OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 17-21 July 11, 2017

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

FROM: Beth Tursell, Associate to General Counsel

SUBJECT: Bridge Program for the Position of Field Examiner

Pursuant to Article 6 of the collective-bargaining agreement between the General Counsel and the National Labor Relations Board Union (Agreement), the Agency has agreed to announce each year a national posting for up to three Field Examiner Bridge Program positions. This year the national posting for Fiscal Year 2017 will be through a Notice of Vacancy in USAJobs. The Notice of Vacancies can be accessed through the following link:

Notice of Vacancy for Labor Relations Examiner Trainee (Bridge Program)

As in the past, selections for the program may be affected by budgetary restrictions. Applications will be submitted through USAJobs, processed by the Division of Operations-Management, and the Associate to the General Counsel for Operations-Management will be the selecting official. Evaluation and selection of candidates for the Bridge Program will be governed by the application of Article 6 Section 16(d), of the Agreement in conjunction with Section 10 ("Evaluation and Selection") of the "Bridge Program for Labor Management Relations Examiner Positions, General Schedule Positions, GS-5 and 7," a copy of which has been posted with this memorandum and the 2017 Memorandum of Agreement concerning the Bridge Program between the Agency and the National Labor Relations Board Union. Successful applicants will serve in the Regions in which they currently work. Because a trainee is required to take 30 semester hours of college courses during the three year training period, all efforts will be made to make selection(s) by September 1, 2017, so that selectee(s) may register for appropriate courses in the fall college semester.

The Selection Process

Enclosed are memoranda announcing the program that should be distributed to all administrative professional employees in the Region and posted on the office bulletin board along with a copy of the program. **Employees who wish to be considered for the program must submit their applications via USA Jobs by July 31, 2017**. **Incomplete Application Packages will not be accepted**. A determination will then be made as to which of the applicants meet the basic eligibility requirements set forth on pages one and two of the Bridge Program. Prior to the job announcement deadline, applicants are encouraged to confirm they have submitted complete applications by logging into their USAJobs account.

prOnce basic eligibility is determined, the three most recent appraisals will be reviewed by Operations-Management representatives for each eligible applicant. If an appraisal has not previously been prepared for an applicant who meets the basic eligibility requirements for the Bridge Program, the appropriate supervisor should complete it. In addition, an "Appraisal of Potential Based on Job Elements" (copy attached) will need to be completed for each eligible applicant by the Regional Director and the supervisor or manager who is most familiar with the applicant's qualifications. Personal interviews will then be conducted by Operations-Management

staff through videoconferencing with eligible applicants.

Pursuant to the 2017 Memorandum of Agreement, prior to the interview, each applicant will be asked to address, in writing, six of the questions that had formerly been reserved for the interview. Based upon the interviews, the written responses that the applicants have submitted to above-described questions, the "Appraisal of Potential," the applicant's annual performance appraisals, and taking into consideration the five factors (work experience, education and training, special achievement, overall performance, and potential), listed in Section 10, page three, of the Bridge Program, the Associate to the General Counsel in the Division of Operations-Management will determine whether to accept any applicant(s) for participation in the Bridge Program. Upon request, applicants who are not selected for the Bridge Program will be provided with an explanation of the reason(s) for their non-selection.

Grade Level at Assignment to the Program and Promotion during Training

To make the program consistent with government-wide classification standards, successful applicants will be placed into the 244 (Labor Management Relations Examiner) series upon entering the program. All employees selected for the program will enter the program as a GS-5 Labor Management Relations Examiner Trainee with pay retention.

Upon the successful completion of the first year of the program, trainees will be placed into the GS-7 Labor Management Relations Examiner Trainee position. All trainees will serve as GS-7 Labor Management Relations Examiner Trainees during the final two years of the program. Upon the successful completion of the final year of the program, trainees will be promoted to the target GS-9 Labor Management Relations Examiner position.

Subsequent promotions will follow the Field Examiner merit promotion plan that is set forth in Article 8, Part B, Section 1 of the collective bargaining agreement.

Pay Retention During Training

<u>Pay Setting for GS-9 selectees</u>
GS-9 Field administrative staff selected to participate in the Bridge Program will enter at the GS-5, and will be eligible for pay retention for the duration of their participation in the Bridge Program. [1]. After one successful year in the Bridge Program, the selectee will be promoted to the GS-7; and will continue to receive pay at the GS-9 level for the duration of their participation in the Bridge Program. Selectees will remain at the GS-7 for two years and must successfully complete all required training to be eligible for the GS-9.

<u>Pay Setting for GS-7 selectees</u>
GS-7 Field administrative staff selected to participate in the Bridge Program will enter at the GS-5, and will be eligible for pay retention during their first year in the Bridge Program. After one successful year in the Bridge Program, the selectee will be returned to the GS-7 and pay will be set at the applicable GS-7 rate for the duration of their participation in the Bridge Program. Selectees will remain at the GS-7 for two years and must successfully complete all required training to be eligible for the GS-9.

Program Academic Requirements

Section 12 of the program provides that each trainee will, at Agency expense, take 30 semester

[1] If a Bridge Program participant's tenure is extended for a year, the employee will remain at the GS-7.

hours of college courses. The academic requirements of the program must be fulfilled by taking classes at accredited institutions. The Regional Director, or his or her designee, will plan the curriculum with the trainee. During the first year, the trainee must take (if available) three semester hours in Speech/Oral Communication, six semester hours in English Composition or college-level Writing, and three semester hours in Logic; and will be encouraged to take three semester hours in accounting.

After the first year, the remaining semester hours must be from among the following related fields of study: political science, government, economics, industrial or labor relations, personnel administration, business administration, accounting, or labor law; provided, that if any of the first-year courses, including accounting, were not satisfied in the first year of the program, they must be satisfied in the second year of the program.

The educational institution, the curriculum, and the cost assumed therewith, and schedule of courses, must be approved in advance by the Regional Director in consultation with the Division of Operations-Management. Unless the required course is available only during the day, it should ordinarily be taken at night. Each trainee is required to furnish grade transcripts at the completion of any college course work. If a trainee receives a grade of less than a "C" (or less than 2.0 under a numerical grading scale) in any course, this will be taken into consideration in determining whether the trainee should continue in the program.

A trainee who has already successfully completed any of the college-level courses identified above prior to entry into the program may receive Bridge Program credit for those courses. That determination will be made by the Division of Operations- Management based on a review of the trainee’s academic transcript.

On-the-Job Training

A training plan must be specifically developed for each trainee. Attached is a typical training plan covering the normal three year program. Because many of the individuals entering this program will have had little preparation for the type of professional position that they are seeking, it is absolutely essential that the training and development of the participant be given the closest possible attention and supervision. On-the-job training is lighter during the first year but is balanced with heavier college course work.

The trainee will retain his or her administrative professional position throughout the training program. However, during the second and third years, consideration will be given to detailing or temporarily promoting another employee into the position.

Evaluation during the Program by Management

Ninety days after the trainee has been assigned to the program, the supervisor should prepare a written evaluation of the trainee's developmental needs. In addition, the specifically tailored three year training plan should be generally described and the projected three year program of college courses set forth. A copy of this evaluation should be forwarded to Administrative Assistant Victoria Wallace, with a copy to your Assistant General Counsel or Deputy.

In accordance with Article 6 of the Agreement, at the end of the first three months, and quarterly thereafter, except on the employee's anniversary date in the program, the supervisor should prepare a quarterly written performance evaluation of the trainee's work and progress. A copy of the evaluation should be given to and discussed with the trainee. A copy should also be forwarded to Administrative Assistant Victoria Wallace, with a copy to the appropriate Assistant General

Counsel or Deputy. On an annual basis, the employee is to be provided an Annual Performance Appraisal in accordance with Article 6 of the Agreement.

Evaluation to be Prepared by the Trainee

A trainee under this program is also required to make certain written evaluations. Each trainee is required to make a written assessment, on a quarterly basis, of his or her development. Each trainee must also furnish grade transcripts at the completion of any college course work. Developmental evaluations and academic transcripts should be submitted to Regional management and forwarded to Administrative Assistant Victoria Wallace, with a copy to the appropriate Assistant General Counsel or Deputy.

Action upon Failure to Meet Standards

When the Associate to the General Counsel, Division of Operations-Management, determines that a trainee has failed to meet performance requirements, the trainee will, depending on the availability of suitable position vacancies, be laterally reassigned or returned to his or her former position or to a similar position with equivalent status and grade.

The Bridge Program provides a meaningful way for administrative professional employees to change careers and perform professional work of a particularly complex and challenging nature. Consequently, great care will be given to the evaluation of applicants to determine whether any have the ambition and the ability to assume the responsibilities of a Field Examiner. Of course, if an individual is selected, we have an affirmative duty to provide training and development with care and attentiveness so as to assist the trainee in reaching the Field Examiner position.
Please distribute this memorandum and the attachments to all administrative professional employees in the Region and place a copy on your office bulletin board. Any questions should be directed to your AGC or Deputy.

