

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 18-03

March 14, 2018

TO: All Division Heads, Regional Directors, Officers-In-Charge, and Resident Officers

FROM: Peter B. Robb, General Counsel

SUBJECT: Report on the Midwinter Meeting of the ABA Practice and Procedure Under the National Labor Relations Act Committee of the Labor and Employment Law Section

In early March, Deputy General Counsel John Kyle attended the Annual Midwinter meeting of the Practice and Procedure Under the National Labor Relations Act Committee (P&P Committee) of the American Bar Association (ABA) Labor and Employment Law Section together with several senior Agency managers. As in years past, a primary purpose of this meeting was to respond to and discuss Committee concerns and questions about Agency case handling processes. As prior General Counsels have done, I am sharing the P&P Committee members' concerns and the Agency's responses with you so that you can have the benefit of this important exchange. While we did not have time to respond to every question raised at the meeting, we have included all the questions posed to the Agency and the Agency's responses.

/s/

P.B.R.

I. **Questions Concerning Potential Reorganization of Field Operations and Changes to Case Handling Procedures**

The Committee understands that the General Counsel is considering a significant reorganization of the field operations, as was discussed during our January 19, 2018 meeting in Washington, DC with the Board and General Counsel. The Committee also understands that the General Counsel is considering a series of changes to case handling procedures, as described in Beth Tursell's Case Processing Memo to the regions, dated January 29, 2018, a copy of which was published by Bloomberg BNA. As to both organizational changes as well as case handling procedural changes:

A. What changes are under consideration?

The General Counsel is currently soliciting input from Agency HQ and Field staff for the purpose of formulating recommended changes to existing case processing procedures. At an appropriate future point, the General Counsel, again in deliberation with Agency staff, will examine and may propose, as appropriate, recommended changes to the structure of the Field offices. No decisions have been made at this time.

B. What are the purposes of these changes?

The purpose of these changes would be to bring the Agency in line with OMB Directive 17-22 and to meet the FY 18 and 19 budget. We are hoping that any change that may be approved will lead to a more streamlined operational structure in FY 2019. The results of such changes may be to generate benefits in several potential areas, including perhaps: improvement in the efficiency, timeliness, quality of services and organizational decision making, elimination of unnecessary levels of management and administrative support, maximization of employee performance, reduction in travel and other case processing expenses.

C. What is the process you intend to follow to solicit input from stakeholders, including but not limited to members of this Committee who have historically been given an opportunity to share thoughts and experience on such matters?

Changes related to the structure of the Field will be open for public comment prior to implementation, as appropriate.

D. What is the anticipated timetable for implementing these changes?

Changes to case processing will be made once all comments from Agency employees have been received reviewed, and evaluated. It is hoped that any changes that might be proposed to the structure of Field offices would be effective by October 1, 2018, but the process in its incipient stages and no firm timetable has been established.

E. What is the anticipated process for implementing these changes?

Until decisions, if any, have been made regarding changes, it is impossible to determine the process for implementing any such changes.

II. Unfair Labor Practice Issues.

A. Fiscal Year 2017 Statistics.

1. Please provide the number of ULP charges filed, the settlement rate, the number of merit dismissals, the number of complaints issued, the litigation win rate and the percentage of ULP charges filed in which merit was found.

Number of Charges Filed: 19,280

Settlement Rate: 95%

Number of Merit Dismissals: 300

Number of Complaints Issued: 1,263

Litigation Win Rate: 85%

Merit Rate: 38.6%

2. Please provide the number of Motions for Summary Judgment (MSJs) that were filed as a result of an alleged default in a settlement agreement that included a default provision. What were the results of such MSJs?

The Board does not keep specific statistics on the number of cases in which the default language is triggered. A document search disclosed that in FY 2017, there were no cases in which an MSJ was filed and granted as a result of an alleged default in a settlement including a default clause.

3. Please provide statistics on pre-arbitral and post-arbitral deferrals, including the number of cases deferred and the number of cases not deferred, and the length of time the cases have been pending. Does this represent a change from prior years?

There were 1,181 cases in deferral status at the end of FY 2016, which is 59 (5%) more than last year. 570 cases were deferred during FY 2017. The median length of time cases have been pending is 374 days. 701 cases have been pending for over one year. The Agency does not keep statistics on the number of pre v. post arbitral deferrals.

4. Please provide the number of pre-trial subpoenas duces tecum issued by the General Counsel within three weeks prior to the start of a trial, as well as the total number of pre-trial subpoenas duces tecum issued.

Our records indicate that 536 pre-trial subpoenas duces tecum issued in in FY 2017. Unfortunately, we cannot determine how many of these subpoenas were filed within three weeks of trial.

5. Please provide the number of appeals received by the Office of Appeals; the number and percentage of cases sustained and overturned; the median number of days to process all such cases and those that were sustained; and the average number of days an appeal was pending.
 - The number of appeals received by the Office of Appeals in Fiscal year 2017: 1425

- The number of appeals processed by the Office of Appeals in Fiscal year 2017: 1489
 - The number of cases sustained: 19
 - The percentage of cases sustained: 1.28%
 - The median number of days to process cases: 35
 - The median days to process sustained cases: 79
 - The average number of days an appeal was pending is not specifically computed but it is a tad over 35 when you consider the 19 sustained case took more than 35 days.
6. Where does the Board plan to publish statistics? Which statistics can be found on the Board's website? Which can be found in the Agency's annual Performance and Accountability Report (PAR)? Where can practitioners access the PAR?

The Board publishes statistics on its public website, www.nlr.gov. These statistics can be found in several places on the Board's website: News & Outreach / [Graphs & Data](#) and Reports & Guidance / [Reports](#)

The Agency's statistics available on the Board's website include:

Graphs & Tables

- [Charges and Complaints](#) – statistics regarding the disposition of unfair labor practice charges in FY 2017, and statistics regarding charges filed/settlements/complaints issued from FY 2008 – FY 2017
- [Petitions and Elections](#) – statistics regarding Representation Petitions (RC), Decertification Petitions (RD), Employer-Filed Petitions (RM), Median Days from Petition to Election, Median Size of Bargaining Units in Elections, Disposition of Election Petitions Closed in FY 2017, Number of Petitions Filed in FY 2017, Number of Elections Held in FY 2017, Percentage of Elections Conducted in 56 Days in FY 2017, Percentage of Elections Conducted Pursuant to Election Agreements in FY 2017
- [Decisions](#) – statistics regarding the number of Board decisions issued in contested cases in FY 2008 – FY 2017
- [Litigation](#) – statistics regarding the agency's 10j Activity in FY 2017, Litigation Injunction Activity FY 1976 – FY 2017 and Appellate Court Decisions 1974 - 2017
- [Remedies](#) – statistics regarding Reinstatement Offers and Monetary Remedies for FY 2008 – FY 2017

Data

- [Recent Filings](#) – listings of all recently filed Charges and Petitions
- [Tally of Ballots](#) – listing of all recent Tally of Ballots from representation elections

The Performance and Accountability Report (PAR) can be found on the Board's website under Reports & Guidance / [Performance and Accountability Reports \(PAR\)](#). This annual report includes performance measures associated with the Agency's mission-related goals.

7. What is the average length of time a case remains in the Division of Advice?

Advice does not keep statistics regarding average pending time in Advice but the median case-processing time was 19 days.

B. Section 10(j) Injunctions.

1. Please provide statistics concerning the number of 10(j) injunctions requested by Region, the number submitted to the Board, the number authorized by the Board and the number granted by the courts in FY 2017.

Board Authorizations

- **113** 10(j) requests received from Regional offices (we do not keep track of the number of each Region's requests for an injunction)
- The GC sent **38** cases to the Board requesting authorization for 10(j) proceedings
- The Board authorized **37** cases during FY 2017

Success Rate

- Of the **37** cases authorized by the Board:
 - **9** cases were pending resolution at the end of the fiscal year
 - **17** were litigated to conclusion by the end of the fiscal year:
 - **10** wins (**8** full/**2** partial)
 - **7** losses
 - **11** cases resulted in a settlement/adjustment

2. Please provide statistics regarding the average time between the filing of the charge and when a given Region: submits a request to Advice; when the Region makes a determination to issue a complaint; when the complaint is filed; when the case is filed in federal court; and the date of any injunction determination.

