Building
Washington, DC 20515

Dear Members of Congress:

I write in response to your May 1, 2018 letter regarding the National Labor Relations Board's (NLRB) compliance with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. No. 104-121, enacted March 29, 1996) (SBREFA), as amended by the Fair Minimum Wage Act (Pub. L. No. 110-28, enacted May 25, 2007).

The NLRB understands that Section 212 of the SBREFA requires the publication of small entity compliance guides, which are prepared for each rule or group of related rules for which a final regulatory flexibility analysis is required under the Regulatory Flexibility Act (Pub. L. No. 96-354, enacted September 19, 1980). As an independent federal agency, the National Labor Relations Board has traditionally developed policy through adjudication. As such, the NLRB has rarely engaged in the federal rulemaking process.

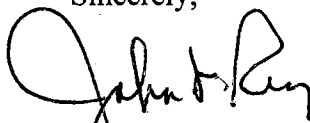
The Regulatory Flexibility Act (RFA) only requires analysis of a rule where notice-and-comment rulemaking is required (5 U.S.C. 601(2), 603(a)). In the past, when the NLRB has engaged in the federal rulemaking process, the rules have generally been procedural and have or could have been promulgated without notice-and-comment under the Administrative Procedures Act (5 U.S.C. 553(b)(3)(A)).

For those rules promulgated under notice-and-comment procedures since the enactment of the Fair Minimum Wage Act, previous Board leadership certified that the rules did not have a significant economic impact on a substantial number of small entities. Given that agencies are not required to prepare a regulatory flexibility analysis for such rules under Section 605 of the RFA (see Section 212 of SBREFA), small entity compliance guides were not required and therefore were not produced. As such, the Agency did not produce and therefore did not transmit small entity compliance guide reports to the Committee on Small Business of the House of Representatives, the Committee on Small Business and Entrepreneurship of the Senate, or any other committee of relevant jurisdiction.

Please be assured that the Agency will closely review any future rules for compliance with the Small Business Regulatory Enforcement Fairness Act of 1996, as amended by the Fair Minimum Wage Act and will inform the relevant committees of the Agency's compliance.

If you or your staffs have any questions or need additional assistance, please do not hesitate to contact the NLRB's Office of Congressional and Public Affairs at 202-273-1991.

Sincerely,



John F. Ring
Chairman



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
Washington, D.C. 20570

June 5, 2018

The Honorable Elizabeth Warren
U.S. Senate
317 Hart Senate Office Building
Washington, DC 20510

The Honorable Kirsten Gillibrand
U.S. Senate
478 Russell Senate Office Building
Washington, DC 20510

The Honorable Bernard Sanders
U.S. Senate
332 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Warren, Gillibrand, and Sanders:

I write in response to your letter dated May 29, 2018, in which you express strong concerns over the National Labor Relations Board's announcement regarding joint-employer rulemaking. I appreciate the concerns raised in your letter, and I welcome this opportunity to respond to them.

At the outset, let me assure you that any notice-and-comment rulemaking undertaken by the NLRB will never be for the purpose of evading ethical restrictions. As you note, I said during my confirmation hearing that I would take my ethical obligations very seriously, and I do. Additionally, as NLRB Chairman, I view it as my responsibility to ensure the Agency upholds the highest ethical standards in everything we do. To that end, we will be announcing in the near future a comprehensive internal ethics and recusal review to ensure that the Agency has appropriate policies and procedures in place to ensure full compliance with all ethical obligations and recusal requirements.

Your letter references that the NLRB may engage in rulemaking on the joint-employer subject. Candor requires me to inform you that the NLRB is no longer merely considering joint-employer rulemaking. A majority of the Board is committed to engage in rulemaking, and the NLRB will do so. Internal preparations are underway, and we are working toward issuance of a Notice of Proposed Rulemaking (NPRM) as soon as possible, but certainly by this summer.

As I stated in the NLRB's May 9, 2018 press release, a majority of the Board believes that "notice-and-comment rulemaking offers the best vehicle to fully consider all views on what the [joint-employer] standard ought to be." Although we could have invited briefing in connection with our traditional case-by-case adjudication, rulemaking on this topic opens an avenue of communication with the Board for – we hope – thousands of commenters. I look forward to hearing from all interested parties, including individuals and small businesses that may not be able to afford to hire a law firm to write a brief for them, yet have valuable insight to share from hard-won experience.

Rulemaking is appropriate for the joint-employer subject because it will permit the Board to consider and address the issues in a comprehensive manner and to provide the greatest guidance. Although legal standards of general applicability can be announced in a decision of a specific case, case decisions are often limited to their facts. With rulemaking, by contrast, the Board will be able to consider and apply whatever standard it ultimately adopts to selected factual scenarios in the final rule itself. In this way, rulemaking on the joint-employer standard will enable the Board to provide unions and employers greater “certainty beforehand as to when [they] may proceed to reach decisions without fear of later evaluations labeling [their] conduct an unfair labor practice,” as the Supreme Court has instructed us to do.¹

In addition, whereas standards adopted through case adjudication may apply either retroactively or prospectively, final rules issued through notice-and-comment rulemaking are required by law to apply prospectively only. Thus, by establishing the standard for determining joint-employer status through rulemaking, the Board immediately frees its stakeholders from any concern that actions they take today may wind up being evaluated under a new legal standard announced months or years from now.

I should note as well that this prospective application of rulemaking also should eliminate any concerns about ethical restrictions or recusals with respect to pending cases. Because any rule developed will apply prospectively only, its application will not affect any case pending before the Board or one of its regional offices on the effective date of the final rule, and thus it will not affect any parties to pending cases.

Finally, I want to address your concerns that there has been any prejudgment of the joint-employer issue. Contrary to what your letter declares my public statements “must reflect,” my reference to “the current uncertainty” in my public statements regarding the joint-employer standard reflects fact. The standard for determining joint-employer status under the NLRA has been and continues to be a hotly debated subject, as everyone in the labor-law community is acutely aware. Additionally, regardless of your position on the standard it announced, the 2015 *Browning-Ferris* decision² left employers and unions almost completely in the dark so far as predicting outcomes in specific cases and planning accordingly is concerned, as the *Browning-Ferris* majority candidly acknowledged.³ Whatever standard the Board ultimately adopts at the

¹ *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 679 (1981).

² *Browning-Ferris Industries of California, Inc., d/b/a BFI Newby Island Recyclery*, 362 NLRB No. 186 (2015) (“*Browning-Ferris*”).

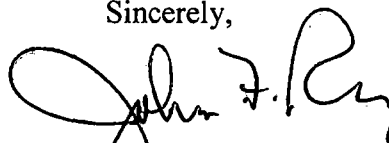
³ See *id.*, slip op. at 16: “[W]e do not and cannot attempt today to articulate every fact and circumstance that could define the contours of a joint employment relationship. Issues related to the nature and extent of a putative joint-employer’s control over particular terms and conditions of employment will undoubtedly arise in future cases—just as they do under the current test—and those issues are best examined and resolved in the context of specific factual circumstances.” As stated above, rulemaking will enable the Board to address “specific factual circumstances” hypothetically and thus to furnish unions and employers the guidance that *Browning-Ferris* conspicuously failed to provide.

conclusion of the rulemaking process, my hope is that the final rule will bring far greater certainty and stability to this key area of labor law, consistent with congressional intent.⁴

Likewise, my statement that the Board “intends to get the job done” does not “presume[]” any particular outcome, as your letter suggests. It shows only that the Board is determined—after gathering and considering input from all interested parties—to provide clear and useful guidance to its stakeholders regarding “the contours of a joint employment relationship,”⁵ which many believe *Browning-Ferris* expressly left undefined. I trust these explanations put to rest any claim that my previous public statements demonstrate prejudgment on my part.

Although I have an open mind and will consider all comments we receive from interested parties, I will not pretend that I am devoid of opinions on the subject of the joint-employer standard, any more than my predecessors, then-Chairman Wilma Liebman and then-Members Mark Gaston Pearce and Craig Becker, were devoid of opinions when they embarked on rulemaking to change the Board’s representation-case procedures in 2011, or than then-Chairman Mark Gaston Pearce and then-Members Kent Hirozawa and Nancy Schiffer were when they repeated that enterprise in 2014. As I am sure you are aware, it is well settled that holding opinions or embarking on notice-and-comment rulemaking does not disqualify an agency administrator from undertaking such rulemaking. Indeed, the Court of Appeals for the District of Columbia Circuit has observed that “to disqualify administrators because of opinions they expressed or developed” would mean that “‘experience acquired from their work would be a handicap instead of an advantage.’”⁶ It “would eviscerate the proper evolution of policymaking were [a court] to disqualify every administrator who has opinions on the correct course of his agency’s future actions.”⁷ For these reasons, the D.C. Circuit has held that “an individual should be disqualified from rulemaking only when there has been a clear and convincing showing” that the agency official “has an unalterably closed mind on matters critical to the disposition of the proceeding.”⁸ I assure you, Senators, that absolutely is not the case with me.

Sincerely,



John F. Ring
Chairman

⁴ See *Colgate-Palmolive-Peet Co. v. NLRB*, 338 U.S. 355, 362-63 (1949) (“To achieve stability of labor relations was the primary objective of Congress in enacting the National Labor Relations Act.”).

⁵ *Browning-Ferris*, above, slip op. at 16.

⁶ *United Steelworkers of America v. Marshall*, 647 F.2d 1189, 1209 (D.C. Cir. 1980) (quoting *FTC v. Cement Institute*, 333 U.S. 683, 702-703 (1948)).

⁷ *Air Transport Association of America, Inc. v. NMB*, 663 F.3d 476, 488 (D.C. Cir. 2011).

⁸ *Id.* at 487.



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

August 21, 2018

The Honorable Lamar Alexander
Chairman
Committee on Health, Education, Labor, and
Pensions
U.S. Senate
428 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and
Pensions
U.S. Senate
428 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Alexander and Ranking Member Murray:

As you probably know, McDonald's USA, LLC, et al. is a matter currently pending before the National Labor Relations Board (NLRB) on McDonald's request for special permission to appeal the administrative law judge's decision to reject a settlement reached by and between McDonald's and its franchisees and the Board's General Counsel. You are probably also aware that the Charging Parties in this proceeding have filed a motion in which they contend that Member Emanuel and I are obligated to recuse ourselves from participating in the disposition of McDonald's request for special permission to appeal.

I understand that the minority staff of the Senate Committee on Health, Education, Labor, and Pensions (HELP) has contacted the NLRB's Inspector General (IG) regarding the pending recusal motion, even though there is no active IG investigation or audit involving the matter. For whatever reason, the IG then discussed the call with the NLRB's Designated Agency Ethics Officer (DAEO), who has the responsibility to provide the Board's members independent and objective advice regarding recusal matters.

Unquestionably, the HELP Committee has important oversight functions over the NLRB, and we pledge full compliance with those responsibilities. It is distressing, however, that the Committee's minority staff would reach out to the IG to discuss a pending recusal motion where there is currently no IG involvement. As the Committee staff knows, the NLRB has a Congressional Affairs Office, which typically handles inquiries from Congress. And the Committee staff certainly knows that the NLRB (like every other federal agency) has a Designated Agency Ethics Official (DAEO) whose duties include advising the Board on recusal matters. Given the public statements made by the Democratic members of the HELP Committee prejudging the recusal motion, the minority staff's contact with the IG, who then discussed the outreach with the DAEO, has the unfortunate appearance of an attempt to improperly influence the outcome of the pending recusal motion.

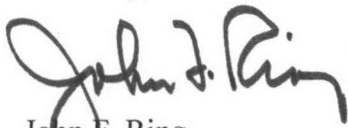
Regardless of the reason for the contact, it is imperative that the pending recusal motion in the McDonald's proceeding—just like every other recusal matter—be handled under the prescribed government ethics rules and procedures first. Those procedures include a process for individual Board members to secure an opinion from the Board's DAEO reflecting her independent, objective review of particular recusal issues in light of the applicable legal standards. There can be no doubt about the DAEO's impartiality, and there should be no

doubt about the fairness of the Board's recusal procedures. There is no room for politicization of this process.

As I have repeatedly told the Committee, I take my ethical obligations very seriously. And, as Chairman, one of my primary responsibilities is to ensure that everyone at the Agency upholds the highest ethical standards. Under my leadership, the Board has initiated an internal review of its recusal standards and procedures in order to ensure rigorous compliance with all ethical obligations and recusal requirements. In connection with the McDonald's case, upholding these high standards demands strict adherence to the applicable recusal standards and to the process for individual Board members to ascertain their duty in light of those standards. In this regard, promptly after the Charging Parties filed their motion—and before the Committee contacted the IG—both Member Emanuel and I requested the Agency's DAEO to review the Charging Parties' motion, evaluate our recusal obligations in the McDonald's matter, and provide an opinion. We will be guided by that opinion, not by political considerations.

If you have any other questions or concerns, please do not hesitate to contact me directly or the Agency's Congressional Affairs Office.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. Ring". The signature is stylized with a large, looping "J" and "R".

John F. Ring
Chairman



United States Government

NATIONAL LABOR RELATIONS BOARD

Office of the Chairman

1015 Half Street, SE

Washington, DC 20570

October 16, 2018

The Honorable Tim Walberg
U.S. House of Representatives
2436 Rayburn House Office Building
Washington, DC 20515

The Honorable Bradley Byrne
U.S. House of Representatives
119 Cannon House Office Building
Washington, DC 20515

Dear Representatives Walberg and Byrne:

I write in response to your letter dated September 28, 2018, in which you express concerns over attempts by those outside the NLRB to manipulate the Agency's recusal process for political purposes. I share your concerns and can commit to you that we are doing everything possible to fend off improper influence on the Board's ethics program.

Unfortunately, your concerns are justified. In recent months, there have been a number of attempts to influence the NLRB's ethics program and specifically its recusal requirements. Some Senators and Members of Congress have publically demanded recusals of Board Members for the apparent purpose of achieving a desired outcome for a particular constituency. Likewise, various interest groups have publically demanded recusals in particular cases, again without knowledge of the relevant facts, for their own purposes. As you may know, I wrote to the Chairman and Ranking Member of the Senate Health, Education, Labor and Pension Committee recently regarding concerns we had over Minority Staff contacts with our Inspector General (IG) that were then passed along to our Designated Agency Ethics Officer (DAEO) pertaining to a pending recusal motion. Although the response I received defended the Committee's communications with our IG (which I had acknowledged in my original letter), it remains unclear why Committee Staff's interests were communicated to our DAEO through the Agency's IG. Our DAEO, as you know, is supposed to be neutral and independent in providing Board Members with ethics advice and guidance. That guidance absolutely should not be influenced by outside interests.

While this may all be good political theatre, it is not good for the NLRB. More importantly, as you note, these attempts to potentially manipulate our ethics program could do lasting damage to the Board's institutional functions and legitimacy well into the future. I am absolutely committed to guarding against any such damage. It is critical that all NLRB stakeholders—and the American people generally—have full confidence in the integrity of the Board and view the Agency as a fair and impartial body that complies with ethics and recusal rules as they are written, not as they would like them to be construed in order to accomplish a particular end. The NLRB's recusal decisions should never be based on politics or an outside perception anticipating

the position that a particular Board Member might take in an individual case. Those who rely on the NLRB to resolve labor matters need to know their cases will be decided under proper procedures that ensure an appropriate Board majority.

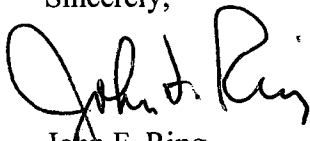
To that end, the Board is currently undertaking a comprehensive internal ethics and recusal review, as I announced earlier this summer. As part of that effort, we are reviewing all of our policies and procedures governing ethics and recusal requirements for Board Members, including how recusal determinations are made. We are examining every aspect of the Board's current recusal practices in light of statutory, regulatory and presidential pledge requirements. This includes ensuring not only that we uphold the Board's strong ethical culture, but also ensuring each Board Member's right and obligation to participate in cases is protected in the future. Our review also includes seeking outside guidance and input, to include undertaking a benchmarking effort to gather best practices from the recusal protocols of other independent agencies with adjudicatory functions, such as we have at the Board.

I have made clear that while this exhaustive initiative is underway, the NLRB will not permit there to be any improper influence on our ethics program or recusal process. If we become aware any such conduct in the future, I will report it immediately. Additionally, in working with our DAEO, I have stressed the importance of independence, and asked that I be notified immediately if our Ethics Office believes there has been any attempt to improperly influence their independence.

As Chairman, I am committed to ensuring that the NLRB complies with all ethics rules and to ensuring that everyone at the NLRB upholds the highest ethical standards.

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

Sincerely,



John F. Ring
Chairman

United States Senate

WASHINGTON, DC 20510

May 29, 2018

The Honorable John Ring
Chairman
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dear Chairman Ring:

We write to express strong concerns with your announcement that the National Labor Relations Board (“the Board”) may issue a regulation that would undermine labor rights clarified by the Board in its 2015 *Browning-Ferris* decision.¹ This 2015 ruling reaffirmed that, under the National Labor Relations Act (NLRA), corporations with indirect control or reserved authority over workers can be held accountable for violating their rights.² Last year, the Board tried to reverse this ruling through a rushed adjudication process, but later vacated the reversal because the Inspector General and the Board’s Designated Agency Ethics Official both determined that Member William Emanuel’s participation violated federal ethics rules.³ We are concerned that you will attempt to overturn *Browning-Ferris*—the subject of ongoing litigation in a federal appeals court—by rulemaking, in order to evade the ethical restrictions that apply to adjudications.

The trust that the public places in the Board’s impartiality has been substantially tarnished over the past year, largely due to the Board’s rushed reversals of several significant precedents churned out without public notice or input in the week prior to the expiration of former-Chairman Miscimarra’s term.⁴ The *Hy-Brand* decision—intended to overturn the joint-employer standard that the Board articulated in *Browning-Ferris*—was vacated after the Board’s Inspector General determined that there was a “serious and flagrant problem and/or deficiency in the

¹ See *Browning-Ferris Industries*, 362 NLRB No. 186 (Aug. 27, 2015).

² *Id.*

³ See *Hy-Brand Industrial Contractors*, 366 NLRB No. 26 (Feb. 26, 2018); *Hy-Brand Industrial Contractors*, 365 NLRB No. 156 (Dec. 14, 2017); National Labor Relations Board, Office of Inspector General, “Notification of a Serious and Flagrant Problem and/or Deficiency in the Board’s Administration of its Deliberative Process and the National Labor Relations Act with Respect to the Deliberation of a Particular Matter,” February 9, 2018, available at https://www.nlr.gov/sites/default/files/attachments/basic-page/node-1535/OIG%20Report%20Regarding%20Hy_Brand%20Deliberations.pdf; Bloomberg BNA, “Appointee Violated Trump Ethics Pledge, Second Official Says,” Hassan A. Kanu, April 26, 2018, <https://www.bna.com/appointee-violated-trump-n57982091556/>.

⁴ See *UPMC*, 365 NLRB No. 153 (Dec. 11, 2017); *Hy-Brand Industrial Contractors*, 365 NLRB No. 156 (Dec. 14, 2017); *The Boeing Company*, 365 NLRB No. 154 (Dec. 14, 2017); *PCC Structural*s, 365 NLRB No. 160 (Dec. 15, 2017); *Raytheon Network Centric Systems*, 365 NLRB No. 161 (Dec. 15, 2017).

Board's administration of its deliberative process"—specifically, that Board Member William Emanuel's participation tainted the resulting decision because his former employer represents a party in *Browning-Ferris*.⁵ The Board's designated agency ethics official agreed with the Inspector General that Emanuel violated federal ethics rules.⁶

Since these revelations, you and the Board's other members have expressed interest in rectifying the Board's ethical lapses. In their unanimous decision to vacate the Board's decision to overrule *Browning-Ferris*, then-Chairman Marvin Kaplan and Members Mark Gaston Pearce and Lauren McFerran expressly pointed to the Inspector General's determination that Emanuel should have recused himself but did not.⁷ And when asked about the importance of observing ethics requirements that prevent Board members from participating in matters that affect former employers and clients during your confirmation hearing, you affirmatively stated, "I take this issue very seriously," and "I don't want to be in the situation Member Emanuel is in and I don't want to put another cloud over the NLRB."⁸

Yet, now you are proposing that the Board change the joint-employer standard by employing the rulemaking process. While there is nothing inherently suspect about an agency proceeding by rulemaking, it is impossible to ignore the timing of this announcement, which comes just a few months after the Board tried and failed to overturn *Browning-Ferris*, and appears designed to evade the ethical constraints that federal law imposes on Members in adjudications. The Board's sudden announcement of rulemaking on the exact same topic suggests that it is driven to obtain the same outcome sought by Member Emanuel's former employer and its clients, which the Board failed to secure by adjudication.

Further, your public statements indicate that you have prejudged this issue. In the announcement that the Board is considering this rulemaking, you said that "the current uncertainty over the standard to be applied in determining joint-employer status under the Act undermines employers' willingness to create jobs and expand business opportunities."⁹ You tweeted that "uncertainty over the standard undermines job creation & economic expansion"¹⁰ Given that federal law prohibits the Board from engaging in economic analysis, these statements must reflect either 1) anecdotal characterizations of current law not rooted in empirical analysis or a solicitation of input from the full range of stakeholders (as the Board failed to solicit amicus briefs before considering *Hy-Brand*), or 2) analysis conducted in violation of federal law.¹¹

⁵ See "Notification of a Serious and Flagrant Problem and/or Deficiency in the Board's Administration of its Deliberative Process and the National Labor Relations Act with Respect to the Deliberation of a Particular Matter," *supra* note 3.

⁶ See Kanu, *supra* note 3.

⁷ See *Hy-Brand*, 366 NLRB No. 26 (Feb. 26, 2018).

⁸ Bloomberg BNA, "Labor Nominee John Ring Makes Ethics Promises," Hassan A. Kanu, May 14, 2018, <https://www.bna.com/labor-board-nominee-n57982089396/>.

⁹ National Labor Relations Board, "NLRB Considering Rulemaking to Address Joint-Employer Standard," press release, May 9, 2018, <https://www.nlr.gov/news-outreach/news-story/nlr-considering-rulemaking-address-joint-employer-standard>.


¹⁰ Tweet by John F. Ring, May 9, 2018, <https://twitter.com/NLRBChairman/status/994287315509022720>.

¹¹ See 29 U.S.C. § 154(a).

You also stated that the Board majority “intends to get the job done.”¹² This of course presumes that there is a “job” to be “done,” i.e., that current law is deficient in some way and must be changed. This alone demonstrates that you have prejudged the issue. Further, the “uncertainty” rationale may be easily dismissed as pretextual. If the Board were to promulgate a regulation changing the joint-employer standard, it would be the third time the standard has changed during this Administration. A rulemaking would take years and lead to further legal action, which is certain to *prolong* uncertainty.

While it is hard to see how such an action could reduce uncertainty, it is very easy to understand how it appeases corporate interests desperately seeking to escape liability under *Browning-Ferris* and suppress their workers’ efforts to organize. It is obvious to all rational observers that it is the *substance* of the Board’s current standard—not any “uncertainty” about what it means—that troubles the new Board majority. Reinstating the tainted *Hy-Brand* standard through rulemaking would sweep significant conflict-of-interest concerns raised by multiple independent, non-partisan officials under the rug and further damage the Board’s reputation. We therefore urge you to reconsider this decision and refrain from initiating a rulemaking process on the joint-employer standard.

Sincerely,


Elizabeth Warren
United States Senator
Kirsten Gillibrand
United States Senator
Bernard Sanders
United States Senator

¹² See Tweet by John F. Ring, *supra* note 10.

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6515

May 1, 2018

The Honorable John F. Ring
Chairman
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Dear Chairman Ring:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Small Business is conducting oversight over the National Labor Relations Board's compliance with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. No. 104-121, enacted March 29, 1996) (SBREFA), as amended by the Fair Minimum Wage Act of 2007 (Pub. L. No. 110-28, enacted May 25, 2007) (FMWA).¹

Section 212 of SBREFA requires the publication of small entity compliance guides, which explain the actions a small entity must take to comply with agency rules. These guides must be prepared for each rule or group of related rules for which a final regulatory flexibility analysis is required under the Regulatory Flexibility Act (Pub. L. No. 96-354, enacted September 19, 1980).² Agencies must publish these compliance guides by posting the guides in easily identifiable locations on their websites and by distributing the guides to affected entities.³ The guides must be published on the date of publication of the final rule (or as soon as possible after that date) and no later than the effective date of the final rule.⁴ The guides must contain an explanation of the actions a small entity must complete to meet the requirements of a rule and may include a description of possible procedures that may assist a small entity in meeting the requirements.⁵ Agencies must ensure that the guides are written using sufficiently plain language so that they are likely to be understood by the affected small entities.⁶ The agencies may also group issue-related guides when the guides cover similar rules.⁷

Section 212(a)(6) of SBREFA requires an agency to annually submit a report to the Committee on Small Business of the House of Representatives, the Committee on Small Business and

¹ The Small Business and Work Opportunity Act of 2007 amended SBRFEA to include specific requirements for small entity compliance guides. *See* U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-05 (codified as amended at 5 U.S.C. § 631 note). This letter will cite to the statutory sections of SBRFEA, as amended.

² Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, § 212(a)(1), 110 Stat. 847 (codified at 5 U.S.C. § 631 note).

³ *Id.* § 212(a)(2).

⁴ *Id.* § 212(a)(3).

⁵ *Id.* § 212(a)(4).

⁶ *Id.* § 212(a)(5).

⁷ *Id.*

Entrepreneurship of the Senate, and any other committee of relevant jurisdiction.⁸ The report must describe the status of the agency's compliance with section 212(a)(1) through (5) of SBRFEA, and must be received no later than one year after the date of the enactment of the FMWA, and annually thereafter.⁹ The FMWA was enacted on May 25, 2007.


To date, the Committee has not received any small entity compliance guide reports from your agency since the statute's enactment in 2007. The Committee requests the following information and documents as soon as possible, but no later than May 25, 2018:

1. Any annual small entity compliance guide reports that have been transmitted to the Committee since the reporting requirement began in 2007. If no reports have been transmitted, an explanation as to why the Committee has not received any reports;
2. The annual small entity compliance guide report on your agency's compliance with section 212 of SBREFA for the year 2017;
3. The location of the small entity compliance guides on your agency's website; and
4. A list of the affected entities that your agency distributed, or will distribute, the guides to.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2361 of the Rayburn House Office Building and the Minority Staff in Room 2069 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you have any questions about this request, please contact Stephanie Fekete of the Majority Staff at (202) 225-5821 or Melissa Jung of the Minority Staff at (202) 225-4038. Thank you for your attention to this matter.

Sincerely,



Steve Chabot
Chairman
Committee on Small Business



Nydia Velázquez
Ranking Member
Committee on Small Business

⁸ *Id.* § 212(a)(6).

⁹ *Id.*



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

February 15, 2018

The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and
Pensions
U.S. Senate
428 Dirksen Senator Office Building
Washington, DC 20510

The Honorable Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce
U.S. House of Representatives
2101 Rayburn House Office Building
Washington, DC 20515

The Honorable Gregorio Kilili Camacho
Sablan
U.S. House of Representatives
2411 Rayburn House Office Building
Washington, DC 20515

The Honorable Donald Norcross
U.S. House of Representatives
1531 Longworth House Office Building
Washington, DC 20515

Dear Senator Murray and Representatives Scott, Sablan, and Norcross:

Thank you for your December 21, 2017 letter requesting information regarding the National Labor Relations Board's (NLRB) 2014 Election Rule, which modified the Board's representation-election procedures located at 29 CFR parts 101 and 102.

Your request seeks data from representation (RC) petitions, decertification (RD) petitions, and employer-filed (RM) petitions from April 14, 2015, to the most recent date for which data is available, and for a period of equal length going back from April 14, 2015, with each of the two periods organized into one-year increments. It should be noted that April 14, 2015, is the date that the 2014 Election Rule took effect; petitions filed on and after April 14, 2015, are processed under the 2014 Election Rule.

The time period for the included data is July 26, 2012, through December 31, 2017. To accommodate your request for one-year increments, the time periods are broken down as follows:

Cases Processed prior to the Revised Rule:

7/26/2012 – 4/13/2013 (261 days)
4/14/2013 – 4/13/2014
4/14/2014 – 4/13/2015

Cases Processed under the Revised Rule:

4/14/2015 – 4/13/2016
4/14/2016 – 4/13/2017
4/14/2017 – 12/31/2017 (261 days)

For your convenience, we arranged most of your request into summary tables. The underlying data is compiled in an Excel spreadsheet that includes the Case Number, Case Name, and all relevant data points.

1. The number and percentage of elections where the parties stipulated to the terms of the election.

Please see the attached Summary Table, Lines 4 and 5.

2. The number and percentage of elections where the parties have not stipulated to the terms of the election, and a hearing was ordered. Please identify each such case by name and case number.

Please see the attached Summary Table, Lines 6 and 7.

3. The number and percentage of cases in which the employer requested a continuance of the originally-scheduled pre-election hearing date. Please identify each such case by name and case number.

We do not have data elements that track requests for the continuance of a hearing in a matter that can be responsive. The attached Excel spreadsheet lists the number of petitions filed during each time period, the date a Pre-Election hearing was originally scheduled, and the date the hearing was held. We do not track the reason for a difference in the scheduled and held dates.

