In Memorandum GC 19-02, the former General Counsel introduced new timeliness goals for certain aspects of field office case processing, notably the time to complete the initial investigation of unfair labor practice cases. That memorandum attached the Agency’s FY 2019-2022 Strategic Plan, which has since been superseded by the Agency’s FY 2022-2026 Strategic Plan. Memorandum GC 19-02 and the superseded FY 2019-2022 Strategic Plan set the goal for completing unfair labor practice investigations as a 5% per year reduction in average case processing times from a baseline of FY 2018 performance, for a targeted reduction of 20% overall over four years. The timeliness goals prior to Memorandum GC 19-02 measured investigations from filing of charge to satisfaction of the Dispose of Allegations target date in the NxGen system, taking into account overage case explanations. The system announced in GC 19-02 instead measured from filing of charge to the NxGen system’s implementation date and did not account for any overage case explanations.

The timeliness of initial unfair labor practice investigations is one of many important Agency goals. The maxim “justice delayed is justice denied” is certainly applicable in the NLRA context, whether it be for victims of unfair labor practices who must endure coercion and economic strain until the Agency can vindicate their rights, or for charged parties who must wait for exoneration before they can fully move on with their operations. However, the greatest priority in our investigative work is to perform at the highest quality level. Thus, when I arrived back at our Agency, I asked managers about their experiences with Memorandum GC 19-02 and whether they comported with our greatest priority.

After receiving input, a Labor-Management Forum (LMF), comprised of Agency managers and representatives of the National Labor Relations Board Union, engaged in productive collaboration, after which they submitted their recommendations to me.

Based upon the input received, I have decided to implement the following in order to better effectuate timely and quality processing of unfair labor practice charges:

1. I am eliminating the goal of requiring each Region to annually reduce the average number of days from filing of charge to disposition of the charge.
• Beginning June 1, 2022, the Agency will assess timeliness of initial unfair labor practice investigations based on the average number of days from filing of the charge until the Region either disposes of the charge or reaches a stopping point at which the Region can no longer advance the investigation pending the occurrence of some event beyond the Region’s control (Abeyance). The overall goal will be to reach this milestone in average of 91 days or fewer. This will be an Agency goal, as well as a goal for each Region.

2. I am reimplementing Impact Analysis as a tool to manage the timely processing of unfair labor practice cases towards the 91 day goal, but with some key changes to the Impact Analysis system.

• Under the newly implemented Impact Analysis system, Category 3 (highest impact) cases will be assigned the longest time to investigate because history has demonstrated that these cases frequently are more complex, involve more issues, and require a more in-depth investigation; as a result, Category 3 cases generally have taken longer to investigate than Category 1 and 2 cases.

• Accordingly, I am adjusting the targets for investigating each category of case. The targets will be as follows: the target time for investigating Category 3 cases will be 105 days; the target time to investigate Category 2 cases will be 91 days; and the target time to investigate Category 1 cases will be 49 days.

<table>
<thead>
<tr>
<th>Category</th>
<th>As of 2018</th>
<th>New</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td>98 days</td>
<td>49</td>
</tr>
<tr>
<td>Category 2</td>
<td>77 days</td>
<td>91</td>
</tr>
<tr>
<td>Category 3</td>
<td>49 days</td>
<td>105</td>
</tr>
</tbody>
</table>

• Though I am setting target dates for Category 1, 2 and 3 cases, the purpose of these targets is to assist Regions in meeting the overall goal for all cases which is an average of 91 days from filing to disposition date or stopping point of investigation beyond the Region’s control. The Agency’s institutional timeliness goals for initial unfair labor practice investigations will be (1) the 91 day overall goal across all three categories of cases and (2) the 105 day goal for Category 3 cases specifically. The target dates for Category 1 and 2 will be used only for case management.

3. In order to ensure consistency, Regions will use the list attached as Appendix A to categorize a case as a Category 1, 2 or 3. Similarly, Regions will use Appendix B, which is a list of “Dispositions of Initial Investigation.” Regions are permitted to place a case in abeyance in the circumstances indicated on Appendix B but must document that decision in the NxGen case file.

