

Personnel Appeals Board

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1995 Annual Report

March 29, 1996



Personnel
Appeals
Board

The Honorable Charles A. Bowsher
Comptroller General
United States General Accounting Office
Room 7000
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Bowsher:

Please find attached a copy of the 1995 Annual Report of the Personnel Appeals Board of the U.S. General Accounting Office. The Board considers, decides, and orders corrective or disciplinary action, when appropriate, in cases involving employee appeals, prohibited personnel practices, prohibited political activity, and discrimination. The Board also has responsibility for eeo oversight of GAO. The attached report describes the activities of the Board, its Office of General Counsel, and its Office of Equal Employment Opportunity Oversight during the last fiscal year.

Sincerely,

Nancy A. McBride

Nancy A. McBride
Chair

attachment

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Biographies of Board Members



Nancy A. McBride was appointed to the Board in 1991, served as Vice-Chair in fiscal years 1993 and 1994, and as Chair in fiscal year 1995, a term extended through fiscal year 1996. She is a graduate of Georgetown University and the Marshall-Wythe School of Law of the College of William and Mary. Ms. McBride was an Assistant City Attorney for the City of Alexandria, Virginia for six years. She has been in private practice since 1989, serving as an arbitrator and hearing officer primarily in labor and education matters. Ms. McBride is a frequent instructor at the George Meany Center for Labor Studies in Silver Spring, Maryland.



Leroy D. Clark was appointed to the Board in 1992 and served as Vice-Chair in fiscal year 1995, a term extended through fiscal year 1996. A graduate of the City College of New York and the Columbia University Law School, Professor Clark has been an attorney for the N.A.A.C.P. Legal Defense Fund, Inc., and served as General Counsel of the U.S. Equal Employment Opportunity Commission. He is also an arbitrator listed with the American Arbitration Association and the Federal Mediation and Conciliation Service. Currently a faculty member at the Catholic University Law School, Professor Clark is also the co-author of a textbook on employment discrimination law.

Biographies of Board Members



Alan S. Rosenthal was appointed to the Board in 1991 and served as Chairman in fiscal years 1993 and 1994. A graduate of the University of Pennsylvania and the Yale Law School, he retired in 1988 after nearly 40 years in the Federal service. Following a clerkship with a judge on the U.S. Court of Appeals for the District of Columbia Circuit, Mr. Rosenthal served for 20 years in the Appellate Section of the Civil Division of the Department of Justice (for 14 years as Assistant Section Chief). In 1972, he became Chairman and Chief Administrative Judge of the Atomic Safety and Licensing Appeal Panel of the Atomic Energy Commission (later Nuclear Regulatory Commission). Mr. Rosenthal has taught at the University of Pennsylvania Law School and the Washington College of Law of the American University.



Harriet Davidson was appointed to the Board in 1993. She is a graduate of the University of Rochester, New York University, and Brooklyn Law School. Ms. Davidson was a public interest lawyer, specializing in employment and administrative law, for seven years, and served as a clinical instructor at the Seton Hall University School of Law. She was also Director of the Housing Division of the Philadelphia Redevelopment Authority. Since 1987, Ms. Davidson has been a hearing officer and administrative judge for Federal, state, and county agencies, primarily in employment, real estate and banking matters. In 1993, she was appointed to the Montgomery County Human Relations Commission (Maryland).

Personnel Appeals Board

Chair	Nancy A. McBride
Vice-Chair	Leroy D. Clark
Member	Alan S. Rosenthal
Member	Harriet Davidson

Personnel Appeals Board Staff

Executive Director	Beth L. Don
Co-Director, EEO Oversight	M.Gail Gerebenics
Co-Director, EEO Oversight	Barbara Lipsky
Solicitor to the Board	Catherine McNamara
Staff Attorney	Susan P. Inzeo
Administrative Operations Assistant	Sarah L. Hollis
Clerk of the Board	Patricia V. Reardon

Personnel Appeals Board/Office of General Counsel Staff

General Counsel	Jessie James, Jr.
Senior Trial Attorney	Janice E. Willis
Senior Trial Attorney	Janice M. Reece
Administrative Operations Assistant	Deborah Y. McKissick
Secretary	Darian C. Jackson

Personnel Appeals Board 1995



Alan S. Rosenthal, Nancy A. McBride, Harriet Davidson, Leroy D. Clark

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Abbreviations

AoC	Architect of the Capitol
AOCFEP	Architect of the Capitol Fair Employment Practices Office
CAA	Congressional Accountability Act
CRO	Civil Rights Office, GAO
eeo	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
FLRA	Federal Labor Relations Authority
GAO	General Accounting Office
GAOPA	General Accounting Office Personnel Act
MRG	Management Review Group
MSPB	Merit Systems Protection Board
PAB/OGC	Personnel Appeals Board Office of General Counsel
PAB	Personnel Appeals Board
PFP	Pay-for-Performance



The Personnel Appeals Board

GAO Jurisdiction

In 1980, Congress passed the General Accounting Office Personnel Act (GAOPA)¹ which directed the General Accounting Office (GAO), a legislative branch agency, to establish its own personnel system, independent of any other administrative, adjudicatory, or oversight agencies. That Act created the Personnel Appeals Board (PAB or the Board) as an independent agency designed to afford GAO employees essentially the same rights that employees in the Executive Branch enjoy.

The Personnel Appeals Board combines the adjudicatory functions of the Merit Systems Protection Board (MSPB), the Federal Labor Relations Authority (FLRA), and the Equal Employment Opportunity Commission (EEOC). The Board's Office of General Counsel (PAB/OGC) performs the investigatory and prosecutorial functions of the Office of Special Counsel and the FLRA General Counsel.

The Board adjudicates disputes concerning personnel actions or alleged discrimination; its Office of General Counsel investigates and prosecutes alleged violations in those areas. The Board also has the authority to certify collective bargaining representatives and to adjudicate unfair labor practices but, in the absence of a union at GAO, has not had the occasion to do so. In addition, the Board has oversight authority over equal employment opportunity in GAO's personnel practices and programs.

Organization

In fiscal year 1995, the Personnel Appeals Board was comprised of four members who have expertise in the areas of EEO, labor law, arbitration, mediation, and adjudication.² The members are appointed by the Comptroller General for five-year, non-renewable terms and select their own Chair and Vice-Chair for one-year renewable terms.