4. The number and percentage of cases in which the employer's request described in Request No. 3 was granted. Please identify each such case by name and case number.

As stated above in the response to Request No. 3, we do not have data elements that track requests for continuance of a hearing in a matter that can be responsive.

5. The range, mean, and median number of additional days granted by each continuance described in Request No. 4.

As stated above in response to Request No. 3, we do not have data elements that track the underlying information, we cannot produce this calculation.

6. The number and percentage of cases where the labor organization requested a continuance of the originally scheduled hearing date. Please identify each such case by name and case number.

For the reasons set forth above in the response to Request No. 3, we do not have data elements that track this information.

7. The number and percentage of cases in which the labor organization's request described in Request No. 6 was granted. Please identify each such case by name and case number.

For the reasons set forth above in the response to Request No. 3, we do not have data elements that track requests for continuance of a hearing in a matter that can be responsive.

8. The range, mean, and median number of additional days granted by the each continuance described in Request No. 7.

As we do not have data elements that track the underlying information, we cannot produce this calculation.

9. The number and percentage of cases in which a pre-election hearing was held. Please identify each such case by name and case number.

Please see the attached Summary Table, Line 8.

10. The number and percentage of cases in which the only issues that were not agreed to by the parties were the election date or details regarding the conduct of the election.

We do not have data elements that track this information.

11. The range, mean, and median number of days for the duration of pre-election hearings.

Please see the attached Summary Table, Lines 9, 10, and 11.

12. The number and percentage of cases in which the parties stipulated that some employees should vote subject to challenge (a) as part of an overall election agreement and (b) in a case that resulted in a decision and direction of election. Please identify each such case by name and case number.

The information provided is for cases where elections were held and the results were certified.

Part (a) – Cases that resulted in Election agreements

Election Agreements – Prior to the Revised Rule

7/26/2012 – 4/13/2013: 27 cases (all RC representation petitions)

4/14/2013 – 4/13/2014: 25 cases (all RC representation petitions)

4/14/2014 – 4/13/2015: 22 cases (all RC representation petitions)

Election Agreements - Revised Rule:

4/14/2015 – 4/13/2016: 133 cases (all RC representation petitions)

4/14/2016 – 4/13/2017: 58 cases (all RC representation petitions)

4/14/2017 – 12/31/2017: Five cases (all RC representation petitions)

Part (b) – Cases that resulted in a Decision and Direction of Election

RD Decisions – Prior to the Revised Rule:

7/26/2012 – 4/13/2013: One case (RC representation petition)

4/14/2013 – 4/13/2014: Three cases (all RC representation petitions)

4/14/2014 – 4/13/2015: Two cases (all RC representation petitions)

RD Decisions - Revised Rule

4/14/2015 – 4/13/2016: Two cases (All RC representation petitions)

4/14/2016 – 4/13/2017: Two cases (all RC representation petitions)

4/14/2017 – 12/31/2017: Zero cases

13. The number and percentage of cases in which the Regional Director or Board directed that some employees should vote subject to challenge over the objection of a party. Please identify each such case by name and case number.

The information provided is for cases where elections were held and the results were certified.

RD Decisions – Prior to the Revised Rule:

7/26/2012 – 4/13/2013: Five cases (all RC representation petitions)

4/14/2013 – 4/13/2014: 11 cases (all RC representation petitions)

4/14/2014 – 4/13/2015: Six cases (all RC representation petitions)

RD Decisions - Revised Rule

4/14/2015 – 4/13/2016: 14 cases (13 RC representation petitions, one RM employer-filed petition)

4/14/2016 – 4/13/2017: Seven cases (all RC representation petitions)

4/14/2017 – 12/31/2017: Two cases (RC representation petition)

14. The number and percentage of cases in which the Regional Director or Board refused to permit a party to litigate an issue on the grounds that it was not identified or contested in its position statement. Please identify each such case by name and case number.

We do not have data elements that track this information.

15. The number and percentage of cases in which a dispute that was deferred by permitting employees to vote subject to challenge was mooted by the election results. Please identify each such case by name and case number.

Data responsive to #12 and #13 list cases where people were allowed to vote subject to challenge. The challenge information below is specific to those particular cases. The spreadsheets prepared for #12 and #13 contain determinative challenge information. We do not have data elements that track whether the parties' underlying dispute regarding status of the employees in question was resolved by the results of the election.

Time Frame	Election Agreements-vote subject to challenge	RD Decision-stipulated vote subject to challenge	RD Decision – RD Directed to vote subject to challenge	# of cases where challenges were filed	# of cases where challenges were determinative
7/26/2012 – 4/13/2013 (prior to revised rule)	27	1	5	24	3
4/14/2013 – 4/13/2014 (prior to revised rule)	25	3	11	29	5
4/14/2014 – 4/13/2015 (prior to revised rule)	22	2	6	22	1
4/14/2015 – 4/13/2016 (revised rule)	133	2	16	115	15
4/14/2016 – 4/13/2017 (revised rule)	58	2	7	51	6
4/14/2017 – 12/31/2017 (revised rule)	5	0	2	4	2

16. The number and percentage of cases in which the employer requested an extension of time to file and serve the voter eligibility list. Please identify each such case by name and case number.

We do not have data elements that track this information. The attached Excel spreadsheet lists the “original” and “current” due date for the voter eligibility list and the

date the list was provided ("completed due date"). We do not track the reason for any difference in the original and completed due dates.

17. The number and percentage of cases described in Request No. 16 in which the request was granted, and the number and percentage of cases described in Request No. 16 in which the request was denied.

As explained above in the response to Request No. 16, we do not have data elements that track an extension request.

18. The range, mean, and median number of additional days granted by each extension described in Request No. 17.

As explained above in the response to Request No. 16, we do not have data elements that track an extension request.

19. The number and percentage of cases in which a decision and direction of election was issued.

Please see the attached Summary Table – Line 6.

20. The range, mean, and median number of days between the close of a pre-election hearing and the issuance of a decision and direction of election.

Please see the attached Summary Table – Line 12, 13, and 14.

21. The range, mean, and median number of days between the filing of post-hearing briefs following a pre-election hearing, when such filing was permitted, and the issuance of a decision and direction of election.

Please see the attached Summary Table – Line 17.

22. The number and percentage of certifications of a representative that were followed by a technical refusal to bargain that resulted in a Board decision finding a violation of section 8(a)(5) of the National Labor Relations Act. Please identify each such case by name and case number.

Please see the attached spreadsheet Technical 8(a)(5) Violation Statistics FYs 2014-2017.

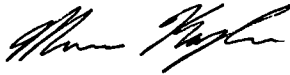
23. The number of charges, objections, or complaints of any kind concerning a labor organization's misuse of any form of list of employees provided pursuant to the NLRB's election procedures, together with copies of all such charges, objections, or complaints.

We conducted a document search of our electronic case file records for charges, complaints, or objections to the conduct of election that contained language referring to "misuse" or "abuse" of voter lists. In addition, we also inquired among the 26 Regional

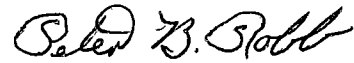
Offices to see if they recalled any such cases. No charges, objections, or complaints relating to misuse of the list of voters have been received by any office since April 15, 2015.

If you or a member of your staffs have any questions or need additional assistance, please do not hesitate to contact the Office of Congressional and Public Affairs at (202) 273-1991.

Sincerely,



Marvin E. Kaplan
Chairman



Peter B. Robb
General Counsel

Congress of the United States
Washington, DC 20515

March 28, 2018

The Honorable Marvin Kaplan
Chairman
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

The Honorable Peter Robb
General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

Dear Chairman Kaplan and Mr. Robb:

We write regarding the February 15, 2018 response to our December 21, 2017 request for data (“Attachment A”) pertaining to the National Labor Relations Board’s (“NLRB”) Request for Information (“RFI”) on whether to rescind or modify the 2014 Election Rule.¹ In light of the fact that 12 of our 23 queries went totally or partially unanswered, this letter urges the Board to provide a full and complete response, and that it take the necessary steps to compile and produce such information. The information we seek is highly relevant to the RFI and unquestionably within the possession of the NLRB.

The February 15, 2018 response refused to answer these requests on the grounds that the NLRB “do[es] not have data elements that track” the requested information. The NLRB maintains meticulous case records and possesses the information that would enable it to produce responses to the outstanding requests.

Our requests are directly material to the efficiency and fairness of the 2014 Election Rule.² The outstanding 12 requests focus on data regarding the contention that the Rule, by eliminating opportunities for employers to secure procedural pre-election delays, imposes undue burdens on employers. To that end, nine of the outstanding questions inquired about when parties have “requested a continuance of the originally-scheduled pre-election hearing date”³ or “requested an extension of time to file and serve the voter eligibility list.”⁴ Understanding the frequency of these motions and how often they are granted or denied would provide important empirical evidence about whether employers have sufficient time to prepare for key steps in the pre-election process, and whether additional time has been granted when there has been an alleged hardship. The other three outstanding requests inquired into whether the 2014 Election Rule

¹ 82 Fed. Reg. 58783 (Dec. 14, 2017).

² 79 Fed. Reg. 74307 (Dec. 15, 2014).

³ Attachment A, Request Nos. 3-8.

⁴ Attachment A, Request Nos. 16-18.

foreclosed parties' abilities to litigate pre-election disputes that were material to the outcome of the election.⁵ Producing this data is necessary for understanding whether the 2014 Election Rule provides parties enough time to litigate pre-election disputes even as it streamlines the election process.

Producing responses to these requests is within the NLRB's capabilities because the Board can examine its own case records for the information. The Board's Next Generation ("NxGen") electronic case management system stores every case file. The Board implemented NxGen in 2011 and has consistently updated and improved it since that time. It is our understanding that all case related documents are required to be uploaded to the NxGen electronic case file to ensure completeness.⁶ The NxGen system specifically identifies Motions to Postpone/Reschedule Hearings, which covers Requests 3-8 in Attachment A.⁷ Such motions are already accessible on the case pages on the Board's website, as are other motions and decisions that are responsive to our requests. Given that the Board has the ability to transfer all of the information on NxGen to its website, it also has the ability to compile data responsive to all of our requests. Therefore, merely lacking the data elements in a computer system does not warrant the refusal to comply with a Congressional request.

When the NLRB developed the 2014 Election Rule, it engaged in a lengthy rulemaking over three and a half years and considered extensive research regarding each of the specific aspects of the representation process. Here, the NLRB did not even provide data justifying its reconsideration of the Rule. Given that robust data exists, we are sure you agree that it would be unacceptable for the NLRB to overhaul its election procedures on the basis of mere anecdotes.⁸

We therefore request that you produce full responses to our 12 outstanding requests by April 16, and that you extend the deadline for comments until May 16.

Additionally, we appreciate that you have been able to use the NxGen system to confirm for us that 6,988 petitions ("Group A") were filed between July 6, 2012 and April 13, 2015, while 6,401 petitions ("Group B") were filed between April 14, 2015 and December 31, 2017. However, we remain puzzled by your claim that the system cannot similarly identify

⁵ Attachment A, Request Nos. 10 (requesting the "number and percentage of cases" where "the only issues not agreed to ... were the election date or details regarding the conduct of the election"); 14 (requesting the "number and percentage of cases" where "the Regional Director or Board refused to permit a party to litigate an issue on the grounds that it was not identified or contested in its position statement"); 15 (requesting the "number and percentage of cases" where "a dispute that was deferred by permitting employees to vote subject to challenge was mooted by the election results") (December 21, 2017 letter).

⁶ Memorandum OM 13-23 (NxGen) (Jan. 7, 2013), *available at* <https://apps.nlr.gov/link/document.aspx/09031d4580ef44c4>.

⁷ Public Documents, National Labor Relations Board, <https://www.nlr.gov/open/public-documents?page=12> (last accessed Mar. 22, 2018).

⁸ When the U.S. District Court for the District of Columbia rejected challenges to the 2014 Election Rule, it noted that challengers "rel[ied] heavily on the repetition of disparaging labels [such as] 'ambush or quickie election rule,'" but that "when one descends to the level of the particular, the provisions at issue are not quite as described." *Chamber of Commerce of the U.S. v. NLRB*, 118 F. Supp. 3d 171, 189 (D.D.C. 2015). Opposition to the 2014 Election Rule has long been plagued by a lack of empirical support, and we are concerned that the NLRB did not cite any research in its Request for Information that would justify reconsidering or modifying the Rule.

continuances that have been sought within these cases. In an attempt to assist in the efforts to produce this mutually beneficial information, we request that you take the following steps within five days to test the availability of such information:

For each of the two sets of representation cases identified as Group A and Group B, please query NxGen using the terms *postpone*, or *reschedule*, or *continuance* **and** *hearing* or *motion* or *order*. Please provide the number of results or "hits" for each group of representation cases. To the extent that there are fewer than 200 results within either group, please provide the information sought by Requests 3-8 in Attachment A with respect to such results. If there are more than 200 results, please include with the production of all outstanding requests as set forth above.

Please contact our staff at John_DElia@help.senate.gov and Kyle.deCant@mail.house.gov if you have any questions about this request. We look forward to hearing from you.

Sincerely,



PATTY MURRAY
U.S. Senator
Ranking Member
Committee on Health, Education, Labor and
Pensions



ROBERT C. "BOBBY" SCOTT
U.S. Representative
Ranking Member
Committee on Education and the Workforce



GREGORIO KILILI CAMACHO SABLÁN
U.S. Representative
Ranking Member
Committee on Education and the Workforce
Subcommittee on Health, Employment,
Labor and Pensions



DONALD NORCROSS
U.S. Representative

The Honorable Marvin Kaplan

March 28, 2018

Page 4

Enclosure.

cc: The Honorable Lamar Alexander
Chairman
U.S. Senate Committee on Health, Education, Labor and Pensions

The Honorable Virginia Foxx
Chairwoman
U.S. House of Representatives Committee on Education and the Workforce

Mr. Gary Shinnars
Executive Secretary
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

Congress of the United States

Washington, DC 20510

December 21, 2017

Hon. Mark Gaston Pearce
Hon. Lauren McFerran
Hon. Marvin Kaplan
Hon. William Emanuel
Hon. Peter Robb, General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dear Member Pearce, Member McFerran, Member Kaplan, Member Emanuel, and Mr. Robb¹:

We write to request information regarding the National Labor Relations Board's (NLRB) 2014 Election Rule.² On December 14, 2017, the NLRB published a Request for Information (RFI) in the *Federal Register* that solicits comments on whether to retain, rescind, or modify the 2014 Election Rule, which streamlined the NLRB process for union representation elections.³ The RFI does not supplement its questions with any empirical evidence or internal data suggesting a need to reconsider the Rule, let alone provide any factual or legal justification for overhauling or modifying the current election procedures. Further, the NLRB has not indicated whether it has initiated any effort to conduct an internal review of cases processed pursuant to the Rule.

Given that the Rule has been in effect for less than three years, we are concerned with the NLRB's decision to consider rescinding or modifying the Rule without first providing any data or analysis sufficient to justify reopening the Rule. We note that, when the NLRB enacted the Rule, it had engaged in a thorough rulemaking process that provided research, considered thousands of public comments over a combined 141 days, and held four days of public hearings. As the RFI notes, the Rule has been upheld in every court where it has been challenged.⁴

In order for commenters to provide the NLRB with meaningful analysis on whether to retain or modify the Rule, comprehensive data regarding the Rule's implementation should be available. Accordingly, we request that you provide us with the information detailed in this letter no later than January 19, 2018.

Please provide the following information and data with respect to cases involving representation petitions, decertification petitions, and employer-filed petitions from April 14, 2015 to the most

¹ In the absence of a Chair, this letter is directed to all Members and the General Counsel.

² 79 Fed. Reg. 74307 (Dec. 15, 2014).

³ 82 Fed. Reg. 58783 (Dec. 14, 2017).

⁴ *Assoc. Builders & Contractors of Texas, Inc. v. NLRB*, 826 F.3d 215 (5th Cir. 2015), *affirming* No. 1-15-CV-026 RP, 2015 WL 3609116 (W.D. Tex. June 1, 2015); *Chamber of Commerce v. NLRB*, 118 F. Supp. 3d 171 (D.D.C. 2015).

recent date for which data is available, and for a period of equal length going back from April 14, 2015, with each of the two periods organized into one-year increments:

1. The number and percentage of elections where the parties stipulated to the terms of the election.
2. The number and percentage of elections where the parties have not stipulated to the terms of the election, and a hearing was ordered. Please identify each such case by name and case number.
3. The number and percentage of cases in which the employer requested a continuance of the originally-scheduled pre-election hearing date. Please identify each such case by name and case number.
4. The number and percentage of cases in which the employer's request described in Request No. 3 was granted. Please identify each such case by name and case number.
5. The range, mean, and median number of additional days granted by each continuance described in Request No. 4.
6. The number and percentage of cases where the labor organization requested a continuance of the originally scheduled hearing date. Please identify each such case by name and case number.
7. The number and percentage of cases in which the labor organization's request described in Request No. 6 was granted. Please identify each such case by name and case number.
8. The range, mean, and median number of additional days granted by the each continuance described in Request No. 7.
9. The number and percentage of cases in which a pre-election hearing was held. Please identify each such case by name and case number.
10. The number and percentage of cases in which the only issues that were not agreed to by the parties were the election date or details regarding the conduct of the election.
11. The range, mean, and median number of days for the duration of pre-election hearings.
12. The number and percentage of cases in which the parties stipulated that some employees should vote subject to challenge (a) as part of an overall election agreement and (b) in a case that resulted in a decision and direction of election. Please identify each such case by name and case number.

13. The number and percentage of cases in which the Regional Director or Board directed that some employees should vote subject to challenge over the objection of a party. Please identify each such case by name and case number.

14. The number and percentage of cases in which the Regional Director or Board refused to permit a party to litigate an issue on the grounds that it was not identified or contested in its position statement. Please identify each such case by name and case number.

15. The number and percentage of cases in which a dispute that was deferred by permitting employees to vote subject to challenge was mooted by the election results. Please identify each such case by name and case number.

16. The number and percentage of cases in which the employer requested an extension of time to file and serve the voter eligibility list. Please identify each such case by name and case number.

17. The number and percentage of cases described in Request No. 16 in which the request was granted, and the number and percentage of cases described in Request No. 16 in which the request was denied.

18. The range, mean, and median number of additional days granted by each extension described in Request No. 17.

19. The number and percentage of cases in which a decision and direction of election was issued.

20. The range, mean, and median number of days between the close of a pre-election hearing and the issuance of a decision and direction of election.

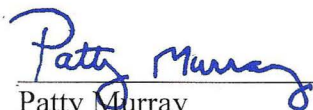
21. The range, mean, and median number of days between the filing of post-hearing briefs following a pre-election hearing, when such filing was permitted, and the issuance of a decision and direction of election.

22. The number and percentage of certifications of a representative that were followed by a technical refusal to bargain that resulted in a Board decision finding a violation of section 8(a)(5) of the National Labor Relations Act. Please identify each such case by name and case number.

23. The number of charges, objections, or complaints of any kind concerning a labor organization's misuse of any form of list of employees provided pursuant to the NLRB's election procedures, together with copies of all such charges, objections, or complaints.

Please contact our staff at John_DElia@help.senate.gov, and Kyle.deCant@mail.house.gov if you have any questions about this request. We look forward to hearing from you.

Sincerely,



Patty Murray
U.S. Senator
Ranking Member
Committee on Education,
Labor & Pensions



Robert C. "Bobby" Scott
U.S. Representative
Ranking Member
Education and the Workforce
Committee



Gregorio Kilili Camacho Sablan
U.S. Representative
Ranking Member
Subcommittee on Health, Employment,
Labor and Pensions



Donald Norcross
U.S. Representative

cc: The Honorable Lamar Alexander
Chairman
U.S. Senate Committee on Health, Education, Labor and Pensions

The Honorable Virginia Foxx
Chairwoman
U.S. House of Representatives Committee on Education and the Workforce

Gary Shinnars
Executive Secretary
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

March 1, 2018

The Honorable Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce
U.S. House of Representatives
2101 Rayburn House Office Building
Washington, DC 20515

The Honorable Donald Norcross
U.S. House of Representatives
1531 Longworth House Office Building
Washington, DC 20515

The Honorable Gregorio Kilili Camacho Sablan
U.S. House of Representatives
2411 Rayburn House Office Building
Washington, DC 20515

Dear Representatives Scott, Sablan and Norcross:

I write in response to your letter dated February 15, 2018 regarding recent reports involving potential changes to the National Labor Relations Board's (NLRB) organizational structure and case-handling procedures.

As stewards of the taxpayer dollar, it is important for the Agency to engage in strategic review of NLRB practices and structures in order to improve the efficiency, effectiveness, and accountability of the Agency. Given the current funding situation, the NLRB needs to act prudently to develop strategies to consolidate and eliminate duplicative functions and improve mission operations. While no specific plans involving restructuring or case-handling have been developed, below are the answers to the questions you outlined in your letter:

A.

1. An explanation of the role of the Board's Members in determining or approving any structural reorganization to the Regions.

I have attached the Board memorandum describing the delegation of authority and assigned responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended September 8, 1958 (effective August 25, 1958), August 12, 1959 (effective August 3, 1959), April 28, 1961 (effective May 15, 1961), October 4, 2002 (effective October 1, 2002), July 23, 2012 (effective July 23, 2012), and July 27, 2012 (effective August 1, 2012) (appearing at 20 FR 2175, 23 FR 6966, 24 FR 6666, 26 FR 3911, 67 FR 62992, 77 FR 43127, and 77 FR 45696 respectively).

2. A detailed description of any proposal to restructure the Regions or modify the Regional Directors' authorities. Please supplement this description with any documents or communications outlining your office's proposals.

No specific plan involving the restructuring of the organization has been developed. In order to ensure efficiency, the Agency is assessing its current organizational structure for possible changes and, if warranted, will work to develop potential plans to be shared publicly.

3. A detailed description of any proposal to change the filing requirements or case-handling procedures for unfair labor practices. Please supplement this description with any documents or communications outlining your office's proposals.

No specific plan involving changes to case-handling has been developed. I solicited suggestions for improving NLRB case processing guidelines from members of our organization based in headquarters and field offices. The Division of Operations Management compiled this feedback and shared it with members of our organization for input. The compilation was derived from comments received from field attorneys, examiners, supervisors, Regional Directors, Assistant Regional Directors, Regional Attorneys, and other employees. After internal comments have been reviewed, proposed improvements will be submitted for comment to the public, as appropriate. All internal communications represent confidential, intra-agency and deliberative documents that need to be protected from disclosure.

4. Your rationale for proposing changes to the structure of the Regions and case-handling procedures for unfair labor practices. Please supplement this rationale with any documents or communications explaining your rationale for proposing changes to the structure of the Regions and case-handling procedures for unfair-labor practices.

As I stated in my responses to Questions 3 and 4, no specific plans have been proposed.

5. Clarification on whether the Board will provide an opportunity for public comment on any proposed changes to the Regions, the Regional Directors' authorities, or the case-handling procedures for unfair labor practices, if you choose to pursue any such proposal.

I will consult and seek approval where appropriate, including soliciting public comment. I do not speak for the Board.

B. Please provide the following documents no later than March 1, 2018:

6. The Regional Directors' January 16, 2018 letter to you and the Board.

Any predecisional, deliberative documents related to possible reorganization of regional offices constitute confidential, intra-agency communication. In order to encourage an open evaluation of potential policies, practices and procedures, the Agency needs to protect such documents from disclosure.

7. Any formal or informal response that you or anyone employed by your office issued to the Regional Directors' January 16, 2018 letter.

As stated in response to question 6, any predecisional, deliberative documents related to possible reorganization of regional offices constitute confidential, intra-agency communication. In order to encourage an open evaluation of potential policies, practices and procedures, the Agency needs to protect such documents from disclosure.

8. All communications and documents concerning a possible reorganization of the Region or changes to processing unfair labor practice charges between you or any person employed by your office and any person or entity not employed by the National Labor Relations Board, including but not limited to Congressional staff or members, White House employees, and employees or members of any party outside of the Board.

Attached please find documents responsive to your request.

9. A list of all cases where you have withdrawn a complaint, moved for dismissal of a complaint, or reversed a Region's determination that a charge had merit, since you have sworn in as General Counsel. For each case, detail the process you relied on in making your determination, including what prompted your reconsideration, which decision-makers from the Board's headquarters were involved, and whether you communicated with the charging party, the respondent, or both. Please include any such communications with parties outside the Board in your response.

As General Counsel, I have prosecutorial discretion. In exercising that discretion, I reviewed the attached Advice Memorandum in *Honeywell* (Case Nos: 03-CA-176218 and 03-CA-180669), dated February 7, 2017, which notes that, "The Region concluded that the Employer engaged in hard bargaining but was not bargaining in bad faith," and decided to rescind the advice contained in that memo. The deliberative process used to make determinations in this case is privileged. To my recollection, this is the only case responsive to your request.

10. A list of all cases where you have directed a Regional Director to pursue a settlement of an unfair labor practice case while a complaint is pending, since you have sworn in as General Counsel. For each case, detail the process you relied on when determining whether to pursue settlement, including what prompted your reconsideration, which decision-makers from the Board's headquarters were involved, and whether you communicated with the charging party, the respondent, or both. Please include any such communications with parties outside the Board in your response.

Charged with administering and enforcing the National Labor Relations Act, it is my job as General Counsel to serve the public interest by reducing interruptions in commerce caused by industrial strife. In order to achieve this goal, I believe that every effort should be made to facilitate a settlement between the parties. Therefore, in all cases, I have expected that settlements be considered. I recall two cases where settlement was the main thrust of a request.

On January 17, 2018, a Motion to Stay Proceedings was filed in *McDonald's USA, LLC* (Case No. 02-CA-093893, et al). Given that McDonald's initiated discussions regarding a global settlement of all pending NLRB charges, I sought a 60-day stay of the proceedings. The deliberative process used to make determinations in this case is privileged.

On February 20, 2018 counsel for Wal-Mart requested a discussion about settlement of *Wal-Mart, Stores, Inc.*, 364 NLRB No. 118 (2016) which is on appeal in the Ninth Circuit Court of Appeals. The request and my response are attached. Other documents are related to confidential settlement discussions.

If you or a member of your staffs have any questions or need additional assistance, please do not hesitate to contact the Office of Congressional and Public Affairs at (202) 273-1991.

Sincerely,

A handwritten signature in black ink that reads "Peter B. Robb". The signature is written in a cursive, flowing style.

Peter B. Robb
General Counsel



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

March 1, 2018

The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions
U.S. Senate
428 Dirksen Senator Office Building
Washington, DC 20510

The Honorable Elizabeth Warren
U.S. Senate
317 Hart Senate Office Building
Washington, DC 20510

Dear Ranking Member Murray and Senator Warren:

I write in response to your letter dated February 15, 2018 regarding recent reports involving potential changes to the National Labor Relations Board's (NLRB) organizational structure and case-handling procedures.

As stewards of the taxpayer dollar, it is important for the Agency to engage in strategic review of NLRB practices and structures in order to improve the efficiency, effectiveness, and accountability of the Agency. Given the current funding situation, the NLRB needs to act prudently to develop strategies to consolidate and eliminate duplicative functions and improve mission operations. While no specific plans involving restructuring or case-handling have been developed, below are the answers to the questions you outlined in your letter:

1. Please provide an official copy of the Regional Directors' January 16, 2018 letter to you and the Board.

Any predecisional, deliberative documents related to possible reorganization of regional offices constitute confidential, intra-agency communication. In order to encourage an open evaluation of potential policies, practices and procedures, the Agency needs to protect such documents from disclosure.

2. Please provide any formal or informal response that you or anyone employed by your office issued to the Regional Directors' January 16 letter.

As I stated in my response to Question 1, any predecisional, deliberative documents related to possible reorganization of regional offices constitute confidential, intra-agency communication. In order to encourage an open evaluation of potential policies, practices and procedures, the Agency needs to protect such documents from disclosure.

3. Please indicate how you view the role of the Members of the Board in any structural reorganization.

I have attached the Board memorandum describing the delegation of authority and assigned responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended September 8, 1958 (effective August 25, 1958), August 12, 1959 (effective August 3, 1959), April 28, 1961 (effective May 15, 1961), October 4, 2002 (effective October 1, 2002), July 23, 2012 (effective July 23, 2012), and July 27, 2012 (effective August 1, 2012) (appearing at 20 FR 2175, 23 FR 6966, 24 FR 6666, 26 FR 3911, 67 FR 62992, 77 FR 43127, and 77 FR 45696 respectively).

4. Please provide a detailed description of any proposed changes to the Regions or the Regional Directors' authorities.

No specific plan involving the restructuring of the organization has been developed. In order to ensure efficiency, the Agency is assessing its current organizational structure for possible changes and, if warranted, will work to develop potential plans to be shared publicly.

5. Please provide a detailed description of any proposed changes to the filing requirements or case-handling procedures for unfair labor practices.

No specific plan involving changes to case-handling has been developed. I solicited suggestions for improving NLRB case processing guidelines from members of our organization based in headquarters and field offices. The Division of Operations Management compiled this feedback and shared it with members of our organization for input. The compilation was derived from comments received from field attorneys, examiners, supervisors, Regional Directors, Assistant Regional Directors, Regional Attorneys, and other employees. After internal comments have been reviewed, proposed improvements will be submitted for comment to the public, as appropriate. All internal communications represent confidential, intra-agency and deliberative documents that need to be protected from disclosure.

