United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Human Resources,
Committee on Government Reform and Oversight
House of Representatives

For Release on Delivery
Expected at 11:00 a.m.
Thursday, July 24, 1997

NATIONAL LABOR RELATIONS BOARD

Observations on the NLRB's July 8, 1997, Draft Strategic Plan

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GAO/T-HEHS-97-183

National Labor Relations Board: Observations on the NLRB's July 8, 1977, Draft Strategic Plan

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the National Labor Relations Board's (NLRB) strategic plan required by the Government Performance and Results Act of 1993 (the Results Act).

NLRB is an independent agency created by the National Labor Relations Act of 1935. As amended, the act provides the basic framework for relations between labor and businesses engaged in interstate commerce. It defines and protects rights of employees and employers, encourages collective bargaining, and seeks to eliminate certain unfair labor practices that could interrupt commerce. The act covers both profit and nonprofit firms. Major exemptions include agricultural laborers, supervisors, and public employees.

My comments today will focus primarily on NLRB's July 8, 1997, draft strategic plan. As you requested, we determined whether the draft plan complied with the requirements of the Results Act and the Office of Management and Budget's (OMB) guidance on developing strategic plans (Circular A-11, Part 2). To judge the overall quality of the plan and its components, we used our May 1997 guidance for congressional review of the plans (GAO/GGD-10.1.16, May 1997).[1] We also relied on previous reviews we have conducted on the Results Act and at NLRB. A list of related GAO products appears at the end of this testimony.

Agency strategic plans are to provide the framework for implementing all other parts of the Results Act, and they are a key part of improving performance. The act anticipated that it might take several planning cycles to perfect the process, however, and that the final plan would be continually refined as future planning cycles occur. Agencies are not required by the Results Act to have final strategic plans until September 30, 1997. We recognize that developing a strategic plan is a dynamic process and that the draft plan we reviewed will be further revised before NLRB submits its final plan to the Congress in September 1997.

In summary, although NLRB's plan is a work in progress, the July 8 version has deficiencies in several critical areas and often omits important information required by the act. For example, the plan's mission statement clearly articulates neither the purpose of NLRB's various functions nor how

[1] Agencies' Strategic Plans Under GPRA: Key Questions to Facilitate Congressional Review (GAO/GGD-10.1.16, May 1997).

it performs its work. Moreover, although the plan's long-term goals are linked to its mission statement, its goals and objectives are neither results oriented nor measurable as stated. The agency has consulted with key stakeholder groups, such as unions, employers, and the agency's employees; however, it has not yet consulted with the Congress. Finally, NLRB's draft plan includes no description of the strategies or initiatives that will be used to achieve the plan's strategic goals, has no information on the time schedule or resources required by key actions associated with the plan's progress, and omits three of the six basic elements required by the Results Act. NLRB officials have acknowledged these deficiencies and are further revising the plan.

Background

The purpose of the National Labor Relations Act is to encourage collective bargaining and to protect workers exercising their freedom of association to negotiate the terms and conditions of their employment. To carry out this responsibility, NLRB performs electoral, investigative, prosecutorial, and judicial functions. These functions are divided between its Office of General Counsel and a five-member Board appointed by the President with Senate approval.

NLRB's Office of General Counsel, organized into 52 field offices in 33 regions, conducts representation elections,[2] investigates and resolves cases involving disagreements about elections, and investigates and prosecutes cases involving unfair labor practices. All cases originate in one of the regional offices, either with a party filing a charge alleging an unfair labor practice or with a party filing a petition for an election. At the regional level, parties to the case either settle informally—the case is withdrawn, dismissed, or settled—or pursue litigation. Cases that the Office of General Counsel's regional staff determine have merit as an unfair labor practice usually involve a hearing before an administrative law judge (ALJ) in the region, who decides the case. Litigation in representation cases usually involves a hearing before a hearing officer, followed by a regional director's decision. If the parties to a case concur with the ALJ or regional director decision, this decision becomes the NLRB decision.

