

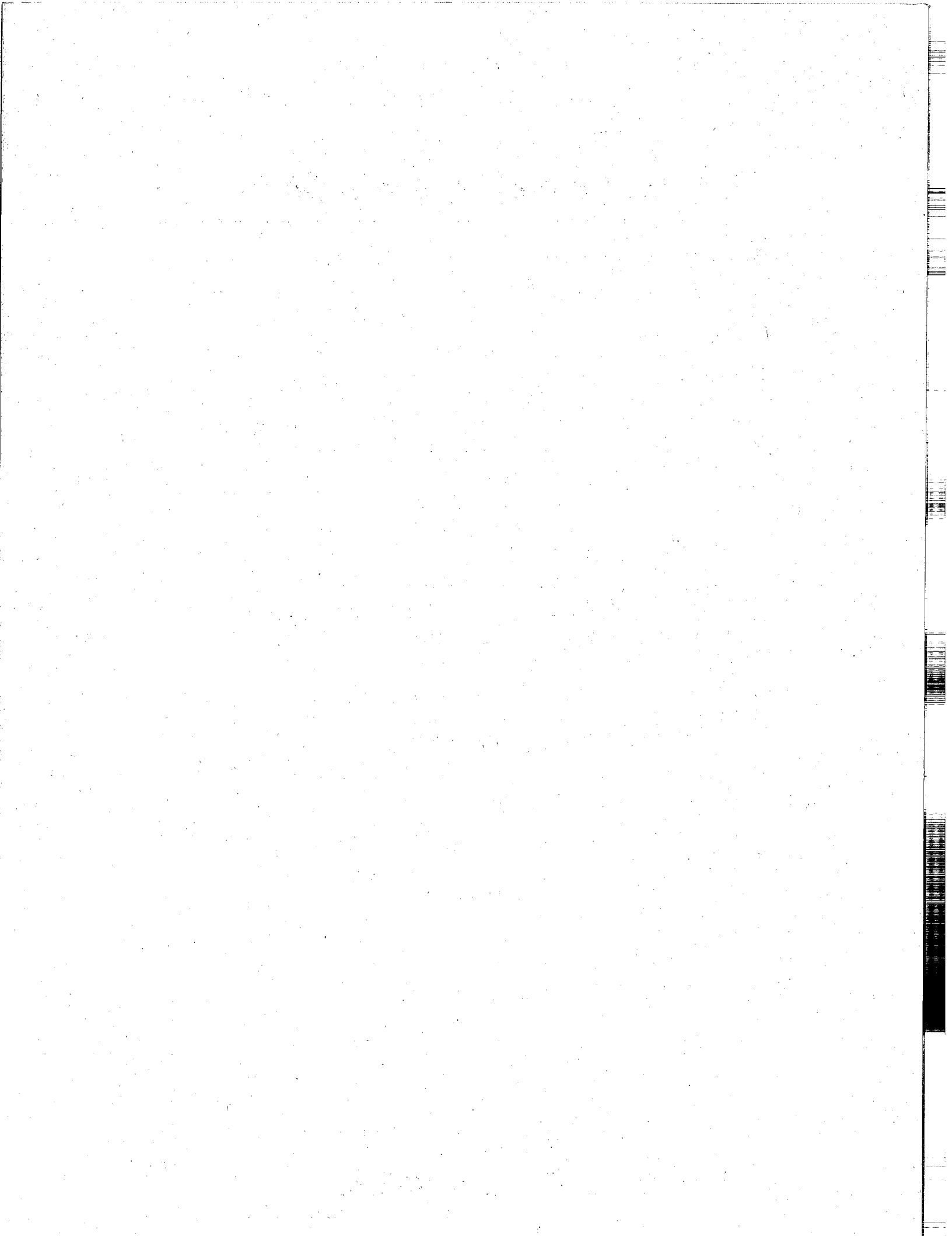


*Personnel Appeals Board*

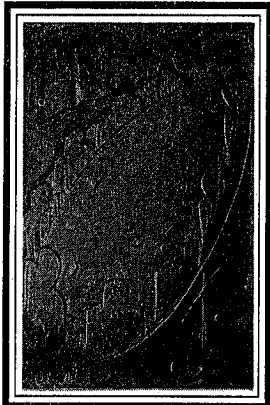
*1996 Annual Report*

SP.020

158299



January 27, 1997



Personnel  
Appeals  
Board

The Honorable James F. Hinchman  
Acting Comptroller General  
United States General Accounting Office  
Room 7000  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Hinchman:

Attached please find a copy of the 1996 Annual Report of the Personnel Appeals Board of the U.S. General Accounting Office. As you know, it is the Board's responsibility to consider, decide, and order corrective or disciplinary action, when appropriate, in cases involving employee appeals, prohibited personnel practices, prohibited political activity, and discrimination. The Board also has responsibility for eeo oversight of GAO and its program and practices. The attached report describes the activities of the Board, its Office of General Counsel, and its Office of Equal Employment Opportunity Oversight during the last fiscal year.

Sincerely,

*Leroy D. Clark*  
Leroy D. Clark  
Chair

attachment



**Table of Contents** ..... 3

**Biographies of Board Members** ..... 6

**Personnel Appeals Board and PAB Office of General Counsel Staff** ..... 9

**Chapter 1:**

**The Personnel Appeals Board** ..... 11

- About the PAB ..... 11
- Expanded Jurisdiction ..... 14

**Chapter 2:**

**The Appeal Process** ..... 15

- Prehearing Discrimination Complaint Procedures ..... 15
- Initiating an Appeal ..... 16
- Board Decisions ..... 17
- Class Action Appeals to the Board ..... 17

**Chapter 3:**

**PAB Office of General Counsel Activities** ..... 23

- Case Activity ..... 23
- Comments on Proposed Agency Action ..... 23
- PAB/OGC Employee Contacts ..... 23
- PAB/OGC Investigative Authority ..... 24
  - Stays ..... 24
  - Other Relief ..... 24

**Chapter 4:**

**Administrative Actions** ..... 27

- Regulatory Revisions ..... 27

**Chapter 5:**

**Oversight Projects** ..... 29

- Report on Hearing on Age Issues ..... 29
- Downsizing Study ..... 29
- Promotion Study ..... 29
- Report on the Discrimination Complaint Process and Mediation Program ..... 30

**Figures**

**Figure 1.1:** Organization of the Personnel Appeals Board ..... 12  
**Figure 2.1:** Cases Filed with PAB ..... 18  
**Figure 2.2:** Process of Case From Charge to Termination of Appeal ..... 19  
**Figure 2.3:** Process of Case to Final Board Member’s Decision with No Appeal ..... 20  
**Figure 2.4:** Process of Case from Charge to Judicial Review ..... 21  
**Figure 2.5:** Process of Reduction-in-Force Case ..... 22  
**Figure 2.6:** Cases Filed with PAB/OGC ..... 25

**Abbreviations**

AoC	Architect of the Capitol
AOCFEP	Architect of the Capitol Fair Employment Practices Office
CAA	Congressional Accountability Act
CRO	Civil Rights Office, GAO
eeo	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
FLRA	Federal Labor Relations Authority
GAO	General Accounting Office
GAOPA	General Accounting Office Personnel Act
MSPB	Merit Systems Protection Board
PAB/OGC	Personnel Appeals Board Office of General Counsel
PAB	Personnel Appeals Board
RIF	reduction-in-force

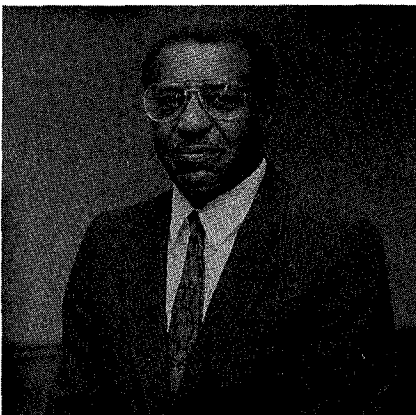


***Biographies of Board Members***



***Nancy A. McBride***

Nancy A. McBride was appointed to the Board in 1991, served as Vice-Chair in fiscal years 1993 and 1994, and as Chair in fiscal years 1995 and 1996. She is a graduate of Georgetown University and the Marshall-Wythe School of Law of the College of William and Mary. Ms. McBride was an Assistant City Attorney for the City of Alexandria, Virginia for six years. She has been in private practice since 1989, serving as an arbitrator and hearing officer primarily in labor and education matters. Ms. McBride is a frequent instructor at the George Meany Center for Labor Studies in Silver Spring, Maryland. Her term on the Board expired at the end of fiscal year 1996 but was extended through the first four months of fiscal year 1997.