6. Please provide your justifications, budgetary or otherwise, for proposing changes to the structure of the regions and filing requirements or case-handling procedures for unfair labor practices.

As I stated in my responses to Questions 3 and 4, no specific plans have been proposed.

7. Please confirm that there would be an opportunity for public comment on any proposed changes to either the regions, the Regional Directors' authorities, or the filing requirements or case-handling procedures for unfair labor practices.

I will consult and seek approval where appropriate, including soliciting public comment. I do not speak for the Board.

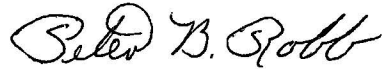
8. Please provide all communications concerning a possible reorganization of the Regions or changes to processing unfair labor practice charges between you or any person employed by your office and any person or entity not employed by the National Labor Relations Board, including, but not limited to, Congressional staff or members, White House employees and employees or members of any agency

stakeholders or associations including the Chamber of Commerce, the National Association of Manufacturers, the International Franchise Association, and the National Right to Work Committee.

Attached please find documents responsive to your request.

If you or a member of your staffs have any questions or need additional assistance, please do not hesitate to contact the Office of Congressional and Public Affairs at (202) 273-1991.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter B. Robb". The signature is fluid and cursive, with the first name "Peter" being more prominent than the last name "Robb".

Peter B. Robb
General Counsel

20 F.R. 2175

NATIONAL LABOR RELATIONS BOARD

**Revocation of Assignment of Responsibilities to the Associate General
Counsels of the Division of Operations and Division of Law,
Respectively**

Pursuant to the provisions of section 3(a) of the Administrative Procedures Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER notification that:

Assignment of Responsibilities to the Associate General Counsels of the Division of Operations and Division of Law, Respectively, effective December 21, 1954 (19 F.R. 8830, December 23, 1954) was revoked effective at close of business March 31, 1955.

Dated: Washington, D.C., April 1, 1955.

By direction of the Board.

FRANK M. KLEILER,
Executive Secretary

**Authority and Assigned Responsibilities of General Counsel of
National Labor Relations Board**

Pursuant to the provisions of section 3(a) of the Administrative Procedures Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following board memorandum describing the authority and assigned responsibilities of the general counsel of the National Labor Relations Board (effective April 1, 1955).

Dated: Washington, D.C., April 1, 1955.

By direction of the Board.

FRANK M. KLEILER,
Executive Secretary

**Board Memorandum Describing the Authority and Assigned
Responsibilities of the General Counsel of the National Labor Relations
Board (Effective April 1, 1955)**

The statutory authority and responsibility of the General Counsel of the Board are defined in section 3(d) of the National Labor Relations Act as follows: "There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other

than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law.”

This memorandum is intended to describe the statutory authority and to set forth the prescribed duties and authority of the General Counsel of the Board, effective April 1, 1955:

I. Case handling—A. Complaint cases. The General Counsel of the Board has full and final authority and responsibility, on behalf of the Board, to accept and investigate charges filed, to enter into and approve informal settlement of charges, to dismiss charges, to determine matters concerning consolidation and severance of cases before complaint issues, to issue complaints and notices of hearing, to appear before Trial Examiners in hearings on complaints and prosecute as provided in the Board’s rules and regulations, and to initiate and prosecute injunction proceedings as provided for in section 10(l) of the act. After issuance of Intermediate Report by the Trial Examiner, the General Counsel may file exceptions and briefs and appear before the Board in oral argument, subject to the Board’s rules and regulations.

B. Court litigation. The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to seek and effect compliance with the Board’s orders and make such compliance reports to the Board as it may from time to time require.

On behalf of the Board, the General Counsel of the Board will, in full accordance with the directions of the Board, petition for enforcement and resist petitions for review of Board Orders as provided in section 10(e) and (f) of the act, initiate and prosecute injunction proceedings as provided in section 10(j), seek temporary restraining orders as provided in section 10(e) and (f), and take appeals either by writ of error or on petition for certiorari to the Supreme Court: *Provided, however,* That the General Counsel will initiate and conduct injunction proceedings under section 10(j) or under section 10(e) and (f) of the act and contempt proceedings pertaining to the enforcement of or compliance with any order of the Board only upon approval of the Board, and will initiate and conduct appeals to the Supreme Court by writ of error or on petition for certiorari when authorized by the Board.

C. Representation and other election cases. The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to receive and process, in accordance with the decisions of the Board and with such instructions and rules and regulations as may be issued by the Board from time to time, all petitions filed pursuant

to section 9 of the National Labor Relations Act as amended. He is also authorized and has responsibility to conduct secret ballots pursuant to section 209(b) of the Labor Management Relations Act of 1947, whenever the Board is required to do so by law; and to enter into consent election agreements in accordance with section 9(c)(4) of the act.

The authority and responsibility of the General Counsel of the Board in representation cases shall extend, in accordance with the rules and regulations of the Board, to all phases of the investigation through the conclusion of the hearing provided for in section 9(c) and section 9(e) (if a hearing should be necessary to resolve disputed issues), but all matters involving decisional action after such hearing are reserved by the Board to itself.

In the event a direction of election should issue by the Board, the authority and responsibility of the General Counsel, as herein prescribed, shall attach to the conduct of the ordered election, the initial determination of the validity of challenges and objections to the conduct of the election and other similar matters; except that if appeals shall be taken from the General Counsel's action on the validity of challenges and objections, such appeals will be directed to and decided by the Board in accordance with such procedural requirements as it shall prescribe. If challenged ballots would not affect the election results and if no objections are filed within five days after the conduct of a Board-directed election under the provisions of section 9(c) of the act, the General Counsel is authorized and has responsibility, on behalf of the Board, to certify to the parties the results of the election in accordance with regulations prescribed by the Board.

Appeals from the refusal of the General Counsel of the Board to issue a notice of hearing on any petition, or from the dismissal by the General Counsel of any petition, will be directed to and decided by the Board, in accordance with such procedural requirements as it may prescribe.

In processing election petitions filed pursuant to section 9(e) of the act, the General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to conduct an appropriate investigation as to the authenticity of the 30 percent showing referred to and, upon making his determination to proceed, to conduct a secret ballot. If there are no challenges or objections which require a hearing by the Board, he shall certify the results thereof as provided for in such section, with appropriate copies lodged in the Washington files of the Board.

D. Jurisdictional dispute cases. The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to perform all functions necessary to the accomplishment of the provisions of section 10(k) of the act, but in connection therewith the Board will, at the request of the General Counsel, assign to him for the purpose of conducting the hearing provided for therein, one of its staff Trial Examiners. This authority and responsibility and the assignment of the Trial Examiner to the General Counsel shall terminate with the close of the hearing. Thereafter the Board will assume

full jurisdiction over the matter for the purpose of deciding the issues in such hearing on the record made and subsequent hearings or related proceedings and will also rule upon any appeals.

II. *Internal regulations.* Procedural and operational regulations for the conduct of the internal business of the Board within the area that is under the supervision and direction of the General Counsel of the Board may be prepared and promulgated by the General Counsel.

III. *State agreements.* When authorized by the Board, the General Counsel may initiate and conduct discussions and negotiations, on behalf of the Board, with appropriate authorities of any of the States or Territories looking to the consummation of agreements affecting any of the States or Territories as contemplated in section 10(a) of the act: Provided, however, That in no event shall the Board be committed in any respect with regard to such discussions or negotiations or the entry into of any such agreement unless and until the Board and the General Counsel have joined with the appropriate authorities of the State or Territory affected in the execution of such agreement.

IV. *Liaison with other governmental agencies.* The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to maintain appropriate and adequate liaison and arrangements with the office of the Secretary of Labor, with reference to the reports required to be filed pursuant to section 9(f) and (g) of the act and availability to the Board and the General Counsel of the contents thereof.

The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to maintain appropriate and adequate liaison with the Federal Mediation and Conciliation Service and any other appropriate Governmental Agency with respect to functions which may be performed in connection with the provisions of section 209(b) of the act. Any action taken pursuant to the authority and responsibility prescribed in this paragraph shall be promptly reported to the Board.

V. *Anti-communist affidavits.* The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to receive the affidavits required under section 9(h) of the act, to maintain an appropriate and adequate file thereof, and to make available to the public, on such terms as he may prescribe, appropriate information concerning such affidavits, but not to make such files open to unsupervised inspection.

VI. *Miscellaneous litigation involving board and/or officials.* The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to appear in any court to represent the Board or any of its Members or agents, unless directed otherwise by the Board.

VII. *Personnel.* In order better to ensure the effective exercise of the duties and responsibility described above, the General Counsel of the Board, subject to applicable laws and the rules and regulations of the Civil Service Commission, is authorized and has responsibility, on behalf of the Board, to select, appoint, retain, transfer, promote,

demote, discipline, discharge, and take any other necessary and appropriate personnel action with regard to, all personnel engaged in the field offices and in the Washington office (other than Trial Examiners, Legal Assistants to Board Members, the personnel in the Information Division, the personnel in the Division of Administration, the Solicitor of the Board and personnel in his office, the Executive Secretary of the Board and personnel in his office, including the Docket, Order and Issuance Section, and secretarial, stenographic and clerical employees assigned exclusively to the work of trial examiners and the Board Members); provided, however, that no appointment, transfer, demotion or discharge of any Regional Director or Officer in Charge shall become effective except upon the approval of the Board.

In connection with and in order to effectuate the exercise of the powers herein delegated (but not with respect to those powers herein reserved to the Board), the General Counsel is authorized, using the services of the Division of Administration, to execute such necessary requests, certifications, and other related documents, on behalf of the Board, as may be needed from time to time to meet the requirements of the Civil Service Commission, the Bureau of the Budget, or any other governmental agency. The Board will at all times provide such of the "housekeeping" functions performed by the Division of Administration as are requested by the General Counsel for the conduct of his administrative business, so as to meet the stated requirements of the General Counsel within his statutory and prescribed functions.

The establishment, transfer or elimination of any Regional or Sub-Regional Office shall require the approval of the Board.

NATIONAL LABOR RELATIONS BOARD

VIII. To the extent that the above-described duties, powers and authority rest by statute with the Board, the foregoing statement constitutes a prescription and assignment of such duties, powers and authority, whether or not so specified.

GUY FARMER,
Chairman.
ABE MURDOCK,
Member.
IVAR H. PETERSON,
Member.
PHILIP RAY RODGERS,
Member.

NATIONAL LABOR RELATIONS BOARD

April 1, 1955.

23 F.R. 6966

NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL

Amendment to Board Memorandum Describing Authority and Assigned Responsibilities

Pursuant to the provisions of section 3(a) of the Administrative Procedures Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following amendment to board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board (effective August 25, 1958). This amends memorandum which appeared at 20 F.R. 2175.

6967

Dated, Washington, D.C., September 8, 1958.

By direction of the Board.

[SEAL]

FRANK M. KLEILER,
Executive Secretary.

The Board Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, is hereby amended by striking the text of Section VII and substituting the following:

In order better to ensure the effective exercise of the duties and responsibilities described above, the General Counsel of the Board, subject to applicable laws and the Rules and Regulations of Civil Service Commission, is delegated full and final authority on behalf of the Board over the selection, retention, transfer, promotion, demotion, discipline, discharge and in all other respects, of all personnel engaged in the field and in the Washington Office (other than personnel in the Board Members' offices, the Division of Trial Examiners, the Division of Information, the Security Office, the Office of the Solicitor, and the Office of the Executive Secretary); provided, however, that no appointment, transfer, demotion or discharge of any Regional Director, or of any Officer in Charge of a Sub-Regional Office shall become effective except upon approval of the Board.

The General Counsel will provide such administrative services and housekeeping services as may be requested by the Board in connection with the conduct of its necessary business, and will submit to the Board a quarterly report on the performance of these administrative functions.

In connection with and in order to effectuate the foregoing, the General Counsel is authorized to execute such necessary requests, certifications, and other related documents

NATIONAL LABOR RELATIONS BOARD

on behalf of the Board, as may be needed from time to time to meet the requirements of Civil Service Commission, the Bureau of the Budget, or any other Governmental Agency; provided, however, that the total amount of any annual budget requests submitted by the agency, the apportionment and allocation of funds and/or the establishment of personnel ceilings within the agency shall be determined jointly by the Board and the General Counsel.

The establishment, transfer or elimination of any Regional or Sub-Regional Office shall require the approval of the Board.

24 F.R. 6666

NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL

Amendment to Board Memorandum Describing Authority and Assigned Responsibilities

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following further amendment to Board Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the National Labor Relations Board (effective August 3, 1959). This amends memorandum which appeared at 20 F.R. 2175, as amended at 23 F.R. 6966.

Dated, Washington, D.C., August 12, 1959.

By direction of the Board.

FRANK M. KLEILER,
Executive Secretary

The Board Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended August 25, 1958, is hereby further amended by striking the text of Section VII and substituting the following:

1. In order more fully to release the Board to the expeditious performance of its primary

6667

function and responsibility of deciding cases, the full authority and responsibility for all administrative functions of the Agency shall be vested in the General Counsel. This authority shall be exercised subject to the limitations contained in paragraph 2 with respect to the personnel of, or directly related to, Board Members, and shall be exercised in conformity with the requirements for joint determination as described in paragraph 4.

2. The General Counsel shall exercise full and final authority on behalf of the Agency over the selection, retention, transfer, promotion, demotion, discipline, discharge and in all other respects, of all personnel engaged in the field and in the Washington Office (other than personnel in the Board Members' offices, the Division of Trial Examiners, the Division of Information, the Security Office, the Office of the Solicitor, and the Office of the Executive Secretary); provided, however, that the establishment, transfer or elimination of any Regional or Sub-Regional Office shall require the approval of the Board.

NATIONAL LABOR RELATIONS BOARD

3. The General Counsel will provide such administrative services and housekeeping services as may be requested by the Board in connection with the conduct of its necessary business, and will submit to the Board a quarterly report on the performance of these administrative functions.

4. In connection with and in order to effectuate the foregoing, the General Counsel is authorized to formulate and execute such necessary requests, certifications, and other related documents on behalf of the Agency, as may be needed from time to time to meet the requirements of Civil Service Commission, the Bureau of the Budget, or any other Governmental Agency; provided, however, that the total amount of any annual budget requests submitted the Agency, the apportionment and allocation of funds and/or the establishment of personnel ceilings within the Agency shall be determined jointly by the Board and the General Counsel.

26 F.R. 3911

NATIONAL LABOR RELATIONS BOARD

REGIONAL DIRECTORS

Delegation of Authority

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following Delegation of Authority to the Regional Directors of the National Labor Relations Board:

Pursuant to section 3(b) of the National Labor Relations Act, as amended, and subject to the amendments to the Board's Statements of Procedure, Series 8, and to its Rules and Regulations, Series 8, effective May 15, 1961, and subject to such further amendments and instructions as may be issued by the Board from time to time, the Board delegates to its Regional Directors "its powers under section 9 to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 9 and certify the results thereof."

Such delegation shall be effective with respect to any petition filed under subsection (c) or (e) of section 9 of the Act on May 15, 1961.

Dated, Washington, D.C., April 28, 1961.

By direction of the Board.

[SEAL]

OGDEN W. FIELDS,
Executive Secretary.

GENERAL COUNSEL

**Further Amendment to Memorandum Describing Authority and
Assigned Responsibilities**

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following further amendment

NATIONAL LABOR RELATIONS BOARD

to Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board (effective on May 15, 1961).¹

Dated, Washington, D.C., April 28, 1961.

By direction of the Board.

[SEAL]

OGDEN W. FIELDS,
Executive Secretary

The Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended September 3, 1958 (effective August 25, 1958), and August 12, 1959 (effective August 3, 1959), is hereby further amended as follows:

1. Strike the text of section I C. entitled “Representation and other Election Cases” and substitute the following:

Pursuant to section 3(b) of the Act, and subject to such instructions and rules and regulations as may be issued by the Board from time to time, the Board has delegated to its Regional Directors its powers under section 9 to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 9 and certify the results thereof. Such delegation shall be effective with respect to any petition filed under subsection (c) or (e) of section 9 of the Act on May 15, 1961.

Subject to the foregoing delegation and to the Regional Director’s direct responsibility to perform the delegated functions in accord with the Board’s rules and regulations and any other implementing directives of the Board, the General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to facilitate the receipt and processing, in accordance with such instructions and rules and regulations as may be issued by the Board from time to time, all petitions filed pursuant to section 9 of the Labor Management Relations Act, as amended. The General Counsel is also authorized and has responsibility to conduct secret ballots pursuant to section 209(b) of the Labor Management Relations Act of 1947, whenever the Board is required to do so by law.

2. Strike paragraph 2, section VII of the amendment dated August 12, 1959 (effective August 3, 1959), and substitute the following:

The General Counsel shall exercise full and final authority on behalf of the Agency over the selection, retention, transfer, promotion, demotion, discipline, discharge, and in all other respects, of all personnel engaged in the field, except that personnel action with respect to Regional Directors and Officers-in-Charge of Subregional offices will be

¹ This amends memorandum which appeared at 20 F.R. 2175, as amended at 23 F.R. 6966 and 24 F.R. 6666.

conducted as hereinafter provided, and in the Washington Office (other than personnel in the Board

3912

Members' Offices, the Division of Trial Examiners, the Division of Information, the Security Office, the Office of the Solicitor, and the Office of the Executive Secretary): *Provided, however,* That the establishment, transfer or elimination of any Regional or Subregional Office shall require the approval of the Board.

The appointment, transfer, demotion, or discharge of any Regional Director or of any Officer-in-Charge of a Subregional office shall be made by the General Counsel only upon the approval of the Board.

67 FR 62992

Further Amendement to Memorandum Describing Authority and Assigned Responsibilities

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the Federal Register the following further amendment to Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board (effective October 1, 2002).

Dated, Washington, DC, October 4, 2002.

By direction of the Board.

John J. Toner,
Executive Secretary

The Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended September 8, 1958 (effective August 25, 1958), and April 8, 1961 (effective May 15, 1961) (appearing at 20 FR 2175, 23 FR 6966, 24 FR 6666 and 26 FR 3911, respectively), is hereby further amended as follows:

1. Strike the text of paragraphs 1 and 4 of section VII of the amendment dated August 12, 1959 (effective August 3, 1959), strike the text of paragraph 2 of section VII of the amendment dated April 28, 1961 (effective May 15, 1961), and substitute the following:

62993

1. In order more fully to release the Board to the expeditious performance of its primary function and responsibility of deciding cases, the authority and responsibility for all administrative functions of the Agency shall be vested in the General Counsel, except as provided below. This authority shall be exercised subject to the limitations contained in paragraphs 2, 5, and 6, and shall be exercised in conformity with the requirements for joint determination as described in paragraph 4.

2. Subject to the limitations contained in paragraphs 5 and 6, the General Counsel shall exercise full and final authority on behalf of the Agency over the selection, retention, transfer, promotion, demotion, discipline, discharge, and in all other respects, of all personnel engaged in the field, except that personnel action with respect to Regional Directors and Officers-in-Charge of Subregional Offices will be conducted as hereinafter provided, and in the Washington Office (other than personnel in the Board Members' Offices, the Division of Judges, the Division of Information, the Security Office, the Office of the Solicitor, the Office of the Executive Secretary and the Office of the Inspector General): provided, however, that the establishment, transfer or elimination of any Regional or Subregional Office shall require the approval of the Board.

The appointment, transfer, demotion, or discharge of any Regional Director or of any Officer-in-Charge shall be made by the General Counsel only upon the approval of the Board.

4. In connection with and in order to effectuate the foregoing, the General Counsel is authorized to formulate and execute such necessary requests, certifications, and other related documents on behalf of the Agency, as may be needed from time to time to meet the requirements of the Office of Personnel management, the Office of Management and Budget or any other Governmental Agency; provided, however, that the total amount of any annual budget requests submitted by the Agency, the apportionment

and establishment of personnel ceilings within the Agency shall be determined jointly by the Board and the General Counsel.

2. Add the following paragraphs 5 and 6 to the text of section VII of the amendment dated April 28, 1961 (effective May 15, 1961):

5. The Information Technology Branch shall be realigned under the authority of the Chief Information Officer ("CIO") (who will jointly report to the General Counsel and the Chairman of the Board with respect to those matters covered by the responsibilities of the CIO), and placed with the Office of the Inspector General, Office of Equal Employment Opportunity and the Office of Employee Development outside the Division of Administration. The Editorial and Publications Services Section of the Library and Administrative Services Branch, Division of Administration, shall be transferred to the Office of the Executive Secretary.

6. The Chairman of the Board shall have full and final authority over the selection, retention, transfer, promotion, demotion, discipline, discharge and evaluation of those persons holding Senior Executive Service positions in the Division of Administration, the senior management official in the Office of Employee Development, the Chief Information Officer, and the Inspector General.

77 FR 43127

Further Amendment to Memorandum Describing Authority and Assigned Responsibilities of the General Counsel

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. L. 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the Federal Register the following further amendment to Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board.

The Board Memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended September 8, 1958 (effective August 25, 1958), and April 8, 1961 (effective May 15, 1961). And October 4, 2002 (effective October 1, 2002) (appearing at 20 FR 2175, 23 FR 6966, 24 FR 6666, 26 FR 3911, and 67 FR 62992, respectively), is hereby further amended as follows:

1. Strike the text of paragraph 6 of section VII of the amendment dated October 4, 2002 (effective October 1, 2002), and substitute the following:

6. The Agency shall appoint a Chief Financial Officer (“CFO”), who will jointly report to the General Counsel and the Chairman of the Board. The Budget, Finance and Acquisitions Management Branches shall be realigned under the authority of the CFO, and placed with the Office of the Chief Information Officer, Office of the Inspector General, Office of Equal Employment Opportunity and Office of Employee Development outside the Division of Administration.

2. Add the following paragraph 7 to the text of section VII of the amendment dated October 4, 2002 (effective October 1, 2002):

7. The Chairman of the Board shall have full and final authority over the selection, retention, transfer, promotion, demotion, discipline, discharge and evaluation of those persons holding Senior Executive Service positions in the Division of Administration, the senior management officials in the Office of Equal Employment Opportunity and the Office of Employee Development, the Chief Information Officer and the Chief Financial Officer.

Authority: Sections 3, 4, 6, and 10 of the National Labor Relations Act, 29 USC Sec. 3, 4, 6, and 10.

Dated Washington, DC, July 17, 2012

By direction of the Board

Lester A. Heltzer,
Executive Secretary

Further Amendment to Memorandum Describing Authority and Assigned Responsibilities of the General Counsel

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the Federal Register the following further amendment to Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board.

The Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended September 8, 1958 (effective August 25, 1958), August 12, 1959 (effective August 3, 1959), April 28, 1961 (effective May 15, 1961), October 4, 2002 (effective October 1, 2002), and July 23, 2012 (effective July 23, 2012) (appearing at 20 FR 2175, 23 FR 6966, 24 FR 6666, 26 FR 3911, 67 FR 62992 and 77 FR 43127, respectively), is hereby further amended as follows:

1. Strike the text of paragraphs 1 and 2 of section VII of the amendment dated October 4, 2002 (effective October 1, 2002), and substitute the following:

1. In order more fully to release the Board to the expeditious performance of its primary function and responsibility of deciding cases, the authority and responsibility for all administrative functions of the Agency shall be vested in the General Counsel, except as provided below. This authority shall be exercised subject to the limitations contained in paragraphs 2, 5 and 7, and shall be exercised in conformity with the requirements for joint determination as described in paragraph 4.

2. Subject to the limitations contained in paragraphs 5 and 7, the General Counsel shall exercise full and final authority on behalf of the Agency over the selection, retention, transfer, promotion, demotion, discipline, discharge, and in all other respects, of all personnel engaged in the field, except that personnel action with respect to Regional Directors and Officers-in Charge of Subregional offices will be conducted as hereinafter provided, and in the Washington Office (other than personnel in the Board Members' Offices, the Division of Judges, the Division of Information, the Security Office, the Office of the Solicitor, the Office of the Executive Secretary and the Office of Inspector General): provided, however, that the establishment, transfer or elimination of any Regional or Subregional Office shall require the approval of the Board. The appointment, transfer, demotion, or discharge of any Regional Director or of any Officer-in-Charge of a Subregional office shall be made by the General Counsel only upon the approval of the Board.

Dated, Washington, DC, July 27, 2012.

By direction of the Board.

Lester A. Heltzer
Executive Secretary.

From: [Robb, Peter](#)
To: [Lotito, Michael J.](#)
Subject: RE: Alert: Labor Board Could See Major Change in Regional Offices
Date: Wednesday, January 17, 2018 12:24:00 PM

[No comment](#)

From: Lotito, Michael J. [mailto:MLotito@littler.com]
Sent: Wednesday, January 17, 2018 11:38 AM
To: Robb, Peter <Peter.Robb@nlrb.gov>
Subject: Fwd: Alert: Labor Board Could See Major Change in Regional Offices

No idea who talked about formal rule making. Sounds silly to me.

Sent from my iPad

Begin forwarded message:

From: Bloomberg Government <alerts@bgov.com>
Date: January 17, 2018 at 11:37:17 AM EST
To: <milotito@littler.com>
Subject: Alert: Labor Board Could See Major Change in Regional Offices



[Labor Board Could See Major Change in Regional Offices](#)

By Lawrence E. Dubé | January 17, 2018 11:37AM ET | Bloomberg BNA

(Bloomberg Law) -- NLRB General Counsel Peter Robb (R) wants to launch a major restructuring of the National Labor Relations Board's field office operations, sources familiar with the matter told Bloomberg Law.

Robb, a Trump appointee who became general counsel late last year, held a conference call with regional directors Jan. 11. He told the directors he wants to reorganize the agency's 26 regional offices into a smaller number of districts or regions supervised by officials who would report directly to the general counsel. Several sources told Bloomberg Law they are concerned that the general counsel wants to limit regional directors' authority and possibly reduce the rank of at least some regional office officials. Regional directors currently have the authority to issue complaints and dismissals of unfair labor practice cases, and they render decisions in union representation cases.

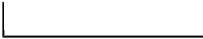
The National Labor Relations Act and labor board regulations give the general

counsel broad authority over regional office operations, but board approval may be required for office restructuring and personnel actions. One attorney familiar with NLRB operations told Bloomberg Law that a formal rulemaking process may also be required.

An NLRB spokesperson did not immediately respond to Bloomberg Law's request for comment.

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From: [Robb, Peter](#)
To: [Lotito, Michael J.](#)
Subject: RE: Your reorganization
Date: Wednesday, January 17, 2018 9:30:00 AM

I cannot comment on any reorganization.

-----Original Message-----

From: Lotito, Michael J. [<mailto:MLotito@littler.com>]
Sent: Wednesday, January 17, 2018 6:04 AM
To: Robb, Peter <Peter.Robb@nlrb.gov>
Subject: Your reorganization

Is leaking. BNA reporter wants to talk to me. What do you want me to do. Guidance please. He is calling me at 10:30

Sent from my iPhone

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From: [Robb, Peter](#)
To: [LERA](#)
Subject: RE: February 6 LERA Event
Date: Wednesday, January 31, 2018 2:50:00 PM

The General Counsel will discuss the following topics:

GC memorandum 18-02

Restructuring Rumors

Case Processing

From: LERA [mailto:nylerasec@gmail.com]

Sent: Wednesday, January 31, 2018 9:06 AM

To: Kaplan, Marvin E. <Marvin.Kaplan@nlrb.gov>; Robb, Peter <Peter.Robb@nlrb.gov>; Pearce, Mark G. <Mark.Pearce@nlrb.gov>; McFerran, Lauren <Lauren.McFerran@nlrb.gov>

Cc: Dennis Campagna <nycampagna@gmail.com>; Dennis Campagna <djc20@cornell.edu>; Alexander J. Franchilli <AFranchilli@ebglaw.com>

Subject: February 6 LERA Event

Dear Mr. Kaplan, Mr. Robb, Mr. Pearce, and Ms. McFerran:

I am working with Dennis Campagna to prepare for the February 6 LERA event. We are very excited to hear you speak, and there is great interest based on the number of reservations we have so far.

Would you be able to briefly describe the topics you intend to cover? If you have materials that you would like distributed to the audience, please send them to me as soon as you can, as we will need to begin preparing booklets. Alternatively, please feel free to send me the names of cases or articles so that I can pull them for you.

If you have any questions, please feel free to contact me.

Best regards,

Alex Franchilli

From: [Corthon, Mildred](#)
To: [Lynn Rhinehart](#)
Subject: RE: Letter re: reorganization plans
Date: Monday, February 05, 2018 11:03:00 AM

You are very welcome Lynn. It's also nice to hear from you and I hope you are doing well. I look forward to hearing from you soon.