If parties contest the regional decision, the five-member Board at NLRB headquarters reviews the case and decides to affirm, modify, or reverse the regional decision. For decision-making purposes, the Board organizes

[2]Representation elections are elections conducted among workers to determine whether they wish to be represented by a union.

itself into five three-member panels. One Board member serves as the head of each panel, is assigned the case, and drafts the Board's decision. Most Board decisions are made by the three-member panels rather than by the entire five-member Board. Parties (except for the General Counsel) who disagree with the Board's decision may appeal unfair labor practice cases, but generally not representation cases, to a U.S. circuit court of appeals and, in turn, to the Supreme Court.

In fiscal year 1997, NLRB's budget of about $175 million authorized 1,950 full-time-equivalent positions in its Washington headquarters and field offices. In addition to 200,000 inquiries a year from the public, NLRB receives for investigation about 40,000 cases a year filed by individuals, employers, or unions. The vast majority of all cases filed with NLRB are resolved informally at the regional level, and most of these are resolved without going to an ALJ or the regional director for a decision. The remaining cases are forwarded for review to the five-member Board at NLRB headquarters.

Results Act Requirements for Preparing Agency Strategic Plans

The Results Act requires that agencies clearly define their missions and articulate a comprehensive mission statement that covers the agency's major functions and operations. It also requires that they establish long-term strategic goals, as well as annual goals linked to them. Agencies must then measure their performance in meeting the goals they have set and report publicly on their progress. In addition to monitoring ongoing performance, agencies are expected to perform discrete evaluations of their programs and to use information from these evaluations to improve the programs.

The Results Act requires agency strategic plans to include the following six elements:

- Mission statement: A comprehensive mission statement covering the major functions and operations of the agency.
- Strategic goals: A description of general goals and objectives for the major functions and operations of the agency.
- Strategies to meet goals: A discussion of the approaches (or strategies) to achieve the goals and objectives and the resources needed.
- Relationship of strategic goals to performance goals: A description of the relationship between the general goals and objectives in the strategic plan and the performance goals in the annual performance plan.

- External constraints: A discussion of key factors external to the agency that could significantly affect achieving the strategic goals.
- Program evaluations: A description of program evaluations used to establish or revise strategic goals and objectives and a schedule for future evaluations.

The plan is to cover a period of not less than 5 years and is to be updated every 3 years. The act requires agencies, as they develop their strategic plans, to consult with the Congress and solicit the views of other key stakeholders.

OMB Circular A-11 provides guidance to agencies on preparing strategic plans, including a description of individual components to be included in such plans. In addition, the circular provides information on developing annual performance plans and a schedule by which all plans must be completed and sent to OMB and the Congress.

Strategic Plan's Mission Statement Could Be Strengthened

According to OMB Circular A-11, the mission statement in a strategic plan should be brief, defining the basic purpose of the agency, with particular focus on its core programs and activities. High-quality mission statements often explain why the agency exists, what it does, and how it performs its work.

NLRB's stated mission in its draft strategic plan is to "(a) determine and implement through secret ballot elections, the free democratic choice by employees as to whether they wish to be represented by a union in dealing with their employers and, if so, by which union; (b) prevent and remedy unlawful acts, called unfair labor practices, by either employers or unions or both; and (c) insure that the process of collective bargaining is available and unimpeded."

Although the statement accurately itemizes the functions required by the statute, it does not clearly articulate what those functions are intended to achieve. For example, the statement does not focus on the results expected from activities, such as conducting elections, that is, how workplaces would be different if such elections occurred freely. In addition, a statement about ensuring that the process of collective bargaining is available and unimpeded is vague without further clarification of which NLRB activities would address this part of its mission and what would result from achieving this. Similarly, the statement says

that NLRB will prevent and remedy unlawful acts but does not convey which agency activities would perform this function.

Strategic Plan's Goals Linked to Agency's Mission but Not Results Oriented

The plan's long-term goals are generally linked logically to its mission statement. For example, the first three of the plan's five goals concern the expeditious and effective resolution of representation questions and unfair labor practices and vigorous pursuit of court orders and judgments to obtain redress. All of these are logically linked to a mission statement aimed at facilitating employees' free choice in determining union representation, preventing and remedying unfair labor practices and ensuring that the collective bargaining process is available and unimpeded. The remaining goals concern the agency's desire to implement effective management practices—maintaining a well-trained workforce and providing it the technological capabilities to ensure productivity—that would help achieve its mission.

