



MEMORANDUM

March 15, 2011

To: House Committee on Education and the Workforce
Attention: Richard Miller

From: Gerald Mayer (gmayer@crs.loc.gov, 7-7815)

Subject: **Potential Impact of H.R. 1 on the National Labor Relations Board (NLRB)**

This memorandum responds to your request for an analysis of the potential impact on the National Labor Relations Board (NLRB) if Congress reduces funding for the agency by \$50 million for FY2011. The memorandum first discusses the possible effect of a \$50 million reduction in funding on NLRB staffing. Second, the memorandum reviews the duties and activities of the NLRB and discusses the possible effects of a reduction in funding for the agency.

It should be stressed that the analysis in this memorandum of the potential effect of H.R. 1 on the NLRB is dependent on many assumptions and may be imprecise. Congress may or may not reduce funding for the NLRB by \$50 million for FY2011. If Congress does reduce funding by \$50 million, the agency may consider ways to accommodate a \$50 million reduction in funding that are not considered in this memorandum. In general, this memorandum assumes that the NLRB would absorb a large reduction in funding in FY2011 principally through furloughs.¹

NLRB Funding

For FY2010, Congress appropriated \$283.4 million for the NLRB. The Administration requested \$287.1 million for FY2011 and \$287.7 million for FY2012.² H.R. 1, which passed the House on February 19, 2011, would provide the NLRB with \$233.4 million for FY2011, a reduction of \$50 million (or 17.6%) for FY2011. Under the Senate amendment to H.R. 1 (SA 149), NLRB funding for FY2011 would continue at the FY2010 level.

¹ The NLRB budget director indicated in a conversation with CRS that, in the event of a \$50 million reduction in funding for FY2011, the agency would likely rely heavily on furloughs.

² The funding amount for the NLRB for FY2010 is from a February 19, 2010 table from the House Committee on Appropriations. Fiscal year 2011 and 2012 budget requests are from the National Labor Relations Board, *Justification of Performance Budget for Committee on Appropriations, Fiscal Year 2012*, available at <http://www.nlr.gov/sites/default/files/documents/188/just2012full.pdf>, p. 43. (Hereafter cited as NLRB, *Justification of Performance Budget for Committee on Appropriations, Fiscal Year 2012*.)

Potential Impact of a \$50 Million Reduction in Funding on NLRB Staffing

One way to analyze the potential impact of a \$50 million reduction in funding for the NLRB is to separate budget authority for the agency into fixed costs (e.g., rent) and variable costs (e.g., wages and salaries). In the short-term, if the NLRB believes that a \$50 million cut is temporary and not permanent, the agency could lower variable costs. In the short-term, it may be difficult, or impossible, to lower fixed costs. Thus, a short-term reduction in funding would likely come largely from variable costs.

Table 1 shows the NLRB's budget authority, by spending category, for FY2010. The largest cost, \$170 million, is for personnel compensation. Other costs include employee benefits, rent, utilities, services, furniture, equipment, and supplies. If appropriations for the NLRB are reduced by \$50 million for FY2011, the NLRB would probably not be able to reduce obligations equally for each spending category. For instance, furloughs could reduce the cost of wages and salaries, but the agency may still have to pay some employee benefits. Furloughs could reduce agency contributions for Social Security and Medicare. Furloughs could also reduce agency contributions to employee retirement plans. If employees are furloughed, the agency would not have to make contributions for employee life insurance. But, the agency could not reduce spending on health insurance premiums unless furloughed employees cancel their health insurance.³ Spending for travel, supplies, and other activities could also be reduced. Some purchases could be delayed or postponed.

According to the NLRB, a portion of a \$50 million reduction in funding for FY2011 could come from nonpersonnel costs. The estimates in this memorandum use the NLRB's assumption that \$5.7 million of a \$50 million reduction in appropriations could come from costs other than personnel pay and benefits.⁴ The estimates also assume that, in the short-term, the NLRB will not lay off workers or leave positions vacant. If expected appropriations for FY2012 are lower (in real dollars) than FY2010 appropriations, the NLRB could consider staff reductions.

The estimates in this memorandum make two assumptions regarding furloughs. Under the first assumption, all staff are furloughed. This may not be a realistic assumption, however. For example, the five members of the Board and the General Counsel are appointed by the President, with approval of the Senate. They may not be furloughed. Other staff may also be exempt from a furlough. Thus, under the second assumption, 90% of staff would be furloughed. But, it is entirely possible that NLRB would identify a different share of staff to be exempted.

Finally, the estimates in this memorandum are based on average compensation costs. However, total compensation for some employees is higher than for other employees. NLRB could vary the number of furlough days by type of position. Thus, if furloughs are not made across-the-board, in order to absorb a \$50 million reduction in funding, either more or fewer staff may be furloughed.

³ Furloughed employees could pay their share of health insurance premiums directly to the agency or have the amount deducted from their pay when they return to work. Alternatively, to lower current or future expenses, they could cancel their insurance. U.S. Office of Personnel Management, *Guidance and Information on Furloughs*, available at <http://www.opm.gov/furlough/furlough.asp#Requests%20for%20Leave%20During%20Furlough>.

⁴ Personal conversation with NLRB budget director.

