UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General

Office of the Executive Secretary Survey

Report No. OIG-AMR-60-09-02

INSPECTOR GENERAL

NATIONAL LABOR RELATIONS BOARD

WASHINGTON, DC 20570

August 26, 2009

I hereby submit a survey of the Office of the Executive Secretary, Report No. OIG-AMR-60-09-02. This survey was conducted to gather information about the Office of the Executive Secretary (OES) to determine functions performed by the office and internal controls that management exercises in carrying out its mission.

We conducted this audit survey after concerns were forwarded to our office regarding the OES' performance of its case processing functions. During the review, it was also reported to us by the Board's managers that they were not comfortable relying on the OES' information technology systems, and they had concerns about the case assignment process.

What we found was that the OES was generally assigning cases and affecting the issuance of the Board's decisions in a timely manner. What we also found was a general lack of acceptance of ownership and responsibility for the case processing data. This was most evident in the OES' response to our internal control findings.
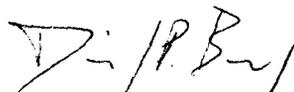
Internal controls are the tools managers use to ensure that the mission of an organization is met and to prevent and detect errors. During this survey, we identified several internal control issues. Our internal control tests found errors in participant information that may affect service to those participants, errors in data elements in the Board's case reporting systems, and differences in the two electronic case processing systems that made reconciling the two systems difficult. When we looked at the case assignment process, we identified a lack of documentation of procedures in the assignment of cases to Board offices that could call into question the fairness of that process. When we looked at the case processing reports, we found that the staff manipulated the data and processes to create reports.

The Executive Secretary and his staff noted during the audit survey that they are in the process of transitioning to a new case processing system. While that is true both for them and the rest of the Agency, the management issues with the OES will not dissipate with the arrival of a new case processing system nor will it, by itself, alter the byzantine nature of the office. The problems identified in this report demonstrate a greater need for change than can simply come from a new case processing system layered on an outdated management process.

We are recommending that the Executive Secretary work with the Board to evaluate the OES' organizational structure, duties, and staffing needs. Doing so will assist the OES in creating processes that will be complemented by the new case processing system rather than compete with it. We are also recommending that the Executive Secretary develop a system of internal controls. Those controls should be designed with a view towards the new case processing system and ensure that the cases are assigned in a manner deemed appropriate by the Board and its managers.

The Executive Secretary's written comments to our draft report are attached as an appendix. Although the Executive Secretary generally agreed with our recommendations regarding developing internal controls and documenting procedures, the comments do not address evaluating the OES' organizational structure, duties, and staffing needs. Nevertheless, given the tone and forward view of the comments, we are hopeful that we can reach agreement on the implementation of all of the report's recommendations.

The Executive Secretary's comments also list nine electronic case handling functions that the OES "planned, implemented, or revised" in the past year and notes that those efforts were not mentioned in the report. Although the OES may have participated in those initiatives, for a variety of reasons it would be difficult to credit the OES to the degree claimed in the comments and meet the requirements of the generally accepted government auditing standards.

David P. Berry
Inspector General

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BACKGROUND

The National Labor Relations Board (NLRB or Agency) administers the principal labor relations law of the United States, the National Labor Relations Act of 1935 (NLRA), as amended.

Section 4 of the NLRA states that the Board shall appoint an Executive Secretary. NLRB Regulations state that the Executive Secretary is the chief administrative and judicial management officer of the Board; that he represents the Board in certain situations; that he receives, dockets, and acknowledges all formal documents filed with the Board; issues and serves the Boards decisions and orders on the parties and their representatives; and certifies copies of Board documents.

The Office of the Executive Secretary (OES) is divided into the immediate office; the Docket, Order, and Issuance Section; and the Editorial and Publication Services Section. The immediate office consists of the Executive Secretary, the Deputy Executive Secretary, three Associate Executive Secretaries, and five clerical employees. The Docket, Order, and Issuance Section consists of one supervisor and four clerical employees. The Editorial Section consists of two supervisory editors (one vacant) and six editors. According to the NLRB's organizational charts, the number of positions in the OES decreased from 38 in April 2004 to 23 in March 2009. The change of 15 positions includes 4 positions that were transferred to the Office of the Chief Information Officer (OCIO). This reduction in staff was consistent with the NLRB Workforce Plan that envisioned an increase in the use of technology and a reduction in the reliance on paper for the filing of documents, processing of cases, and issuance of Board decisions.

The OES maintains an electronic database of cases at the Board, the Pending Case List (PCL) system. PCL services the Offices of the Board Members, OES, Office of Representation Appeals (R-Unit), Office of the Solicitor, and the Division of Information. The system generates reports used to manage cases and collects and compiles historical data for external reporting. PCL also interfaces with the Judicial Case Management System (JCMS), which is used by the Board Member offices to electronically process documents. PCL will be retired when the Next Generation Case Management System (NxGen) is implemented for the Board in Fiscal Year (FY) 2010, but JCMS will remain and will interface with NxGen.

