



March 2021

# NATIONAL LABOR RELATIONS BOARD

Meaningful  
Performance  
Measures Could Help  
Improve Case Quality,  
Organizational  
Excellence, and  
Resource  
Management



A Century of Non-Partisan Fact-Based Work

# GAO@100 Highlights

Highlights of [GAO-21-242](#), a report to congressional requesters

## Why GAO Did This Study

NLRB carries out its statutory responsibility for administering and enforcing the National Labor Relations Act through two primary functions: (1) preventing employers and unions from engaging in unfair labor practices, and (2) conducting secret-ballot elections for employees to consider representation by a union. Recent increases in unobligated funds, reductions in staff levels, and policy changes at NLRB have raised concern about its ability to accomplish its mission. GAO was asked to examine the effects of these changes.

This report examines: (1) how NLRB has obligated its annual appropriations since fiscal year 2010; (2) how staff numbers have changed since fiscal year 2010; and (3) the extent to which NLRB has met its performance goals since fiscal year 2015, and stakeholder perspectives on factors affecting its ability to do so. GAO reviewed NLRB budget and employee survey data, strategic plans, and performance and accountability reports. GAO also interviewed NLRB officials and stakeholders, including representatives of large labor organizations and industry groups selected to obtain a range of views.

## What GAO Recommends

GAO is making six recommendations to NLRB, including to develop objective and quantifiable performance measures and evaluate performance pressure on staff. NLRB agreed with GAO's recommendations, and described a number of ongoing and planned actions to address them.

View [GAO-21-242](#). For more information, contact Thomas Costa at (202) 512-4769 or [costat@gao.gov](mailto:costat@gao.gov).

March 2021

## NATIONAL LABOR RELATIONS BOARD

### Meaningful Performance Measures Could Help Improve Case Quality, Organizational Excellence, and Resource Management

## What GAO Found

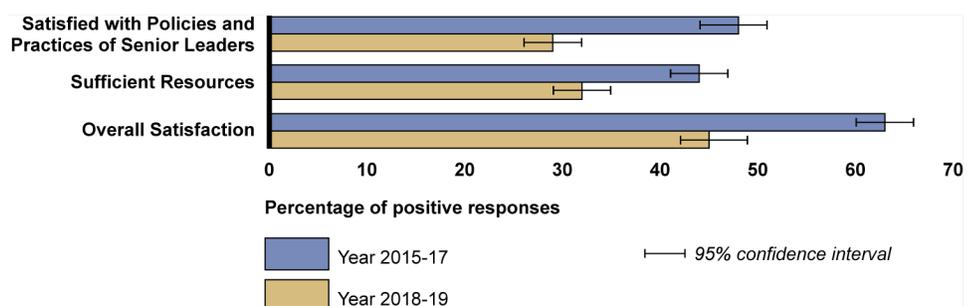
The National Labor Relations Board (NLRB) obligated most of its appropriations in fiscal years 2010 through 2017 on handling complaints of unfair labor practices and for conducting union representation elections; however, the agency has experienced a recent growth in unobligated funds. For example, more than \$5 million of NLRB's fiscal year 2019 appropriations were not obligated. GAO's review and a recent NLRB Inspector General report attributed the unobligated funds to a lack of effective internal controls, and NLRB has taken steps to address several recommendations made by its Inspector General to strengthen its controls and improve its budgeting.

In addition to the recent growth in unobligated funds, the number of NLRB staff decreased from 1,733 in fiscal year 2010 to 1,281 in fiscal year 2019, or by 26 percent. NLRB officials and internal and external stakeholders partly attributed the change to a 22 percent decline in NLRB's caseload. Staff reductions were about four times greater (33 percent compared to 8 percent) in NLRB's regional offices, where casework originates, than in headquarters.

NLRB reported that it has met some of its performance measures for case processing goals since fiscal year 2015, but the agency lacks meaningful measures for others, and stakeholders identified various factors affecting NLRB's efforts to meet its goals. While NLRB reported that it met most of its recently revised timeliness measures, it lacks objective and quantifiable measures for other goals, such as organizational excellence and resource management. Without such measures, NLRB will not be able to determine its progress in meeting its goals.

While NLRB officials said they believe the emphasis on increased timeliness has helped resolve cases more promptly, several internal stakeholders said they believe it has negatively affected case quality and staff morale. Data from the Federal Employee Viewpoint Survey show NLRB employees were increasingly dissatisfied with senior leaders' policies, resource sufficiency, and their overall organization in recent years (see figure), ranking last out of all 17 medium-sized federal agencies in 2019. Without working with internal stakeholders to evaluate pressures on staff, NLRB risks over-burdening staff, which could result in reduced employee morale and work quality.

Estimates on Selected Responses in the Federal Employee Viewpoint Survey (FEVS) for National Labor Relations Board Employees, 2015 through 2019



Source: GAO analysis of FEVS data on the National Labor Relations Board. | GAO-21-242

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**Abbreviations**

FEVS	Federal Employee Viewpoint Survey
GPRA	Government Performance and Results Act of 1993
GPRAMA	GPRA Modernization Act of 2010
OIG	National Labor Relations Board Office of Inspector General
NLRA	National Labor Relations Act
NLRB	National Labor Relations Board
NxGen	Next Generation Data System

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March 29, 2021

The Honorable Patty Murray  
Chair  
Subcommittee on Labor, Health and Human Services,  
Education, and Related Agencies  
Committee on Appropriations  
United States Senate

The Honorable Rosa DeLauro  
Chairwoman  
Subcommittee on Labor, Health and Human Services,  
Education, and Related Agencies  
Committee on Appropriations  
House of Representatives

Work stoppages and labor strife can have a significant effect on the U.S. economy. Recognizing the consequences of these issues, Congress in 1935 created the National Labor Relations Board (NLRB), an independent federal agency, to administer and enforce the National Labor Relations Act (NLRA). The NLRA encourages the practice of collective bargaining, protects the rights of employees in this area, and seeks to eliminate unfair labor practices.<sup>1</sup>

NLRB's two primary functions are to (1) prevent employers and unions from engaging in unfair labor practices, and (2) conduct secret-ballot elections among employees to determine whether they wish to be represented by a union (representation cases). All proceedings originate with the filing of charges or petitions by employees, unions, employers, or other parties in the private sector. The NLRB acts only on those charges and requests brought before it and does not initiate filings.

Recent increases in unobligated balances, reductions in staff, and policy changes have raised concern about NLRB's ability to accomplish its mission.<sup>2</sup> Since fiscal year 2016, NLRB's level of expired unobligated

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<sup>1</sup>National Labor Relations Act of 1935, 29 U.S.C. §§ 151-169.

<sup>2</sup>NLRB receives 1-year appropriations, which expire at the end of their period of availability, and are then available only for limited purposes. For example, expired funds could still be used to make payments or liquidate obligations incurred during the fiscal year for which the appropriations were made.

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funds has steadily increased, while the agency has reduced its full-time equivalent staff by approximately 17 percent.<sup>3</sup> In December 2018, NLRB's General Counsel also issued a directive to shorten processing times for unfair labor practice cases.

You asked us to examine the effects of case processing policies on staffing, as well as other budget and management issues. This report examines:

1. How NLRB has obligated its annual appropriations since fiscal year 2010, and the causes of the recent growth in unobligated funds;
2. How NLRB staff numbers have changed since fiscal year 2010, and the factors that have contributed to these changes; and
3. The extent to which NLRB has met its performance goals since fiscal year 2015, and the factors that NLRB officials and stakeholders identified as affecting NLRB's ability to meet its goals.

For our first objective, we reviewed NLRB financial statements and budget justifications, as well as analyzed budget data since fiscal year 2010, to determine how NLRB has obligated its appropriations.<sup>4</sup> We compared NLRB's unobligated funds with other similarly-sized federal agencies.<sup>5</sup> We selected fiscal year 2010 as our starting point to provide a long-term view of the level of unobligated balances at NLRB. We also interviewed NLRB officials to understand the budget process and reasons for the recent growth in unobligated balances. Additionally, we reviewed the September 2020 report from the agency's Office of Inspector General

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<sup>3</sup>When we refer to unobligated funds, we mean unobligated balances in expired accounts in the U.S. Department of the Treasury. Expired balances remain available to the agency for 5 fiscal years for adjusting and liquidating obligations properly incurred during the budget authority's period of availability. Amounts not used within this 5-year period are cancelled, and all remaining funds are returned to the general fund of the Department of the Treasury and are thereafter no longer available for any purpose.

<sup>4</sup>We analyzed data from the Office of Management and Budget MAX data system. We assessed these data by comparing our results with published totals and determined that they were sufficiently reliable for our purposes.

<sup>5</sup>We analyzed 21 agencies with budgets ranging from approximately half to twice the amount of NLRB's average appropriation from fiscal years 2010 through 2019. In addition to NLRB, three agencies had unobligated balances—ranging from \$1 to \$6 million—in at least 1 fiscal year from 2010 through 2019. Agencies may have different reasons for unobligated funds and may also have different time frames in which to use their appropriations. We did not investigate the reasons for other agencies' unobligated funds. See appendix I for more details.

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(OIG) about NLRB's unobligated balances in fiscal year 2019, and interviewed the OIG about the report's findings and recommendations.<sup>6</sup>

For our second objective, we reviewed NLRB staffing level data regionally and nationally since fiscal year 2010, as well as NLRB planning documents concerning staffing levels.<sup>7</sup> We reviewed NLRB's case processing policies and interviewed NLRB officials to understand factors that may have affected staffing levels. We also interviewed internal and external stakeholders, which we discuss in more detail below. We analyzed NLRB's data on case intake levels since fiscal year 2010 to identify potential relationships between case levels and staffing.<sup>8</sup> Again, we selected fiscal year 2010 as our starting point to show the trends in staffing changes over the last decade.

For our third objective, we analyzed NLRB documentation and interviewed NLRB officials and stakeholders. We defined the scope of our review to begin in 2015 to have overlap for the various agency initiatives that have been implemented over the last several years. To understand NLRB's performance goals and its progress in achieving them, we reviewed NLRB's annual Performance and Accountability Reports for each fiscal year from 2015 to 2019, and reviewed NLRB's two most recent strategic plans, for fiscal years 2014-2018 and fiscal years 2019-2022. We analyzed data from NLRB's annual Federal Employee Viewpoint Surveys (FEVS) for 2015 to 2019 to obtain employee perspectives on the agency's performance.<sup>9</sup> We selected FEVS questions that asked about staff morale, workload, resources, and satisfaction with the organization and senior leaders because these questions addressed

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<sup>6</sup>NLRB Office of Inspector General, Fiscal Year 2019 Budget Execution, OIG-AMR-91-20-04 (September 16, 2020).

<sup>7</sup>After reviewing the methods that NLRB uses to collect and record these data, we determined that they were sufficiently reliable for our purpose.

<sup>8</sup>We analyzed NLRB case data from its Next Generation (NxGen) data system. We determined these data were sufficiently reliable for our purposes by reviewing the methods that NLRB uses to collect and record these data, and interviewing knowledgeable officials about the data.

<sup>9</sup>The Office of Personnel Management administers FEVS as a tool for employees to share their perceptions in many critical areas of their work experience. We reviewed the methods used to collect and record FEVS data and determined that they were sufficiently reliable for our purposes.

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NLRB employee views about their working environment and agency management.

We also reviewed NLRB's case quality review process to understand how NLRB evaluates its work investigating unfair labor practice cases and union representation elections. We interviewed NLRB management officials on the agency's case quality reviews. Lastly, we interviewed internal and external stakeholders to obtain their views on factors that have affected NLRB's ability to meet its performance goals. We interviewed representatives from three internal stakeholder groups: NLRB's two unions (the National Labor Relations Board Union and the National Labor Relations Board Professional Association) and NLRB's Regional Director Committee.<sup>10</sup> We also interviewed NLRB's Chief Administrative Law Judge and NLRB's OIG. We did not include NLRB management as an internal stakeholder because we captured the views of NLRB management through other aspects of our work. The external stakeholders we interviewed included representatives of large industry groups and external unions, selected to obtain a range of views: the U.S. Chamber of Commerce, the National Right to Work Committee, the American Federation of Labor and Congress of Industrial Organizations, the Service Employees International Union, and the International Brotherhood of Teamsters. We also reviewed relevant federal laws, regulations, and guidance, and previous GAO work.

