

## **Politicized Performane Monitoring: The Effect of Civil Service Reform on Case Processing in the NLRB Regional Offices**

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### **ABSTRACT**

*This study provides a research and practice examination of the effect of changes in the standards and measures of performance on field office case processing in the National Labor Relations Board (NLRB). In particular, this study exposes how performance management policy can be used to achieve indirect control over field office decision-making. In several important pieces of civil service reform legislation, policymakers strived incrementally toward achieving efficiency and equity in policy administration through standard setting and monitoring bureaucratic policy outputs. As a result of such reforms, the General Counsel of the NLRB has the opportunity to create and use performance measures that indicate not only productivity but also compliance with administration goals. Thus, because this study demonstrates the importance of procedural changes in enhancing political control, future studies of administrative culture should examine the role of performance management policies in structuring and constraining field office personnel decision making.*

### **INTRODUCTION**

Throughout American political history, politicians pursued various mechanisms for constraining bureaucratic decision making within a decentralized, federalist governing structure. At first such constraints were incentive-based political schemes expressed through patronage systems in early administrative arrangements. Later, policymakers enacted a series of civil service reforms mandating procedural fairness and performance accountability as mechanisms of political control. Through each endeavor, elected officials sought increasingly detailed performance management policies for achieving indirect control over decentralized or local office decision-making. With such reforms, policymakers incrementally moved toward standardizing efficiency and equity in policy administration, regardless of the administrative culture or context, through standard setting and monitoring bureaucratic policy outputs or outcomes. As such, changes in monitoring and procedures influence not only the bureaucratic task environment, but incentives for achieving agency missions impartially.

To further examine the way in which procedural change can enhance executive political control over regional or local office decision making, this study provides a research and practice examination of changes in the standards and measures of performance on field office case processing in the National Labor Relations Board (NLRB). Based on this analysis, I argue that such reforms provide opportunities to create and use performance measures that indicate not only productivity but also compliance with administration goals. Because this study demonstrates the importance of procedural changes in enhancing political control, I argue that future studies of policy implementation and administrative culture should include an analysis or measure of the role of performance management in structuring and constraining field office personnel discretion.

To support this argument, this study examines the role of civil service reforms in providing opportunities for creating accountability and consistency in NLRB field office decision-making. First, I examine the role of the civil service standard setting and procedures, as a legacy of the Pendleton Act 1883, in creating conditions for a hostile political environment for the NLRB. Second, I examine how civil service reforms encompassed in the Administrative Procedures Act 1946 influenced the development of performance standards regarding quantity, quality, timeliness, manner, and method of case processing at the NLRB field office level. Third, I examine important changes to these standards resulting from the Civil Service Reform Act 1978 that provided opportunities for accountability-linked performance measures where case processing productivity standards are directly tied to individual case determination as well as regional office output measures. Fourth, I examine additional reforms resulting from the Government Performance and Results Act 1993 that further enhanced opportunities for performance-based management of the NLRB's regional offices.

Finally, I examine how the mandates of the Paperwork Reduction Act of 1995 and the Government Paperwork Elimination Act 1996, in conjunction with procedural changes to ensure compliance with earlier performance goals, created incentives for award winning innovation procedures and information processing in the NLRB.

### **MISSION AND STRUCTURE OF THE NLRB**

Throughout its history, the NLRB has been in a precarious position; its processing structure and procedures reflect, as do most regulatory agencies, statutory mandates and precedent, the nature of its Board members, and general administrative processes (Owen and Braentigam 1978; Flynn 2000). Yet, it is the decentralized, discretionary decision making structure of regional office case filtering which provides opportunities for politicized or responsive decisions that could be adverse to the preferences of the president or the NLRB members. Because the statutory mandates are general and regional staffs apply precedents and rules at their discretion, critics and hostile interests frequently accuse them of bias and misfeasance.

#### **NLRB Mission**

From its inception, the NLRB, created by the National Labor Relations Act 1935 (NLRA) (49 Stat. 449), was not intended to resolve all labor-management disputes. Congress created the NLRB for resolving disputes over workers' collective bargaining rights (representation complaints) and prosecuting unlawful or discriminatory acts (unfair labor practices complaints or ULPs) related to collective bargaining relationships. More specifically, the NLRA forbids employer interference with union organizing or administration, discrimination against current or potential union members, punishment of employees for filing charges, and refusal to bargain with unions (Millis and Brown 1973; 29 CFR §100-103). Subsequent amendments, including the Taft-Hartley Labor Act 1946 (Labor-Management Relations Act, 61 Stat. 136) and Landrum-Griffin Act 1959 (Labor-Management Reporting and Disclosure Act 1959, 73 Stat. 519), expand the NLRB's role in addressing employer ULP complaints and monitoring union representation elections.