Table I. Budget Authority, by Category, for the National Labor Relations Board (NLRB), FY2010

Category	Amount (in millions)
Personnel compensation	\$170
Employee benefits	42
Travel and transportation	4
Rental payments to the General Services Administration (GSA) and security payments to the Department of Homeland Security (DHS)	28
Rent, communications and utilities	6
Other services	26
Supplies and materials	1
Furniture and equipment	5
Total	282

Source: National Labor Relations Board, *Justification of Performance Budget for Committee on Appropriations, Fiscal Year 2012*, available at <http://www.nlr.gov/sites/default/files/documents/188/just2012full.pdf>, p. 43.

As requested, **Table 2** illustrates the potential number of furlough days if NLRB's funding for FY2011 is reduced by \$50 million. The estimates assume that a \$50 million reduction in funding would be absorbed entirely over the last six months of FY 2011 (April through September 2011). The estimates are based on an average cost for wages and salaries and (variable) benefits of \$59 an hour. This calculation was made using published information on the number of NLRB employees and the average annual number of hours worked. In its FY2012 Budget Justification for Congress, the NLRB reported that, for FY2010, the agency had 1,632 full-time equivalent employees (FTEs). According to the Office of Management and Budget, a typical FTE work year consists of 2,087 hours.⁵

Based on the above information and assumptions, the estimated number of furlough days per affected employee for NLRB for the second half of FY2011 may be between 58 days and 64 days or, approximately, 2.7 to 3.0 months. If all staff are furloughed, staff may be furloughed for an average of 58 days. If 90% of staff are furloughed, staff may be furloughed for an average of 64 days.

⁵ Office of Management and Budget, *Historical Tables, FY2012*, available at <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/hist.pdf>, p. 20

Table 2. Estimated Number of Furlough Days Per Affected Employee at NLRB for the Second Half of FY2011, Under the Assumption of a \$50 Million Reduction in Funding

	Amount of reduced spending (in millions)
Total number of reduced employee hours (over six months)	754,430
Total number of reduced employee work days (over six months)	93,990
Percent reduction in work days (over six months)	44%
Number of furlough days per employee: ^a	
If 100% of staff are furloughed (over six months)	58 days
If 90% of staff are furloughed (over six months)	64 days

a. Estimates assume that a reduction in funds is absorbed largely through furloughs.

Potential Impact of a \$50 Million Reduction in Funding on NLRB Duties and Activities

The National Labor Relations Board administers and enforces the National Labor Relations Act (NLRA), which governs labor-management relations in the private sector (except for railroad and airline employees). The NLRB consists of a five-member Board and a General Counsel. Among other things, the General Counsel's office processes election petitions, conducts secret ballot elections, investigates complaints of unfair labor practices (ULPs), determines remedies for ULPs, and supervises the NLRB's 51 field offices. The Board resolves objections and challenges to secret ballot elections, decides questions of the composition of bargaining units, and hears appeals of unfair labor practices.⁶

During FY2010, the NLRB received 3,044 representation petitions.⁷ In FY2009, NLRB conducted 1,704 secret ballot elections.⁸ During FY2010, 23,509 ULP cases were filed. Upon investigation, NLRB found that 35.6% of ULPs cases filed had merit and sought remedies. Some ULP cases found to have merit are settled through litigation.⁹ If a union and employer do not agree on the appropriate bargaining unit, hearings may be held. Hearings may also be held to resolve challenges or objections to an election. Administrative law judges conduct hearings on ULP cases. Decisions made in the field offices may be appealed to the Board.

Based on the information in **Table 2**, if a \$50 million reduction in funding for NLRB for the second half of FY2011 was absorbed largely through furloughs, it could reduce the number of work days of NLRB staff by 44 percent. One cannot predict with certainty how NLRB's workload would be affected, but it is reasonable to assume that the effect of such a substantial reduction in work days would be dramatic. Other NLRB activities that could be affected include Board decisions, remedies to ULPs, collection of backpay,

⁶ For more information on the NLRB see CRS Report RRL32930, *Labor Union Certification Procedures: Use of Secret Ballots and Card Checks*, by Gerald Mayer.

⁷ NLRB, *Justification of Performance Budget for Committee on Appropriations, Fiscal Year 2012*, p. 6.

⁸ National Labor Relations Board, *Annual Report of the National Labor Relations Board, For the Fiscal Year Ended September 30, 2009*, available at <http://www.nlr.gov>, p. 13.

⁹ NLRB, *Justification of Performance Budget for Committee on Appropriations, Fiscal Year 2012*, pp. 19-20 .

requests for court injunctions to stop ULPs, responses to public inquires, outreach, completion of financial and other reports, and other activities.

Reduced NLRB staffing could affect employers, employees, and unions. Because of delays in conducting secret ballot elections, some employees and unions may seek voluntary recognition from employers. For the same reason, some employers may prefer secret ballot elections.

If Congress reduces NLRB funding for FY2011 by \$50 million, the effect on the NLRB and its clients may be significantly different from what has been described here. NLRB's response to reduced funding for FY2011 could be affected by the agency's expected funding for FY2012 and later. If the agency's expected funding for FY2012 is \$50 million or more less than its request, it may not fill some vacant positions or it could eliminate some positions in FY2011. Similarly, if the agency furloughs staff in FY2011, it may choose to furlough more staff at its headquarters in Washington DC than in its field offices. Or, as mentioned above, the agency may consider ways to accommodate a \$50 million reduction in funding that are not considered in this memorandum.