We evaluated this information using criteria such as NLRB's strategic plans and NLRB's guidance on the quality review process, leading management practices for setting and achieving measurable performance goals detailed in our prior work on the Government Performance and Results Act of 1993 (GPRA) and GPRA Modernization Act of 2010

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<sup>10</sup>NLRB officials said the Regional Director Committee is made up of five members representing Regional Directors across NLRB's 26 regional offices, and the Committee is comprised of one Regional Director from each of the four districts as well as one chair from any district. The Committee members spoke with directors from their region about our review in order to represent several viewpoints during our interviews.

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(GPRAMA);<sup>11</sup> and Standards for Internal Control in the Federal Government.<sup>12</sup>

We conducted this performance audit from February 2020 to March 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

NLRB is a mid-sized agency with about 1,281 full-time equivalent staff positions and a fiscal year 2019 budget of approximately \$274.2 million. NLRB carries out its mission through its headquarters office and 26 regional offices grouped into four geographic districts across 19 states and associated field offices throughout the United States.

NLRB is headed by a five-member Board and the General Counsel. Each Board Member is appointed by the President and confirmed by the Senate for a term of 5 years, with the term of one member expiring each year; currently, there are four Board Members and one vacancy. The Board primarily acts as a quasi-judicial body to decide unfair labor practice and representation cases that have been appealed after a decision by an NLRB Administrative Law Judge; the Board issues several hundred decisions each year. The Board is also responsible for processing representation cases in the NLRB regional offices.

NLRB's General Counsel is appointed by the President and confirmed by the Senate for a term of 4 years. The General Counsel is independent from the Board and is responsible for investigating and prosecuting unfair labor practice cases, and for providing general legal and administrative supervision of NLRB regional and headquarters offices in the processing of unfair labor practice cases, as well as representing the agency in court. The current Acting General Counsel was appointed on January 25, 2021.

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<sup>11</sup>The Government Performance and Results Act of 1993 (GPRA), as updated and expanded by the GPRA Modernization Act of 2010 (GPRAMA), generally requires agencies to have performance goals that are objective, measurable, and quantifiable. Performance goals are generally assessed by one or more performance measures.

<sup>12</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

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NLRB officials said that headquarters' divisions and offices are supervised by either the Board or General Counsel based on their roles in investigating, prosecuting, litigating, and adjudicating cases. For example, the Board supervises the Division of Judges, while the General Counsel supervises the Division of Advice.<sup>13</sup> Divisions and offices in headquarters provide services to both the Board and the General Counsel, such as the Division of Administration and the Office of Chief Financial Officer. Each regional office is led by a Regional Director, and the Regional Directors are represented by the Regional Director Committee, according to NLRB officials.

NLRB's responsibility for investigating and resolving reported allegations of unfair labor practices (about 90 percent of NLRB's workload) is primarily carried out in the regional offices by attorneys and examiners, collectively called board agents. In 2019, NLRB received 18,552 unfair labor practice charges. Unfair labor practice charges may allege violations of the NLRA by employers or unions for engaging in conduct that denies employees' rights under the Act, such as refusing to bargain in good faith or taking discriminatory adverse actions against employees.

When an unfair labor practice charge is filed, it is assigned to a board agent who investigates the charge by collecting evidence from the charging party. If the charging party's preliminary information suggests a meritorious case, the board agent will request evidence from the party being charged. The board agent then makes a recommendation to the supervisor or Regional Director on the merits of the case. The case may be dismissed or withdrawn if it lacks merit; if the allegation has merit, the board agent will try to resolve the case through settlement. A settlement agreement may be informal or formal, and may include financial compensation, restoration of a job, or refraining from engaging in unlawful conduct.

If the parties are unable to reach a resolution, the Regional Director, on behalf of the General Counsel, issues a complaint against the charged party.<sup>14</sup> The case then goes before an Administrative Law Judge for a

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<sup>13</sup>The Division of Judges is comprised of Administrative Law Judges who docket, hear, settle, and decide unfair labor practice cases nationwide. The Division of Advice examines legal issues and provides legal analysis under the General Counsel.

<sup>14</sup>According to NLRB officials, approximately 98 or 99 percent of meritorious cases are ultimately settled rather than proceeding to a hearing before an Administrative Law Judge. Cases can be settled at various stages of the process. For example, a case can be settled before a complaint is issued, or during the time between a complaint and a hearing.

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hearing, where the General Counsel is responsible for the prosecution of the case. The Administrative Law Judge issues a decision. An Administrative Law Judge decision may be appealed to the Board; a Board decision may be appealed to an appropriate U.S. Court of Appeals. If a party refuses to comply with a Board decision, the Board may petition for court enforcement of the order. NLRB also has compliance officers whose duties are obtaining compliance with informal and formal settlement agreements, Board orders, and court judgments.<sup>15</sup>

Regional offices are also primarily responsible for processing representation cases; NLRB processed 2,095 petitions for union representation in 2019 (about 11 percent of NLRB's case intake). When employees wish to form or join a union, or decertify an existing union, a representation petition is filed with NLRB. NLRB board agents will then investigate to make sure the Board has jurisdiction, the organization seeking to represent employees is a labor organization, and there are no existing labor contracts or recent elections that would bar an election.

If no impediments are found, NLRB board agents will seek an election agreement between the employer, union, and other parties. Once an agreement is reached, the parties authorize the NLRB Regional Director to conduct the election. If no agreement is reached, the Regional Director will hold a hearing and then may order an election and set the conditions in accordance with the Board's rules and its decisions.

NLRB identified four performance goals in its fiscal years 2014-2018 and fiscal years 2019-2022 Strategic Plans. The first two goals are mission-related, concerning how the agency handles its core functions in administering the NLRA. The last two goals are support-related, concerning the internal management of resources.

- Goal 1 – Promptly and fairly resolve unfair labor practice cases.
- Goal 2 – Promptly and fairly resolve all questions concerning representation of employees.
- Goal 3 – Achieve organizational excellence and productivity in the public interest.

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<sup>15</sup>According to NLRB officials, historically, compliance officers at times handled investigations and representation cases, but since June 2020, they handle only compliance work.

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- Goal 4 – Manage agency resources efficiently, in a manner that instills public trust.

NLRB reports on its progress toward meeting its performance goals through its annual Performance and Accountability Reports.

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## Most Appropriated Funds Went to Casehandling and Mission Support with Growth in Unobligated Funds Due in Part to Poor Internal Controls

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### NLRB Has Obligated the Majority of Its Appropriated Funds on Casehandling and Mission Support since Fiscal Year 2010

Since fiscal year 2010, NLRB has obligated between 85 and 92 percent of its appropriations on casehandling for unfair labor practice and representation cases and mission support (see table 1).<sup>16</sup> Prior to fiscal year 2015, these budget categories were combined as a single category called field investigation.<sup>17</sup> Casehandling comprised the largest category of NLRB's obligations each year, while mission support comprised the second largest obligations category. NLRB officials said they do not separate casehandling costs by type—unfair labor practice cases and

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<sup>16</sup>Mission support includes estimated costs of all other casehandling support functions, such as administration, human resources, finance, and information technology, NLRB's Equal Employment Opportunity office, Freedom of Information Act work, public affairs, and security. The remainder of the appropriation for each of the fiscal years since 2010 (ranging between 8 percent and 15 percent) funded Administrative Law Judges, Board adjudication, and internal review.

<sup>17</sup>Prior to fiscal year 2015, NLRB used the category field investigations for all obligations related to processing unfair labor practice and representation cases, including administration and information technology obligations. In fiscal year 2015, NLRB changed budgeting software and used the casehandling category for all such expenses. In fiscal year 2016, NLRB began to separate its expenses related to the casehandling support functions under the mission support category. NLRB officials said that the categories may have changed due to the requirements of the Digital Accountability and Transparency Act of 2014, which required NLRB to realign its financial software's code structure to provide Congress an opportunity to evaluate the cost associated with technology, rent, security, and other operational expenses necessary to support operations.

representation cases—because staff generally work on both and do not distinguish time worked on one or the other.

**Table 1: National Labor Relations Board (NLRB) Obligations by Program Activity and Total Appropriations, Fiscal Years 2010-2019 (Dollars Rounded to Nearest Million, in Actual Dollars)**

Program activity	Fiscal year 2010	Fiscal year 2011	Fiscal year 2012	Fiscal year 2013	Fiscal year 2014	Fiscal year 2015	Fiscal year 2016	Fiscal year 2017	Fiscal year 2018	Fiscal year 2019
Case-handling / field investigation <sup>a</sup>	245	243	239	225	233	238	167	162	156	150
Mission support	NA <sup>e</sup>	78	82	86	91					
Administrative Law Judges	12	13	12	12	12	11	9	9	8	8
Board adjudication <sup>b</sup>	24	25	26	25	28	24	19	19	20	19
Internal review <sup>c</sup>	1	1	1	1	1	1	1	1	1	1
<b>Total obligations</b>	<b>282</b>	<b>282</b>	<b>278</b>	<b>263</b>	<b>274</b>	<b>274</b>	<b>274</b>	<b>273</b>	<b>271</b>	<b>269</b>
Total obligations for casehandling <sup>d</sup> and mission support	245	243	239	225	233	238	245	244	242	241
<b>Total appropriation</b>	<b>283</b>	<b>283</b>	<b>278</b>	<b>263</b>	<b>274</b>	<b>274</b>	<b>274</b>	<b>274</b>	<b>274</b>	<b>274</b>
Percentage of obligations for casehandling <sup>d</sup> and mission support relative to total appropriations	86.6%	85.9%	86.0%	85.6%	85.0%	86.9%	89.4%	89.1%	88.3%	88.0%

Source: GAO Analysis of Office of Management and Budget MAX data and NLRB data for fiscal year 2018. Agency officials said that the agency corrected its obligations numbers for that year. | GAO-21-242

Notes: Program Activity presents agency obligations by the activity, project, or other programmatic distinction. The table reflects the actual dollars obligated, which have not been adjusted for inflation. Although NLRB’s appropriations have remained fairly constant over time, NLRB’s appropriations decreased by approximately 17 percent from fiscal year 2010 through fiscal year 2019 when considering the effects of inflation. Program activities numbers may not sum to the listed totals due to rounding.

<sup>a</sup>Prior to fiscal year 2015, NLRB used the category field investigations for all obligations related to processing unfair labor practices and representation cases, including administration and information technology obligations. In fiscal year 2015, NLRB changed budgeting software and used the category “casehandling” for all such expenses. In fiscal year 2016, NLRB began to separate its expenses related to the casehandling support functions under the category “mission support.” Likewise, prior to fiscal year 2016, NLRB separately detailed obligations for securing compliance with board orders—costs of enforcing Board decisions and orders in court—which has been included in casehandling starting in fiscal year 2016.

<sup>b</sup>Board adjudication encompasses the activities of the Board staff offices, the Office of Executive Secretary, the Office of the Solicitor, and the Office of Representation Appeals.

<sup>c</sup>Internal review encompasses the NLRB Inspector General.

<sup>d</sup>These costs include Casehandling, Field Investigations, and Securing Compliance with Board Orders.

<sup>e</sup>The table uses “NA,” or not applicable, to signify a year in which NLRB did not use a category for its obligations.

Although NLRB’s appropriations have remained fairly constant in actual dollars, NLRB’s appropriations decreased by approximately 17 percent from fiscal year 2010 through fiscal year 2019 when considering the effects of inflation. Since being separated into casehandling and mission support categories in fiscal year 2016, obligations for casehandling have decreased and obligations for mission support have increased. NLRB officials said that in fiscal year 2019, the increased mission support obligations primarily paid for new information technology to improve its data system and help NLRB’s board agents accomplish their work.

