

**UNITED STATES GOVERNMENT**  
**National Labor Relations Board**  
**Office of Inspector General**



**Memorandum**

October 11, 2012

To: Mark Gaston Pearce  
Chairman

Lafe Solomon  
Acting General Counsel

From: David Berry   
Inspector General

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. The purpose of this memorandum is to fulfill that requirement. The information provided in this report is based upon our reviews and investigations, as well as our general knowledge of the National Labor Relations Board's (NLRB or Agency) operations.

Fiscal Year (FY) 2012 was an extraordinary year of change for the Agency. Major reorganizational and consolidation efforts were initiated by the Chairman and Acting General Counsel. The Chairman and Acting General Counsel, and their staffs, expended tremendous effort to resolve the administrative and organizational issues that had long been put off. Nevertheless, a number of the challenges below represent the equally daunting tasks that lay ahead to improve the culture of how the Agency manages its business and ensures proper internal controls.

Although we observed significant efforts at improving the management and performance of the Agency, the eight challenges that we identified at the end of beginning of FY 2011 continued through FY 2012. We have also added one challenge to address the reorganization and consolidation of operations. It is important to note that, in our view, something can be a management or performance challenge even though it is not a deficiency or within the control of the Agency.

## CHALLENGES

### **Mission Centered**

#### ***Manage in the current political environment.***

Without commenting on the merits of the issues, we believe it is appropriate to highlight the politically charged debate regarding labor relations and the NLRB specifically, as well as the Government-wide issues related to Federal spending. Functioning in this environment is a challenge for both the political appointees that govern and the career personnel who manage. The obvious challenge is that there is a diversion of resources and attention away from the Agency's mission to defend its actions and decisions or to respond to repeated demands for information both for oversight and litigation discovery. There is also a level of uncertainty that is created by the recess appointments of Board Members and operating for an extended period of time with an Acting General Counsel. The repeated threats of Government shutdowns, and now the "fiscal cliff," create anxiety in the Agency's workforce and divert attention and resources away from mission related functions.

#### ***Reorganize and consolidate operations.***

In FY 2011, the Acting General Counsel initiated working groups to study the case processing of Regional Offices and certain Headquarters operations. In April 2011, we issued an audit report that compared case processing activity with the associated expenses of Regional Office operations and made recommendations to consider the consolidation of certain Regional Offices that have a low case load. Soon thereafter, the Acting General Counsel began a pilot program involving the consolidation of Regional Offices, and he is now in the process of making recommendations to the Board. At the same time, the Chairman and Acting General Counsel began to reorganize the financial management of the Agency and certain other Headquarters operations.

To describe these efforts simply as a challenge is somewhat of an understatement. The scope of these efforts is significant and requires a high degree of attention and a certain aptitude at change management. While we view the efforts of the Chairman and Acting General Counsel to be commendable, much work for the career managers lies ahead to achieve full implementation of these efforts.

#### ***Implement the Next Generation Case Management System and seize opportunities to create more productive and efficient procedures and organizations.***

The Agency implemented an enterprise-wide electronic case management and processing system. The system replaced 13 separate legacy systems by integrating them into a single unified system using multiple technologies, including 5 distinct software solutions for customer relationship management, document management, collaboration, business

analytics, and Web-based services for external constituents. This is the most comprehensive information technology project undertaken in the history of the NLRB. Its success is critical to the Agency's mission and presents a unique opportunity to create more productive and efficient procedures and organizations. The success of this effort will ultimately be judged not by how well it was developed, but how the system is actually used to process the cases.

## **Business Centered**

### ***Manage the Agency's financial resources.***

Over the last several years, we noted improvements that we believe were due to greater transparency in the allocation and spending of fiscal resources. We noted that part of that success came from greater participation in the fiscal management by the Agency's senior management officials, who had previously been more focused on the mission of the Agency, and part was due to the responsiveness of the staff involved in the daily financial management of the Agency. We believed that this cooperative effort netted better management and stewardship of the Agency's resources. In hindsight, we may have been too optimistic.