#### **NLRB Case Processing Structure**

The NLRA creates a process through which these particular types of disputes are resolved formally outside of the civil court system. The NLRA mandates adjudication through a highly structured process designed to resolve disputes at the lowest possible level. Based on its mission to resolve such collective bargaining disputes at the regional level, the organizational structure of the NLRB places substantial authority and responsibility on its 32 Regional Offices, 3 Subregional Offices, and 17 Resident Offices to filter and process complaints (NLRB 2002b; Bornstein and McCulloch 1974; Gross 1974; 1981; 1995; Gould 2000; 1995; 2002b; Moe 1985).

**Regional Office Case Filtering and Adjudication.** To resolve a dispute, an aggrieved party (employees, unions, or employers) files a complaint with a regional office and the staff determines whether the complaint is within the jurisdiction of the NLRB. If it is, then the Regional Director instructs a field examiner or attorney to investigate the merits of the complaint and recommend (based on precedent and mandate) whether the complaint should be withdrawn, dismissed, or issued; two-thirds of all complaints are generally withdrawn or dismissed. Prior to or after issuing a complaint, the parties may accept a voluntary settlement; ninety percent of complaints are settled. Those that cannot be settled are referred to an NLRB administrative law judge for adjudication through a hearing.

**General Counsel's Review and the NLRB.** Complex, unique, or appealed cases are sent to the NLRB General Counsel for review. The General Counsel, who is appointed by the current president, may send the case to the NLRB for a decision or let the lower level decision stand. If General Counsel sends the case to the NLRB, the five members of the NLRB, who are appointed for five year staggered terms on a bi-partisan basis, issue a decision and order complete with findings of fact, conclusions of law, and reasoning for dismissing the case or providing remedy. When disputes cannot be resolved at the regional offices, by a NLRB administrative law judge, or through deliberation by the NLRB, unsatisfied parties may request review from the circuit court of appeals (29 CFR §101).

### **ACCOUNTABILITY AND PROCEDURAL CHANGE IN THE NLRB**

With no control over their caseloads, the NLRB and its regional offices have more cases filed (averaging about 30,000-40,000 per year), and in the courts at any given time than any other regulatory institution (Murphy 1973; NLRB 1997). Because of its high profile, the NLRB and its regional offices, from their inception, have been targets of consistent opposition from unions and employers, relatively continuous congressional investigations, and presidential manipulation through the appointment process (Moe 1985; Murphy 1973; Millis and Brown 1973). In response to its critics, the NLRB regional offices developed processes that have produced consistent case processing outcomes including merit finding of 35 percent and a settlement rate of about 90-99 percent of the complaints filed in regional offices, as well as output measures including resolving 90 percent of the cases within 50 days or less of the filing date (Higgins 1998; Page 2000).

Although the NLRB case or complaint processing structure appears controlled, incremental and logical, the discretion delegated to the regional offices led to criticisms including inconsistency, bias, and incompetence (Millis and Brown 1973).

### **Why NLRB Procedures and Process Matter**

In general, procedures matter because they promote opportunities for bureaucratic decision making that achieve the goal of limited, efficient, effective, and equitable government. The NLRB originated within a regulatory and civil service system where standard operation procedures are supposed to create a depoliticized and impartial administration of policy (Hardin 1992). According to Shulman (1973), however, while no procedure “insures honest judgment, loyalty to prescribed goals, or faithful execution of statutory duty,” procedures can make unfairness more difficult (621). Indeed, Shulman (1973) argued that “if they are fired ‘with a zeal to pervert’ they can do it despite meticulous compliance with the finest procedures...” (621).

In addition to being due process oriented, procedures matter because they are also relative. Because the discretionary power to determine merit is delegated to the regional offices, the NLRB has endured a lifelong dichotomous image of neutral and responsive competence. This results from the context in which the regional offices make their decisions. Regional office staffs make their decisions within a political culture that is competitive, strategic, and highly conflictual. While generally expected to provide due process, the regional offices cannot initiate complaints unless an aggrieved party files one and cannot enforce a complaint once it is issued. This constraint makes the regional office dependent on information and voluntary compliance by employers, unions, and employees who have contrary interests and historically adversarial relationships. Because the mandate and precedents of the NLRB generally involve somewhat transparent rules (e.g. forbid interference) rather than concrete rules (e.g. speed limit 55 mph), regional staff determination and disposition of complaints are highly personalized (Michael 1996). Such transparency in the definition and application of rules provides aggrieved parties an opportunity to engage in strategic filing activities including causing delays by withholding or inundating the regional office with information or filing frivolous complaints. Either way, the aggrieved party’s benefits from forcing an issue at the regional office are greater than the costs of losing a representation election or enduring an unlawful act (Owen and Braentigam 1978; Block 1997).