The Executive Director manages the Board's staff and office operations. The Solicitor advises the Board members on legal matters and the Director of EEO Oversight conducts studies and produces reports on selected topics involving equal employment opportunity at GAO. The General Counsel, who serves at the pleasure of the Board Chair, investigates charges filed with his or her office and, if he or she concludes that reasonable cause exists, offers to represent the employee or applicant for employment before the Board with the assistance of senior trial attorneys.

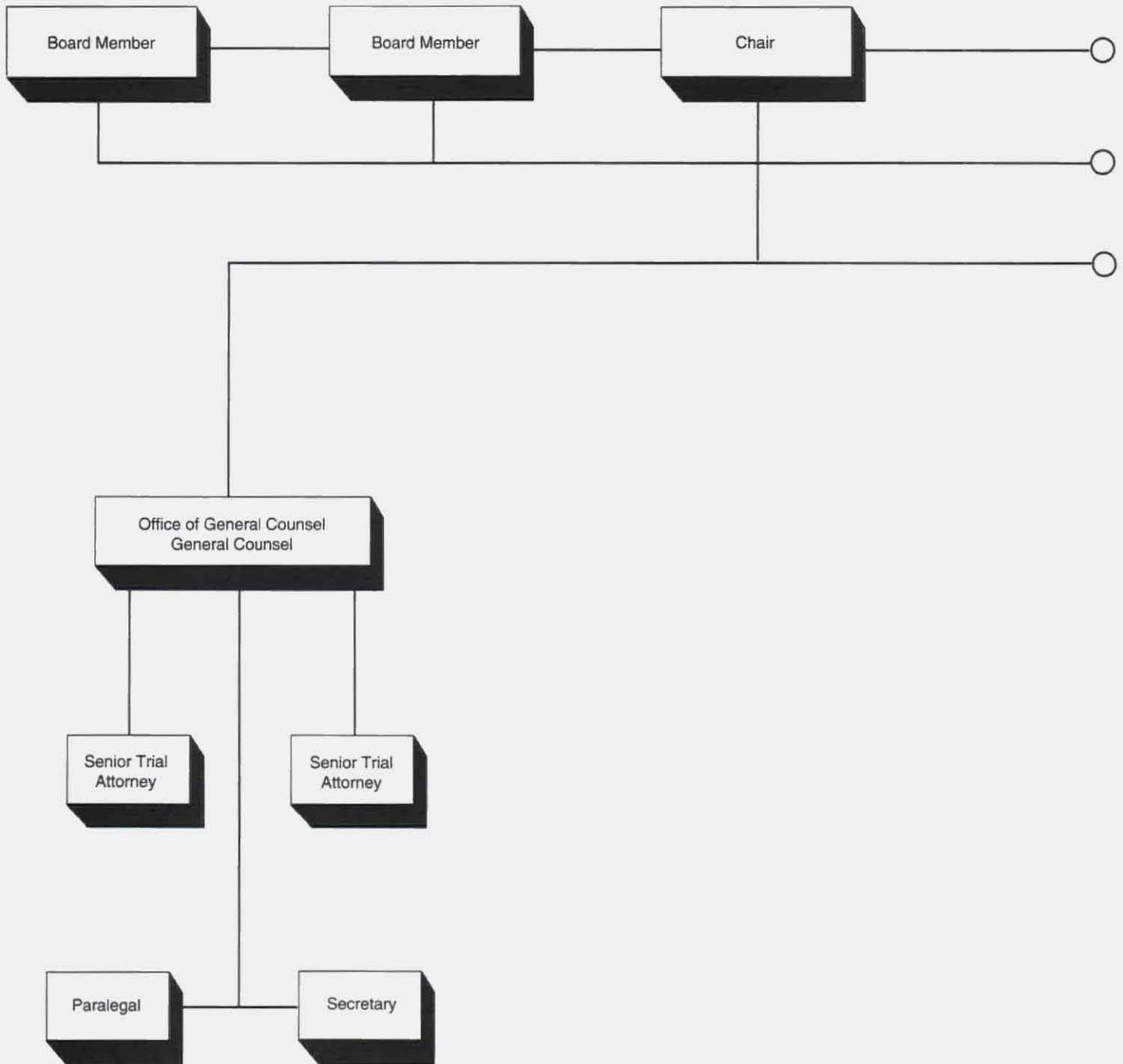
¹P. L. 96-191, codified at 31 U.S.C. § 731 *et. seq.* (1988 and Supp. V 1994).

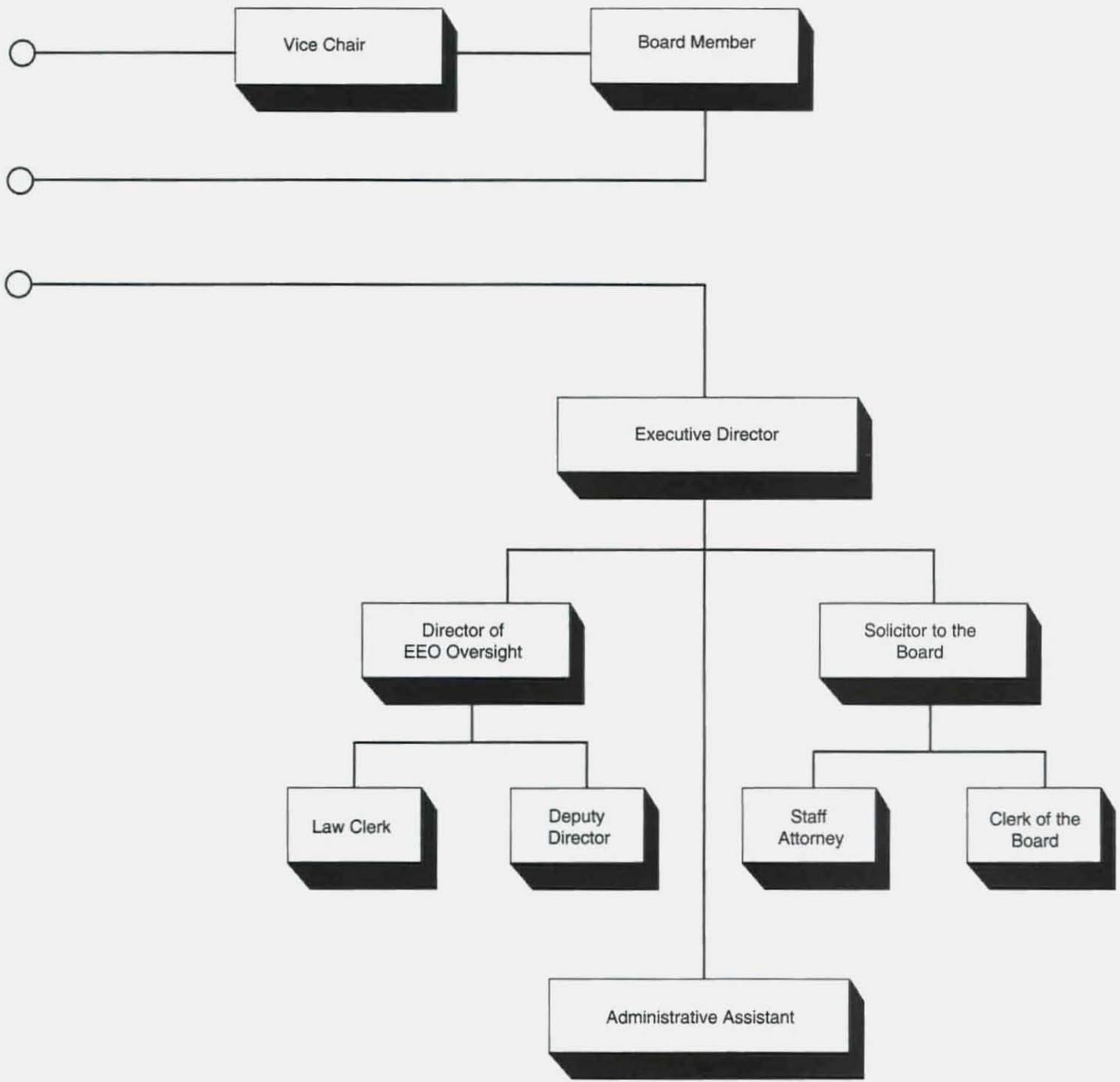
²By statute, the PAB is comprised of five members. The vacancy that occurred with the expiration of a member's term at the end of fiscal year 1994 has not been filled.