***Leroy D. Clark***

Leroy D. Clark was appointed to the Board in 1992, served as Vice-Chair in fiscal years 1995 and 1996, and was elected Chair for fiscal year 1997. A graduate of the City College of New York and the Columbia University Law School, Professor Clark has been an attorney for the N.A.A.C.P. Legal Defense Fund, Inc., and served as General Counsel of the U.S. Equal Employment Opportunity Commission. He is also an arbitrator listed with the American Arbitration Association and the Federal Mediation and Conciliation Service. Currently a faculty member at the Catholic University Law School, Professor Clark is also the co-author of a textbook on employment discrimination law.

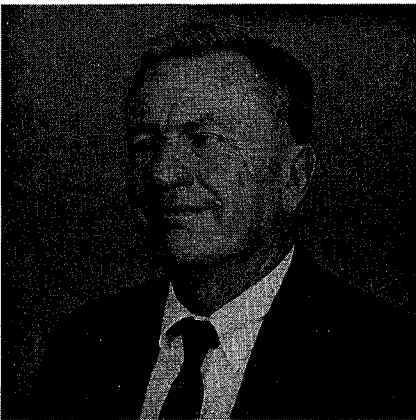


**Biographies of Board Members**



**Harriet Davidson**

Harriet Davidson was appointed to the Board in 1993 and will serve as Vice-Chair in fiscal year 1997. She is a graduate of the University of Rochester, New York University, and Brooklyn Law School. Ms. Davidson was a public interest lawyer, specializing in employment and administrative law, for seven years, and served as a clinical instructor at the Seton Hall University School of Law. She was also Director of the Housing Division of the Philadelphia Redevelopment Authority. Since 1987, Ms. Davidson has been a hearing officer and administrative judge for Federal, state, and county agencies, primarily in employment, real estate and banking matters. In 1993, she was appointed to the Montgomery County Human Relations Commission (Maryland).



**Alan S. Rosenthal**

Alan S. Rosenthal was appointed to the Board in 1991 and served as Chairman in fiscal years 1993 and 1994. A graduate of the University of Pennsylvania and the Yale Law School, he retired in 1988 after nearly 40 years in the Federal service. Following a clerkship with a judge on the U.S. Court of Appeals for the District of Columbia Circuit, Mr. Rosenthal served for 20 years in the Appellate Section of the Civil Division of the Department of Justice (for 14 years as Assistant Section Chief). In 1972, he became Chairman and Chief Administrative Judge of the Atomic Safety and Licensing Appeal Panel of the Atomic Energy Commission (later Nuclear Regulatory Commission). Mr. Rosenthal has taught at the University of Pennsylvania Law School and the Washington College of Law of the American University. Mr. Rosenthal's term on the Board expired during fiscal year 1996.

**Personnel Appeals Board**

Nancy A. McBride  
Leroy D. Clark  
Alan S. Rosenthal  
Harriet Davidson

Chair  
Vice-Chair  
Member  
Member

**Personnel Appeals Board Staff**

Executive Director  
Co-Directors, EEO Oversight  
  
Solicitor to the Board  
Staff Attorney  
Administrative Operations Assistant  
& Acting Clerk of the Board

Beth L. Don  
M. Gail Gerebenics  
Barbara Lipsky  
Catherine McNamara\*  
Susan P. Inzeo  
Sarah L. Hollis

**Personnel Appeals Board/Office of General Counsel Staff**

General Counsel  
Senior Trial Attorney  
Senior Trial Attorney  
Administrative Operations Assistant  
Secretary

Jessie James, Jr.  
Janice E. Willis  
Janice M. Reece  
Deborah Y. McKissick  
Darian C. Jackson

\* No longer with the Board

**Personnel Appeals Board 1996**



*Alan S. Rosenthal, Nancy A. McBride, Harriet Davidson, Leroy D. Clark*



10/10/10

## The Personnel Appeals Board

### About the PAB

The Personnel Appeals Board (PAB or the Board) was created by Congress in 1980 to adjudicate disputes, issue decisions and order corrective or disciplinary action, when appropriate, in cases involving prohibited personnel practices, prohibited political activity, and discrimination involving employees of the U.S. General Accounting Office.<sup>1</sup> The Board also was granted responsibility for oversight of equal employment opportunity at GAO.

The PAB operates as an independent agency in the legislative branch, combining the adjudicatory functions of its executive branch counterparts: the Merit Systems Protection Board (MSPB); the Federal Labor Relations Authority (FLRA); and the Equal Employment Opportunity Commission (EEOC). The Board's Office of General Counsel (PAB/OGC) performs the investigatory and prosecutorial functions of the Office of Special Counsel and the FLRA General Counsel.

By statute, the Board is comprised of five members who serve five-year, non-renewable terms.<sup>2</sup> The process of selecting a Board member begins several months prior to the

expiration of a current member's term. GAO advertises the vacancy and solicits applications from candidates who have expertise in the areas of EEO, labor law, arbitration, mediation, and adjudication. A screening panel<sup>3</sup>, chaired by the Special Assistant to the Comptroller General, is established to review the applications and interview the candidates it determines to be the best qualified. The panel's recommendations are then forwarded to the Comptroller General who appoints each Board member. The Board elects its own Chair and Vice-Chair for one-year renewable terms.