Finally, procedures matter because they vary by resources and knowledge available to the decision makers. For example, in addition to politicization and strategic manipulation from employers, unions, and employees, the regional office staff must also make discretionary decisions within an uncertain and unstable political environment. Aside from shifting domestic policy priorities due to business cycle fluctuations, regional office staffs generally must balance budgetary pressures against increased complaint filing as well as frequent changes in the NLRB members. As one of 13 regulatory agencies with permanent authorizations, the NLRB must undergo an annual appropriations process. This means that the NLRB must annually account for its case output and outcomes to the president and Congress (Regulation....1982). As the NLRB statutory mandate has expanded, its budget and staff have not increased comparatively (U.S. Congress. House 1975; Brownstone 1986). Further, the presidential appointment process has created opportunities for stalling or freezing cases at the NLRB (Brownstone 1986) which also creates uncertainty. These two combined pressures of budget issues and instability, created case backlogs, additional congressional scrutiny, and criticism from employers, unions, and employees regarding procedural efficiencies and effectiveness.

### **Pendleton and NLRB Administration 1935-1945**

The most important changes in American bureaucratic and procedural efficiencies and effectiveness occurred before Congress created the NLRB. The Pendleton Act 1883, which created a merit system and the Civil Service Commission, imposed a systematic change in executive leadership and control over bureaucratic decisions through public personnel hiring. Congress designed this civil service reform as a constraint on executive politicization through the hiring and firing process, and as a protection for public employees from political pressure. Protectionism, initially, was the performance management tool that would create quality outcomes and outputs from public service (Rosenbloom 1983; Pugliese 1982).

Such protections were still an essential part of the context and expectations for public service when Congress created the NLRB and its decentralized case filtering and processing system. The acrimonious and bitter political beginnings of the NLRA did not resolve upon implementation. The innovative and controversial NLRB decision making process made it highly visible and unique; the Civil Service Commission monitored the hiring process but little else. Because there were no mandates for supervision and because the General Counsel did not supervise the regional offices at that time, the NLRB provided very little oversight at the beginning. Within the Civil Service Commission guidelines regarding professional autonomy, the regional offices staff had substantial discretion for resolving complaints.

The process by which field staff handled complaints varied by the personality and attitudes of the Regional Director, field staff, and the clientele (Millis and Brown 1973). Some field staffs were risk averse and sought clearances from the NLRB for most cases; some often “went native” and used their own judgment for processing cases. Increasingly, unions and employers complained about the variation in processing cases where some regional offices handled cases objectively and carefully, while others dismissed all complaints, and still others forced “shot-gun” settlements (Millis and Brown 1973; Gellhorn and Linfield 1973).

Because of its visibility and lack of structure, the NLRB was relentlessly targeted as engaging in a ‘zeal to pervert’. In addition to being accused of bias, the NLRB and its regional offices fought accusations of ‘stirring up strife,’ bringing ‘unwarranted charges,’ conducting disorderly or arbitrary hearings, over-delegating, and ‘snooping’ for complaints (Gellhorn and Linfield 1973). The lack of standards for case filtering and processing under the Pendleton Act made it difficult for the NLRB to refute its critics. In 1939, the House of Representatives Smith Committee investigated the NLRB’s informal record keeping and lack of confidentiality of its proceedings (Higgins 1998). As a result of continuing controversy over the NLRB regional office case handling, as well as concern over increasing delays and case backlogs, a 1941 investigation and report on the NLRB by the U.S. Attorney General’s Office criticized its variation in case handling and recommended that the NLRB set standards (U.S. Department of Justice 1973). In particular, the report identified that case handling varied by complaint complexity, the situation, the attitude of the parties involved, and the location. Finally, the report suggested that the NLRB’s legitimacy was being jeopardized by increasing numbers of losing parties refusing to abide by the examiner’s rulings. Clearly, the NLRB’s political and institutional support was diminishing due to its lack of procedural consistency.

In response to these political challenges, the NLRB took steps to incrementally institutionalize standardized processing and procedures at the field offices. For example, even though NLRB statutory mandates do not require the regional staff and hearing officers to conduct their investigations using rules of evidence, they generally did so as best practices (Gellhorn and Linfield 1973). In addition, from 1940-1945, the NLRB changed the structure of authority and standardized even more of its procedures. During this time, the NLRB repeatedly asked for congressional approval for increasing their procedural efficiency and process; Congress did not respond (Graham 1973). Indeed, many members of Congress were openly hostile toward the NLRB and in 1945, Congress refused to support the NLRB’s reforms requiring increased staff appropriations (Millis and Brown 1973). In response, and without congressional support, the NLRB created standardized methods for processing complaints, standardized forms for recording complaints, and a field manual for standardizing complaint responses as tools for improving performance and addressing its political critics.