	No. Days from Charge to Complaint	No Days from Charge to ILB Submission	No. Days from Charge to Board Authorization	No Days from Charge to District Ct Petition	No. Days from Charge to District Ct Determination
Average	124 days	186 days	6 days	294 days	277 days
Median	85 days	120 days	162 days	210 days	254 days

Note: the number of days from Charge to District Court Determination is fewer than the number of days from Charge to District Court Petition because several cases were settled after the District Court Petition was filed.

C. Investigative Subpoenas.

1. Please provide FY 2017 statistics regarding the number of investigative subpoenas to obtain testimony and documents issued as a percentage of total cases that have gone to decision, as well as the frequency of petitions to revoke and success of such petitions.

During FY 2017, Regions issued 1,829 subpoenas in 666 situations, divided between 1,185 subpoenas ad testificandum and 644 subpoenas duces tecum. This total constitutes approximately 9.5 percent of the 19,280 ULP charges filed during the year.¹

Please see the following table which provides a Region-by-Region breakdown of the number of (1) situations in which subpoenas were issued, (2) subpoenas ad testificandum, (3) subpoenas duces tecum, (4) total subpoenas, (5) situations in which an investigative subpoena was issued and there was a merit determination, (6) situations in which an investigative subpoena was issued and there was a non-merit determination, (7) situations in which an investigative subpoena was issued and there was neither a merit nor a non-merit determination, (8) number of petitions to revoke an individual investigative subpoena, and (9) number of situations in which the Region sought enforcement of an investigative subpoena in District Court. The Agency does not track the other information sought.

Region	# Cases	AT	DT	Total	Merit	Non-Merit	Other	Petition to Revoke	Enforced
1/34	31	33	37	67	12	6	13	7	0
2	11	13	10	23	7	2	2	3	0
3	3	2	2	4	3	0	0	1	0
4	9	13	8	21	7	1	1	3	0
5	35	51	22	73	15	10	10	4	2
6	23	19	20	39	13	7	3	5	1
7	20	32	10	42	6	10	4	3	0
8	17	38	12	50	10	2	5	12	5
9	32	75	24	99	14	12	6	4	1
10/11	21	78	14	92	12	7	2	1	0
12/24	83	40	92	132	40	29	14	20	0
13	18	46	24	70	10	6	2	1	0
14/17	10	38	8	46	9	0	1	0	0
15/26	82	158	66	224	27	27	28	16	1
16	38	57	13	70	18	19	1	0	1
18/30	37	122	34	156	13	12	12	12	0
19/36	19	13	18	31	7	6	6	6	3
20	8	30	5	34	4	2	2	2	0
21	24	18	29	37	8	12	4	3	0

¹ This represents a significant increase over FY 2016. However, in FY 2017, a number of Regions issued multiple subpoenas ad testificandum in individual cases which have skewed the statistics. For example, in the three Regions that issued the greatest number of subpoenas ad testificandum (Regions 12/24, 18/30, and 22), 183 of the subpoenas, or 40% of the total subpoenas ad testificandum issued in those Regions, related to just four situations.

22	24	178	35	228	10	6	8	7	0
25/33	2	0	4	4	0	0	2	0	0
27	3	7	0	7	1	2	0	0	0
28	37	67	33	99	23	7	7	4	4
29	29	17	67	84	13	9	7	52	28
31	39	21	50	71	14	15	10	12	0
32	11	19	7	26	4	6	1	4	0
Total	666	1185	644	1829	300	215	151	182	46

2. What guidance, if any, is being provided to the Regions concerning the issuance of investigative subpoenas? What changes, if any, are anticipated to be made to such guidance?

Pursuant to Memorandum GC 00-02, Regions have authority to issue investigative subpoenas, subject to limited clearance and record-keeping requirements. Directors are authorized to issue subpoenas ad testificandum and duces tecum to charged parties and third-party witnesses “whenever the evidence would materially aid in the determination of whether a charge allegation has merit and whenever such evidence cannot be obtained by reasonable voluntary means.” The only limitation on this discretion is when the Region seeks to issue the subpoena after a complaint has issued or when a serious claim of privilege is likely to be raised. See also Casehandling Manual Sec. 11770 et seq. The guidance provided by GC 00-02 and Casehandling Manual Sec. 11770 et seq is currently under review.

D. Access to Information.

1. What is the status of the Agency’s efforts concerning website enhancements to enable counsel to obtain charges and other filings via the website or efforts to publish redacted settlement agreements and other redacted pre-hearing documents on the website?

The Agency made significant website improvements including electronic filing of Charges and Petition, comprehensive Case Docket page, searchable and downloadable lists of recent Charges and Petitions, and Tally of Ballots. The Agency is evaluating FY 2018 and FY 2019 budgets to consider what enhancements can be implemented in near future. Implementing redaction process for pre-hearing documents and settlement agreements is not on the priority list.

2. What is the status of the Agency’s efforts to create a PACER-type searchable platform or function? Will the Agency create a function, similar to federal court filings, for electronic service on all parties of electronically filed documents?

In addition to the Agency’s effort to expand Website enhancements as noted above, we are exploring ways to expand our Enterprise Search capabilities to encompass more documents and provide greater search ability.

3. Is the Agency able to electronically post a complete docket of all pending unfair labor practice trials nationwide? If not, why not? If so, what would it take to actually post this information?

The Agency is evaluating FY 2018 and FY 2019 budgets to consider what enhancements can be implemented in near future.

4. What instructions been provided to the Regions and staff regarding updates to the NxGen system over the past year? Please detail any significant changes delineated in OM 17-06.

OM 17-13 (January 1, 31, 2017) made significant changes to the Regions NxGen Data Integrity protocols designed to increase the accuracy and reliability of our data.

5. Concerning the electronic filing system:

- a. Is there a mechanism for amending or withdrawing charges? If not, is the Agency considering such a mechanism?

There is no electronic filing system for amending or withdrawing charges at this time. The Agency will consider this mechanism in the future.

- b. Is the public at large able to view the charge? If so, is it viewable immediately upon filing? If not, why not? What is the Agency's current thinking or plan regarding public access to charges?

Due to Personally Identifiable Information (PII) on a Charge document, it is not immediately viewable upon filing. The Charge document will be available on the website after redaction.

- c. How can parties e-file a pdf charge?

Parties can E-File an already completed and signed Charge or Petition PDF form on the Agency website – [E-File Charge / Petition](#)

6. What is the current status of *Worker.gov* concerning issues related to the National Labor Relations Act?

<https://www.worker.gov> was a joint effort by the U.S. Departments of Labor and Justice, the Equal Employment Opportunity Commission and the National Labor Relations Board. This effort took place in 2014-2016. There is no active effort on this front at this time.

E. GC Memo 18-02 – Mandatory Submissions to Advice.

GC Memo 18-02 instructs Regions to submit to Advice cases that involve “significant legal issues,” including, *inter alia*, any cases “over the last eight years that overruled precedent and involved one or more dissents.” For each of the following categories of cases, please provide statistics regarding how many of each category of such cases

have been submitted to Advice to date, and describe any trends and the issues presented in these types of cases.

1. Concerted activity for mutual aid and protection (e.g. *Fresh & Easy Neighborhood Market*, 361 NLRB No. 12 (2014) and *Pier Sixty LLC*, 362 NLRB No. 59 (2015)).

Three cases

2. Common employer handbook rules cases, including those cases falling under the three categories set forward in *The Boeing Company*, 365 NLRB No. 154 (2017).

19 cases

3. Employee use of employer email systems (*Purple Communications*, 361 NLRB No. 126 (2014)).

1 case

4. Work stoppages found protected under the *Quietflex* standard (e.g. *Los Angeles Airport Hilton Hotel & Towers*, 360 NLRB No. 128 (2014); *Nellis Cab Company*, 362 NLRB No. 185 (2015); *Wal-Mart Stores, Inc.*, 364 NLRB No. 118 (2016).

None

5. Off-duty access to property (e.g. *Capital Medical Center*, 364 NLRB No. 69 (2016) and *Piedmont Gardens*, 360 NLRB No. 100 (2014)).