### NLRB’s Increase in Unobligated Funds in Fiscal Year 2019 Was Attributed to an Overestimate of Payroll Expenses and Poor Internal Controls

A recent NLRB Office of Inspector General (OIG) report of NLRB’s obligations for fiscal year 2019 found that the unobligated funds were due to erroneous payroll estimates and poor budget controls. We found that the same factors contributed to the unobligated funds in fiscal year 2018. Although NLRB obligated nearly all of its appropriations for most fiscal years since 2010, it had approximately \$3 million—over 1 percent of its appropriation—unobligated in fiscal year 2018 and \$5.7 million—over 2 percent of its appropriation—unobligated in fiscal year 2019 (see table 2).<sup>18</sup>

**Table 2: National Labor Relations Board (NLRB) Obligations Relative to Appropriations, Fiscal Years 2010 – 2019 (Dollars in Millions, in Actual Dollars)**

	Fiscal year 2010	Fiscal year 2011	Fiscal year 2012	Fiscal year 2013	Fiscal year 2014	Fiscal year 2015	Fiscal year 2016	Fiscal year 2017	Fiscal year 2018	Fiscal year 2019
Appropriation	283	283	278	263	274	274	274	274	274	274
<b>Total obligations</b>	<b>282</b>	<b>282</b>	<b>278</b>	<b>263</b>	<b>274</b>	<b>274</b>	<b>274</b>	<b>273</b>	<b>271</b>	<b>269</b>
Unobligated balances in expired accounts in the U.S. Department of the Treasury <sup>a</sup>	1.4	0.6	0.8	0.7	0.3	0.5	0.6	.9	3.0	5.7

Source: GAO Analysis of Office of Management and Budget MAX data and NLRB Performance and Accountability Reports, fiscal years 2010 through 2019. | GAO-21-242

<sup>18</sup>Obligated balances are the amount of obligations already incurred for which payment has not yet been made, while an unobligated balance is the portion of available budget authority that has not yet been obligated. See GAO, A Glossary of Terms Used in the Federal Budget Process, [GAO-05-734SP](#) (Washington, D.C.: September 2005). NLRB receives 1-year appropriations, which expire at the end of their period of availability and are then available for only limited purposes, such as making payments or liquidating obligations incurred during the fiscal year for which the appropriations were made. After 5 years, any remaining amounts are cancelled.

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<sup>a</sup>The totals for unobligated funds for each fiscal year cannot be derived by subtracting the total obligations from the appropriation amount because the source data in NLRB's annual Performance and Accountability reports did not round the numbers to the nearest million. Conversely, the source data in the Office of Management and Budget MAX data set did round the amounts for the annual appropriation and the total obligations to the nearest million. We chose not to round the amounts for unobligated funds to the nearest million to provide greater specificity in the amount of remaining funds.

The recent NLRB OIG report attributed the growth in unobligated funds to NLRB's overestimate of its payroll expenses and a lack of effective internal controls to track and report on the availability of funds throughout the fiscal year.<sup>19</sup> Specifically, the report stated that NLRB overestimated its payroll expenses by more than \$17 million by using an erroneously high number of employees expected to work at the agency during fiscal year 2019 despite steady, historical staff decreases. The OIG report said that NLRB based the estimate on the employee roster as of September 19, 2018 (the most recent payroll at the start of fiscal year 2019), and the staff decreases continued into fiscal year 2019.

The OIG report also stated that NLRB lacked effective internal controls to ensure it allocated its appropriation to meet necessary expenses and avoid the loss of appropriated funds. For example, the agency did not identify the \$17 million overestimate for payroll expenses until the third quarter of fiscal year 2019, complicating the agency's ability to use those funds by the end of the fiscal year in September, according to the report.

Although NLRB management agreed with most of the OIG report's recommendations and noted that the overestimated payroll expenses may have contributed to the unobligated funds, management said that overestimating payroll expenses was not the ultimate reason for the failure to obligate those funds. NLRB management said the primary cause was a contracting problem that arose on September 24, 2019. A planned \$2.5 million contract was reduced to \$758,000, and then was eventually canceled due to complications from an underlying breach of agreement with the General Services Administration, NLRB officials said. The OIG disagreed with the agency's conclusion, citing, in part, several inaccurate statements made by NLRB officials. For example, the OIG noted that agency officials erroneously stated that even if the funding for the contract had been made available in January 2019, the issue was out of the agency's control. Like the OIG, we believe that NLRB's unobligated funds in fiscal year 2019 were significantly due to NLRB's overestimated

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<sup>19</sup>See NLRB Office of Inspector General, Fiscal Year 2019 Budget Execution, OIG-AMR-91-20-04 (Washington, D.C. September 16, 2020).

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payroll expenses and a lack of effective budgetary internal controls, notwithstanding the year-end contracting challenges noted by NLRB management. With better estimates and more effective internal controls, NLRB could have better planned and executed its budget, decreasing its unobligated funds.

Although NLRB disagreed as to the primary cause of the unobligated funds in fiscal year 2019, the agency concurred with five of the NLRB OIG report's six recommendations, and agreed to take action in response to all six recommendations. NLRB has developed a financial management manual intended to replace prior guidance, and officials said the agency will take steps to ensure that existing procedures or new procedures are implemented in accordance with the Standards for Internal Control in the Federal Government.<sup>20</sup>

In addition to the \$5.7 million in fiscal year 2019, NLRB had approximately \$3 million in unobligated balances in fiscal year 2018, which NLRB management attributed to an early retirement plan that enrolled fewer people than anticipated. The Office of Management and Budget guidance in 2017 instructed agencies to develop plans to reduce the federal civilian workforce, and NLRB created two early retirement options for NLRB employees in fiscal year 2018. NLRB set aside approximately \$7.5 million for related payments under the early retirement programs.<sup>21</sup> However, fewer people took early retirement than expected—the agency allocated funds for 125 employees to enroll and 39 employees did so, according to NLRB officials. Because NLRB did not learn that the enrollment would be a third of what was anticipated until early September 2018, NLRB officials said they did not have sufficient time to approve and obligate those funds for other uses. NLRB officials also said that not receiving NLRB's final appropriation for fiscal year 2018 until April 2018 created challenges for obligating funds. We have previously reported that continuing resolutions present challenges for federal agencies, but also noted the importance of developing effective plans to use appropriations to accomplish agency goals.<sup>22</sup> NLRB officials said that the agency's fiscal year 2018 budget process was substantially similar to its 2019 process;

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<sup>20</sup>[GAO-14-704G](#).

<sup>21</sup>Office of Management and Budget Memorandum M-17-22 directed agencies to freeze hiring and reduce costs. OMB M-17-22 (April 12, 2017).

<sup>22</sup>GAO, *National Mediation Board: Additional Actions Needed to Fully Implement Prior GAO Recommendations and Improve Agency Management and Oversight*, [GAO-20-236](#) (Washington, D.C.: February 14, 2020).

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thus, the lack of accurate budget estimates for personnel and effective internal controls in fiscal year 2019 would have also impacted NLRB in fiscal year 2018.

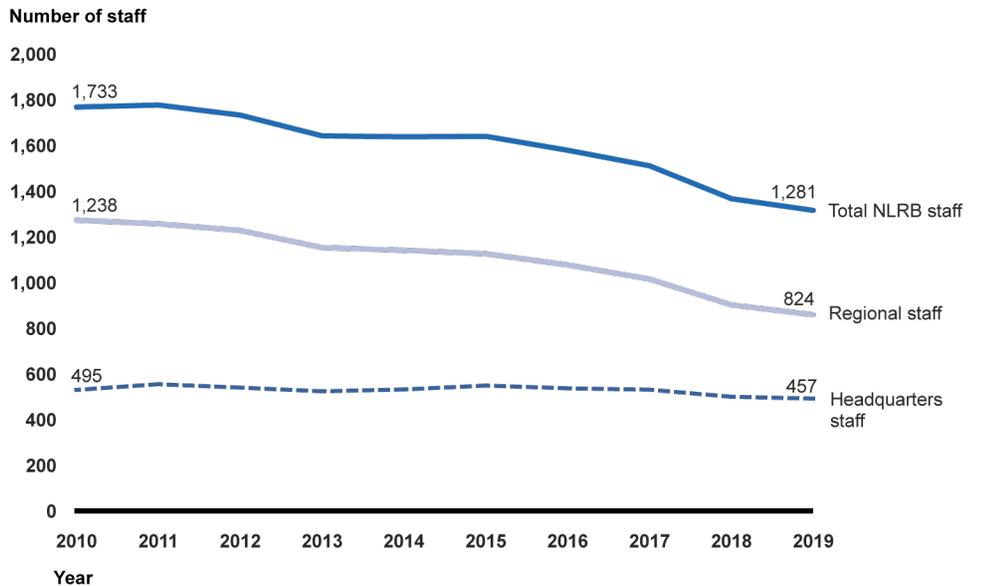
In addition to addressing recommendations from the OIG's report, NLRB implemented additional budget procedures to comply with prior OIG recommendations. These steps included the Office of the Chief Financial Officer creating internal controls to identify and correct data errors in the agency's financial system, and documenting quality control procedures for review of open obligations. In fiscal year 2020, NLRB obligated \$273.8 million, 99.8 percent of its \$274.2 million appropriation, leaving an unobligated balance of approximately \$470,000. Going forward, NLRB's actions to implement the OIG's recommendations should improve the agency's budgeting procedures and strengthen its ability to track and report on the availability of funds throughout the fiscal year.

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## Staffing Has Decreased by 26 Percent since Fiscal Year 2010, Due in Part to a 22 Percent Decrease in Incoming Cases

NLRB's total number of staff decreased from 1,733 in fiscal year 2010 to 1,281 in fiscal year 2019, or by 26 percent (see fig. 1). All of the decreases in NLRB staff during this period occurred through attrition either by retirements or resignations. These decreases occurred less in NLRB headquarters, which saw an 8 percent decrease in staff, than in NLRB's regions, which saw a 33 percent decrease. As a percentage of total NLRB staff, regional staff decreased from about 71 percent in fiscal year 2010 to about 64 percent in fiscal year 2019.

**Figure 1: National Labor Relations Board (NLRB) Staff Numbers, Fiscal Years 2010-2019**



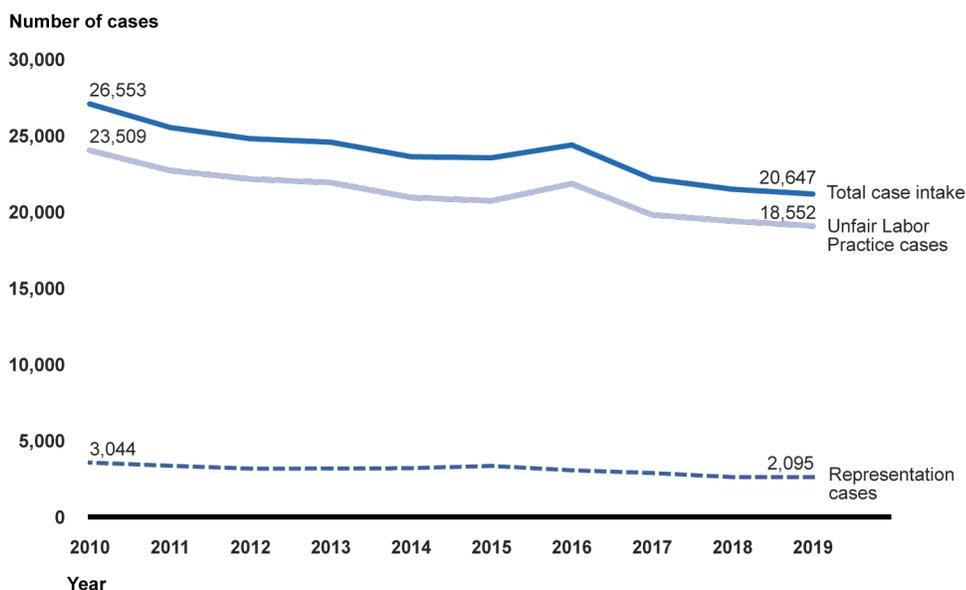
Source: GAO analysis of National Labor Relations Board staff data. | GAO-21-242

NLRB officials and internal and external stakeholders pointed to two reasons for the overall decrease in staff numbers. First, NLRB officials, as well as two internal and two external stakeholders, said that the decrease in staff numbers resulted in part from a decreasing number of cases to process. From fiscal years 2010 through 2019, NLRB’s total caseload decreased by about 22 percent; unfair labor practice cases decreased by 21 percent, and representation cases decreased by 31 percent (see fig. 2). NLRB officials said they could not determine a specific proportion of staff reductions that directly resulted from the decrease in case numbers because all staff reductions have resulted from retirements and resignations—which NLRB officials said precludes making such a calculation. Three stakeholders said one possible explanation for decreasing case numbers is flat or declining union membership over the past decade.<sup>23</sup> The number of union members in the United States

<sup>23</sup>Relatedly, another stakeholder said that unions that had been at companies for longer tended to file fewer unfair labor practice claims, as management and labor gained a better understanding of what was required and allowed under the collective bargaining agreement.

workforce decreased from 14,715,000 members in fiscal year 2010 to 14,574,000 members in fiscal year 2019, according to the Department of Labor’s Bureau of Labor Statistics.<sup>24</sup>

**Figure 2: National Labor Relations Board (NLRB) Unfair Labor Practice Cases and Representation Cases, Fiscal Years 2010-2019**



Source: GAO analysis of National Labor Relations Board case data. | GAO-21-242

In addition, four stakeholders speculated that the decreased case numbers were partially due to NLRB’s prior management creating what the stakeholders believed was a hostile environment for organizing unions and filing unfair labor practice charges. However, NLRB officials noted that the agency’s biggest recent decrease in case intake—9 percent—occurred in fiscal year 2017, which occurred before the prior NLRB General Counsel was appointed in November 2017, compared to a 3 percent decrease in fiscal year 2018 and a 1 percent decrease in fiscal year 2019.