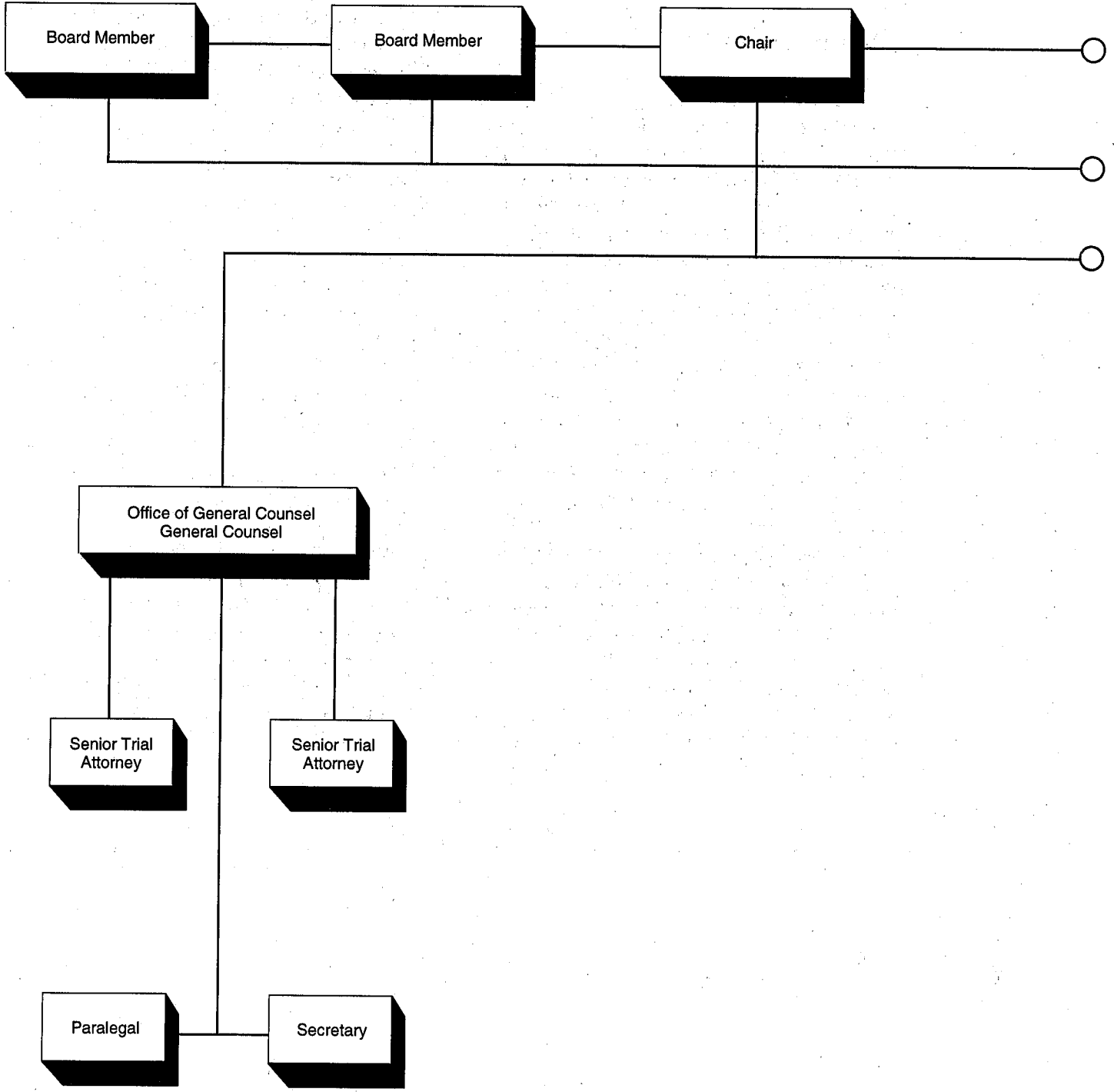
The Executive Director manages Board staff and its operations; the Solicitor advises the Board members on legal matters; and the Director of EEO Oversight conducts studies and produces reports on selected topics involving equal employment opportunity at GAO. The General Counsel, who is selected by the Board and appointed by the Comptroller General, serves at the pleasure of the Board Chair. The General Counsel investigates charges filed with his or her office and, if he or she concludes that reasonable cause exists, offers to represent the employee or applicant for employment before the Board with the assistance of senior trial attorneys.

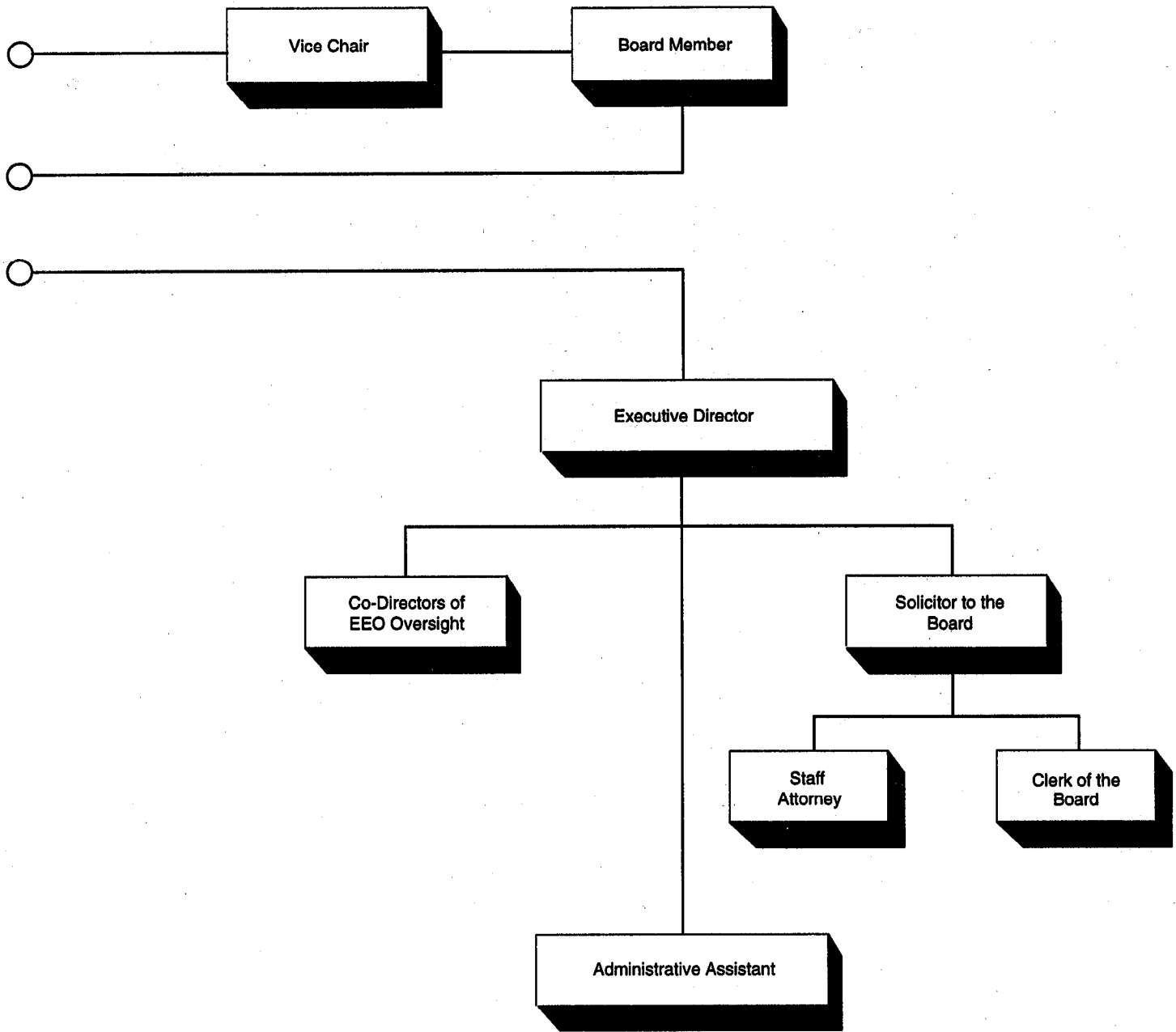
<sup>1</sup> The Board also has the authority to certify collective bargaining representatives and to adjudicate unfair labor practices but, in the absence of a union at GAO, has not had the occasion to do so.

<sup>2</sup> The vacancy that occurred with the expiration of a member's term in September, 1994 has not been filled. The vacancy that occurred with the expiration of a member's term in June, 1996, was filled early in fiscal year 1997.

<sup>3</sup> In addition to the Special Assistant who chairs the panel, the other voting members are three assistant or deputy assistant comptrollers general, the Director of the Civil Rights Office, and the General Counsel. The non-voting members are an Executive Secretary appointed by the Comptroller General, and a member and alternate from each of six employee councils.