Mildred

From: Lynn Rhinehart [mailto:lrhinehart@aflcio.org]
Sent: Monday, February 05, 2018 10:56 AM
To: Corthon, Mildred <Mildred.Corthon@nlrb.gov>
Subject: Re: Letter re: reorganization plans

Hi Mildred! It's nice to hear from you. Thank you for forwarding the letter. I will be in touch soon about possible dates. We would like a group to meet here in DC, and also to arrange for 2-3 conversations with lawyers outside DC (which I understand would need to be done via videoconference). I hope to get you some possible dates in the next few days. Thanks!
Lynn

On Mon, Feb 5, 2018 at 10:44 AM, Corthon, Mildred <Mildred.Corthon@nlrb.gov> wrote:

Good Morning Lynn,

Please see the attached letter from General Counsel Peter Robb in response to your letter of February 2, 2018. If you could please send me a list of your possible meeting dates I'll check Peter's calendar and respond back to you as soon as possible.

Take care,
Mildred

--

Lynn Rhinehart
General Counsel, AFL-CIO
815 16th Street, NW
Washington, DC 20006
202-637-5155
lrhinehart@aflcio.org



UNITED STATES GOVERNMENT
National Labor Relations Board
Office of the General Counsel

February 5, 2018

Lynn Rhinehart, General Counsel
AFL-CIO
815 16th Street, N.W.
Washington, D.C. 20006

Subj: Request for Practitioner Meetings On Agency Organization and Operations

Dear Lynn,

Thank you for your letter dated February 2, 2018. I too was alarmed to read the story in the Times. As I have repeatedly said both before and after the story appeared, there is no plan for reorganization. That is why the story did not include any plan. However, budget issues over many years and the decline in caseload require a review of the organization. I welcome the opportunity to discuss this with a group of your members. Please contact my Assistant Mildred Corthon to set up the meeting. It was good hearing from you.

Thanks again

A handwritten signature in cursive script, appearing to read "Peter".

Peter B. Robb
General Counsel
National Labor Relations Board

From: [Robb, Peter](#)
To: [Rosemary Pye](#)
Subject: Re: Letter from Retired NLRB Regional Directors 2-6-18
Date: Tuesday, February 06, 2018 1:53:48 PM

Good to hear from you. I hope you are well and happy. I appreciate the comments but they are premature. There has been no plan developed. Rather, due to budget issues, an evaluation of the organization has begun. When proposed changes have been drafted, they will be submitted to the public as appropriate. Thanks for your concern. It is good to see that former employees are still interested in the Agency.

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From: Rosemary Pye <pye.arbitrator@gmail.com>
Sent: Tuesday, February 6, 2018 9:56:00 AM
To: Robb, Peter
Subject: Letter from Retired NLRB Regional Directors 2-6-18

Dear General Counsel Robb,

The retired Regional Directors congratulate you on your appointment as General Counsel and look forward to working with you whenever we might be helpful. I am attaching a letter from 56 retired Regional Directors about what may be proposed restructuring of the regional offices. As the cover letter explains, as people with great devotion to the NLRB and knowledge of regional-office work, we are making ourselves available to you to discuss your plans. I am the local contact, but there are also several other regional directors who can meet with you in person or by phone. I look forward to hearing from you.

Sincerely,

Rosemary

Rosemary Pye
pye.arbitrator@gmail.com

February 6, 2018

The Honorable Peter B. Robb, General Counsel
Office of the General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Dear General Counsel Robb:

We write as retired Regional Directors (RDs) of the NLRB, representing decades of public service to the Agency. Among the signatories below are former RDs during the administrations of Presidents Nixon, Ford, Carter, Reagan, George H.W. Bush, Clinton, George W. Bush, Obama, and Trump. Throughout these very different administrations, we shared the privilege of exercising our delegated authority to support the highest ideals of objective decision-making. Without exception, as career professionals, we faithfully followed changes in the law and policy.

We understand that you may be contemplating a restructuring of the field offices, which could involve the elimination of Regions, the downgrading of RDs from SES status to GS-15, and the creation of a small number of District Directors, whose location and responsibilities are unspecified. Drawing on our long experience as RDs, we set forth below some observations regarding that proposal. We believe that the restructuring as proposed clearly misses the mark because:

- There would be no cost savings. Instead, restructuring would create additional costs, which are clearly unwarranted in bad budget years. Even if cost savings were achieved, diminished efficiency and lessened effectiveness would offset any such apparent gain.
- The substantial value of local access by the public to the decision-makers must not be lost. This access to Regional Directors by the labor bar not only builds trust in the Agency's operations, but more importantly fosters early settlements producing real cost savings.
- A process for consolidation of offices already exists.
- There are already comprehensive safeguards on the RDs' decision-making authority.

- The restructuring must not violate the Civil Service Reform Act.
- There is no rationale for demoting RDs from Senior Executive Service.
- The mandatory Advice submission memo will provide further control.
- The experience under former Chairman Dotson illustrates the consequences of attempting a restructuring without a clear problem in need of resolution.

1. To the extent that the proposed restructuring is intended to save costs, it would be significantly more expensive in the first fiscal year and, even when fully implemented, would not achieve a savings.

Before such a substantial restructuring is given serious consideration, the potential benefits and costs must be carefully computed. Applying general principles, it appears that the proposed restructuring would not produce substantial cost savings in its first fiscal year, or in subsequent years.

The restructuring proposal appears to be considering adding between four to six District Directors. The addition of four District Director SES positions would represent additional annual salaries of approximately \$758,000; six additional directors would total \$1,137,000. Thus, the first fiscal year would result in a major increase in spending – not a savings.

It is doubtful whether, under SES rules, an SES member who continues to do substantially the same job, which the restructuring seems to envision, could be demoted to the top step of GS-15. It is likely that the NLRB would have to wait for the incumbent RDs to retire or resign to fill future managerial positions at the GS-15 level. If that were the process, the increased costs of salaries for the RDs and District Directors would continue long into the future.

Assuming, however, for the sake of argument, that all RDs could be demoted to GS-15 immediately, that would still not produce a saving this year nor in the future. Thus, with a difference between SES pay and the top GS-15 of about \$25,000 per RD, the demotion of RDs would represent approximately \$650,000 less costs. However, any such savings would be offset by the additional annual cost of \$758,000 for four District Directors, or \$1,137,000 for six.

These figures are estimates and must be refined, but the critical principle remains that the restructuring would increase the NLRB spending on salaries and not constitute a savings. The cost of this plan would add significantly to the Agency's budget in its first year and would result in additional and ongoing costs when fully implemented. Moreover, even assuming for the sake of argument that the District Director model achieves some actual cost savings, the benefits would be illusory, as they would be offset by the costs of decreased efficiency and effectiveness, as described below.

2. The Board's exemplary record of case-handling in both unfair labor practice and representation cases is attributable in large part to the continuous interaction between the RDs and Regional staffs with the parties and the public, and it is essential not to lose that access and the benefits it provides case processing.

Because RDs have always been devoted to outreach to the parties, the bar, and the public, the parties trust the regional directors as decision-makers. The RDs make themselves available to parties to present their cases for decision-making and for settlement. As a result, the Agency's settlement rate has consistently been approximately 90 percent, which provides a considerable savings to the Agency. If the decision-making authority is moved to District Directors who are not easily accessible to the parties, it is doubtful that this measure of trust and efficiency will be preserved. District Directors would not have the time or ability to develop the close working relationships with the management and labor bar that are the hallmark of effective and efficient case processing.

In addition, a District Director system would result in higher costs and substantial inconvenience to the parties who would not have easy access to RDs to argue their positions on pending cases. Additional funds would also need to be spent to allow District Directors to travel to the offices that they are responsible for overseeing, and casehandling would be significantly delayed with this additional layer of review.

3. The current procedures to review the need for consolidation of offices on a case-by-case basis can continue without additional restructuring.

The General Counsel has long had a process of reviewing regional office consolidations or restructuring at times when RD vacancies occur or caseloads change significantly. There is no

reason why that process cannot continue independently of any restructuring plan. This process has already substantially reduced the number of RDs where case intake no longer justifies a Region continuing to be headed by an SES RD. Therefore, there is no need to restructure Regional Office management or downgrade RDs to achieve perceived efficiencies produced by consolidating offices. The changes proposed would clearly require Board approval and, perhaps, a Board rulemaking process.

4. The General Counsel already has significant controls over the decision-making authority of the RDs.

The offices of the General Counsel, Operations, Advice, and Appeals exercise considerable safeguards on the authority of the RDs. The General Counsel issues policy memoranda, as it has in the recent memo on mandatory submissions; oversees training of all staff; and conducts conferences and conference calls to give direction to the RDs. The Division of Operations reviews cases -- particularly Advice, Appeals, 10(j), and complaint cases -- to ensure consistent quality. Operations prepares appraisals of the RDs and conducts quality reviews of cases. The implementation of the electronic case file system allows oversight of all files.

Approximately 65 percent of cases are non-meritorious, and if dismissed, may be appealed to the Office of Appeals. Section 10(j) cases are authorized by the General Counsel and the Board in Washington. Litigated cases are taken to administrative law judges, the Board, and the courts, where any faults in the decisions or litigation by the Regions may be revealed and addressed.

The General Counsel meets with the American Bar Association's Practice and Procedures Committee and with parties and practitioners throughout the country for feedback on the performance of the Regional Directors and Regions.

In sum, there is already comprehensive and effective oversight of RD casehandling decisions and activities.

- 5. The Civil Service Reform Act caps the percentage of non-career SES for an agency at 25 percent. If District Directors are non-career SES, adding four to six non-career SES positions would likely exceed the cap.**

It has not been clarified whether the District Director positions would be career or non-career. However, the difficulty of complying with the requirements of the Civil Service Reform Act on the ratio of non-career to career positions should be considered in any plan.

The Civil Service Reform Act caps the percentage of non-career SES positions in an agency at 25 percent. Again, the retired RDs do not have exact information on current SES staffing at the Board, but it appears that an additional four to six non-career SES positions, while eliminating all the SES positions for RDs, would result in a ratio that would violate the Civil Service Reform Act.

- 6. There is no rationale for demoting Regional Directors from Senior Executive Service positions.**

Even before the creation of SES in 1978, the NLRB's RDs had been vested with executive rank and authority to administer and enforce the Act, on behalf of the GC and Board, at the local level, and to manage the field staffs. While adjustments in the Regions' configurations have occurred from time to time to account for shifting caseloads, until now no one has proposed categorically stripping RDs of their SES status. We are not aware of any rationale for such a drastic step. While changes to the SES system as a whole have been proposed, we are not aware of any precedent for the demotion of an entire class of Senior Executives within a department or agency.

- 7. There is no clear need for a restructuring plan of the regional offices at this time. The GC memorandum on mandatory submissions to the Division of Advice was just issued on December 1, 2017, and the impact of this memo is not yet clear.**

To the extent that restructuring is directed at a closer, more centralized review of Regional Office casehandling, that issue has been substantially advanced by the issuance of the recent comprehensive GC memo on Advice submissions. The General Counsel's concerns over control may be satisfied as this review will provide sufficient oversight without the added administrative burden of implementing a complex new field structure with its added costs, burdens, and problems, as described above.

8. A prior plan by then Chairman Donald Dotson to exercise more control over the Appellate Court Branch provides a cautionary tale.

During his time as Chairman, Donald Dotson moved to have the Board review briefs of the Appellate Court Branch and exercise more control over their representation of the Board in the courts. This was a major change with no clear factual predicate warranting such restructuring. The changes implemented provided no real advantage to the Board, which did not have the time, interest, or specialized expertise to duplicate the review already provided by the General Counsel. The fallout in the reputation of the Board with the staff, bar, and the public was substantial.

Because 95 percent of casehandling is done by the Regional Offices, the field staff, the bar, the public, and their political representatives will be even more concerned about a restructuring of the field. Chairman Dotson's attempt at a more modest restructuring, affecting fewer cases and fewer members of the public, counsels against undertaking such a major restructuring without a clear reason for change.

Conclusion

The retired RDs recommend that the long-established achievements of the RDs and resulting benefits to the Agency in terms of quality and efficiency, as well as reputation in the community, be recognized and preserved.

We look forward to an active and meaningful participation in this process by adhering to our shared goals of both maintaining the high quality of the Regional Office work while also addressing the Agency's reduced budgetary resources. Fifty-six retired RDs have signed this letter to you because we feel very strongly about the issues discussed in the letter.

Please know that we are raising our concerns only with you at this time, because we understand you are in the early stages of your proposed restructuring plan. We also appreciate that because you are faced with a difficult budget year, you may not go forward at this time. We hope you will look to us for input if you decide to move forward.

We would very much appreciate learning your current intentions and have provided in a separate memo a local contact point for your convenience. Please also know that while we much prefer to have a dialogue directly with you, as people with enormous pride in the Agency and concern for its future, we may ultimately need to also reach out to the Board and the broader labor relations community.

Respectfully,

<u>NAME</u>	<u>FORMER RD REGION</u>	<u>CURRENT RESIDENCE</u>
Victoria E. Aguayo	Los Angeles	Arcadia, CA
Richard L. Ahearn	Buffalo, Cincinnati & Seattle	Seattle, WA
Joseph A. Barker	Chicago	Kalamazoo, MI
Philip E. Bloedorn	Milwaukee	Wilmington, NC
Frederick J. Calatrello	Cleveland	Cleveland, OH
Roberto G. Chavarry	Chicago	Odessa, FL
Robert W. Chester	Minneapolis & Pittsburgh	Venetia, PA
Willie L. Clark, Jr.	Winston Salem	Winston Salem, NC.
Louis J. D'Amico	Baltimore	Ashville, NC
Margaret J. Diaz	Tampa	Tampa, FL
Michael Dunn	Fort Worth	Bedford, TX
Paul Eggert	Seattle	Fountain Hills, AZ
Karen P. Fernbach	Manhattan	Great Neck, NY
Marta M. Figueroa	San Juan	San Juan, PR
Gerard P. Fleischut	Memphis & New Orleans	Memphis, TN
Joseph Frankl	San Francisco	Cloverdale, CA
D. Randall Frye	Cincinnati	Kings Mountain, NC

Olivia Garcia	Los Angeles	Prairie Lea, TX
Stephen M. Glasser	Detroit	Farmington Hills, MI
Wayne R. Gold	Baltimore	Sarasota, FL
Irving E. Gottschalk	Milwaukee	Glendale, WI
Claude T. Harrell, Jr.	Atlanta & St. Louis	Atlanta, GA
Peter W. Hirsch	Philadelphia	Penn Valley, PA
Peter B. Hoffman	Hartford	West Hartford, CT
Daniel L. Hubbel	Kansas City & St. Louis	Basehor, KS
Michael Josserand	Denver	Castle Rock, CO
Gary Kendellen	Newark	Summit, NJ
Rochelle Kentov	Tampa	Clearwater, FL
Martha Kinard	Fort Worth	Arlington, TX
Elizabeth Kinney	Chicago	Evanston, IL
Gerald Kobell	Pittsburgh	Pittsburgh, PA
Jonathan B. Kreisberg	Hartford & Boston	Delray Beach, FL
Rhonda P. Ley	Buffalo & Pittsburgh	Lewiston, NY
J. Michael Lightner	Newark	Denville, NJ
Rik Lineback	Indianapolis	Indianapolis, IN
Curtis L. Mack	Atlanta	Atlanta, GA
Helen E. Marsh	Buffalo	Silver Spring, MD
Celeste J. Mattina	Manhattan	Washington, DC
D. Michael McConnell	Overland Park	Shawnee, KS
James J. McDermott	Los Angeles	Brentwood, CA
Robert H. Miller	San Francisco	Foster City, CA

Dorothy L. Moore-Duncan	Philadelphia	Philadelphia, PA
Gary W. Muffley	Cincinnati	Tallahassee, FL
Joseph P. Norelli	San Francisco	Princeville, HI
Marlin O. Osthus	Minneapolis	St. Paul, MN
Wanda Pate Jones	Denver	Denver, CO
James G. Paulsen	Brooklyn	New York, NY
Charles L. Posner	Baltimore	Chevy Chase, MD
Rosemary Pye	Boston	Arlington, VA
Alan B. Reichard	Oakland	Walnut Creek, CA
James S. Scott	Oakland	Walnut Creek, CA
Ronald M. Sharp	Minneapolis	Boulder, CO
F. Rozier Sharp	Kansas City	North Port, FL
Daniel Silverman	Manhattan	Brooklyn, NY
Curtis A. Wells	Fort Worth & New Orleans	Bolivar, MO
Glenn A. Zipp	Peoria	Peoria, IL

From: [Kyle, John](#)
To: [Snyder, Jennifer P.](#)
Cc: [Stanley M. Gosch](#); [Emily Perez](#); [Todd C. Duffield](#)
Subject: Re: P&P meeting
Date: Friday, February 23, 2018 6:32:38 PM

Jennifer. Hello again. I spoke with Peter and he said that his focus will be less on published decisions or memos and more on an interactive process with the P&P participants. I think he wants to discuss where the Agency finds itself now and where some of the case processing and other concepts may take it in the future, getting feedback from your attendees as to what they and their clients see as important to their interests and concerns. Thanks.

John

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From: Kyle, John
Sent: Thursday, February 22, 2018 8:14:02 PM
To: Snyder, Jennifer P.
Cc: Stanley M. Gosch; Emily Perez; Todd C. Duffield
Subject: Re: P&P meeting

Jennifer. Of course. I will speak with Peter tomorrow and let you know. Thanks and I look forward to seeing you in Puerto Rico.

John

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From: Snyder, Jennifer P. <jsnyder@dilworthlaw.com>
Sent: Thursday, February 22, 2018 5:51:25 PM
To: Kyle, John
Cc: Stanley M. Gosch; Emily Perez; Todd C. Duffield
Subject: P&P meeting

John -

In preparation for next week's meeting, would you kindly let us know what decisions/memos General Counsel Robb plans to discuss? We would like to gather them and make them available to attendees in advance.

Thanks,
Jennifer Snyder
Employer Co-Chair, P&P Committee

www.DilworthLaw.com

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From: [Robb, Peter](#)
To: [Lynn Rhinehart](#)
Cc: [Corthon, Mildred](#)
Subject: RE: Invitation to LCC
Date: Friday, February 09, 2018 3:03:00 PM

OK

From: Lynn Rhinehart [mailto:lrhinehart@aflcio.org]
Sent: Friday, February 09, 2018 2:59 PM
To: Robb, Peter <Peter.Robb@nlrb.gov>
Cc: Corthon, Mildred <Mildred.Corthon@nlrb.gov>
Subject: Re: Invitation to LCC

Well drat. I would offer you the 16th but that slot is taken by my boss, so that probably wouldn't be the best move. Sorry it didn't work out. We will follow up next week on dates for conversations about the reorg stuff. Thanks for getting back to me so quickly on the LCC.

Lynn

On Fri, Feb 9, 2018 at 2:36 PM, Robb, Peter <Peter.Robb@nlrb.gov> wrote:

Unfortunately I have previously accepted a speaking engagement with the Michigan Bar Association on May 17, 2018 in Detroit. I would be pleased to speak with your lawyers' group but that date is bad. Sorry

From: Lynn Rhinehart [mailto:lrhinehart@aflcio.org]
Sent: Thursday, February 08, 2018 2:31 PM
To: Robb, Peter <Peter.Robb@nlrb.gov>
Cc: Corthon, Mildred <Mildred.Corthon@nlrb.gov>
Subject: Invitation to LCC

Hi, Peter, attached is the invitation to our annual lawyers conference that we discussed last week. If you could take a look and see if the date works, that would be great. I have a GC meeting on Wednesday and we will be talking about dates to come talk to you about the reorg stuff - I'll get back to Mildred right after that so we can get that going.

Thanks,
Lynn

--

Lynn Rhinehart
General Counsel, AFL-CIO
[815 16th Street, NW](#)
[Washington, DC 20006](#)
[202-637-5155](#)
lrhinehart@aflcio.org

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Lynn Rhinehart
General Counsel, AFL-CIO
815 16th Street, NW
Washington, DC 20006
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lrhinehart@aflcio.org

United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

S.A.M.

DATE: February 7, 2017

TO: Paul Murphy, Regional Director
Region 3

FROM: Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Honeywell
Case Nos: 03-CA-176218 and 03-CA-180669

The Region submitted this case for Advice as to whether the Employer violated the Act by locking out its employees in support of a bargaining position that would give the Employer considerable discretion over key terms and conditions of employment. We conclude that such a lockout is an example of the type of economic warfare that is so damaging to collective bargaining that the Board should prohibit its use. We therefore conclude that the Employer violated the Act by locking out its employees to compel the Union to waive its right to bargain over the parties' health and welfare plans.

FACTS

The Employer, Honeywell International, manufactures airplane equipment at various facilities across the country. The Union, the UAW, represents employees at several of the Employer's facilities; in particular, UAW Local 9 has represented a unit of production and maintenance employees at the Employer's South Bend, Indiana site since 1936 and UAW Local 1508 has represented a similar unit at the Green Island, NY facility since 1967. There are currently 320 and 41 unit members at the South Bend and Green Island sites, respectively. The parties have negotiated a master agreement covering both units as well as separate local agreements. All contracts ran from May 3, 2011 to May 3, 2016.

The parties began negotiating for their successor agreements on April 12, 2016¹ in South Bend. Throughout the course of negotiations, the Employer repeatedly offered proposals that as to virtually all of its health and welfare coverage—most

¹ All dates are in 2016 unless otherwise specified.

notably medical and dental insurance and pensions²—employees would transition to the same plans that “Honeywell offers to non-bargaining unit employees at the site and as they may change from time to time,” effective January 1, 2017.³ The proposals all specified that “[n]o matter respecting the Plans shall be subject to the Grievance Procedure established in the Collective Bargaining Agreement between the Company and the Union.” The Union consistently rejected such proposals, explaining that it would never agree to allow the Employer to reserve the right to make changes at its sole discretion.⁴ The Employer’s proposals also included language reserving to itself some discretion on hours of work,⁵ leaves of absences,⁶ and rates of production.⁷ In

² This type of language that twinned the unit employee benefits to those enjoyed by non-unit employees which could be changed at the Employer’s discretion also reached supplemental life insurance, AD&D, Dependent Life Insurance, Short and Long Term Disability, the FSA, the EAP, Identity Theft Services, Business Travel Insurance, 401(k), Bravo (a reward recognition program), Employee Discount Program, and the Employee Referral Program.

³ The Employer explained that the plans are offered corporate-wide and apply to all locations, but the health insurance premiums vary regionally.

⁴ According to the Employer, the UAW accepted similar discretionary language earlier this year in a collective-bargaining agreement covering its Boyne City, Michigan facility.

⁵ “The Company retains the right to set standard hours of work, break times, meal times, clean-up times and shift schedules locally, which may vary by classification, department or product line. Local management will provide the local Union advance notice and an opportunity to discuss any change in standard hours of work, break times, meal times, clean-up times and shift schedules.”

⁶ “Employees covered by this Agreement are eligible for all leaves of absence available to other employees at their work site, on the same terms and conditions applicable to those other employees and as the Company may change them from time to time. . . . By making the foregoing applicable to bargaining unit employees the same as other Honeywell employees, including as they may change from time to time, the parties do not waive any other rights under this Agreement.”

⁷ “The Company agrees that the rates of production will be set on the basis of fairness and equity and they shall be consistent with the quality of workmanship, efficiency of operation and reasonable working capacities of normal operators. Allowance will be made for personal time and other elements such as tool allowances where these are factors. When the Company decides to study a job, it will give advance notice to the

the interest of obtaining an agreement, the Union has tentatively agreed to the Employer's proposals regarding leaves of absence and rates of production. Although it has not agreed to the Employer's proposal on hours of work, the Union has focused its objections on the health and welfare proposal rather than the hours of work proposal.

The parties negotiated almost daily from April 12 until May 3 when the Employer presented the Union with what it described as its last, best, and final offer (LBFO). The LBFO included the same language about health and welfare benefits that the Union had objected to throughout the negotiations. On May 7, the unit members voted overwhelmingly to reject the LBFO. The Employer locked out the employees on May 9, informing the Union and employees that it had made "the difficult decision to not allow members of the bargaining unit to work until an agreement on a new contract is reached." In the letter informing the Union of the lockout, the Employer stated that "[e]mployees will be permitted to return to work upon union ratification of a new collective bargaining agreement."

The parties have held multiple bargaining sessions since the lockout began: on May 18, June 7, June 8, the week of September 12, and November 2. The Employer presented a new proposed agreement at the November negotiation that included modifications to its health and welfare provisions. Most significantly, the new proposal provided that employee contributions to health insurance premiums would increase no more than 15 percent per year. The Union presented the new proposal to its members on November 12, but reports that the members once again rejected the proposed agreement "by a wide margin." Sometime in December, the Employer presented a new proposal that included a ratification bonus.⁸ According to the Employer, the Green Island unit reportedly voted to accept the Employer's proposal, but the South Bend unit rejected it and ratification failed. As of this date, the parties have no additional bargaining dates scheduled. However, the Union reportedly plans to review a collective-bargaining agreement that the Employer recently signed with a different union.

employee who works on the job. The supervisor will instruct in the method of performing the operation. The Company shall then notify both the supervisor and the employee of the standard on the job after the study has been completed. In the event of a dispute over the new standard, the Company will review the study and the new standard with the Union."

⁸ The Region has asked the parties whether the Employer's December proposal included any changes to its health and welfare benefits language but has not yet received a response.

The Region concluded that the Employer engaged in hard bargaining but was not bargaining in bad faith. The Employer's proposed agreement includes wage increases throughout the term of the agreement and incorporates the parties' extant grievance-arbitration procedure and dues check-off. As of this date, neither party has declared impasse and the Employer has expressed its willingness to continue bargaining. The Employer maintains a public website dedicated to the status of negotiations for both the South Bend (<http://southbend.honeywell.com/negotiations>) and Green Island (<http://greenisland.honeywell.com/>) facilities.

ACTION

We conclude that a lockout violates the Act when it is used to force a union to waive its right to bargain over crucial terms and conditions of employment that the Employer could not lawfully implement if the parties went to impasse. The use of an economic weapon such as a lockout to compel a union to yield its statutory role as bargaining representative is so destructive of the collective-bargaining process that its use in this manner constitutes an unfair labor practice. We therefore conclude that the Employer unlawfully locked out its employees in an attempt to force the Union to agree to a contract giving it broad discretion over the parties' health and welfare provisions.

As an initial matter, we note that the Employer did not violate the Act by proposing contract terms under which it retained a good deal of discretion over mandatory subjects of bargaining. It is lawful for an employer to insist to impasse upon contract clauses giving it broad discretion over mandatory subjects, provided it is otherwise bargaining in good faith.⁹ In *NLRB v. American National Insurance Co.*,

⁹ See, e.g., *St. George Warehouse, Inc.*, 341 NLRB 904, 907 (2004) (not unlawful for employer to demand broad management rights clause absent indicia that union was left with fewer rights than it would have had absent a contract (citing *A-1 King Size Sandwiches*, 265 NLRB 850 (1982), *enforced* 732 F.2d 872 (11th Cir. 1984)), *enforced* 420 F.3d 294 (3rd Cir. 2005). Compare *Reichhold Chemicals, Inc.*, 288 NLRB 69, 70 (1988) (employer's demand for comprehensive management rights and no-strike clauses was lawful hard bargaining) with *Hydrotherm, Inc.*, 302 NLRB 990, 994 (1991) (employer's insistence on management rights provision giving it unfettered discretion over wages and most terms and conditions amounted to unlawful demand that the union surrender its rights as exclusive representative). See also *Intermountain Power Service Corp.*, Case 27-CA-16791-1, Advice Memorandum (Nov. 15, 2000) (concluding that employer's insistence on provisions requiring the union to waive right to bargain over certain mandatory subjects did not constitute bad-faith bargaining).

the Supreme Court held that an employer's insistence on contract clauses that gave the employer complete discretion on promotions, discipline, and work scheduling was not a per se violation of Section 8(a)(5).¹⁰ The Court noted that such flexible contract clauses were quite common, and that Congress intended that the Board should not disrupt the way collective bargaining had been practiced.

Since the Court's decision in *American National Insurance*, the Board has held that it is "lawful for an employer to insist on the retention of discretion under a management rights clause over certain mandatory subjects of bargaining."¹¹ The Board in *McClatchy Newspapers* specifically noted that an employer may lawfully "attempt[] to negotiate [an] agreement on retaining discretion over wage increases."¹² In *KSM Industries*,¹³ the Board extended the *McClatchy* rationale to a non-wage proposal, holding that the employer lawfully bargained to impasse over a discretionary medical and dental insurance proposal.¹⁴ That proposal, on its face, permitted the employer to unilaterally change virtually every aspect of the health benefit, including the provider, the plan design, the level of benefits, and the administrator; the sole limitations were requirements that changes would be company-wide and that employee premiums would be capped at a specified dollar amount.¹⁵ The Employer's proposed health and welfare terms are nearly identical to

¹⁰ 343 U.S. 395, 397, 409 (1952).

¹¹ *McClatchy Newspapers, Inc.*, 321 NLRB 1386, 1388 (1996), *enforced*, 131 F.3d 1026 (D.C. Cir. 1997). The Board also held that, although the employer's insistence on the merit pay proposal was lawful, its implementation of discretionary pay increases, as permitted by its proposal, was unlawful.

¹² *Id.* at 1391.

¹³ 336 NLRB 133 (2001).

¹⁴ *Id.* at 135. Noting that health insurance, like wages, is a mandatory subject of bargaining and an important term and condition of employment, the Board found KSM's proposal akin to the merit wage proposals in *McClatchy* and stated that there was "no principled reason" to distinguish *McClatchy* on the basis that health insurance rather than wages were involved. *Id.* at n.6.