Attachments:
Bridge Program
Training Plan
Appraisal of Potential Based on Job Elements

cc: w/Attachments: Chonita Young, Director of Human Resources

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM

TO: All Field Office Administrative Professionals

FROM: Beth Tursell, Associate to General Counsel

SUBJECT: Bridge Program for Position of Field Examiner

Pursuant to Article 6 of the collective-bargaining agreement between the General Counsel and the National Labor Relations Board Union (Agreement), the Agency has agreed to announce each year a national posting for up to three Field Examiner Bridge Program positions. As in the past, selection for the program may be affected by budgetary restrictions. Applications will be submitted through USAJobs. The Notice of Vacancies can be accessed through the following link:

Notice of Vacancy for Labor Relations Examiner Trainee (Bridge Program)

The applications will be processed in the Division of Operations-Management, and the Associate to the General Counsel for Operations-Management will be the selecting official. Evaluation and selection of candidates for the Bridge Program will be governed by the application of Article 6, Section 16, of the Agreement and the 2017 Memorandum of Agreement concerning the Bridge Program between the Agency and the National Labor Relations Board Union, in conjunction with Section 10 ("Evaluation and Selection") of the "Bridge Program for Labor Management Relations Examiner Positions, General Schedule Positions, GS, 5, and 7," a copy of which has been posted with this memorandum. Successful applicants will serve in the Regions in which they currently work. Because a trainee is required to take 30 semester hours of college courses during the three year training period, all efforts will be made to make selection(s) by August 4, 2017, so that selectee(s) may register for appropriate courses in the fall college semester.

The training will last three years with the possibility that it may be extended for one year, if necessary. Before completion of the training period, trainees are required to have completed 30 semester hours of selected college courses which will be paid for by the Agency. Unless the courses are available only during the day, they should be taken at night.

Employees who wish to be considered for the program are to submit their applications through USAJobs by July 18, 2017. **Incomplete Application Packages will not be accepted.**

Some of the program's more important provisions are outlined below. However, employees should read the complete program that is attached to this memorandum.

Eligibility Requirements

To be eligible for consideration, employees must currently be at grade GS-5 or above and be serving in a career or career-conditional appointment.

Entry Level

To make the program consistent with government-wide classification standards, all successful applicants will be placed into the 244 (labor management relations examiner) occupational series

upon their entry into the program. All successful candidates will be assigned to the program as a GS-5 Labor Management Relations Examiner Trainee with pay retention.

Promotions During Training

All trainees will enter the program as GS-5 Labor Relations Examiner Trainees and will be promoted to a GS-7 Labor Management Relations Examiner Trainee upon the successful completion of the first year of the program. They will continue serving as GS-7 Labor Management Relations Examiner Trainees during the second and third year of the program, and will be promoted to the target GS-9 Labor Management Relations Examiner position upon the successful completion of the final year of the program.

Pay Retention During Training

Pay Setting for GS-9 selectees

GS-9 Field administrative staff selected to participate in the Bridge Program will enter at the GS-5, and will be eligible for pay retention for the duration of their participation in the Bridge Program[1]. After one successful year in the Bridge Program, the selectee will be promoted to the GS-7 and will continue to receive pay at the GS-9 level for the duration of their participation in the Bridge Program. Selectees will remain at the GS-7 for two years and must successfully complete all required training to be eligible for the GS-9.

Pay Setting for GS-7 selectees

GS-7 Field administrative staff selected to participate in the Bridge Program will enter at the GS-5, and will be eligible for pay retention during their first year in the Bridge Program. After one successful year in the Bridge Program, the selectee will be returned to the GS-7 and pay will be set at the applicable GS-7 rate for the duration of their participation in the Bridge Program. Selectees will remain at the GS-7 for two years and must successfully complete all required training to be eligible for the GS-9.

Employees interested in the Bridge Program are encouraged to carefully weigh the benefits afforded of participating in this developmental program.

We look forward to receiving applications from interested employees.

/s/

[1] If a Bridge Program participant's tenure is extended for a year, the employee will remain at the GS-7.

National Labor Relations Board Bridge Program For
Labor Management Relations Examiner Positions
General Schedule Positions GS-5 and GS-7

1) Purpose

The purpose of this program is to provide carefully selected employees who are currently serving in nonprofessional positions' with an opportunity to qualify for professional careers as Labor Management Relations Examiners. Career development activities to be provided these employees include formal education and training and assignment to specially designed "bridge" positions that will provide them with qualifying experience and on-the-job training.

Specifically, the objectives of this program are:

- To achieve more effective utilization of those employees who have the capacity for professional development;
- To permit career movement for capable employees whose current job assignments fail to provide opportunities for professional development; and
- To motivate employees toward high achievement and create an environment that promotes high morale.

2) Position Coverage**:**

Trainee (Bridge) Positions: Entry level Trainee positions will be established and posted at grade 5, in the GS-244 occupational series. These positions will be titled Labor Management Examiner Trainee.

3) Basic Eligibility Requirements:

Trainees will be selected consistent with the Agency's merit promotion program from among full-time NLRB employees (or part-time position to which the employee can be converted) who currently hold nonprofessional "field" positions in grades GS-3 and above who:

- Are currently serving on career-conditional or career appointments; and
- Have demonstrated their potential for career development in a professional occupation.

Attachment B

4) Experience and/or Training Requirements:

- All administrative professionals are eligible for assignment to a trainee position. Those individuals at the GS-4 level must have 52-weeks' time in grade to apply.
- "Qualifying experience" is that which is gained in technical, specialized, clerical, administrative or other responsible work that has demonstrated the employee's potential to satisfactorily complete the developmental program.
- Equivalent combinations of education and experience are qualifying for all grade levels and positions for which both education and experience are acceptable.
- Successful candidates will enter the program as GS-5 Labor Management Relations Examiner Trainees. Successful candidates currently in grades above GS-5 will receive full pay retention at their current grade and step for the duration of their participation in the Bridge Program

5) Length of Training:

The normal length of the training program will be three years. However, the length and/or intensity of the program may be altered to conform to the individual developmental needs of trainees. Trainees may be permitted to repeat any year phase of the program, provided that the overall length of the program does not exceed four years. The failure of a trainee to progress to succeeding year phases of the program within two years, in any year phase, of the program or to complete the program in a maximum of four years is an appropriate basis to remove the trainee from the program.

6) Promotions During Training:

In order to be retained in the program and where appropriate, promoted, a trainee must achieve appropriate performance ratings. Upon the successful completion of the first year of the program, trainees will be placed into the GS-7 Labor Management Relations Examiner Trainee position. All trainees will serve as GS-7 Labor Management Relations Examiner Trainees during the final two years of the program. Upon the successful completion of the final year of the program, trainees will be promoted to the target GS-9 Labor Management Relations Examiner position.

In order to allow for promotions during the Bridge Program, and because the nature of the Bridge Program precludes a final determination as to the candidate's conversion until completion of the entire program, applicants will be required to sign an acknowledgement that any reduction in grade or pay that may be necessary to return the employee to his or her former or, as appropriate, other position upon failure to meet standards, shall not be subject to the adverse action or grievance procedures.

7) Pay Retention During Training

Pay Setting for GS-9 selectees

- GS-9 Field administrative staff selected to participate in the Bridge Program will enter at the GS-5, and will be eligible for pay retention for the duration of

their participation in the Bridge Program, consistent with applicable regulations[1].

- After one successful year in the Bridge Program, the selectee will be promoted to the GS-7 and will continue to receive pay at the GS-9 level for the duration of their participation in the Bridge Program. Selectees will remain at the GS-7 for two years and must successfully complete all required training to be eligible for the GS-9.

Pay Setting for GS-7 selectees

- GS-7 Field administrative staff selected to participate in the Bridge Program will enter at the GS-5, and will be eligible for pay retention during their first year in the Bridge program consistent with applicable regulations.

- After one successful year in the Bridge Program, the selectee will be returned to the GS-7 and pay will be set at the applicable GS-7 rate for the duration of their participation in the Bridge Program. Selectees and will remain at the GS-7, for two years and must successfully complete all required training to be eligible for the GS-9.

Bridge Program participants are encouraged to carefully review the OMs on this subject.

8) Target Position: The target position will be Labor Management Relations Examiner, GS-244-9.

9) Eligibility Requirements:

Trainees will be recommended by the Regional Director for assignment to the target position if they have: (A) successfully completed the training program; (B) achieved appropriate performance ratings; (C) demonstrated the ability to perform at the GS-9 Field Examiner level; (D) demonstrated the potential to progress to at least the full performance level; and (E) met Office of Personnel Management qualification requirements (Single Agency Qualifications Standard for positions classified in the GS-244 occupational series).

10) Evaluation and Selection:

To ensure eligibility for consideration, the Division of Operations-Management in cooperation with the Office of Human Resources will be responsible for preliminary screening of applicants' qualifications.

[1] If a Bridge Program participant's tenure is extended for a year, the employee will remain at the GS-7.

In evaluating candidates, consideration will be given to:

- The candidate's:
    - Work experience;
    - Education and training;
    - Special achievement;
    - Overall performance; and
    - Potential

The contents of the Appraisal for Potential Based on Job Elements (Form NLRB-4940); The results of the interviews conducted to ascertain candidates' career goals and potential for professional development; and each candidate's three most recent performance appraisals will also be considered.

For each annual posting, staff in the Division of Operations-Management will designate the best qualified candidates and submit recommendations (if any) in writing to the Associate to the General Counsel, Division of Operations- Management or his or her designee.

The decision to fill or not fill any of the positions or to select specific applicants will be made by the Associate to the General Counsel, Division of Operations-Management, who may select any candidate on the best qualified list. Except for an allegation that the employee's non-selection is in violation of Article 4, Sections 1, 4, or 11 of the Agreement between the General Counsel of the National Labor Relations Board and the NLRB Union, or any law affecting conditions of employment, non-selection for the program is not subject to the grievance or arbitration procedures.