The Agency’s new goal for timeliness of initial unfair labor practice investigations is effective June 1, 2022. Because impact analysis categorization has not been consistent thus far during Fiscal Year 2022, only the overall average will be considered for FY 2022.
I fully recognize and applaud the Field office staff members for their admirable investigative work despite significant challenges associated with a flat-lined budget, loss of resources, and increased case intake and mission-critical initiatives. In making the decision referenced above, I was especially cognizant of (1) the enormous strain case processing in a time of increasing intake and diminishing staff has placed on the Field, (2) the uncertainty of future intake and staffing, particularly given budget dependency, and (3) the necessity for reliable data to ensure the accuracy and integrity of our ultimate performance measurements.

I also agree with the LMF’s recommendation that they reconvene no later than February 2023 to examine initial experiences with the system, assess related data, and submit recommended modifications, if deemed appropriate. Relatedly, I look forward to their recommendations regarding a system for measuring post-abeyance case handling.

I am so grateful to all who contributed to helping develop these recommendations and I appreciate the commitment of all of you to meet or surpass these new goals. Your dedication to our mission of protecting the rights of workers in this country to engage in union and protected concerted activities is laudable and much appreciated.

/s/
J.A.A.
Appendix A

Disposition of Initial Investigation

In a Region’s control
• Approve Withdrawal Request
• Issue Dismissal Letter
• Issue Merit Dismissal
• Issue Deferral Letter
• Issue Complaint
• Approve Informal Settlement Agreement
• Submit to Advice (Regional Advice Branch)
• Submit to Injunction Litigation Branch (prior to issuing complaint)
• Submit to CCSLB (pre-complaint)
• Referring to the Board a petition revoke investigative subpoenas or filing in district court for enforcement investigative subpoenas

Out of a Region’s Control (Abeyance)
• Submitted to Ethics and cannot move forward
• Submitted to E-Litigation Branch and cannot move forward
• Coordination with another Region (formal or informal)
• Coordination with other federal or state agency
• Submitted to Operations for referral to the National Mediation Board
• Submitted to Operations for possible action involving the General Counsel’s Front Office
• Incapacity of Charging Party verified and charge impacted by 10(b)
• Related cases (C or R) pending that could impact settlement/complaint
• Partial dismissal/deferral pending in Appeals where Region cannot issue complaint or approve settlement on the remainder of the case until there is a ruling on the appeal
Appendix B

- **Category 3 (Exceptional Impact; 105 days)**
  - All allegations involving loss of employment, loss of recognition, or refusal to recognize.
  - All allegations emanating from an organizing campaign
  - All allegations arising during first contract negotiations, including successor situations (including *Weingarten*, retaliation for union activities, information requests, unilateral changes, refusal to bargain, surface bargaining, etc.)
  - 8(a)(1) discharge
  - 8(a)(2) assistance/interference involving imposition of bargaining representative
  - 8(a)(3) discharge (recognizing that existing guidance requests that nip-in-the-bud cases and some 10(j) situations be investigated in fewer than 98 days)
  - 8(a)(1), (3) and (4) refusal to hire (moved this from Cat. 2)
  - 8(a)(3)/8(a)(5) ongoing strike or lockout
  - 8(a)(3) subcontracting, shut down or relocation
  - 8(a)(3) refusal to hire in successor avoidance cases
  - 8(a)(4) discharge
  - 8(a)(5) withdrawal of recognition
  - 8(b)(2) resulting in loss of employment
  - 8(g)

- **Category 2 (Significant Impact; 91 days)**
  - 8(a)(1) all conduct (except loss of employment or *Weingarten* violation)
  - 8(a)(2) assistance (not involving imposition of bargaining representative)
  - 8(a)(3), (4) discipline less than discharge and any adverse action less than discipline (more onerous working conditions, reduction in hours, etc.)
  - 8(a)(5) all bargaining violations short of loss of recognition or refusal to recognize (unilateral change, refusal to meet, 8(d), information request, refusal to sign successor contract, etc.)
  - 8(a)(1), (3) retaliatory lawsuits
  - 8(b)(1)(A) duty of fair representation cases or other coercive conduct
  - 8(b)(1)(A) fees, fines, assessments and *Beck*
  - 8(b)(1)(A) and (2) Hiring hall (not involving ongoing loss of work)
  - 8(b)(2) anything that does not involve loss of employment
  - 8(b)(3) refusal to bargain when filed by an employer
  - Likely deferral cases (determine likelihood of deferral as soon as possible; recategorize if necessary)
  - *Weingarten* violations
Category 1 (Important Impact; 49 days)

- Clear no merit cases (no jurisdiction; 10(b) period has expired)
- 8(a)(5) filed by an individual in error
- 8(b)(3) filed by an individual in error