Figure 1.1: Organizational chart for the Personnel Appeals Board





### *Expanded Jurisdiction*

From 1994 until January 23, 1996, the Board had the authority to hear appeals of employees of the Architect of the Capitol (AoC), the Botanic Garden, and the Senate Restaurants that alleged discrimination in employment based on race, color, religion, sex, national origin, age, or disability.<sup>4</sup> The Board was to hear those appeals after the employees exhausted their internal administrative complaint process. Appeals from those employees are now handled by the Office of Compliance which was established by the Congressional Accountability Act of 1995 (CAA).<sup>5</sup> That Act makes eleven civil rights and worker protection laws applicable to employees of Congress and legislative branch agencies.

<sup>4</sup> Architect of the Capitol Human Resources Act (ACHRA), Pub. L. 103-283, §312, 108 Stat. 1443, went into effect on July 22, 1994. The Act also amended the GAOPA to reflect the Board's expanded jurisdiction. See, §312(e)(4)(A-C).

<sup>5</sup> Pub. L. No. 104-1, 109 Stat. 3 (Jan. 23, 1995). An employee previously covered by the ACHRA may file charges with the Board if the action forming the basis of the complaint occurred before January 23, 1996.



### The Appeal Process

An employee, a group of employees, a labor organization<sup>6</sup> or an applicant for employment at GAO may file an appeal with the Board, which can hear individual complaints as well as class actions. An appeal by a GAO employee may arise from (1) a removal, a suspension for more than 14 days, a reduction in grade or pay, or a furlough of not more than 30 days; (2) a prohibited personnel practice; (3) an unfair labor practice or other labor relations issue; (4) an action involving prohibited discrimination; (5) prohibited political activity; and, (6) any other personnel issues that the Comptroller General, by regulation, determines that the Board should hear.

For actions forming the basis of complaints arising before January 23, 1996, the Board may hear appeals from employees of the Architect of the Capitol (AoC), the Botanic Gar-

den, or the Senate Restaurants arising from (1) a complaint of discrimination based on race, color, religion, sex, national origin, age, handicap or disability<sup>7</sup> or (2) a complaint of intimidation or reprisal for exercising rights granted by the AoC Human Resources Act.

### Prehearing Discrimination Complaint Procedures

At GAO, the eeo complaint process begins with a consultation with a civil rights counselor, contact with whom must occur within 45 days of the alleged incident.<sup>8</sup> If the matter cannot be resolved, a formal written complaint may be filed with the Affirmative Action/Civil Rights Office (AA/CRO) within 15 days of receipt from the counselor of notice of the right to file a complaint. The Director of the

<sup>6</sup> Labor organizations at GAO are covered by the GAOPA; the AoC Human Resources Act does not cover such organizations.  
<sup>7</sup> Definitions of discrimination are consistent with §717 (Title VII) of the Civil Rights Act of 1964 (42 U.S.C. §2000e-16); §15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. §633a); §501 of the Rehabilitation Act of 1973 (29 U.S.C. §791); and §§102-104 of the Americans with Disabilities Act of 1990 (42 U.S.C. §§12112-14).  
<sup>8</sup> The complete procedures for filing a complaint may be found at U.S. General Accounting Office Operations Manual, Order 2713.2, "Discrimination Complaint Process" (October 14, 1994) (hereafter GAO Order 2713.2).

AA/CRO can either accept or dismiss the complaint.<sup>9</sup> If the complaint is accepted, it is investigated by AA/CRO staff which then submits a report to the Director of AA/CRO. If the complaint cannot be resolved through negotiation with GAO management, the Director submits a recommended decision to the Comptroller General who then issues a final agency decision. The decision of the Comptroller General may be appealed to the Board, as may AA/CRO's decision to dismiss a complaint.

For appeals involving complaints arising from incidents that occurred before January 23, 1996, employees of the AoC, the Botanic Garden, or the Senate Restaurants must file a written Request for Formal Advice with the Architect of the Capitol Fair Employment Practices Office (AOCFEP) within 180 days of the alleged discrimination or retaliation.<sup>10</sup> If no resolution is reached during the Formal Advice period, a factfinder is assigned to investigate the employee's claim. The factfinder submits a written report to the employee and to the head of the division with which the employee has a complaint. After the Factfinding Report has been submitted, the employee has 20 days to prepare a Formal Complaint detailing the claim of alleged discrimination or retaliation. The Architect reviews the Formal Complaint and the Factfinding Report and makes a determination on any claims that were not resolved in the foregoing steps. The Determination of the Architect may be appealed to the Board.

### ***Initiating an Appeal***

When the prehearing complaint procedures have been completed and the complaint has not been resolved or, in the case of non-discrimination complaints, within 30 days of the incident that precipitated the complaint, a charge may be filed with the Board's Office of General Counsel. That office has the author-

ity to investigate and to prosecute alleged violations of the law over which the Board has jurisdiction. Once an individual complaint is investigated by PAB/OGC, the complainant is advised about appeal rights and settlement options. If no settlement occurs, PAB/OGC issues a right-to-appeal letter notifying the employee, the affected agency management, and the Board that the investigation has been completed.

The employee also receives PAB/OGC's confidential statement that includes the results of the investigation and a determination of whether there is a legal and factual basis for an appeal. At this point, PAB/OGC advises the employee whether there are reasonable grounds to believe that the employee's rights under the GAO Personnel Act or the AoC Human Resources Act have been violated. If PAB/OGC determines that such grounds exist, it offers to represent the employee before the Board at no expense to the employee or the employee may retain private counsel. If the determination is made by PAB/OGC that there are no reasonable grounds to support the claim, nevertheless, the employee may appear *pro se* or retain private counsel to represent him or her in the appeal.

If an employee chooses to pursue an appeal, he or she must file a petition for review with the Board within 30 calendar days after service of the right-to-appeal letter from the PAB/OGC. Upon receipt of the petition, the Chair may appoint a single Board member to hear and decide the case or determine that the Board will hear the case *en banc*.

The Board member's decision is final unless the Board member grants a party's motion to reconsider; the PAB, on its own motion, decides to review the initial decision; or a party requests full Board review. Final decisions, with few exceptions, are appealable to the U.S. Court of Appeals for the Federal Circuit.

<sup>9</sup> Reasons for dismissal of a complaint include that it fails to state a claim; that it was not filed in a timely manner; that it alleges a matter that was not raised in pre-complaint counseling; that it contains allegations not within the jurisdiction of the CRO; or that it sets forth matters that are contained in a pending complaint or are the basis of a petition for review before the PAB or of a pending civil action in a Federal Court in which the complainant is a party; or that is a matter that has been finally decided. A complaint may also be dismissed at any time during the process for failure of the complainant to prosecute the complaint. GAO Order 2713.2, ch. 3, §5.

<sup>10</sup> Architect of the Capitol, Equal Employment Opportunity Procedures Manual.

## **Board Decisions**

Early in fiscal year 1996, a Board member decided a case involving a class comprised of disabled veterans employed by GAO between October 31, 1990, and January 17, 1992. The Petitioners had alleged, among other things, that GAO had failed to establish an affirmative action plan for disabled veterans. During lengthy pre-trial proceedings, it was determined that the agency was indeed bound to honor its voluntary commitment in Chapter 10 of GAO Order 2306.1, in effect between 1980 and 1992, to establish such a plan for disabled veterans. That determination made it necessary to ascertain whether the disabled veterans had been harmed by the non-observance of the commitment. The question of whether the Petitioners had suffered cognizable harm became the sole issue remaining to be decided in the case. The presiding member decided that the Petitioners neither showed any harm nor proved any damages arising from the absence of an affirmative action plan for disabled veterans. (Docket No. 91-03, Nov. 20, 1995)

In a unanimous decision, the full Board affirmed the initial decision described above. The Board found that disabled veterans in GAO's employ were not entitled to damages because of the agency's failure to adopt and/or implement an affirmative action plan for them during the 1980-92 period.