1 case

6. Conflicts with other statutory requirements (e.g. *Cooper Tire & Rubber Company*, 363 NLRB No. 194 and *Pier Sixty, LLC*, 362 NLRB No. 59 (2015)).

1 case

7. Weingarten (e.g. *Fry's Food Stores*, 361 NLRB No. 140 (2015), *Howard Industries*, 362 NLRB No. 35 (2015) and *Manhattan Beer Distributors*, 362 NLRB No. 192 (2015) (drug testing context)).

1 case

8. Disparate treatment of represented employees during contract negotiations (e.g. *Arc Bridges, Inc.*, 362 NLRB No. 56 (2015)).

1 case

9. Successorship (e.g. *GVS Properties*, 362 NLRB No. 194 (2015), *Creative Vision Resources*, 364 NLRB No. 91 (2016) and *Nexco Solutions*, 364 NLRB No. 44 (2016)).

1 case

10. Duty to bargain before imposing discretionary discipline where parties have not executed initial collective bargaining agreement (*Total Security Management*, 364 NLRB No. 106 (2016).

9 cases

11. Duty to provide witness statements to union (*Piedmont Gardens*, 362 NLRB No. 139 (2015).

None

12. Dues check-off (*Lincoln Lutheran of Racine*, 362 NLRB No. 188 (2015).

None

F. Time Targets.

1. What are the current time frames for case dispositions (Category I, II and III)?

The General Counsel's Impact Analysis program provides the analytical framework for classifying cases in accordance with their impact on the public and significance to the achievement of the Agency's mission. Pursuant to this program, there have been no changes to the time frames for ULP case dispositions since modifications were implemented on October 1, 2014. The current time frames for case dispositions are as follows:

Category III	7 weeks
Category II	11 weeks
Category I	14 weeks

a) What happens when these time frames are not met?

Upon the filing of a charge, the Regional Director or Assistant Regional Director will assign the case an Impact Analysis category. Any case still pending disposition on the last day of the month in which the time target is exceeded is reported as "overage". Cases that cannot be processed within the time targets for reasons that are outside the control of the Regional office are excused, and therefore, not considered overage. The time targets themselves are fixed; however, depending on the given situation, a case may be excused. The Division of Operations-Management determines whether any given case should be excused and conducts a monthly review of overage cases to determine whether any should be excused. Acceptable reasons for cases going overage are discussed in response to Question F. 1. (b).

Overage statistics for ULP cases are kept monthly, but are measured on an annual basis. Under the current standards, Regions have an overage allowance of up to 8% in Category III cases and up to 10% in Category II and Category I cases. The Division of Operations-Management will discuss overage cases with the Region, as appropriate.

- b) What criteria does the Division of Operations-Management use to determine whether a case should be excused from these time frames?

A case is not excused from the time frames entirely, but may be excused for a particular month that it is overage. Where a case cannot be disposed of within the time targets for reasons outside of the control of the Regional office, it is excused. There are a variety of reasons a case might not meet the Impact Analysis time targets, but which would be outside the Region's control. These reasons underscore that, in addressing whether a case is excused, the Division of Operations-Management gives serious consideration as to what is outside of the Region's control. For example, a new charge alleging violations that have occurred after the initial charge was filed, and where both are so intertwined that a common analysis and determination is required, represents one situation in which failure to meet the time target for the first case is deemed outside of the Region's control. Similarly, where the charging party raises additional allegations that pre-date the subject charge, an amended charge adding the earlier allegation would excuse the charge from failing to meet the time target. The issuance of an investigative subpoena to obtain testimony or documents necessary to enable the Region to make a decision excuses the case from being considered overage for a reasonable period — usually one month. In situations where there has been a Regional determination and serious settlement negotiations are underway, the Region is excused from issuing a complaint for one month. In certain circumstances, charges held in abeyance pending the outcome of related proceedings in other cases may also be excused from meeting the time target.

2. In FY 2017, did the ALJs meet the overall goal of issuing at least 50% of all decisions within 90 days of the close of the hearing and within 45 days of receipt of briefs or other submissions?

In FY 2017, judges issued half of their decisions within 111 days from close of hearing and within 61 days from receipt of briefs or submissions.

3. In FY 2017, what percentage of cases went “over age”? What was the breakdown for Category I, II and III cases?

There are few cases in Regional offices that exceed the time targets without excuse. In FY 17, 1.44% of Category I, 2.13% of Category II, and 3.65% of Category III cases were overage and unexcused.

4. What events will toll or suspend the time targets?

As explained above, the time targets are fixed and are not tolled or suspended per se. Rather, a case that does not meet the relevant time target and goes overage may be excused for a particular month.

G. General Case Processing Issues.

1. Please provide a list of the pending cases involving *D.R. Horton/Murphy Oil* issues, the status of such cases, and the Regions or appellate courts in which they are pending.

The Agency does not have a specific system in place that automatically and accurately tracks this information. However, the attached is a list of cases extracted from different parts of the Agency's electronic case-handling system. Each case is open, and the list identifies those which are before appellate courts, and the court before which the case is pending.

2. Please provide a list of any cases in which the General Counsel has authorized the Regions to argue for reconsideration of *Spruce Up* and the status of such cases.

The Agency does not maintain such a list. However, in response to a FOIA request in 2015, the FOIA Branch obtained certain information relating to a number of cases in which the General Counsel authorized Regions to argue for reconsideration of the Board's decision in *Spruce Up* at that time. Those cases, all of which are now closed, are identified below:

- Novel Service Group, Inc., Cases 02-CA-113834 and 02-CA-118386
 - American Eagle Protective Services Corporation and Paragon Systems, Inc., Joint Employers, Case 05-CA-126739
 - Paragon Systems, Inc., Case 05-CA-127523
 - Adams & Associates, Inc. and McConnell, Jones, Lanier & Murphy, LLP, Joint Employers, Cases 20-CA-130613 and 20-CA-138046.
 - MV Transportation, Case 02-CA-113834
 - G4S Government Solutions, Inc., Case 07-CA-122185
 - American Carton, Inc., Case 10-CA-130244
 - Montecito Heights Healthcare & Wellness Centre, LP, Case 31-CA-122327
 - Clean-Tech Services, Inc., Case 04-CA-124224
 - MVM, Inc., Case 28-CA-120679
 - MVM, Inc., Case 27-CA-124918
 - Lexington Center for Nursing and Rehabilitation, Case 01-CA-127836
 - Paragon Systems, Inc., Case 08-CA-125740
3. In the context of settlements and non-admissions clauses, what is a "repeat offender" or "recidivist" employer? Is a formal or informal designation made? If so, who makes such determinations? What is the standard? Has the standard changed? Is there a "sunset" on such designation? Is this designation solely regional in nature or national? To the extent that Regional Directors have discretion in this area, what guidance, if any, is provided to them?

The term recidivist is commonly used in Board decisions where consideration is given to accepting any given settlement agreement. Whether recidivist behavior warrants rejection of a settlement is fact specific, including consideration of the seriousness of prior violations, length of time between violations and number of facilities involved. See *Service Merchandise Co.*, 299 NLRB 1132 (1990). Repeat offenders, used more broadly, include the universe of charged parties who have been found to have violated the Act by a Regional office in the

recent past. Regional Directors have full discretion to make such determinations. Non-admission clauses are not routinely incorporated into settlement agreements regardless of whether the charged party is a repeat violator. See ULP Case Handling Manual, Section 10130.8. In situations where a charged party has been found by the Region to have violated the Act in the past, Regions typically will progressively increase the formality of agreements and may decline to agree to inclusion of a non-admissions clause, or decline to agree to an informal settlement, instead insisting on a formal stipulation. Whether to agree to any given settlement or not is left to the discretion of the Regional Director. As in prior years, the progression is not mandated, and there may be compelling circumstances where a Region may insist on a formal settlement even the absence of prior merit findings or, conversely, may approve an informal settlement notwithstanding prior merit findings.

4. For the EAJA letters (evidence letters) that Charged Parties receive:

- a) What expectations, if any, are given to Regions concerning the specificity provided to charged parties in EAJA letters? What should a charged party do if the EAJA letter lacks specificity?