#### **Administrative Procedures Act and Procedural Change 1946-1977**

The procedural reforms that the NLRB initiated were not implemented soon enough to pacify its critics or address what was becoming a general movement for improving the process and performance of the civil service. Two important legislative changes created critical mandates, constraints, and incentives for the NLRB to modify its case handling procedures, case processing time, and to address mounting case backlogs. First, Congress passed the Administrative Procedures Act (APA) 1946 (5 USC § 551-559) and shortly afterwards it passed the Taft-Hartley Act 1947. Individually, each created legislative mandates for imposing standard operating procedures and reporting. Together, they imposed significant mandates for creating operating procedures and performance that demonstrated fair play and due process (Millis and Brown 1973; Higgins 1998). Importantly, while providing increased protection for some staff, both imposed statutory pressure on the NLRB for demonstrating improved performance and productivity through reporting output and outcomes measures.

**The APA, Taft-Hartley, and Agency Procedures.** The APA mandated setting standards for implementing rules and adjudication and publication of information about the rules and decisions in the Federal Register. For example, the APA set up standards for fair play and due process in the administration of federal policy based on recommendations and findings of the Attorney General’s Committee on Administrative Procedure, as presented to the Senate Committee on the Judiciary in 1941 (Millis and Brown 1973; U.S. Department of Justice 1947). While not specific to the NLRB, problems involving arbitrary and delayed case handling in the regional offices were central to the findings of the Attorney General’s report. While at that time the NLRB was not unique in its endeavors for standardizing process and procedure, since under the Pendleton Act there were few guidelines, it was certainly the most controversial and visible agency under investigation (Higgins 1998).

The passage of the APA impacted the NLRB procedures and performance in a number of ways. First, the APA restructured the way in which trial examiners/administrative law judges, such as those used by the NLRB regional offices for case adjudications, were structurally related and evaluated.

Importantly, the APA made these trial examiners independent and prohibited performance evaluations of them. Second, because the APA mandated a separation of internal functions, the NLRB moved to separate staff involved in decision making from those involved in investigating and prosecuting cases. In particular, administrative changes compliant with the APA include: removing NLRB members from prosecuting complaints, separating the regional staffs engaged in investigating and prosecuting cases from those involved in representation elections, issuing complaints only by the Regional Directors, and conducting hearings only by trial examiners appointed by Washington DC staffs (Wason 1973; O'Keefe 1986). Finally, because the APA required rules written within its standards, the NLRB rewrote its Rules and Regulations in language consistent with APA requirements.

Although the NLRB made significant changes in separating functions between staff and creating APA complaint standard operating procedures, such changes did not forestall its political enemies in Congress from making additional changes in its institutional structure and power relationships by passing the Taft-Hartley Act. The most important structural changes, entirely consistent with the APA, involved separating the NLRB General Counsel from the NLRB by making the position a presidential political appointment, expanding the powers of the NLRB General Counsel to determine which cases the Board reviews, and increasing NLRB membership from 3 to 5 members. Taft-Hartley also expanded the jurisdiction of the NLRB, created employer rights involving unfair labor practices committed by unions, and required increased NLRB reporting on outcomes and outputs (through annual reports).

**The Effect of Administrative Reform.** As a result of Taft-Hartley and the APA, the General Counsel's office became a political tool of the president for controlling which cases can be reviewed and which of the clientele, employers, unions, or employees may find remedy at the NLRB. While cases must still originate from the regional offices, separating the power and expanding of the General Counsel from that of the Board members increased the General Counsel's control over case handling, court litigation, representation elections, internal regulations, budgets, and personnel at the regional and Washington DC offices (Higgins 1998; O'Keefe 1986; 20 FR 2175). Although the General Counsel could only take adverse action against a regional director with the approval of the NLRB, staffing and budgetary controls, important to regional case processing performance, were now controlled by a political appointee.

Over the years, from 1946 to 1977, the NLRB modified the administrative and procedural relationships within its organization in response to increasing criticism concerning process and delays. During the period 1947-1953, various attempts to increase the Board members' authority over administrative duties, including the budget and personnel, failed as the General Counsel's office continued to consolidate its political power and control over case processing. The passage of the Landrum-Griffin Act 1959 further cemented the president's control over the General Counsel's office by granting presidential appointment power over Acting General Counsel (Higgins 1998) and authorizing the General Counsel to delegate some responsibilities to the Regional Directors.

