

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 98- 17 December 29, 1998

TO: All Regional Directors, Officers-in-Charge
and Resident Officers

FROM: Fred Feinstein, General Counsel

SUBJECT: Impact Analysis Report

Enclosed is a report submitted by the Impact Analysis Committee on the status of the Impact Analysis program. I again want to express my appreciation to the Committee for the fine work they put in on the report and on helping to oversee the implementation of Impact Analysis. The report concludes that the program has been working well in the Regions. Impact Analysis has provided a framework for Regions to be proactive in managing their cases and has enabled the higher priority cases to be handled expeditiously. The report finds, however, that there are some aspects of the program that could be improved. In particular, Regions should ensure that sufficient resources are devoted to Category III cases, especially those that have been unexcused overage for over one month. Additionally, Regions should continue to implement the teamwork concept. For a discussion of teamwork, Regions should review Memorandum GC 97-1.

F.F.

Enclosure

MEMORANDUM GC 98-17

cc: NLRBU

TO: Fred Feinstein, General Counsel DATE: April 27,
2005

FROM: Impact Analysis Committee

SUBJECT: Status of Impact
Analysis Program

The Impact Analysis Committee was asked to initiate a comprehensive review of the Impact Analysis program and to develop baseline data for evaluation of Impact Analysis, with particular emphasis on how effectively the program was addressing its primary goals. We were also requested to analyze our findings and to propose appropriate modifications if we concluded that any of the expressed standards were impeding the Agency's ability to fulfill its mission as efficiently and effectively as possible. To accomplish these objectives, in addition to reviewing relevant statistics, we conducted an analysis of the operations of four Regional Offices, two of which were performing successfully as measured by the percentage of unexcused overage cases and two of which were less successful.¹ The examination included a review of the internal and external environment within which each of the Regions operates and its overall case management system. In addition, we reviewed information that we obtained from five locals of the NLRBU.²

Overall, it appears that Impact Analysis has succeeded in allocating significant resources to the highest impact cases. The percentage of unexcused overage Category III and II cases has been steadily decreasing. With respect to Category III cases, by the end of September 1998 the unexcused overage cumulative rate was 15.0 percent, compared to a rate of 18.3 percent as of the end of Fiscal Year 1997. Similarly, the Category II cumulative rate at the end of September 1998 was 23.6 percent, whereas it was 30.1 at the end of Fiscal Year 1997. Conversely, the Category I cumulative rate had increased from 22.5 at the end of Fiscal Year 1997 to 24.6 percent as of September 30, 1998. Thus, consistent with Impact Analysis principles, Regions have been shifting resources to those cases having a greater impact on the public. Moreover, given the fact that only approximately 20 percent of the cases are Category III, the total number of unexcused overage cases

is relatively few. It is likely that the relatively small increase in Category I cases can be attributed to the success of interregional cooperation, which, due to the inability of the assisting Region being able to conduct on-site investigations, has mostly been limited to Category I cases.

1 Initially, selected members of the Committee conducted telephone discussions with the Regional Director, Regional Attorney and Assistant to the Regional Director in one Region to obtain the necessary information. It was decided, subsequently, that this procedure was very time consuming and, although the selected Region was extremely cooperative, it was difficult for the Committee to obtain a full understanding of the Region's case management system without a visit to the Region. Accordingly, the information concerning the remaining three Regions was obtained from reports drafted by members of the Committee who were located in these offices.

2 Bargaining unit input was obtained through NLRBU representatives on the Impact Analysis Committee conducting teleconferences with the local union representatives.

Whether the allowable overage percentages of 10, 20 and 30 percent unexcusable overage for Categories III, II and I, respectively,³ are realistically achievable remains to be seen. Neither management nor employees report problems with properly assigning categories to cases. As of the end of September 1998, the one month overage figures were 12.9, 20.7 and 20.8 percent for Categories III, II and I, respectively. Thus, it does appear to be possible to attain or better the allowable overage percentages. Whether it can be done is dependent upon several variables, the most important of which is staffing.

We believe it would be very difficult to meaningfully compare the overage statistics under Impact Analysis with those of the predecessor case management system. It was not anticipated that by instituting Impact Analysis our backlog would necessarily be reduced. Indeed, Impact Analysis recognizes that we cannot complete all cases in the same time frame or with the same investigative techniques or with the same commitment of resources as we had done previously. While it recognizes that Regions will have backlogs, it strives to ensure, unlike the previous case management system, that cases receiving our greatest attention are cases of greater relative impact on the public. These cases, however, are often the most time

consuming to investigate. Under the old system, which treated virtually all cases the same, there was a disincentive to investigate the most time consuming charges timely. Accordingly, since the types of cases in the backlog before and after Impact Analysis are likely to be substantially different, it is difficult to compare meaningfully the results under Impact Analysis with the previous case management system.