ULP Casehandling Manual (CHM) Section 10054.4 provides the following guidance on requests for evidence from charged parties:

When communicating with the appropriate charged party representative to obtain evidence, Board agents should relate the basic contentions that have been advanced with regard to all violations alleged. For example, when the charging party's evidence points to a prima facie 8(a)(1) violation involving threats of discharge, the Board agent normally would disclose such information as the general nature of the conduct (e.g., threat of discharge), the general locale, the identity of the supervisor involved, and the date of the conduct. Although such disclosure may be a decisive factor resulting in the charged party's full cooperation, the degree of disclosure should be commensurate with the level of cooperation anticipated from the charged party. Since the identity of a witness should be protected, the Board agent should, whenever possible, avoid providing details that would likely disclose the identity of the witness.

If the Board agent's request for evidence letter does not provide sufficient specificity for the charged party to respond to an allegation, then the charged party should alert the Board agent as soon as possible, and not wait to do so until the deadline for presentation of evidence. The charged party should not hesitate to contact the Board agent by phone to discuss the matter. What constitutes "sufficient specificity" to respond depends on the factual circumstances and may be difficult to resolve in the abstract without a discussion.

- b) When a letter has issued and the Charging Party subsequently filed an amended Charge, what should the Charged Party respond to and are the deadlines also modified?

There is no general policy on how new allegations or amended charges affect requests for evidence or their deadlines. Sometimes, where the new allegations of the amended charge were uncovered during the Region's receipt

of the charging party's evidence on the original charge, the allegations were already included among those described in the original request for evidence. Other times, the amended charge leads to a supplemental request for evidence with the same or different deadline to respond. If the charged party has questions about how to respond to an amended charge, or the deadline for responding to a request for evidence, the charged party should contact the Board agent.

- c) After the initial EAJA letters are issued, is there any instruction on investigation follow-up requests, including whether agents should vet such requests with a supervisor before sending or other efforts to limit the number of requests?

There is no general policy on how Board agents should make follow-up requests for evidence or how such follow-up requests are reviewed by Board agents' supervisors before issuance.

Follow-up requests may result from defenses or factual issues raised by the charged party's response to the original request for evidence. ULP CHM Section 10052.5 states that the Board agent should contact the charged party early in the investigation in order to, among other things, describe the charge allegations and seek sufficient details regarding the charged party's position to enable the Board agent to examine the charging party regarding this position. Sharing such information at this early stage of the investigation process makes it less likely that charged party responses to requests for evidence will raise factual or legal issues that the Region did not anticipate and that lead to follow-up requests for evidence.

Follow-up requests may also result from the charged party's failure to provide all documentary evidence requested in the original request for evidence, or failure to provide full cooperation through the submission of Board affidavits from witnesses under the charged party's control. The Agency's policy of seeking full and complete cooperation from charged parties is based primarily not on concern about possible future EAJA litigation, but rather on the objective of ascertaining all facts needed to arrive at a proper disposition of the case. See ULP CHM Sections 10050, 10054 and 10054.5. Cooperation by charged parties in investigations is critical for the efficient and appropriate resolution of unfair labor practice charges and the Agency's achievement of its statutory mission.

5. What advice, if any, is provided to the Regions concerning consulting with charging parties before settlement is reached with a charged party? Do such discussions occur before or after discussion with the charged party?

The General Counsel understands the importance of the charging party's position in any settlement discussion. While the ULP Case Handling Manual sections on settlement have not changed since this question was answered in 2015, Regions have subsequently been strongly encouraged to follow best practices of consulting with the charging party prior to making an initial settlement proposal to the charged party and, on a case by case basis, to use their discretion in determining whether to submit the initial settlement proposal to both

parties concurrently. In addition, the General Counsel has imparted to Regions the importance of regularly considering the charging party's position when assessing any counterproposals made by the charged party, and to consider involving charging party in that process, including to test factual assertions made by the charged party making the counterproposal.

6. Under *Total Security Management*, 364 NLRB No. 106 (2016), concerning the duty to bargain before imposing discretionary discipline where parties have not executed initial collective bargaining agreement, should the Regions process an individual charge if the union takes the position that there is no violation? What remedies is the General Counsel currently directing regions to seek under *Total Security Management*?

Regions should process individually-filed Total Security charges regardless of the union's position as to whether a violation has occurred. In *Total Security*, the Board held that discretionary discipline is a mandatory subject of bargaining and that employers may not impose certain types of discipline, such as suspension, demotion and discharge unilaterally. In addition, there may be other kinds of Total Security allegations, for example, where an employer furnishes some notice and opportunity to bargain before imposing discipline but refuses to bargain to agreement or impasse after the discipline is imposed. While not typical, Regional offices occasionally receive individually-filed Section 8(a)(5) charges, and without passing on whether any given charge has merit, it is well established that there are no procedural impediments to processing individually-filed Section 8(a)(5) charges.

With regard to remedies, again the remedy sought may depend on the nature of the violation committed. However, generally speaking the Board concluded that a standard remedy for an unlawful unilateral change should be granted in these types of cases. As such, the Agency looks for a remedy for an unlawful unilateral change in *Total Security* cases that includes a cease-and-desist order, a requirement for respondents to bargain with the employees' collective-bargaining representative before changing their terms and conditions of employment by imposing discretionary discipline, a notice posting requirement, and a make-whole order as well that includes reinstatement and backpay (if respondent is not able to prove that the discipline was "for cause").

7. Is a party required to submit a request under the Freedom of Information Act to receive a copy of an opposing party's appeal protesting a regional director's refusal to issue complaint? If so, what is the rationale behind such policy?

In order to receive a copy of the appeal we require a FOIA request. This permits our FOIA office to redact the appeal to protect confidentiality. Only the appeal is provided not the attachments and there is never a cost for providing the appeal. A FOIA request can be made electronically through the website directly with the FOIA office. (On www.nlr.gov click the news and outreach banner at top and drop down to FOIA). Once a FOIA request is made we are notified and suspend the processing of the appeal. We have worked closely with our FOIA office to coordinate and streamline the process. This ensures that the appeal will not be considered before the Respondent has the opportunity to respond to the appeal. Once FOIA releases the appeal, we are again notified and our office

sends out a letter to the requesting party giving them two weeks to respond to the appeal should they elect to do so.

8. Concerning non-Board settlements, what guidance, if any, is given to Regions concerning how much information they are required to obtain from the parties? Is a summary of the agreement acceptable?

Section 10140 of the Board's ULP Casehandling Manual and OM Memorandum 07-27 provide guidance to the Regions on how to handle non-Board adjustments. In order to permit the Regional Office to exercise proper review pursuant to the policy set forth in *Independent Stave Co.*, 278 NLRB 740 (1987) (to enforce public interests, not private rights, and to reject private settlement that are repugnant to the Act or Board policy), the Board agent should ordinarily obtain the terms of the non-Board adjustment in writing. The Board agent should also obtain the position of any alleged discriminatees and any other individuals or entities who may be adversely affected by approval of the request for withdrawal of the charge.

9. Several Regions report that staff shortages are requiring that affidavits be conducted more frequently by telephone. What guidance, if any, is provided to the Regions about telephone affidavits? Are in-person affidavits still preferred? Under what circumstances are telephone affidavits preferred/allowed?

Guidance on the circumstances in which taking witness affidavits by phone is provided in Section 10060.10 of the Casehandling Manual and in casehandling memoranda, [OM-99-75](#) and the [attachment](#) to [OM 06-54](#). Historically, the use of telephone affidavits has increased when the Agency has responded to tightened budgets by limiting Board agent travel. Staffing shortages should not affect the manner in which affidavits are taken. Current guidance distinguishes between Impact Analysis Category I and most Category II cases, where the issues are generally more straightforward and gathering testimonial evidence by phone is less likely to impact the thoroughness of the investigation, and Category III cases where the opportunity to probe witnesses and cover relevant evidence through face-to-face examination may significantly enhance the quality of the investigation. In all cases, Directors may exercise discretion in evaluating whether special circumstances warrant taking witness statements in person. For example if the witness's health means that traveling to a regional office will be difficult, a Director may authorize an agent to take evidence by phone, even where the witness lives within the 120 mile radius in which institutional charging parties are generally asked to present witnesses at the Regional office. If substantial travel by a Board agent would be necessary to obtain corroborating or supplemental testimony, there is a high probability that the case has no merit, or there are no material issues of fact, a Regional Director may permit testimony to be taken by phone regardless of the nature of the allegations.

