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CAROL A. DE DEO was appointed to the Board in January 2017. In October 2020, Ms. De Deo became Chair of the Board, after serving as Vice Chair since April 2019. Except for a brief period spent in private practice, she worked at the Department of Labor from 1983 to 2009, serving as Deputy Solicitor for National Operations (highest ranking non-political appointee in the Office of the Solicitor) from 2004 to 2009. Earlier she served as Associate Solicitor for Labor-Management Laws, Associate Solicitor for Employee Benefits, Deputy Associate Solicitor for Special Appellate and Supreme Court Litigation, and Deputy Associate Solicitor for Labor-Management Laws. She previously worked at the National Labor Relations Board (NLRB) in the Appellate Court Branch as a supervisor from 1978 to 1983, and as a staff attorney for several years. She earned her J.D. from George Washington University (GWU) in 1974, and she received a Bachelor of Arts degree in English from GWU in 1971.

ROSA M. KOPPEL was appointed to the Board in April 2017, and became Vice Chair of the Board in October 2020. Ms. Koppel has worked in private practice representing federal and private sector employees in employment law matters since 2014. She served as Solicitor at the Federal Labor Relations Authority (FLRA) between 2008 and 2014, where she led the litigation team in matters before the U.S. Courts of Appeals, Federal District Courts, the Merit Systems Protection Board (MSPB), and the Equal Employment Opportunity Commission (EEOC). She has advised FLRA
managers and human resources officials on cases involving Title VII of the Civil Rights Act, the Rehabilitation Act, the Equal Pay Act, the Age Discrimination in Employment Act, and the Family and Medical Leave Act. Previously she worked as the Deputy General Counsel and served as the Acting General Counsel at the MSPB between 2005 and 2008, where she led the team that handles appeals before the U.S. Court of Appeals for the Federal Circuit. Between 1984 and 2005, she worked at the Office of the Comptroller of the Currency (OCC), where she rose from trial attorney and legal advisor to the Assistant Director of the Litigation Division. She led the team that represented the OCC before federal and state courts as well as the MSPB, EEOC, and the General Services Board of Contract Appeals. Ms. Koppel received her J.D. from New York University School of Law in 1981 and her Bachelor’s degree in Biology from New York University in 1977.

*RICHARD S. UGELOW* was appointed to the Board in September 2016, and he served as the Chair of the Board from April 2019 until October 2020. Prior to serving as Chair, Mr. Ugelow served as the Vice Chair beginning in July 2017. Mr. Ugelow recently retired from the faculty of American University Washington College of Law, where he taught clinical legal education and employment discrimination law. Previously he served as a senior trial attorney and Deputy Section Chief in the Employment Litigation Section of the Civil Rights Division of the U.S. Department of Justice from 1973 until 2002. Prior to his employment with the Department of Justice, he served as a Captain in the U.S. Army Judge Advocate General Corps from 1969 until 1973. He also currently serves as a complaint examiner for the District of Columbia Office of Police Complaints. Among his publications, Mr. Ugelow authored the chapter entitled “I-O Psychology and the Department of Justice” in *Employment Discrimination Litigation, Behavioral,*
Quantitative, and Legal Perspectives by Frank J. Landy. He has also served as a moderator and presenter in numerous different forums. Mr. Ugelow earned a Bachelor’s degree from Hobart College in 1965. He received his Juris Doctor (J.D.) degree from American University in 1968 and earned a Master of Laws (LL.M.) degree from Georgetown University in 1974. Mr. Ugelow is a member of the Bars of the District of Columbia, Maryland, and Florida.