<sup>24</sup>Department of Labor’s Bureau of Labor Statistics also showed that the number of wage and salary workers increased from 124,073,000 in fiscal year 2010 to 141,737,000 in fiscal year 2019. At the same time, the percentage of such workers represented by a union decreased from 11.9 percent in fiscal year 2010 to 10.3 percent in fiscal year 2019.

The second reason for an overall decrease in staff numbers, according to NLRB officials and one external stakeholder, was that improved technology had increased staff efficiency, resulting in the need for fewer staff. NLRB officials said that the efficiencies from technology improvements included a reduced time for processing of case related documents and more efficient electronic documentation.

NLRB officials and stakeholders identified several reasons for regional staff numbers declining more than headquarters staff. Our analysis of NLRB staff numbers showed that hiring as a percentage of staff has been much higher in headquarters, especially since fiscal year 2015 (see table 3). NLRB officials said that the recent declines in case numbers eliminated the need to hire as many staff in the regions after staff retired or resigned.<sup>25</sup> Several stakeholders noted that NLRB has decreased the ratio of supervisors per board agent, resulting in fewer supervisors in regional offices. NLRB officials said that they discuss appropriate staff levels with the relevant Regional Directors, increasing numbers as needed. However, several internal stakeholders said that NLRB management did not consistently seek feedback on staff levels from Regional Directors. Additionally, several other stakeholders said that NLRB centralized work previously done in the regions—such as compliance work, translation services, and decision writing—which effectively took resources away from regions and left some regions understaffed.<sup>26</sup>

**Table 3: National Labor Relations Board (NLRB) Attrition and Hiring Numbers, including Percentage of Staff, Fiscal Years 2010-2019**

	NLRB attrition, fiscal years 2010-2019				NLRB hiring, fiscal years 2010-2019				
	Headquarters		Region		Headquarters			Region	
2010	53	10.7%	97	7.8%	2010	64	12.9%	139	11.2%
2011	47	9.0%	135	11.0%	2011	57	11.0%	85	7.0%
2012	57	11.3%	107	9.0%	2012	51	10.1%	109	9.1%
2013	49	10.0%	94	8.4%	2013	36	7.4%	23	2.1%

<sup>25</sup>In 2018, NLRB also changed its staffing formula to calculate regional staff based exclusively on case intake, rather than incorporating other factors such as the types of cases filed.

<sup>26</sup>One stakeholder said, for example, that representation case decision writers no longer conduct unfair labor practice investigations or try cases, and compliance and language assistants no longer perform any other administrative tasks. The stakeholder said this policy has resulted in eliminating regional positions at a faster rate than in headquarters.

NLRB attrition, fiscal years 2010-2019					NLRB hiring, fiscal years 2010-2019				
	Headquarters		Region			Headquarters		Region	
2014	52	10.5%	99	9.0%	2014	49	9.9%	113	10.2%
2015	62	12.1%	76	7.0%	2015	74	14.4%	74	6.8%
2016	47	9.4%	118	11.3%	2016	43	8.6%	31	3.0%
2017	58	11.7%	95	9.7%	2017	30	6.0%	29	3.0%
2018	44	9.5%	92	10.6%	2018	20	4.3%	0	0.00%
2019	42	9.2%	52	6.3%	2019	25	5.5%	13	1.6%
<b>Total Attrition, 2010-2019</b>	<b>511</b>		<b>965</b>		<b>Total Hiring, 2010-2019</b>	<b>449</b>		<b>616</b>	
Average	51.1	10.3%	96.5	9.0%	Average	44.9	9.1%	61.6	5.8%

Source: GAO analysis of NLRB staff data. | GAO-21-242

Note: Officials said that the historical data for the total number of NLRB employees at the end of a fiscal year—September 30th—are generated using the list of employees paid in the last pay period in the fiscal year, which sometimes might include data from the beginning of the next fiscal year. Hiring and attrition data are generated for the entire fiscal year, October 1 through September 30. As a result, NLRB officials said that it is not possible to calculate the number of employees at the agency at the end of a fiscal year by taking the number of employees at the beginning of the fiscal year, adding the hires, and subtracting the attritions.

In addition to the decrease in staffing levels, NLRB obligations on personnel have also decreased over the past several years, from \$220 million in fiscal year 2016 to \$203 million in fiscal year 2019 (see table 4).<sup>27</sup> Over the same time period, NLRB increased obligations on contractual services and supplies, which rose from \$50 million in fiscal year 2016 to \$61 million in fiscal year 2019. Inflation has affected these changes. Considering inflation, NLRB obligations on personnel decreased by approximately 13 percent from fiscal year 2016 to fiscal year 2019, and obligations on contractual services and supplies increased by about 15 percent over the same period. NLRB officials said that the contractual services and supplies category includes casehandling, Board adjudication, mission support, rent, information technology, and internal review. NLRB officials said the \$11 million increase in this category in fiscal year 2019 compared to fiscal year 2016 was due to rent adjustments at the agency’s headquarters in fiscal year 2016 and

<sup>27</sup>The Office of Management and Budget requires agencies to provide budget obligation information by “program activity” as well as “object class.” The “personnel” costs in table 4 cannot be directly compared to the “casehandling” or “mission support” costs from table 1 earlier in this report because personnel costs are comprised of salaries and benefits for NLRB personnel, while casehandling and mission support include costs beyond salaries and benefits, such as information technology.

investment in information technology during fiscal year 2019, including updating aging equipment and improving casehandling software.

**Table 4: National Labor Relations Board (NLRB) Obligations by Category, Fiscal Years 2010-2019 (Dollars in Millions in Actual Dollars)**

Object Class	Fiscal year 2010	Fiscal year 2011	Fiscal year 2012	Fiscal year 2013	Fiscal year 2014	Fiscal year 2015	Fiscal year 2016	Fiscal year 2017	Fiscal year 2018	Fiscal year 2019
Personnel	212	219	214	208	209	214	220	217	210	203
Acquisition of assets	5	4	3	1	1	1	4	1	4	5
Contractual services and supplies	65	59	61	54	64	59	50	55	57	61
<b>Total obligations</b>	<b>282</b>	<b>282</b>	<b>278</b>	<b>263</b>	<b>274</b>	<b>274</b>	<b>274</b>	<b>273</b>	<b>271</b>	<b>269</b>
Percent of obligations for personnel	75.2%	77.7%	77.0%	79.1%	76.3%	78.1%	80.3%	79.5%	77.5%	75.5%

Source: GAO Analysis of Office of Management and Budget MAX data. | GAO-21-242

Note: These categories present agency obligations by the items or services purchased by the agency; Office of Management and Budget data refer to these categories as “object classes.” Some totals do not add up due to rounding or unobligated funds. The table reflects the actual dollars appropriated and obligated, which have not been adjusted for inflation; the purchasing power of NLRB has decreased over the last 10 fiscal years. When considering the effect of inflation, in real dollars, obligations on personnel decreased by 18 percent from fiscal year 2010 to fiscal year 2019, while obligations on contractual services and supplies decreased by nearly 20 percent.

## NLRB Reported It Has Met Some Performance Measures, but It Lacks Others; Stakeholders Cited Different Factors Affecting NLRB’s Achievement of Goals

Although NLRB reported that it has met some of its performance measures for case processing goals (Goals 1 and 2) in recent years, we found that it lacks meaningful measures for others. Stakeholders we interviewed identified various factors affecting NLRB’s efforts to meet its goals.

An agency’s performance goals establish desired performance levels, and performance measures are used to assess progress toward achieving those goals. However, the goals and sub-goals listed in NLRB’s strategic plans do not consistently meet requirements described in the Government Performance and Results Act of 1993 (GPRA), as updated and expanded by the GPRA Modernization Act of 2010 (GPRAMA). Specifically, the goals and sub-goals are not consistently objective,

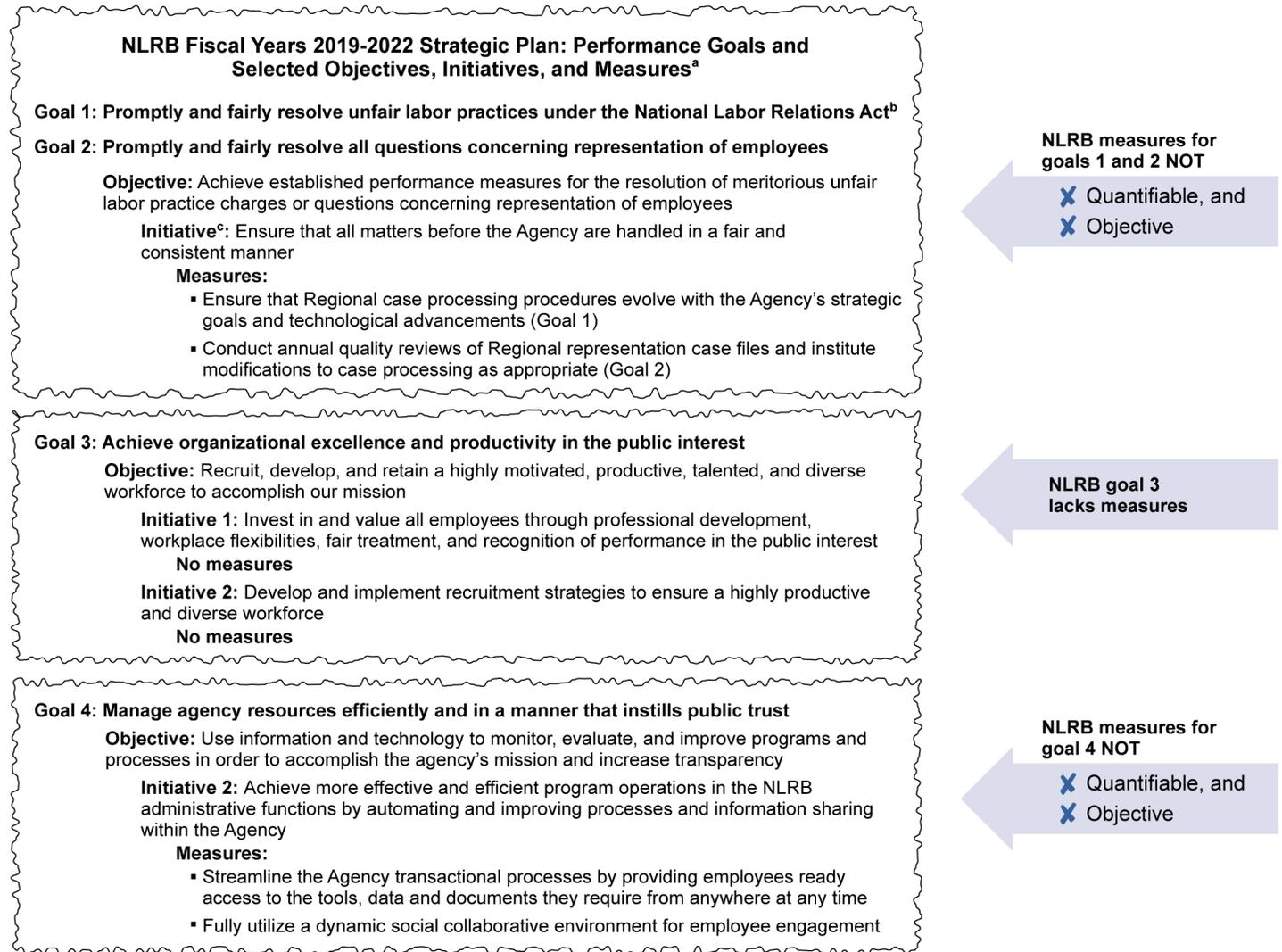
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measurable, and quantifiable.<sup>28</sup> Figure 3 shows examples of NLRB performance goals that lack objective and quantifiable measures.

