UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General

Memorandum

October 12, 2018

To: Board and 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. This memorandum fulfills 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.

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. In our prior year's memorandum, we identified five management and performance challenges.

CHALLENGES

Manage the Agency

In prior reports, I categorized the challenges into specific items and provided a brief explanation of the specific issues. Two years ago, I decided that method was not capturing an overarching challenge that this Agency faces.

In the two prior reports, I 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 a broad array of management skills.

During this fiscal year, the challenge of managing the Agency has changed. In Fiscal Year (FY) 2018, the NLRB had a significant change in leadership with three Members serving as Chairman and two General Counsels. Unfortunately, the change in leadership was coupled with the loss of very senior and key Senior Executive Service personnel. New leaders view old problems with fresh perspectives and, in some instances, are now having to address management decisions that previously had been avoided. Effecting change and addressing legacy issues are always challenging, but doing so while rebuilding a management team is all the more difficult.

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 2017Financial 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 the vacancy of the permanent CFO, we have not observed significant improvement in the management of the Agency’s financial processes, and we continue to identify issues in the internal control environment involving the financial management of the Agency.

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. We have observed that some offices are clearly understaffed and other offices are overstaffed. Employees have expressed to us that the level of stress and frustration in the workplace caused by staffing issues was a factor in their decision to leave. This situation feeds upon itself and perpetuates the human capital challenges.

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 are a start, there remain significant challenges in filling critical vacancies and reallocating personnel resources during a period of "level" funding while the personnel related costs increase. Layered upon that task is the natural instinct of the people to resist change, which obviously makes it all the more difficult to engage in comprehensive workforce planning.

Manage the Agency's Information Technology Security

The FY 2016 Federal Information Security Management Act (FISMA) review was the start of the change from reviewing what the Agency was doing to accessing 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 was completed in the first quarter of FY 2018 and 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." In FY 2018, we have observed some improvement with the development of formal policies; however it is apparent that there remain gaps in the IT security procedures that need to be addressed to meet the basic IT security requirements.

Implement Audit Recommendations

In last year's Top Management and Performance Challenges memorandum, we reported that the Agency had 37 open audit recommendations. Since that time, we added 19 and we closed 8. At this time, there are a total of 48 open recommendations. The oldest open 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.