The full Board agreed with the pivotal conclusion in the initial decision that GAO Order 2306.1 did not require an affirmative action program for disabled veterans that contained goals and timetables. In this connection, the Board found that the record contained nothing to suggest that disabled veterans were underrepresented at the agency during the relevant period in grades 7-15.

The Board went on to hold that the disabled veterans were not entitled to an attorney's fee award inasmuch as they were not the prevailing party in the proceeding. (Docket No. 91-03, June 4, 1996)

Another case before the Board involved an appeal filed by an employee of the Personnel Appeals Board. The petition for review alleged that a suspension and performance appraisal constituted prohibited personnel practices. Because this was an internal Board matter, the Chief Administrative Law Judge of the Merit Systems Protection Board sat in place of the Personnel Appeals Board.<sup>11</sup> The Administrative Judge granted the Board's motion to dismiss the case for lack of jurisdiction because the Board's rescission of the two personnel actions rendered the petition moot. (Docket No. 95-03, April 22, 1996)

The employee appealed the decision to the United States Court of Appeals for the Federal Circuit which affirmed the Administrative Law Judge's decision.<sup>12</sup>

Three of the cases before the Board in fiscal year 1996 were settled prior to the issuance of initial decisions.

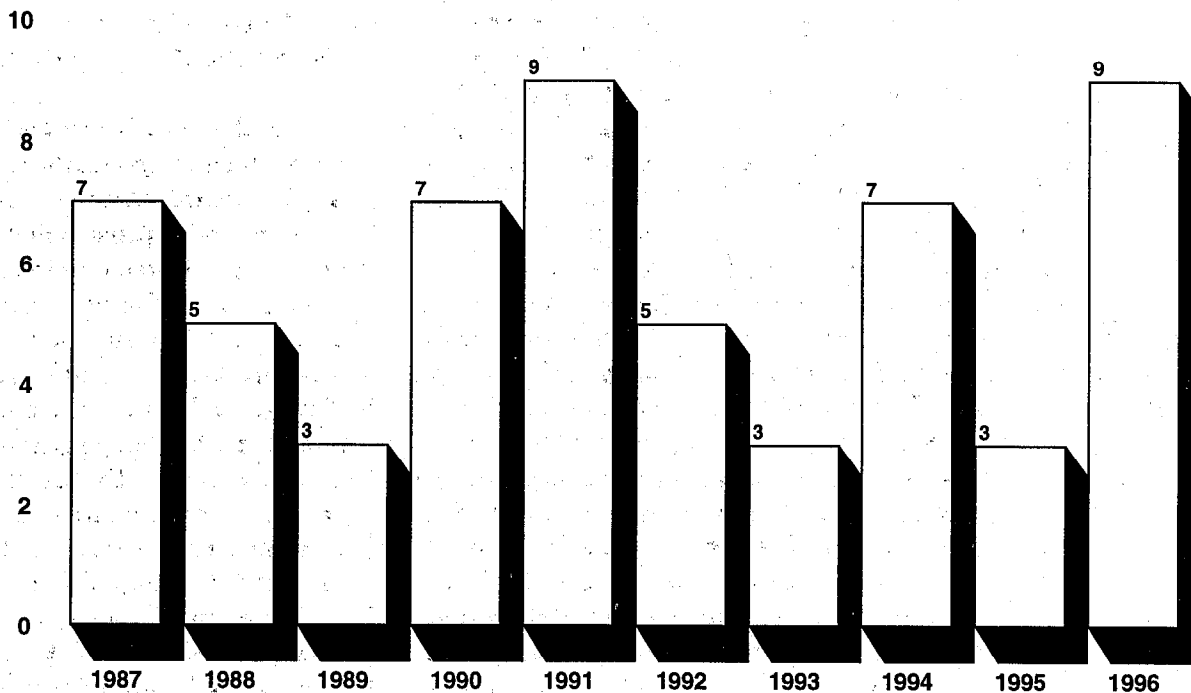
## **Class Action Appeals to the Board**

Equal employment opportunity class action appeals are processed through an administrative hearing in the GAO complaint process, bypassing the PAB/OGC investigation and proceeding directly to the Board for review.

<sup>11</sup> In the event of an appeal from a Board employee, the Board's regulations provide for the appointment and detail of an administrative law judge from the MSPB or the EEOC to perform the Board's adjudicative functions. 4 C.F.R. §28.17 (1996).

<sup>12</sup> Docket No. 96-6001, Oct. 10, 1996 (Fed. Cir.)

**Figure 2.1: Number of cases filed with the Personnel Appeals Board in each of the past ten fiscal years**



The steps to process cases before the Board are:

- Petition for review filed
- Notice of petition for review sent out by Board (with service list)
- Board Member/Administrative Judge assigned
- GAO responds to the petition for review
- Discovery
- Prehearing matters and motion practice
- Board Member/Administrative Judge rules on motions
- Each side files witness list, exhibits and prehearing brief, if required

- Final prehearing or status conference held, if necessary
- Hearing held
- Posthearing briefs filed, if required
- Board Member/Administrative Judge issues decision
- Motions to reconsider or notice of appeal for review by full Board filed
- Final decision issued by full Personnel Appeals Board
- Appeal to the U.S. Court of Appeals for the Federal Circuit.

Figures 2.2 through 2.5 show the process of cases once a charge is filed.