By early 1960, the General Counsel responded to President Kennedy's criticisms of delay and backlogs by instituting a procedure for measuring case handling performance through a 'time-target' system. To further address to reduce paperwork and processing time, in 1961, the NLRB granted Regional Directors the authority to process cases without the NLRB's Washington DC staff's approval and the authority to process representation complaints at the regional level. These combined reforms lowered the processing time for complaint processing at the regional level and increased the percentage of cases determined as having merit from 20 to 30 percent (Murphy 1973; Higgins 1998; McCulloch and Bornstein 1974). Finally, Congress added public sector postal unions and nonprofit hospital employees to the NLRB's jurisdiction in the 1970s with the effect of increasing its case loads in the regional offices without expanding its budget or staff to accommodate servicing these new clienteles (McCulloch and Bornstein 1974).

#### **Civil service Reform Act 1978 and NLRB Process Changes**

By the late 1970s, the NLRB, like many regulatory institutions, became a target for further criticisms regarding procedural efficiency during difficult economic conditions. Consistent with Pendleton and APA goals of creating accountable, limited government, Congress passed the Civil Service Reform Act (CSRA) 1978 (5 USC 1101). The CSRA was created as a tool for not only making federal service more efficient, but for also providing increased protection from political pressure for federal employees.

**Improved Protection.** By accentuating the limits on political pressures of the Pendleton Act through the use of merit systems and the focus on separation of power in the APA, the CSRA promoted further division of power and limits on executive leadership. It did this in several ways.

By abolishing the Civil Service Commission and creating two separate functional institutions, the Office of Personnel Management (OPM) for managing personnel and the Merit System Protection Board (MSPB) for processing employee disputes, the CSRA created new management tools for protecting and promoting a more productive work force (Rosenbloom 1982; Pugliese 1982; Hunter1999). Further, the CSRA created the Senior Executive Service (SES) where federal managers could trade job protection for productivity and performance based rewards, increased control over personnel decisions, and competitive pay. In addition, the CSRA provided increased protection for employees through establishing the Federal Labor Relations Authority for processing unfair labor practices and mediating disputes employee unions and management. Finally, the CSRA established the Office of Labor-Management Standards in the Department of Labor to administer and enforce most provisions of the Landrum-Griffin Act ensuring fiscal responsibility and democracy in private sector unions.

Such protections were particularly important for NLRB employees for a number of reasons. First, CSRA required annual performance reviews for, and authorized adverse actions based on unacceptable performance against, all federal employees except administrative law judges. Because number of case disposition varies greatly among NLRB administrative law judges, and because the NLRB is responsible for output and outcomes from administrative hearings, the CSRA significantly altered the General Counsel's ability to monitor and improve productivity. Although the APA created independence for administrative law judges in the NLRB, it did not exempt them from performance reviews. The CSRA moves beyond the APA and exempts administrative law judges from the same performance appraisal methods used for evaluating other federal employees (Lubbers 1994; Timony 1994).

In addition, the CSRA created a new type of management at the regional level, the SES, for NLRB Regional Directors. Regional Directors could either remain as civil service, under the protection of the OPM and MSPB, or have less protection but greater rewards for performance as SES (Lubbers 1994). Although the CSRA made it easier to take adverse actions and remove federal employees, including the SES, the OPM and MSPB institutionalized hiring and dispute procedures that protected regional employees. Because the Taft-Hartley Act authorized substantial administrative power and control in the General Counsel over Regional Directors, the CSRA provided added protection for those Regional Directors who remained in the civil service against General Counsel political pressure. Alternatively, the CSRA created a mandate for using performance measures, including outcome and output statistics, for determining rewards and adverse actions that could be used as incentives and disincentives by the General Counsel for achieving political goals.

**Promoting Performance Measurement.** As such, the CSRA created the opportunity for the General Counsel to use time targets and processing goals for rewarding and punishing regional offices. The General Counsel's Division of Operations Management regularly monitors the regional office decisions through monthly reports on processing rates and merit factors (U.S. Office of Personnel Management 1980). Each region is ranked on the basis of percentage of cases litigated, percentage of cases settled, the median age of the cases pending, the median days to issuance of complaints, and the number and percent of ordinary cases in different stages of processing. Each region is compared nationally and by regional offices in a chart showing the office's relative standing (U.S. Office of Personnel Management 1980).

Further, time targets and merit factor scores, used as performance measures for individuals and their regional offices, create incentives for dismissing or urging the withdrawal of a complaint. These time targets, combined with monthly reporting requirements, produce pressure for staff to rush through cases that are in danger of missing their targets. Missing the time targets results in filing additional reports explaining why the target was not met, at minimum, and depresses the office rankings. To avoid this, especially if the due date is at the end or first of the month, field staff may encourage a client to withdraw the case or may simply dismiss it prematurely to avoid being held responsible for missing the target.