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 recent 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 oversees the budget, procurement, and payment processes. The OCFO must now create a new system of controls that will effectively manage the Agency appropriation. The OCFO faces a herculean task of not only creating the structure and procedures for a new office, but also changing the culture of the Agency so that the managers will accept and understand fundamental changes in the fiscal management of the Agency.

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

In prior years, the OIG conducted audits involving the Agency's procurement function. These audits found numerous problems that could generally be attributed to some breakdown in the internal control process. Additional issues have been found during the course of the annual audits of the financial statements.

Adequate staffing, competence, and communication are critical to maintaining a well-managed procurement process. The prior years' convergence of budgetary issues and a

shortage of competent candidates to fill vacant positions in a highly competitive field resulted in an understaffed procurement office. That lack of staffing created delays in processing procurement actions and greatly increased the opportunity for mistakes.

Over the course of several years, we observed improvement in staffing the procurement office and the procurement process itself. Nevertheless, we continued to observe a lack of internal control in the procurement process. In fact, the FY 2011 Audit of the Financial Statements repeated the finding of a significant deficiency in internal control and our FY 2012 audit of the end-of-the-year spending found a lack of regard for internal controls by the former head of the procurement office. Together, those two audits found almost \$400,000 in improper procurement actions at the end of FY 2011.

We are encouraged that the new OCFO took immediate steps to remedy those procurement actions, but the daunting task of building a well-controlled procurement process remains.

### ***Manage the NLRB's human capital.***

A significant challenge facing the NLRB is managing its human capital. 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 the prospect of Government-wide hiring restrictions, reduced or flat appropriations, and the loss of key personnel through retirements. Coupled with those issues are matters directly within the control of management, including a healthy and productive relationship with the two employee unions; a fair and equitable means to address allegations of discrimination and grievances; and maintaining an environment throughout the NLRB that fosters collaboration along with effective and efficient processes.

During the past year, we observed that the Chairman and Acting General Counsel have been proactive in resolving workforce issues and attempting to remedy issues. We also issued a report on the Agency's equal employment opportunity activities with recommendations that should improve the processing and resolution of complaints. We are encouraged by the focus of the Director, Office of Equal Employment Opportunity, and the Chairman and Acting General Counsel to the NLRB's workforce needs.

### ***Maintain the Agency's institutional knowledge.***

There have been many changes in technology, laws and regulations, and management systems that have altered the manner in which employees perform their official duties. As change occurs, the policies and procedures are not always updated on a timely basis, and individual offices come to rely upon the collective institutional knowledge of the staff. While this may be a short-term solution, it puts far too much reliance on the skills of individual employees while lacking the safeguards of well-documented processes. This problem is compounded by the fact that at an Agency of this size, specialized tasks are often performed by a limited number of employees. As more key personnel reach the point of

retirement, the challenge of formalizing institutional knowledge and succession planning becomes even greater. The consolidation and reorganization efforts, along with the retirement of several senior managers in FY 2012, create additional hurdles to this challenge and demonstrate the need for well-drafted policies and procedures.

***Manage the Agency's information technology resources in a manner that achieves efficiency and security.***

Each year the Agency continues to devote significant resources to improving and upgrading information technology equipment and capability. The OIG also devotes its resources to auditing, inspecting, and investigating information technology control and security issues. Despite these efforts, the Agency's information technology infrastructure and the information contained in it remain at risk because of the rapid evolution of information technology threats. Given this environment, ensuring the security of the Agency information in its information technology systems remains a long-term challenge.

***Implement audit findings in a timely manner.***

We added this challenge in FY 2008 because we observed that the Agency was not implementing audit recommendations in a timely manner, there was a recurrence of audit findings, and the Agency managers failed to state an adequate basis when disagreeing with an audit recommendation – including recommendations that would have resulted in cost savings. Also, since 2007, we have received yearly requests from the Committee on Oversight and Government Reform for detailed information on audit recommendations. This year, we reported that as of April 2012, we had 27 unimplemented recommendations. After we reported that figure, we added two recommendations and closed nine.