**Figure 2.2: Process of Case From Charge to Termination of Appeal**

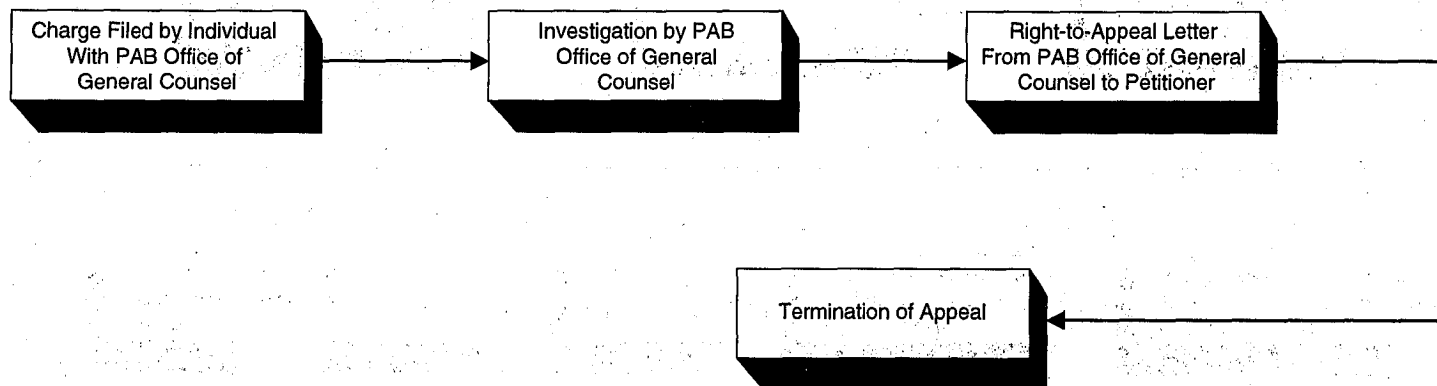


Figure 2.3: Process of Case to Final Board Member's Decision With No Appeal

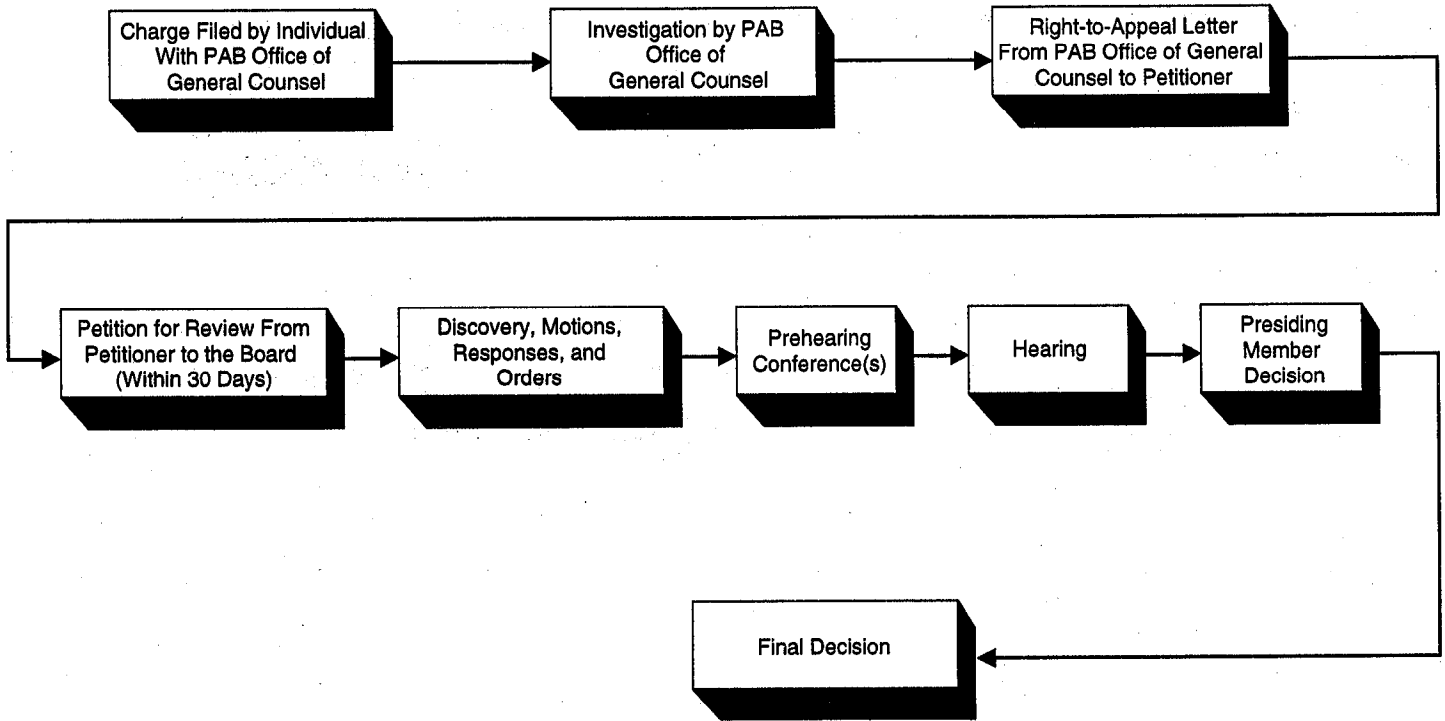
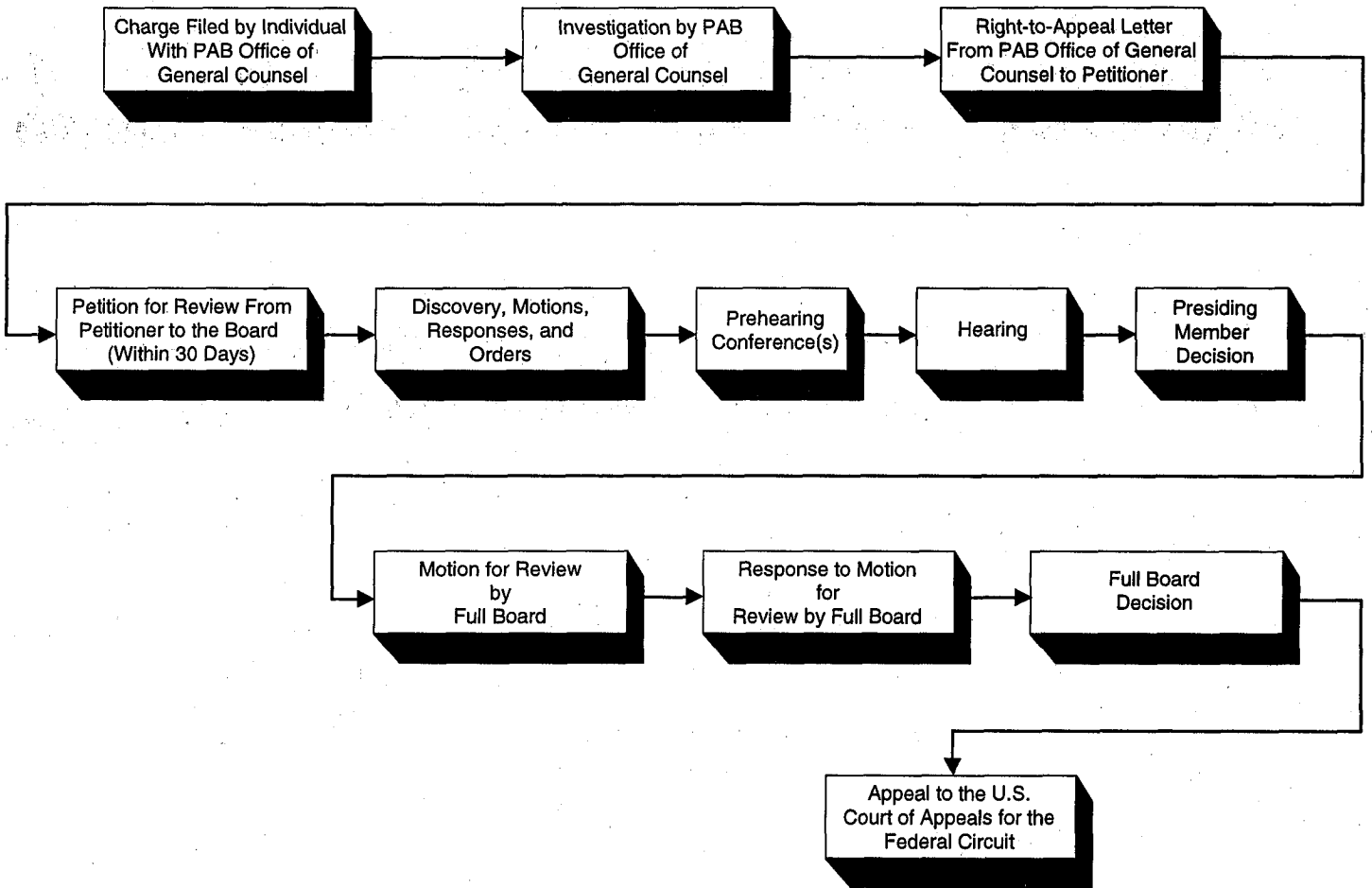
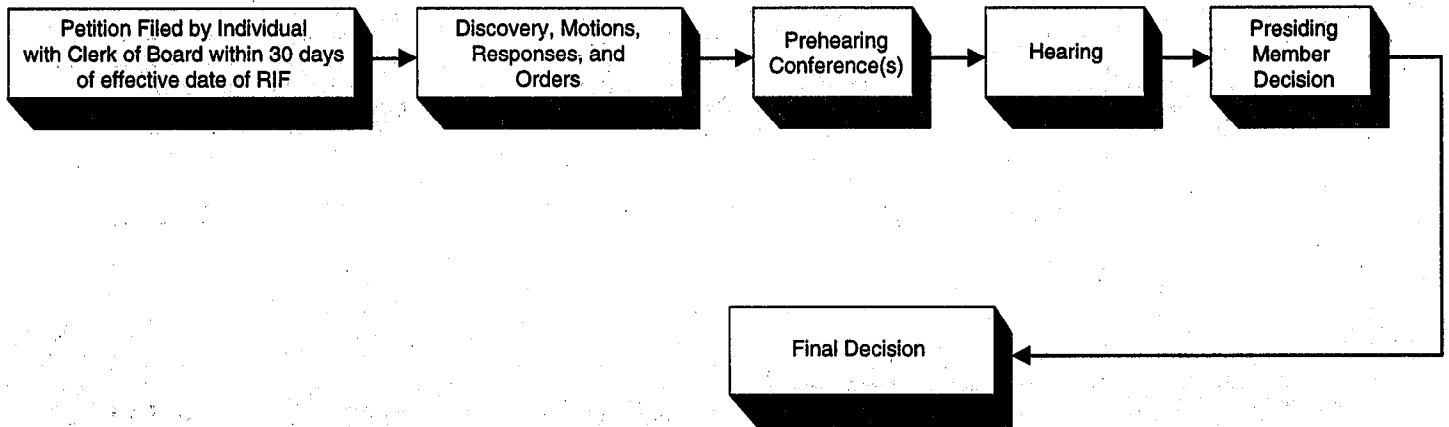