In addition, just as there is an incentive to rush to close cases to preserve an acceptable or average processing rate, field staffs are under equal pressure to improve their merit factor score and that of the regional office. In the aggregate, the merit factor is the comparative percentage of cases determined as having merit, and for the most part, it appears stable and consistent over time. Yet individual regional office merit factors are often consistently higher or lower than the average of the regions altogether and individual merit factors fluctuate with talent, training, and interest (Modjeska 1983; Frankiewicz 1995). This suggests that a clever or astute client may determine over time which of the staff at the regional office has the highest merit factor and seek to file charges with them to increase the odds of a finding of merit. Given such incentives to file cases strategically as well as process them quickly, and increasing caseloads and responsibilities, the NLRB continued to be under investigation for lengthy delays and processing irregularities.

A General Accounting Office report found that delays and variations in processing in the NLRB regional offices were due to a lack of standards and procedures for preventing delays at the Board level. While case processing was improving at the regional level, NLRB median processing times on contested cases from 1984-1989 were two to three times higher than those of the 1970s (U.S. General Accounting Office 1991). Clearly, the CSRA, as well as the hostile anti-union political climate of the Reagan era NLRB did little to improve the overall efficiency and equity of NLRB case handling and processing (U.S. Congress. House. 1984).

### **Government Performance and Results Act 1993 and Other Reforms**

By the early 1990s, like most agencies, the NLRB came under increasing pressure from Vice President Gore and National Performance Review to find more effective means of serving the public as well as from Congress to address its growing case backlog at both the regional and national levels (Gore 1993). Some of the NLRB's greatest improvements in case processing came as a result of the increased pressure from Congress for reductions in its caseload and processing delays and from mandates arising from the Government Performance and Results Act (GPRA) 1993 (103 P.L. 62), the Paperwork Reduction Act (PRA) 1995 (104 P.L. 13), and the Government Paperwork Elimination Act (GPEA) 1998 (105 P.L. 277). The GPRA moved beyond the APA and the CSRA mandates for accountable, effective, and equitable federal procedures to mandating agency focus on the quality of program outcomes or results (U.S. Congress. House. 1997). The PRA and GPRA further mandate agency accountability, efficiency and effectiveness by reducing the paperwork burden for individuals providing information to any federal agency.

**Frameworks for Communication.** Specifically, all three policies mandate improved communication between the executive branch and the public. The GPRA instructs federal agencies to demonstrate improved program effectiveness and clientele (customer) satisfaction by taking a number of steps. First, agencies must submit an annual strategic plan to Congress and the Office of Management and Budget detailing their missions, goals/objectives, strategies for achieving goals/objectives, factors influencing the meeting of goals/objectives, and a method of program evaluation. Second, agencies must submit annual performance plans and reports identifying which performance goals have been met and why (U.S. House. 1997; 2003). Although GPRA created a framework for agency management and accountability, the GAO found that it had limited effect on most agencies because of the difficulty of changing the organizational culture of agencies, developing outcome oriented performance goals or measures, and collecting useful productivity data (U.S. Congress. House 2003). To compound agencies' burden for demonstrating efficiency, the PRA and GPEA also require federal agencies to limit the information collected from the public (paperwork reduction) and give individuals the option to submit such information electronically whenever possible (paperwork elimination). Both paperwork polices mandate that the Office of Management and Budget (OMB) review and grant permission for changes in the paperwork and information required from the public.

Thus, from 1993-1998, the NLRB, like many other agencies was under significant pressure from The White House, OMB and Congress to demonstrate that they were effectively and efficiently serving the public. The NLRB addressed the issue of efficiency under GPPA, especially in processing complaints, by changing its procedures for case processing assignment, reducing regional office clearances and paperwork, and investing in information technology for managing cases. The NLRB received four Hammer Awards from the National Performance Review for some of its programs to implement GPRA including Impact Analysis Plan (case prioritization), Representation Case Reinvention Program (reduction of layers of review), Reinvention of Office of Appeals (lowering processing days for appeals), and its Interregional Cooperation Through Interregional Assistance Program (transferring cases to other regions to balance caseload) (NLRB 1998; 1999b).

**Prioritizing Cases and Setting Processing Targets.** Prior to NLRB revisions, unfair labor practice complaints were processed on the basis of first in, first out with a 30 day fixed target for completing the investigations (determination) and a 45 day target for resolving the complaint at the regional office (disposition as either a dismissal, issuance, or client withdrawal) (NLRB 1997). Because by then staffing levels were lower but complaint filings were 50 percent higher than they were in 1962, the NLRB needed a way to prioritize its case load that was complaint with GPRA.

By changing the way in which regional staff prioritized and the performance goals associated with each type of case, the NLRB made incremental improvements in reducing processing delays and time in most of the years from 1998-2002. Using an Impact Analysis Plan it developed with the OMB and the GAO, from 1995-1996 the NLRB implemented a system that classified cases by urgency (NLRB 1998; 1999b). It classified Category I cases as important, Category II cases as significant, and Category III cases as exceptional and gave first priority to cases involving injunctions (NLRB 2004).