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Figure 1.1: Organizational chart for the Personnel Appeals Board





Expanded Jurisdiction

In 1994, Congress passed the Architect of the Capitol Human Resources Act (ACHRA),³ giving the Board the authority to hear appeals of employees of the Architect of the Capitol (AoC), the Botanic Garden, and the Senate Restaurants that allege discrimination in employment based on race, color, religion, sex, national origin, age, or disability. The Board was to hear those appeals after the employees exhausted their internal administrative complaint process.

In January, 1995, Congress changed the enforcement scheme applicable to employees covered by the ACHRA when it enacted the Congressional Accountability Act of 1995 (CAA).⁴ That Act makes eleven civil rights and worker protection laws applicable to employees of Congress and legislative branch agencies and provides for enforcement through the newly-established Office of Compliance. Effective on January 23, 1996, Architect of the Capitol employees will no longer bring their appeals to the Board but may file complaints with the Office of Compliance.⁵

³ Pub. L. 103-283, §312, 108 Stat. 1443, went into effect on July 22, 1994. The Act also amended the GAPA to reflect the Board's expanded jurisdiction. See, §312(e)(4)(A-C).

⁴ Pub. L. No. 104-1, 109 Stat. 3 (Jan. 23, 1995).

⁵ Even after the effective date of the CAA in January, 1996, employees previously covered by the ACHRA may file charges with the Board if their claims arose before January 23, 1996.

The Appeal Process

An employee, a group of employees, a labor organization⁶ or an applicant for employment at GAO, the Architect of the Capitol (AoC), the Botanic Garden, or the Senate Restaurants may file an appeal with the Board, which can hear individual complaints as well as class actions. An appeal by a GAO employee may arise from (1) a removal, a suspension for more than 14 days, a reduction in grade or pay, or a furlough of not more than 30 days; (2) a prohibited personnel practice; (3) an unfair labor practice or other labor relations issue; (4) an action involving prohibited discrimination; (5) prohibited political activity; and, (6) any other personnel issues that the Comptroller General, by regulation, determines that the Board should hear.

An appeal by an employee of the AoC, the Botanic Garden, or the Senate Restaurants may arise from (1) a complaint of discrimination based on race, color, religion, sex, national origin, age, handicap or disability⁷ or (2) a complaint of intimidation or reprisal for exercising rights granted by the AoC Human Resources Act.

Prehearing Discrimination Complaint Procedures

Early in fiscal year 1995, the GAO internal order under which the discrimination complaint process is administered underwent extensive revision.⁸

⁶ Labor organizations at GAO are covered by the GAOPA; the AoC Human Resources Act does not cover such organizations.

⁷ Definitions of discrimination are consistent with §717 (Title VII) of the Civil Rights Act of 1964 (42 U.S.C. §2000e-16); §15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. §633a); §501 of the Rehabilitation Act of 1973 (29 U.S.C. §791); and §§102-104 of the Americans with Disabilities Act of 1990 (42 U.S.C. §§12112-14)

⁸ U.S. General Accounting Office Operations Manual, Order 2713.2, "Discrimination Complaint Process" (October 14, 1994) (hereafter GAO Order 2713.2).

The new Order provides that, at GAO, the eeo complaint process begins with a consultation with a civil rights counselor, contact with whom must occur within 45 days of the alleged incident. If the matter cannot be resolved, a formal written complaint may be filed with the Civil Rights Office (CRO) within 15 days of receipt from the counselor of notice of the right to file a complaint. The Director of the Civil Rights Office can either accept or dismiss the complaint.⁹ If the complaint is accepted, it is investigated by CRO staff which then submits a report to the Director of the Civil Rights Office. If the complaint cannot be resolved through negotiation with GAO management, the Director submits a recommended decision to the Comptroller General who then issues a final agency decision. The decision of the Comptroller General may be appealed to the Board, as may the decision of the Civil Rights Office to dismiss a complaint.

An employee of the AoC, the Botanic Garden, or the Senate Restaurants must file a written Request for Formal Advice with the Architect of the Capitol Fair Employment Practices Office (AOCFEP) within 180 days of the alleged discrimination or retaliation.¹⁰ If no resolution is reached during the Formal Advice period, a factfinder is assigned to investigate the employee's claim. The factfinder submits a written report to the employee and to the head of the division with which the employee has a complaint. After the Factfinding Report has been submitted, the employee has 20 days to prepare a Formal Complaint detailing the claim of alleged discrimination or retaliation. The Architect reviews the Formal Complaint and the Factfinding Report and makes a determination on any claims that were not resolved in the foregoing steps. The Determination of the Architect may be appealed to the Board.