¹⁵ *Id.* at 135. Although the proposal called for discussions with the union, the employer admitted that it did not intend to negotiate changes in the plan.

those at issue in *KSM Industries* and thus the Employer is entitled to insist upon them to impasse, provided it continues to bargain in good faith.¹⁶

Likewise, the Employer's use of economic pressure to compel the Union to capitulate to its terms is not *per se* unlawful. In *American Ship Building Co. v. NLRB*, the Supreme Court held that an employer does not violate Section 8(a)(1) or (3) when, following a bargaining impasse, it temporarily shuts down the plant and brings economic pressure to bear in support of its legitimate bargaining position.¹⁷ The Board later expanded *American Ship* to hold that, even in the absence of impasse or threat of imminent strike, a lockout for the sole purpose of bringing economic pressure to bear in support of the employer's legitimate bargaining position is lawful and not inherently destructive of employee rights.¹⁸ And an employer's statutory duty to maintain the status quo during post-expiration bargaining is temporarily suspended once the parties reach good-faith impasse, permitting the employer to make unilateral changes "that are reasonably comprehended within [its] preimpasse proposals."¹⁹

But an employer's right to wield its economic weapons is not absolute. The Supreme Court has held that the Board may limit an employer's application of economic pressure, provided it does so in the interest of promoting labor peace and stable collective bargaining rather than based on its assessment of the parties'

¹⁶ The fact that the parties here have not declared impasse appears to be a distinction without a difference. The principles of law cited herein are applicable to the instant case. See, e.g., *Kaiser Aluminum*, Case 32-CA-017041, JD(SF)-021-02 at 48–49, May 10, 2002.

¹⁷ 380 U.S. 300 (1965). In reaching this conclusion, the Court also stated that "[t]his is the only issue before us, and all that we decide," intimating "no view whatever as to the consequences which would follow had the employer replaced his employees with permanent replacements or even temporary help." (380 U.S. at 308, 308 n.8).

¹⁸ See *Darling & Co.*, 171 NLRB 801, 802–803 (1968) (neither absence of impasse or threat of imminent strike precludes finding that lockout in support of legitimate bargaining position is lawful), *enforced sub nom. Lane v. NLRB*, 418 F.2d 1208 (D.C. Cir. 1969); *Harter Equipment (Harter I)*, 280 NLRB 597 (1986) (employer's use of temporary replacements during an offensive lockout had only a "comparatively slight" effect on employee rights and did not violate the Act), *enforced sub nom. Operating Engineers Local 825 v. NLRB*, 829 F.2d 458 (3rd Cir. 1987).

¹⁹ *Am. Fed. of Television & Radio Artists v. NLRB*, 395 F.2d 622, 624 (D.C. Cir. 1968).

respective bargaining strength.²⁰ Indeed, the Board may order a party to cease use of an economic weapon that “directly obstructs or inhibits the actual process of discussion”²¹ It has both the authority and the expertise to “den[y] the employer a particular economic tactic for the sake of preserving the stability of the collective bargaining process.”²²

One way that the Board has limited an employers’ use of economic warfare is found in the *McClatchy*²³ line of cases, where the Board carved out an exception to the implementation after impasse doctrine. Under *McClatchy* and its progeny, an employer may not lawfully implement any discretionary changes to certain key terms and conditions of employment, even after reaching good-faith impasse, because the Board deems the unilateral imposition of discretionary terms “inimical to the postimpasse, ongoing collective-bargaining process.”²⁴ The Board in *McClatchy* held that, once implemented, such discretionary proposals are so inherently destructive of the fundamental principles of collective bargaining that they cannot be sanctioned as part of a doctrine created to break impasse and restore active collective bargaining.²⁵ The Board reasoned that the ongoing exclusion of the union from meaningful bargaining over a significant term such as wages, leaving that key term of employment entirely within the employer’s discretion, would impact all future negotiations on this issue and would disparage the union by demonstrating its

²⁰ See *Charles D. Bonanno Linen Suve. v. NLRB*, 454 U.S. 404, 412, 419 (1982) (upholding Board order barring an employer from withdrawing from multi-employer bargaining after impasse in the interest of maintaining the stability of the multiemployer bargaining unit); *NLRB v. Erie Resistor Corp.*, 373 U.S. 221, 230–31, 235–37 (1963) (upholding Board decision prohibiting employer from granting “super-seniority” to strikebreakers but not strikers because of the likely detrimental effect on future collective bargaining). See also *NLRB v. Insurance Agents’ International Union*, 361 U.S. 477, 488 (1960) (noting that the “unique character” of certain economic pressure tactics might be inconsistent with collective bargaining).

²¹ *NLRB v. Katz*, 369 U.S. 736, 747 (1962).

²² *McClatchy Newspapers, Inc. v. NLRB*, 131 F.3d at 1032.

²³ *McClatchy Newspapers, Inc.*, 321 NLRB 1386.

²⁴ *KSM Industries*, 336 NLRB at 135. See also *McClatchy Newspapers, Inc.*, 321 NLRB at 1389–91.

²⁵ 321 NLRB at 1391.

complete inability to act for the employees in this regard.²⁶ The Board subsequently extended the *McClatchy* rationale to a non-wage proposal in *KSM Industries*, holding that an employer violated the Act when, after declaring impasse, it unilaterally implemented a health care proposal and exercised its discretion to unilaterally change the benefits therein without notifying and bargaining with the union.²⁷ Relying on *McClatchy*, the Board held that the employer's post-impasse implementation of changes to the health care plan without bargaining with the union violated Section 8(a)(5) because it nullified the union's authority to bargain over a key term and condition of employment.²⁸

In the instant case, the Employer's conduct threatens and disrupts the collective-bargaining relationship in much the same way as the unilateral implementation of discretionary terms that the Board found unlawful in *McClatchy*. It is using a formidable form of economic pressure to compel the Union to agree to terms that it could not lawfully implement at impasse under the *McClatchy* doctrine. The Employer has made clear that it is unwilling to end the lockout without a signed collective-bargaining agreement and has refused to entertain an agreement that does not contain the discretionary benefit terms. Thus, in order to return the employees to work, the Union must cede a significant aspect of its role as bargaining representative: its right to negotiate over future changes to health and welfare benefits.²⁹ In essence, the Employer is attempting to use the lockout to force the

²⁶ *Id.* (citing *NLRB v. Katz*, 369 U.S. 736, 746–47 (1962)).

²⁷ 336 NLRB at 133.

²⁸ *Id.* at 135. *Cf. E.I. DuPont & Co.*, 346 NLRB 553, 558–60 (2006) (employer's post-impasse implementation of healthcare plan not unlawful because the implemented term was a narrow clause that set limits on the employer's exercise of discretion), *enforced* 489 F.3d 1310 (D.C. Cir. 2007); *Monterey Newspapers*, 334 NLRB 1019, 1021 (1991) (successor's setting "tightly circumscribed" pay band system for new hires distinguishable from Board merit-pay cases involving unfettered employer discretion).

²⁹ Not all mandatory subjects of bargaining are recognized as being as important as wages or health benefits, and therefore would not pose the same threat to the collective bargaining process if unilaterally implemented postimpasse. *See, e.g., McClatchy Newspapers, Inc. v. NLRB*, 131 F.3d at 1035 (recognizing the distinction between wages, which must be set bilaterally through collective bargaining, and "scheduling or a host of other decisions generally thought closely tied to management operations"). *Cf. KSM Industries*, 336 NLRB at 135 n.6 (finding that there is no reason to distinguish health insurance from wages as an "important term and condition of employment" that may not be unilaterally implemented postimpasse).

Union to waive its right to have any input into changes to significant terms and conditions of employment for the duration of the agreement, conduct that is surely as “inimical to the . . . ongoing bargaining process” as post-impasse implementation of these same proposals.³⁰

The likely harm to the collective-bargaining relationship is exacerbated because, were the Union to accede to the Employer’s demands and agree to a collective-bargaining agreement waiving its right to bargain over certain key terms, future negotiations would occur under a “discretionary cloud.”³¹ With no objective criteria to limit the employer’s discretion, there would be no status quo for the union to bargain from, and the union would be unable to bargain knowledgeably.³² Moreover, the Union is unable to bargain effectively now to end the lockout when the Employer is demanding that it accept the proverbial “pig in a poke.” A union’s power to end a lockout rests entirely on its ability to reach an agreement that is acceptable to the employer, and the locked-out employees cannot return to work until such time as the union and a majority of unit employees accede to the employer’s terms. Thus, an employer that has locked out its employees must notify the union of the bargaining demands that precipitated the lockout so that the employees can evaluate whether to accept the terms and return to work.³³ But where one of the terms upon which the Employer insists is the right to redefine *ad nauseum* a crucial term and condition of employment without the Union’s input, it is nearly impossible for the Union and employees to weigh the loss of any input into future changes in essential terms and conditions against any proposed Employer concessions.

We further note the underlying policy considerations that have traditionally informed the Board’s waiver analysis: “[n]ational labor policy disfavors waivers of

³⁰ *KSM Industries*, 336 NLRB at 135.

³¹ *McClatchy Newspapers, Inc. v. NLRB*, 131 F.3d at 1032 (noting that allowing an employer to unilaterally implement discretionary changes after impasse could “irreparably undermine” the union’s ability to bargain).

³² *McClatchy Newspapers*, 321 NLRB at 1391. *See also Royal Motor Sales*, 329 NLRB 760, 778–79 (1999) (employers violated Section 8(a)(5) by unilaterally implementing merit wage proposals with no definable objective criteria or procedures for application), *enforced.*, 2 F. App’x 1 (D.C. Cir. 2001).

³³ *See Dayton Newspapers, Inc.*, 339 NLRB 650, 657–58 (2003), *enforced in relevant part* 402 F.3d 651 (6th Cir. 2005); *Eads Transfer, Inc.*, 304 NLRB 711, 712 (1991) (locked-out employees must be able to knowingly reevaluate their position and decide whether to accept the employer’s terms”), *enforced* 989 F.2d 373 (9th Cir. 1993).

statutory rights by a union . . . ”³⁴ and, as the Supreme Court observed in *NLRB v. C & C Plywood Corp.*, the Act places a “clear emphasis upon the protection of free collective bargaining.”³⁵ If the Union is compelled to agree to the Employer’s proposed terms in order to end the lockout and return the employees to work, it will not have engaged in the sort of conscious voluntary *yielding* contemplated in the Board’s waiver standard.³⁶ Rather than ceding some of its bargaining power in exchange for some other collectively-bargained concession, the Union will be surrendering statutory rights in a bid for survival.³⁷ Although it is true that “the right to bargain collectively does not entail any ‘right’ to insist on one’s position free from economic disadvantage,”³⁸ this is hardly an example of the “free collective bargaining” that the Act intends to secure. In sum, the Employer’s use of the lockout is so “destructive of collective bargaining” that it should be deemed to violate the Act.³⁹

Accordingly, we conclude that the Region should issue complaint alleging that the Employer violated the Act by locking out its employees in support of a bargaining

³⁴ *Suffolk Child Development Center*, 277 NLRB 1345, 1349 (1985) (quoting *C & P Telephone Co. v. NLRB*, 687 F.2d 633, 636 (2d Cir. 1982).

³⁵ 385 U.S. 421, 430 (1967).

³⁶ See, e.g., *Trojan Yacht*, 319 NLRB 741, 742 (1995) (an employer arguing waiver must show “that the matter sought to be waived was fully discussed and consciously explored and that the waiving party thereupon *consciously yielded* its interest in the matter”) (emphasis added).

³⁷ See *Revisiting the Offensive Bargaining Lockout on the Fiftieth Anniversary of American Ship Building Company v. NLRB*, Douglas E. Ray & Christopher David Ruiz Cameron, 31 ABA Journal of Law & Employment Law 325, 329 (2016) (employers, “[e]ncouraged by *American Ship* and its progeny, are increasingly using the lockout weapon to seek takeaways and give-backs at the bargaining table.” The article further notes (at 328) that because of the lockout’s ability to wreak havoc on employees and their communities, “these doctrinal expansions of the offensive lockout have turned this economic weapon into a nuclear option...”).
http://www.americanbar.org/content/dam/aba/publishing/aba_journal_labor_employment_law/v31n2/abajlel31-2_05ray.authcheckdam.pdf.

³⁸ *American Ship Building Co.*, 380 U.S. at 309.

³⁹ *McClatchy*, 321 NLRB at 1392 (quoting *American Ship Building Co. v. NLRB*, 380 U.S. 300, 309 (1965)).

position that allows it to retain broad discretion over crucial terms and condition of employment.

/s/
B.J.K.

H: ADV.03.CA.176218.Response.Honeywell 



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 03
130 S Elmwood Ave Ste. 630
Buffalo, NY 14202-2465

Agency Website: www.nlrb.gov
Telephone: (716)551-4931
Fax: (716)551-4972

January 4, 2018

Catherine Creighton, Esq.
Creighton, Johnsen & Giroux
295 Main Street, Suite 560
Buffalo, NY 14203-2461

Re: Honeywell International Inc.
Case 03-CA-176218

Dear Ms. Creighton:

We have carefully investigated and considered your charge that Honeywell has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, after careful consideration, I have decided that further proceedings are not warranted, and I am dismissing your charge.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlrb.gov and:

- 1) Click on E-File Documents;
- 2) Enter the NLRB Case Number; and,
- 3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlrb.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **January 18, 2018**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than January 17, 2018. **If an appeal is postmarked or given to a**

delivery service on the due date, it will be rejected as untimely. If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before January 18, 2018.** The request may be filed electronically through the *E-File Documents* link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after January 18, 2018, **even if it is postmarked or given to the delivery service before the due date.** Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/ Paul J. Murphy

PAUL J. MURPHY
Regional Director

Enclosure

cc: Allen R. Clarke, Vice President Labor and
Employee Relations
Honeywell
115 Tabor Road
Morris Plains, NJ 07950

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International Union, United Automobile,
Aerospace and Agricultural Implement
Workers of America (UAW)
8000 E Jefferson Ave
Detroit, MI 48214-2699

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Case Name(s).

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

HONEYWELL INTERNATIONAL, INC.

and

Case 03-CA-176218

**INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA (UAW)**

ORDER DISMISSING COMPLAINT AND NOTICE OF HEARING

A Complaint and Notice of Hearing in the above-captioned matter issued on July 7, 2017.

A hearing before an administrative law judge was scheduled for May 7, 2018.

IT IS HEREBY ORDERED that the Complaint and Notice of Hearing is dismissed and that the disposition of the charge will be addressed in a subsequent correspondence.

DATED at Buffalo, New York, this 4th day of January, 2018.

/s/Paul J. Murphy

PAUL J MURPHY, Regional Director
National Labor Relations Board
Niagara Center Building
130 S. Elmwood Avenue, Suite 630
Buffalo, New York 14202

From: [Robb, Peter](#)
To: [Wheeless, Steven](#)
Subject: RE: From Walmart Counsel re Wal-Mart Stores, Inc., 364 NLRB No. 118 (2016)
Date: Wednesday, February 21, 2018 8:53:00 AM

Thank you for your email. According to my normal process, please send an email or letter explaining the issue and why a discussion would be helpful. I will then get back to you promptly.

From: Wheeless, Steven [mailto:SWheelless@steptoe.com]
Sent: Tuesday, February 20, 2018 6:33 PM
To: Robb, Peter <Peter.Robb@nlrb.gov>
Cc: Wheeless, Steven <SWheelless@steptoe.com>
Subject: From Walmart Counsel re Wal-Mart Stores, Inc., 364 NLRB No. 118 (2016)

General Counsel Robb: Greetings from the labor bar out West. I am Walmart's outside labor counsel, and I represent Walmart in the above-referenced "interior demonstration/*Quietflex*" case (currently pending before the 9th Circuit), which you referenced in your GC Memo 18-02. Would it be possible for me to call you at your convenience in the next day or two to discuss a potential alternative resolution to the case? If so, what might be a good day/time to call and at what number should I call? I can, of course, correspond via letter if you prefer. Or if you would prefer that I direct my inquiry to someone else in your office, I am happy to do that as well. Appreciate your consideration of this request. Thanks, Steve

Steven D. Wheeless
Partner, swheelless@steptoe.com

Step toe

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This message and any attached documents contain information from the law firm Step toe & Johnson LLP that may be confidential and/or privileged. If you are not the intended recipient, please do not read, copy, distribute, or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message.

20 F.R. 2175

NATIONAL LABOR RELATIONS BOARD

**Revocation of Assignment of Responsibilities to the Associate General
Counsels of the Division of Operations and Division of Law,
Respectively**

Pursuant to the provisions of section 3(a) of the Administrative Procedures Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER notification that:

Assignment of Responsibilities to the Associate General Counsels of the Division of Operations and Division of Law, Respectively, effective December 21, 1954 (19 F.R. 8830, December 23, 1954) was revoked effective at close of business March 31, 1955.

Dated: Washington, D.C., April 1, 1955.

By direction of the Board.

FRANK M. KLEILER,
Executive Secretary

**Authority and Assigned Responsibilities of General Counsel of
National Labor Relations Board**

Pursuant to the provisions of section 3(a) of the Administrative Procedures Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following board memorandum describing the authority and assigned responsibilities of the general counsel of the National Labor Relations Board (effective April 1, 1955).

Dated: Washington, D.C., April 1, 1955.

By direction of the Board.

FRANK M. KLEILER,
Executive Secretary

**Board Memorandum Describing the Authority and Assigned
Responsibilities of the General Counsel of the National Labor Relations
Board (Effective April 1, 1955)**

The statutory authority and responsibility of the General Counsel of the Board are defined in section 3(d) of the National Labor Relations Act as follows: "There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other

than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law.”

This memorandum is intended to describe the statutory authority and to set forth the prescribed duties and authority of the General Counsel of the Board, effective April 1, 1955:

I. Case handling—A. Complaint cases. The General Counsel of the Board has full and final authority and responsibility, on behalf of the Board, to accept and investigate charges filed, to enter into and approve informal settlement of charges, to dismiss charges, to determine matters concerning consolidation and severance of cases before complaint issues, to issue complaints and notices of hearing, to appear before Trial Examiners in hearings on complaints and prosecute as provided in the Board’s rules and regulations, and to initiate and prosecute injunction proceedings as provided for in section 10(l) of the act. After issuance of Intermediate Report by the Trial Examiner, the General Counsel may file exceptions and briefs and appear before the Board in oral argument, subject to the Board’s rules and regulations.

B. Court litigation. The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to seek and effect compliance with the Board’s orders and make such compliance reports to the Board as it may from time to time require.

On behalf of the Board, the General Counsel of the Board will, in full accordance with the directions of the Board, petition for enforcement and resist petitions for review of Board Orders as provided in section 10(e) and (f) of the act, initiate and prosecute injunction proceedings as provided in section 10(j), seek temporary restraining orders as provided in section 10(e) and (f), and take appeals either by writ of error or on petition for certiorari to the Supreme Court: *Provided, however,* That the General Counsel will initiate and conduct injunction proceedings under section 10(j) or under section 10(e) and (f) of the act and contempt proceedings pertaining to the enforcement of or compliance with any order of the Board only upon approval of the Board, and will initiate and conduct appeals to the Supreme Court by writ of error or on petition for certiorari when authorized by the Board.

C. Representation and other election cases. The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to receive and process, in accordance with the decisions of the Board and with such instructions and rules and regulations as may be issued by the Board from time to time, all petitions filed pursuant

to section 9 of the National Labor Relations Act as amended. He is also authorized and has responsibility to conduct secret ballots pursuant to section 209(b) of the Labor Management Relations Act of 1947, whenever the Board is required to do so by law; and to enter into consent election agreements in accordance with section 9(c)(4) of the act.

The authority and responsibility of the General Counsel of the Board in representation cases shall extend, in accordance with the rules and regulations of the Board, to all phases of the investigation through the conclusion of the hearing provided for in section 9(c) and section 9(e) (if a hearing should be necessary to resolve disputed issues), but all matters involving decisional action after such hearing are reserved by the Board to itself.

In the event a direction of election should issue by the Board, the authority and responsibility of the General Counsel, as herein prescribed, shall attach to the conduct of the ordered election, the initial determination of the validity of challenges and objections to the conduct of the election and other similar matters; except that if appeals shall be taken from the General Counsel's action on the validity of challenges and objections, such appeals will be directed to and decided by the Board in accordance with such procedural requirements as it shall prescribe. If challenged ballots would not affect the election results and if no objections are filed within five days after the conduct of a Board-directed election under the provisions of section 9(c) of the act, the General Counsel is authorized and has responsibility, on behalf of the Board, to certify to the parties the results of the election in accordance with regulations prescribed by the Board.

Appeals from the refusal of the General Counsel of the Board to issue a notice of hearing on any petition, or from the dismissal by the General Counsel of any petition, will be directed to and decided by the Board, in accordance with such procedural requirements as it may prescribe.

In processing election petitions filed pursuant to section 9(e) of the act, the General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to conduct an appropriate investigation as to the authenticity of the 30 percent showing referred to and, upon making his determination to proceed, to conduct a secret ballot. If there are no challenges or objections which require a hearing by the Board, he shall certify the results thereof as provided for in such section, with appropriate copies lodged in the Washington files of the Board.

D. Jurisdictional dispute cases. The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to perform all functions necessary to the accomplishment of the provisions of section 10(k) of the act, but in connection therewith the Board will, at the request of the General Counsel, assign to him for the purpose of conducting the hearing provided for therein, one of its staff Trial Examiners. This authority and responsibility and the assignment of the Trial Examiner to the General Counsel shall terminate with the close of the hearing. Thereafter the Board will assume

full jurisdiction over the matter for the purpose of deciding the issues in such hearing on the record made and subsequent hearings or related proceedings and will also rule upon any appeals.

II. *Internal regulations.* Procedural and operational regulations for the conduct of the internal business of the Board within the area that is under the supervision and direction of the General Counsel of the Board may be prepared and promulgated by the General Counsel.

III. *State agreements.* When authorized by the Board, the General Counsel may initiate and conduct discussions and negotiations, on behalf of the Board, with appropriate authorities of any of the States or Territories looking to the consummation of agreements affecting any of the States or Territories as contemplated in section 10(a) of the act: Provided, however, That in no event shall the Board be committed in any respect with regard to such discussions or negotiations or the entry into of any such agreement unless and until the Board and the General Counsel have joined with the appropriate authorities of the State or Territory affected in the execution of such agreement.

IV. *Liaison with other governmental agencies.* The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to maintain appropriate and adequate liaison and arrangements with the office of the Secretary of Labor, with reference to the reports required to be filed pursuant to section 9(f) and (g) of the act and availability to the Board and the General Counsel of the contents thereof.

The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to maintain appropriate and adequate liaison with the Federal Mediation and Conciliation Service and any other appropriate Governmental Agency with respect to functions which may be performed in connection with the provisions of section 209(b) of the act. Any action taken pursuant to the authority and responsibility prescribed in this paragraph shall be promptly reported to the Board.

V. *Anti-communist affidavits.* The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to receive the affidavits required under section 9(h) of the act, to maintain an appropriate and adequate file thereof, and to make available to the public, on such terms as he may prescribe, appropriate information concerning such affidavits, but not to make such files open to unsupervised inspection.

VI. *Miscellaneous litigation involving board and/or officials.* The General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to appear in any court to represent the Board or any of its Members or agents, unless directed otherwise by the Board.

VII. *Personnel.* In order better to ensure the effective exercise of the duties and responsibility described above, the General Counsel of the Board, subject to applicable laws and the rules and regulations of the Civil Service Commission, is authorized and has responsibility, on behalf of the Board, to select, appoint, retain, transfer, promote,

demote, discipline, discharge, and take any other necessary and appropriate personnel action with regard to, all personnel engaged in the field offices and in the Washington office (other than Trial Examiners, Legal Assistants to Board Members, the personnel in the Information Division, the personnel in the Division of Administration, the Solicitor of the Board and personnel in his office, the Executive Secretary of the Board and personnel in his office, including the Docket, Order and Issuance Section, and secretarial, stenographic and clerical employees assigned exclusively to the work of trial examiners and the Board Members); provided, however, that no appointment, transfer, demotion or discharge of any Regional Director or Officer in Charge shall become effective except upon the approval of the Board.

In connection with and in order to effectuate the exercise of the powers herein delegated (but not with respect to those powers herein reserved to the Board), the General Counsel is authorized, using the services of the Division of Administration, to execute such necessary requests, certifications, and other related documents, on behalf of the Board, as may be needed from time to time to meet the requirements of the Civil Service Commission, the Bureau of the Budget, or any other governmental agency. The Board will at all times provide such of the "housekeeping" functions performed by the Division of Administration as are requested by the General Counsel for the conduct of his administrative business, so as to meet the stated requirements of the General Counsel within his statutory and prescribed functions.

The establishment, transfer or elimination of any Regional or Sub-Regional Office shall require the approval of the Board.

NATIONAL LABOR RELATIONS BOARD

VIII. To the extent that the above-described duties, powers and authority rest by statute with the Board, the foregoing statement constitutes a prescription and assignment of such duties, powers and authority, whether or not so specified.

GUY FARMER,
Chairman.
ABE MURDOCK,
Member.
IVAR H. PETERSON,
Member.
PHILIP RAY RODGERS,
Member.

NATIONAL LABOR RELATIONS BOARD

April 1, 1955.

23 F.R. 6966

NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL

Amendment to Board Memorandum Describing Authority and Assigned Responsibilities

Pursuant to the provisions of section 3(a) of the Administrative Procedures Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following amendment to board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board (effective August 25, 1958). This amends memorandum which appeared at 20 F.R. 2175.

6967

Dated, Washington, D.C., September 8, 1958.

By direction of the Board.

[SEAL]

FRANK M. KLEILER,
Executive Secretary.

The Board Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, is hereby amended by striking the text of Section VII and substituting the following:

In order better to ensure the effective exercise of the duties and responsibilities described above, the General Counsel of the Board, subject to applicable laws and the Rules and Regulations of Civil Service Commission, is delegated full and final authority on behalf of the Board over the selection, retention, transfer, promotion, demotion, discipline, discharge and in all other respects, of all personnel engaged in the field and in the Washington Office (other than personnel in the Board Members' offices, the Division of Trial Examiners, the Division of Information, the Security Office, the Office of the Solicitor, and the Office of the Executive Secretary); provided, however, that no appointment, transfer, demotion or discharge of any Regional Director, or of any Officer in Charge of a Sub-Regional Office shall become effective except upon approval of the Board.

The General Counsel will provide such administrative services and housekeeping services as may be requested by the Board in connection with the conduct of its necessary business, and will submit to the Board a quarterly report on the performance of these administrative functions.

In connection with and in order to effectuate the foregoing, the General Counsel is authorized to execute such necessary requests, certifications, and other related documents

NATIONAL LABOR RELATIONS BOARD

on behalf of the Board, as may be needed from time to time to meet the requirements of Civil Service Commission, the Bureau of the Budget, or any other Governmental Agency; provided, however, that the total amount of any annual budget requests submitted by the agency, the apportionment and allocation of funds and/or the establishment of personnel ceilings within the agency shall be determined jointly by the Board and the General Counsel.

The establishment, transfer or elimination of any Regional or Sub-Regional Office shall require the approval of the Board.

24 F.R. 6666

NATIONAL LABOR RELATIONS BOARD

GENERAL COUNSEL

Amendment to Board Memorandum Describing Authority and Assigned Responsibilities

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following further amendment to Board Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the National Labor Relations Board (effective August 3, 1959). This amends memorandum which appeared at 20 F.R. 2175, as amended at 23 F.R. 6966.

Dated, Washington, D.C., August 12, 1959.

By direction of the Board.

FRANK M. KLEILER,
Executive Secretary

The Board Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended August 25, 1958, is hereby further amended by striking the text of Section VII and substituting the following:

1. In order more fully to release the Board to the expeditious performance of its primary

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function and responsibility of deciding cases, the full authority and responsibility for all administrative functions of the Agency shall be vested in the General Counsel. This authority shall be exercised subject to the limitations contained in paragraph 2 with respect to the personnel of, or directly related to, Board Members, and shall be exercised in conformity with the requirements for joint determination as described in paragraph 4.

2. The General Counsel shall exercise full and final authority on behalf of the Agency over the selection, retention, transfer, promotion, demotion, discipline, discharge and in all other respects, of all personnel engaged in the field and in the Washington Office (other than personnel in the Board Members' offices, the Division of Trial Examiners, the Division of Information, the Security Office, the Office of the Solicitor, and the Office of the Executive Secretary); provided, however, that the establishment, transfer or elimination of any Regional or Sub-Regional Office shall require the approval of the Board.

NATIONAL LABOR RELATIONS BOARD

3. The General Counsel will provide such administrative services and housekeeping services as may be requested by the Board in connection with the conduct of its necessary business, and will submit to the Board a quarterly report on the performance of these administrative functions.

4. In connection with and in order to effectuate the foregoing, the General Counsel is authorized to formulate and execute such necessary requests, certifications, and other related documents on behalf of the Agency, as may be needed from time to time to meet the requirements of Civil Service Commission, the Bureau of the Budget, or any other Governmental Agency; provided, however, that the total amount of any annual budget requests submitted the Agency, the apportionment and allocation of funds and/or the establishment of personnel ceilings within the Agency shall be determined jointly by the Board and the General Counsel.