To manage cases better, the regional office staffs were directed to give first priority to Category III cases regardless of the relative filing date of the complaint. In addition to prioritizing cases upon filing, the NLRB set processing time targets and allowable missed targets (overages) based on the case priority. Category I processing targets were set at 15 weeks (later reduced to 12) with an overage of 15 percent; Category II processing targets were set at 11 weeks (later reduced to 9) with an overage of 15 percent; and Category III processing targets were set at 7 weeks with an overage of 10 percent (NLRB 1998; 1999a; 2000a; 2000b; 2001; 2002a; Page 2000).

In addition to changes in case handling procedures at the regional level, the NLRB changed the process by which NLRB members reviewed cases. The NLRB was under significant scrutiny for a growing case backlog at the Board level. As a response to mandates from the National Performance Review and the GPRA, the NLRB created a 'R-Case Triage' Plan for representation cases. Based on the complexity of the case and its fact pattern, the NLRB placed the case into different subpanels of its members. "Superpanels" were composed of three members and heard oral presentations for easy cases. "Speed Team" panels involved only one member in consultation with two others for reviewing cases. Finally, "Super Speed Team" panels expedited simple cases (NLRB 2000a). Each of these panels was given time targets. These changes allowed NLRB members to focus the full Board's attention on the more complex cases while reducing its case backlogs.

**Balancing Caseloads and Reducing Clearances.** The NLRB also made significant changes in Regional Directors' authority shifted the geographical jurisdiction of the regional offices, reduced the number of supervisors, increased remote area access, authorized caseload balancing, and created a Best Practices Report for representation and unfair labor practices cases to standardize disposition of cases across regional offices. To address paperwork reduction goals, from 1994-1998, the NLRB delegated case handling and administrative authority to Regional Directors and reduced the number of supervisors at the regional level. This increased the level of discretion in case determination and disposition at the regional level (NLRB 1998; 1999b). Already known for being responsive to geographic and legal cultures existing in the field office jurisdiction, the delegation of such discretion accentuated the variation in case processing and outcomes in the NLRB regional offices.

To create more balance and control over the use of that discretion and responsiveness to local culture, from 1997-2000 the NLRB undertook a number of actions to further control outcomes in the regional offices. First, the NLRB created two Best Practices Reports, one for representation cases and one for unfair labor practice cases. The goal of these reports was to create consistency, uniformity, and predictability in case processing across geographical areas and over time (NLRB 1999b; Page 2000). Thus in addition to standardizing case processing through a revised Casehandling Manual, the NLRB attempted to standardize regional office staff interpretation and application of rules involving representation and unfair labor practices (NLRB 1999b; Page 2000). Second, it reconfigured the jurisdictions of the regional offices (downgrading one office to a subregion). Third, the NLRB instituted an Information Officer Program to reduce the filing of frivolous charges through complaint screening. Fourth, the NLRB created an Interregional Cooperation Through Interregional Assistance Program allowing regions with staff shortages and high case backlogs to transfer some of their cases to other regional offices for processing. Fifth, the NLRB initiated Quality Reviews on a sample of regional office case dispositions and reviews those decisions with the controlling regional office. Finally, the NLRB initiated a Resident Agent Program where agents in remote areas work from their homes (NLRB 1997; 1998; 2000a; 2002b). Together, these programs and practices minimized the level of discretion and variation over areas and time while promoting responsiveness to GPRA mandates for efficiency, equity, and accountability.

**Investing in Information Technology.** To further ensure processing and disposition consistency across regional office geographic jurisdictions and time as well as increasing its ability to monitor regional office decision making, the NLRB invested heavily in adopting and adapting its procedures to state of the art information technology. From 1998-1999, the NLRB created and implemented the Case Activity Tracking System (CATS) which linked all regional offices to the same database of open and closed cases for the first time in its history. In compliance with GPRA, CATS maintained case histories and processing data on all case filed in the regional offices (NLRB 1998; NLRB 1999b; 2000b; 2002a). This database system not only allows the regional staffs from different regional office to examine the disposition of cases with similar fact patterns or clientele, it allows the General Counsel's staff to monitor trends in case processing at particular regional offices. In addition to using state of the art information technology for case handling, since 1997, the NLRB has also invested in creating and maintaining a website, establishing email and intranet, and providing e-government services to clientele.



In compliance with GRPA, PRA, and GEPA, the NLRB reduced its paperwork requirements by switching from requiring written affidavits to accepting telephone affidavits, written questionnaires, and statements of positions (NLRB 1997). The NLRB also allows many documents to be filed electronically, including reports, requests for review, appeals, briefs, representation motions, and time extensions (NLRB 2004). In addition, the NLRB allows regional offices to accept communication and documents related to case processing via email (Labor Board...2003). Importantly, the NLRB's website is searchable and provides access to agency forms, data, and information.