When testimony is taken by phone, the Board agent interviews the witness, prepares a written affidavit and sends it to the witness, usually by email. The witness is asked to read the affidavit carefully, make necessary corrections, initial all changes, and then contacts the agent by phone. The agent administers the oath by phone before the witness signs the statement. The agent may also

administer the oath during the interview process. Upon receipt of the signed statement, the agent signs the affidavit under a jurat that indicates the testimony was taken by telephone.

In anticipation that future budgets may impact the Agency's travel budget, we are evaluating whether the presumption in favor of face-to-face affidavits in Category III cases should be modified, even in the more complex Category III cases. Greater reliance on technology including electronic case files, e-filing, and videoconferencing have helped the Agency to be more efficient in evening out caseloads by moving cases to Regions that have agents available to conduct timely investigations by phone. The success of our interregional assistance program under which a charge filed in one region may be assigned to another suggests taking witness statements by phone does not need to affect quality. We have observed that witnesses and Board agents are increasingly comfortable communicating in an electronic environment and most agents are skilled at developing rapport with witnesses in phone conversations.

10. What is the policy, if any, governing Regional Office personnel working remotely? Does the Board anticipate continuing its policy? Has the Board examined whether and to what extent such telecommuting may be adversely impacting case processing?

The Agency has a teleworking policy wherein Field employees who have portable work and meet certain other eligibility criteria may telework so long as doing so does not interfere with operating needs. Employee performance standards apply regardless of work location and employees are expected to accommodate to the needs of parties in arranging witness interviews. Employees may elect to telework on a set schedule of up to 3 days per 2-week pay period and no more than 2 telework days in one week. Employees may also be permitted to telework on an ad hoc basis in order to complete a project. Employees with temporary medical issues that limit mobility or ability to commute may telework with adequate medical certification supporting the request. In addition, telework is authorized in response to a weather emergency, building closure, major transportation interruption, or pandemic.

Employees may be called into the office or their telework may be canceled based on the operating needs of the office. Teleworking privileges may be withdrawn if there is a decline in performance related to the telework arrangement. Employee performance standards apply regardless of work location and employees are expected to accommodate to the needs of parties in arranging witness interviews. CHM Section 10054.3(a) specifically provides that Board agents should schedule interviews with cooperative witnesses at a "mutually convenient time and place." Regions have not reported that the telework policy has had an adverse impact on case processing or the performance of individual agents.

III. Remedies.

- A. GC Memo 18-02 notes that Regions have been instructed to submit to Advice issues concerning remedies, such as recovering search for work and interim

employment expenses (*King Soopers*, 364 NLRB No. 93 (2016)) and requiring employers to remit unlawfully withheld dues without being able to recoup them from employees (*Alamo Rent-a-Car*, 362 NLRB No. 135 (2015)). Does the General Counsel's office plan to continue to seek such remedies? Will any guidance be provided for the Regions and practitioners on these issues?

At this time, the General Counsel has not taken a different position on *King Soopers* and *Alamo Rent-a-Car*. The General Counsel may elect to provide alternative analysis.

- B. GC Memo 18-02 rescinds GC Memo 11-04 on Default Language. What current guidance, if any, is given to Regions regarding default language? If none, is any planned?

There has not been any additional guidance provided to the Regions, although we are reviewing the Agency's Unfair Labor Practice Manual to ascertain if changes are necessary to comport with GC Memo 18-02. Regional Directors have the discretion to seek the inclusion of default language, particularly with recidivists.

- C. What guidance have the Regions been given regarding discretion to include non-admissions clauses in settlement agreements? Is any further guidance planned at this time?

The Regional Directors have discretion in considering non-admission clauses in settlement agreements. There has not been any additional guidance provided to the Regions, though we consult with individual Regions over these provisions from time to time.

IV. Representation Cases.

A. Statistics.

1. Please provide statistics concerning the number of RC and RD petitions filed in FY 2017, the number of elections conducted in each category, and the union win rate.

Case Type	No. of Elections	Percent Won by Union	Total Employees Eligible to Vote	Total Valid Votes for	Total Valid Votes Against
Total Elections	1404	66.00%	94,575	44,139	32,422
RC	1205	71.00%	81,646	38,152	27,572
RD	173	32.00%	12,345	5,768	4,587
RM	26	30.00%	584	219	263

2. Please provide statistics concerning the median number of days from petition to election, with a comparison to the number of median days in prior years.

	Median Number of days	with Election Agreement	with Contested Cases
FY08	38	36	64
FY09	37	37	67
FY10	38	38	66
FY11	38	37	64.5
FY12	38	37	66
FY13	38	37	59
FY14	38	37	59
FY15	33	32	55.5
FY16	23	23	35
FY17	23	22	36

3. Please provide statistics concerning the average unit size sought in RC petitions and the average unit size determined to be appropriate. How do these statistics compare to the years before *Specialty Healthcare*?

	Median Size
FY07	24
FY08	26
FY09	24
FY10	27
FY11	26
FY12	28
FY13	24
FY14	26
FY15	25
FY16	26
FY17	24

The median unit size has not changed significantly.

4. Please provide statistics on the number of requests for stays in election cases and the number of cases in which the Board granted review?

The Board reached decisions on 48 Requests for Review in pre-election cases. Of those, 8 were granted, 36 were denied, two were withdrawn, two were moot, and one was rejected as untimely. We do keep separate data regarding requests for stays in election cases.

5. Please provide statistics concerning the use of mixed, mail, and manual ballots. Have mail ballot elections increased? Has any guidance been provided regarding return time for mail ballots? Is consideration given to posting mixed, mail, or manual ballots statistics on the Board's website?

Here is a breakdown of use of manual, mail, and mixed ballot elections for the past five years.

	Manual	Mail	Mixed	Total Elections
FY 2017	1,311	189	22	1,522
FY 2016	1,417	216	27	1,660
FY 2015	1,639	212	21	1,872
FY 2014	1,631	193	16	1,840
FY 2013	1,664	183	16	1,863
FY 2012	1,577	163	17	1,757

Section 11336.2(d) of the NLRB Casehandling Manual, Part 2, Representation Proceedings (January 2017), provides:

The deadline for return of the ballots depends on the circumstances. Usually two weeks should be allowed from the date of mailing to date of return. Slightly more time may be needed around holiday periods.

The number of mixed, mail, or manual ballot elections is not currently posted the Board's website. We will consider adding this field to the Agency's Election Report data.

B. Election Rules.

1. For FY 2017, what is the median time from:

- a. Filing to election overall?

23 days

- b. Filing to election in Stipulated Agreement cases?

22 days

- c. Filing to election in DDE cases?

36 days

2. What is the total number and percentage of stipulated elections in FY 2017? How does that compare to FY 2016 and FY 2015?

	FY 2017	FY 2016	FY 2015
No. Stipulated Elections	1448	1506	1679
Percentage of Stipulated Elections	91.7%	91.5%	91.7%

- a. What is the total number and percentage of withdrawn petitions in FY 2017? How do those compare to FY 2016 and FY 2015?

	FY 2017	FY 2016	FY 2015
No. Petitions Withdrawn	642	835	863
Percentage of Petitions Withdrawn	29.0%	32.9%	30.6%

- b. What is the total number and percentage of blocking charges in FY 2017? How do those compare to FY 2016 and FY 2015?

	FY 2017	FY 2016	FY 2015
No. of Blocking Charges	106	181	240
Percentage of Blocking Charges	0.6%	0.9%	1.2%

- c. Has guidance been issued on extensions of time on hearings (beyond the applicable 8-day period) to allow parties to negotiate stipulations? How many extensions have been granted, and under what circumstances? Are any changes anticipated to be forthcoming?

GC Memorandum 15-06, *Guidance Memorandum on Representation Case Procedure Changes Effective April 14, 2015*, and OM 18-05, *Representation Case Procedures in Light of PCC Structural, Inc. 365 NLRB No. 160 (2017)* provide that, if a party wishes to postpone the hearing, it may make a request to the Regional Director. The Regional Director may postpone the hearing for up to 2 business days upon request of a party showing *special circumstances* and for more than 2 business days upon request of a party showing *extraordinary circumstances*. The Board did not articulate standards by which a Regional Director is to judge postponement requests, and no further guidance has been given. However, the Regional Offices follow the Representation CHM at Section 11143, which provides that, "A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request (i.e., not merely "prior commitments"). The request should include the positions of the other parties regarding the postponement."