⁹Reasons for dismissal of a complaint include that it fails to state a claim; that it was not filed in a timely manner; that it alleges a matter that was not raised in pre-complaint counseling; that it contains allegations not within the jurisdiction of the CRO; or that it sets forth matters that are contained in a pending complaint or is the basis of a petition for review before the PAB or of a pending civil action in a Federal Court in which the complainant is a party; or that is a matter that has been finally decided. A complaint may also be dismissed at any time during the process for failure of the complainant to prosecute the complaint. GAO Order 2713.2, ch. 3, §5.

¹⁰ Architect of the Capitol, Equal Employment Opportunity Procedures Manual.

Initiating an Appeal

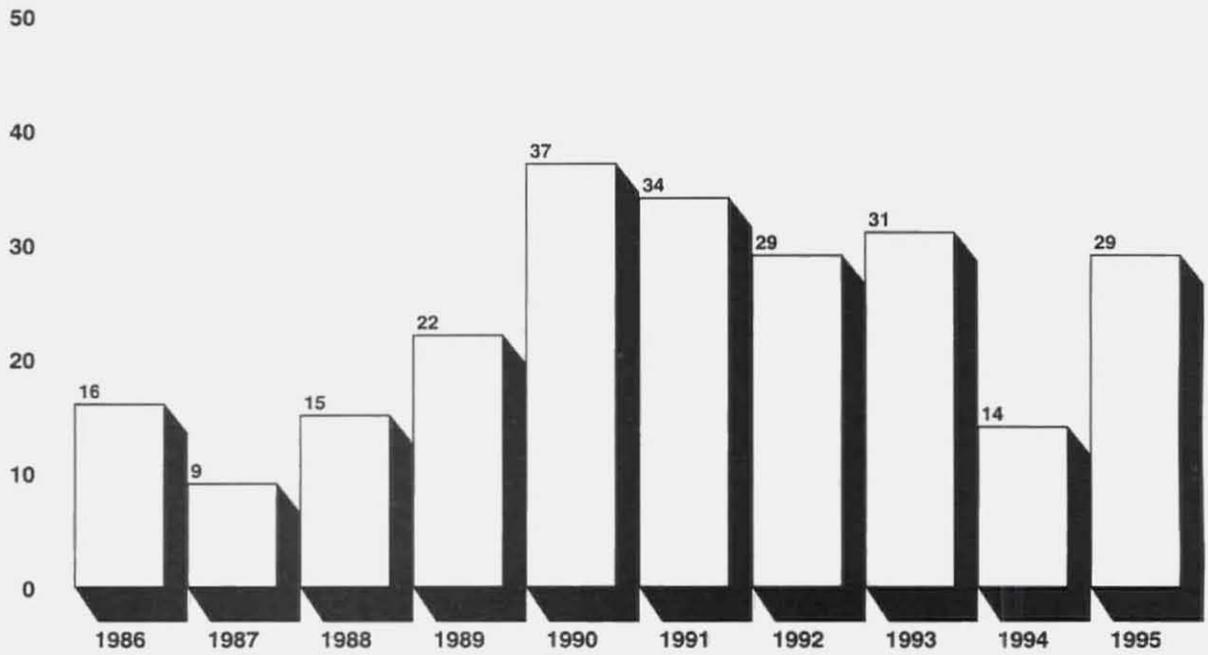
When the prehearing complaint procedures have been completed and the complaint has not been resolved or, in the case of non-discrimination complaints, within 30 days of the incident that precipitated the complaint, a charge may be filed with the Office of General Counsel (PAB/OGC). That office has the authority to investigate and to prosecute alleged violations of the law over which the Board has jurisdiction. Once an individual complaint is investigated by PAB/OGC, the complainant is advised about appeal rights and settlement options. If no settlement occurs, PAB/OGC issues a right-to-appeal letter notifying the employee, the affected agency management, and the Board that the investigation has been completed.

The employee also receives PAB/OGC's confidential statement that includes the results of the investigation and a determination of whether there is a legal and factual basis for an appeal. At this point, PAB/OGC advises the employee whether there are reasonable grounds to believe that the employee's rights under the GAO Personnel Act or the AoC Human Resources Act have been violated. If PAB/OGC determines that such grounds exist, it offers to represent the employee before the Board at no expense to the employee or the employee may retain private counsel. If the determination is made by PAB/OGC that there are no reasonable grounds to support the claim, nevertheless, the employee may appear *pro se* or retain private counsel to represent him or her in the appeal.

If an employee chooses to pursue an appeal, he or she must file a petition for review with the Board within 30 calendar days after service of the right-to-appeal letter from the PAB/OGC. Upon receipt of the petition, the Chair may appoint a single Board member to hear and decide the case or determine that the Board will hear the case en banc. The Board member's decision is final unless the Board member grants a party's motion to reconsider; the PAB, on its own motion, decides to review the initial decision; or a party requests full Board review. Final decisions, with few exceptions, are appealable to the U.S. Court of Appeals for the Federal Circuit.

The Office of General Counsel began fiscal year 1995 with 18 cases open from the previous year; 29 new charges were filed with PAB/OGC during the fiscal year. Twenty-two of the new cases concerned prohibited personnel practices, six alleged discrimination, and one involved a suspension. PAB/OGC closed 27 cases during the fiscal year, issued 38 Right to Appeal letters, and completed two Settlement Agreements. Employees of the Architect of the Capitol, Senate Restaurants, and Botanic Garden did not file any cases with PAB/OGC in fiscal year 1995.

Figure 2.1: New cases filed with the PAB Office of General Counsel in each of the past ten fiscal years



Board Decisions

In fiscal year 1995, the PAB summarily affirmed an administrative judge's decision granting summary judgment for the agency, ruling that no prohibited personnel practices were committed in the implementation of the Pay-for-Performance (PFP) system as applied to petitioner.

The petitioner was a GS-15 supervisory accountant in June 1989, when GAO converted his position from the General Schedule (GS) pay system to the PFP system. At the time, he anticipated that he would have received a within-grade salary increase in November 1989, had he remained under the GS system. Under the new PFP system, however, he received a prorated increase to his basic pay in October 1989 and October 1990.

Petitioner argued that the agency committed various prohibited personnel practices in promulgating the regulations governing the pay protection provision of the PFP system, removing him from the GS system, implementing the pay protection provision of the PFP, and, ultimately, diminishing his retirement annuity because his "high three year average" for annuity calculations was computed under the PFP system, when his salary was less than it would have been under the GS system.