The study of the four Regions does demonstrate that, when utilized, Impact Analysis is an effective program. It provides techniques for managers to be proactive in managing cases and to ensure that cases with the higher public impact are handled expeditiously. For example, one of the four Regions has developed different management techniques for Category III and Category II cases to attack the respective backlogs. It is also using the "red flagged" overage Category III case list to identify cases that need closer monitoring. As part of its responsibilities, Operations should continue to monitor the casehandling process to ensure that Impact Analysis is being properly implemented. 3 These allowable overage percentages were based, in part, on the Committee's survey which showed that approximately 20 percent of the "C" case intake would be Category III cases, 50 percent would be Category II cases and 30 percent would be Category I cases. These percentages have remained fairly constant since implementation of Impact Analysis.

An area of concern, however, is the extent of the attention being devoted in other Regions to "red flagged" cases, i.e., category III cases that have been unexcused overage for at least two months. Our review of the overage C case reports for April and September 1998 revealed that approximately two-thirds of the unexcused overage Category III cases are red flagged cases. This suggests that Regions, as well as Operations, need to monitor these cases more closely to ensure that adequate resources are being devoted to them.

One weakness in the Impact Analysis program is that Category I cases sometimes remain pending longer than necessary. Two of the surveyed Regions reported experiencing such problems. This issue was addressed in the Impact Analysis Training Manual, wherein it was noted that reasonable shorter deadlines can be established for the disposition of cases in appropriate situations. A

balance must be struck between the amount of work that a particular Category I case needs for completion with the lower priority of the case. It is the responsibility of management, as well as the employees, to ensure necessary resources are devoted to Category I cases to enable their disposition in appropriate time frames given the competing priority of higher impact cases. At this point the Committee does not view this issue as sufficiently serious as to warrant modification of the Impact Analysis program.

The study reflects that there continues to be some success with teamwork, but there is still room for substantial improvement. In some Regions, supervisors are assisting more frequently with direct casehandling, either in terms of handling their own cases, filling in for absent team members, or assisting team members in the handling of their cases. Moreover, there does appear to be more coordination among supervisors and among employees than prior to Impact Analysis. Nevertheless, it appears that employees and supervisors prefer that employees handle their own cases and that employees continue, except in major cases, to conduct the investigations by themselves. Teamwork was instituted as a means to handling the high priority cases quickly. As the goal is to some extent being achieved, the use of teamwork should continue to be encouraged.⁴

Regions are employing alternative investigative techniques in accordance with Impact Analysis principles. Notwithstanding that travel restrictions in Fiscal Year 1998 necessitated greater reliance on alternative investigative techniques, the extent of such use appears to vary considerably among Regions. Operations needs to continue its monitoring of case processing to ensure that alternative investigative techniques are properly employed in all Regions, even if travel restrictions are eased this fiscal year.

Category placement is used as a principal criterion for determining the appropriateness of alternative investigative techniques. The category of a case is also used to streamline at least one Region's decision making process. In this Region, Category I cases are initially decided by the Board agent and Category II cases are agendaed with the supervisor only. While the Committee expresses no view as to the different levels of decision making, we believe that some differentiation in the decision making process based on Impact Analysis principles

is appropriate.

Impact Analysis has also had a positive effect on areas of case processing besides ulp investigations. Trials have been scheduled according to Impact Analysis principles so that cases with greater public impact are litigated more quickly. In addition, greater resources are now devoted to representation cases to ensure timely processing. As a result of the Regions' efforts, the median time from filing of representation case petitions to initial elections has been reduced from 48.7 days in Fiscal Year 1994 to 42 days in Fiscal Year 1998. During the same period, issuance of Regional Directors' representation case decisions has been reduced from a median of 45 days to 36 days; post-election no-hearing reports from 30 to 26 median days and post-election hearing reports from 90 to 77 median days. Similarly, the fourth quartile median for conducting initial elections has been reduced from 61 days in Fiscal Year 1995 to 50 days in Fiscal Year 1998.

Based on the study, it appears that there has generally been public acceptance of Impact Analysis. It has also enhanced employee morale as it has given employees a system for dealing with the backlog. This has reduced the stress level of employees, particularly those working in Regions with a substantial case backlog.

4 For a discussion of the teamwork concept, see Memorandum GC 97-1 and the Impact Analysis manual.

In conclusion, Impact Analysis is a program that has been working well, especially when it is recognized that it has only been in effect for slightly more than two years. It has given the Agency a framework for maximizing our effectiveness in times of limited resources by providing for the management and measurement of work based upon its impact on the public. It has also enabled us to comply with the GPRA requirement that the Agency begin to measure our effectiveness on the basis of results we actually achieve rather than on the basis of the efforts we expended or the number of cases we processed. Thus, the success of Impact Analysis must be measured, in substantial part, by the ability of Regions to handle the cases with higher public impact rather than by a reduction in the overall case backlog. The casehandling statistics demonstrate that we are achieving these objectives, although there is certainly room for improvement.