- In FY 2017, there were 390 rescheduled hearings.
- In FY 2016, there were 366 rescheduled hearings.

- In FY 2015, there were 653 rescheduled hearings.

The Agency does not maintain statistics on how many extensions have been granted or under what circumstances extensions are granted.

- d. How many no-issue pre-election hearings were held in FY 2017? How does this compare to FY 2016 and FY 2015?

The Agency does not maintain statistics about the number of no-issue pre-election hearings held.

- e. Are there statistics on the median amount of time it is taking Regional Directors to issue decisions in no- issue hearings?

The Agency does not maintain statistics about the number of no-issue pre-election hearings held.

3. What direction, if any, is given to Regions concerning whether to hold pre-hearing conferences?

It is the Board's strong policy to make every effort to secure an election agreement whenever possible in order to avoid the delay and expense of a hearing. However, in those cases where a hearing is necessary, after review of the Statement of Position form, Board agents will discuss with parties the issues to be raised at the hearing, including the Regional Director's initial decision as to what will be litigated, what will be deferred and what will be precluded from litigation based on the Statement of Position. In most cases this conversation can occur without the need for a pre-hearing conference. Regional Directors, however, follow CHM 11009.1, which vests them with the discretion to call for a pre-hearing conference, if it is deemed advisable.

4. What direction, if any, is given to Regions concerning whether and under what circumstances to allow voting be done by mail ballots? In Regions with staffing shortages or large geographic regions, are mail ballots more acceptable? Are there ever situations where a combination of voting methods is authorized and, if so, when?

Under the Board's longstanding policy, a manual election is the preferred method of balloting. See *Nouveau Elevator Industries*, 326 NLRB 470, 471 (1998). However, the mechanics of an election, such as the date, time, place, and method are left to the discretion of the Regional Director, subject to Board review. See *Manchester Knitted Fashions*, 108 NLRB 1366, 1366 (1954); *San Diego Gas & Electric*, 325 NLRB 1143, 1144 (1998). In assessing whether to hold a manual, mail ballot or mixed manual/mail ballot election, a Director's decision primarily is informed by considerations set forth in CHM 11301.2:

(a) where eligible voters are "scattered" because of their job duties over a wide geographic area;

(b) where eligible voters are "scattered" in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and

(c) where there is a strike, a lockout or picketing in progress. A field office's staffing situation or the size of the geographic area covered by the Region typically are not considerations when making a decision regarding the best means to conduct an election. Although, as the Board noted in *San Diego Gas & Electric*, supra, 325 NLRB at 1145 n.8, a Regional Director will not order mail ballot elections based solely on budgetary concerns, CHM 11301.2 further provides that when considering whether to order a manual or mail ballot election, "the regional director should consider the efficient use of the Agency's financial resources."

Out of the 1532 elections that the Board conducted in FY 2017, 1321 were conducted manually, 189 were conducted by mail, and 22 were conducted in part by mail and in part manually.

C. Joint Employer.

1. Have decisions been made or any guidance been provided on the *McDonald's* litigation?

The litigation in *McDonald's USA, LLC, A Joint Employer, et al.*, Cases 02-CA-093893 et al. is currently pending before Administrative Law Judge Lauren Esposito. On January 17, 2018, Counsel for the General Counsel filed with Judge Esposito a Motion to Stay Proceedings for 60 days in order to discuss a global settlement of all pending NLRB charges involving McDonald's USA, LLC, and to allow Counsel for the General Counsel to assess the impact of two Board decisions that issued December 14, 2017, *Hy-Brand Industrial Contractors, Ltd.*, 365 NLRB No. 156, and *The Boeing Co.*, 365 NLRB No. 154, on the issues in this litigation. On January 19, 2018, Judge Esposito granted the Motion to Stay Proceedings. The hearing is adjourned until March 19, 2018, and the parties have been engaging in settlement discussions.

D. PCC Structurals and OM 18-05.

1. Since OM 18-05 was issued, how many cases were re-opened at the Region level by action of one of the parties? How many have been reopened by the Regional Directors? How many Notices to Show Cause have been issued?

OM-18-05 sets forth guidance in processing representation cases given the retroactive effect of *PCC Structurals, Inc.*, 365 NLRB No. 160 (Dec. 15, 2017), which overruled *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), and held that the traditional community of interest standard is to be applied where an employer asserts that the smallest appropriate unit must include additional employees. Specifically, Regions were instructed to allow parties to revisit unit determinations and agreements, either by request or through Regional issuance of Notices to Show Cause. The memorandum clarifies that any party seeking to revisit a unit issue affirmatively identify with significant specificity those community of interest factors upon which it is relying. Additionally, Regions were directed not to permit parties to re-litigate a standard community of interest analysis where they had the opportunity to do so by virtue of having been invited to address traditional community of interest factors earlier.

The Agency does not have a specific case-handling or records system in place to completely and accurately track the information requested. However, based on contact with the Regional offices, we are not aware of any cases that have been reopened as a result of the issuance of OM-18-05. Notices to Show Cause or contact with the parties to discuss revisiting unit issues occurred in approximately 83 cases.

V. Miscellaneous.

- A. What is the status of shared regional leadership in Regions 1 and 2? Are any other Regions under consideration for shared leadership?

Presently and in the recent past, there has not been shared regional leadership in Regions 1 and 2. Beginning January 16, 2018 through to the foreseeable future, Regional Director Paul Murphy, Region 3, Buffalo Regional Office, is serving as the Acting Regional Director of Region 1, as he serves as the Director of Region 3.

- B. What is the status of work share efforts between the Regions? Which Regions are currently involved in work share agreements and what items are shared between the Regions?

There is no formal work share program in place, nor are there any work share agreements in place between Regions. As in the past, where cases with common issues or concerns are filed in multiple Regions, they are coordinated under the supervision of the Division of Operations-Management. Also, under the Agency's Interregional Assistance Program (IRAP) for the current cycle (January 1 to April 30, 2018), Region 1 is sending cases to Region 3, Region 5 is sending cases to Region 27, Region 7 is sending cases to Region 2, Region 12 is sending cases to Region 6, Region 15 is sending cases to Region 22, Region 16 is sending cases to Region 18, and Region 32 is sending cases to Region 20. These cases typically require less time and resources to handle and are transferred to help ensure that they are processed in a timely manner. Finally, in order to ensure prompt processing of cases, the General Counsel transferred an additional 28 cases from Region 1 to Region 3, Buffalo. Given Director Murphy's physical location in Buffalo, Region 3 has also been handling case docketing work for Region 1, as well as the assignment and supervision of some cases arising within Region 1's geographical boundaries. Director Murphy ensures work is shared between the staffs of Regions 1 and 3.

Compliance assistance is provided in situations where there is a significant uptick in compliance cases in a specific Region or where the Region's compliance members are relatively inexperienced. In both cases, timely compliance is difficult for Regions to effectuate. Operations conducts an analysis of compliance cases (outstanding Board orders and court judgments) in each Region to identify those Regions that are in a better position to assist. Assistance is then requested and the necessary cases are transferred.

- C. Practitioners in several areas of the country are concerned about the unavailability of hearing dates from the Division of Judges. What efforts, if any, are being made to make hearing dates more available to parties?

The hearing date assigned to a case depends on several factors, including the availability of the attorney assigned to try the matter, the parties and their counsel, and an Administrative Law Judge. Typically, once the Region determines the availability of the first two, it contacts the appropriate Deputy Chief or Associate Chief Administrative Law Judge (located in Washington, D.C., New York, NY, or San Francisco, CA) to obtain the soonest available date. The Deputy Chief or Associate Chief Administrative Law Judge will try to accommodate the Region's request, but because the number of complaints issued exceed the number of Administrative Law Judges, that is not always possible. In such cases, the Deputy Chief or Associate Chief Administrative Law Judge will provide the earliest open date. Additionally, in some instances in which a complaint involves significant issues (e.g., cases in which Section 10(j) relief is sought), the Deputy Chief or Associate Chief Administrative Law Judge will try to reassign a trial slot, bumping a lower-priority case.