11) Training Plan:

The plan will follow the same general outline for all trainees; i.e., it will be geared to the basic requirements of the Labor Management Relations Examiner occupation and designed so as to assure the trainee's acquisition of the essential knowledge and skills appropriate for the grade level of the target position. However, the plan will also be tailored to the individual trainee's needs and background. The duties assigned and training courses required will be commensurate with the trainee's past experience and training and program grade level. The plan will include both on and off-the -job training.

An individual training plan will be developed by the Region within two weeks after a trainee is officially assigned to a trainee position. The plan shall include:
Orientation:(Duration: one-four weeks) The orientation will be designed to add to the knowledge of the trainee with respect to the history, mission and accomplishments of the NLRB, its organizational structure and program components, policies and rights.
On-the-job Training: (Duration: 152-155 weeks) On-the-job training will be conducted in the office where the target position exists. Carefully supervised work assignments will become increasingly more difficult commensurate with the trainee's level of development. Where additional formal training time is found to be desirable and available, on-the-job

training time may be adjusted, as appropriate;
In addition to performing necessary training assignments, trainees will continue to perform assigned administrative professional duties as described below.

12) Formal Training:

Thirty semester hours[2] of college courses will be taken, 15 of which are those listed in the Single Agency Qualifications Standard for positions classified in the GS-244 occupational series. During the first year, the trainee must take (if available) three semester hours in Speech/ Oral Communication, six semester hours in English Composition or College-level Writing, three semester hours in Logic, and three semester hours in Accounting. After the first year, the remaining semester hours must be from among those listed in the Single Agency Qualifications Standard, with the understanding that any of the above-listed credits, including Accounting, that were not satisfied in the first year of the program must be satisfied in the second year of the program. (Exception: A trainee who has already successfully completed the above college-level courses prior to entry into the program may be required to take an appropriate number of other courses while in the program.) The educational institution, the curriculum, and the cost assumed therewith, and schedule of courses must be approved in advance by the appropriate Regional Director in consultation with the Division of Operations-Management and the Office of Employee Development.

13) Self-Development:

The trainee will be made aware of his/her own responsibility for self-development. Toward this end, he/she will be expected to review training materials from a selected list that are pertinent to the career field (see sample training plan below).

14) Evaluation:

The Division of Operations-Management and the Region will develop, supervise, and administer the evaluation phase of this program. The Office of Employee Development will have monitoring responsibility with respect to the evaluation system. Written supervisory evaluations of the trainee's progress and the effectiveness of the training will be required on a regularly-scheduled basis. Ninety days following assignment to a trainee position, a written evaluation will be made of the trainee's developmental needs and, if necessary, the Region will tailor the plan to provide him/her with the necessary knowledge and skills. Subsequent written supervisory evaluations will be required quarterly thereafter. The supervisor is required to review the evaluations with the trainee at the time evaluation forms are completed. In assessing the trainee's overall progress, the supervisor will take into consideration the trainee's college course work. On an annual basis, the trainee will receive an annual appraisal and, where appropriate, a promotion recommendation. Upon completion of training, the Regional Director will submit a comprehensive evaluation of the achievement, including course work and performance of the trainee, and recommend to the Division of Operations-Management

[2] Reference to semester hours is understood to also mean equivalent quarter hours.

whether the trainee is qualified for the target position.

15) Written Self-Evaluation:

The trainee will also be required to make written evaluations and furnish grade transcripts at the completion of any college course work or of formal training provided at NLRB expense, and quarterly will assess his/her own development. Should a trainee receive a grade of less than a "C" (or a rating of less than 2.0 under a numerical grading scale), this will be taken into consideration in assessing the trainee's ability to perform as a Labor Management Relations Examiner. Upon satisfactorily completing the training program and successfully demonstrating performance in the trainee position, the trainee will be eligible for reassignment or promotion to the target position. A written certificate of his/her satisfactory completion of training, under the program, will be filed in his/her Official Personnel Folder. The training program file will contain a record of the actual training provided each trainee. These files will be retained for minimum period of two years after completion of the training.

16) Action Upon Failure to Meet Standards:

Except as indicated below, when the Associate to the General Counsel, Division of Operations-Management, determines that a trainee has failed to meet performance requirements, the trainee will, depending on the availability of suitable position vacancies, be laterally reassigned or returned to his/her former position or to a similar position with equivalent status and grade.

17) Promotions:

There is no guarantee of promotion under the provisions of the program. Promotions will be based on positive determinations that the trainee has met the performance requirements, has satisfactorily completed the necessary training, has demonstrated an ability to perform the duties of the target position, and has been evaluated and recommended by the appropriate officials. This program does not, in any way, provide authorization for an exception to the time-in-grade restriction. Additional development of candidates beyond target positions will follow normal promotion procedures.

18) Counseling:

Career counseling will be provided by the Regional Office and a representative of the Division of Operations-Management at the time he/she enters the program. Thereafter, counseling will be provided by the Regional Office at appropriate intervals thereafter.

19) Cost of Operating Training Program and Productivity Gains:

- The NLRB is convinced that the cost of operating the training program will be more than offset over a period of time by improved employee morale, productivity and efficiency.
- Additional funds will not be requested for the specific purpose of effecting grade

adjustments.

20) Flexibility Provisions:

To avoid the necessity for frequent minor changes in the program caused by changes in the needs of the Agency or the trainee, it is permissible to:

- Alter length and intensity of the individual training plan to conform to the individual developmental needs of the trainee;
- Extend elapsed training time (not to exceed one year), as appropriate, in individual cases to cover contingencies such as sick leave, emergency annual leave, or a trainee's difficulty in grasping a portion of the training or a particular developmental assignment;
- Alter segments of training to permit learning experience to coincide with changes, the needs of the NLRB and of the trainee, and evaluation of experience with the training program;
- Add or modify subject matter material to reflect technological changes, the needs of the NLRB and of the trainee, and evaluation of experience with the training program;
- Curtail or modify the program due to staffing or budgetary reasons, although this is unlikely due to the priority accorded to upward mobility.

21) Administration of the Program:

The Associate to the General Counsel, Division of Operations- Management, and the Director of the Office of Human Resources are responsible for administration of the program with delegated authority provided to subordinate staff members. The appropriate Regional Offices will, after consulting with the Division of Operations-Management and the Office of Employee Development, develop specific training plans within program guidelines and will review and evaluate their effectiveness annually

Sample Individual Training Plan

Name: XXX
Present Job Title: XX
Series and Grade: GS-303-_
Entry into Training: 12/01/16
Duration of Training: Three year program

Objective

To develop, through planned reading, formal training, discussion and work experience, Bridgee's ability to perform the duties of a Labor Management Relations Examiner related to processing representation petitions and unfair labor practice charges, e.g., processing of petitions and charges, holding of conferences and elections, legal research, interviewing witnesses and obtaining relevant evidence; analysis of facts, procedures and law in representation and unfair labor practice cases; preparation of oral and written reports, forms and other documents.

What is a Field Examiner?

Field Examiners process unfair labor practice case and representation petitions filed with the National Labor Relations Board. The following is only a very broad overview.

Unfair labor practice investigations: protecting employees' rights afforded to them under the Act.

Charges against Employers commonly allege interference with employees' rights to engage in protected concerted and/or union activities, discrimination based on union activity, or failure to bargain in good faith.

a) 8(a)(1) – coercion of Section 7 rights
b) 8(a)(2) – Employer assistance to labor organizational activities
c) 8(a)(3) – discrimination based on union activity
d) 8(a)(4) – retaliation for participating in NLRB proceedings
e) 8(a)(5) – failure to bargain in good faith

Charges against Unions commonly allege coercion of or interference with employees' Section 7 rights; failure to bargain in good faith, or interfere with commerce.

a) 8(b)(1)(A) – Duty of fair representation
b) 8(b)(2) – cause an Employer to discriminate under 8(a)(3)
c) 8(b)(3) – failure to bargain in good faith
d) 8(b)(4) – interference with commerce through its actions

Representation petitions: Section 9(a) of the Act

Questions Concerning Representation (QCR) – RC, RD, RM petitions

a) Process petitions for an appropriate group of employees that allow them to vote in a secret ballot election
b) Work with parties to the petition to schedule and conduct an election for an appropriate unit of employees in a reasonable amount of time.

Other petitions that do not raise a QCR – UD, UC, AC

Program Categories (3 years)

1) Academic Requirements
2) Reading and learning how to perform Field Examiner work
3) On-the-Job Training

* All three of these elements are inter-related and will be performed concurrently.

Academic Requirements

Depending on the needs of the trainee, the Agency will pay for the following required college course work: three semester hours in Speech/Oral Communication, six semester hours in English Composition or College Level Writing, three semester hours in Logic (all to be taken during the first year of the program), and three semester hours in Accounting (preferably to be taken during the first year of the program). The remaining semester hours must be in one of the specialized areas, the substance of which is directly related to the work of the Agency (political science, government, economics, industrial relations, labor relations, personnel administration, business administration, accounting or labor law).

Tuition, books and fees will be paid by the Agency under the Government Employee Training Act and in accordance with the provisions of the Agreement between the General Counsel of the National Labor Relations Board and the NLRBU covering Field administrative profesional employees. The trainee will be required to submit reports on his/her progress at the end of each grading period.

An ongoing dialogue with the supervisor and ultimately Division of Operations should occur and approval of classes should occur before registering. This will insure that the courses satisfy the Program requirements. So that all coursework can be effectively accounted for, a chart with the following headers will be maintained by the supervisor.