During FY 2008, the OES assigned 462 cases to the Board Member offices, the R-Unit, and the Office of the Solicitor and closed 490 cases. A total of 205 cases were pending at the end of FY 2008.

OBJECTIVE, SCOPE, AND METHODOLOGY

The purpose of an audit survey is to provide a general understanding of an entity and its mission, important operational areas, the nature of management controls, and potential weaknesses or problem areas. This differs from other performance audits in that its focus is a broad understanding of the entity as opposed to auditing to answer a more specific audit objective.

Consistent with the purpose of an audit survey, our objective for this review was to gather information about the OES to determine functions performed by the office and internal controls that management exercises in carrying out its mission. Our scope was case processing activity performed by the OES during FY 2008 and the first 9 months of FY 2009.

We interviewed staff in the OES and reviewed available documentation, including the OES Case Processing Procedures, reports prepared by outside consultants, position descriptions for OES staff, and the performance plans for OES senior managers, to learn about functions performed by the office and internal controls that management exercises in carrying out its mission. We interviewed OCIO staff to learn about the automated systems used by the OES in managing cases. We also interviewed management in Board Member offices, the R-Unit, and the Office of the Solicitor to gain an understanding about how the OES serves those Board offices.

We selected a judgmental sample of 25 cases closed during FY 2008 and reviewed selected data elements in PCL to determine the accuracy of the data. We selected a judgmental sample of 40 unfair labor practice (ULP) cases pending before the Board on June 1, 2009, and tested whether the party information used for serving documents was accurate. Given the size of the closed and pending case populations, we determined that a statistical sample would be larger than necessary for the purposes of this audit survey. Because we did not use statistical sampling for the samples described above, we are unable to project the results to the intended population. We reviewed the list of cases pending as of March 20, 2009, and determined whether the cases were reported in the proper stage of case processing. We determined the number of cases assigned to each Board Member's office during FY 2008. We calculated the time lag from when the Board approved a decision to when the decision issued.

We obtained and reviewed manual and automated reports prepared by the OES. We obtained lists of employees in the OES for the period from FY 2003 through FY 2008 from the Human Resources Branch and reviewed the OES' trends in staffing.

An Exit Conference with the Executive Secretary and the Deputy Executive Secretary was held on July 16, 2009. Written comments to the draft report were provided by the Executive Secretary on August 24, 2009.

This audit survey was performed in accordance with generally accepted government auditing standards during the period December 2008 through July 2009. Those standards require that we plan and perform the audit survey to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit survey objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit survey objectives. We conducted this audit survey at NLRB Headquarters in Washington, DC.

FUNCTIONS OF THE OFFICE OF THE EXECUTIVE SECRETARY

For the purpose of this report, we focused on the OES' administrative case processing functions.

Administrative Processing of Cases

The OES is responsible for the administrative processing of cases before the Board. A case can be any of a number of different matters that require action by the Board, the Office of the Solicitor, or the R-Unit. Examples of cases include processing Administrative Law Judge (ALJ) decisions that are not contested and appeals of ALJ decisions; motions for summary judgment and reconsideration; processing formal settlements; processing sections 10(k) and 10(j) matters; appeals of representational hearing officers' rulings; and requests for review of Regional Directors' decisions involving representation matters.

Although the OES does not decide the underlying issues involved in a particular case, it does perform certain procedural functions. The OES receives and assigns cases to the Board Member offices, prepares reports that provide information regarding the status of the case, and processes the case for issuance once the decision in a case is reached. The OES can also approve or deny a party's request for an extension of time and makes determinations of whether filings to the Board are timely. The OES participates in committees that have a purpose of keeping cases, primarily appeals of ALJ decisions, moving through the decisional process.

Other Functions

Although not reviewed as part of this audit survey, the OES also performs the following functions:

- Handling correspondence on behalf of the Board, including Freedom of Information Act requests;

- Communicating, on behalf of the Board, with employees, employers, labor organizations, Congress, other agencies, and the public;

- Advising Regional Directors on behalf of the Board in representation cases; and

- Participating in the Agency's committees.

INTERNAL CONTROLS OF THE OES

We focused our efforts during this audit survey on the OES' internal controls because the perception that was reported to us by the Board's managers was that they were not able to access reliable data, they were not comfortable relying on the OES' information technology systems, and they had concerns regarding the fairness of the case assignment process.

Internal control is a major part of managing an organization. It is made up of plans, methods, and procedures that are used to meet the mission of the organization and serves as the first line of defense in preventing and detecting errors. Internal control, as opposed to luck or good fortune, helps the managers achieve the desired results through effective stewardship of public resources.

The OES has well documented procedures that provide very detailed instruction for its clerical staff regarding the processing of case related matters. These procedures are, however, only one element of internal control activities. Other elements that are necessary in an organization such as the OES involve documentation of management level procedures, risk assessments, controls over processing information, and accurate and timely recording of events.