The Board found that the agency took steps reasonably calculated to provide notice to the petitioner of the proposed regulations governing pay administration in interim Order 2540.1 and to solicit his comments to the proposal. The decision also concluded that the agency acted within its statutory mandate in placing petitioner in a pay band under the PFP system. In addition, the Board ruled that the agency was not required to make pay protection salary adjustments annually on petitioner's anniversary date. (Docket No. 94-07, March 3, 1995; aff'd., July 3, 1995)

In another fiscal year 1995 decision, the Board held that GAO acted unlawfully in assigning an evaluator to a pay category without sufficient regard to that evaluator's actual performance. The administrative judge determined that the agency had committed a prohibited personnel practice by forcing a predetermined number of employees, including petitioner, into the lowest or "acceptable" pay category under the Pay-for-Performance system.

The evaluator, along with other evaluators in her issue area, had been subject to review by a Management Review Group (MRG) for purposes of determining PFP calculations for the 1991-92 appraisal year. Although instructed to place three of thirty employees in the lowest or "acceptable" category, the MRG initially concluded that none of the evaluators in the group merited placement at the bottom level. Upon reconvening at the instruction of management, the MRG subsequently placed petitioner and two other evaluators in the acceptable category. In doing so, the MRG--on a four to three vote--distinguished between petitioner and another evaluator with substantially identical performance evaluations and contributions statements. The other evaluator was assigned to the higher "commendable" pay category.

The PAB concluded that the PFP decision was made without meaningful opportunity to request a waiver from the predetermined distribution scheme and without due consideration of petitioner's performance during the appraisal year. The decision found that the forced, inflexible distribution system for determining pay and merit increases in this case became unmoored from the actual performance of petitioner, as evidenced in a performance appraisal, resulting in a prohibited personnel practice. (Docket No. 94-01, July 3, 1995).

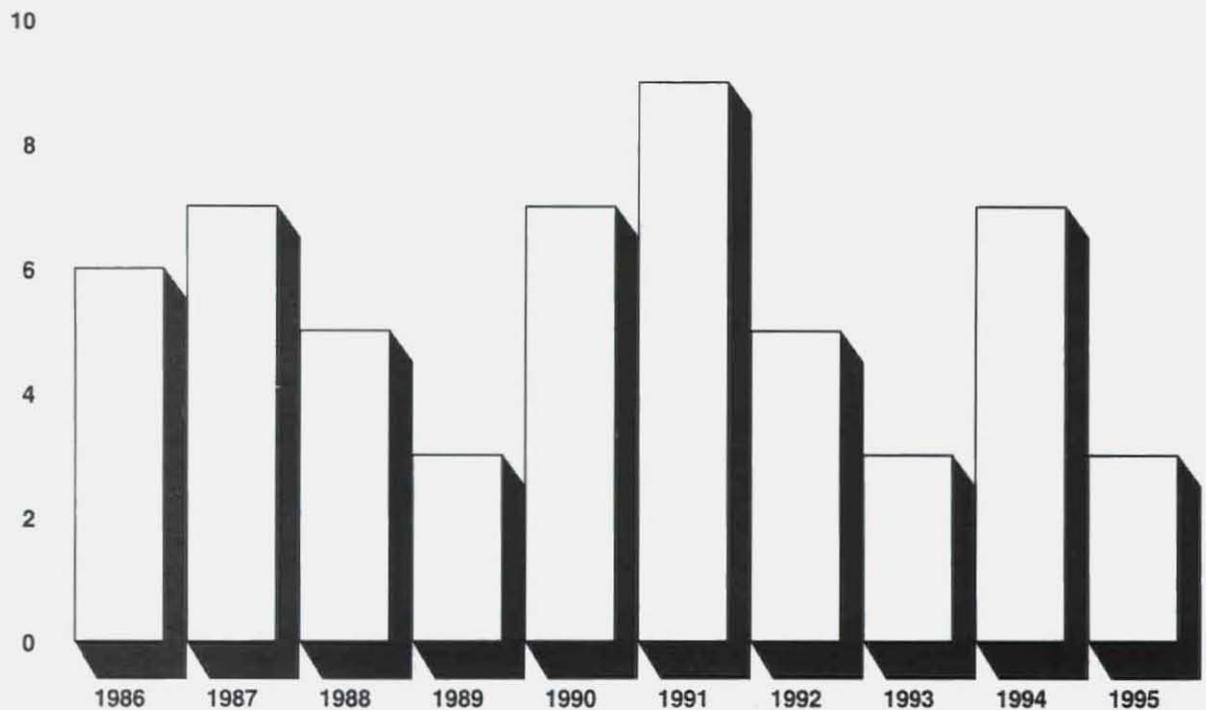
The Board also considered for the first time the observance of reemployment rights following an employee's period of service in the Armed Forces of the United States. The petitioner was employed at GAO as a GS-7 Head Secretary, an appointment that carried with it a one-year probationary period. During that period, petitioner entered active military duty but returned to the agency prior to the expiration of the probationary period. Shortly thereafter, the petitioner received a performance evaluation in which he was found to "need improvement" in two areas. Because he had been given reason to believe that the unfavorable ratings would lead to his termination at the end of his probationary year, petitioner resigned two days before that date.

The presiding member found that the unfavorable ratings were not warranted. Therefore, petitioner's resignation in response to the threat of termination amounted to a constructive discharge in violation of his right, under both statute and regulation, not to be discharged for a prescribed period following return from military service "without cause." On this determination, the agency was directed to restore petitioner to his former position or its equivalent, and to provide him with certain allied relief.¹¹

(Docket No. 95-02, September 26, 1995)

¹¹ Shortly after the end of the fiscal year, the agency requested that the presiding member reconsider the initial decision.