BARBARA S. FREDERICKS was appointed to the Board in January of 2019. Ms. Fredericks is currently on the faculty of the Graduate School USA in Washington, D.C., teaching courses on topics of administrative law. She is also a consultant on the development of rule of law programs and civil service systems. Ms. Fredericks previously served as Assistant General Counsel for Administration at the U.S. Department of Commerce, responsible for advising management on labor issues and transparency. She also was the Department’s chief ethics officer. Ms. Fredericks served on the Montgomery County Ethics Commission, and taught a course on Anticorruption Law and Practices at the Georgetown University Law Center. Earlier in her career, she served as Deputy Assistant General Counsel for Administration at the Department of the Treasury, and as a senior labor counsel at the U.S Postal Service and the National Labor Relations Board. Ms. Fredericks graduated from Boston University School of Law, after obtaining a B.A. at Case Western Reserve University.
CAROLE W. WILSON was appointed to the Board in April 2019. Before being appointed to the Board, Ms. Wilson served as an Administrative Judge (unfair labor practice, representation, and mediation matters) for the District of Columbia Public Employee Relations Board for five years. Previously, Ms. Wilson served in various supervisory attorney positions at the Department of Housing and Urban Development, as Associate General Counsel for Litigation, Associate General Counsel for Finance and Regulatory Enforcement, Associate General Counsel for Fair Housing, Associate General Counsel for Human Resources Law, Senior Counsel for Equal Employment Opportunity and Senior Attorney for Administrative Law from 1989-2011. She also served as an Associate General Counsel for the International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers from 1978-1989, specializing in pay equity cases (including litigation before the Supreme Court), and co-founding the National Committee for Pay Equity. Ms. Wilson was the Executive Assistant to the Assistant Secretary for Employment Standards, U.S. Department of Labor, 1977-1978, where she worked on labor law reform for the Secretary of Labor. She also served as an Assistant General Counsel at the National Labor Relations Board for ten years. Ms. Wilson earned her J.D. from George Washington University Law School, where she was Managing Editor of the George Washington International Law Review, and her Bachelor’s degree in Political Science from Vassar College (with distinction on her senior thesis), and where she founded the Vassar Civil Rights Committee.
PERSONNEL APPEALS BOARD

Carol A. De Deo Chair
Rosa M. Koppel Vice Chair
Richard S. Ugelow* Member
Barbara S. Fredericks Member
Carole W. Wilson Member

PERSONNEL APPEALS BOARD STAFF

Susan P. Inzeo Executive Director
Vanessa H. Gallagher Director, EEO Oversight
Sue S. Farley Solicitor
Kevin P. Wilson Senior Staff Attorney
Patricia V. Reardon-King Clerk of the Board
Stuart G. Melnick General Counsel
Frank J. Mack** Senior Trial Attorney
Brian Nuterangelo Senior Trial Attorney
Mariama Liverpool*** Senior Trial Attorney
Darian C. Jackson Paralegal Specialist

*Richard S. Ugelow was Chair through September 30, 2020.

**Frank J. Mack retired from the PAB Office of General Counsel in April 2020.

***Mariama Liverpool joined the PAB Office of General Counsel in July 2020.
CHAPTER 1: THE PERSONNEL APPEALS BOARD

Section 1: About the PAB

Under the Government Accountability Office Personnel Act of 1980 (GAOPA),¹ the Personnel Appeals Board (PAB or Board) is charged with adjudicating disputes, issuing decisions, and ordering corrective or disciplinary action, when appropriate, in cases alleging prohibited personnel practices, discrimination, prohibited political activity, negotiability and unfair labor practices involving employees of the United States Government Accountability Office² (GAO or the Agency), a Legislative branch agency. The GAOPA also authorizes the Board to oversee GAO’s employment regulations, procedures, and practices relating to anti-discrimination laws.³

The PAB’s authority combines the adjudicatory functions of its Executive branch counterparts: the Merit Systems Protection Board (MSPB);⁴ the Equal Employment

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¹ 31 U.S.C. § 731 et seq.


⁴ The MSPB was “created to ensure that all Federal government agencies follow Federal merit systems practices. The Board does this by adjudicating Federal employee appeals of agency personnel actions, and by conducting special reviews and studies of Federal merit systems.” 5 C.F.R. § 1200.1. The PAB has similar jurisdiction to hear and decide matters alleging prohibited personnel practices under 5 U.S.C. § 2302(b). 4 C.F.R. § 28.2(b)(2). The PAB also has similar review and study authority over GAO with regard to assessing the EEO impact of GAO’s actions and/or inactions. See supra, n.3.
Opportunity Commission (EEOC);\(^5\) and the Federal Labor Relations Authority (FLRA).\(^6\)

The Board’s Office of General Counsel (PAB/OGC) performs the investigatory and
prosecutorial functions of its Executive branch equivalents, which are the Office of
Special Counsel (OSC)\(^7\) and the EEOC.