We identified several internal control issues that were evidenced by errors in participant information that may affect service to those participants, errors in data elements in the Board's case reporting system, and differences in the two electronic case processing systems that made reconciling the two systems difficult. We also identified a lack of documentation of procedures in the assignment of cases to Board offices that could call into question the fairness of that process.

Accuracy of Participant Data

The NLRB's Rules and Regulations state that final orders of the Board in ULP cases and ALJ decisions shall be served upon all parties. A party, as defined by the Rules and Regulations, includes any person named or admitted as a party, in any Board proceeding, including, without limitation, any person filing a charge under the Act, any person named as respondent, employer, a party to a contract, or any labor organization alleged to be dominated, assisted, or supported in violation of the NLRA. The Rules and Regulations state that papers shall also be served on any attorney or other representative of the party who has entered a written appearance in the proceeding on behalf of the party. If the party is represented by more than one attorney or representative, service on any one will satisfy the requirement.

As part of its function of docketing, acknowledging, serving, and issuing documents on behalf of the Board, the OES maintains a database of participants in cases before the Board. The database is known as the Master Data Management (MDM). The use of the MDM began in 2006 with the importing and cleansing of PCL data for participants in Board cases and has been extended to support Board and ALJ E-issuance. When NxGen is implemented, the MDM's participant data will be available to all Agency offices who utilize NxGen in processing cases.

Participant information is entered in MDM in one of two ways. OES clerical staff obtain participant address information from the Regional Office case files or from the Case Activity Tracking System (CATS) and then manually input the information into MDM. Participants who have signed up for E-service can directly input their service information by using the NLRB's E-government portal (mynlrb.gov). Staff in the OES noted that very few participants currently enter his or her own information.

Support staff in the OES use the MDM data to create the affidavit of service and to print the envelope labels to mail the documents served on the participants. Procedures for affecting the service varied among the support staff. Some support staff printed a new affidavit of service and labels from the MDM each time a document was to be served while others used copies of the affidavit of service that were maintained in file folders for each Regional Office on shelves in the OES. During the audit survey, OES managers instructed the support staff to cease using the copied affidavits.

The OES does not have written procedures requiring the review of the accuracy of participant contact information and OES staff does not regularly review the MDM to ensure that the support staff has correctly entered the information.

Errors in the MDM participant information are generally discovered by the OES when mail is returned as undeliverable. We are unaware of any basis to find that the U.S. Postal Service's inability to deliver mail is an internal control. Additionally, a system dependent upon the failure of delivery by the U.S. Postal Service will not catch the instances in which a party or their representative is not mailed the required service in the first place.

Participant Data Testing

To illustrate the need for internal controls, we tested the accuracy of the participant data in the MDM and found the following issues:

- One ULP case that is currently pending before the Board does not have the participant data entered into the MDM.

- In the sample of 40 cases pending before the Board, we identified 5 participants, in 4 cases, that were listed in either the transcript or the ALJ decision that are not in the MDM. The roles of the parties are shown on the following table:

Party In Interest	2
Charging Party	1
Respondent	1
Amicus Curiae	1

- In other participant testing, we found one case in which the MDM did not include one of the participants. We also identified four individuals or entities that were erroneously listed in the MDM as a participant in cases.

- In May 2009, OCIO staff sent letters to all participants in active cases before the Board that had not signed up for E-service. The purpose of the letter was to invite the participants to register for E-service of ALJ decisions. The letters were sent to 986 different participants. Letters to 45 participants were returned as undeliverable. The reasons for the return of the letters are summarized in the table below:

Not deliverable as addressed / unable to forward	20
Return to sender attempted – not known / unable to forward	11
Forward time exp / return to sender	8
No longer at this address	2
No such number / unable to forward	1
Refused / unable to forward	1
Temporarily away / unable to forward	1
Insufficient address / unable to forward	1

For eight of the letters that were returned, the envelope listed a forwarding address that could be used to correct the MDM and to serve the letter again. For the remaining 37 returned letters, further research would be needed to obtain the correct address.

- A comparison of the MDM and CATS showed that many participants were in one database, but not the other. For the purpose of this comparison, we excluded entries in which the name changed between the two systems, but the address remained the same. The results of the comparison are shown on the table below:

	In CATS, but not in MDM	In MDM, but not in CATS
Participants in one database, but not in the other	83	177
Charging Party	10	27
Charging Party Main Representative	25	26
Respondent	11	21
Respondent Main Representative	20	36
Other Party Role	17	66
No Role Designated	0	1

The above differences show that the Regional Office and the Board's participant records are not consistent with each other. Given the age of some of the cases and the fact that a party's representatives could change, we would expect to see deviations between the CATS and MDM for main representatives. We would not, however, expect to see deviations between the two systems for the charging party and the respondent.

- We identified multiple typographical errors in the MDM. These include misspelled cities, participants, and street addresses.