Figure 2.2: Number of cases filed with the Personnel Appeals Board in each of the past ten fiscal years

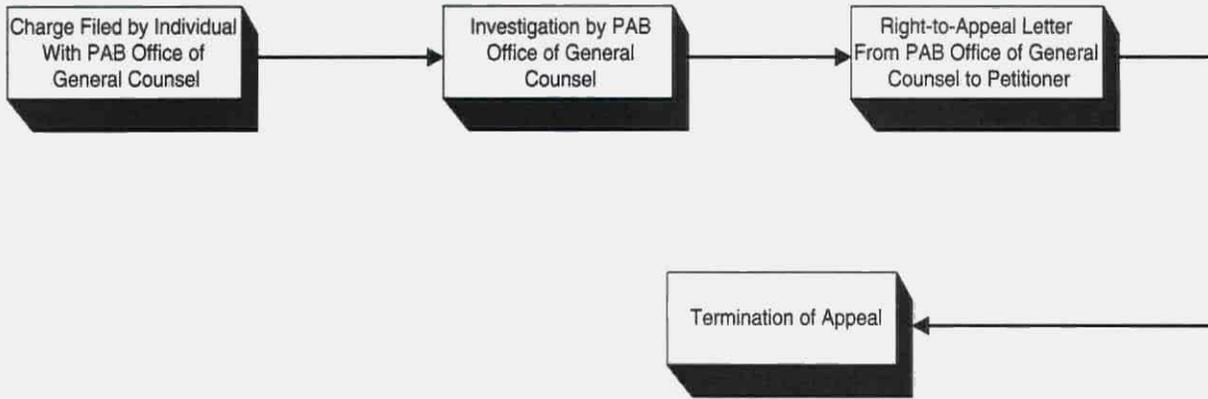


The steps to process cases before the Board are:

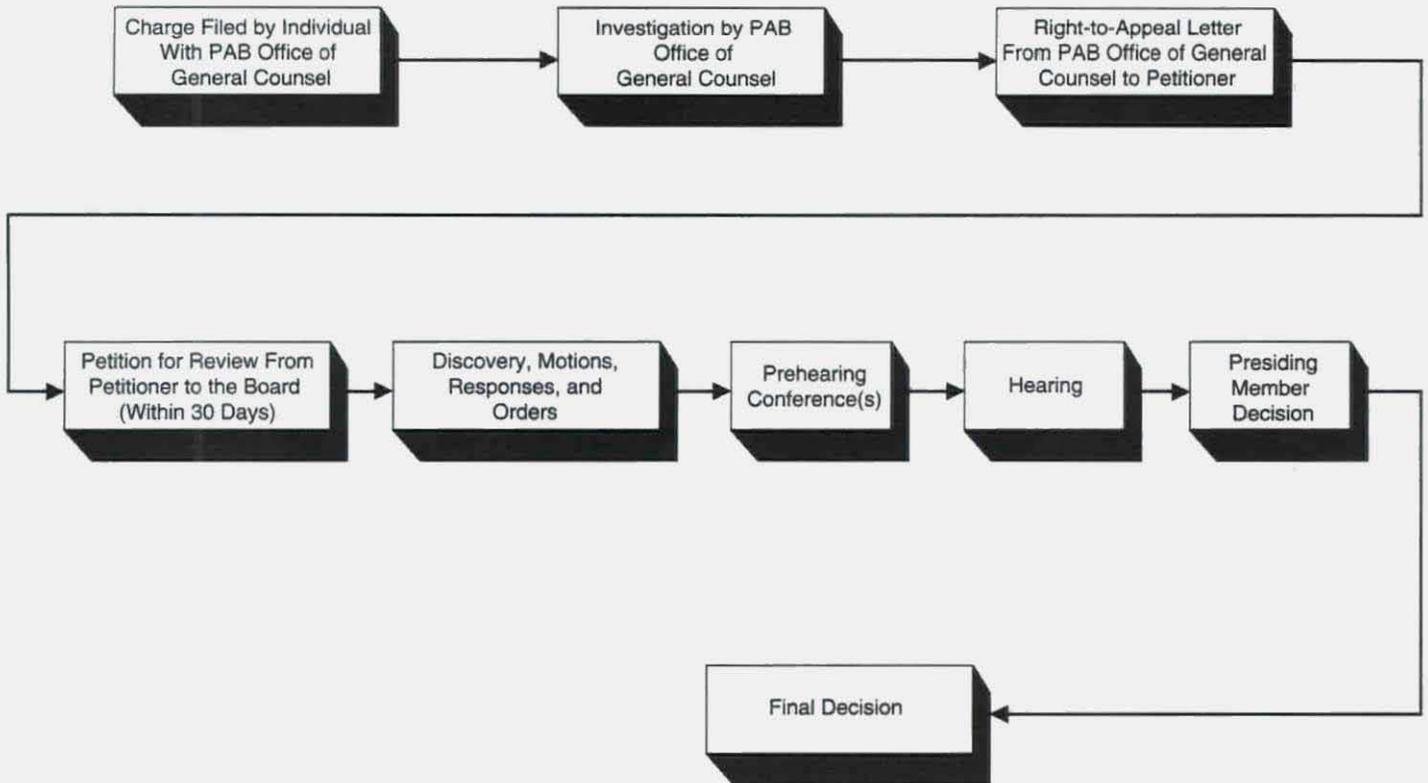
- Petition for review filed
- Notice of petition for review sent out by Board (with service list)
- Board Member/Administrative Judge assigned
- GAO responds to the petition for review
- Discovery
- Prehearing matters and motion practice
- Board Member/Administrative Judge rules on motions
- Each side files witness list, exhibits and prehearing brief, if required
- Final prehearing or status conference held, if necessary
- Hearing held
- Posthearing briefs filed, if required
- Board Member/Administrative Judge issues decision
- Motions to reconsider or notice of appeal for review by full Board filed
- Final decision issued by full Personnel Appeals Board
- Appeal to the U.S. Court of Appeals for the Federal Circuit

Figures 2.3 through 2.5 show the process of cases once a charge is filed.

