

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM-16-09

March 9, 2016

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Anne Purcell, Associate General Counsel

SUBJECT: Casehandling Cost Saving Instructions for Remainder of Fiscal Year 2016

As you may know the Agency is facing a significant budget deficit for the remainder of FY 16. Accordingly the entire Agency is carefully reviewing ways in which we can reduce and control spending for the remainder of the fiscal year. This memorandum is directed to the field, but I assure you that more Agency-wide and headquarters cost cutting initiatives are also in the works and will be announced in the near future. I encourage anyone with additional cost cutting suggestions to contact me and all ideas will be carefully considered. We want to ensure that we continue to effectively enforce the National Labor Relations Act and service our stakeholders throughout the year. Towards this end, until further notice, we are instituting in FY 2016 casehandling cost savings measures consistent with those instituted in previous fiscal years, which proved to be effective.

UNFAIR LABOR PRACTICE SETTLEMENTS AND ELECTION AGREEMENTS

The Field continues to enjoy remarkable success in securing settlements of merit unfair labor practice cases and election agreements to resolve pre-election disputes. The salutary effects of ULP settlements in resolving labor disputes and election agreements are obvious and must be pursued. In addition, and of special importance at this time of budget uncertainty, significant savings of Agency staff and budget resources result from high settlement and election agreement rates. It is also true that settlement early in the processing of a merit unfair labor practice case and the prompt negotiation of an election agreement will result in the greatest saving in resources. Accordingly, in all Regional Offices, and especially in those offices where performance in these areas is below the national experience, redoubled efforts should be made to resolve cases. In this regard, training for all professional employees should continue to be conducted on settlement techniques when appropriate, settlement coordinators should be active and Regional Directors should be directly involved in settlement efforts. Please consult Memoranda OM 89-91, dated September 29, 1989; [OM 97-81](#), dated December 9, 1997, and [OM 98-33](#), May 12, 1998. In addition, please provide the name of your settlement coordinator to your AGC or Deputy for our future reference.

TRIALS AND REPRESENTATION CASE HEARINGS, COMMUNICATION WITH DIVISION OF JUDGES

For those trials that will be going forward despite exhaustive settlement efforts, in order to save on transportation and per diem costs for witnesses, pre-trial preparation should be conducted in the Regional Office, by phone, videoconference, if feasible, or in conjunction with other required travel, if at all possible to keep costs to a minimum. Certainly, the trial attorney should meet in person with witnesses at least on two separate occasions prior to the trial, with one occasion scheduled in coordination with travel to the hearing.¹ Witnesses whose presence at trial must be secured by subpoena at government expense should be released as soon thereafter as possible. Other stratagems which may contribute to shorter, more efficiently run trials and representation hearings during the budgetary uncertainty should also be employed:

1. In making assignments for trials and hearings focus on those trials and hearings inside the office to provide inexperienced counsel the opportunity to “second chair” senior counsel as a training exercise. Two attorneys should be assigned to out-of-town cases only in large cases requiring those resources.
2. Avoid additional costs to court reporters and interpreters by providing timely notice of the postponement or cancellation of hearings/trials and avoid overtime costs for court reporters unless overtime will allow the Region to conclude the proceeding.
3. Ensure that when facilities must be rented for hearings, trials or elections the least expensive alternatives that will at the same time suit the Agency’s needs are chosen. Contact Facilities for assistance in locating free or low cost rooms.
4. In appropriate cases, where cost savings may be realized, Regions should consider having trial attorneys use oral argument at the end of the hearing in lieu of filing post-trial briefs and encourage administrative law judges to issue bench decisions.
5. Encourage the use of stipulations to reduce the time on the record and conserve resources.

In addition, close communication with the Division of Judges with regard to the amendment of complaints and settlement efforts will ensure the Judges schedule the appropriate number of hearing days and avoid unnecessary trips.

¹ See [ICG-13-04](#), “FY 2011 Litigation Review and Comprehensive Report on Litigation Wins and Losses,” dated December 17, 2012, noting that while generally three meetings with the witness are desirable, there are times when two may be sufficient and other times when more are required. These are matters left to the discretion of the trial attorney in consultation with regional management. Maintaining high quality in our litigation is paramount.

VIDEO TESTIMONY IN ULP PROCEEDINGS

Witness testimony by video in unfair labor practice proceedings before the ALJ has been upheld by the Board in certain circumstances. See [NLRB Bench Book, § 12-400](#). Among those include situations in which the parties have agreed to take testimony in this fashion. *Id.* Accordingly, even if a witness is available, or there is an insufficient foundation to request video testimony, Regional offices should pursue agreement with the parties to provide for taking testimony by video where it is strategically appropriate. It is of course within the discretion of the Regional Director to make this determination, but we encourage you to consult with your AGC, Deputy or me in making this assessment. Even without agreement, in a recent (admittedly unusual) case, the Board found video testimony appropriate. See [EF Int'l Language Schools, Inc., 363 NLRB No. 20 slip op. at n.1 \(2015\)](#).