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<sup>28</sup>Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. 31 U.S.C. § 1115(h)(9). GPRAMA requires performance goals to be expressed in an objective, quantifiable, and measurable form unless agencies, in consultation with the Office of Management and Budget, determine that it is not feasible. In such cases an “alternative form” performance goal may be used. 31 U.S.C § 1115(b)(2).

**Figure 3: Examples of National Labor Relations Board’s (NLRB) Performance Goals from Fiscal Years 2019-2022 Strategic Plan that Lack Objective and Quantifiable Measures**



Source: GAO analysis of NLRB Fiscal Years 2019-2022 Strategic Plan. | GAO-21-242

<sup>a</sup>The above are selected objectives, initiatives, and measures from NLRB’s Fiscal Years 2019-2022 Strategic Plan.

<sup>b</sup>National Labor Relations Act of 1935, 29 U.S.C. §§ 151-169.

<sup>c</sup>Goal 1 refers to this initiative as initiative 3, and Goal 2 refers to this initiative as initiative 2. Under this initiative for ensuring quality, Goals 1 and 2 have the same exact performance measures.

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## Goals 1 and 2: Case Management

Goal 1: Promptly and fairly resolve unfair labor practices under the National Labor Relations Act

Goal 2: Promptly and fairly resolve all questions concerning representation of employees

Source: NLRB Fiscal Years 2019-2022 Strategic Plan. | GAO-21-242

NLRB reported that it has met most of its timeliness measures for unfair labor practice and representation cases, but we found that it lacks meaningful measures to demonstrate attainment of performance goals for quality of case processing. NLRB's timeliness measures generally set goals for the agency to complete various stages of unfair labor practice and representation cases within certain timeframes. Its quality measures focus on reviewing case files to ensure that proper steps were taken.

NLRB reported that it met most of its eight timeliness measures for unfair labor practice cases in fiscal year 2019, although it reported that it did not meet most of its previous timeliness measures in fiscal years 2015 to 2018.<sup>29</sup> NLRB expanded the number of its timeliness measures for unfair labor practice cases to eight beginning in fiscal year 2019, and reported that it met seven of the measures that year.<sup>30</sup> These measures called for a 5 percent annual decrease in the average time required to resolve an unfair labor practice charge for the next 4 years, to achieve a total of a 20 percent decrease in case processing time. According to the NLRB General Counsel's congressional testimony in March 2020, case processing times had increased from fiscal years 2012 to 2018.<sup>31</sup> In

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<sup>29</sup>From fiscal years 2015 to 2018, NLRB had the following two timeliness measures: (1) the percentage of all meritorious unfair labor practice charges resolved with a Board Order or Court judgment within 365 days of the filing of the unfair labor practice charge, and (2) the percentage of all unfair labor practice charges resolved by withdrawal, dismissal, settlement, or compliance with a Board order or Court judgment within 120 days of the filing of the charge. NLRB reported that it did not meet any timeliness measures except for one measure in fiscal year 2016. NLRB officials said they did not know why the agency did not meet timeliness measures in previous years, as it was under a different administration.

<sup>30</sup>The eight measures are comprised of two sets of four measures, one set applying to meritorious unfair labor practice charges and the other set applying to all charges (both meritorious and non-meritorious charges). The first set of four measures call for 5 percent annual decreases for meritorious unfair labor practice charges: 1) average time required to resolve the charges, 2) average time between issuance of complaint and settlement or issuance of a decision by an administrative law judge, 3) the average time between issuance of an administrative law judge decision and a Board order, and 4) decrease in the average time between issuance of a Board order and the closing of the case. The next set of four measures are the same measures, but for all unfair labor practice cases, including both meritorious and non-meritorious cases. The one measure NLRB reported it did not meet in fiscal year 2019 was the average time for meritorious unfair labor practice charges between issuance of a complaint and either 1) settlement between the parties, or 2) issuance of a decision by an administrative law judge.

<sup>31</sup>Peter B. Robb (General Counsel, National Labor Relations Board). "Testimony before the Subcommittee on Labor, Health, and Human Services, Committee on Appropriations, United States House of Representatives." (Date: 3/11/2020).

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response, NLRB officials said they expanded the timeliness measures to hold each office more accountable for processing times.<sup>32</sup>

With regard to representation cases, NLRB reported that it consistently met or exceeded its timeliness measure—the percentage of representation cases resolved within 100 days of filing the election petition—in fiscal years 2015 to 2019. NLRB has not changed its measure, but has gradually increased the target over the years. Specifically, the target for fiscal year 2015 was 85.4 percent of cases resolved within 100 days, and the target for fiscal year 2019 was 85.8 percent.

In addition to timeliness measures, NLRB also has two quality measures each for unfair labor practice and representation cases; however, we could not determine whether NLRB met these measures based on its two recent strategic plans because the plans lack objective and quantifiable measures for quality. For example, as shown in figure 3, one measure for quality states that the agency should “ensure that regional case processing procedures evolve with the agency’s strategic goals and technological advancements,” but there is no objective or quantifiable assessment to determine whether NLRB is meeting the measure.

The second measure for quality states that the agency “conduct annual quality reviews of regional unfair labor practice [or representation] case files and institute modifications to case processing as appropriate.” NLRB officials said these reviews are a technical review to check how closely NLRB investigations follow agency guidelines and can uncover critical errors, defined as errors that can impact the result of the case. NLRB’s Division of Operations-Management, which oversees these reviews, is supposed to incorporate findings into memoranda and hold closeout meetings with each region to discuss those findings. Although conducting annual quality reviews is an objective target, there is not a quantifiable measure to assess how NLRB is meeting the standard.

The Government Performance and Results Act of 1993 (GPRA), as updated and expanded by the GPRA Modernization Act of 2010 (GPRAMA), generally requires agencies to have performance goals that are objective, measurable, and quantifiable with clearly defined

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<sup>32</sup>Each measure is related to the Office of the General Counsel, the Office of the Judges Division, or the Board.

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milestones.<sup>33</sup> Performance goals are generally assessed by one or more performance measures. Key attributes for performance measures include balance, which exists when a suite of measurements ensures that an organization's various priorities are covered. Previous GAO work found agencies that are successful in measuring performance had measures that demonstrate results and provide useful information for decision-making, among other things. Also, Standards for Internal Control state that management should track major achievements and compare them to plans, goals, and objectives set by the entity. However, without meaningful measures, NLRB will not be able to track its progress in meeting performance goals.<sup>34</sup>

NLRB officials said they simply kept the performance goals from the previous NLRB administration's strategic plan, including the performance measures that already existed for those goals. According to NLRB officials, the Division of Operations-Management has found no evidence of any decline in the quality of case processing and NLRB has had consistent percentages of cases found to have merit, consistent settlement rates, and litigation success rates over the last 10 fiscal years. However, none of these potential indications of case quality are part of the agency's strategic plan. Also, every federal agency is accountable for current, measurable performance goals that meet federal requirements, even when assessing the quality of agency performance. Without balanced performance measures covering all of an agency's priorities, NLRB is limited in its ability to track its progress toward meeting its goals, identify areas for improvement, and report to stakeholders and the public on the extent to which its performance is meeting expectations.

In addition to not having meaningful measures for quality, NLRB has not conducted its annual quality reviews discussed earlier in accordance with agency guidelines. Specifically, NLRB did not issue all required quality review memoranda to regions for fiscal years 2018 and 2019 to document findings from the reviews. Further, several stakeholders noted that NLRB

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<sup>33</sup>Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. 31 U.S.C § 1115(h)(9). GPRAMA requires performance goals to be expressed in an objective, quantifiable, and measurable form unless agencies, in consultation with the Office of Management and Budget, determine that it is not feasible. In such cases an "alternative form" performance goal may be used. 31 U.S.C § 1115(b)(2).

<sup>34</sup>One of our recent GPRAMA reports include GAO, *Taxpayer Service: IRS Could Improve the Taxpayer Experience by Using Better Service Performance Measures*, [GAO-20-656](#) (Washington, D.C.: Sept. 23, 2020).

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did not hold required closeout meetings with some regions, and that they were unaware of NLRB follow-up for identified critical errors. However, NLRB officials said the memoranda that were issued covered all areas of review required by guidance, and provided several examples of specific follow-up for critical errors. To address stakeholder concerns, NLRB officials from the prior administration said they planned to change the process for fiscal year 2021 to better ensure that the agency issues all memoranda as required by guidance and documents closeout meetings and cases of critical errors. Although NLRB officials said the agency uses other methods to check on the quality of investigations, without a mechanism to ensure that critical errors identified from its quality reviews of case files are tracked and addressed, NLRB is limited in its ability to address those problems that may affect the quality of its investigations.

Stakeholders we interviewed presented mixed perspectives regarding factors affecting NLRB's ability to meet its performance goals for timeliness and quality of case processing. Three internal stakeholders said they believe NLRB policies emphasizing timeliness are negatively affecting the quality of investigations and staff morale. Two of these stakeholders pointed to a recent policy change as an example. In 2019, NLRB's Division of Operations-Management issued a memorandum discouraging the use of an investigative subpoena—an order to compel testimony by a witness or obtain documentary evidence—when the Regional Director could issue a complaint based on the evidence available. The memorandum notes that the use of investigative subpoenas could unnecessarily prolong the investigation of an unfair labor practice charge. From fiscal years 2018 to 2019, there was a nearly 60 percent decrease in the number of investigative subpoenas issued in the regions. Two internal stakeholders said they believe investigative subpoenas are an important tool to collect evidence and determine whether a case has merit, and its decreased use has had a negative effect on the quality of investigations.

However, according to NLRB officials, the memorandum on subpoenas has improved the timeliness and quality of investigations, and has led to an earlier issuance of complaints where merit is found. One external stakeholder agreed that NLRB management policies emphasizing timeliness have helped resolve unfair labor practice cases more promptly, noting that this has been a need across multiple NLRB administrations.<sup>35</sup>

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<sup>35</sup>However, according to one external stakeholder, speeding up the investigation for unfair labor practice cases can also negatively affect workers, most often the charging party.

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According to NLRB documentation, after 6 years of increases in the backlog of unfair labor practice cases, the backlog decreased by 8 percent in both fiscal years 2019 and 2020. NLRB officials said that the timeliness measures have improved not only efficiency but quality as well because quicker initial contacts have yielded more detailed and accurate information. In the 2019 Federal Employee Viewpoint Survey (FEVS), 91 percent of NLRB employees in the regions rated the overall quality of work done by their unit as positive.<sup>36</sup>

With regard to representation cases, stakeholders we interviewed had different perspectives on NLRB's emphasis on increasing the timeliness of processing such cases. One external stakeholder said moving these cases quickly can prevent employees from being fully informed before union representation elections. Conversely, another external stakeholder reported that quicker timeframes for representation cases improve chances of union support, as delays can result in decreased support due to employer intimidation. NLRB's timeliness target for processing representation cases has increased by 0.4 percentage points from fiscal year 2015 to fiscal year 2019, and NLRB has reported consistently exceeding this measure.

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### Goal 3: Organizational Excellence

Goal 3: Achieve organizational excellence and productivity in the public interest

Source: NLRB Fiscal Years 2019-2022 Strategic Plan. | GAO-21-242

We were unable to determine if NLRB has met this goal based on the agency's strategic plans because the plans do not have any measures to track its performance. As with assessing quality, NLRB officials said they had simply carried forward prior goals. NLRB officials said although Goal 3 is not tied to numerical targets, they measure the goal by the completion of management strategies, which are specific projects or deliverables for which they can account. While management strategies describe efforts that may influence NLRB to take steps toward meeting its goal, they are not measures. For example, one management strategy states, "strive to achieve improved internal communications."