Figure 2.4: Process of Case From Charge to Judicial Review



**Figure 2.5: Process of Reduction-in-Force Case (employee's option)**





## **PAB Office Of General Counsel Activities**

### ***Case Activity***

The Office of General Counsel began fiscal year 1996 with 19 cases open from the previous year; 57 new charges were filed with PAB/OGC during the fiscal year. Fifty of the new cases concerned prohibited personnel practices, 6 alleged discrimination,<sup>13</sup> and one involved a suspension. PAB/OGC closed 49 cases during the fiscal year and negotiated four settlement agreements.

### ***Comments on Proposed Agency Actions***

GAO's reduction-in-force, which prompted a record number of charges filed with PAB/OGC in FY 96, was preceded by the promulgation of new agency RIF regulations.<sup>14</sup> The draft order was circulated for comment and the Board's Office of General Counsel suggested a number of changes to be made prior to the finalization of the Order. Among the suggestions were the following: limit the agency's discretion in the establishment of zones of consideration; place part-time and full-time employees on the same retention register; allow an employee who has received an improved rating to have it considered as the annual performance rating; allow appeals to the PAB within 30 days of receipt of a RIF notice; and apply all RIF procedures to post transfer of function RIFs. The agency adopted the suggestions relating to the retention register.

## ***PAB/OGC Employee Contacts***

In addition to investigating and prosecuting cases, PAB/OGC also provides information to employees about their personnel and equal employment rights. To accomplish this, the PAB Office of General Counsel periodically makes presentations to GAO's employee councils, updating them on recent changes in the law and Board procedures.

In May, 1996, the PAB/OGC sponsored a symposium for administrative and support personnel, a group that received a high percentage of the RIF notices. During the symposium, the General Counsel and his staff provided information about employees' rights in a RIF as well as the Board's appeal process and answered questions from the participants. In addition, the General Counsel spoke at several employee-sponsored conferences about the RIF, again, emphasizing employees rights and the appeal process.

Another significant activity of the Office of General Counsel involves responding to individual employee questions about diverse issues such as personnel actions, performance appraisals, grievances, complaint processing, and performance and development options. Ninety-two informational inquiries were fielded in FY 1996 by the staff of the PAB's Office of General Counsel, the majority of them related to the RIF.

<sup>13</sup> Three of these six eeo cases involved employees of the Architect of the Capitol.

<sup>14</sup> GAO Order 2351.1

### ***PAB/OGC Investigative Authority***

The Office of General Counsel is responsible for initiating an investigation when information comes to its attention suggesting that a prohibited personnel practice has occurred, is occurring, or will occur, regardless of whether a charge has been filed. If an individual brings an allegation to the attention of PAB/OGC, that individual may remain anonymous in most cases. After an investigation, if PAB/OGC finds insufficient grounds to conclude that a prohibited personnel practice was committed, it prepares a report, closing the case, and sends it to the individual who brought the complaint and to GAO management. If it is determined that there are sufficient grounds to support the existence of a prohibited personnel practice, the Office may seek a stay of the personnel action, propose corrective action, or propose disciplinary action.

#### ***Stays***

When an employee requests that PAB/OGC seek a stay of a personnel action, the Office of General Counsel is authorized to conduct an investigation into the allegations. PAB/OGC may request that the Board issue an *ex parte* stay, not to exceed 30 days, of any proposed personnel action that, in the General Counsel's judgment, may constitute a prohibited personnel practice. If the request for an *ex parte* stay is granted, the General Counsel may then request either a further temporary stay or a permanent stay of the proposed action. The Board may grant or deny the re-

quested stay, require further briefing and/or oral argument or conduct an evidentiary hearing. In fiscal year 1996, PAB/OGC received one request for a stay that was resolved through settlement negotiations.

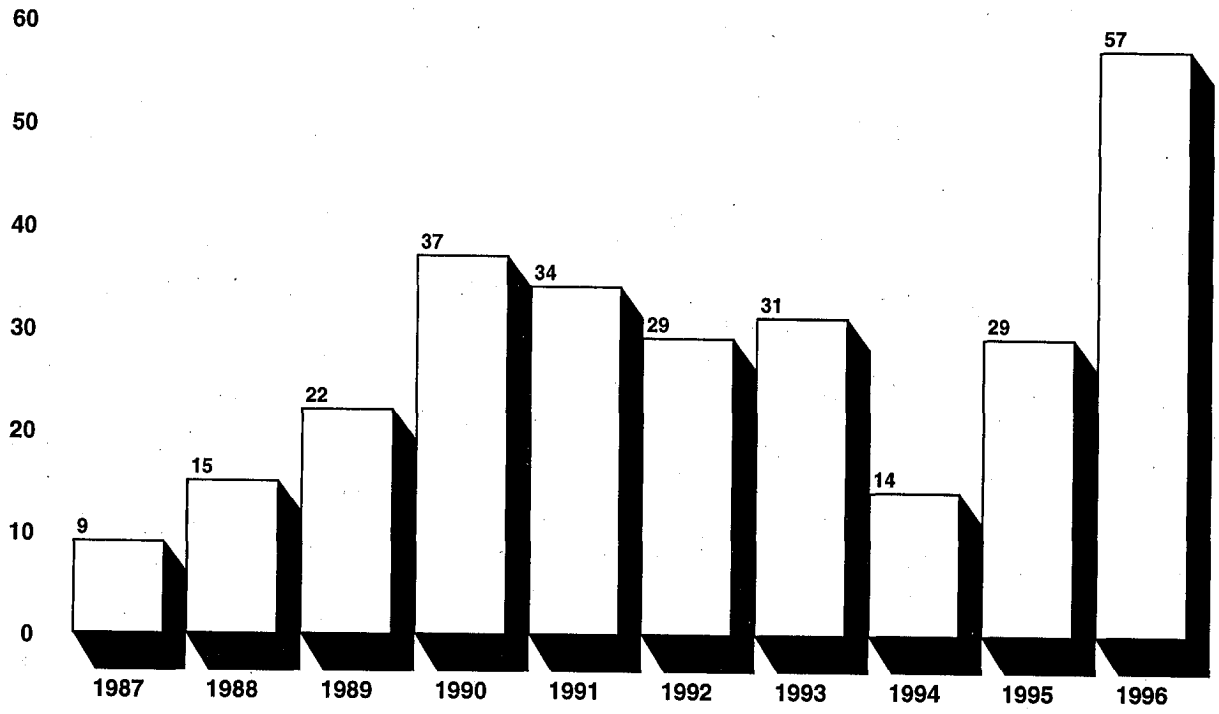
#### ***Other Relief***

When PAB/OGC finds reasonable grounds to believe that a prohibited personnel practice may have occurred, it may recommend corrective action to management and, if the recommendation is not followed, it may then petition the Board to order corrective action.