The Agency is reviewing the trial assignment process to find ways to make it more efficient. However, the reality is that the overall number of Administrative Law Judges has declined in the past few years. At this time, there are only 32 Administrative Law Judges available to handle hearings. Moreover, in the past year, five experienced Administrative Law Judges retired. In the time leading up to their retirement, they could not be assigned new cases because they would not be available to draft the decisions. Although some of these Judges were replaced, those hires occurred after the retirements, and the new Judges are still developing the skills that made their predecessors efficient. Finally, in the New York Division, one of its five Judges has been assigned to a case that has been on the record for more than 300 days, effectively removing her from the docket.

D. What is the current policy for referral of cases to the National Mediation Board?

Regions draft a letter outlining the facts and referring the case to NMB for the Associate to the General Counsel's signature. The letter is reviewed by the Division of Operations-Management and sent to NMB along with disk containing all documents in the electronic file.

E. What is the status of any memoranda, cooperation agreements and/or initiatives between the NLRB and the Department of Labor and/or the EEOC?

The following memoranda describe cooperation agreements, MOUs and initiatives between the NLRB, Department of Labor and/or the EEOC:

- MOU with OWCP and USPS regarding NLRA charges filed against USPS alleging refusal to provide records compiled or maintained pursuant to the FECA (10/16/2017)
- OSHA (Memorandum GC 76-14 and GC 75-29) concerning requests for information and case file material by OSHA.
- OSHA (Memorandum GC 79-14) MOU concerning cases arising under section 11(c) of the OSHA Act.
- OSHA (Memorandum OM 14-60 and 14-77) concerning referred charges.
- Wage and Hour Division (Memorandum GC 78-69) concerning coordination on deferred cases.

- WHD/OSHA/EEOC /OFCCP (Memorandum OM 17-10). Fact sheet on retaliation based on exercise of workplace rights.

In addition, the NLRB participates along with DOL, EEOC, DOJ and DHS in an Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws. In 2016 the NLRB and EEOC entered into an Addendum to a 2011 MOU between the DOL and DHS concerning enforcement activities at worksite which ensures that the civil worksite enforcement activities of the EEOC and the NLRB do not conflict with DHS/ICE's worksite enforcement activities.

Finally, Agency personnel, including Field staff also coordinate with the DOL and EEOC to engage in joint outreach activities to promote the work of the agencies.

- F. Has the GC developed technology or other initiatives to facilitate remote investigations (e.g., collection of affidavits while agents are working remotely)?

In addition to traditional "telephone affidavits," board agents may also interview and take affidavits in remote locations using Skype technology.

- G. Regarding the Annual Notice for Receipt of Charges and Petitions (Form NLRB-4702), what instructions, if any, are provided to the Regions to determine if there is an Annual Notice on file for a particular party and then to provide notice of filings to that party? Should a party believe that it has failed to receive such notice, what steps are there to remedy the lack of notice?

As you are aware, an attorney or other representative of a party to a Board proceeding, who has filed a notice of appearance (Form NLRB-4701) with the Regional office, may submit to a Regional Director an Annual Notice for Receipt of Charges and Petitions (Form NLRB-4702) for all matters involving a particular client coming before the Regional Office. Additionally, an attorney or other representative may submit a request for a national notice to the Division of Operations-Management. All such requests for notices will be honored for the fiscal year in which the request is made. Regional offices have been made aware of their responsibilities through OM Memorandum 15-32 and CHM (ULP) Section 10058.1(c). Regional offices take great care to adhere to requests for receipt of charges and petitions pursuant to Form NLRB-4702. However, in rare instances, a request may not be picked up. The most direct way to resolve a discrepancy should a party believe that it has not received notice is to submit an additional Form NLRB-4702 to the appropriate Regional Director, with a cover letter explaining the problem and request. For national requests that have not been honored, parties should contact the Division of Operations-Management and note the Regions that have not forwarded notices.

- H. Is the Agency sufficiently funded to meet its mission? What would be the optimum funding level? If a lack of funding is affecting Agency operations, what areas are impacted?

The agency's annual appropriation has not yet been enacted. The NLRB/Government continues to operate under a continuing resolution (through March 23rd). As a result, the final budget numbers will remain uncertain until Congressional

action passes a funding bill for the year. OMB's Budget Request for FY18 proposed a funding level of \$258M. OMB's request for FY 19 is \$249 million. Recently, OMB made an additional \$1.5 million available to be used in FY 18 or 19 for restructuring efforts. The Agency is committed to fulfilling its mission with whatever budget is finally approved.

The NLRB leadership has started to discuss with HQ and Field staff the budgetary and organizational challenges that will necessitate review of its organizational structure. It has already begun the review of Agency business processes. The eventual review will include discussions with all members of the leadership team and staff, including the field, where the vast majority of the agency provides services to its customers. It is hoped that the results will generate benefits in several potential areas, including perhaps: improvement in the efficiency, timeliness, quality of services and organizational decision making; elimination of unnecessary levels of management; maximization of employee performance; reduction in travel and other case processing expenses.

Pending cases involving *D.R. Horton/Murphy Oil* issues

Case No.	Case Name	App Ct. (If applicable)
01-CA-065954	Keystone Automotive Industries, Inc.	
01-CA-095205	ABnote USA, Inc., d/b/a ABnote North America	
01-CA-152928	Healthcare Services Group, Inc.	
01-CA-158144	Handy Technologies, Inc.	
01-CA-161183	Mastec Services Company, Inc.	
01-CA-168468	Mastec North America, Inc.	
02-CA-088471	JP MORGAN CHASE & CO AND JP MORGAN CHASE BANK, N.A.	
02-CA-098118	JP MORGAN CHASE & CO AND CHASE INVESTMENT SERVICES CORP	
02-CA-136163	Raymour's Furniture Co.	
04-CA-075160	TRUE BLUE, INC. f/k/a LABOR READY, INC. AND ITS WHOLLY OWNED SUBSIDIARY, LABOR READY NORTHEAST, INC.	
05-CA-135360	Rose Group d/b/a Applebees	3d Circuit
06-CA-091823	Kmart Corporation, a Subsidiary of Sears Holdings Corporation	5th Circuit
06-CA-100022	Sears Holdings Corporation	
10-CA-038804	Murphy Oil USA, Inc.	5th Circuit
10-CA-081208	Amerisave Mortgage Corporation	
10-CA-082519	Amerisave Mortgage Corporation	5th Circuit
10-CA-145882	Raleigh Restaurant Concepts, Inc.	
10-CA-113862	P.J. Cheese Inc.	5th Circuit
10-CA-141014	P.J. Cheese Inc.	
10-CA-145086	P.J. Cheese Inc.	
10-CA-141407	U.S. Express Enterprises and U.S. X-Press, Inc., a Single Employer	5th Circuit
10-CA-151454	Cowabunga	11th Circuit
10-CA-171072	E.A. Renfro Co.	
12-CA-077879	Convergys Customer Management Group, Inc.	
12-CA-077882	Convergys Customer Management Group, Inc.	
12-CA-096026	Everglades College	11th Circuit
12-CA-086470	Care Ride, L.L.C., a subsidiary of Bay Care Health System, Inc.	
12-CA-173125	Uber Technologies	
12-CA-165320	20/20 Communications, Inc.	
12-CA-144223	Arise Virtual Solutions, Inc.	
12-CA-145083	Samsung Electronics America, Inc.	11th Circuit
12-CA-146110	Victory Casino Cruises	11th Circuit
12-CA-153478	MasTec, Inc.	
12-CA-157478	TBC Corp.	
13-CA-175926	Adecco USA, Inc.	
13-CA-174693	Uber Technologies	
14-CA-094714	Cellular Sales of Missouri, LLC	
15-CA-019456	All Service Plumbing and Maintenance, Inc.	
15-CA-079737	Intelligent Management Solutions, Inc. DBA IMS Expert Services	
15-CA-079761	Intelligent Management Solutions, Inc. dba IMS Expert Services	
15-CA-113753	RPM Pizza, LLC	
16-CA-086102	Mastec Services Company, Inc.	
16-CA-092530	Downtown Health and Rehabilitation	
16-CA-112850	Professional Janitorial Service of Houston, Inc.	
17-CA-072853	Waffle House, Inc.	
18-CA-103319	Apple American Group	2d Circuit