Name of Course	Course #	Name of University	Category (per Bridge Program)	Credit Hours	Completion Date	Grade

In – Office Training

Reading/Learning FX Position AND On-the-Job Training

These two elements of the Program are laid out in greater detail below and are intended to work in conjunction with one another to enable the trainee to effectively learn the critical areas of labor law and the duties of a Field Examiner. The pace of the Program may be re-evaluated from time to time and is subject to revision based upon the progress of the trainee.

Mechanics of the Program

Division of Work:

- Year 1 – 60% Examiner work, 40% Administrative Professional Work
- Years 2 + 3 – 100% Examiner work
- Examiner work is laid out in greater detail below
- Administrative Professional work will include: Translations; FOIA overflow; Administrative Professional overflow

Supervision: SFX/SFA XX or designee will be supervisor for Examiner work. XX will remain supervisor for clerical work. During the first year, the division of work will be coordinated by the supervisors to ensure an appropriate allocation of work time.

Regularly Scheduled Meetings: Schedule meetings with your SFX/SFA or designee on a regular basis. This will provide the trainee and supervisor with a format for regular dialogue about the work and keep everything on pace for successful completion of the Program.

NxGen

The trainee will learn additional NxGen responsibilities of an Examiner during the course of the Program.

Evaluations

The trainee will be evaluated quarterly on 11/30, 2/28, 5/31 and 8/31 of each year. The supervisor will review these quarterly evaluations with the trainee at the time of issuance and have a discussion regarding the progress made during the evaluation period. Importantly, the discussion will also look forward and identify how to continue to develop skills for the upcoming 90 day period. The evaluation process will also include a written, self-evaluation component each quarter reflecting on strengths and identifying areas for improvement.

The evaluation process is coordinated between Division of Operations Management and Regional personnel. In addition, Human Resources will monitor the progress of the Program. Consistent with all unit employees, the trainee will receive an annual appraisal for work completed by 5/31.

YEAR 1:

Academic – continue with coursework as scheduled
Administrative Professional work – continue as scheduled with translations and overflow in coordination with supervisors.

Reading Assignments
In all the reading assignments, the goal is for the trainee to obtain the necessary base knowledge to have the on-the-job training be relevant. The trainee should review the different reading resources throughout the training period. Thus, the trainee may select from any of the suggested list of resources or from the list in the attach appendix.

1) Learning about the Act:
   - *Developing Labor Law*: Historical Background of Wagner Act, Chapter 2 & 3 (p. 26-50);
2) Understanding Unions
   - Learn of the three primary roles within a labor organization: servicing its members, organizing employees, engaging in political/legislative action
   - AFL-CIO website, "Learn About Unions"
   - Find and read websites of at least unions in our local area
3) Agency structure
   - "Who We Are" on the NLRB's website, www.nlrb.gov
   - *Basic Guide to the National Labor Relations Act, How the Act is Enforced*, p. 33
4) Taking Affidavits
   - Professional Development Module 19: *Taking Affidavits* (see Insider)
     - **** For all Modules****
     - Read Participant's Guide
     - Do Practice Activity (at least
     1) oReview with supervisor
     oReview Instructor's Guide
5) 2011 New Employee Training material, Section 21b, *Techniques for Efficient and Effective Investigations*. You should discuss with your supervisors which sections you should review now. However, you should turn back to this Section periodically throughout your period of training as a Bridgee.
6) 2012 Quality Committee Report, Section I.C, *The Affidavit*, p.3. As with the 2011 New Employee Training material, you should return often to this valuable resource.

On-the-Job Training

Interpersonal Relationships: Learning to work with members of the public is an essential skill to develop. There are different personalities that agents encounter during investigating cases that have to be handled in an appropriate manner. Presentation skills within and outside the office are critical to performing the job.

1) Observations to learn how to handle parties
    - Affidavits – not for content but for developing and establishing relationships
        - Talk with agent before and after affidavits
        - Focus on interpersonal relationships
        - Acknowledge different styles of agents (observe many agents)
    - Agendas – not for content but for presentation
        - Review FIR
        - Focus on dialogue and oral presentation
    - Elections – note how agents handle different situations
        - Talk with agent before and after election
        - Observe how agents handle legal parties in pre-election conference
        - Note how agents resolve issues without escalating matters
        - Recognize different styles used to accomplish task

<u>Month 1</u>

Academic – continue with coursework as scheduled
Administrative Professional work – continue as scheduled in coordination with supervisors.

Reading Assignments

1) *Learning the Law – Section 8(b)(1)(A):* choose one or more of the following:
    - *Developing Labor Law*, Chapter 25, Duty of Fair Representation (p. 2103 – 2210)
    - Professional Development Module 38, *Duty of Fair Representation* (see Insider)
    - Reference Module 19 as needed
2) *Basic Guide to the National Labor Relations Act* (hardcopy is handy for reference)
    - This Guide should be referenced throughout the Program as a beneficial resource for common questions or explanations of Board processes.
3) 2011 New Employee Training material, Section 5, *Section 8(b)(1)(A) Materials*.
4) Information Officer – Professional Development Module 32: *Tips for the Information Officer*
5) Read one recent NLRB Board decision on a DFR case (to be identified by supervisor)

On-the-Job Training

Affidavit-taking skills: This is the backbone of all investigations. Obtaining relevant details can turn a case and can also lead to obtaining further essential evidence. Be an active listener when observing affidavits and think where the case may be going and how to get there.

Observation

1) Affidavits – move toward substance of 8(b)(1)(A) affidavit
    a. Talk with agent before affidavit about general information
    b. Prepare sample questions prior to the affidavit
    c. Compare questions with those asked by agent
    d. Discuss affidavit afterwards with agent
    e. Write down lessons learned, identify critical issues
    f. Discuss affidavit experience with the supervisor at next meeting
2) Case file Review – The Supervisor can identify an appropriate 8(b)(1)(A) case to review
    a. Review file "bottom-up" – follow investigation in sequential order.
    b. Note the questions asked in the affidavit and the ultimate issue presented
    c. Follow the process and the issues that were investigated
    d. Note interactions with parties
    e. Analyze the case and FIR based on new knowledge of 8(b)(1)(A)
3) Information Officer – observe how agents handle different situations
    a. Sit with Information Officer on phone calls and walk-ins (this can be facilitated by the supervisor).
    b. Think through the problem presented and try to identify issue
    c. After each call/visit, discuss the situation presented with the agent.

2/Month 2

Reading Assignments

1) *Learning the Law – Section 8(b)(1)(A):* choose one or more of the following, which you did not complete the previous month:
    - *Developing Labor Law*, Chapter 25, Duty of Fair Representation (p. 2103 – 2210)
    - Professional Development Module 38, *Duty of Fair Representation* (see Insider)
    - Reference Module 19 as needed
2) 2011 New Employee Training material, Section 5, *Section 8(b)(1)(A) Materials*. Complete review from last month.
3) Read one recent NLRB Board decision on a DFR case (to be identified by supervisor)

On-the-Job Training

Continue your training on affidavit-taking skills with an eye toward,

- Obtaining relevant details can turn a case and can also lead to obtaining further essential evidence.
- Being an active listener when observing affidavits and think where the case may be going and how to get there.

Observation

1) Affidavits – move toward more substance of 8(b)(1)(A) affidavit
    a. Talk with agent before affidavit about general information
    b. Prepare sample questions prior to the affidavit
    c. Compare questions with those asked by agent
    d. Discuss affidavit afterwards with agent
    e. Write down lessons learned, identify critical issues
    f. Discuss affidavit experience with the supervisor at next meeting
2) Case file Review – The Supervisor can identify an appropriate 8(b)(1)(A) case to review
    a. Review file "bottom-up" – follow investigation in sequential order.
    b. Note the questions asked in the affidavit and the ultimate issue presented
    c. Follow the process and the issues that were investigated
    d. Note interactions with parties
    e. Analyze the case and FIR based on new knowledge of 8(b)(1)(A)
3) Information Officer – observe how agents handle different situations
    a. Sit with Information Officer on phone calls and walk-ins (this can be facilitated by the supervisor).
    b. Think through the problem presented and try to identify issue
    c. After each call/visit, discuss the situation presented with the agent.

Quarterly Evaluation

Trainee prepares a very short summary of previous months in the Program (about one-page in length). This should reflect the trainee's development in learning the topics and issues based on the experiences thus far. In addition to the accomplishments made, the summary should also note areas that can be more fully-developed.

The supervisor will also present the trainee with a quarterly evaluation. This will be accompanied with a meeting with the trainee, supervisor and ARD to discuss the development thus far and prepare for the challenges that lie ahead.

Academic – continue with coursework as scheduled
Administrative Professional work – continue as scheduled in coordination with supervisors.

Reading Assignments

1) *Learning the Law – 8(a)(1):* choose one or more of the following:
    - *Developing Labor Law* Chapter 6 (6.III.B.3; p. 82 – 241)
    - Professional Development Module 35: *Protected Concerted Activity*
    - 2011 New Employee Training material, Section 1, *Section 8(a)(1) Materials*

2) Common to all cases
   - Skip Counsel – Important procedural matter to know
     - Professional Development Module 33: *Skip Counsel*
     - 2011 New Employee Training material, Section 19, *Skip Counsel Materials*.
   - Section 10(b) – 6 month statute of limitations
     - Professional Development Module 25: *10(b) or Not 10(b)*

On-the-Job Training

Case Assignments: Based upon the supervisor's judgment, the trainee can be assigned her own case. A facially simple duty of fair representation case can be assigned for full investigation by trainee. Close supervision will insure proper casehandling.