If the PAB/OGC determines after an investigation that there are reasonable grounds to believe that a prohibited personnel action has occurred or exists, it may propose disciplinary action against the employee responsible for the practice. The Office may also propose disciplinary action against an employee engaging in prohibited political activity. In either case, PAB/OGC's proposal for discipline is presented to the Board and to the employee. After a hearing, the Board decides whether discipline is warranted and what is appropriate.

PAB/OGC did not initiate any information investigations, recommend any corrective action, or institute disciplinary proceedings in the past fiscal year.

**Figure 2.6: New cases filed with PAB/OGC in each of the past ten fiscal years**





## Administrative Actions

### Regulatory Revisions

During GAO's appropriations cycle for fiscal year 1996, Congress determined that it would reduce GAO's funding by 25 percent: 15 percent in fiscal year 1996 and 10 percent in fiscal year 1997. Agency management concluded that, because nearly 80 percent of GAO's budget is consumed by salaries and personnel-related costs,<sup>15</sup> GAO could not absorb such a cutback without reducing the workforce. The agency decided to accomplish the reduction through a variety of methods, including offering separation incentives, closing field offices, and conducting a reduction-in-force.

Prior to the issuance of the RIF notices, the Board reviewed its own regulations to determine whether the RIF warranted any changes in Board procedure. In interim regulations published in March, the Board decided to revise its regulations to streamline, at the employee's option, the procedure for filing an appeal from a separation from employment resulting from a RIF action. The new provisions were published on an interim basis to allow for comment from employees and agency officials. They amended PAB regulations to give individuals who lose their jobs through a RIF the option of filing an appeal directly with the Board, without first obtaining a right to

appeal letter from the PAB Office of General Counsel (PAB/OGC). An individual could challenge a RIF-based separation by filing an appeal with the Clerk of the Board within 30 days after the effective date of the RIF action.

Individuals subject to the new provisions may, nonetheless, choose to follow the PAB's normal process, by filing a charge with the PAB/OGC. That office investigates the charges and, if it finds reasonable grounds to believe that the employee's rights have been violated, represents the individual before the PAB unless the employee elects not to be represented. If the PAB/OGC does not find reasonable grounds to believe that a violation has occurred, the employee may still pursue the matter before the Board after the PAB/OGC issues a right to appeal letter.

In July, after the period to allow for comments had expired and the comments had been reviewed and considered, the Board issued its final regulations that, for the most part, followed the interim regulations. In finalizing the regulations, the PAB clarified that in RIF-based termination cases involving eeo allegations, an individual may pursue his or her claim on an expedited basis by filing directly with the Board, bypassing both the agency's Civil Rights Office and the PAB/OGC.

<sup>15</sup> Statement of John H. Luke, Deputy Assistant Comptroller General for Human Resources, GAO, before the Subcommittee on Civil Service, Committee on Government Reform and Oversight, House of Representatives (May 23, 1996).



## **Oversight Projects**

The GAO Personnel Act directs the Board to oversee equal employment at GAO through review and evaluation of GAO's procedures and practices.<sup>16</sup> Pursuant to this mandate, the Board's Office of Oversight conducts studies of selected issues and prepares evaluative reports that contain specific recommendations to the agency. The Office of Oversight focus in fiscal year 1996 was on the agency's downsizing efforts, age issues in employment, and promotions.

### ***Report on Hearing on Age Issues***

In FY 95, the Board held its first informational hearing to examine issues that affect older workers, generally, and those employed by GAO, specifically. Participants at the hearing included representatives from the American Association of Retired Persons (AARP), the Equal Employment Opportunity Commission (EEOC), the Office of Personnel Management (OPM), GAO management, and GAO employee councils and a private attorney representing some employees who have filed an age discrimination suit against GAO.

In FY 96, the Board issued a report that summarized the participants' remarks, as well as supplemental information subsequently provided by GAO's Personnel Office.

The issues addressed by the participants were downsizing, promotions, recruitment and hiring, and training. The summary report focuses on those topics, highlighting the differing perspectives that the representatives of the private and public sectors, and management and employees brought to the discussions.

## ***Downsizing Study***

Throughout the past fiscal year, the Board continued its 15 month study of GAO's downsizing efforts.<sup>17</sup> The Board's study, which will culminate in a report to be issued in FY 97, focuses on the eeo implications, if any, of the downsizing activity that occurred at GAO between July 1, 1995 and September 30, 1996, a period that encompassed the buyouts and early retirement offers, three field office closings, and the reduction-in-force.

### ***Promotion Study***

The Board also began work on a new oversight study addressing rates of promotions of GAO employees between 1990 and 1995. The purpose of the study is to determine whether there were significant differences in the rates based on race, gender, national origin, age, or disability. During the study, which also will result in a report in FY 97, the Board will also review GAO's promotion system to determine whether there are any potential barriers to equal employment opportunity.

<sup>16</sup> 31 U.S.C. §732(f)(2)(A); See applicable regulations at 4 C.F.R. §§28.91 and 28.92. The Board was not granted oversight authority for the AoC, the Botanic Garden, or the Senate Restaurants.

<sup>17</sup> The Board's study began with the last quarter of FY 95 (July 1, 1995 through September 30, 1995) when the buyouts were offered and ended on the last day of FY 96 (September 30, 1996).

***GAO's Discrimination Complaint Process and Mediation Program***

The Board's report on GAO's internal complaint process was completed late in FY 95 and published at the beginning of FY 96. In the report, entitled *GAO's Discrimination Complaint Process and Mediation Program*, the Board made a number of recommendations to ensure continued improvement in the discrimination complaint process and the mediation program. Among those recommendations were that civil rights counselors and mediators participate in annual training; that AA/CRO adhere to internal timeframes; that eeo and personnel function be separated at the management level; that complainants and mediation participants be fully apprised of their rights, including procedures to enforce settlement agreements; and that customer satisfaction surveys be used to assess the mediation program.

Subsequent to the agency's review of the report for comment and before the publication of the report, the agency adopted and implemented a number of the Board's recommendations. AA/CRO, for example began providing informational packages to all complainants and participants in the mediation program. The office also began developing a customer satisfaction questionnaire; began exploring the possibility of annual training for counselors and complaint counseling through the use of video-conferencing; and put in place a complaint tracking system that complies with the Board's specifications.

In addition, the Deputy Assistant Comptroller General for Human Resources assured the Board that the agency will begin a full review of all relevant regulations and Orders to determine if there is a more effective way to conduct the eeo complaint process.