Pending cases involving *D.R. Horton/Murphy Oil* issues

Case No.	Case Name	App Ct. (If applicable)
20-CA-035419	24 Hour Fitness USA, Inc.	5th Circuit
20-CA-065889	Roseville Point Health & Wellness	
20-CA-065896	Windsor Care of Petaluma	
20-CA-076573	Armour Steel Company	
20-CA-080497	GameStop Corp., GameStop Inc., Sunrise Publications, Inc., and GameStop Texas Ltd. (L.P)	5th Circuit
20-CA-139745	Hobby Lobby Stores, Inc.	7th Circuit
21-CA-072281	UNIVERSAL SERVICES OF AMERICA, A CALIFORNIA CORPORATION d/b/a UNIVERSAL PROTECTION SERVICE d/b/a UNIVERSAL SECURITY SOLUTIONS	
21-CA-073942	RALPHS GROCERY COMPANY, THE KROGER CO.	9th Circuit
21-CA-090894	Covenant Care California, LLC; Covenant Care La Jolla, LLC d/b/a La Jolla Nursing & Rehabilitation Center	9th Circuit
21-CA-092054	Nijjar Realty, Inc., a California corporation	9th Circuit
21-CA-099065	SF Markets	
21-CA-102332	Leslie's Poolmart, Inc.	5th Circuit
21-CA-103030	Bristol Farms	D.C. Circuit
21-CA-107219	Network Capital Funding	9th Circuit
21-CA-123072	Costa Mesa Cars, Inc.	
21-CA-133781	Prime Healthcare Paradise Valley	D.C. Circuit
21-CA-137250	Rim Hospitality	
21-CA-139031	Coastal Marine Services, Inc.	
21-CA-149699	California Commerce Club	D.C. Circuit
21-CA-150878	XPO Port Services, Inc.	
22-CA-127746	AT&T Mobility Service	4th Circuit
25-CA-108828	Multiband EC, Inc.	5th Circuit
25-CA-117090	SMI/Div. of DCX-CHOL Enterprises, Inc.	
26-CA-063184	Advanced Services, Inc.	8th Circuit
27-CA-081522	Jim N' Nick's Denver I, LLC, Jim N' Nick's Bar-B-Que Riverchase, Inc.	
27-CA-110765	Brinker International Payroll Company, L.P.	5th Circuit
28-CA-072150	CPS Security USA	9th Circuit
28-CA-080254	National Center for American Indian Enterprise Development	
28-CA-118801	AWG Ambassador	9th Circuit
28-CA-147123	Lincoln Eastern Management Corp.	5th Circuit
28-CA-123611	Valley Health System, LLC	9th Circuit
28-CA-136313	RGIS, Inc.	
28-CA-123865	American Express Co.	5th Circuit
29-CA-096094	Domino's Pizza LLC	5th Circuit
29-CA-103180	Domino's Pizza LLC	
29-CA-141164	CVS RX Services, Inc.	5th Circuit
30-CA-073190	Waterstone Mortgage Corporation	
31-CA-071281	Bloomingtons, Inc.	9th Circuit
31-CA-072179	Securitas Security Services USA, Inc.	
31-CA-072180	Securitas Security Services USA, Inc.	
31-CA-072914	Labor Ready Southwest, Inc., a subsidiary of TrueBlue, Inc.	D.C. Circuit
31-CA-072916	Countrywide Financial Corporation, Countrywide Home Loans, Inc., and Bank of America Corporation (hereinafter referred to as "Countrywide")	9th Circuit

Pending cases involving *D.R. Horton/Murphy Oil* issues

Case No.	Case Name	App Ct. (If applicable)
31-CA-072918	Countrywide Financial Corporation, Countrywide Home Loans, Inc., and Bank of America Corporation (hereinafter referred to as "Countrywide")	
31-CA-074295	The Neiman Marcus Group, Inc.	5th Circuit
31-CA-085028	Xanterra Parks & Resorts, Inc.	
31-CA-085544	Wet Seal, Inc. and West Seal Retail, Inc.	
31-CA-085545	Wet Seal, Inc. and Wet Seal Retail, Inc.	
31-CA-088081	Securitas Security Services USA, Inc.	
31-CA-088082	Securitas Security Services USA, Inc.	
31-CA-091388	Swissport USA, Inc.	
31-CA-092489	Supershuttle Los Angeles, Inc.	
31-CA-093920	Haynes Building Services, LLC	D.C. Circuit
31-CA-097187	Beth's Kitchen Inc. and its successor in interest FreshLunches, Inc.	
31-CA-097189	Employers Resource	
31-CA-097190	Hof's Hut Restaurants, Inc. d/b/a Lucille's Smokehouse Barb-b-que	
31-CA-104178	The Pep Boys Manny Moe & Jack of California	9th Circuit
31-CA-104872	Hoot Winc, LLC and Ontario Wings, LLC dba Hooters of Ontario Mills, Joint Employers	9th Circuit
31-CA-104874	Ontario Wings, LLC DBA Hooters of Ontario Mills	
31-CA-104877	Ontario Wings, LLC DBA Hooters of Ontario Mills	
31-CA-104892	Hoot Winc, LLC	
31-CA-107256	Hoot Winc, LLC	
31-CA-107259	Ontario Wings, LLC dba Hooters of Ontario Mills	
31-CA-109296	Ross Stores, Inc.	5th Circuit
31-CA-112382	Fresh Lunches, Inc. successor in interest to Beth's Kitchen, Inc.	
31-CA-113416	Adriana's Insurance Services, Inc.	D.C. Circuit
31-CA-113420	Veronica's Auto Insurance Services, Inc.	
31-CA-113423	Adriana's Insurance Services, Inc.	
31-CA-133242	Philmar Care	9th Circuit
31-CA-140383	Alexandria Care Center, LLC	
31-CA-144492	Beena Beauty Holding, LLC	9th Circuit
31-CA-128266	Kenai Drilling, Ltd.	9th Circuit
31-CA-158487	Darden Restaurants, Inc.	
31-CA-116102	Century Fast Foods	9th Circuit
31-CA-126475	Grill Concepts	D.C. Circuit
32-CA-065459	Windsor Healthcare Management, Inc. d/b/a Windsor The Ridge Rehabilitation Center, et al.	
32-CA-065468	Windsor Manor Rehabilitation Center	
32-CA-065476	Windsor Monterey Care Center	
32-CA-065489	Windsor Skyline Care Center	
32-CA-065672	Windsor Country Drive Care Center	
32-CA-065676	Windsor Park Care Center of Fremont	
32-CA-065679	Windsor Healthcare Center of Oakland	
32-CA-065701	Windsor Gardens Rehabilitation Center of Salinas	
32-CA-065717	Windsor Redding Care Center	
32-CA-065834	Core Healthcare Center, LLC d/b/a Oakland Healthcare & Wellness Center, et al.	
32-CA-065840	San Pablo Healthcare and Wellness Center	

Pending cases involving *D.R. Horton/Murphy Oil* issues

Case No.	Case Name	App Ct. (If applicable)
32-CA-065844	Windsor Gardens Care Center of Hayward	
32-CA-065847	Windsor Post Acute Care Center of Hayward	
32-CA-066979	FAA CONCORD H, INC. d/b/a Concord Honda	9th Circuit
32-CA-072231	FAA CONCORD H, INC. d/b/a Concord Honda	
32-CA-075221	Acuity Specialty Products, Inc., d/b/a Zep Inc.	
32-CA-095025	On Assignment Staffing Services, Inc.	
32-CA-128085	SolarCity Corp.	5th Circuit
32-CA-119054	Tarlton & Son, Inc.	9th Circuit
32-CA-151443	SJK, Inc. d/b/a Fremont Ford	9th Circuit
32-CA-156938	Fry's Electronics, Inc.	
32-CA-138015	Price-Simms. Inc.	D.C. Circuit
32-CA-142303	Adecco USA, Inc.	5th Circuit
32-CA-176353	Walnut Creek Assoc. 2, Inc.	
34-CA-090246	Mas Tec North America, Inc.	