INVESTIGATIONS

Alternative Investigatory Techniques - Full use should be made of alternative investigatory techniques. Accordingly, questionnaires, telephone affidavits, videoconference interviews, where feasible, position statements and other techniques that reduce or eliminate the travel costs usually associated with unfair labor practice investigations involving travel outside the commuting area should be employed as appropriate. See Memoranda OM 95-15, dated August 22, 1995, and [GC 02-02](#), dated December 6, 2001.² Thus, all Category I and most Category II cases should be investigated consistent with the guidance in those memoranda, unless the case is local or the Regional Director determines that travel is essential to a quality investigation.

² [GC 02-02](#) states, at. p. 3:

Face-to-face affidavits remain the cornerstone of our investigations. Experience has shown, however, that there are also alternative investigative techniques that can save time and resources without adversely affecting quality in certain types of cases. Especially where significant travel would otherwise be involved, such techniques save both considerable time and resources, thereby allowing Board agents to address other matters. While the need to utilize these techniques, such as questionnaires and telephone affidavits, was originally based upon a shortage of casehandling resources, even with adequate resources the use of these techniques in the investigation of certain types of cases should be continued in order to promote both efficiency and economy. In particular, all Regional Offices should utilize alternative techniques for all Category I cases and continue to use them for certain Category II cases, such as a Section 8(a)(5) or 8(b)(3) request for information or a Section 8(b)(1)(A) duty of fair representation allegation, which, as previously noted, will now be placed in Category II. Additionally, consistent with Memorandum OM 99-75, Regional Directors continue to have the discretion to use these techniques for other Category III and II cases, where appropriate. As stated in that memorandum:

In situations where substantial travel will be necessary, the Regional Directors may exercise their discretion to take telephonic affidavits in circumstances where the affidavit is a supplemental statement, where individuals are providing evidence that corroborates evidence presented in a face-to-face affidavit or where there is a very high probability that the case has no merit.

(Footnotes omitted).

Translations – Use Agency bilingual agents before utilizing the services of our contractor. A list of the Bilingual Field Employee is posted on the [Insider](#).

Time Targets – Make full use of the “cushion” in reaching the Impact Analysis time targets. Understanding that understaffing is a reality in many of our regions, keep in mind that a certain percentage of cases can go overage under those time targets. This will allow for consolidation of travel and hopefully some relief to the staff in casehandling.

TRAVEL

Travel Coordinator - The Travel Coordinator in each Region should continue to manage Regional travel on a daily basis, clustering travel assignments for Board agents and avoiding nonessential travel while ensuring that appropriate, alternative investigative techniques are employed in lieu of travel outside the commuting area whenever possible. Interregional coordination of travel for investigations is encouraged. Travel coordinators in contiguous Regions should be in frequent contact to permit agents traveling in the outskirts of their Regions to assist in investigations or elections in the outskirts of a contiguous region. Use of GSA cars when available and when cost effective should be encouraged. See Memorandum [OM 03-98](#), dated August 1, 2003. When travel by air is absolutely necessary, the most cost efficient arrangements mentioned below should be employed. In addition, where feasible, multiple travel vouchers for local travel should be processed together. This will help reduce voucher transaction fees. Thus, expenses such as mileage, tolls or parking for separate local trips can be combined in one voucher. Local travel vouchers should be processed within 90 days of incurring the expense, and expenses should not be carried across the end of the fiscal year. Note that temporary duty and local travel vouchers cannot be combined on a single voucher.

Notwithstanding the Agency’s current budget uncertainty, we must continue to pursue the General Counsel’s Outreach Initiative. However, in doing so we must be mindful of the costs involved and the competing demands on our scarce budget resources. Thus, for the time being any request for outreach activities that will cost more than \$100 must be directed to Deputy Assistant General Counsel David Kelly. If non-local travel is required for outreach, such travel costs cannot be incurred unless it can be combined with travel for casehandling or is less than \$100. Similarly, full advantage should be made of the outreach materials we now have available (see the [Outreach Resources](#) link of the Operations page of the “Insider”). Finally, if your region produces a newsletter, a practice we strongly encourage, please distribute the newsletter via email and/or your Regional web page.

Use of E2 for Travel Arrangements – All travel arrangements should be made on line through the E2 website. Making travel arrangements in this fashion not only represents a substantial cost savings but also ensures for prompt issuance of your ticket for travel. Fees for booking travel through the Carlson Travel Management Center are more than four times as much those incurred when making the arrangements on line through E2,

and caused the Agency to incur a significant expense in this area last year. Similarly, reservations for lodging and/or car rental should also be made on line through E2. Employees should also be reminded that they can participate in the Gainsharing Travel Savings Incentive Award Program. See APC 00-05.