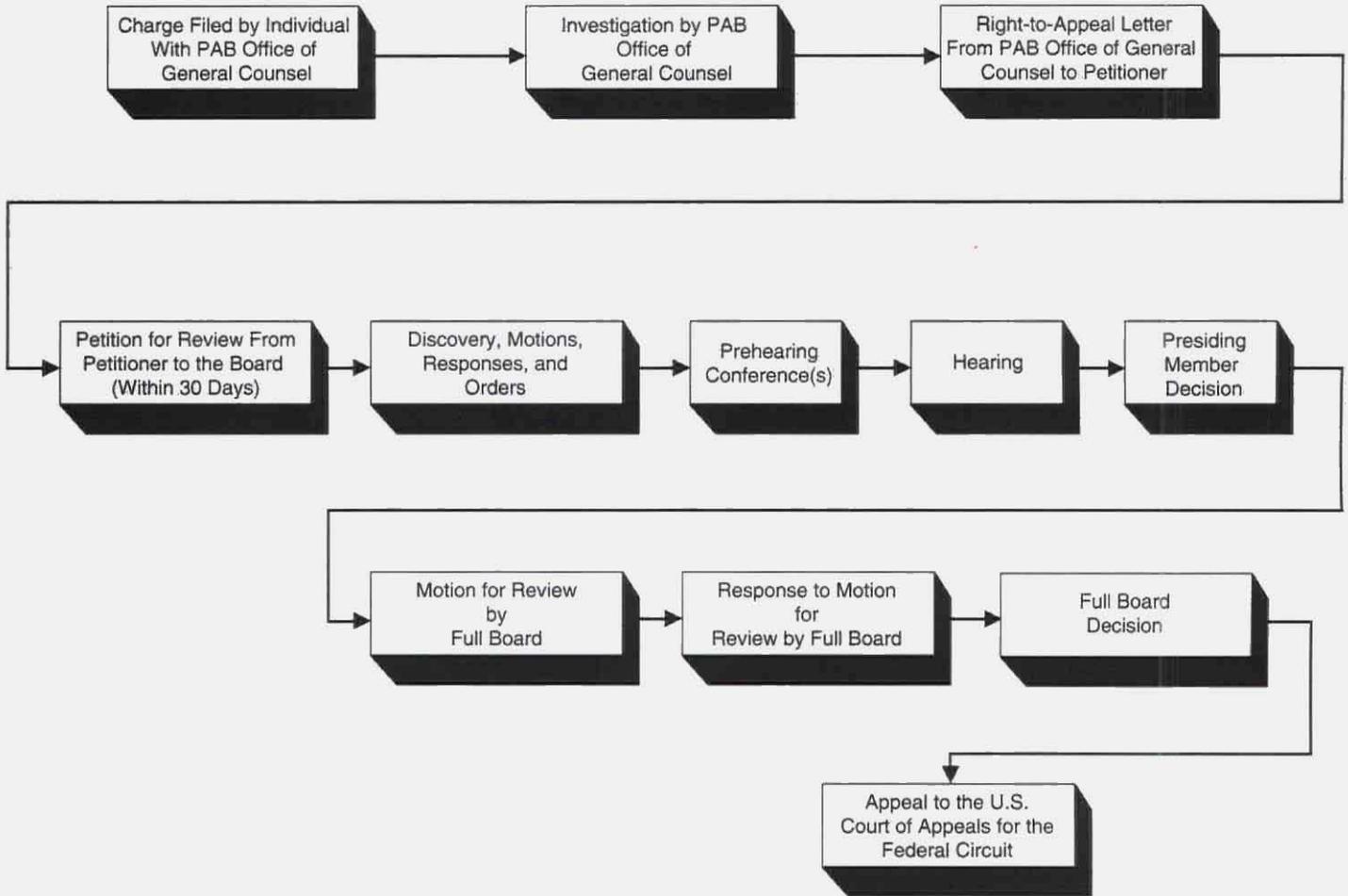
Figures 2.3: Process of Case From Charge to Termination of Appeal



Figures 2.4: Process of Case to Final Board Member's Decision With No Appeal



Figures 2.5: Process of Case From Charge to Judicial Review



Class Action Appeals to the Board

Equal employment opportunity class action appeals are processed through an administrative hearing in the GAO complaint process, bypassing the PAB/OGC investigation and proceeding directly to the Board for review.

In a pending class action case, which is not an eeo case, a petitioner filed a request for class certification alleging that he and other similarly situated disabled veterans of the Vietnam era had been denied veterans' preference rights due to GAO's failure to establish an affirmative action plan for such veterans. Previously, the Board held that GAO had voluntarily assumed the obligation to provide such a plan when it promulgated internal Order 2306.1 but had failed to do so. The Board certified a class comprised of disabled veterans employed by GAO between October 31, 1990, and January 17, 1992, who were covered by GAO Order 2306.1.

Early in fiscal year 1995, the presiding member issued a decision concluding that GAO was in compliance with GAO Order 2306.1 from October 1, 1980, through September 30, 1985, but was not in compliance with the Order from October 1, 1985, through January 17, 1992. The decision outlined the nature of the legal duty to provide affirmative action for disabled veterans at GAO. A four-day hearing was held in April, 1995, in order for the parties to present evidence on the extent of harm, if any, members of the class suffered because of GAO's failure to provide the required affirmative action plans for disabled veterans. The parties were awaiting a decision at the end of the fiscal year. (Docket No. 91-03).

PAB Office of General Counsel Activities

Information/Inquiry Intake

In addition to investigating and prosecuting cases, the PAB General Counsel also provides information to employees about their personnel and equal employment rights. To accomplish this, the PAB General Counsel periodically makes presentations to GAO's employee councils, updating them on recent changes in the law and Board procedures.

A significant activity of the Office of General Counsel involves responding to individual employee questions about diverse issues such as personnel actions, performance appraisals, grievances, complaint processing, and performance and development options. During this fiscal year, PAB/OGC handled a number of inquiries from AoC employees. The Office of General Counsel tracks the amount of time its staff expends responding to these inquiries from employees, the nature of those inquiries, and the service, if any, provided. Sixty-four informational inquiries were fielded in FY 1995 by the staff of the PAB's Office of General Counsel.

Legal Authority

The Office of General Counsel also is responsible for initiating an investigation when information comes to its attention suggesting that a prohibited personnel practice has occurred, is occurring, or will occur, regardless of whether a charge has been filed. If an individual brings an allegation to the attention of PAB/OGC, that individual may remain anonymous in most cases. After an investigation, if PAB/OGC finds insufficient grounds to conclude that a prohibited personnel practice was committed, it prepares a report, closing the case, and sends it to the individual who brought the complaint and to GAO management. If it is determined that there are sufficient grounds

to support the existence of a prohibited personnel practice, the Office may seek a stay of the personnel action, propose corrective action, or propose disciplinary action.

When an employee requests that PAB/OGC seek a stay of a personnel action, the Office of General Counsel is authorized to conduct an investigation into the allegations. PAB/OGC may request that the Board stay the personnel action if it finds reasonable grounds to believe that the personnel action was taken, or will be taken, as a result of a prohibited personnel practice. If a stay is granted, it may remain in effect pending further investigation or until the matter is litigated before the Board.

When PAB/OGC finds reasonable grounds to believe that a prohibited personnel practice may have occurred, it may recommend corrective action to management and, if the recommendation is not followed, it may then petition the Board to order corrective action.

If the PAB/OGC determines after an investigation that there are reasonable grounds to believe that a prohibited personnel action has occurred or exists, it may propose disciplinary action against the employee responsible for the practice. The Office may also propose disciplinary action against an employee engaging in prohibited political activity. In either case, PAB/OGC's proposal for discipline is presented to the Board and to the employee. After a hearing, the Board decides whether discipline is warranted and what is appropriate.