Continued Use of Copied Affidavits of Service

As noted above, during the course of the audit survey, OES managers sent an e-mail message to OES staff instructing them to eliminate the use of copied affidavits of service. OES staff was told to create a new affidavit of service from MDM when serving documents. After the e-mail message, however, we identified one decision that was served with a copied affidavit of service. When we compared the copied affidavit of service that was used, we found differences between it and the MDM, including misspelled party names and one missing party.

Accuracy of Case Data in Reporting System

PCL is the repository of case processing data for the Board Member offices, OES, R-Unit, and the Office of the Solicitor. PCL should provide managers with a wide variety of reports that identify performance activity, case inventory, stage of case processing, and Board Member positions.

Cases are entered into PCL when the case decision arrives at the Board. For most of the cases, support staff in the OES inputs the case data into PCL, including the initiation, the assignment of the case to an office and its staff, and closing out the case at issuance. The Associate Executive Secretary for Assignments inputs the issues being contested into PCL. Staff and supervisory attorneys in the offices that were assigned the case input case information into a notes field and a "blog" field that has been recently added to PCL. JCMS provides data regarding the stage of case processing through an interface with PCL as transactions are performed in JCMS. The R-Unit's support staff input data for its cases from receipt of the case until the decision and order is ready to issue.

Data Review in PCL

The OES does not have written procedures requiring the review of data accuracy and OES staff does not regularly review or reconcile the PCL or JCMS data to determine whether it is complete and accurate. Instead, the OES relies on the end users of the data to inform the OES that data is incorrect. To facilitate reporting of errors, the Executive Secretary has a standard request when transmitting reports stating that if errors are found in the reports that corrections be submitted to him. The staff assigned to the case can also identify errors by submitting a "PCL Fix" report to an e-mail account that is monitored by OCIO staff responsible for PCL. System generated error files relating to the transfer of data from JCMS to PCL are also reviewed for problems with the transfer.

Although the system generated errors may be an internal control, there are no written procedures regarding that review and standing alone it is insufficient given the errors that we found. We do not consider the remainder of the items listed as internal controls because they are passive in nature and shift the burden for the data accuracy from the Executive Secretary to the Board Members' staffs. Asking others to perform part of your function simply is not an internal control.

Case Data Accuracy in PCL

Although 5 of the 10 PCL data elements tested were generally accurate, a number of errors were found in 5 data elements that are used to track the time that cases are in the various stages of case processing. It appears that these data elements would affect reports used to manage cases. The data fields with significant errors are discussed below:

- The date that the initial action was held, which is the beginning of Stage II, was incorrect or undocumented in PCL in 11 of the 25 cases tested. In three cases, the date in PCL did not match the date of the action in JCMS. In each of these three instances, the data in PCL was listed as about 1 week earlier than the date listed in JCMS. Eight items tested did not include an entry in the data field. We verified that an initial action was held by reviewing JCMS to determine that later actions, such as being entered into Stage III or conformance, had been accomplished.

- For the date that circulation began, which is the beginning of Stage III, data in PCL did not match data in JCMS for 5 of the 25 cases tested. This is significant because JCMS is a source of the PCL data. For each of the five cases, the difference was less than 1 month.

- The date of conformance, which is the date that a draft decision is approved, was blank in PCL in 3 of the 25 cases tested;

- The date that a conformed draft was given to Board Member counsel was incorrect or undocumented in 3 of the 25 cases tested; and

- In 3 of the 25 cases tested, the date the case arrived at the Board was blank in PCL. This date usually represents the day that the ALJ decision is issued.

Procedures for Processing Decisions

Judicial Case Management System

The Board uses an electronic system known as JCMS to process, track, and manage its cases through the three stages of case processing. Stage I represents the period from the assignment of a case to initial action, which is when votes on the issues are obtained. Stage II represents the period from initial action to the circulation of a draft decision. Stage III runs from the circulation of a draft decision through the clearance of the draft decision.

Cases are not normally entered into JCMS until a bench memo summarizing the issues is prepared by the Board Member's staff attorney. This is often after the case has originally been assigned to a Board Member's staff by the OES. Once the bench memo is prepared, the Board Member's office assigned to the case submits a form through JCMS requesting that the case be entered into the system. The request form includes data fields that are populated from PCL. By submitting the request, the PCL data is then transferred to JCMS and an e-mail message is sent to the JCMS team notifying them that a new case needs to be processed. A JCMS team member reviews the data, confirms that the case is a new entry, and advances the case to the requested processing stage. The JCMS team is comprised of OCIO staff.

Cases are moved through the different stages in JCMS as different transactions are executed. For example, the posting of a draft moves the case from Stage II to Stage III. JCMS provides data back to PCL regarding the stage of case processing through an interface as the transactions are performed.

Staff in the OES stated that a problem with the data interchange between JCMS and PCL sometimes brings inaccurate data into PCL. OCIO staff stated that this has been a problem since the transfer was implemented. They stated the process developed to fix the problem is to track and review the errors to determine the cause and to correct the transaction. Corrective actions may include reprocessing the transaction in JCMS or manually revising the incorrect data in PCL. Staff in the OCIO stated that they have not yet determined how to prevent this problem when NxGen is released for the Board.