26 F.R. 3911

NATIONAL LABOR RELATIONS BOARD

REGIONAL DIRECTORS

Delegation of Authority

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following Delegation of Authority to the Regional Directors of the National Labor Relations Board:

Pursuant to section 3(b) of the National Labor Relations Act, as amended, and subject to the amendments to the Board's Statements of Procedure, Series 8, and to its Rules and Regulations, Series 8, effective May 15, 1961, and subject to such further amendments and instructions as may be issued by the Board from time to time, the Board delegates to its Regional Directors "its powers under section 9 to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 9 and certify the results thereof."

Such delegation shall be effective with respect to any petition filed under subsection (c) or (e) of section 9 of the Act on May 15, 1961.

Dated, Washington, D.C., April 28, 1961.

By direction of the Board.

[SEAL]

OGDEN W. FIELDS,
Executive Secretary.

GENERAL COUNSEL

**Further Amendment to Memorandum Describing Authority and
Assigned Responsibilities**

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the FEDERAL REGISTER the following further amendment

NATIONAL LABOR RELATIONS BOARD

to Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board (effective on May 15, 1961).¹

Dated, Washington, D.C., April 28, 1961.

By direction of the Board.

[SEAL]

OGDEN W. FIELDS,
Executive Secretary

The Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended September 3, 1958 (effective August 25, 1958), and August 12, 1959 (effective August 3, 1959), is hereby further amended as follows:

1. Strike the text of section I C. entitled "Representation and other Election Cases" and substitute the following:

Pursuant to section 3(b) of the Act, and subject to such instructions and rules and regulations as may be issued by the Board from time to time, the Board has delegated to its Regional Directors its powers under section 9 to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 9 and certify the results thereof. Such delegation shall be effective with respect to any petition filed under subsection (c) or (e) of section 9 of the Act on May 15, 1961.

Subject to the foregoing delegation and to the Regional Director's direct responsibility to perform the delegated functions in accord with the Board's rules and regulations and any other implementing directives of the Board, the General Counsel of the Board is authorized and has responsibility, on behalf of the Board, to facilitate the receipt and processing, in accordance with such instructions and rules and regulations as may be issued by the Board from time to time, all petitions filed pursuant to section 9 of the Labor Management Relations Act, as amended. The General Counsel is also authorized and has responsibility to conduct secret ballots pursuant to section 209(b) of the Labor Management Relations Act of 1947, whenever the Board is required to do so by law.

2. Strike paragraph 2, section VII of the amendment dated August 12, 1959 (effective August 3, 1959), and substitute the following:

The General Counsel shall exercise full and final authority on behalf of the Agency over the selection, retention, transfer, promotion, demotion, discipline, discharge, and in all other respects, of all personnel engaged in the field, except that personnel action with respect to Regional Directors and Officers-in-Charge of Subregional offices will be

¹ This amends memorandum which appeared at 20 F.R. 2175, as amended at 23 F.R. 6966 and 24 F.R. 6666.

conducted as hereinafter provided, and in the Washington Office (other than personnel in the Board

3912

Members' Offices, the Division of Trial Examiners, the Division of Information, the Security Office, the Office of the Solicitor, and the Office of the Executive Secretary): *Provided, however,* That the establishment, transfer or elimination of any Regional or Subregional Office shall require the approval of the Board.

The appointment, transfer, demotion, or discharge of any Regional Director or of any Officer-in-Charge of a Subregional office shall be made by the General Counsel only upon the approval of the Board.

67 FR 62992

Further Amendement to Memorandum Describing Authority and Assigned Responsibilities

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the Federal Register the following further amendment to Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board (effective October 1, 2002).

Dated, Washington, DC, October 4, 2002.

By direction of the Board.

John J. Toner,
Executive Secretary

The Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended September 8, 1958 (effective August 25, 1958), and April 8, 1961 (effective May 15, 1961) (appearing at 20 FR 2175, 23 FR 6966, 24 FR 6666 and 26 FR 3911, respectively), is hereby further amended as follows:

1. Strike the text of paragraphs 1 and 4 of section VII of the amendment dated August 12, 1959 (effective August 3, 1959), strike the text of paragraph 2 of section VII of the amendment dated April 28, 1961 (effective May 15, 1961), and substitute the following:

62993

1. In order more fully to release the Board to the expeditious performance of its primary function and responsibility of deciding cases, the authority and responsibility for all administrative functions of the Agency shall be vested in the General Counsel, except as provided below. This authority shall be exercised subject to the limitations contained in paragraphs 2, 5, and 6, and shall be exercised in conformity with the requirements for joint determination as described in paragraph 4.

2. Subject to the limitations contained in paragraphs 5 and 6, the General Counsel shall exercise full and final authority on behalf of the Agency over the selection, retention, transfer, promotion, demotion, discipline, discharge, and in all other respects, of all personnel engaged in the field, except that personnel action with respect to Regional Directors and Officers-in-Charge of Subregional Offices will be conducted as hereinafter provided, and in the Washington Office (other than personnel in the Board Members' Offices, the Division of Judges, the Division of Information, the Security Office, the Office of the Solicitor, the Office of the Executive Secretary and the Office of the Inspector General): provided, however, that the establishment, transfer or elimination of any Regional or Subregional Office shall require the approval of the Board.

The appointment, transfer, demotion, or discharge of any Regional Director or of any Officer-in-Charge shall be made by the General Counsel only upon the approval of the Board.

4. In connection with and in order to effectuate the foregoing, the General Counsel is authorized to formulate and execute such necessary requests, certifications, and other related documents on behalf of the Agency, as may be needed from time to time to meet the requirements of the Office of Personnel management, the Office of Management and Budget or any other Governmental Agency; provided, however, that the total amount of any annual budget requests submitted by the Agency, the apportionment

and establishment of personnel ceilings within the Agency shall be determined jointly by the Board and the General Counsel.

2. Add the following paragraphs 5 and 6 to the text of section VII of the amendment dated April 28, 1961 (effective May 15, 1961):

5. The Information Technology Branch shall be realigned under the authority of the Chief Information Officer ("CIO") (who will jointly report to the General Counsel and the Chairman of the Board with respect to those matters covered by the responsibilities of the CIO), and placed with the Office of the Inspector General, Office of Equal Employment Opportunity and the Office of Employee Development outside the Division of Administration. The Editorial and Publications Services Section of the Library and Administrative Services Branch, Division of Administration, shall be transferred to the Office of the Executive Secretary.

6. The Chairman of the Board shall have full and final authority over the selection, retention, transfer, promotion, demotion, discipline, discharge and evaluation of those persons holding Senior Executive Service positions in the Division of Administration, the senior management official in the Office of Employee Development, the Chief Information Officer, and the Inspector General.

77 FR 43127

Further Amendment to Memorandum Describing Authority and Assigned Responsibilities of the General Counsel

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. L. 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the Federal Register the following further amendment to Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board.

The Board Memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended September 8, 1958 (effective August 25, 1958), and April 8, 1961 (effective May 15, 1961). And October 4, 2002 (effective October 1, 2002) (appearing at 20 FR 2175, 23 FR 6966, 24 FR 6666, 26 FR 3911, and 67 FR 62992, respectively), is hereby further amended as follows:

1. Strike the text of paragraph 6 of section VII of the amendment dated October 4, 2002 (effective October 1, 2002), and substitute the following:

6. The Agency shall appoint a Chief Financial Officer (“CFO”), who will jointly report to the General Counsel and the Chairman of the Board. The Budget, Finance and Acquisitions Management Branches shall be realigned under the authority of the CFO, and placed with the Office of the Chief Information Officer, Office of the Inspector General, Office of Equal Employment Opportunity and Office of Employee Development outside the Division of Administration.

2. Add the following paragraph 7 to the text of section VII of the amendment dated October 4, 2002 (effective October 1, 2002):

7. The Chairman of the Board shall have full and final authority over the selection, retention, transfer, promotion, demotion, discipline, discharge and evaluation of those persons holding Senior Executive Service positions in the Division of Administration, the senior management officials in the Office of Equal Employment Opportunity and the Office of Employee Development, the Chief Information Officer and the Chief Financial Officer.

Authority: Sections 3, 4, 6, and 10 of the National Labor Relations Act, 29 USC Sec. 3, 4, 6, and 10.

Dated Washington, DC, July 17, 2012

By direction of the Board

Lester A. Heltzer,
Executive Secretary

Further Amendment to Memorandum Describing Authority and Assigned Responsibilities of the General Counsel

Pursuant to the provisions of section 3(a) of the Administrative Procedure Act (Pub. Law 404, 79th Cong., 2d Sess.), the National Labor Relations Board hereby separately states and currently publishes in the Federal Register the following further amendment to Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board.

The Board memorandum describing the authority and assigned responsibilities of the General Counsel of the National Labor Relations Board effective April 1, 1955, as amended September 8, 1958 (effective August 25, 1958), August 12, 1959 (effective August 3, 1959), April 28, 1961 (effective May 15, 1961), October 4, 2002 (effective October 1, 2002), and July 23, 2012 (effective July 23, 2012) (appearing at 20 FR 2175, 23 FR 6966, 24 FR 6666, 26 FR 3911, 67 FR 62992 and 77 FR 43127, respectively), is hereby further amended as follows:

1. Strike the text of paragraphs 1 and 2 of section VII of the amendment dated October 4, 2002 (effective October 1, 2002), and substitute the following:

1. In order more fully to release the Board to the expeditious performance of its primary function and responsibility of deciding cases, the authority and responsibility for all administrative functions of the Agency shall be vested in the General Counsel, except as provided below. This authority shall be exercised subject to the limitations contained in paragraphs 2, 5 and 7, and shall be exercised in conformity with the requirements for joint determination as described in paragraph 4.

2. Subject to the limitations contained in paragraphs 5 and 7, the General Counsel shall exercise full and final authority on behalf of the Agency over the selection, retention, transfer, promotion, demotion, discipline, discharge, and in all other respects, of all personnel engaged in the field, except that personnel action with respect to Regional Directors and Officers-in Charge of Subregional offices will be conducted as hereinafter provided, and in the Washington Office (other than personnel in the Board Members' Offices, the Division of Judges, the Division of Information, the Security Office, the Office of the Solicitor, the Office of the Executive Secretary and the Office of Inspector General): provided, however, that the establishment, transfer or elimination of any Regional or Subregional Office shall require the approval of the Board. The appointment, transfer, demotion, or discharge of any Regional Director or of any Officer-in-Charge of a Subregional office shall be made by the General Counsel only upon the approval of the Board.

Dated, Washington, DC, July 27, 2012.

By direction of the Board.

Lester A. Heltzer
Executive Secretary.

From: [Robb, Peter](#)
To: [Lotito, Michael J.](#)
Subject: RE: Alert: Labor Board Could See Major Change in Regional Offices
Date: Wednesday, January 17, 2018 12:24:00 PM

[No comment](#)

From: Lotito, Michael J. [mailto:MLotito@littler.com]
Sent: Wednesday, January 17, 2018 11:38 AM
To: Robb, Peter <Peter.Robb@nlrb.gov>
Subject: Fwd: Alert: Labor Board Could See Major Change in Regional Offices

No idea who talked about formal rule making. Sounds silly to me.

Sent from my iPad

Begin forwarded message:

From: Bloomberg Government <alerts@bgov.com>
Date: January 17, 2018 at 11:37:17 AM EST
To: <milotito@littler.com>
Subject: Alert: Labor Board Could See Major Change in Regional Offices



[Labor Board Could See Major Change in Regional Offices](#)

By Lawrence E. Dubé | January 17, 2018 11:37AM ET | Bloomberg BNA

(Bloomberg Law) -- NLRB General Counsel Peter Robb (R) wants to launch a major restructuring of the National Labor Relations Board's field office operations, sources familiar with the matter told Bloomberg Law.

Robb, a Trump appointee who became general counsel late last year, held a conference call with regional directors Jan. 11. He told the directors he wants to reorganize the agency's 26 regional offices into a smaller number of districts or regions supervised by officials who would report directly to the general counsel. Several sources told Bloomberg Law they are concerned that the general counsel wants to limit regional directors' authority and possibly reduce the rank of at least some regional office officials. Regional directors currently have the authority to issue complaints and dismissals of unfair labor practice cases, and they render decisions in union representation cases.

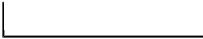
The National Labor Relations Act and labor board regulations give the general

counsel broad authority over regional office operations, but board approval may be required for office restructuring and personnel actions. One attorney familiar with NLRB operations told Bloomberg Law that a formal rulemaking process may also be required.

An NLRB spokesperson did not immediately respond to Bloomberg Law's request for comment.

[Daily Labor Report: All Articles News Alert](#)

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From: [Robb, Peter](#)
To: [Lotito, Michael J.](#)
Subject: RE: Your reorganization
Date: Wednesday, January 17, 2018 9:30:00 AM

I cannot comment on any reorganization.

-----Original Message-----

From: Lotito, Michael J. [<mailto:MLotito@littler.com>]
Sent: Wednesday, January 17, 2018 6:04 AM
To: Robb, Peter <Peter.Robb@nlrb.gov>
Subject: Your reorganization

Is leaking. BNA reporter wants to talk to me. What do you want me to do. Guidance please. He is calling me at 10:30

Sent from my iPhone

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From: [Robb, Peter](#)
To: [LERA](#)
Subject: RE: February 6 LERA Event
Date: Wednesday, January 31, 2018 2:50:00 PM

The General Counsel will discuss the following topics:

GC memorandum 18-02

Restructuring Rumors

Case Processing

From: LERA [mailto:nylerasec@gmail.com]

Sent: Wednesday, January 31, 2018 9:06 AM

To: Kaplan, Marvin E. <Marvin.Kaplan@nlrb.gov>; Robb, Peter <Peter.Robb@nlrb.gov>; Pearce, Mark G. <Mark.Pearce@nlrb.gov>; McFerran, Lauren <Lauren.McFerran@nlrb.gov>

Cc: Dennis Campagna <nycampagna@gmail.com>; Dennis Campagna <djc20@cornell.edu>; Alexander J. Franchilli <AFranchilli@ebglaw.com>

Subject: February 6 LERA Event

Dear Mr. Kaplan, Mr. Robb, Mr. Pearce, and Ms. McFerran:

I am working with Dennis Campagna to prepare for the February 6 LERA event. We are very excited to hear you speak, and there is great interest based on the number of reservations we have so far.

Would you be able to briefly describe the topics you intend to cover? If you have materials that you would like distributed to the audience, please send them to me as soon as you can, as we will need to begin preparing booklets. Alternatively, please feel free to send me the names of cases or articles so that I can pull them for you.

If you have any questions, please feel free to contact me.

Best regards,

Alex Franchilli

From: [Corthon, Mildred](#)
To: [Lynn Rhinehart](#)
Subject: RE: Letter re: reorganization plans
Date: Monday, February 05, 2018 11:03:00 AM

You are very welcome Lynn. It's also nice to hear from you and I hope you are doing well. I look forward to hearing from you soon.

Mildred

From: Lynn Rhinehart [mailto:lrhinehart@aflcio.org]
Sent: Monday, February 05, 2018 10:56 AM
To: Corthon, Mildred <Mildred.Corthon@nlrb.gov>
Subject: Re: Letter re: reorganization plans

Hi Mildred! It's nice to hear from you. Thank you for forwarding the letter. I will be in touch soon about possible dates. We would like a group to meet here in DC, and also to arrange for 2-3 conversations with lawyers outside DC (which I understand would need to be done via videoconference). I hope to get you some possible dates in the next few days. Thanks!
Lynn

On Mon, Feb 5, 2018 at 10:44 AM, Corthon, Mildred <Mildred.Corthon@nlrb.gov> wrote:

Good Morning Lynn,

Please see the attached letter from General Counsel Peter Robb in response to your letter of February 2, 2018. If you could please send me a list of your possible meeting dates I'll check Peter's calendar and respond back to you as soon as possible.

Take care,
Mildred

--

Lynn Rhinehart
General Counsel, AFL-CIO
815 16th Street, NW
Washington, DC 20006
202-637-5155
lrhinehart@aflcio.org



UNITED STATES GOVERNMENT
National Labor Relations Board
Office of the General Counsel

February 5, 2018

Lynn Rhinehart, General Counsel
AFL-CIO
815 16th Street, N.W.
Washington, D.C. 20006

Subj: Request for Practitioner Meetings On Agency Organization and Operations

Dear Lynn,

Thank you for your letter dated February 2, 2018. I too was alarmed to read the story in the Times. As I have repeatedly said both before and after the story appeared, there is no plan for reorganization. That is why the story did not include any plan. However, budget issues over many years and the decline in caseload require a review of the organization. I welcome the opportunity to discuss this with a group of your members. Please contact my Assistant Mildred Corthon to set up the meeting. It was good hearing from you.

Thanks again

A handwritten signature in cursive script, appearing to read "Peter".

Peter B. Robb
General Counsel
National Labor Relations Board

From: [Robb, Peter](#)
To: [Rosemary Pye](#)
Subject: Re: Letter from Retired NLRB Regional Directors 2-6-18
Date: Tuesday, February 06, 2018 1:53:48 PM

Good to hear from you. I hope you are well and happy. I appreciate the comments but they are premature. There has been no plan developed. Rather, due to budget issues, an evaluation of the organization has begun. When proposed changes have been drafted, they will be submitted to the public as appropriate. Thanks for your concern. It is good to see that former employees are still interested in the Agency.

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From: Rosemary Pye <pye.arbitrator@gmail.com>
Sent: Tuesday, February 6, 2018 9:56:00 AM
To: Robb, Peter
Subject: Letter from Retired NLRB Regional Directors 2-6-18

Dear General Counsel Robb,

The retired Regional Directors congratulate you on your appointment as General Counsel and look forward to working with you whenever we might be helpful. I am attaching a letter from 56 retired Regional Directors about what may be proposed restructuring of the regional offices. As the cover letter explains, as people with great devotion to the NLRB and knowledge of regional-office work, we are making ourselves available to you to discuss your plans. I am the local contact, but there are also several other regional directors who can meet with you in person or by phone. I look forward to hearing from you.

Sincerely,

Rosemary

Rosemary Pye
pye.arbitrator@gmail.com

February 6, 2018

The Honorable Peter B. Robb, General Counsel
Office of the General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Dear General Counsel Robb:

We write as retired Regional Directors (RDs) of the NLRB, representing decades of public service to the Agency. Among the signatories below are former RDs during the administrations of Presidents Nixon, Ford, Carter, Reagan, George H.W. Bush, Clinton, George W. Bush, Obama, and Trump. Throughout these very different administrations, we shared the privilege of exercising our delegated authority to support the highest ideals of objective decision-making. Without exception, as career professionals, we faithfully followed changes in the law and policy.

We understand that you may be contemplating a restructuring of the field offices, which could involve the elimination of Regions, the downgrading of RDs from SES status to GS-15, and the creation of a small number of District Directors, whose location and responsibilities are unspecified. Drawing on our long experience as RDs, we set forth below some observations regarding that proposal. We believe that the restructuring as proposed clearly misses the mark because:

- There would be no cost savings. Instead, restructuring would create additional costs, which are clearly unwarranted in bad budget years. Even if cost savings were achieved, diminished efficiency and lessened effectiveness would offset any such apparent gain.
- The substantial value of local access by the public to the decision-makers must not be lost. This access to Regional Directors by the labor bar not only builds trust in the Agency's operations, but more importantly fosters early settlements producing real cost savings.
- A process for consolidation of offices already exists.
- There are already comprehensive safeguards on the RDs' decision-making authority.

- The restructuring must not violate the Civil Service Reform Act.
- There is no rationale for demoting RDs from Senior Executive Service.
- The mandatory Advice submission memo will provide further control.
- The experience under former Chairman Dotson illustrates the consequences of attempting a restructuring without a clear problem in need of resolution.

1. To the extent that the proposed restructuring is intended to save costs, it would be significantly more expensive in the first fiscal year and, even when fully implemented, would not achieve a savings.

Before such a substantial restructuring is given serious consideration, the potential benefits and costs must be carefully computed. Applying general principles, it appears that the proposed restructuring would not produce substantial cost savings in its first fiscal year, or in subsequent years.

The restructuring proposal appears to be considering adding between four to six District Directors. The addition of four District Director SES positions would represent additional annual salaries of approximately \$758,000; six additional directors would total \$1,137,000. Thus, the first fiscal year would result in a major increase in spending – not a savings.

It is doubtful whether, under SES rules, an SES member who continues to do substantially the same job, which the restructuring seems to envision, could be demoted to the top step of GS-15. It is likely that the NLRB would have to wait for the incumbent RDs to retire or resign to fill future managerial positions at the GS-15 level. If that were the process, the increased costs of salaries for the RDs and District Directors would continue long into the future.

Assuming, however, for the sake of argument, that all RDs could be demoted to GS-15 immediately, that would still not produce a saving this year nor in the future. Thus, with a difference between SES pay and the top GS-15 of about \$25,000 per RD, the demotion of RDs would represent approximately \$650,000 less costs. However, any such savings would be offset by the additional annual cost of \$758,000 for four District Directors, or \$1,137,000 for six.

These figures are estimates and must be refined, but the critical principle remains that the restructuring would increase the NLRB spending on salaries and not constitute a savings. The cost of this plan would add significantly to the Agency's budget in its first year and would result in additional and ongoing costs when fully implemented. Moreover, even assuming for the sake of argument that the District Director model achieves some actual cost savings, the benefits would be illusory, as they would be offset by the costs of decreased efficiency and effectiveness, as described below.

2. The Board's exemplary record of case-handling in both unfair labor practice and representation cases is attributable in large part to the continuous interaction between the RDs and Regional staffs with the parties and the public, and it is essential not to lose that access and the benefits it provides case processing.

Because RDs have always been devoted to outreach to the parties, the bar, and the public, the parties trust the regional directors as decision-makers. The RDs make themselves available to parties to present their cases for decision-making and for settlement. As a result, the Agency's settlement rate has consistently been approximately 90 percent, which provides a considerable savings to the Agency. If the decision-making authority is moved to District Directors who are not easily accessible to the parties, it is doubtful that this measure of trust and efficiency will be preserved. District Directors would not have the time or ability to develop the close working relationships with the management and labor bar that are the hallmark of effective and efficient case processing.

In addition, a District Director system would result in higher costs and substantial inconvenience to the parties who would not have easy access to RDs to argue their positions on pending cases. Additional funds would also need to be spent to allow District Directors to travel to the offices that they are responsible for overseeing, and casehandling would be significantly delayed with this additional layer of review.

3. The current procedures to review the need for consolidation of offices on a case-by-case basis can continue without additional restructuring.

The General Counsel has long had a process of reviewing regional office consolidations or restructuring at times when RD vacancies occur or caseloads change significantly. There is no

reason why that process cannot continue independently of any restructuring plan. This process has already substantially reduced the number of RDs where case intake no longer justifies a Region continuing to be headed by an SES RD. Therefore, there is no need to restructure Regional Office management or downgrade RDs to achieve perceived efficiencies produced by consolidating offices. The changes proposed would clearly require Board approval and, perhaps, a Board rulemaking process.

4. The General Counsel already has significant controls over the decision-making authority of the RDs.

The offices of the General Counsel, Operations, Advice, and Appeals exercise considerable safeguards on the authority of the RDs. The General Counsel issues policy memoranda, as it has in the recent memo on mandatory submissions; oversees training of all staff; and conducts conferences and conference calls to give direction to the RDs. The Division of Operations reviews cases -- particularly Advice, Appeals, 10(j), and complaint cases -- to ensure consistent quality. Operations prepares appraisals of the RDs and conducts quality reviews of cases. The implementation of the electronic case file system allows oversight of all files.

Approximately 65 percent of cases are non-meritorious, and if dismissed, may be appealed to the Office of Appeals. Section 10(j) cases are authorized by the General Counsel and the Board in Washington. Litigated cases are taken to administrative law judges, the Board, and the courts, where any faults in the decisions or litigation by the Regions may be revealed and addressed.

The General Counsel meets with the American Bar Association's Practice and Procedures Committee and with parties and practitioners throughout the country for feedback on the performance of the Regional Directors and Regions.

In sum, there is already comprehensive and effective oversight of RD casehandling decisions and activities.

- 5. The Civil Service Reform Act caps the percentage of non-career SES for an agency at 25 percent. If District Directors are non-career SES, adding four to six non-career SES positions would likely exceed the cap.**

It has not been clarified whether the District Director positions would be career or non-career. However, the difficulty of complying with the requirements of the Civil Service Reform Act on the ratio of non-career to career positions should be considered in any plan.

The Civil Service Reform Act caps the percentage of non-career SES positions in an agency at 25 percent. Again, the retired RDs do not have exact information on current SES staffing at the Board, but it appears that an additional four to six non-career SES positions, while eliminating all the SES positions for RDs, would result in a ratio that would violate the Civil Service Reform Act.

- 6. There is no rationale for demoting Regional Directors from Senior Executive Service positions.**

Even before the creation of SES in 1978, the NLRB's RDs had been vested with executive rank and authority to administer and enforce the Act, on behalf of the GC and Board, at the local level, and to manage the field staffs. While adjustments in the Regions' configurations have occurred from time to time to account for shifting caseloads, until now no one has proposed categorically stripping RDs of their SES status. We are not aware of any rationale for such a drastic step. While changes to the SES system as a whole have been proposed, we are not aware of any precedent for the demotion of an entire class of Senior Executives within a department or agency.

- 7. There is no clear need for a restructuring plan of the regional offices at this time. The GC memorandum on mandatory submissions to the Division of Advice was just issued on December 1, 2017, and the impact of this memo is not yet clear.**

To the extent that restructuring is directed at a closer, more centralized review of Regional Office casehandling, that issue has been substantially advanced by the issuance of the recent comprehensive GC memo on Advice submissions. The General Counsel's concerns over control may be satisfied as this review will provide sufficient oversight without the added administrative burden of implementing a complex new field structure with its added costs, burdens, and problems, as described above.

8. A prior plan by then Chairman Donald Dotson to exercise more control over the Appellate Court Branch provides a cautionary tale.

During his time as Chairman, Donald Dotson moved to have the Board review briefs of the Appellate Court Branch and exercise more control over their representation of the Board in the courts. This was a major change with no clear factual predicate warranting such restructuring. The changes implemented provided no real advantage to the Board, which did not have the time, interest, or specialized expertise to duplicate the review already provided by the General Counsel. The fallout in the reputation of the Board with the staff, bar, and the public was substantial.

Because 95 percent of casehandling is done by the Regional Offices, the field staff, the bar, the public, and their political representatives will be even more concerned about a restructuring of the field. Chairman Dotson's attempt at a more modest restructuring, affecting fewer cases and fewer members of the public, counsels against undertaking such a major restructuring without a clear reason for change.

Conclusion

The retired RDs recommend that the long-established achievements of the RDs and resulting benefits to the Agency in terms of quality and efficiency, as well as reputation in the community, be recognized and preserved.

We look forward to an active and meaningful participation in this process by adhering to our shared goals of both maintaining the high quality of the Regional Office work while also addressing the Agency's reduced budgetary resources. Fifty-six retired RDs have signed this letter to you because we feel very strongly about the issues discussed in the letter.

Please know that we are raising our concerns only with you at this time, because we understand you are in the early stages of your proposed restructuring plan. We also appreciate that because you are faced with a difficult budget year, you may not go forward at this time. We hope you will look to us for input if you decide to move forward.

We would very much appreciate learning your current intentions and have provided in a separate memo a local contact point for your convenience. Please also know that while we much prefer to have a dialogue directly with you, as people with enormous pride in the Agency and concern for its future, we may ultimately need to also reach out to the Board and the broader labor relations community.