1) Case assignment: 8(b)(1)(A) case
   a. Contact Charging Party to schedule affidavit and get background of the case
   b. Prepare questions – have supervisor review
   c. Research potential issues
   d. Take affidavit and allow supervisor to review before affiant signs
   e. Prepare plan with supervisor for investigation
   f. Prepare Request for Evidence letter
   g. Neutral witness contacts, if appropriate
2) Case File Review – 8(a)(1)
   a) Same as 8(b)(1)(A) review
   b) Review in stages and in chronological order
   c) Analyze and identify the critical issues

4Month 4

Academic – Continue to take courses according to plan
Administrative Professional work – continue as scheduled in coordination with supervisors.

Reading Assignments

1) *Learning the Law – 8(a)(3):* choose one or more of the following:
   - *Developing Labor Law*, Chapter 7 (p. 310 particular focus on 7.II.B.1, p. 317 – 329; 7.II.C p.353 - 381)
   - Professional Development Module 31: *Wright Line: What Do You Really Know?*
   - 2011 New Employee Training material, Section 2a, *Section 8(a)(3) Materials*

2) Representation Cases
    - Professional Development Module 26: *Investigating a Representation Petition*
        - Investigation, Election Agreements, Issues for Hearing
        - The Process and Procedures of R cases
        - Elections
    - Professional Development Module 6: *NLRB Representation Elections*

On-the-Job Training

1) Representation case processing: learning the process of representation cases is a great deal of relationship building and extracting compromises from the parties.
2) Observation: Shadowing agent in the processing of R cases
    - Investigation: in addition to the below, lessons are to be learned about identifying and working through appropriate unit issues. Review the checklist of issues to gather from parties.
        - Working with parties
        - Showing of Interest check
            - 30% showing required
            - Must be signed and dated
            - If insufficient, petitioner given 48 hours to make sufficient
        - Unit issues – community of interest, no supervisors, appropriate unit
            - Explaining procedures and steering parties
        - Finalizing details on issues and logistics
            - Date – No more than 42 days after filing unless good cause shown
            - Time – Objective is to maximize voter turnout; i.e. shift change
            - Place – typically at Employer's facility away from supervisor offices
    - Stipulated election agreement/Hearing
        - Stipulated election agreements are preferred and occur if all parties agree on all details to conduct election.
        - Hearings are necessary if parties cannot reach agreement thereby affording all parties due process.
    - Voter eligibility list
        - Voter eligibility list (aka *Excelsior* list) due 2 days after approval of stipulated election agreement
        - If there is a hearing, as soon as practicable after decision and direction of election.
    - Notice of Election
        - Board Election Notice to be prepared with all details of election
        - It is required that Notice be posted a full 3 days prior to election
    - Election (high emphasis on relationships with parties and observers)

- Preparation of election site – booth set up, notices posted, badges laid out
- Pre-election conference – all representatives present
- Observer instructions
- Conduct of election
- Ballot Count
- Tally of Ballots

- Post-election (to be learned in greater detail in future)

1) Case File Review – 8(a)(3)
   a. Review completed 8(a)(3) cases file with same approach as previous case file reviews.
   b. Discuss cases and ask questions relating to issues with supervisor.

<u>Month 5</u>
Academic – Continue to take courses according to plan
Administrative Professional work – continue as scheduled in coordination with supervisors.

Reading Assignments

1) *Learning the Law – R cases*, including hearings
   - *Developing Labor Law*, Representation Process, Part III (p. 506 – 576)

2) Representation case hearings
   - Professional Development Module 7: *The Role of the Hearing Officer*
   - Professional Development Module 41: *Suggestions to the Postelection Hearing Officer*

3) Professional Development Module 37: *Credibility Issues*
4) Recent Board Decisions – 8(a)(1) and 8(a)(3) cases to examine the practical application of case law.

On-the-Job Training

<u>Case assignments continue</u> – 8(b)(1)(A) and 8(a)(1) and 8(a)(3)

As more cases are assigned to the trainee, the processing of cases will become more independent although the substance of cases will continue to necessitate frequent discussions with her supervisor for proper handling.

It is anticipated that 1 – 2 unfair labor practice cases, and one representation case will be assigned to the trainee at this time in the Program.

<u>Observation</u>: Post-election representation proceedings

While post-election proceedings are not as common as many other types of case circumstances, she will be encouraged to shadow agents who are handling determinative challenged ballots and/or objections.

1) Post-election investigation
    a. Immediately seek position of parties
    b. Review positions and summarize in a short report
    c. Process to hearing or dispose of by report
    d. Schedule hearing
2) Hearing
    a. Prepare by performing appropriate research on issues
    b. Control parties at hearing
    c. Make credibility resolutions
3) Post-election Report
    a. Learn how to present facts and analyze issues
    b. Present credibility issues
    c. Reach well-reasoned conclusions

Quarterly Evaluation

Trainee prepares a very short summary of previous months in the Program (about one- page in length). This should reflect the trainee's development in learning the topics and issues based on the experiences thus far. In addition to the accomplishments made, the summary should also note areas that can be more fully-developed.

The supervisor will also present the trainee with a quarterly evaluation. This will be accompanied with a meeting with the trainee, supervisor and ARD to discuss the development thus far and prepare for the challenges that lie ahead.

Summer Months

Academic – Continue to take courses according to plan
Administrative Professional work – continue as scheduled in coordination with supervisors.

Reading Assignments

1) Legal Writing
    - Professor Tim Terrell's Legal Writing Program
        - Introduction
        - Organization
        - Analysis
        - Conclusion
    - Final Investigative Reports
        - Examine Terrell's review of FIRs
        - Review closed cases for review of FIRs (selected by supervisor)

2) Legal Research
    - Basics of Westlaw (WestlawNext)
        - Understand what to look for - train with supervisor or assigned agent on basic functions of Westlaw
        - Become familiar with common search parameters
    - Archivalware on Insider
        - Significant Advice Memos (SAMS)
        - Advice and Appeals Memos
3) R cases – Outline of Law in Representation Cases and 2013 supplement, Chapters 12 – 15 (p. 133 – 202)
    - Appropriate Unit – presumptively appropriate unit / community of interest / multi-facility / multi-employer

4) Deferral
    - *Developing Labor Law*, Chapter 18 (p. 1576 – 1661)
5) Beyond the Basics
    - Professional Development Module 28: *Weingarten Rights: Representation at an Investigatory Interview*
    - Jurisdiction – Outline of Law in Representation Cases and 2013 supplement, Chapter 1 (p. 1 – 25)
    - Professional Development Module 12: *CWA vs. Beck*

On-the-Job Training

Development: Many cases assigned have recently been completed. Upon examination of strengths and development areas reviewed in recent Evaluation, focus can be steered toward areas of the investigation process as needed. Repetition.

1) Case assignments
    - 2 to 3 per month of types previously learned and add in cases with issues recently learned.
    - Focus on process and identifying issues
        - Close supervision through regular discussions regarding case processing, and weekly meetings will facilitate this learning process
        - Actively prepare, investigate, analyze and present cases.
2) Deferral
    - *Collyer* and *United Technologies*
    - *Dubo*
    - *Spielberg* analysis upon resolution by parties
    - Review case files of cases that have been deferred
        - Identify the reasons for deferral
        - Identify the requirements that allow for deferral
        - Examine the responsibilities of parties following deferral

3) Settlement Procedures – post-merit proceedings
    - Drafting an informal settlement agreement
    - Appropriate Notice language
    - Calculating accurate backpay

Quarterly Evaluation

As in the past, the trainee should prepare a very short summary of previous months in the Program. This should reflect the experience thus far and development in learning the topics and issues presented thus far. In addition to the accomplishments made, it should also be noted what areas can be improved upon moving forward.

The supervisor will also present the trainee with a quarterly evaluation. This will be accompanied with a meeting with the trainee, supervisor and ARD to discuss the development thus far and prepare for the challenges that lie ahead

Final Months of First Year

Academic – Review the status of academic credentials with the supervisor and Division of Operations. Continue taking courses as necessary according to the plan.

Administrative Professional work – continue as scheduled with translations and overflow in coordination with supervisors (**final months)**.

Reading Assignments

1) 8(a)(5) Duty to Bargain in Good Faith – choose one or more of the following:
    - *Developing Labor Law, Part* IV Chapter 13 (through Section IV p. 883 – 1044; Section VI p. 1050 – 1094)
    - Professional Development Module 29: *Investigating Information Request Cases*
2) Professional Development Module 34: *UC Petitions: The Ins and Outs of Unit Clarifications*

3) Beyond the Basics:
    - Joint Employer
    - Successorship
        - Professional Development Module 1: *The Successorship Doctrine*
        - Professional Development Module 2: *Successorship – Changes in Employer Identity*

On-the-Job Training

8(a)(5) bargaining obligations: In an established collective bargaining relationship, there is a duty on both parties to bargain in good faith. The term "good faith" is subject to interpretation and often requires careful analysis to determine if a party has breached its duty under the Act. Violations of 8(a)(5) can include unwillingness to reach agreement during negotiations, unilateral changes, refusal to provide information, refusal to execute an agreed upon agreement, and failure to process grievances.

