

NLRB GC Institutes Changes to Certain Decision-Making Processes

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The National Labor Relations Board's General Counsel's office has issued an internal Memorandum ("Changes to Case Processing Part 1") to all regional directors, officers-in-charge, and resident officers announcing immediate enactment of case processing changes.

The six-page memorandum, obtained by *Bloomberg BNA*, addresses four policies. Memorandum ICG 18-06 (July 30, 2018). According to the Memorandum, the changes are based "almost entirely from suggestions received from all levels of the Agency...."

The first four pages of the memorandum, on "Decision-Writing Centralization," outline the "streamlin[ing of] the decision-writing process" of pre-election R-Case decisions that arise within each of the four NLRB Districts (each District consists of a number of Regions). The General Counsel wants a dedicated group of decision writers who have "the time, resources, and specialized skills to efficiently draft decisions..." and, therefore, would be able to help achieve quality consistency across all Districts and Regions.

The Memorandum states that the number of writers for each District will vary from one to three, based on an analysis of the number of R-Case pre-election decisions issued during fiscal year 2017. During the time an individual is a decision writer, his unfair labor practice case workload will be adjusted to accommodate his writing duties.

The Memorandum contains some interesting statistics. They show a large disparity across the NLRB in the number of pre-election R-Case decisions written in each Region. During FY 2017, 157 decisions were issued across the NLRB. Four Regions wrote at least 12 decisions, and nine wrote three or fewer. The Memorandum also reveals wide disparities in the amount of time it takes Regions to write decisions. The median amount of time two Regions took to write decisions was 15 or fewer days (the lowest regional median was 14 days), while the median amount of time one of the Regions took was 68 days. Thus, another goal of centralized decision-writing is "lower and more consistent medians across Districts and Regions."

The second policy, on "Streamlining Advice Branch Submissions," addresses the delays in

processing cases submitted to the Advice Division that have “been a cause of criticism” inside and outside of the NLRB. The General Counsel proposes to reduce required paperwork through the submission of “short form memos” to Advice. Additionally, some Advice submissions may be in the form of an email. Further, other submissions may be made by incorporating all of the necessary evidence by reference if it can be found in, for example, the “Agenda Minute.”

The third policy, on “Streamlining Ethics Issues,” states that legal ethics guidance memoranda will be categorized and stored in a searchable format that Regional personnel can access. Consistent with the overall goal of the Memorandum, this should increase consistency and efficiency across the Regions when they deal with ethical issues.

The final policy change is entitled “Team-Decisions.” Regional Directors are instructed to “delegate appropriate case-handling decision-making authority” to supervisors, rather than participating in even “the more mundane case-handling decisions.” The breadth of the “decision-making authority” that may be given to supervisors may include, for example, approving dismissals, withdrawals, or settlements. It also may involve allowing the supervisor and agent to make the final decision about a charge where they agree on the merit or lack thereof. The General Counsel’s office notes that 17 regions allow supervisors to participate in decision-making and have experienced “great success.”

The Memorandum states that delegation is “appropriate in most Category 1 [exceptional impact] cases and some Category 2 [significant impact] and 3 [important impact] cases.” The Memorandum notes that a Regional Director’s appropriate delegation of authority to supervisors and managers will be positively noted in their annual appraisals under “critical element 2 (leading people 10%).” The Memorandum also states “the extent to which a supervisor or manager steps up and assumes these responsibilities will be positively noted in their appraisals.”

Additional changes should be expected. In addition to the Memorandum’s title (“Changes to Case Processing Part 1”), footnote 1 states that “some other items... will be addressed in one or more memos soon to follow.”

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