Respectfully,

<u>NAME</u>	<u>FORMER RD REGION</u>	<u>CURRENT RESIDENCE</u>
Victoria E. Aguayo	Los Angeles	Arcadia, CA
Richard L. Ahearn	Buffalo, Cincinnati & Seattle	Seattle, WA
Joseph A. Barker	Chicago	Kalamazoo, MI
Philip E. Bloedorn	Milwaukee	Wilmington, NC
Frederick J. Calatrello	Cleveland	Cleveland, OH
Roberto G. Chavarry	Chicago	Odessa, FL
Robert W. Chester	Minneapolis & Pittsburgh	Venetia, PA
Willie L. Clark, Jr.	Winston Salem	Winston Salem, NC.
Louis J. D'Amico	Baltimore	Ashville, NC
Margaret J. Diaz	Tampa	Tampa, FL
Michael Dunn	Fort Worth	Bedford, TX
Paul Eggert	Seattle	Fountain Hills, AZ
Karen P. Fernbach	Manhattan	Great Neck, NY
Marta M. Figueroa	San Juan	San Juan, PR
Gerard P. Fleischut	Memphis & New Orleans	Memphis, TN
Joseph Frankl	San Francisco	Cloverdale, CA
D. Randall Frye	Cincinnati	Kings Mountain, NC

Olivia Garcia	Los Angeles	Prairie Lea, TX
Stephen M. Glasser	Detroit	Farmington Hills, MI
Wayne R. Gold	Baltimore	Sarasota, FL
Irving E. Gottschalk	Milwaukee	Glendale, WI
Claude T. Harrell, Jr.	Atlanta & St. Louis	Atlanta, GA
Peter W. Hirsch	Philadelphia	Penn Valley, PA
Peter B. Hoffman	Hartford	West Hartford, CT
Daniel L. Hubbel	Kansas City & St. Louis	Basehor, KS
Michael Josserand	Denver	Castle Rock, CO
Gary Kendellen	Newark	Summit, NJ
Rochelle Kentov	Tampa	Clearwater, FL
Martha Kinard	Fort Worth	Arlington, TX
Elizabeth Kinney	Chicago	Evanston, IL
Gerald Kobell	Pittsburgh	Pittsburgh, PA
Jonathan B. Kreisberg	Hartford & Boston	Delray Beach, FL
Rhonda P. Ley	Buffalo & Pittsburgh	Lewiston, NY
J. Michael Lightner	Newark	Denville, NJ
Rik Lineback	Indianapolis	Indianapolis, IN
Curtis L. Mack	Atlanta	Atlanta, GA
Helen E. Marsh	Buffalo	Silver Spring, MD
Celeste J. Mattina	Manhattan	Washington, DC
D. Michael McConnell	Overland Park	Shawnee, KS
James J. McDermott	Los Angeles	Brentwood, CA
Robert H. Miller	San Francisco	Foster City, CA

Dorothy L. Moore-Duncan	Philadelphia	Philadelphia, PA
Gary W. Muffley	Cincinnati	Tallahassee, FL
Joseph P. Norelli	San Francisco	Princeville, HI
Marlin O. Osthus	Minneapolis	St. Paul, MN
Wanda Pate Jones	Denver	Denver, CO
James G. Paulsen	Brooklyn	New York, NY
Charles L. Posner	Baltimore	Chevy Chase, MD
Rosemary Pye	Boston	Arlington, VA
Alan B. Reichard	Oakland	Walnut Creek, CA
James S. Scott	Oakland	Walnut Creek, CA
Ronald M. Sharp	Minneapolis	Boulder, CO
F. Rozier Sharp	Kansas City	North Port, FL
Daniel Silverman	Manhattan	Brooklyn, NY
Curtis A. Wells	Fort Worth & New Orleans	Bolivar, MO
Glenn A. Zipp	Peoria	Peoria, IL

From: [Kyle, John](#)
To: [Snyder, Jennifer P.](#)
Cc: [Stanley M. Gosch](#); [Emily Perez](#); [Todd C. Duffield](#)
Subject: Re: P&P meeting
Date: Friday, February 23, 2018 6:32:38 PM

Jennifer. Hello again. I spoke with Peter and he said that his focus will be less on published decisions or memos and more on an interactive process with the P&P participants. I think he wants to discuss where the Agency finds itself now and where some of the case processing and other concepts may take it in the future, getting feedback from your attendees as to what they and their clients see as important to their interests and concerns. Thanks.

John

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From: Kyle, John
Sent: Thursday, February 22, 2018 8:14:02 PM
To: Snyder, Jennifer P.
Cc: Stanley M. Gosch; Emily Perez; Todd C. Duffield
Subject: Re: P&P meeting

Jennifer. Of course. I will speak with Peter tomorrow and let you know. Thanks and I look forward to seeing you in Puerto Rico.

John

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From: Snyder, Jennifer P. <jsnyder@dilworthlaw.com>
Sent: Thursday, February 22, 2018 5:51:25 PM
To: Kyle, John
Cc: Stanley M. Gosch; Emily Perez; Todd C. Duffield
Subject: P&P meeting

John -

In preparation for next week's meeting, would you kindly let us know what decisions/memos General Counsel Robb plans to discuss? We would like to gather them and make them available to attendees in advance.

Thanks,
Jennifer Snyder
Employer Co-Chair, P&P Committee

www.DilworthLaw.com

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From: [Robb, Peter](#)
To: [Lynn Rhinehart](#)
Cc: [Corthon, Mildred](#)
Subject: RE: Invitation to LCC
Date: Friday, February 09, 2018 3:03:00 PM

OK

From: Lynn Rhinehart [mailto:lrhinehart@aflcio.org]
Sent: Friday, February 09, 2018 2:59 PM
To: Robb, Peter <Peter.Robb@nlrb.gov>
Cc: Corthon, Mildred <Mildred.Corthon@nlrb.gov>
Subject: Re: Invitation to LCC

Well drat. I would offer you the 16th but that slot is taken by my boss, so that probably wouldn't be the best move. Sorry it didn't work out. We will follow up next week on dates for conversations about the reorg stuff. Thanks for getting back to me so quickly on the LCC.

Lynn

On Fri, Feb 9, 2018 at 2:36 PM, Robb, Peter <Peter.Robb@nlrb.gov> wrote:

Unfortunately I have previously accepted a speaking engagement with the Michigan Bar Association on May 17, 2018 in Detroit. I would be pleased to speak with your lawyers' group but that date is bad. Sorry

From: Lynn Rhinehart [mailto:lrhinehart@aflcio.org]
Sent: Thursday, February 08, 2018 2:31 PM
To: Robb, Peter <Peter.Robb@nlrb.gov>
Cc: Corthon, Mildred <Mildred.Corthon@nlrb.gov>
Subject: Invitation to LCC

Hi, Peter, attached is the invitation to our annual lawyers conference that we discussed last week. If you could take a look and see if the date works, that would be great. I have a GC meeting on Wednesday and we will be talking about dates to come talk to you about the reorg stuff - I'll get back to Mildred right after that so we can get that going.

Thanks,
Lynn

--

Lynn Rhinehart
General Counsel, AFL-CIO
[815 16th Street, NW](#)
[Washington, DC 20006](#)
[202-637-5155](#)
lrhinehart@aflcio.org

--

Lynn Rhinehart
General Counsel, AFL-CIO
815 16th Street, NW
Washington, DC 20006
202-637-5155
lrhinehart@aflcio.org



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

March 30, 2018

The Honorable Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce
U.S. House of Representatives
2101 Rayburn House Office Building
Washington, DC 20515

The Honorable Suzanne Bonamici
Vice Ranking Member
Committee on Education and the Workforce
U.S. House of Representatives
439 Cannon House Office Building
Washington, DC 20515

The Honorable Gregorio Kilili Camacho Sablan
Ranking Member
Subcommittee on Health, Employment, Labor and
Pensions
Committee on Education and the Workforce
U.S. House of Representatives
2411 Rayburn House Office Building
Washington, DC, 20515

The Honorable Mark Takano
Ranking Member
Subcommittee on Workforce Protections
Committee on Education and the Workforce
U.S. House of Representatives
1507 Longworth House Office Building
Washington, DC 20515

The Honorable Rosa L. DeLauro
Ranking Member
Subcommittee on Labor, Health and Human
Services, Education, and Related Agencies
Committee on Appropriations
2413 Rayburn House Office Building
Washington, DC 20515

The Honorable Donald Norcross
U.S. House of Representatives
1531 Longworth House Office Building
Washington, DC 20515

The Honorable Adriano Espaillat
U.S. House of Representatives
1630 Longworth House Office Building
Washington, DC 20515

The Honorable Keith Ellison
U.S. House of Representatives
2263 Rayburn House Office Building
Washington, DC 20515

The Honorable Mark Pocan
U.S. House of Representatives
1421 Longworth House Office Building
Washington, DC 20515

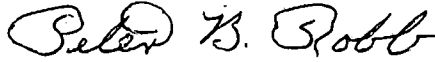
Dear Members of Congress:

I write in response to your letter dated March 12, 2018 regarding your request for the record of the consolidated litigation against *McDonald's*. In response to your request, I have enclosed a CD containing the hearing transcript through July 31, 2017 for *McDonald's USA, LLC*, Case Nos. 02-CA-09389, et al. This is the first production of documents in response to your request. My office will continue to provide responsive documents to you on a rolling basis as the collection and review process continues.

The redactions made in this production pertain to testimony either covered by the protective order or given under seal.

Please do not hesitate to contact the Office of Public and Congressional Affairs at 202-273-1991 if you have any questions regarding this matter.

Sincerely,

A handwritten signature in cursive script that reads "Peter B. Robb". The signature is written in black ink and is positioned above the printed name and title.

Peter B. Robb
General Counsel



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

May 3, 2018

The Honorable Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce
U.S. House of Representatives
2101 Rayburn House Office Building
Washington, DC 20515

The Honorable Suzanne Bonamici
Vice Ranking Member
Committee on Education and the Workforce
U.S. House of Representatives
439 Cannon House Office Building
Washington, DC 20515

The Honorable Gregorio Kilili Camacho Sablan
Ranking Member
Subcommittee on Health, Employment, Labor and
Pensions
Committee on Education and the Workforce
U.S. House of Representatives
2411 Rayburn House Office Building
Washington, DC, 20515

The Honorable Mark Takano
Ranking Member
Subcommittee on Workforce Protections
Committee on Education and the Workforce
U.S. House of Representatives
1507 Longworth House Office Building
Washington, DC 20515

The Honorable Rosa L. DeLauro
Ranking Member
Subcommittee on Labor, Health and Human
Services, Education, and Related Agencies
Committee on Appropriations
2413 Rayburn House Office Building
Washington, DC 20515

The Honorable Donald Norcross
U.S. House of Representatives
1531 Longworth House Office Building
Washington, DC 20515

The Honorable Adriano Espailat
U.S. House of Representatives
1630 Longworth House Office Building
Washington, DC 20515

The Honorable Keith Ellison
U.S. House of Representatives
2263 Rayburn House Office Building
Washington, DC 20515

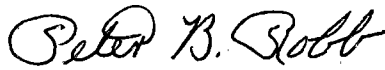
The Honorable Mark Pocan
U.S. House of Representatives
1421 Longworth House Office Building
Washington, DC 20515

Dear Members of Congress:

I write in response to your letter dated March 12, 2018 regarding your request for the record of the consolidated litigation against *McDonald's*. In response to your request, I have enclosed a CD containing further hearing transcripts for McDonald's USA, LLC, et al., Case Nos. 02-CA-09389. This is the second production of documents in response to your request. My office will continue to provide responsive documents to you on a rolling basis as the review process continues.

Please do not hesitate to contact the Office of Public and Congressional Affairs at 202-273-1991 if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, reading "Peter B. Robb". The signature is written in a cursive style with a large, stylized "P" and "R".

Peter B. Robb
General Counsel



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

December 21, 2018

The Honorable Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce
U.S. House of Representatives
2101 Rayburn House Office Building
Washington, DC 20515

The Honorable Suzanne Bonamici
Vice Ranking Member
Committee on Education and the Workforce
U.S. House of Representatives
439 Cannon House Office Building
Washington, DC 20515

The Honorable Gregorio Kilili Camacho
Sablan
Ranking Member
Subcommittee on Health, Employment, Labor
and Pensions
Committee on Education and the Workforce
U.S. House of Representatives
2411 Rayburn House Office Building
Washington, DC, 20515

The Honorable Mark Takano
Ranking Member
Subcommittee on Workforce Protections
Committee on Education and the Workforce
U.S. House of Representatives
1507 Longworth House Office Building
Washington, DC 20515

The Honorable Rosa L. DeLauro
Ranking Member
Subcommittee on Labor, Health and Human
Services, Education, and Related Agencies
Committee on Appropriations
2413 Rayburn House Office Building
Washington, DC 20515

The Honorable Donald Norcross
U.S. House of Representatives
1531 Longworth House Office Building
Washington, DC 20515

The Honorable Adriano Espailat
U.S. House of Representatives
1630 Longworth House Office Building
Washington, DC 20515

The Honorable Keith Ellison
U.S. House of Representatives
2263 Rayburn House Office Building
Washington, DC 20515

The Honorable Mark Pocan
U.S. House of Representatives
1421 Longworth House Office Building
Washington, DC 20515

Dear Members of Congress:

I write as a follow up to my March 30, 2018 and May 3, 2018 letters, responding to your letter dated March 12, 2018 regarding your request for the entire record of the consolidated litigation against *McDonald's*.

To respond to your March 12 document request, the National Labor Relations Board (the "NLRB" or "Agency") has assigned attorneys and professionals from the Agency's FOIA Branch, the Division of Operations-Management, the Office of the Chief Information Officer,

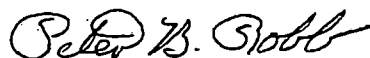
and its Region 2 Office in New York to conduct a search of the record for responsive, non-privileged documents. In the Agency's previous two responses, it provided all of the hearing transcripts (with redactions covered by the administrative law judge's protective order) in the consolidated litigation in McDonald's USA, LLC, et al., Case Nos. 02-CA-09389 (the "Litigation").

In this third response to your request, the Agency is producing three CDs containing orders and decisions issued by the Board, the administrative law judge and the special master, and briefs, motions and other filings from the Litigation. These documents were compiled by the Agency's FOIA Branch, the Division of Operations-Management, its Region 2 Office in New York, and the Office of the Chief Information Officer. This is the third production of documents in response to your request. Please note there are redactions to one of the orders contained in this production. These redactions were made by the administrative law judge in the Litigation and pertain to information covered by the protective order or given under seal.

My office will continue to provide responsive documents to you on a rolling basis as the review process continues.

Please do not hesitate to contact the Office of Public and Congressional Affairs at 202-273-1991 if you have any questions regarding this matter.

Sincerely,

A handwritten signature in cursive script that reads "Peter B. Robb".

Peter B. Robb
General Counsel



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

January 31, 2019

The Honorable Robert C. "Bobby" Scott
Chairman
Committee on Education and Labor
U.S. House of Representatives
2176 Rayburn House Office Building
Washington, DC 20515

The Honorable Suzanne Bonamici
Committee on Education and Labor
U.S. House of Representatives
2231 Rayburn House Office Building
Washington, DC 20515

The Honorable Gregorio Kilili Camacho
Sablan
Committee on Education and Labor
U.S. House of Representatives
2411 Rayburn House Office Building
Washington, DC, 20515

The Honorable Mark Takano
Committee on Education and Labor
U.S. House of Representatives
420 Cannon House Office Building
Washington, DC 20515

The Honorable Rosa L. DeLauro
Chairwoman
Subcommittee on Labor, Health and Human
Services, Education, and Related Agencies
Committee on Appropriations
2413 Rayburn House Office Building
Washington, DC 20515

The Honorable Donald Norcross
U.S. House of Representatives
2437 Rayburn House Office Building
Washington, DC 20515

The Honorable Adriano Espailat
U.S. House of Representatives
1630 Longworth House Office Building
Washington, DC 20515

The Honorable Mark Pocan
U.S. House of Representatives
1421 Longworth House Office Building
Washington, DC 20515

Dear Members of Congress:

I write as a follow up to my March 30, 2018, May 3, 2018 and December 21, 2018 letters, responding to your letter dated March 12, 2018 regarding your request for the record of the consolidated litigation against *McDonald's*.

To respond to your March 12 document request, the National Labor Relations Board (the "NLRB" or "Agency") assigned attorneys and professionals from the Agency's FOIA Branch, the Division of Operations-Management, the Office of the Chief Information Officer, and its Region 2 Office in New York to conduct a search of the record for responsive, non-privileged documents.

In the Agency's previous three responses, it provided all of the hearing transcripts, orders and decisions issued by the Board, the administrative law judge, and the special master, and briefs, motions and other filings (with redactions covered by the administrative law judge's protective

order) in the consolidated litigation in McDonald's USA, LLC, et al., Case Nos. 02-CA-09389 (the "Litigation").

In this fourth and final response to your request, the Agency is producing a flash drive containing additional filings and exhibits from the Litigation.

Please note that some of the original records received by Region 2 contained redactions, made by the respondents, of certain financial and personally identifiable information. Additional redactions of information covered by the protective order or given under seal were made by subject matter experts from the Region who were directly involved in the Litigation. In total, there are 11 motions and 1 exhibit being produced that were redacted pursuant to the protective order or given under seal. In addition, 6 exhibits and 3 filings have been withheld in full because the majority of each document falls under the protective order and the parties agreement on maintaining the confidentiality of certain information.

Please do not hesitate to contact the Office of Public and Congressional Affairs at 202-273-1991 if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, reading "Peter B. Robb". The signature is written in a cursive, flowing style.

Peter B. Robb
General Counsel



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

January 3, 2018

The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions
U.S. Senate
428 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Elizabeth Warren
U.S. Senate
317 Hart Senate Office Building
Washington, DC 20510

Dear Ranking Member Murray and Senator Warren:

I write in response to your letter dated December 12, 2017 regarding the issuance of Memorandum GC 18-02, Mandatory Submissions to Advice. Initially, I note that, as General Counsel of the National Labor Relations Board (NLRB), I am charged with general oversight and supervision of NLRB field offices, which investigate and prosecute unfair labor practice cases and which process representation cases. And, in keeping with the long-standing tradition of my predecessors, I released guidance in the form of Memorandum GC 18-02, Mandatory Submission to Advice, to all Regional Directors, Officers-in Charge, and Resident Officers.

As to the specific questions in your aforementioned letter, I offer the following responses:

1. Please provide any communications that occurred after January 19, 2017 between you, or a member of your office, and any person or entity not employed by the National Labor Relations Board, concerning –
 - a. any Board decision implicated by Memorandum 18-02's mandatory submission requirement;
 - b. GC 17-01, GC 16-03, GC 15-04, GC-12-02, GC 12-01, GC 11-04, or OM 17-02, or any doctrine, argument, or issue addressed by any of those memos; or
 - c. Any of the "initiatives" listed on page 5 of Memorandum 18-02.

During most of the time in question, I was practicing labor and employment law at a law firm. Thus, I had communication with clients and colleagues about Board precedent, including conducting a presentation, which I have enclosed herein, and cannot recall any other communications that were not subject to attorney-client privilege. Since becoming General Counsel on November 17, 2017, I have spoken about GC Memorandum 18-02 with external parties when asked, including at the AFL-CIO during a General Counsels meeting to which I was invited. However, I do not have any related written materials other than the memo itself and internal drafts.

2. Please explain how you arrived at the timeframe of “over the last eight years” in targeting cases that overruled precedent.

Over the last eight years, the Board has reversed longstanding precedent and/or created novel legal theories in many cases, and I believe those cases, encompassed during this time period, warrant review.

3. Did you consult Regional Directors in developing Memorandum 18-02? If so, what were the recommendations of the Regional Directors?

While I am uncertain what specific input the Regional Directors provided, before issuing GC Memorandum 18-02, I followed standard operating procedure. Thus, I sought guidance and counsel from senior advisors, including those from the Division of Operations-Management, which oversees the field operations and which shared a draft with the Regional Directors.

4. Please provide your reasons for revoking each of the General Counsel memos and “initiatives” listed on page 5 of Memorandum 18-02. Please explain how revoking each memo and terminating each “initiative” furthers the policies and purposes of the NLRA.

Each General Counsel identifies his/her own initiatives. Since I have been General Counsel for about six weeks, I am still considering the initiatives that I wish to pursue. In the meantime, I thought it prudent to advise the public and our Board agents that I may not be inclined to continue certain initiatives of my predecessor. However, as I have not made any final decisions in that regard, I requested that cases be sent to the Division of Advice so that I could make informed determinations for a small subset of cases that are filed with the Agency in any given year.

5. In Memorandum 18-02, you state, “No new theories will be presented on cases that have been fully briefed to the Board in order to avoid delay. Second, again in order to avoid delay, the General Counsel will not be offering new views on cases pending in the courts, unless directed to by the Board or courts.” This does not address cases in which a complaint has already issued, but the case has not been fully briefed to the Board and is not pending in the courts. How many already issued complaints rely on Board decisions implicated by Memorandum 18-02’s mandatory submission requirement? Please list all such complaints by their case names and numbers.

With regard to cases where complaint has issued, no list has been generated because my directives are clear that the complaints will continue to be pursued under extant Board law and the Board will ultimately make the final determination.

6. How will Memorandum 18-02 affect complaints mentioned in the previous question?

As noted previously, it will not affect complaints that have issued. The case will be litigated, if not settled, and the Board will ultimately render a decision and order that we will seek to enforce if voluntary compliance is not forthcoming.

7. Did you read about or consider any changes or trends in the economic realities facing workers in the course of developing Memorandum 18-02.

In response to question 2, I believe that over the last eight years, issues involving the Board have created uncertainty in the workplace. I believe that it is incumbent upon the General Counsel to provide

guidance to workers, employers, unions, practitioners and the public at large that furthers that goal and promotes our mission of supporting industrial stability nationwide.

8. In announcing Memorandum 18-02's mandatory submission requirement, you state, "As you know, the last eight years have seen many changes in precedent, often with vigorous dissents. The Board has two new members who have not yet revealed their views on many issues. Over the years, I have developed some of my own thoughts."

- a. What "thoughts" are you referring to?
- b. Why did you not disclose your "thoughts" on Board decisions implicated by Memorandum 18-02's mandatory submission requirement in your interview with our staff in which you were specifically asked about your views on recent decisions of the Board and answered that you hadn't developed any?

As I stated in GC Memorandum 18-02 and in Congressional testimony, I was an NLRB field attorney and, subsequently, chief counsel to a Board member. Having worked on both the General Counsel-side and Board-side of the Agency, I am particularly well-equipped to understand the importance of providing the best and most complete analysis available on significant issues brought before the Agency. The examples outlined in GC Memorandum 18-02 do not imply my predisposition on any particular matter, nor how those under my oversight will ultimately argue a case. Rather, it provides an opportunity to consider and put forth appropriate legal theories for final Board determination.

9. Why did you decide that you "might want to provide the Board with an alternative analysis" in complaints supported by the Board's decision in *Fresh & Easy Neighborhood Market*, 361 NLRB No. 12 (2014), which abrogated *Holling Press*, 343 NLRB 301 (2004)?

- a. Do you believe that workplace sexual harassment is a rare occurrence? Will you develop any "alterative Analysis" asserting that sexual harassment claims "are not a common everyday occurrence," as the 2004 Board majority concluded in *Holling Press*?
- b. As the *Fresh & Easy* Board noted, "*Holling Press* effectively created an exemption from Section 7 for claims of sexual harassment in circumstance where those claims, had they instead concerned discipline, safety, or many other matter similarly affecting working conditions, would have enjoyed the protection of the Act." Do you believe such an exception is warranted?
- c. Will you seek to create other exceptions from Section 7's protections for specific kinds of workplace grievances?
- d. Please explain your understanding of the "solidarity principle" articulated in *Fresh & Easy*.

As noted previously, I believe that it is the General Counsel's responsibility to ensure that the Board has the best record and arguments before it, particularly when addressing challenging issues. I have publicly stated that there needs to be a balancing of the policies of Title VII and the NLRA so that workers, employers and unions are fully aware of acceptable and lawful conduct in the workplace. I fully support the sentiment that workers should be treated with dignity and respect and, along those lines, I believe that allegations of sexual misconduct should be dealt with promptly and appropriate actions should be imposed swiftly.

If you or a member of your staffs have any questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs, at (202) 273-1991.

Sincerely,

A handwritten signature in black ink, reading "Peter B. Robb". The signature is written in a cursive style with a large, stylized "P" and "R".

Peter B. Robb
General Counsel

LAMAR ALEXANDER, TENNESSEE, CHAIRMAN

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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

DAVID P. CLEARY, STAFF DIRECTOR
EVAN SCHATZ, DEMOCRATIC STAFF DIRECTOR

<http://help.senate.gov>

January 16, 2018

Hon. Peter B. Robb
General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Dear Mr. Robb:

On January 3, 2018, we received your response to our letter from December 12, 2017, which requested information about your recent memorandum to regional offices seeking to exercise oversight over an unprecedented amount of regional decision making. We request you provide additional detail to some of the answers provided in your response. Please provide this additional information by January 29, 2018:

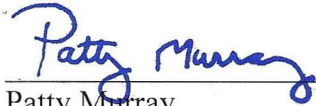
1. In response to Question 1, you state that you “cannot recall any other communications that were not subject to attorney-client privilege.” Please detail the electronic records searches, including the keyword searches, used to determine that no responsive documents exist that are not subject to privilege. Please produce a privilege log as specified in paragraph (G) of the Definitions and Instructions provided to you. Please also detail the steps that you took to ascertain the existence of responsive documents, including notes of oral conversations or meetings. Please limit your responses to any communications occurring after you were sworn-in as General Counsel.
2. Question 3 asked whether you consulted the Regional Directors in developing Memorandum 18-02, and, if so, to identify the recommendations of the Regional Directors. You stated that you were “uncertain what specific input the Regional Directors provided.” Did you or any member of your immediate staff consult any Regional Director regarding Memorandum 18-02 or its contents prior to issuance on December 1, 2017? If so, please detail the nature of those consultations including whether Regional Directors were asked for input, and whether Regional Directors saw a draft of the Memorandum.
3. Memorandum 18-02, states that the General Counsel memos listed on Page 5 of Memorandum 18-02 “shall be rescinded,” and that the “initiatives” listed on Page 5 are “no longer in effect.” In response to Question 4, you stated, “Since I have been General Counsel for about six weeks, I am still considering the initiatives that I wish to pursue. In the meantime, I thought it prudent to advise the public and our Board agents that I may not be inclined to continue certain initiatives of my predecessor. However, as I have not made any final decisions in that regard, I requested that cases be sent to the Division of

Advice so that I could make informed determinations . . ." Please specify whether each of the items listed on Page 5 have in fact been rescinded and/or are no longer in effect.

4. With regard to your answer to Question 7, please confirm that "uncertainty" resulting from Board actions over the last eight years was the only recent economic change or trend affecting workers that you considered in the preparation of Memorandum 18-02.

If you have any questions about this request, please contact [John DElia@help.senate.gov](mailto:John_DElia@help.senate.gov) and [Lindsay Owens@warren.senate.gov](mailto:Lindsay_Owens@warren.senate.gov). We look forward to hearing from you.

Sincerely,



Patty Murray
U.S. Senator
Ranking Member
Committee on Health, Education,
Labor & Pensions



Elizabeth Warren
U.S. Senator



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

January 29, 2018

The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions
U.S. Senate
428 Dirksen Senator Office Building
Washington, DC 20510

The Honorable Elizabeth Warren
U.S. Senate
317 Hart Senate Office Building
Washington, DC 20510

Dear Ranking Member Murray and Senator Warren:

I write in response to your letter dated January 16, 2017 regarding your additional questions concerning the issuance of Memorandum GC 18-02, Mandatory Submissions to Advice.

As I stated in my January 3, 2018 letter, I released Memorandum GC 18-02 to all NLRB Regional Directors, Officers-in Charge, and Resident Officers in order to ensure that the Board has the best analysis available on the issues that come before it. The legal issues outlined in the memorandum provide an opportunity to explore novel legal theories and areas where previous dissents have raised potential questions. Below are the answers to the questions you outlined in your letter:

1. In response to Question 1, you state that you "cannot recall" any other communications that were not subject to attorney-client privilege." Please detail the electronic records searches, including the keyword searches, used to determine that no responsive documents exist that are not subject to privilege. Please produce a privilege log as specified in paragraph (G) of the Definitions and Instructions provided to you. Please also detail the steps that you took to ascertain the existence of responsive documents, including notes of oral conversations or meetings. Please limit your responses to any communications occurring after you were sworn-in as General Counsel.

As I stated in the January 3, 2018 letter, I cannot recall any other communications that were not subject to attorney-client privilege while I was practicing labor and employment law at a law firm. I no longer have access to documents at my former law firm. I reviewed my personal email and found no such documents. From November 17, 2017 to December 1, 2017, I have no written materials other than the memo itself and internal drafts.

2. Question 3 asked whether you consulted the Regional Directors in developing Memorandum 18-02, and, if so, to identify the recommendations of the Regional Directors. You stated that you were "uncertain what specific input the Regional Directors Provided." Did you or any member of your immediate staff consult any Regional Director regarding Memorandum 18-02 or its contents prior to issuance on December 1, 2017? If so, please detail the nature of those consultations including

whether Regional Directors were asked for input, and whether Regional Directors saw a draft of the Memorandum.

As I stated in the January 3, 2018 letter, I followed standard operating procedures when issuing GC Memorandum 18-02. The Division of Operations-Management, which I sought guidance and counsel from, shared a draft with the Regional Directors prior to its issuance. I was not sent written or electronic communications describing the details of the input provided by the Regional Directors, if any.

3. Memorandum 18-02, states that the General Counsel memos listed on Page 5 of Memorandum 18-02 "shall be rescinded," and that the "initiatives" listed on Page 5 are "no longer in effect." In response, to Questions 4, you stated, "since I have been General Counsel for about six weeks, I am still considering the initiatives that I wish to pursue. In the meantime, I thought it prudent to advise the public and our Board agents that I may not be inclined to continue certain initiatives of my predecessor. However, as I have not made any final decisions in that regard, I requested that cases be sent to the Division of Advice so that I could make informed determinations..." Please specify whether each of the items listed on Page 5 have in fact been rescinded and/or are no longer in effect.

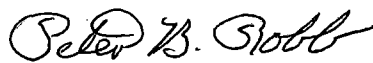
The initiatives listed on Page 5 of Memorandum 18-02 have been rescinded and are no longer in effect.

4. With regard to Question 7, please confirm that "uncertainty" resulting from Board actions over the last eight years was the only recent economic change or trend affecting workers that you considered in the preparation of Memorandum 18-02.

As I stated in the January 3, 2018 letter, I believe that it is incumbent upon the General Counsel to promote the Agency's mission of supporting industrial stability nationwide. Multiple factors were considered in the preparation of Memorandum 18-02, including the Board's reversal of longstanding precedent over the past eight years that has created uncertainty in the workplace and my experience in the labor law field.