Unfortunately, the objectives associated with each of the goals are simply extended restatements of the strategic goals, rather than more specific explanations of what the goals are intended to accomplish. For example, one of the plan's goals is that "the NLRB will resolve questions concerning representation expeditiously and effectively." The associated objective states that "the NLRB seeks to effectively protect the rights of employees to select or reject a labor organization as their collective bargaining representative. To this end, it is essential that the NLRB resolve all questions concerning representation and conduct representation elections fairly and as expeditiously as possible." In addition, the goals and objectives as stated are generally neither results oriented nor measurable. For example, the goals tend to focus on the process, such as resolving questions, and how it will be done, that is, expeditiously and effectively, rather than on the result, such as workplaces where the free and democratic choice of employees can be expressed. In addition, the goals are not readily measurable without clarification of the meaning of terms such as "effective."

Strategies to Achieve Goals Are Identified but Not Described

The Results Act specifies that agencies describe the means by which they will achieve the general goals and objectives and the various resources needed. This can include operational processes, skills, technologies, and other resources. The current version of the NLRB strategic plan mentions proposed strategies to achieve each objective but does not describe them nor articulate the linkage between the strategy and the particular goal and

in one instance does not even identify a strategy. For example, it lists strategies such as "super panels" to achieve the goal concerning representation elections without describing them or their relevance.[3] Earlier versions of the agency's strategic plan had more detail on the agency's proposed strategies, and agency officials have told us that they are continuing to develop this area internally.

In addition, OMB Circular A-11 requires that agencies include schedules and the levels of resources necessary to complete key actions. The current agency plan, however, has no information on the time schedule or resources required by key actions associated with the plan's progress, for example, the development or use of "case management data research tools" or the resources associated with the completion of its case activity tracking system, which is discussed later in my statement.

Plan Omits Three Required Components

NLRB's draft strategic plan omits three of the six components required by the Results Act and OMB Circular A-11. More specifically, the plan does not discuss (1) the relationship between its long-term goals and annual performance goals, (2) outside factors or external constraints that could hinder or affect the agency's efforts to achieve its goals, and (3) role of program evaluation in developing the plan or establishing goals.

The Results Act requires agencies to establish annual performance goals linked to the plan's long-term strategic goals. These annual goals are to appear in an annual performance plan that the agencies must prepare beginning in February 1998 and submit to the Congress. OMB Circular A-11 notes that the agency strategic plan should include the type and nature of the goals to be included in the annual plan, the relationship between the annual plan goals and the general goals and objectives of the strategic plan, and the relevance of the annual goals in reaching the overall goals and objectives. Agencies must then measure their performance toward the goals they have set and report publicly, in subsequent years, on their progress. Results-oriented annual performance goals can enable the agency to track its progress closely and adjust the strategic plan when necessary. NLRB officials are currently revising the performance measures proposed in an earlier draft, they said, and anticipate addressing this issue in future versions of the agency's strategic plan.

[3]Under a super panel procedure, a panel of three Board members meets each week to hear cases that involve issues that lend themselves to quick resolution without written analyses by each Board member's staff.

In addition, NLRB's strategic plan does not discuss external factors that affect the agency's ability to achieve its objectives. OMB Circular A-11 notes that strategic plans should briefly describe key external factors, indicate their link with particular goals, and describe the factors' effect on meeting that goal. Identifying and assessing such key factors would have particular relevance for NLRB, an agency whose workload is influenced by general economic conditions; changes in the nature of work and workforce demographics; and the needs of stakeholders such as workers, unions, and employers.

Finally, one of the purposes of the Results Act is to improve decision-making by providing reliable information on the extent to which programs are fulfilling their statutory responsibilities. Program evaluations can be an important source of information for ensuring the validity and reasonableness of goals. Evaluation information can also be useful in explaining results in the agency's annual performance reports, including, when applicable, the reasons annual goals were not met and identifying appropriate strategies to meet unmet goals. According to the Results Act, an agency's strategic plan should describe the program evaluations used in establishing or revising goals and objectives and include a schedule for future program evaluations. NLRB's strategic plan neither describes the program evaluations used in preparing the strategic plan nor includes a schedule for future program evaluations.