The processing of a case in JCMS concludes after the decision has been approved by Board Members. Staff in the OES stated that because case processing beyond Board approval is not accomplished within JCMS, closing the cases in JCMS is merely a formality to remove the case from work-in-progress and to permit archiving. The OES stated that cases are closed in JCMS two or more times a year. As a result, cases that are closed by the

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Board remain open in JCMS. Staff added that this process will continue once NxGen is implemented.

Stage of Case Processing Different

In the Board Case Status Report derived from PCL, Board cases were reported in the wrong stage of case processing in some instances. As of March 20, 2009, 168 of the cases pending before the Board were entered in JCMS. Of these 168 cases, 14 were reported in the wrong stage of case processing in PCL. These include:

- Five cases were listed as being in Stage II in PCL, but votes had not been obtained and entered into JCMS;

- One case was listed as being in Stage III in PCL, but a draft had not yet circulated;

- Two cases were listed as being in Stage II in PCL, but a draft had circulated;

- Two cases were listed as being in Stage I in PCL, but were closed in JCMS; and

- Four cases were listed as being closed or in conformance in JCMS, but were in Stage I in PCL. In each of these cases, an order was processed through JCMS and was issued, but did not represent a final order in the case. Because the orders were procedural rather than decisional, the processing of the order in JCMS did not change the stage of the case and therefore does not accurately reflect the current status of the case.

Because the case status differed between PCL and JCMS, managers will be unable to reconcile the number of cases in each stage between the reporting system and the document processing system.

Cases Not Closed in JCMS

As of April 6, 2009, we found 29 cases that were listed as being in one of the three case processing stages in JCMS were already resolved through the issuance of a decision by the Board, a settlement agreement, or the withdrawal of the case. These cases were all closed in PCL. This is shown in the table below:

	Fiscal Year of Board Resolution			
Stage of Processing	2007	2008	2009	Total
Stage I	6	6	2	14
Stage II	3	1	0	4
Stage III	7	1	3	11
Total	16	8	5	29

Executive Secretary's Case Management Systems Responsibility

At the Exit Conference, the Executive Secretary and his staff stated that with the implementation of JCMS, the OES no longer controls the data in PCL regarding the current status of the Board's cases. They are, in fact, users of the system and rely on the Board staff to process the cases in JCMS and to report data problems to them. They explained that JCMS is a transactional system and that data is collected as a processing event occurs rather than clerical staff entering data. They stated that the systems, particularly the interface between the two systems, do not work as they were intended and that they are frustrated by the problems they have encountered with the systems that have not been resolved. They also noted that in the past when attempts were made to correct data, they could not do so without the assistance of OCIO staff. They also stated that the responsibility for the data in the systems rests with the Board Members' staffs and the OCIO and that once the Chief Information Officer (CIO) can assure them that the data is accurate they will rely upon the systems. Despite these statements, they claim PCL and JCMS as examples of internal controls that they have implemented.

These assertions by the Executive Secretary and his staff are contrary to the duties and responsibilities of the Executive Secretary as set out in the Agency's regulations, as described above, and the Executive Secretary's Position Description. That Position Description states that the OES is responsible for directing and coordinating the flow of cases through the decision making process. That responsibility includes the establishment and maintenance of current records as to the number and types of cases, stages of processing, and age of cases pending before the Board for the purpose of planning the assignment of cases, and adjusting internal procedures to handle case processing workloads. The OES also directs and controls the computerized system of information retrieval for case management improvement and forecasting future needs and plans.

The assertions of the Executive Secretary and his staff are also contrary to the Federal statutes that establish the duties and responsibilities of a CIO. By statute, the CIO's duties with regard to information technology systems include:

- Providing advice and other assistance to the head of the executive agency and other senior management personnel of the executive agency to ensure that information technology is acquired and information resources are managed for the executive agency in a manner that implements the policies and procedures of [Federal statutes] and the priorities established by the head of the executive agency;

- Developing, maintaining, and facilitating the implementation of a sound, secure, and integrated information technology architecture for the executive agency; and

- Promoting the effective and efficient design and operation of all major information resources management processes for the executive agency, including improvements to work processes of the executive agency.

The CIO's duties do not include responsibility for the accuracy of the data in a particular system. Rather, it is the duties of the Executive Secretary that clearly include that responsibility. This division of duties is consistent with the guidance provided by the Office of Management and Budget (OMB) in its Circular No. A-130, Transmittal Memorandum #4, Management of Federal Information Resources. In that circular, OMB states that the user of Federal information resources must have skills, knowledge, and training to manage information resources, enabling the Federal government to effectively serve the public through automated means and those Federal managers with program delivery responsibilities should recognize the importance of information resources management to mission performance.