Observation: 8(a)(5) affidavit taking

1) Talk to agent before affidavit about general allegations
2) Prepare sample questions
3) Observe affidavit – note details of bargaining sessions
4) Afterwards, discuss strengths, weaknesses of case
5) Discuss experience with supervisor

Casehandling: continue processing C and R cases under close supervision

Quarterly EvaluationTrainee prepares a very short summary of previous months in the Program (about one- page in length). This should reflect the trainee's development in learning the topics and issues based on the experiences thus far. In addition to the accomplishments made, the summary should also note areas that can be more fully-developed.

The supervisor will also present the trainee with a quarterly evaluation. This will be accompanied with a meeting with the trainee, supervisor and ARD to discuss the development thus far and prepare for the challenges that lie ahead.

Based on this evaluation, a decision will be made regarding whether to proceed. If both the on-the-job training and college course work have been satisfactory, the trainee will be evaluated and considered for promotion to the next higher grade level depending on entry level, and training will continue on a full-time basis.

– Annual Evaluations

This evaluation period covers the trainee's work since entry into the Program. The supervisor will present an evaluation of the trainee's work in the critical areas of Quality, Efficiency, Working Relationships, and Oral and Written Presentation. A meeting with the trainee, supervisor and ARD will be held to discuss the evaluation.

****END OF YEAR 1****

YEAR 2:

Academic – Continue to take courses as needed and discussed at previous evaluation period.
Administrative Professional Work – None.

CASES – The supervisor will determine the complexity of case assignments and caseload depending on the trainee's progress. The trainee's level of independence in the processing of cases will gradually increase. Throughout the second year, the trainee will continue to be exposed and gain familiarity with the following Representation and ULP cases.

REPRESENTATION CASES

Representation case processing is a critical function of the Field Examiner and repeated exposure to all stages of the process is vital to learning this area of the job. Identifying issues early in the investigation is critical to appropriately processing representation cases. Petitions can be affected by the filing of related unfair labor practice charges, or special rules may apply in unique circumstances.

1) Beyond the Basics:
   - Concurrent R and C cases – Blocking charges ULP Casehandling Manual (CHM) 11730 - 11734
     - Type I – not automatic but depends on substance of allegations. Request to proceed can be filed to continue processing of R case.
     - Type II – automatic blocking. The charge undermines the integrity of the petition itself.
   - Post Election Matters:
     - Determinative Challenged Ballots;
     - Objections to the Conduct of Elections;
     - and Related ULP charges.

2) Contract Bar – Outline of Law in Representation Cases and 2013 supplement, Chapter 9 (p. 81 – 109)
   - Effectiveness of collective bargaining agreement
   - Duration – only bars for three years
   - Window period to file representation petition

3) Election Agreements – research and learn the following unique circumstances that can arise in the processing of representation petitions.
   - Self-determination elections (See – Outline of Law in Representation Cases and 2013 supplement, Chapter 21, p. 267 - 272)
   - *Armour Globe*
   - *Sonotone*
   - *Steiny-Daniel* Formula
   - *Norris Thermador*

4) Decision Writing: Professional Development Module 5: *Drafting Regional Director Pre- Election Decisions*
    - Researching the issues
    - Reading and abstracting the transcript
    - Applying legal writing principles in drafting the decision

UNFAIR LABOR PRACTICE CASES

The second year will be a time to build upon many of the skills learned in year one. Continued development of interpersonal relationships with peers and outside parties remains an essential part of the job as working with peers and handling challenging parties is a learned skill. No two cases are identical and analyzing each set of circumstances in each case allows the trainee to develop knowledge and understanding of the work. The following areas of the law will be learned through reading and research of the issues through similar resources used thus far and those found in the Appendix.

1) Section 8(a)(2) – Domination of or assistance to labor organizations
    - Employer-dominated employee committee
    - Recognition of union without majority status
    - Unlawful assistance
2) Section 8(a)(4) – retaliation for providing testimony to NLRB
    - 2011 New Employee Training material, Section 2b, *Section 8(a)(4) Materials*

Beyond the Basics

1) 10(j) injunctive relief
    - Professional Development Module 20: *Identifying and Investigating 10(j) Cases*
    - Learn the purpose and procedures of Section 10(j)
    - Identify types of cases that are or could warrant 10(j) consideration
    - Understand elements to examine for 10(j)
    - Learn how to investigate 10(j) issues

2) Complaint drafting – review Pleadings Manual and observe agents drafting complaints to learn how complaints are put together and how allegations are pled.

3) Litigation – while Examiners are not expected to be actively involved in litigation, observing trial attorneys prepare and litigate cases can be quite helpful in developing investigation skills.

Evaluations: Quarterly , Annual at end of Year 2

At the end of the second year, the supervisor makes a recommendation regarding retention in the program and, where appropriate, promotion.

YEAR 3:

Academic work – If not already completed, continue to take requisite courses to satisfy the academic requirements under the Program.

Casework: In the third year of the training program, the trainee is expected to independently process basic Representation and ULP cases and process more complex cases that were introduced to the trainee in year two.

Representation case work:

The trainee will continue to be assigned representation cases to help develop skills in this area. Attempts will be made to expose the trainee to more challenging and unique petitions and to expand knowledge in additional areas of the law. Based upon the supervisor's evaluation, the trainee will be granted more independence in the processing of cases. When appropriate, the trainee should be able to conduct a pre-election hearing with close guidance and supervision.

Unfair Labor Practice case work:

The supervisor will gradually expose the trainee to a broader diversity of cases to investigate. It is critical to develop higher analytical and writing skills during this time. The trainee will be exposed to more complex cases often requiring working closely with the supervisor. The trainee will be expected to work independently on simple casehandling matters.

Compliance.

The trainee will observe compliance to learn the practices and procedures of processing merit cases to conclusion. There are significant benefits to the investigatory work by understanding how remedies are determined, enforced, and secured from parties.

Evaluation and Certification

Evaluations: Quarterly Annual through the end of year 3

At the end of the third year, the supervisor completes the third annual appraisal of the trainee. Based upon an evaluation of the trainee's performance and completion of the college course work, the Regional Director will make a recommendation to the Associate to the General Counsel, Division of Operations-Management, regarding conversion and, where appropriate, promotion. The recommendation should describe both the trainee's professional development and his or her academic development, including a summary of what coursework was required under the program and which coursework was waived due to the trainee's completion of equivalent coursework prior to entry into the program. A transcript should also be provided. A determination will be made by the Associate to the General Counsel, Division of Operations-Management, of the trainee's readiness for conversion to the target position and, where appropriate, promotion.

Appendix

Orientation to the Mission of the Agency and Functions of a Field Examiner

The remaining sessions of the orientation broaden the trainee's view of the National Labor Relations Act, the Agency, the operations of the Regional Offices, and the role played by the Labor Management Relations Examiner.

The following training material and orientation to that material will be provided or made available to the trainee:

1) NLRB Website (www.nlrb.gov) – Board and ALJ decisions; GC, OM and Advice memos; updated casehandling manuals and other publications; electronic filing (E-Gov); latest NLRB Annual Report
2) Insider – Especially Westlaw, training programs and resources, Office of Human Resources materials, GC and OM memos, etc.
3) Region's library materials
4) The National Labor Relations Act
5) The Board's Rules and Regulations (Parts 101, 102, and 103) and Statements of Procedure
6) NLRB Organization and Functional Chart
7) NLRB Casehandling Manuals – Part 1, Part 2, and Part 3
8) A Guide to Basic Law and Procedures Under the NLRA
9) Set of Current NLRB forms – as needed
10) Reading assignments
11) A schedule of training
12) Agreement between the General Counsel and the NLRB Union (Professional Unit)
13) Outline of Law in Representation Cases and 2013 supplement
14) Hearing Officer's Guide

Orientation to the Agency

1) The Board – Members, staffs, Executive Secretary's Office, Solicitor, Representation Appeals, Office of Public Affairs, Inspector General, OCIO
2) Division of Judges
3) General Counsel
4) Washington
    - GC and Deputy GC
    - Division of Operations-Management
        - Associate to the General Counsel and Deputy Associate General Counsel
        - Districts, AGCs and DAGCs
    - Division of Advice
        - Regional Advice Branch
        - Injunction Litigation Branch

- Division of Enforcement Litigation
  - Appellate and Supreme Court Branch
- Office of Appeals
- Division of Legal Counsel
  - Contempt, Compliance, and Special Litigation Branch
  - Ethics Employment and Administrative Law Branch oFOIA Branch
  - oe-Litigation
- OCIO/Help Desk
- Division of Administration
  - Security Branch
  - Facilities and Property Branch oOffice of Employee Development o Office of Human Resources
- OEEO
- Office of the Chief Financial Officer oAcquisition Management Branch o Budget Branch
  - Finance Branch

5) Regional Office Organization
   - Professional hierarchy
   - Administrative professionl hierarchy
   - Relationship and dealings with the public
   - Information Officer duties
   - Press and media inquiries
   - Freedom of Information Act
   - Parties, attorneys and witnesses

I. Representation Cases

The trainee first observes, then assists, and finally conducts secret ballot elections and processes petitions. Elections and consent conferences are conducted with an experienced agent or supervisor present for advice and assistance. Depending on development during the year, the trainee may become solely responsible for certain of these functions. Assignments progress from petitions involving small units with no anticipated issues to larger and somewhat more complex bargaining units. During this period, the trainee will receive instructions and guidance in the use of research tools
and in the preparation of written reports with respect to initial processing of petitions. The subject matter for study and discussion during this period is as follows: [3]