Consultation With Key Stakeholders Has Not Included the Congress

In developing a strategic plan, the Results Act requires that agencies consult with the Congress and solicit and consider the views and input from other key stakeholders. NLRB's strategic plan does describe the agency's efforts to obtain information from its stakeholders (unions and employers) to determine their satisfaction with its services. The agency has also obtained input from regular meetings with labor-management advisory panels, which are composed of labor and management practitioners who appear before the agency and use the agency's services, on changes in agency procedures that could expedite case processing and improve agency services. Finally, the agency plan acknowledges valuable input from regular consultations with the labor organizations that represent their own employees as well as with their managers and supervisors on improvements in work process, including issues of quality. The plan, however, provides no indication that NLRB has consulted with the Congress in its development, and agency officials said that they have not yet done so.

Strategic Plan Recognizes Management Challenges Facing the Agency

NLRB's strategic plan does identify several key challenges facing the agency, including difficulties in managing a large caseload and weaknesses in its management information systems. However, regarding its management information system, the plan does not link the development of performance measures with the development of a new management information system. The result is that potential incompatibilities between the two could impede accurately measuring progress toward the strategic goals. The plan could also be improved by acknowledging several additional issues: the year 2000 computer problem, computer security, and financial management.

Caseload Management

NLRB's strategic plan recognizes that combining timeliness in reducing caseload backlogs with fairness and quality continues to be one of the main challenges facing the agency. Our past work on NLRB's case management supports this.[4] In 1991, we reported that NLRB's regional offices resolved the vast majority of cases within 1 year. During the mid- and late-1980s, the five-member Board decided about 67 percent of the 5,000 cases forwarded to it within 1 year from the date a case was assigned to a Board member. About 10 percent of the cases decided by the Board, however, took from about 3 to 7 years to decide. We recommended in January 1991 that to help improve the timeliness of its case processing, NLRB should (1) establish standards for the total length of time a case should be at the Board and a time for each decision stage at headquarters that, when exceeded, requires corrective action[5] and (2) specify the corrective actions that Board members and staff should take when those targets are exceeded.

In response to our recommendations, the Board set 2 years as a benchmark as the outside limit for issuing a decision at the Board and 6 months as the maximum time for each decision stage. Also, the Board revised its case management procedures to directly involve all Board members in matters that may be emerging as problem cases at the Board level requiring special attention. According to Board officials, these actions, together with other factors, resulted in significantly reducing the number and percent of Board-decided cases that were more than 2 years old. At the end of fiscal year 1991, 7 cases—2 percent of all cases—were

[4]National Labor Relations Board: Action Needed to Improve Case-Processing Time at Headquarters (GAO/HRD-91-29, Jan. 7, 1991).

[5]To decide cases, the five-member Board uses a three-step process. The Board refers to the steps as stages I, II, and III. In stage I, a preliminary decision is reached on whether to accept, modify, or reject the regional decision. In stage II, Board staff draft the proposed Board decision. In stage III, the draft decision circulates to the Board members who approve, modify, or dissent to the proposed decision.

pending before the Board for more than 2 years compared with 60 cases—16 percent of all cases—that were pending at the end of fiscal year 1989. At the end of fiscal years 1992 and 1993, the percent of unfair labor practice cases pending at the Board for more than 2 years was 3 and 4 percent, respectively, and the percent of representation cases was 1 and 3 percent, respectively.

Although processing times for representation cases at the Board level and in the regions have remained stable, NLRB has not sustained its improved case-processing times for unfair labor practice cases. At the Board, the percent of unfair labor practice cases pending for more than 2 years at the end of fiscal year 1994 rose to 8 percent and, at the end of fiscal year 1996, to 15 percent—to a level almost as high as in fiscal year 1989. At the regional level, the number of unfair labor practice cases awaiting preliminary investigation to determine whether a case had merit increased from 3,555 cases at the end of fiscal year 1991 to 5,219 cases at the end of fiscal year 1995. Almost one-half of the 5,219 cases exceeded NLRB's 45-day benchmark for preliminary investigations to take place. The median processing time in the regions for closing unfair labor practice cases increased from 58 days from filing to closing in fiscal year 1990 to 72 days in fiscal year 1995.