Travel Responsibilities of the Parties – Except when Board agent travel can be coordinated, or under special circumstances, all institutional charging parties within 120 miles of the field office location should be encouraged to travel to the office to present evidence and give affidavit testimony. It is reserved to the sound discretion of the Regional Director to determine whether Board agent travel should be invested in the investigation where the institutional charging party is unwilling to travel up to 120 miles to the Regional Office. In exercising this discretion, the Director should be sensitive to the hardship such a requirement might impose on certain parties. Charged parties and their witnesses located within 120 miles should be strongly encouraged to travel to the office. If the charged party is unwilling to provide affidavits, the Board Agent should generally not go to the Charged Party's facility, instead requesting video conference interviews and a position statement. Unfair labor practice and representation case hearings should be conducted in the field office in cases involving employers located within 120 miles from the field office city. Regional Office managers must exercise judgment where the presence of witnesses at hearings must be compelled by subpoena and costs associated with subpoenas make the conduct of the hearing in a location remote from the Region cost effective. Use of video conferencing for Representation cases should be considered where travel costs are substantial. See Memorandum [OM 11-42](#) and [08-20](#).

MAIL, WRITTEN COMMUNICATIONS

Decrease Reliance on Private Delivery Services and Certified Mail - Regions should significantly decrease the use of UPS (unless economically justified) and certified mail, especially for interoffice mail. Eliminate the use of these services if "next day delivery" would mean Saturday delivery. Of course, use of certified mail must still be used insofar as the Rules and Regulations require such service.

Electronic Mail – To the extent not already done, please increase use of E-mail, where appropriate, in place of correspondence to and from Headquarters and between field offices and with the parties, consistent with Memorandum [OM 03-74](#), dated May 6, 2003. Continue to encourage the parties to e-file documents during the course of the investigation.

SUPPLIES

Office supplies and services should be purchased with an Agency Purchase Card pending further instructions. We anticipate that the Acquisitions Management Branch will soon issue a protocol providing for bulk purchases, which will provide a significant cost savings in the purchase of supplies.

PHONES AND PHOTOCOPY EQUIPMENT USE

Phone Lines - Disconnect unused leased phone lines. Phone line costs vary from location to location but average approximately \$35.00 per month. Generally, there is no cost to disconnect a phone line, but reactivation costs can be substantial. Thus, the Regions should balance these costs with anticipated savings. If a line is to be unused for at least 4 to 6 months, a net savings to the Agency would result if the line is disconnected, even if a reconnection charge is later incurred. In addition, this would obviate the need to transfer unnecessary lines when Unified Communications is deployed in your Regional office. Contact Rob White, NLRB Telecommunications Specialist, for information specific to your city.

Photocopy Machine Use - Use of office photocopy machines should be prudently monitored and abuse prevented. Because the cost of toner for individual printers is high, encourage the use of the network printer and always default to double sided on both network and personal printers. Double-sided photocopying should be used whenever possible.

PAPER REDUCTION

- Take every opportunity to encourage reduction in the use of paper. When it is used, encourage recycling. To the extent possible, the review of all case files should be conducted on-line and when agendaing cases, participants should use their laptops rather than copying and distributing relevant documents. With the exception of paper documents that are submitted by parties in a case, there should be no paper files.
- Representation Case Decisions, Complaints and Notices of Hearings are often double-spaced. While this is not required by the Agency's rules and regulations, the Board's preference is that these documents be submitted double spaced. However, please consider using single space and double-sided copying for documents that are not filed with the Board or courts.
- Maximize the use of E-mail for interoffice announcements of general interest. E-mail messages relevant to a case investigation should be uploaded into NxGen, rather than printed out.
- Printed copies of official documents such as complaints should be reduced to the minimum number necessary.
- Upload all relevant case handling documents to be submitted to Headquarters into NxGen. If for some reason that is not possible, E-mail all documents submitted to Headquarters.

- When forwarding non-bargaining unit and PMRS appraisals to Headquarters, please continue to place in the E-room. There is no need to provide a separate paper copy.
- When forwarding bargaining unit appraisals to Headquarters, please scan a signed copy and place in the E-room. There is no need to provide a separate paper copy.
- Headquarters offices will continue to distribute documents electronically.
- Notify the parties in our hearings that they should bring sufficient copies of their exhibits.

Vigilance in the management of our limited resources must be maintained if we are to continue to enforce the Act effectively and provide the essential services we perform to the national economy and to individual working people and businesses across the land while avoiding dislocations of our employees. Continuing the casehandling efforts that have resulted in our enviable record of performance will greatly contribute to this effort as well. Hiring opportunities in FY 2016 will likely continue to be extremely limited, so we must carefully manage our resources in order to handle the Agency's caseloads as effectively as possible.

Thank you in advance for your continued cooperation in controlling costs. We appreciate all of your past efforts in controlling costs and will keep you advised of the FY 2016 budget situation as it develops. As noted above, please let us know if you have any cost savings suggestions. If you have any questions about the foregoing, please contact your Assistant General Counsel or Deputy or me.

/s/
A.P.

cc: NLRBU

MEMORANDUM OM 16-09