[3] In addition to these suggested reading topics, the supervisor will consider appropriate reading assignments in

Objectives

1) NLRB function in determination of representatives
2) Importance of expeditious handling in Representation matters; time targets
3) Procedure in Representation Cases
    - Preparation
    - The Petition - who may file, types: RC, RD, RM, UD, UC, AC, VR
        - Assistance in preparing petition
        - Information required
        - Docketing of petitions and amended petitions - Filing date, responsibility when filed in field.
        - Review information on the petition – names and contact information for parties and potential intervenors, nature of business, number of employees, unit, case type and number.
        - Review information on Notice of Hearing
        - Initial communications with parties
4) Notice to other interested parties (joint or single employers, multi-employer associations, potential intervenors)
5) Check NxGen, prior and current related ULP or Representation cases; possible additional interested parties, including intervenors - incumbents, prior representatives, organizing within last 2 years.
6) Blocking Charges
    - Type I – only interferes with employee free choice - Request to Proceed?
    - Type II – affects petition, showing of interest, precludes or conditions the existence of QCR, or taints incumbent's subsequent loss of majority status
    - Exceptions to blocking charge policy
    - Resumption of processing of blocked petitions
    - Taint determination where filing of decertification petition precedes ulp charge – Truserv (OM 07-69). Nexus between ULP and disaffection?
    - If not, is blocking appropriate – Saint Gobain. See also OM 07-24 re bargaining orders in 8(a)(5) settlement agreements.
7) Showing of Interest
    - What constitutes adequate showing – types, designation legend, signatures, dates, currency, timeliness, percentage
    - Check against payroll for petitioned-for unit, if provided
    - Report on Investigation of Interest (Form NLRB-4069)
    - Attempts to revoke
    - Investigation of claims of fraud or forgery

8) Preliminary investigation
    - Timing of start of investigation, time targets
    - Notification of interested parties
    - Method of investigation - Office or telephone conference
    - No Raiding Agreements – Articles XX, XXI
    - Survey/checklist of possible issues to be met. Research and other preparations for same.
    - Check employer name and state on State's Secretary of State website. Check employer on internet.
9) The investigation
    - How you start – what you say – how you complete – if party indecisive schedule hearing and keep working toward consent or stipulated election
    - Mechanics of the conference
        - Board agent control of the conference
        - Impartiality
        - Sizing up parties
        - Stating purpose of conference
        - Obtaining agreement on non-controversial matters
        - Narrowing and classifying disputed issues
        - Techniques of successful conference
    - Securing required information on procedural and substantive problems
        - Commerce information - legal name, state of incorporation, facts, conclusion
        - Other interested parties
        - Showing of interest – dealt with ex parte – not in open conference. Responding to inquiries as to adequacy – Extent - Full; Intervenor's; Participating
        - Labor relations history – certification year, election year or contract bar
        - Existence of question concerning representation
        - Appropriateness of unit – scope and composition
            - Phraseology of unit description
            - Determine job titles; numbers in each position; locations
    - Determine classifications, locations in dispute
    - Distinction between unit and eligibility questions
10) Election Agreements
    - Distinction between Consent, Full Consent (OM 05-40)and Stipulated Election Agreements
    - Completion
    - Parties' full and complete names
    - Commerce
    - Statement of Position: party waives any issue not raised
    - Dates, hours and places of election – on or off premises, away from locus of management authority. Location, date and time of count. Mail ballot language. Mixed mail-manual ballot language.

- Ballot position if more than 2 choices
- Payroll period for eligibility
- Unit description; self-determination election voting group description and language; Sonotone language for professional and non-professional employees.
- Eligibility stipulations – Daniel formula, on-call employees, etc.
- Norris-Thermador eligibility agreements
- Election order sheet – additional information
- Single or multiple polls, Notice and posting period
- Foreign language notices, ballots, interpreters needed
- Voter release method; schedule; self-release language on Notices? (4) Strike in progress?
- Numbers of polling places and Board agents needed
- Scheduling of pre-election conference
- Determining number and identity of observers
- Need for voter identification?
- Need for separate lists for multiple polls
- Number/set-up of voting booths, ballot boxes, tables, chairs
- Instructions re distribution of Excelsior list
- Voting by Affidavit necessary?
- Instructions for Board agent challenges per election agreement?
- If Blocking Charge - Vote and Count, Vote and Impound or Cancel

11) Procedure where formal action is found necessary after investigation of petition

- Subpoena requests. Tropicana subpoenas.
- Pre-hearing motions
- Postponement requests
- Exploration of issues and pre-hearing research of known issues
- Use of Hearing Officer Guide

12) Regional Director and Board directed elections

- Arrangements, difference in setting up compared to election agreement – DDE orders election as soon as practicable

13) Conduct of Election

- Pre-election conference – Be on time or earlier – leave time to find the location – have map and/or scout it out in advance
- Check of eligibility list – Excelsior, Norris-Thermador or other final and binding agreements, DDE instructions re challenges, if any
- Presence of union agent(s) at voting place prior to election
- Campaign literature or notices near polling place
- Instruction of observers and their behavior; designation of observer forms
- Set up of voting place – booths, ballot box, flag
- Inspection of voting place and booths
- Responding to party inquiries about potential objectionable conduct, challenged ballots
- Official time

14) The election
- Identification of voters
- Checking eligibility list
- When to challenge – Did party waive by silence on SOP
- Treatment of or attitude toward voters – dealing with problem observers, voters
- Observance of stipulated voting period even if all apparent voters already voted

15) Count of Ballots
- Disposing of challenges prior to count
- Void and valid ballots
- Possible segregation or impounding if too many challenges
- Tally sheet
- Tally of ballots
- Certification on conduct

16) Re-run elections

17) Runoff elections

18) Administrative disposition of positions
- Dismissal after investigation
- Withdrawals – with or without prejudice
- Disclaimers of interest; revocations of certifications

19) Post-Election Issues
- Administrative Investigation of Challenges and/or Objections
- Prima facie evidence and parties' positions
- Administrative determination or hearing – OM 04-26.
- Preparation of Report or Notice of Hearing
- Role of Regional Director's representative in post-election hearing
- Role of Hearing Officer in post-election hearing
  - The critical period and "laboratory" conditions
  - Notice posting requirements
  - Voting list requirements
  - Peerless Plywood rule
  - Milchem issues
  - Forged documents
  - Savair issues
  - Appeals to racial prejudice
  - Pro-union conduct of supervisors
  - Third party conduct v. party conduct

II. Unfair Labor Practice Cases

The trainee will observe experienced agents as they plan their investigations, interview witnesses, obtain other relevant evidence, analyze and evaluate evidence, research the law, present their reports and recommendations, and settle cases. As the trainee becomes familiar with the techniques involved, he or she becomes progressively more involved, gradually performing greater portions of

the work until he or she is ready to investigate a charge. Earlier investigations by the trainee will be conducted in the presence of the supervisor or an experienced agent; later investigations will be conducted by the trainee alone, but with close supervision. The trainee may also observe the preparation for, and conduct of, unfair labor practice trials.

Reading and Discussion – The trainee will study the following topics:

I. Procedure

(1) Charges – types, filing and service requirements, who may file, where to file, who to serve, where to serve, notices of appearance
(2) Assignment of cases
(3) Impact analysis; Time Targets; Overarching Goals
(4) Preparing to investigate
- (a)Review of information on the charge
- (b) Check prior and currently pending related R and C cases
- (c) Research apparent issues
- (d) Be familiar with skip counsel issues

(5) Investigation techniques
- (a) organization of the Regional Office file and electronic case file
- (b) filing and service of charge
- (c)) initial contacts with charging party, charged party – lack of cooperation
- (d) Drafting correspondence to parties and third party witnesses
- (e) Interviewing witnesses – employees, agents, supervisors, former agents and supervisors, third party witnesses, represented and unrepresented witnesses
- (f)) Face-to-face affidavits
- (g)) Telephone affidavits
- (h) Questionnaires
- (i) Document requests; EAJA letters
- (j) Rebuttal evidence
- (k) Investigative subpoenas
- (l) Backpay and reinstatement investigation when there has been alleged loss of earnings and/or job – Instruct discriminatees on mitigation obligations – See Grosvenor Orlando – OM 08-54; St. George Warehouse – GC 09-01
- (m) Section 10(b) of Act – Bryan Mfg. Co., 362 U.S. 611
- (n) Use of interpreters for witness interviews
- (o) Jurisdiction evidence
- (p) Agency and Supervisory evidence - Oakwood Healthcare – GC 07-05
- (q) Undocumented workers – Hoffman Plastics Compounds - GC 02-06

(6) Regional determination
- (a) Additional research, analysis and recommendation
- (b) Legal Writing techniques –incorporate aspects of legal writing training
- (c) Preparation of Agenda outline/FIR
- (d) Oral presentation at agenda
- (e) Preparation of agenda minute

(f) Consideration of mandatory Advice submissions (GC 07-11), nationwide case coordination issues (OM 09-39)

(g) Consideration of 10(j) [GC 07-01, OM 06-60]; first contract bargaining remedies [GC 08-08, 07-08 and 06-05, OM 09-54]; electronic posting [OM 06-82]; and foreign language notices in merit cases.