In fiscal year 1995, PAB/OGC initiated one information investigation which did not result in a case before the Board, and did not request any stays, recommend any corrective action, or institute disciplinary proceedings.

Administrative Actions

Final Regulations

The Board finalized amendments to its regulations in fiscal year 1995 in order to reflect its expanded jurisdiction over appeals from employees of the Architect of the Capitol. Interim regulations had been promulgated in November 1994 and circulated to GAO and AoC employees for comment. After expiration of the comment period, review and consideration of the comments received, and minor revision of the regulations based on some of the comments, the regulations took effect on July 6, 1995.

The Board attempted, wherever possible, to adopt for the AoC employees the same procedures applicable to cases brought before the Board by GAO employees. For example, the Board's General Counsel has the same investigatory and prosecutorial responsibility for claims brought by AoC employees as he has with claims brought by GAO employees. The PAB/OGC may also seek corrective action, disciplinary action, or a stay of a personnel action on behalf of AoC employees when he believes that there is reason to believe that prohibited discrimination or retaliation is occurring or has occurred.

The AoC Human Resources Act gives the Board jurisdiction over claims of retaliation, which it has always had with respect to GAO employees, and the regulations describe the kinds of retaliation claims that AoC employees may bring. The Board's regulations also define what constitutes exhaustion of internal remedies for employees of the Architect and allow for class action charges to be brought.

In addition, the Board increased time periods for the filing of charges in order to allow greater time for communication with different agencies. To ensure consistency, the time periods were increased for GAO employees, as well.

The Board's regulations also reflect the decision of the U.S. Court of Appeals for the

District of Columbia Circuit holding that an employee's only avenue for appellate review following a final decision of the Board is before the U.S. Court of Appeals for the Federal Circuit.

The Decisions Book

All of the Board's decisions issued since 1981 have been compiled, indexed, and organized by date in an easily updated, looseleaf format. Volume I, which contains the decisions issued from 1981 through 1989, was published in fiscal year 1994; Volume II, covering 1990 through the present, was published in fiscal year 1995 and will be updated as decisions are issued.

Oversight Projects

The GAO Personnel Act directs the Board to oversee equal employment at GAO through review and evaluation of GAO's procedures and practices.¹² Pursuant to this mandate, the Board's Office of Oversight conducts studies of selected issues and prepares evaluative reports that contain specific recommendations to the agency. The Office of Oversight focus in fiscal year 1995 was on the GAO's discrimination complaint process and age issues in employment.

GAO's Discrimination Complaint Process and Mediation Program

In fiscal year 1995, the Office of Oversight completed its study of the process by which GAO addresses complaints of discrimination and the use of mediation in that complaint process. The Board's study originally focused solely on GAO's use of mediation, a form of alternative dispute resolution, in the complaint process. With a program established in 1989, GAO has been in the vanguard of Federal agency efforts to incorporate alternative dispute resolution methods into the conventional systems for resolving complaints alleging discrimination. Midway through the Board's study, however, the GAO internal order under which the discrimination complaint process and the mediation program are administered underwent extensive revision. The Board decided to expand its study of the mediation program to include the operation of the discrimination complaint process from the initial contact with a pre-complaint counselor through the issuance of the agency's final decision. In conducting the study, the Board surveyed the entire GAO workforce to determine whether employees knew about the discrimination complaint process and the mediation program and, if they had used either process, to determine their level of satisfaction with the processes.

A descriptive report containing the Board's conclusions and recommendations was completed in fiscal year 1995 and will be published early in fiscal year 1996.

In brief, the Board concluded that the discrimination complaint process, including the mediation program, provides GAO employees with a framework for a thorough and fair administrative method for resolving allegations of discrimination. The Board made a number of recommendations to improve the program, including that AA/CRO strictly adhere to internal timeframes; that civil rights counselors and mediators participate in annual training; that "customer satisfaction" surveys be used in the mediation program; that determinations that settlement agreements have not been breached be appealable to the PAB; and, that the eeo and personnel functions at GAO be separated at the management level.

Hearing on Age Issues

In fiscal year 1995, the Board held its first informational hearing to examine issues that affect older workers, generally, and those employed by GAO, specifically. A representative of the American Association of Retired Persons (AARP), staff from the Equal Employment Opportunity Commission (EEOC) and the Office of Personnel Management (OPM), GAO management, and representatives of GAO employees spoke to the Board about age issues in employment, focusing primarily on recruitment and hiring, downsizing, and promotions. The participants at the hearing were asked to address those issues as they affect older workers and to identify barriers that may operate to deny them access to the full range of employment opportunities.

¹² 31 U.S.C. §732(f)(2)(A); See applicable regulations at 4 C.F.R. §§28.91 and 28.92. The Board does not have oversight authority for the AoC, the Botanic Garden, or the Senate Restaurants.

Non-GAO participants identified universal areas of concern and discussed means by which public and private sector organizations have successfully and unsuccessfully addressed age-related issues in the work place. The GAO delegates addressed specific areas pertaining to age-related issues within the agency. A summary of the proceedings will be published in fiscal year 1996.

Future Studies

In deciding what oversight projects to undertake in the future, the Board focused on some issues raised by participants at the age hearing and also solicited input from GAO employees through the employee councils.

In the exercise of its oversight authority, the Board is directing its attention to two areas in the future:

(1) monitoring the separations that will be occurring as 850 or more employees leave the agency in present and near-future downsizing efforts; and (2) exploring the feasibility of conducting a review of promotion and pay at GAO for the past five years.

The Board will monitor the effects of the agency's downsizing that will occur between July 31, 1995, and October 1, 1996. The Board has asked the agency to provide quarterly data on separations, aggregated by race, national origin, gender,¹³ age in five-year increments, and disability. This data will be obtained by organizational unit, as well as for the total workforce.

After review and analysis of the data, the Board will prepare a report about the overall effects of the reduction on the GAO workforce as a whole. Because the agency is using different methods to reduce the number of employees in different categories of employees, the Board will have the opportunity to study the eeo impact of each of the techniques used by GAO.

The Board is also exploring the feasibility of studying promotion patterns at GAO during the past five years. Such a study would entail a comparison of time-in-grade for all promotions for each career ladder within specific units in five year increments. For competitive promotions, the Board would study comparative data such as inclusion on the best-qualified list.

¹³ Race, national origin, age, and disability data will also be broken down by gender in each of those categories.

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