Management's Response

In the written response to the draft report, the Executive Secretary now states that OES owns the data and the OCIO owns the systems. The Executive Secretary also concurs with our recommendation to establish internal controls.

CASE ASSIGNMENT

We found no written procedures or other internal controls regarding the assignment of cases to Board Member staffs. When we first discussed this issue with an OES manager, we were told that cases are assigned to Board Members' staffs on a random basis with exceptions made for long record cases (transcripts over 1,000 pages) and cases in which the Board Member has previously worked on the case. OES managers noted that occasionally a Board manager will ask for a case because the case intake is down and the staff needs work to do. When we interviewed Board Members' managers, we were

told that during the latter part of FY 2008 it was noticed that certain staffs were assigned more cases than the other staffs. Staff attorneys also told us that they perceived that more cases were being assigned to certain staffs than others. We were also told that after bringing this to the attention of the OES, the situation appeared to be resolved.

We reviewed the case assignments for FY 2008 and determined that the assignment of cases did not appear to have been on a random basis as described to us by OES staff. The table below shows what we found by looking at the number of ALJ decisions in ULP cases, excluding remands and long record cases, and the number of representation cases (R cases) assigned to each of the five staffs during FY 2008:

Office	ALJ Decisions		R Cases		Total	
	Amount	Percent	Amount	Percent	Amount	Percent
Member 1	37	34.3	16	28.1	53	32.1
Member 2	27	25.0	15	26.3	42	25.5
Member 3	17	15.7	9	15.8	26	15.7
Member 4	15	13.9	10	17.5	25	15.2
Member 5	12	11.1	7	12.3	19	11.5
Total	108	100.0	57	100.0	165	100.0

The OES responded to our findings in two ways. The Executive Secretary acknowledged that assignment of cases had not been done in the manner in which the OES had historically assigned cases and that he took action to correct the case assignment process once it was brought to his attention. He also stated that his staff provided the following explanation:

- That FY 2008 was a unique period because there was a two Member Board and the staffs were divided between the two Members – with one staff actually divided in half;

- That one Member's front office requested that cases be given to them and that they would then assign the case to the appropriate staff;

- There were staff imbalances and the significant need for work by some of the staffs, particularly Members 1 and 2, that necessitated a temporary deviation during FY 2008 from the normal "rotating, seriatim" of assigning cases that had always been used by the OES;

- There were numerous telephone calls and e-mail messages from Deputy Chief Counsels for Members 1 and 2 urgently asking for new cases for

their staffs, but he did not receive similar requests from the Deputy Chief Counsels for Members 3, 4, or 5.

- That the cases were assigned on a random basis because they were not assigned based upon issues presented in the case; and

- That the perceived deficiencies in the assignment process have been resolved pursuant to a meeting held between OES staff and the Deputy Chief Counsels early in FY 2009.

According to the data used by the OES, the case assignment looked like this:

Offices	5 Member Board		Offices	2 Member Board	
	Amount	Percent		Amount	Percent
Member 1	11	29	Members 1, 2, and 3 ½	115	68
Member 2	6	16	Members 3½, 4, and 5	53	32
Member 3	7	18			
Member 4	8	21			
Member 5	6	16			
Total	38	100		168	100

Also, according to the data from the OES, the total staff size for Members 1, 2, and 3½ was 23 and for Members 3½, 4, and 5 it was 19.

We are not making any judgment or suggestion regarding the method that the Board determines is appropriate for the assignment of cases. Our points are:

- That the deviation from the historical method of assigning cases, if one exists, was not approved by the Board;

- The Executive Secretary does not have written procedures regarding the assignment of cases or any controls regarding that process;

- That the subordinate manager who engaged in the deviation did not notify or seek the approval of the Executive Secretary; and

- The Executive Secretary did not discover this problem despite the fact that information regarding the assignment of cases was available to him.

USE OF MANUAL CASEHANDLING PROCESSES

Staff in the OES and Board managers stated that because of a lack of reliability in PCL, they continued to use manual processes to manage cases. These manual processes include the use of case cards and reports.

Case Cards

Staff in the OES stated that while most of the data used to monitor a case is in PCL, they continue to use the paper case cards because not all of the information is available electronically. The staff cited examples such as the ruling by the Associate Executive Secretary on a request for an extension of time and any information regarding a section 10(j) matter. They also stated that the manual case cards are used to maintain party information. They added that the OES will switch from the manual case cards when there is assurance from the OCIO that all necessary information on the case cards is captured electronically.

We found that all of the data on a case card is or could be recorded in PCL or the MDM. The examples cited by OES staff as not being in PCL were either in the MDM or could be recorded in the notes section of PCL.

Manual Reports

The OES prepares some reports manually. One such report is the Monthly Balance Sheet, which is a memorandum distributed to the Board showing the total cases pending, received, and disposed of by the Board during the previous month. The Monthly Balance Sheet is manually prepared by OES clerical staff, despite the fact that this information is available electronically through the Board Case Status Report, which shows real-time statistics related to Board case processing. Staff in the OES stated that the Monthly Balance Sheet does not always agree with the Board Case Status Report.