**Improved performance?** As a result of such reforms, the General Counsel of the NLRB has the opportunity to create and use performance measures that indicate not only productivity but also compliance with administration goals. In particular, the NLRB's case handling and process resulted in improved efficiency and accountability although there are no data to suggest that these reforms created equity and effectiveness. Because the data in the NLRB's strategic plan focus on output rather than outcomes, it is difficult to determine if there has been a reduction in variation in the regional office disposition of cases. Yet, the output data suggest that these reforms have decreased processing times, delays, and case backlogs. For example, from 1998-2002, representation case processing days declined to below 50 days, Categories I and II case coverage steadily declined, Category III case coverage consistently met targets, and settlement rates were up to 99.4 percent of cases filed. In the NLRB, unfair labor practices case pending at the Board were reduced by 20.1 percent and the processing time was reduced by 100 percent by 2001 (NLRB 1998; 1999; 2000a; 2000b; 2001; 2002b; Page 2000). Based on these results, it appears that the NLRB has increased its ability to serve its clientele.

### **CONCLUSION**

From its inception, the NLRB has had to create procedures and processes that demonstrate to its critics that its staff provides efficient, effective, and equitable remedies for unfair labor practice and representation violations. Because of its unique design and mission, innovations in the NLRB in case handling and processing were decidedly responsive to contemporary political interests and reform movements. For example, while the NLRA provided a legislative mandate, it did not provide specific details on how regional office staffs would or could achieve those mandates. The decentralized structure of case processing in the NLRB offices was specifically designed to be responsive to local or regional labor-management relationships. Under the Pendleton Act, such responsiveness was expected to be initiated through professional and politically neutral civil service employees.

Yet, it was precisely NLRB regional office staff responsiveness that led to both the APA and Taft-Hartley civil service reforms that reduced the regional office independence and flexibility. On the one hand, the APA mandated standardized operating procedures across regional offices so that the processes by which regional office staff handled cases became uniform and less responsive to local or regional contexts. On the other hand, Taft-Hartley reforms insinuated political control over the regional offices by creating an independent but political General Counsel's office and placing the regional offices under its control. In a classic one-two punch, the NLRB regional offices were constrained to common procedures but expected to serve the political interests of the General Counsel and the president within the confines of civil service protections under the Civil Service Commission.

To standardize procedures and serve, the NLRB regional offices endured wave after wave of incremental reforms from different General Counsels responding and reacting to political interests in The White House, Congress, and its labor-management clientele. From creating a Casehandling Manual to instituting targets for case processing time, to imposing Best Practices standards for regional dispositions, the NLRB, through the General Counsel, gradually evolved mechanisms for political control over regional office discretion. Each time, these programs and processes were initiated within the context of consistent investigation and oversight by Congress, the OMB, or the GAO. Each generation of NLRB members and General Counsels as well, were responding to legislative mandates from the CSRA, GPRA, PRA, or the GEPA for increased efficiency, effectiveness, equity, and accountability in agency decision making.

The effect of the civil service reforms and the amendments to the NLRA was to create an expanding number of performance measures for monitoring the decisions of regional office staff. First, by standardizing case handling, the NLRB satisfied APA requirements for posting and disseminating NLRB rules, regulations, and case processing procedures. It also provided the General Counsel with standards such as merit ratings and overages statistics by which to determine whether a regional office is being responsive to local interests or presidential interests. Second, by initiating time targets originally without regard for case complexity, the NLRB imposed standards for case processing that deny regional staffs the opportunity for responsibly and responsively processing cases based on the subjective characteristics that such decentralized designs are meant to address.

Third, by disrupting jurisdictions, shifting cases between regional offices, and using quality reviews to monitor regional office case dispositions, the General Counsel further interrupts the ability of regional staff to set routines and initiate relationships with their clientele. Finally, by creating an interregional database for sharing information and imposing a set of Best Practices, the General Counsel and the Board members can not only monitor trends in regional offices dispositions that do not reflect their political preferences, but can expect standardization of dispositions based on common and shared experiences.

Thus, because this study demonstrates the importance of procedural changes in enhancing political control by the NLRB over regional office decision making, future studies of administrative culture should include an analysis or measure of the role of performance management in structuring and constraining field office personnel. In particular, this study provides important insight into how each set of civil service reforms creates an expanding number and type of performance measures based on activity or outputs as indicators of efficiency and accountability. None of these measures achieves or addresses the basic goals of each civil service reform. Policy effectiveness and equity, as goals for civil service reform, are subjective outcomes which are difficult to find and quantify. In light of these findings, studies of trends in regulatory policy should investigate how changes in political culture supporting improved accountability and efficiency in public service create constraints on effectiveness and equal treatment of clientele.

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