If you or a member of your staffs have any questions or need additional assistance, please do not hesitate to contact Carmen Torres Spell, Director of the Office of Congressional and Public Affairs at (202) 273-1991.

Sincerely,



Peter B. Robb
General Counsel

MICHAEL B. ENZI, WYOMING
RICHARD BURR, NORTH CAROLINA
JOHNNY ISAKSON, GEORGIA
RAND PAUL, KENTUCKY
SUSAN M. COLLINS, MAINE
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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

DAVID P. CLEARY, STAFF DIRECTOR
EVAN SCHATZ, DEMOCRATIC STAFF DIRECTOR

<http://help.senate.gov>

February 15, 2018

Hon. Peter B. Robb
General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Dear Mr. Robb:

We are writing to express grave concern regarding reports of your proposals to diminish the role of the National Labor Relations Board's Regional Directors and make it harder for workers to bring charges for violations of their rights. According to a letter posted by Bloomberg News, the nine Regional Directors of the National Labor Relations Board ("the Board") wrote to you to protest your plan to consolidate the Regions. The letter suggests that you have proposed consolidating the Regions into "district" offices headed by officials that report directly to you, downgrading the Regional Directors from Senior Executive Service positions, and increasing the amount of staff per supervisor.¹ Moreover, although the Board always faces budgetary constraints, we understand you indicated that you would favor reorganizing the Regions even if budgetary constraints were not a concern. Additionally, fifty-six former Regional Directors who served during every administration since President Nixon's issued a letter strongly opposing your plan.²

Bloomberg also reports that you are proposing to significantly increase the filing burden on workers alleging unfair labor practices, creating filing deadlines and other obstacles to increase the likelihood that cases are dismissed without Regional Directors' approval.³ We are concerned that such proposals could threaten the National Labor Relations Board's ability to fairly and effectively protect workers' rights under the National Labor Relations Act ("NLRA").

Regional Directors play a unique role in the Board's organizational structure. They are career professionals with decades of experience serving under both Republican- and Democratic-appointed General Counsels. They are true experts in complex areas of the law that require a nuanced understanding of Board precedents and workplace realities. The expertise and independence of the Regional Directors to make crucial decisions regarding whether to issue complaints for violations of the law is critical given that workers cannot bring claims for NLRA violations to court. The Regions' independence from political influence and sole focus on the enforcement of the law has always been a hallmark of Board processes and must be maintained.

¹ Lawrence E. Dubé, Labor Board Shakeup Could Centralize Control Over Cases, BLOOMBERG BNA, Jan. 17, 2018; Noam Scheiber, Trump Appointee is Trying to Squelch Us, Labor Board Staff Says, N.Y. TIMES, Jan. 25, 2018.

² Chris Opfer & Hassan Kanu, Former Labor Board Officials Shun Regional Overhaul, BLOOMBERG BNA, Feb. 13, 2018 (quoting "56 former regional directors" as stating "the restructuring as proposed clearly misses the mark.").

³ Hassan A. Kanu, Labor Board Considers Case-Processing Revamp, BLOOMBERG BNA, Jan. 31, 2018.

In order to better help us understand your proposals, please specify a date before March 8, 2018, on which you are available to brief us or our staff on these matters. Also, please provide the following information by March 1, 2018:

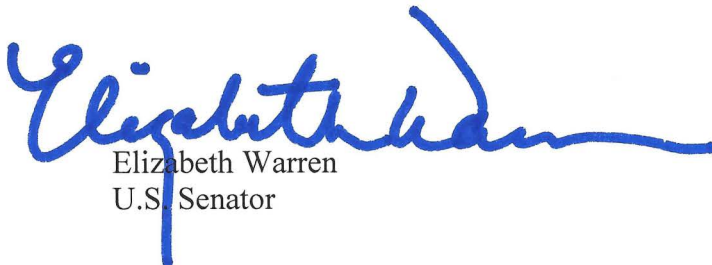
1. Please provide an official copy of the Regional Directors' January 16 letter to you and the Board.
2. Please provide any formal or informal response that you or anyone employed by your office issued to the Regional Directors' January 16 letter.
3. Please indicate how you view the role of the Members of the Board in any structural reorganization.
4. Please provide a detailed description of any proposed changes to the Regions or the Regional Directors' authorities.
5. Please provide a detailed description of any proposed changes to the filing requirements or case-handling procedures for unfair labor practices.
6. Please provide your justifications, budgetary or otherwise, for proposing changes to the structure of the regions and filing requirements or case-handling procedures for unfair labor practices.
7. Please confirm that there would be an opportunity for public comment on any proposed changes to either the regions, the Regional Directors' authorities, or the filing requirements or case-handling procedures for unfair labor practices.
8. Please provide all communications concerning a possible reorganization of the Regions or changes to processing unfair labor practice charges between you or any person employed by your office and any person or entity not employed by the National Labor Relations Board, including, but not limited to, Congressional staff or members, White House employees and employees or members of any agency stakeholders or associations including the Chamber of Commerce, the National Association of Manufacturers, the International Franchise Association, and the National Right to Work Committee.

We look forward to hearing from you. If you have any questions, please contact our staff at John_DElia@help.senate.gov, Carly_Rush@help.senate.gov, and Lindsay_Owens@warren.senate.gov.

Sincerely,



Patty Murray
Ranking Member
Committee on Health, Education,
Labor and Pensions



Elizabeth Warren
U.S. Senator

United States Senate

WASHINGTON, DC 20510

March 7, 2018

Hon. Peter B. Robb
General Counsel
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

Dear Mr. Robb:

As you are aware, the National Labor Relations Board (NLRB) vacated its decision in *Hy-Brand Indus. Contractors* on February 26, 2018, after a report by the NLRB Inspector General determined that Member Emanuel's participation "calls into question the validity of that decision."¹

Consequently, the 2015 *Browning-Ferris* standard once again controls joint employment determinations in Board cases.² This standard recognizes workers' right to bargain collectively with employers that indirectly control their pay and working conditions, and it prevents large corporations from shirking their collective bargaining obligations by, for example, contracting out work while maintaining substantial control over workers.

One large case affected by this decision is *McDonald's*, which involves hundreds of allegations that the company unlawfully harassed and fired workers organizing for higher wages. This significant joint employer case affecting the Section 7 rights of millions of workers has been the subject of a trial before an Administrative Law Judge since 2015. However, beginning this January, you have engaged in "global settlement" discussions at McDonald's instigation.³ You successfully obtained a stay in proceedings before the ALJ, despite the considerable resources the Board has already invested into the case, the significant public interests at stake,

¹ Office of the Inspector General, National Labor Relations Board, *Notification of a Serious and Flagrant Problem and/or Deficiency in the Board's Administration of its Deliberative Process and the National Labor Relations Act with Respect to the Deliberation of a Particular Matter* (Feb. 9, 2018) available at https://www.nlr.gov/sites/default/files/attachments/basic-page/node-1535/OIG%20Report%20Regarding%20Hy_Brand%20Deliberations.pdf (emphasis added).

² See *Hy-Brand Indus. Contractors*, 366 NLRB No. 26 (Feb. 26, 2018) ("Because we vacate the Board's earlier Decision and Order, the overruling of the *Browning-Ferris* decision is of no force or effect.").

³ See Order Granting General Counsel's Motion to Stay Proceedings, *McDonald's USA*, Case 02-CA-093893, et al. (Jan. 19, 2018).

and the fact that the trial was a mere two witnesses from closing.⁴ You expressly invoked *Hy-Brand* as a key justification for doing so.⁵ Now that the Board has vacated *Hy-Brand* and returned to the 2015 joint employer standard, it is imperative that you swiftly resume and finish the trial and allow the ALJ to issue a decision in this critically important case.

In response to our previous inquiries, you have asserted that the uncertainty allegedly engendered by your predecessors is among the most significant difficulties facing workers and employers in the modern workplace. You expressed concern that, in the past, “issues involving the Board have created uncertainty in the workplace” and your belief that “it is incumbent upon the General Counsel to provide guidance...[that] promotes our mission of supporting industrial stability nationwide.”⁶ You now have an opportunity to create certainty for all workers, unions, and employers by allowing an ALJ to thoughtfully consider a fully developed record involving a multifaceted fact pattern and apply the Board’s controlling precedent articulated in *Browning-Ferris*. Such a ruling would enable the stakeholder community to understand with certainty how governing Board law applies to a complex set of facts. Further, doing so would demonstrate a commitment on your part to the fair enforcement of the law and a sense of fair play: no entity should be permitted to skirt its legal obligations or hide the uncomfortable realities of a full factual record simply by prevailing on what it considers to be a more sympathetic ear upon a change in the Administration. Forcing such a resolution would further erode public trust in the decision-making processes of the Board, already marred by its initial decision in *Hy-Brand* and the improper participation of Member William Emanuel, who should have been recused from the case.

The Board’s abandoning of *Hy-Brand* eliminates whatever support may have existed for your efforts to settle the *McDonald’s* case so near to the trial’s close. Because this matter affects the rights of millions of workers and has implications far beyond the scope of the case, we will closely follow how you proceed. We also request that you provide the following information by March 21, 2018.

1. Do you intend to cease settlement efforts and resume the trial in *McDonald’s* in light of the Board’s Order vacating *Hy-Brand*? If not, why not?
2. If the *McDonald’s* trial were to continue, approximately how many hearing days would it take to conclude?
3. Prior to your confirmation as General Counsel, did you discuss the *McDonald’s* case with any person or entity not employed by the National Labor Relations Board, including employees of the White House or industry associations? If so, please provide any such communications.
4. Please list all of the pending cases in which your office is considering or engaging in settlement efforts based in whole or in part on the now ineffective *Hy-Brand* decision.





⁴ It should also be noted that the initial complaints and subpoenas in this case were issued by your office under pre-*Browning-Ferris* Board law which *Hy-Brand* purported to reinstate.

⁵ See Order, *supra* note 2.

⁶ See Letter from NLRB General Counsel Peter Robb to Senators Murray and Warren (Jan. 3, 2018).

We look forward to hearing from you. If you have any questions, please contact Sam Weinstock in Senator Warren's office at Samuel_Weinstock@warren.senate.gov.

Sincerely,


Elizabeth Warren
United States Senator
Kamala D. Harris
United States Senator
Kirsten Gillibrand
United States Senator
Sherrod Brown
United States Senator
Cory A. Booker
United States Senator

Congress of the United States
House of Representatives
Washington, D.C. 20515

March 12, 2018

The Honorable Peter Robb
General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, DC 20570

Dear Mr. Robb:

We write with regard to your decision to move to stay proceedings and pursue a settlement of pending charges involving McDonald's USA, LLC, over the objections of the adversely impacted workers and their representatives. Over the past three years of litigation, this case developed an extensive record detailing allegations that McDonald's and its franchisees, as joint employers, retaliated against employees for exercising their rights under the National Labor Relations Act ("NLRA").

The National Labor Relations Board ("the Board") consumed significant resources in this litigation as it held over 150 days of hearings. We understand that your office moved to stay the proceedings with less than a handful of hearing days remaining before the trial was concluded and the record was closed. We request that you resume the litigation, which your office has long found to have merit, and that you produce the record of the consolidated case.

While we recognize the exclusive and unreviewable prosecutorial discretion that the NLRA affords the office of General Counsel, we are troubled that your decision to prematurely suspend this litigation adversely impacts the charging parties' due process rights. These charging parties, who pursue this litigation on behalf of thousands of fast food workers, have opposed your motion to stay proceedings. Imposing a settlement that the charging parties do not approve would risk denying them recourse for the harms the General Counsel's office alleged in its complaints. For that reason, it appears both imprudent with respect to resources already committed, and unfair to the charging parties to prematurely terminate prosecution of this matter.

Although your motion claimed that a stay is necessary for your office "to assess the impact" of the Board's decision in *Hy-Brand*¹ to overturn *Browning Ferris*,² we note that your office issued complaints against McDonald's and its franchisees in December 2014 under the pre-*Browning Ferris* standard. In any event, the Board's decision to vacate *Hy-Brand* on February 26, 2018 moots this concern, and the Board is now seeking enforcement of *Browning Ferris* in the U.S. Court of Appeals for the D.C. Circuit.³

¹ 365 NLRB No. 156 (2017).

² 362 NLRB No. 186 (2015).

³ *Browning-Ferris Indus. v. NLRB*, Nos. 16-1028, 16-1063, 16-1064 (D.C. Cir. Motion of the NLRB to Recall Mandate Based on Exceptional Circumstances filed Mar. 1, 2018).

As a related matter, we respectfully request that you produce the entire record of the consolidated litigation against McDonald's by April 1, 2018.⁴ The Board's application of its joint employment standard to this case has been of great interest to the Committee on Education and the Workforce.⁵ The facts uncovered in this litigation and commentary on its implications have been discussed in hearings without a complete record. Despite this, sweeping generalities have been made regarding this case's application to other franchises. Producing the record of the consolidated litigation would enable Congress to carefully consider the details of this important case.

Please direct the production of documents and all questions to kyle.decant@mail.house.gov. Thank you for your consideration of this request.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Ranking Member
Committee on Education and the Workforce



SUZANNE BONAMICI
Vice Ranking Member
Committee on Education and the Workforce



GREGORIO KILILI CAMACHO SABLÁN
Ranking Member
Subcommittee on Health, Employment, Labor
and Pensions



MARK TAKANO
Ranking Member
Subcommittee on Workforce Protections

⁴ This request encompasses the records associated with all case numbers listed in the Administrative Law Judge's Order Denying Respondents' Motion to Sever, dated February 20, 2015.

⁵ See, e.g., H.R. 3441, "Save Local Business Act," Hearing Before the Subcommittee on Workforce Protections and the Subcommittee on Health, Employment, Labor and Pensions, 115th Cong., 1st Sess. (Sept. 13, 2017); Redefining Joint Employer Standards: Barriers to Job Creation and Entrepreneurship, Hearing Before the Committee on Education and the Workforce, 115th Cong., 1st Sess. (Jul. 12, 2017); Restoring Balance and Fairness to the National Labor Relations Board, Hearing Before the Subcommittee on Health, Employment, Labor and Pensions 115th Cong., 1st Sess. (Feb. 14, 2017); H.R. 3459, "Protecting Local Business Opportunity Act," Hearing Before the Subcommittee on Health, Employment, Labor and Pensions, 114th Cong., 1st Sess. (Sept. 29, 2015); Expanding Joint Employer Status: What Does It Mean for Workers and Job Creators?, Hearing before the Subcommittee on Health, Employment, Labor and Pensions, 113th Cong., 2nd Sess. (Sept. 9, 2014).



ROSA L. DELAURO

Ranking Member
Subcommittee on Labor, Health and
Human Services, Education, and Related
Agencies
Committee on Appropriations



DONALD NORCROSS

Member of Congress



ADRIANO ESPAILLAT

Member of Congress



KEITH ELLISON

Member of Congress



MARK POCAN

Member of Congress



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

March 12, 2018

The Honorable Elizabeth Warren
U.S. Senate
317 Hart Senate Office Building
Washington, DC 20510

The Honorable Kamala D. Harris
U.S. Senate
112 Hart Senate Office Building
Washington, DC 20515

The Honorable Kirsten Gillibrand
U.S. Senate
478 Russell Senate Office Building
Washington, DC 20510

The Honorable Sherrod Brown
U.S. Senate
713 Hart Senate Office Building
Washington, DC 20515

The Honorable Cory A. Booker
U.S. Senate
359 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Warren, Gillibrand, Booker, Harris and Brown:

I am writing in regards to your March 7, 2018 letter regarding *McDonald's USA, LLC, a Joint Employer, et al. (02-CA-093893, et al.)*. Thank you for your interest in this specific case.

Below are the answers to the questions you outlined in your letter:

1. Do you intend to cease settlement efforts and resume the trial in *McDonald's* in light of the Board's Order vacating *Hy-Brand*? If not, why not?

No. The General Counsel's office is always willing to consider settlements that will effectuate the purposes of the National Labor Relations Act in any case.

2. If the *McDonald's* trial were to continue, approximately how many hearing days would it take to conclude?

My counsel has indicated that the case will resume for McDonald's to present rebuttal evidence in the case. I have instructed my counsel to then present any surrebuttal evidence that will be appropriate. Consequently, if the hearing resumes, the length will be up to the evidence presented by McDonald's as permitted by the Administrative Law Judge.

3. Prior to your confirmation as General Counsel, did you discuss the *McDonald's* case with any person or entity not employed by the National Labor Relations Board, including employees of the White House or industry associations? If so, please provide any such communications.

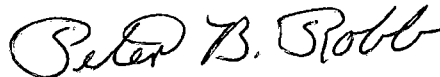
I did not discuss the merits of the *McDonald's* case with anyone prior to becoming General Counsel.

4. Please list all of the pending cases in which your office is considering or engaging in settlement efforts based in whole or in part on the now ineffective *Hy-Brand* decision.

I am not aware of settlement efforts being engaged in as a result of the *Hy-Brand* decision. As I said before, the General Counsel's office is always willing to consider settlements that will effectuate the purposes of the National Labor Relations Act in any case.

If you or a member of your staffs have any questions or need additional assistance, please do not hesitate to contact the Office of Congressional and Public Affairs at (202) 273-1991.

Sincerely,

A handwritten signature in black ink, reading "Peter B. Robb". The signature is written in a cursive, flowing style.

Peter B. Robb
General Counsel



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

April 27, 2018

The Honorable Patty Murray
Ranking Member
Subcommittee on Labor, Health and Human
Services, Education and Related Agencies
Committee on Appropriations
U.S. Senate
154 Russell Senate Office Building
Washington, DC 20510

The Honorable Rosa L. DeLauro
Ranking Member
Subcommittee on Labor, Health and Human
Services, Education, and Related Agencies
Committee on Appropriations
U.S. House of Representatives
2413 Rayburn House Office Building
Washington, DC 20515

Dear Ranking Members Murray and DeLauro:

Thank you for your letter dated April 25, 2018. I share your concern over a possible rescission package. As I have told your staff, it is difficult to operate an agency without a completely settled budget prior to the commencement of a fiscal year. However, I am not aware of any communication from the Office of Management and Budget (OMB) to freeze funding. Indeed, the Board has not changed course on its spending plan.

Although no plan has been developed, the organization and structure of the Agency are unclear continuing review. OMB's current proposed budget of \$249 million for Fiscal Year 2019 will be a challenge. Although \$274.2 million for Fiscal Year 2018 will help, the cumulative effect of years of flat funding has had a significant negative impact on the organization's structure.

In regards to the second footnote, the information provided is incomplete. As you know, I replied that I could not comment on any reorganization report. Moreover, I had not discussed any reorganization plans.

And of course, any changes to case handling procedures are not budget driven, although reductions of revised procedures that result in unnecessary expenses are always welcome.

Finally, I have complied, and will continue to comply, with all applicable laws.

Sincerely,

A handwritten signature in cursive script, reading "Peter B. Robb".

Peter B. Robb

Congress of the United States

Washington, DC 20510

April 25, 2018

The Honorable Peter B. Robb
General Counsel
National Labor Relations Board
1015 Half Street S.E.
Washington, D.C. 20570

Dear General Counsel Robb,

We are concerned about recent reports that the Office of Management and Budget has directed the National Labor Relations Board (NLRB) to freeze funding in preparation for a possible rescission package.¹ There have also been reports of plans for the Agency to reorganize Regions and change casehandling procedures based on the funding level proposed in the President's budget.² If these reports are true, this would violate the letter and spirit of our bipartisan budget deal, it would have a significant negative impact on workers across the country, and we urge you to change course immediately.

We remind you that Congress, not the Administration, has the ultimate authority to set funding levels for executive branch agencies. GAO has previously concluded that "amounts withheld as a consequence of a 'cancellation proposal' constitute impoundments that agencies may take only after the President transmits a special message to Congress under the Impoundment Control Act."³ In other words, agencies may not withhold appropriated funds from obligation in advance of submitting a special impoundment message. They also may not withhold funds from obligation based on the President's budget proposal, outside of the special impoundment message procedures. We expect that all Agency spending and reorganizations will be made in

¹ Hassan A. Kanu, *White House said to Freeze Labor Board Funding*, Bloomberg BNA Daily Labor Report, April 17, 2018, available at <https://www.bna.com/white-house-pause-n57982091192/>

² NLRB Gen. Couns. Mem. 18-03 at 2 (Mar. 14, 2018) (stating, with regard to "Potential Reorganization of Field Operations and Changes to Case Handling Procedures" the following: "The purpose of these changes would be to bring the Agency in line with OMB Directive 17-22 and to meet the FY 18 and 19 budget."); Hassan A. Kanu, *Labor Board Official Parries Criticism on 'No-Plan' Plan*, Bloomberg BNA Daily Labor Report, Apr. 4, 2018; Andrew Hanna, *NLRB general counsel tells staff cuts still possible*, Politico Pro, Mar. 27, 2018.; E-mail from Michael Lotito, Littler Mendelson P.C., to Peter Robb, NLRB General Counsel (Jan. 17, 2018) (on file with the Committee on Health, Education, Labor and Pensions) ("Your reorganization [i]s leaking. BNA reporter wants to talk to me. What do you want me to do. Guidance please."). We are especially troubled by the latter exchange. Although you did not comment in writing, it appears that you have coordinated to some extent with Littler Mendelson in crafting or contemplating reorganization plans and that, long before Congress or the public was aware, Mr. Lotito understood you to have a "reorganization."

³ *Impoundment of the Advanced Research Projects Agency-Energy Appropriation Resulting from Legislative Proposals in the President's Budget Request for Fiscal Year 2018 (B-329092)*, U.S. Government Accountability Office, December 12, 2017, available at <https://www.gao.gov/products/B-329092#mt=e-report>

accordance with federal law, especially the Impoundment Control Act, and that the NLRB will consult with Congress wherever appropriate.

Any actions to unilaterally reduce spending or improperly reorganize like the ones reported would be particularly troubling given that President Trump just recently signed bipartisan legislation that set spending levels and guidance for agencies into law, based on negotiations by us and other members of Congress on both sides of the aisle. Any attempt to go back on the deal we made would be an extreme act of bad faith, in addition to being bad for workers and a violation of the law.

Thank you for your attention to this letter. We would appreciate a prompt reply that includes assurances you will abide by all applicable provisions of the Consolidated Appropriations Act, 2018, as well as the Impoundment Control Act.

Sincerely,



ROSA L. DeLAURO
Member of Congress



PATTY MURRAY
United States Senator

Cc: The Honorable John F. Ring, Chairman
The Honorable William J. Emanuel, Member
The Honorable Marvin E. Kaplan, Member
The Honorable Lauren McFerran, Member
The Honorable Mark Gaston Pearce, Member
National Labor Relations Board
1015 Half Street S.E.
Washington, D.C. 20570

The Honorable Mick Mulvaney, Director
The White House Office of Management & Budget
725 17th Street, NW Washington, DC 20503

Office of the Chief Information Officer - FY2017, FY2018, FY2019 & FY2020 Actual Expenditure.

OFFICE OF CHIEF INFORMATION OFFICER <i>Prem Aburvasamy, CIO</i>		FY 2017 Actuals	Details	FY 2018 Actuals	Details	FY 2019 Actuals
11	Compensation	5,002,406		5,206,100		5,102,746
	Performance Awards	100,162		93,113		97,678
	LSP	44,886		0		165
Personnel Compensation (Total)		5,147,454		5,299,213		5,200,589
12	Benefits	1,578,106		1,642,478		1,606,094
13	Vera/Vsip Payments	0		50,000		0
Total Compensation and Benefits		\$6,725,561	OCIO FTE Compensation	\$6,991,691	OCIO FTE Compensation	\$6,806,683
21	Travel	5,753	OCIO FTE travel to Field offices and conferences	10,832	OCIO FTE travel to Field offices and conferences	16,246
	Communications, Utilities & Misc (Network/Wireless Cell Phone/Internet/Backup circuit, Centrylink, Skype Ext	3,218,762	Agency wide are network, Internet, Backup, and wireless contract	3,237,692	Agency wide are network, Internet, Backup, and wireless contract	3,982,160
25	Other Services	14,082,841		19,337,112		21,157,947
	Software licenses - Annual maintenance	(b) (4)	Microsoft Enterprise (cloud, SharePoint, Skype, Email), NxGen/JCMS related Software annual maintenance	(b) (4)	Microsoft Enterprise (cloud, SharePoint, Skype, Email), NxGen/JCMS Software annual maintenance, FISMA Security and other software licenses	(b) (4)
	NxGen Contract - O&M		NxGen Operations&Maintenance (O&M)contract		NxGen O&M Contract	
	Public Website/Sharepoint - O&M		Public website/SharePoint O&M contract		Public website/SharePoint O&M contract	
	JCMS - O&M					
	Help Desk - Contract		Help Desk Contract		HelpDesk Contract	
	IT Support Services -InfoSec/AV Tech/Nework/Tech PM					
	Hardware Annual Maintenance		Annual Maintenance for Network Switches/Firewall/other devices		Annual Hardware Maintenance for Network Switches/Firewall/other devices	
	IAA-FOIA/DOJ/EPA/NARA		Interagency Agreement - FOIA online/DOJ elit/NARA/DoS IT Security training		Interagency Agreement -FOIA online/DOJ eLit/NARA/DoS IT Security Training	
	Other Miscellaneous Services (Break Fix)		Repair IT equipment not covered by warranty and network cable repairs in HQ/Field offices		Repair IT equipment not covered by warranty and network cable repairs in HQ/Field offices	
	Subscription (Library Services (BNA/Westlaw etc)		Library Subscription (BNA/Westlaw/Clear/Pacer & all other subscriptions)		Library Subscription (BNA/Westlaw/Clear/Pacer & all other subscriptions)	
			Data Center/Gartner/VTC Maintenance/Shred Service/McDonalds Trial infratructure/Internet Reimbursement/Independent Security Audit/Adobe/security/other software licenses for end users		Data center/Gartner/VTC Maintenance/shred service/McDonalds Trial infratructure/Internet Reimbursement/Adobe/Independent Security Audit/security & other SW licenses for end users	
26	Supplies		Mouse, Keyboard, etc		Mouse/USB/Keyboards	
31	Equipment		Video conference devices for field/Wireless Access Point refresh for field offices		Laptop refresh Replace T420/T430/T450 laptops (800)	
					Docker Containerization in Azure Cloud Migration	
					Polycom conference phone	
					NxGen Enhancements	
					Public website /mobile app update	
		0			JCMS Modernization	
Total Non-Labor		\$17,307,355		\$22,585,636		\$25,156,353
Total Operating Resources, OCIO		\$24,032,916		\$29,577,327		\$31,963,036

Details	FY 2020 Actuals	Details
	5,028,561	
	117,890	
	17,628	
	5,164,079	
	1,726,263	
OCIO FTE Compensation	\$6,890,342	OCIO FTE Compensation
OCIO FTE travel to Field offices and conferences	6,994	OCIO FTE travel to Field offices and conferences
Agency wide are network (centuryLink&Verizon), Internet, Backup, and wireless contract	3,535,836	Wide Area network (bridge contract + new), Wireless (bridge contract+new), Internet and Backup VPN circuit
	22,722,675	
Microsoft Enterprise (cloud, SharePoint, Skype, Email), NxGen/JCMS Software annual maintenance, FISMA Security and other software licenses	(b) (4)	Microsoft Enterprise (cloud, SharePoint, Skype, Email), NxGen/JCMS Software annual maintenance, Zoom, FISMA Security/Adobe and other software licenses
NxGen O&M Contract		NxGen O&M Contract
Public website/SharePoint O&M		Public Website & SharePoint Operations & Maintenance
HelpDesk Contract		JCMS Operations & Maintenance
OCIO IT Support Services Contract/Gartner		Help Contract Desk
Annual Hardware Maintenance for Network Switches/Firewall/other devices		IT Support Services Contract / InfoSec /Gartner
Interagency Agreement -FOIA online/DOJ eLit/NARA/GSA/EPA rulemaking/DoS IT Security Training		Annual Hardware Maintenance for Network Switches/Firewall/other devices
Repair IT equipment not covered by warranty and network cable repairs in HQ/Field offices		IAA - FOIA Online, DOJ Security Auditor, GSA, DOJ Scanning / EPA Rule making & Other IAAs
Library Subscription (BNA/Westlaw/Clear/Pacer & all other subscriptions)		Repair IT equipment not covered by warranty and network cable repairs in HQ/Field offices
		Library Subscription (BNA/Westlaw/Clear/Pacer & all other subscriptions)
Data center/VTC Maintenance/shred service/Internet Reimbursement/Adobe/Independent Security Audit/security/DMARC & other SW licenses for end users		Data center/VTC maintenance/ Internet Reimbursement/security & other SW licenses for end users
Mouse/USB/Keyboards		Mouse/keyboard/headsets/usb cameras/memory
		Laptops/network scanners/large screen monitors for field offices/desktop phones/portable monitors & printers
CISCO Switces and ISE installation		OBIEE developer for OCFO
Dashboard Reporting Service for CFO		SharePoint Modern UI development
Public website modernization/mobile app enhancement		
NxGen Enhancements		NxGen Enhancements
Ethics Office SharePoint development		
JCMS Modernization		
	\$26,265,505	
	\$33,155,847	