When we compared the manually prepared Monthly Balance Sheet and the electronically prepared Board Case Status Report, we found that they did not agree in any of the months between September 2008 and March 2009. Differences were present in the beginning and ending balances of cases pending before the Board, the cases assigned during the month, and the cases issued during the month. In most cases, the Board Case Status Report showed more cases than the Monthly Balance Sheet. Additionally, differences existed between the beginning and ending balances in the Board Case Status Report.

To prepare the Monthly Balance Sheet, staff in the OES tallies the number of cases that are assigned and issued during a month and categorizes the cases

on a manual list. The staff also obtains the list of pending cases from PCL for each Board Member and confirms with the Deputy Chief Counsels that the cases are in the correct stage. The cases are then counted and summed to ensure that the cases pending at the beginning of the month plus the cases received less cases disposed of equals the cases pending at the end of the month.

Staff stated that data in PCL is corrected as part of the process to prepare the Monthly Balance Sheet. These corrections include moving a case to the correct stage or inputting the Board Member assignment. The staff also stated that data in PCL may be deleted so that the case will be properly reported for recording on the Monthly Balance Sheet. Once the report issues, the data is then entered back into PCL. Another manipulation of data involves case assignment information. Assignment information regarding cases assigned at the beginning of the month is not entered until after reports used to prepare the Monthly Balance Sheet are run.

OES managers cited this process as a form of internal control. We do not agree that deleting and reentering data or delaying the recording of information are proper forms of internal control. To the contrary, these types of data manipulation create the opportunity for data loss and errors. As such, these efforts to create the Monthly Balance Sheet cannot be viewed as an effective internal control.

Manual Assignment of Cases

The OES manager with responsibility for the assignment of cases records the information in a 6" by 9" "Steno Notebook." When we were discussing the assignment of cases with the manager, he brought this notebook with him. When we asked OCIO staff if there was any reason why case assignment could not initially be recorded in JCMS by OES staff, the response was that they were not aware of any reason. OCIO and OES staff also stated that a module was designed in JCMS for case assignment and that the OES has never used it.

OES DATABASE SYSTEM KNOWLEDGE

Initially, we were surprised at the extent to which the OES relies upon OCIO staff for electronic case management. During the course of the audit survey, we were often sent to OCIO staff by the OES for information regarding the more technical aspects of the electronic case processing systems. We also observed OCIO staff performing functions/tasks that we would expect to be performed by OES staff.

There is nothing inherently wrong with the OES relying on OCIO staff to the extent that it does, except that it may have contributed to the Executive Secretary's perception, as stated at the Exit Conference, that he was not responsible for the accuracy of the data in the case management systems. Also, the extent to which the OES relies on the OCIO puts it in competition for the limited OCIO resources. It also hinders the OES' acceptance of the information technology systems and its ability to leverage those systems in an effort to operate more effectively.

RECOMMENDATIONS

We recommend that the Executive Secretary:

1. Work with the Board to evaluate the OES' organizational structure, duties, and staffing needs.

2. Develop a set of internal controls to ensure that data in the MDM and the Board's case processing and reporting systems is accurate – this process should be with a view towards the NxGen system.

3. Develop procedures for the assignment of cases and internal controls to ensure that those procedures are followed.

4. Cease using the copied affidavits of service.

APPENDIX

United States Government

NATIONAL LABOR RELATIONS BOARD

Office of the Executive Secretary

Washington, DC 20570

August 24, 2009

TO: David P. Berry
                Inspector General

FROM: Lester A. Heltzer
                Executive Secretary

SUBJECT: Draft Report, *Office of the Executive Secretary Survey*, OIG-AMR-60

I and the other managers in the Office of the Executive Secretary (OES) have reviewed your draft report, dated July 22, 2009, and in response we make the following comments.

The Inspector General's Office (OIG) conducted an "audit survey" of the OES after receiving "concerns" from Board-side managers about "OES' information technology systems" and the OES case assignment process. After eight months of study, the IG produced a report that raises some helpful issues about the Board's case handling procedures and the use of computer technology to facilitate them. While we agree with most of the report's findings, we will attempt to provide some context to them to clarify several basic points.

After an exhaustive review--lasting some 7 months--of the OES's office files and PCL/JCMS for FY 2008, the Inspector General's main finding (as stated in the opening paragraph of the report "highlights" page) is "a general lack of acceptance of ownership and responsibility for the case processing data." The IG's report went on to find errors in participant information, errors in data elements in PCL/JCMS, and differences in PCL and JCMS "that made reconciling the two systems difficult." We agree that OES is responsible for Board-side data that resides in the two systems, but take issue with the report's finding that OES is primarily responsible for the operation of these systems. Our view is that OCIO is responsible for the hardware and software that supports them. For example, as the report acknowledges, JCMS provides data back to PCL using an XML interface, but this data interchange has been unreliable, resulting in errors in data elements [such as what stage a case is in]. Once OES is aware of data problems, of course we work to fix them. But to criticize OES for not fixing the underlying technical problems in the two systems misses the mark. Our view is that OES owns the data; OCIO owns the systems. Having said that, we agree that we could do a better job of coordinating with OCIO. Toward that end, and at our

request, we began 17 months ago holding a formal monthly meeting with OCIO to supplement our informal meetings.