(7) Implementation of Regional determination

(a) Settlement – formal, informal, non-Board or Complaint

(b) Withdrawal, short form dismissal or long form dismissal

(c) Conditional withdrawals

(d) Merit dismissals

(e) Collyer, Dubo (OM 08-74 re blocking charges); Spielberg and Babcock & Wilcox deferral

(f) Drafting dismissal letters

(g) Drafting of Request for Advice

(h) Drafting comments on appeals

II. . Section 7 of the Act

III. Employer and Union Unfair Labor Practices – Substantive Law

(1) Section 8(a)(1) – Independent violations - interference, restraint and coercion

(a) Independent or Derivative; freedom of speech – Section 8(c)

(b)) Threats of reprisal v. prophecy

(c)) Solicitation of grievances, promises of benefit, withholding benefits

(d) Interrogation and polling, Johnnie's Poultry

(e)) Surveillance and impression of surveillance

(f) Overly broad and discriminatorily promulgated or enforced rules; No solicitation, no distribution, bulletin boards, electronic mail (Register Guard), access rights of off-duty employees, non-employees, prohibiting discussion of wages, benefits, restrictions on buttons/insignia

(g)) Statements of futility, bargaining from scratch

(h)) Violence

(2)) Section 8(a)(1) – discrimination in terms and conditions of employment because of protected concerted activities

(a) Strikes, work stoppages, safety protests, appeals to management, public agencies, media, political advocacy – GC 08-10 (Eastex v. NLRB)

(b) Individual v. concerted activities

(c) Unprotected activities – sit-down or intermittent strikes, breach of confidentiality, maliciously false statements and disparagement of employee.

(d) Weingarten rights (Postal Service Weingarten cases – OM 09-33)

(e) Unlawful lawsuits – BE&K – GC 08-01

(e) Discharge of supervisor for refusing to commit ULPs or refusal to falsely testify in a Board proceeding

(3) Section 8(b)(1) (A) - restraint or coercion of employees in exercise of Section 7 rights

(a) Union rules proviso – Scofield v. NLRB

(b) Forms of restraint and coercion

(1)) Violence or threats

(2) Mass picketing

(3) Illegal union security and employment practices

(4) Actions to compel strike participation

(5) Fines or other actions against non-members

(6) Restrictions on the right to resign membership

(7) Failure to honor revocation of check-off authorization, timing of revocation

(8) CWA v. Beck issues

(c) Duty of Fair Representati

(1) Owed to all in unit

(2) Breadth of union discretion in processing of grievances

(3) Discrimination based on race, age, sex, national origin, dissident activity, non-membership in union, or other unlawful consideration

(4) Gross negligence v. mere negligence

(4) Section 8 (a) (3) and (4)

(a) 8(a)(3) - employee union membership, activities, sympathies; 8(a)(4) – employee filing charges or giving testimony under the Act, or otherwise using Board processes

(b) Employer knowledge or mistaken belief (Burnup & Sims)

(c) Evidence of animus

b. Nexus to retaliation by imposition of adverse employment action

(a) Timing

(b) Pretext

(c) Motivation

(d) Defenses

(e) Disparate or comparable treatment – comparison with past practices

(f) Condonation

(g) Lack of explanation, false reasons, shifting reasons

(h) Circumstances –e.g., use of guard escort in layoff for lack of work, layoff in midday or midweek contrary to practice

(i) Employer response to unemployment claim, unemployment hearing record and decision

(j) Extent of correlation between alleged discriminatory action and union supporters

(k) Economic defenses – other cost-cutting measures, examination of books of account, etc.

b) Forms of discrimination – Refusal to consider and/or hire (FES,

(a) Toering Electric – GC 08-04), discharge, layoff, constructive discharge, transfer, suspension, warning, other discipline, wage, hour or benefit

(5) Section 8 (b) (2) - To cause or attempt to causes an employer to discriminate

(a) Forms of violations

b) Enforcement of unlawful union security requirements; Philadelphia

Sheraton; Beck

(c) Hiring halls

1. Exclusive or non-exclusive hall – cba, by-laws, referral rules and records.
2. Facially valid referral rules?
3. Objective considerations for preferences in referral classifications?
4. Alleged failure or refusal to refer based on referral of others
5. Alleged discipline (suspension or removal from referral list by Union resulting in loss of work opportunities through referral)

A. Unfair Labor Practices: The trainee will study and may receive assignments in the following areas.

1. Section 8(a)(2) – Domination of or assistance to labor organizations

(a) "Company union" or dominated employee committee system v. independent Section 2(5) labor organization

(b) Recognition of minority union - good faith belief of majority status is no defense

(c) Recognition of majority union in context of organizing by rival union – Bruckner Nursing Home, 262 NLRB 955

(d) Executing new contract with incumbent despite petition filed by rival union – RCA Del Caribe, 262 NLRB 963

(e) Continuing recognition of incumbent despite filing of decertification petition – Dresser Industries, 264 NLRB 1088

(f) Voluntary recognition – Dana Corp., 341 NLRB 1283

(g) Labor-management committees and "dealing" – Electromation

(h) Unlawful assistance v. permissible ministerial aid

(i) Union as party to employer domination - 8(b)(1)(A) acceptance of recognition by minority union and 8(b)(2) if cba of parties contains a union security provision

(j) Remedial orders – withdraw and withhold recognition until certified; cease giving effect to cba provided no requirement to reduce wages or benefits

2. Section 8(a)(5) and Section 8(b)(3)

(a) Nature and extent of duty to meet and bargain in good faith

(b) Direct dealing, bypassing the designated union or employer bargaining agent

(c) Individual employment contracts

(d) Unilateral Changes

(1) After contract expiration – duty to continue economic terms absent agreement, valid impasse or loss of majority status

(2) Mid-term modifications – past practice, management rights, waiver, zipper clauses

(e) Mid-term Section 8(d) violations – clear meaning of contract – consent required for change

(f) Request to bargain

(g) Indicia of bad faith – Totality of the circumstances

(1) Uncompromising attitude

(2) Dilatory and evasive tactics – failure and refusal to meet at reasonable times and places and for reasonable duration
(3) Refusal to make concessions
(4) Regressive bargaining
(5) Injecting new proposals as agreement becomes imminent
(6) Premature declaration of impasse
(7)) Failure to provide information needed for bargaining
(8) Unilateral Changes
(9) Lack of authority of bargaining representative
(10) Unilateral imposition of arbitrary ground rules
(11) Insistence to impasse on non-mandatory subject of bargaining
(12) Away from the table conduct

(h) Subject matter of collective bargaining
(1) Mandatory subjects of bargaining
(2) First National Maintenance – core entrepreneurial decision? driven by labor costs? Amenable to resolution through labor negotiations? partial closings
(3) Subcontracting, layoffs, removal of work from unit
(4) Non-mandatory bargaining subjects
(5) Illegal subjects

(i) Extension of certification year - Mar-Jac Poultry, 136 NLRB 785; expedited treatment of technical 8(a)(5) cases – 14 days from charge to complaint, etc. OM 04-25.

(i) Majority Status without an Election - Gissel bargaining orders – GC 99-08
(1) Appropriate unit
(2) Demand for recognition and request to bargain
(3) Majority status – compare cards, etc. with payroll and personnel records. Authenticate signatures.
(4) Hallmark violations? Fair election unlikely?
(5) Trading Port – 8(a)(1)(3) bargaining order

(j) Reneging on card check – Snow and Sons

(k) Withdrawal of recognition based on alleged loss of majority status – Levitz Furniture - GC 09-04

(l) Construction industry 8(a)(5) charges - 8(f) v. 9(a) contracts – OM 04-83.

(m) Duty to furnish information
(1) Bargaining information
(2)) Financial information – duty triggered by claim of inability to pay
(3) Contract enforcement – determine basis to file or prosecute grievance
(4) Presumptively relevant information
(5) Burden of establishing relevance of information regarding non-unit employees
(6) Liberal, discovery-type standard
(7) Delay
(8) Customer information, names and addresses of witnesses, witness statements, investigative reports, EEO information, striker replacement information

(9) Manner and form of information provided
(10) Confidentiality and privilege defenses; redaction
(11) Postal Service cases – OM 03-18

(n)) Economic Pressure During Bargaining
(1) Impasse – Implementation of terms consistent with final offer
(2) Lockouts
(3)) Strikes – economic strikes v. ulp strikes, permanent and temporary replacements

(o) Successorship
(1)) Alter ego v. Single employer
(2) Burns successors – substantial continuation of the business and the work force; majority status
(3) Demand for recognition and bargaining; continuing demand.
(4) Perfectly clear successors
(5)) Effect of hiatus
(6) Golden State successor – obligation to remedy ULPs of predecessor
(7) Discriminatory refusal to hire predecessor employees

3. Section 8(b)(1)(B) - Restraint or coercion of employers in selection of bargaining representatives

(a) Refusal to negotiate in presence of employer's authorized representative
(b) Other forms of restraint and coercion

APPRAISAL OF POTENTIAL BASED ON JOB ELEMENTS

Target Position: Labor Management Relations Examiner, GS-244-7

Name of Applicant				Region
Job Title	Rating of Candidate's Qualifications (Check Appropriate Box)			
Grade	Not Demonstrated	Acceptable	Above Average	Outstanding
1. Has ability to research information				
2. Communicates effectively in writing				
3. Gains acceptance of recommendations				
4. Makes clear and persuasive oral presentations				
5. Adaptability, especially ability to adjust to changes in policies and procedures				
6. Is timely in the completion of assignments				
7. Possesses good analytical ability				
8. Is industrious				
9. Is able to process a number and variety of assignments in an effective manner				

Additional Comments:

_____
Signature and Date (Rater)

_____
Signature and Date (RD)

Attachment C