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

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 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 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.