The report's observation that the ES office relies on OCIO for electronic case management should come as no surprise. After all, PCL and JCMS were built by OCIO and have been maintained by OCIO except for a period when a supervisor and three employees were transferred from OCIO to OES. The supervisor retired some 3 years ago and the three employees were returned to OCIO [two of whom were tasked to work on PCL/JCMS but not always available to the OES; one of them was so designated some months ago].

Cataloguing data errors in PCL/JCMS is a point well taken. There are errors despite honest efforts by OES to correct them. But we can do better. The report did not explain the larger point that JCMS was supposed to supplant PCL and be a transactional system, that is, a system whereby data points are created automatically by the transactions of events in the system. Instead, OCIO delivered an incomplete system in PCL/JCMS that does not have adequate reporting functionality and relies too much on manual data entry. OES worked with these flawed systems with the understanding from OCIO that most data discrepancies (such as those cited in the report) will be moot when the Board offices will use the new NxGen system early next year. PCL will be retired. JCMS will be subsumed in NxGen. We are assured that PCL/JCMS data problems will go away with the advent of NxGen. We agree with the report's finding that we need to have a system of internal controls even after NxGen is deployed. We may have relied too much on the Board's Front Offices which are in the best position to know the status of their own staff cases to report data discrepancies to OES and then fix the data rather than proactively search for the errors ourselves.

Notwithstanding the data discrepancies identified in the report, by and large, the downsized ES office [from 38 employees in April 2004 to 23 today] does an admirable job keeping track of the thousands of events in the life cycle of cases presented to the Board from their intake to issuance. The system of records maintained by OES may not be perfect but it is very reliable, even with problems created by the sometimes conflicting two systems built by OCIO. To say that the OES "manipulates" data at the end of each month in preparing the Balance Sheet is not an accurate characterization. As it has done for many years, the OES office reconciles case data at the end of each month to assure the accuracy of the report.

The report claims we have no procedures for the assignment of cases but we do have procedures. The procedures are based on the premise that incoming cases are assigned to the five staffs on a rotational basis to assure balanced distribution. At the end of FY 2008, in response to requests from certain staffs for more cases, the Associate Executive Secretary responsible for assigning cases, deviated from the normative procedures by giving more cases to those staffs that requested additional work. We would point out that FY 2008 was highly unusual in having (1) a two-Member Board the entire time, (2) a very low case intake, and (3) Board staff

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imbalances. We can understand the motivation of the AES to satisfy the requests for additional cases but the Executive Secretary told him to return to the basic assignment practice as soon as he learned what the Associate was doing. In any event, no harm was done. We agree with the report's recommendation to clarify and document procedures for the assignment of cases, in consultation with the Board, and to develop internal controls to make sure that those procedures are followed.

In the entrance interview with the IG, we pointed out that the timing of the report and the period the report covered was in the midst of several transitional phases on different levels. We noted, among other things, the longstanding plans to transition from the principally manual data entry system of PCL, through the current intermediate phase of PCL-JCMS (both Boardside only systems) and then to the processing of cases in NxGen, an agencywide system. We noted the transition from skill sets sufficient for a manual entry system to those necessary for the substantially more challenging NxGen system, in accord with training efforts and the OES workforce plan. We noted transitions in office responsibilities among managers.

Throughout the survey process, we acknowledged change management problems in the office associated with the transition from paper-based process to working inside a computer application to process electronic documents. Perhaps we have been too slow in adopting new techniques for case processing and for insuring the integrity of case data. But we haven't been sitting on our hands. In the past year alone, not mentioned in the report, OES has planned, implemented, or revised nine electronic case handling functions in addition to our regular duties: new E-Issuance of Board decisions, new electronic affidavits of service, cleansing and modifications to MDM, new electronic case targeting reports, new E-Issuance of ALJ decisions, new E-Distribution of E-filed documents, new electronic filing system for certain attorney applications, new electronic template system for Board decisions automatically adopted in the absence of exceptions, and planning NxGen for this office.

We are excited about being less than a year away from NxGen, and the transformation it will bring to the way data is maintained and the way Board cases will be managed. We expect that the shortcomings we have experienced in PCL/JCMS, including the data errors identified in the report, will be supplanted by NxGen. In any event, we will actively develop a system of internal controls, as recommended in the report. Finally, we look forward to further automating Board and OES procedures using computer technology.

For myself and, on behalf of the other OES managers, thank you for the opportunity to comment on the draft report. If you have any questions, please do not hesitate to contact me.

cc: The Board