As previously stated, GPRAMA generally requires agencies to have measurable performance goals that are objective and quantifiable with clearly defined milestones. Also, Standards for Internal Control state that management should track major achievements and compare them to plans, goals, and objectives set by the entity. Without meaningful measures, NLRB will not be able to track its progress in meeting

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<sup>36</sup>The 95% confidence interval for this estimate is (88.4%, 93.7%).

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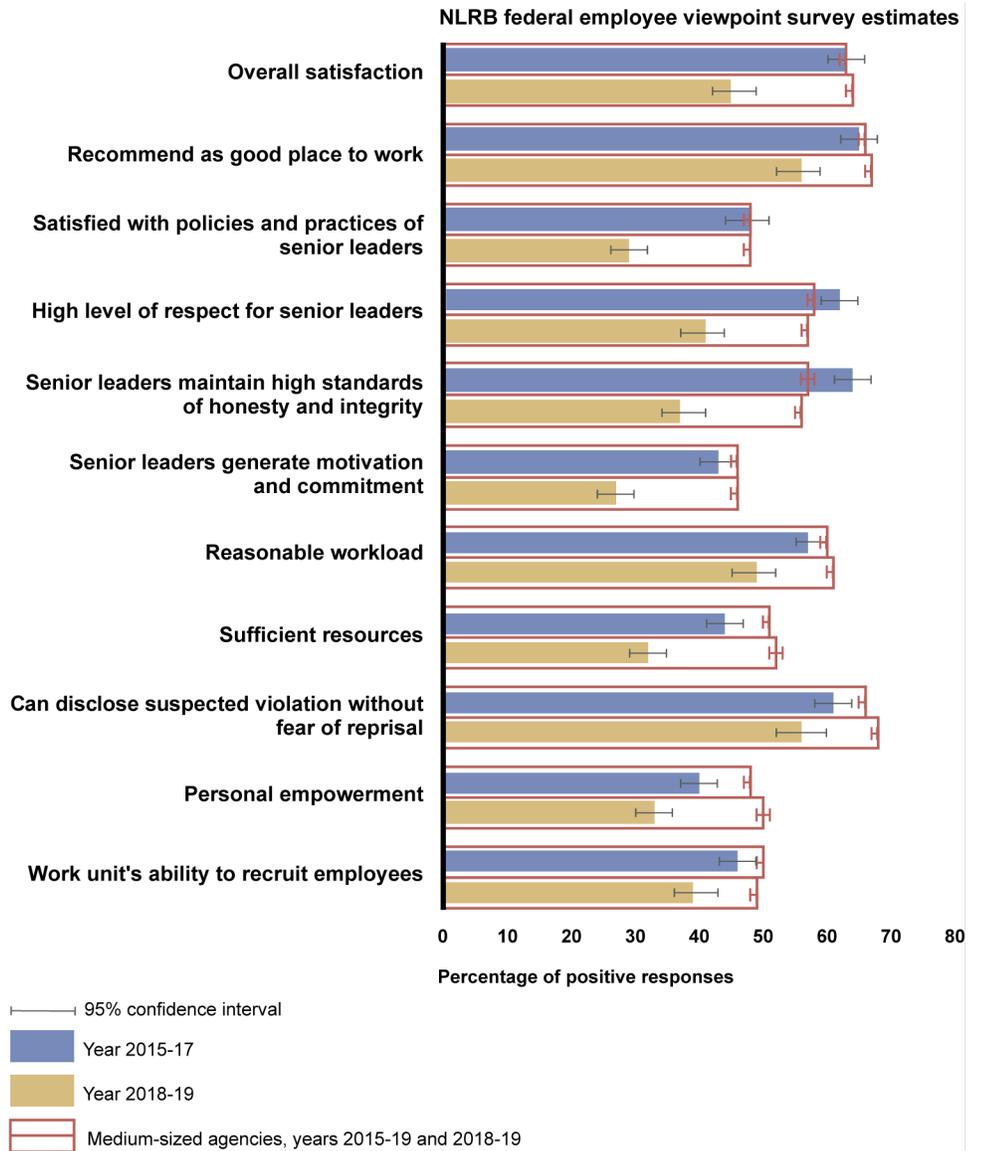
performance goals and identify areas for improvement or compare its results to other agencies. In addition, stakeholders and the public will not be able to tell whether performance is meeting expectations.

Lacking measures for organizational excellence, we examined the answers of NLRB staff to questions on the annual FEVS survey. Our analysis of NLRB's FEVS data found that high percentages of NLRB headquarters and regional staff reported that their work is important, but that they are increasingly dissatisfied with management. In the annual survey for years 2015 to 2019, staff consistently answered positively to questions about the importance and enjoyment of their work and a feeling of personal accomplishment.<sup>37</sup> However, our analysis of FEVS data also showed lower levels of satisfaction with their organization and senior management; in 2019, NLRB ranked last out of all 17 medium-sized federal agencies participating in FEVS on 10 of 11 related questions. For example, the average estimates of NLRB employees who reported that they would recommend their organization as a good place to work was lower during 2018 through 2019 than during 2015 through 2017. Additionally, the average estimates of employees answering positively to questions about senior leaders (e.g., motivation and commitment, honesty and integrity, policies and practices) decreased during 2018 through 2019, compared to previous years. NLRB's scores dropped for all 11 questions about organizational satisfaction, workload, and senior management during 2018 through 2019, compared to during 2015 through 2017. (See fig. 4.)

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<sup>37</sup>In 2019, an estimated 83.6% responded that they like the kind of work they do. The 95% confidence interval is (80.8%; 86.5%). In the same year, an estimated 90.7% responded that the work they do is important. The 95% confidence interval is (88.5%; 92.9%).

**Figure 4: National Labor Relations Board (NLRB) and Medium-Sized Agencies' Estimates on Selected Questions from Federal Employee Viewpoint Survey (FEVS), 2015-2019**



Source: GAO analysis of FEVS data on the National Labor Relations Board and medium-sized agencies. | GAO-21-242

Note: This figure shows the average percent of positive responses for selected U.S. Office of Personnel Management FEVS questions and confidence intervals associated with each question. For purposes of this report, the percent of positive responses refers to the combined percentages of respondents who answered Strongly Agree or Agree, or Very Satisfied or Satisfied, depending on the question's response categories. The medium-sized agencies are those with 1,000 to 9,999

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employees and includes 17 agencies. They are used as a comparison group to visually control for year effects.

Although NLRB has taken steps to address certain findings from the FEVS data, including instituting a customized training system and forming a working group to address and improve efficiency and morale, it does not use FEVS as a measure for organizational excellence, like other agencies do. For example, the U.S. Equal Employment Opportunity Commission uses FEVS scores as a performance measure for employee engagement and inclusiveness to maintain or increase its score in relation to changes in comparable government agency averages. Likewise, the Federal Trade Commission uses the FEVS as a measure to assess employee's perception of work life and workforce management, particularly the factors that influence employee retention. The type of information provided by FEVS data can be incorporated by agencies into their strategic or annual plans and used to measure performance in specific areas. Using this type of information is something NLRB could consider as one way of establishing needed measurable goals for organizational excellence.

Several internal stakeholders attributed low staff morale to causes such as decreased case processing time, understaffing, and pressure from resulting heavier workloads. For example, one internal stakeholder said the emphasis on timeliness incentivizes Regional Directors to direct more resources toward cases that are less likely to have merit or otherwise be resolved quickly and not pursue more meaningful—though time-intensive—cases. Three internal stakeholders said they believe an emphasis on timeliness can lead staff to cut corners or sacrifice case quality, while another said that it creates excessive burden on staff. Officials representing two external union organizations also pointed to NLRB's insufficient staff numbers in the regions and lack of resources. According to our analysis of NLRB's FEVS data, the average estimates of NLRB employees who reported that they have a reasonable workload was lower during 2018 through 2019 than during 2015 through 2017. In 2017, an estimated 72 percent of headquarters staff and 51 percent of regional staff responded that they had a reasonable workload.<sup>38</sup> In 2019, an estimated 56 percent of headquarters staff and 35 percent of regional

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<sup>38</sup>The 95% confidence intervals are (67.7%, 76.2%) for headquarters staff and (47.1%, 54.5%) for regional staff.

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staff responded that they did.<sup>39</sup> Agency officials, however, said that board agents' caseloads are within agency guidelines.<sup>40</sup>

Standards for Internal Control in the Federal Government state that management should adjust excessive pressures on personnel.<sup>41</sup> Pressure can occur because of goals established by management to meet objectives, and excessive pressure can result in personnel cutting corners to meet the established goals. NLRB's recent revisions to timeliness measures in its Fiscal Years 2019-2022 Strategic Plan called for a 20 percent decrease in case processing time over 4 years. While NLRB reported it has successfully met most of its timeliness measures, such changes involve the risk that cases are less thoroughly reviewed or that the quality of investigations is compromised, as well as the risks of over-burdening staff and affecting morale. Without evaluating pressure on personnel, NLRB is not in a position to understand how changes to its timeliness measures may be affecting case quality and staff.

In addition to concerns about staff pressures, several internal stakeholders identified concerns about their relationships with NLRB management, with two internal stakeholders describing their relationships with NLRB as contentious. One internal stakeholder stated a significant point of contention is over the use of official time for union activities. According to NLRB officials, the contentious relationship between the NLRB management and the NLRB Union has been long standing, but that recently there may be increased contention due, in part, to the negotiation of a new collective bargaining agreement. During the course of our work, we observed a contentious relationship and ineffective communication between management and internal stakeholders.<sup>42</sup> Poor communication between NLRB management and the NLRB Union could

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<sup>39</sup>The 95% confidence intervals are (49.9%, 62.0%) for headquarters staff and (30.7%, 40.0%) for regional staff.

<sup>40</sup>In fiscal year 2019, according to NLRB data, its total case intake averaged about 43 cases per regional board agents, including compliance officers, within the level of 45 new cases set by the previous NLRB administration, according to officials. From fiscal years 2011 to 2019, the average number of new cases per agent, not including compliance officers, was about 42 and ranged from 39 to 45.

<sup>41</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

<sup>42</sup>For example, despite numerous attempts to find protocols acceptable to both management and the NLRB Union, GAO was not able to hold discussion groups with NLRB's board agents, who investigate allegations of unfair labor practices and conduct union elections.

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lead to a less productive working relationship and risks negatively affecting the agency's mission.

According to NLRB officials, management has taken steps to involve internal stakeholders. For example, NLRB officials said that NLRB management engages in semi-annual consultations with the NLRB Union Executive Committee. According to NLRB officials, the General Counsel also gave Regional Directors flexibility in how each region met the new timeliness measures for case processing. Further, the General Counsel meets bi-weekly with the Regional Directors to share information and solicit input.

Despite the steps NLRB has taken, several internal stakeholders said that the actions have been ineffective. For example, several internal stakeholders said NLRB management has curtailed communication in various ways, such as not consulting with them on changes to case processing policies, staffing levels, and resource sharing plans. One internal stakeholder reported that its relationship with NLRB management lacked collaboration or opportunities for input. Another internal stakeholder said in the past there were regular meetings with NLRB management to identify and collaboratively resolve potential workplace issues, but NLRB management under the previous administration had ceased these regular meetings. The NLRB Union filed a grievance in 2018 alleging that NLRB management did not consult with the union on policy changes on case processing times; according to NLRB Union officials, that grievance is pending at the Federal Labor Relations Authority.<sup>43</sup>

In both of NLRB's recent strategic plans, one of the management strategies for Goal 3 states that NLRB should ensure that managers collaborate with employees and unions to implement agency policies. Standards for Internal Control in the Federal Government also state that entities should use ethical values to balance the needs and concerns of different stakeholders, such as regulators, employees, and the general public. The standards state that organizations should maintain accountability to key stakeholders, and management should use established reporting lines to communicate quality information internally to all levels of the agency to achieve the entity's objectives. Without

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<sup>43</sup>The Federal Labor Relations Authority administers the labor-management relations program for non-Postal federal employees. It is charged with, among other things, resolving disputes under, and ensuring compliance with, the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§ 7101-7135.