In 1996, we found that NLRB had initiated additional efforts to improve its performance.[6] For example, at the regional level, NLRB consulted with an advisory panel of management and labor attorneys to discuss possible actions for expediting cases, used impact analysis to allocate resources to cases with the greatest scope and effect, and developed efforts, such as alternative investigative techniques, to lighten the regional workload. At the Board level, NLRB focused on lead cases[7] to reduce the backlog of related cases and implemented "speed teams" to expedite Board decisions on easier cases.[8]

Information Systems

Regarding its management information systems, the plan acknowledges the management challenge posed by NLRB's weak systems, noting that its

[6]We obtained this information for an informal briefing for the staff of a congressional committee.

[7]When several undecided cases deal with the same issue, the Board selects one case to serve as the principal or lead case and suspends further processing on all related cases until the lead case is decided.

[8]For cases involving straightforward issues, the three-member panel to which the case is assigned for drafting the Board's decision may agree to draft and circulate the proposed decision without preparing the detailed documentation that typically is required.

multiple, independent systems do not adequately support the agency's need for prompt and accurate information to effectively manage its caseload. NLRB has several systems that enable tracking cases at different stages of processing. No single system, however, can track all cases from the initial charge until their final resolution. A single unified system could facilitate efficiencies in tracking cases and in resolving cases quickly. The plan notes that the agency is continuing to develop the case activity tracking system that is expected to be completed in 2 years, pending resource availability. This system is expected to facilitate case-related research and make it possible to conduct other important aspects of case processing with greater efficiency, increasing productivity.

In recognition of the need for information management improvements, NLRB's plan includes a strategic goal to integrate information resource management into the working environment to more efficiently and effectively meet NLRB's core missions. As discussed earlier, however, while proposed strategies to reach this goal are mentioned in the plan, these strategies are not described. An additional problem is that the plan does not indicate any coordination between developing its case activity tracking system and creating well-defined, results-oriented performance measures. To the extent that the measures developed by the agency as part of its strategic plan and annual performance plans are inconsistent with the data collected by its new information system, that system would have to be retrofitted to allow measuring progress toward the agency's strategic goals. Finally, the plan also omits strategies to address other important information management challenges, such as changing computer systems to accommodate dates beyond the year 1999—called the year 2000 problem—as well as any significant information security weaknesses—two issues that we have identified as high risk governmentwide.[9]

Finally, although NLRB is not required by law to prepare financial statements and have them audited, preliminary work from our governmentwide audit effort has determined that the agency would profit from a single, integrated financial management system instead of the five systems the agency currently uses. Such a system would enable NLRB to collect reliable and timely information on the full cost of its programs and activities. Because NLRB's strategic plan does not detail the range of data to be collected in its case activity tracking system, we cannot say whether an improved cost accounting system should be part of that initiative, but it may be useful for the agency to consider such integration as it reviews its management information systems generally.

[9]GAO High-Risk Series (GAO/HR-97-20, Feb. 1997).

As I previously stated, NLRB's strategic plan is a work in progress. We discussed our observations with Board officials in preparing for this hearing, and they agreed on the need for improvements in the draft plan we reviewed. The officials said they are continuing to revise the draft plan so that it will conform with the Results Act and OMB Circular A-11 requirements.

Mr. Chairman, this concludes my prepared statement. I will be happy to answer any questions that you or other members of the Subcommittee may have.

Related GAO Products

The Government Performance and Results Act: 1997 Governmentwide Implementation Will Be Uneven (GAO/GGD-97-109, June 2, 1997).

Agencies' Strategic Plans Under GPRA: Key Questions to Facilitate Congressional Review (GAO/GGD-10.1.16, May 1997).

Executive Guide: Effectively Implementing the Government Performance and Results Act (GAO/GGD-96-118, June 1996).

Managing for Results: Achieving GPRA's Objectives Requires Strong Congressional Role (GAO/T-GGD-96-79, Mar. 6, 1996).

National Labor Relations Board: Action Needed to Improve Case-Processing Time at Headquarters (GAO/HRD-91-29, Jan. 7, 1991).

Actions Needed to Improve Case Processing Time at National Labor Relations Board Headquarters (GAO/T-HRD-91-1, Oct. 3, 1990).

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