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establishing mechanisms to improve communication and collaboration with key internal stakeholders such as the unions, NLRB risks continued contentious relationships with these stakeholders.

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## Goal 4: Resource Management

Goal 4: Manage agency resources efficiently and in a manner that instills public trust

Source: NLRB Fiscal Years 2019-2022 Strategic Plan. | GAO-21-242

We were not able to determine if NLRB has met this goal based on the agency's strategic plans because most of NLRB's measures for Goal 4 are not objective and quantifiable, as generally required by federal law.<sup>44</sup> NLRB officials said they generally measure Goal 4 progress by the completion of management strategies, which are specific projects or deliverables. However, the management strategies under Goal 4 do not include actions that can be objectively assessed as having been met or not met. For example, one management strategy states, "focus on most critical business needs first." GPRAMA requires performance goals to have clearly defined milestones. Performance goals are generally assessed by one or more performance measures. In addition, Standards for Internal Control state that management should track major achievements and compare them to plans, goals, and objectives set by the entity. Without meaningful measures, NLRB will not be able to track its progress in meeting performance goals.

With regard to resource management, NLRB officials said they have sufficient resources to accomplish the agency's mission and sufficient staff for its work. Moreover, officials said NLRB obligated over \$30 million in fiscal year 2019 and budgeted \$25 million for fiscal year 2020 for technology improvements and maintenance. NLRB officials said the agency redeveloped its external website and made upgrades to NxGen, its case management system. According to NLRB officials, this improved technology has helped NLRB continue to work well during the Coronavirus pandemic. Likewise, two external stakeholders said they believe NLRB has managed its resources well to accomplish its mission, and the agency has sufficient funding and staff for its work because the agency's case intake has declined considerably.

However, several other stakeholders said that NLRB does not have sufficient funding and has not managed agency resources to accomplish its mission. For instance, several internal stakeholders and two external union organization officials emphasized that regional offices lack sufficient staff. Another external stakeholder expressed skepticism of NLRB's

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<sup>44</sup>31 U.S.C § 1115(c). GPRAMA requires performance goals to be expressed in an objective, quantifiable, and measurable form unless agencies, in consultation with the Office of Management and Budget, determine that it is not feasible. In such cases an "alternative form" performance goal may be used. See 31 U.S.C § 1115(c).

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request for less funding. Two internal stakeholders said recent investments in technology had minimal effect on improving casehandling and what is most needed is hiring additional staff. Similarly, our analysis of annual FEVS data for 2015 to 2019 showed the average estimates of NLRB employees who reported that they had sufficient resources (for example, people, materials, budget) to do their jobs was lower during 2018 through 2019 than during 2015 through 2017. In 2017, an estimated 55 percent of headquarters staff and 37 percent of regional staff reported that they had sufficient resources.<sup>45</sup> In 2019, NLRB ranked last out of all 17 medium-sized federal agencies participating in the FEVS for this question. In that year, an estimated 42 percent of headquarters staff and 26 percent of regional staff reported that they had sufficient resources.<sup>46</sup>

One particular point of contention relates to the resource sharing plan for regional offices in District 4 in the western United States. Under the District 4 Resource Sharing Plan, each region in District 4 distributes and assigns its cases as it currently does until the region has reached a cap of its cases pending disposition. Once the region's intake hits the cap, the region contacts the District Case Coordinator, who then distributes the excess to regions that have not hit their cap.<sup>47</sup> NLRB management said there were chronic workload imbalances among the regions, and the District 4 Resource Sharing Plan provides a long-term solution. NLRB management said it has encouraged similar resource sharing plans between regions to better distribute workload. According to NLRB officials, the District 4 Resource Sharing Plan was developed by the district's Regional Directors in collaboration with NLRB's Division of Operations-Management at headquarters.

However, several internal stakeholders said that there was pressure from NLRB management to develop the District 4 Resource Sharing Plan because of the potential for layoffs in regions with less case intake, and said that the District 4 Resource Sharing Plan may have negative consequences. For example, two internal stakeholders said they believe

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<sup>45</sup>The 95% confidence intervals for these estimates are (49.2%, 60.5%) for headquarters staff and (33.1%, 41.0%) for regional staff.

<sup>46</sup>The 95% confidence interval for these estimates are (36.1%, 48.2%) for headquarters staff and (21.5%, 29.7%) for regional staff.

<sup>47</sup>Each region selects a representative to serve as the District Case Assignment Coordinator on a monthly rotation. This resource sharing plan is different from NLRB's Interregional Assistance Program, which allow designated regions with more case intake to voluntarily and temporarily send cases to designated regions with less case intake for a period of time. The cases eventually transfer back to the regions in which they originated.

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the plan may negatively affect the quality and efficiency of case processing, due to loss of regional expertise and an additional layer of bureaucracy. One of these stakeholders reported that the District 4 Resource Sharing Plan would undermine NLRB's effectiveness and the long-term nature of the District 4 Resource Sharing Plan raises concern that it will allow the agency to overlook staffing disparities between the regions. According to this internal stakeholder, four out of seven regions were already at or near their staffing number limits when the plan was implemented and the plan has resulted in an unprecedented reassignment of investigations to remote locations. As discussed earlier, NLRB has not evaluated performance pressures on staff. Such an evaluation could include an assessment of resource sharing plans and could help inform decisions on resource management.

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## Conclusions

NLRB plays a crucial role in minimizing work stoppages and labor strife, while protecting employees' right to choose whether to bargain collectively with their employers. However, NLRB does not have quantifiable and objective measures for several of its performance goals, including for assessing the quality of its case processing, organizational excellence, and resource management. Without such measures, NLRB cannot ensure that it is meeting performance goals, and thus effectively carrying out the agency's essential mission activities.

As part of its efforts to ensure quality of case handling, NLRB conducts annual quality reviews of case files. However, internal stakeholders have expressed concern about inconsistencies in receiving feedback regarding findings from NLRB's quality review process and subsequent follow-up to address such findings. Without effective internal controls to implement its quality review process, NLRB may not be able to ensure the quality of cases.

With regard to organizational excellence and resource management, NLRB has experienced a significant decline in employee satisfaction, ranking last compared to other medium-sized agencies in the annual Federal Employee Viewpoint Survey on measures related to employees' confidence in their agency management. Staff numbers have decreased proportionally more than the number of cases or NLRB's budget, and staff have indicated concerns about their workload. Without evaluating pressure on personnel and making adjustments for excessive pressures, the agency risks overburdening staff and compromising the quality of work. In addition, internal stakeholders and NLRB management have experienced strained communications over the last several years. Without developing mechanisms to improve communication and collaboration

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between NLRB management and key internal stakeholders, including the NLRB unions, a lack of transparency will persist and could negatively affect the ability of the agency to accomplish its mission.

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## Recommendations for Executive Action

We are making the following six recommendations to NLRB:

The Board and General Counsel of NLRB should develop objective and quantifiable performance measures, with associated target levels of performance, for quality under Goals 1 and 2 (timeliness and quality for unfair labor practice and representation cases), and track and report performance results in the annual Performance and Accountability Reports. (Recommendation 1)

The Board and General Counsel should develop objective and quantifiable performance measures, with associated target levels of performance, for Goal 3 (organizational excellence) and track and report performance results in the annual Performance and Accountability Reports. For example, one or more of the measures could include results from the Federal Employee Viewpoint Survey. (Recommendation 2)

The Board and General Counsel should develop objective and quantifiable performance measures, with associated target levels of performance, for Goal 4 (resource management) and track and report performance results in the annual Performance and Accountability Reports. (Recommendation 3)

The Board and General Counsel should develop mechanisms to ensure that the quality review of case files is conducted in a manner consistent with agency guidance, such as ensuring that quality review memoranda are issued and that critical errors are tracked and addressed. (Recommendation 4)

The Board and General Counsel should, in collaboration with employees and NLRB unions, evaluate performance pressure on personnel and make resource adjustments as necessary. (Recommendation 5)

The Board and General Counsel should develop mechanisms to improve communication with key internal stakeholders, such as the NLRB unions, to increase transparency and collaboration in implementing agency policies. (Recommendation 6)

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## Agency Comments and Our Evaluation

We provided a draft of this report to NLRB for review and comment. In its written comments (re-produced in appendix II) NLRB agreed with our six recommendations, and discussed ongoing or planned actions to address them. Regarding our recommendations on case quality (1 and 4), NLRB noted that as part of developing a new strategic plan for fiscal years 2022 through 2026, the agency will reassess its measures to assess the quality of its case processing with input from stakeholders.

NLRB also discussed a number of actions it planned to take to address our recommendations on staffing (2 and 5). Specifically for our second recommendation, NLRB stated that the agency would review its Federal Employee Viewpoint Survey results to consider whether the agency could use the results as measures to track performance. Regarding our fifth recommendation to assess potential pressures on employees, NLRB said that it is evaluating staffing needs through its regional offices and has begun to address those concerns. For example, NLRB stated that it adjusted its fiscal year 2021 operating plan to fund additional positions.

Regarding our sixth recommendation on stakeholder communication, NLRB stated that it has taken steps to reestablish more collaborative relationships with both NLRB unions, and sought feedback from internal stakeholders on how to improve communication.

Finally, NLRB highlighted actions it has taken to address our third recommendation that NLRB develop effective measures to track and assess its performance for managing its resources. For example, NLRB stated that its new Chief Financial Officer has put key measures in place to prevent large unobligated balances.

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We are sending copies of this report to the appropriate congressional committees, the Board Members and the General Counsel of the NLRB, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4769 or [costat@gao.gov](mailto:costat@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last

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page of this report. GAO staff who made key contributions to this report are listed in appendix III.

A handwritten signature in black ink that reads "Thomas Costa". The signature is written in a cursive style with a large, sweeping initial 'T'.

Thomas Costa  
Acting Director  
Education, Workforce, and Income Security

# Appendix I: Unobligated Balances at Federal Agencies of Similar Size to National Labor Relations Board (NLRB)

We analyzed unobligated balances at NLRB and 20 other federal agencies with budgets ranging from approximately half to twice NLRB’s average appropriation from fiscal years 2010 through 2019 (see table 5). NLRB and three of the other 20 agencies reported unobligated balances in at least 1 year from fiscal years 2010 through 2019. There can be many reasons for unobligated balances, and we did not investigate the reasons for the unobligated balances at any agency other than NLRB.<sup>1</sup>

NLRB receives 1-year appropriations, which expire at the end of their period of availability and are then available for only limited purposes, such as making payments or liquidating obligations incurred during the fiscal year for which the appropriations were made. After 5 years, any remaining amounts are cancelled. We did not identify when the funding for the other agencies expires.

**Table 5: Unobligated Balances at Federal Agencies of Similar Size to National Labor Relations Board (NLRB) (Dollars in Millions Rounded to the Nearest Million), Fiscal Years 2010-2019**

Agency	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
NLRB	1.4	0.6	0.8	0.7	0.3	0.5	0.6	.9	3.0	5.7
CFTC <sup>a</sup>	1	0	0	0	0	6	1	1	1	1
CSOSA <sup>b</sup>	1	1	1	1	4	4	3	1	4	6
EEOC <sup>c</sup>	0	0	0	0	0	0	0	0	0	1
17 other similarly sized federal agencies <sup>d</sup>	0	0	0	0	0	0	0	0	0	0

Source: GAO analysis of NLRB Performance and Accountability Reports, 2010-2019, and Office of Management and Budget MAX data. | GAO-21-242

<sup>a</sup>CFTC is the Commodity Futures Trading Commission.

<sup>b</sup>CSOSA is the Court Services and Offender Supervision Agency

<sup>c</sup>EEOC is the Equal Employment Opportunity Commission

<sup>d</sup>The other similarly sized federal agencies that showed no unobligated balances, as rounded to the nearest million, were: Affordable Housing Program; Consumer Financial Protection Bureau; Corporation for Public Broadcasting; Farm Credit System Insurance Corporation; Federal Housing Finance Agency; Federal Retirement Thrift Investment Board; Federal Trade Commission; Institute of Museum and Library Services; Legal Services Corporation; National Endowment for the Arts; National Endowment for the Humanities; Neighborhood Reinvestment Corporation; Patient-Centered Outcomes Research Trust Fund; Presidio Trust; Public Company Accounting Oversight Board; Securities Investor Protection Corporation; United Mine Workers of America Benefit Funds.

<sup>1</sup>By law, agencies may record obligations and adjustments that would have been properly chargeable to a closed account to any current appropriation available to the agency for the same purpose, subject to certain limitations. 31 U.S.C. § 1553(b).

# Appendix II: Comments from the National Labor Relations Board



United States Government  
NATIONAL LABOR RELATIONS BOARD  
1015 Half Street, SE  
Washington, DC 20570

VIA ELECTRONIC MAIL

March 1, 2021

Thomas Costa, Acting Director  
Education, Workforce, and Income Security Issue  
U.S. General Accounting Office  
Washington, D.C. 20548

*Re: Draft Report GAO 21-242*

Dear Mr. Costa:

This is the formal response of the National Labor Relations Board (NLRB or Agency) to the Government Accountability Office (GAO) draft report GAO 21-242, *Meaningful Performance Measures Could Help Improve Case Quality, Organizational Excellence, and Resource Management*.

As noted in the draft report, the **Agency's** career executives, supervisors, employees, and union representatives provided valuable information and feedback to inform the study.<sup>1</sup> The Agency has carefully reviewed the observations, conclusions, and recommendations made in the draft report, and greatly appreciates the opportunity to provide responsive comments.

GAO's study focused on three primary areas of concern: (1) deficiencies in the **Agency's** performance measures relating to case processing; (2) the significant decrease in Agency-wide staffing since Fiscal Year 2010; and (3) the significant increase in unobligated funds the Agency experienced in Fiscal Years 2018 and 2019. The study produced six recommendations focusing on developing objective and quantifiable performance measures, evaluating performance and

<sup>1</sup> The study was conducted at a time when the Agency was under different political leadership, which directly or indirectly supervised many of the Agency employees who participated in the study. Thus, the offices of the Chairman, the **Chairman's** Chief of Staff, the General Counsel, and the Deputy General Counsel were occupied by individuals who no longer hold those positions. We are responding now on behalf of the Agency, though we did not have an opportunity to participate in our present positions with the Agency in any of the dialogue with GAO when the study was underway.

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resource-based pressures on employees, and improving internal controls to better manage the Agency's resources. We address these concerns and recommendations below.

**I. Case-management**

GAO's draft report examines the Agency's stated goals of promptly and fairly resolving unfair labor practices and questions concerning representation of employees arising under the National Labor Relations Act. Although GAO found that the Agency has measures for assessing the timeliness of its case-processing, the draft report concludes that the Agency has no meaningful measures for assessing the quality of its case processing. Relatedly, the report finds that in Fiscal Years 2018 and 2019 prior Agency management failed to conduct annual quality reviews in accordance with agency guidelines, and did not issue all quality review memoranda to regional offices.

The draft report also notes that several NLRB stakeholders expressed concern that case-handling changes instituted by prior Agency leadership risk compromising the quality of case-processing. Some Agency stakeholders expressed concern that prior leadership's emphasis on time targets risked compromising the ability of regional staff to fully investigate cases. Similarly, there was concern over prior leadership discouraging the use of pre-complaint investigative subpoenas in unfair labor practice cases where there arguably were already grounds for issuing a formal complaint. This policy appeared to discount the possibility that such subpoenas might uncover additional evidence that could significantly aid a successful prosecution. We agree and such policy has already been rescinded to allow the use of pre-complaint investigative subpoenas as needed during the investigation.

To address the above deficiencies and concerns, the GAO draft report recommends that the Agency develop objective and quantifiable performance measures, and targets, to assess the quality of the Agency's processing of unfair labor practice and representation cases. The report also recommends that the Agency consistently conduct quality reviews in accordance with Agency guidelines, and that the Agency consistently track and address critical errors.

The Agency accepts these recommendations and will evaluate how GAO's recommendations can be implemented to improve all of its case-management performance goals and measures. Notably, the Agency has already begun developing a new strategic plan for Fiscal Years 2022 through 2026. This process will incorporate a reassessment of our case-management goals and performance measures. Moreover, we are committed to ensuring that this process is a collaborative and transparent one. Input will be sought from all stakeholders, and we will be communicating regularly with these stakeholders as our evaluation progresses to keep them apprised of developments.

## **II. Staffing**

GAO's inquiry into staffing relates to the Agency's stated goal of achieving organizational excellence and productivity in the public interest. A key objective underlying this goal is to recruit, develop, and retain a highly motivated, productive, talented, and diverse workforce to accomplish the Agency's mission. GAO was unable to determine whether the Agency has been meeting this goal because the Agency's strategic plan does not contain any relevant measures.

The draft report, however, describes several concerning changes related to the agency's staffing.

First, it observes that the Agency has experienced a significant decrease in staffing since Fiscal Year 2010, primarily in the Agency's regional offices. Although some Agency personnel interviewed by GAO speculated that staffing losses were attributable to declines in case intake, the draft report points out that staff numbers decreased proportionally more than the decline in intake. In other words, the decline in staffing outpaced the decline in intake. As a result, the draft report observes, remaining staff may be overburdened.

Second, the report also points out that the Agency has suffered a significant decline in employee satisfaction. As the report notes, in the 2019 Federal Employee Viewpoint Survey (EVS), the Agency ranked last among comparable agencies on multiple measures related to employee confidence and trust in senior agency leadership.

Last, the report notes that under prior Agency management there were strained communications between Agency leaders and employees. Thus, as described in the report, GAO investigators found evidence that management failed to consult with internal stakeholders on case processing policies, staffing levels, and resource sharing plans. Similarly, there was evidence that management had ceased regular meetings with internal stakeholders that previously had been useful in identifying and collaboratively resolving potential workplace issues. In the end, GAO "observed a contentious relationship and ineffective communication between management and internal stakeholders," all of which posed risks to productivity and achievement of the Agency's mission.

To address these concerns, the draft report recommends that the Agency develop objective and quantifiable measures, as well as targets, to track the Agency's performance in developing and retaining a highly motivated workforce. In particular, the report suggests that one or more of these measures could include results from the EVS.

We agree that the Agency would be well-served by establishing objective, quantifiable measures, as well as appropriate performance targets. We also agree that results from the EVS could form the basis for one or more of these measures. Accordingly, the Agency is currently reviewing its 2020 EVS results, and will examine potentially relevant questions and results that could be used to track our performance in these areas moving forward.

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The draft report also recommends that the Agency, in coordination with employees and NLRB unions, evaluate performance pressures on employees, make necessary resource adjustments, and improve internal communications to increase transparency and collaboration in achieving the Agency's mission. We agree that implementing these recommendations would benefit the Agency and its internal stakeholders, and our efforts to address these issues are already in progress.

As one example, the Agency is currently evaluating staffing needs throughout its regional offices, and has already made appropriate adjustments in its Fiscal Year 2021 Operating Plan to ensure the availability of resources to fund additional positions. This focus on ensuring sufficient regional staffing will also be reflected in the Agency's new strategic plan for Fiscal Years 2022 through 2026, referenced above.

The Agency has also initiated discussions with both NLRB unions in order to reestablish more collaborative, more productive relationships. This effort includes reopening effective lines of communication, increasing information sharing where appropriate, and exploring the possibility of executing new collective-bargaining agreements to stabilize the parties' relationships.

Finally, Agency leadership has been aggressive in meeting with internal stakeholders to learn more about concerns they may have and how the Agency might address those concerns. In some instances, these are "introductory" meetings in which the Agency's new senior leaders are engaging with managers, supervisors, and employees to gain a better understanding of their program offices' operations, short and long term initiatives, and any needs, such as increased staffing. In addition, senior leaders have restarted recurring meetings with internal stakeholders, including the NLRB unions, to begin the process of building confidence and trust in one another.

### III. Resource Management

The GAO's inquiry into the Agency's management of its appropriated funds relates to the Agency's stated goal of managing Agency resources efficiently and in a manner that instills public trust. At the outset, we emphasize that the effective and efficient use of the Agency's appropriated funds has always been a priority for the Agency. We recognize, however, that achieving and maintaining excellence in this area requires a continual process of evaluating our performance to identify and implement improvements.

In its study, GAO was unable to determine whether the Agency has been meeting its resource-management goals because the Agency's strategic plan does not contain any objective and quantifiable measures. Nevertheless, the draft report examines the Agency's management of its appropriated funds in Fiscal Years 2018 and 2019, when it experienced significant increases in unobligated funds. Citing a report prepared by the Agency's Inspector General, the GAO's report concludes that these shortfalls were attributable to erroneous payroll estimates and the

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lack of effective internal controls to track and report on the availability of funds throughout the relevant fiscal years. The report, however, joins the Inspector General in disagreeing with prior Agency **management's** assertion that the 2019 shortfall was due primarily to a contracting issue that arose in late September 2019. We accept these conclusions.

To address the deficiencies described above, the draft report recommends that the Agency develop effective measures to track and assess its performance managing its resources. We agree, and the Agency has already taken actions to better manage its budget. As the draft report observes, the Inspector **General's** report made six recommendations to the Agency to improve management of its budget, and the Agency agreed to act on each of those recommendations. The Agency has also implemented additional measures to address this area of concern.

More specifically, the Agency has made the following improvements since our new Chief Financial Officer (CFO) and Budget Branch Director arrived in Fiscal Year 2019. Perhaps most important, the CFO and Budget Director have been promoting a culture of accountability and collaboration. They have also introduced a performance-based budgeting process at the Agency. Some key measures that the CFO team has implemented to prevent large unobligated balances include:

- Publishing the NLRB Financial Management Manual (FMM), establishing procedures for funds control, account codes, and financial system reporting.
- Establishing a comprehensive budget planning process under which program area cost estimates are carefully reviewed, documented, and tracked in the Agency's operating plan, which is itself reviewed and approved by Agency leadership.
- Establishing the Unfunded Requirement List (URL). This list is maintained throughout the fiscal year and is used as a tool to inform and expedite resource allocation decisions by Agency leadership. The URL is particularly effective in managing unallocated funds and redirecting spending toward the end of a fiscal year to minimize the risk of under-obligating or over-obligating funds.
- Establishing and implementing clear and concise Year-End Closing Guidelines.
- Strengthening collaboration and program interaction throughout the fiscal year. The Budget Branch communicates with Program Area Offices on a regular basis to keep abreast of their budgetary requirements.
- Conducting mid-year budget review sessions with the Program Area Offices and key stakeholders. Such sessions are critical in minimizing budget execution issues and monitoring obligation and spending rates.
- Establishing an allocation policy that allows Program Area Offices some flexibility to reallocate funds within their respective budget lines. Such flexibility allows the programs to shift spending without delays.
- Implementing internal controls to maintain appropriate separation of duties to reduce risk of error or fraud.

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With these improvements in place, we are confident that the Agency is well positioned to effectively manage its appropriated funds going forward. Indeed, we agree with GAO's conclusion that the actions the Agency has taken "should improve the agency's budgeting procedures and strengthen its ability to track and report on the availability of funds throughout the fiscal year."

We sincerely appreciate the time and effort GAO has invested in preparing the draft report. The observations, conclusions, and recommendations it makes have greatly informed our own thinking about how the Agency and its stakeholders, working together, can most effectively advance our shared mission. In turn, we hope this response will aid GAO's consideration of the Agency's commitment to achieving excellence.

Sincerely,  
*Lauren McFerran*  
Lauren McFerran  
Chairman

**PETER OHR** Digitally signed by PETER OHR  
Date: 2021.03.01 12:40:18 -0600  
Peter Sung Ohr  
Acting General Counsel

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# Appendix III: GAO Contact and Staff Acknowledgments

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## GAO Contact

Thomas Costa, 202-512-4769 or [CostaT@gao.gov](mailto:CostaT@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Mary Crenshaw (Assistant Director), Andrew Nelson (Analyst-In-Charge), Grace Kwon, and Herrica Telus made significant contributions to this report. Also contributing to this report were Susan Aschoff, Carl Barden, Christina Bixby, Nora Boretti, Shari Brewster, Elizabeth Calderon, Kristine Hassinger, Lauren Kirkpatrick, Janice Latimer, Jean McSween, John Mingus, Mimi Nguyen, Corinna Nicolaou, Ardith Spence, Almeta Spencer, and Walter Vance.

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