The statute provides for a Board comprised of five members who serve five-year,
nonrenewable terms. The system is designed to appoint a new member each year so
that GAO may have an annual scheduled recruitment process and the Board may
function as efficiently as possible with members’ terms evenly spread over time.

Candidates for the Board are sought through a process that includes advertising
and recruitment efforts that focus on organizations whose members are experienced in
the adjudication or arbitration of personnel and labor matters. Applicants are expected
to have expertise or litigation experience in the area of federal personnel law,

\(^5\) The EEOC ensures that personnel actions that affect employees or applicants for employment
in the Executive branch “shall be made free from any discrimination based on race, color,
religion, sex (including pregnancy), or national origin.” 42 U.S.C. § 2000e-16(a) (Title VII). In
addition, the EEOC enforces the Age Discrimination in Employment Act, 29 U.S.C. § 621 et
seq., the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., as amended, and
the Genetic Information Nondiscrimination Act, 42 U.S.C. §§ 2000ff et seq. The PAB has
similar jurisdiction to hear and decide cases alleging discrimination. 4 C.F.R. §§ 28.95-28.99.

\(^6\) The FLRA protects the “rights of employees to organize, bargain collectively, and participate
through labor organizations of their own choosing in decisions which affect them.” 5 U.S.C.
§ 7101. The PAB also has the authority to certify collective bargaining representatives and to

\(^7\) The OSC investigates and prosecutes allegations of fourteen prohibited personnel practices,
with an emphasis on protecting federal whistleblowers at GAO. 5 U.S.C. §§ 1214, 2302(b).
The Board’s General Counsel investigates and prosecutes allegations of prohibited personnel
practices at GAO. 4 C.F.R. § 28.12.
demonstrated ability to arbitrate or adjudicate complex legal matters, or experience at a senior level position in resolving complex legal matters.

GAO establishes a screening panel to review applications for Board member positions and identify the best qualified candidates.\(^8\) An interview panel composed of some of the screening panel members, including one employee group member selected by the Employee Advisory Council representatives and one selected by the representatives of the GAO Employees Organization, conducts the personal interviews and reports its results to the full screening panel. The screening panel recommends one or more of the candidates to the Comptroller General, who makes an appointment to the Board after considering the recommended candidates. The Board members elect their own Chair and Vice Chair.

**Section 2: Board Staff**

The Board’s Executive Director manages Board staff and Board operations. The Board’s Solicitor and Senior Staff Attorney advise Board members and the Executive Director on legal matters and provide procedural advice to litigants before the Board. The Board’s Office of Equal Employment Opportunity (EEO) Oversight reviews equal

\(^8\) The voting members of the screening panel are three senior management officials designated by the Comptroller General. The nonvoting members are three representatives selected by the Comptroller General’s Employee Advisory Council, a representative from the Human Capital Office, and four representatives selected by the GAO Employees Organization, IFPTE, Local 1921. GAO Order 2300.4, Personnel Appeals Board Vacancies, ¶7 (Nov. 4, 2009).
employment opportunity practices and procedures at GAO and issues evaluative reports that contain the Board’s findings, conclusions, and recommendations to the Agency. The Clerk of the Board is responsible for receiving filings, distributing Board orders and decisions, and maintaining the Board's official records.

The PAB Office of General Counsel (PAB/OGC) investigates charges of prohibited personnel practices and unfair labor practices filed with its office and, if there is a reasonable basis to believe that a violation of law has occurred, offers to represent the charging party in litigation before the Board. The PAB General Counsel (PAB/GC) supervises the attorneys and paralegal in the conduct of investigations and litigation matters. The Senior Trial Attorneys investigate charges, consult with the General Counsel, and represent employees in litigation before the Board. The Paralegal Specialist assists the attorneys in their investigations and litigation matters.

Figure 1 below shows the organizational make-up of the Personnel Appeals Board.

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Figure 1: PAB Organizational Chart

Personnel Appeals Board

Board Member  |  Board Member  |  Chair  |  Vice Chair  |  Board Member

|  Executive Director  |

General Counsel

Senior Trial Attorneys  |  Paralegal Specialist

Solicitor

Clerk of the Board  |  Senior Staff Attorney

Director of EEO Oversight
CHAPTER 2: THE BOARD PROCESS

The Board’s litigation process is explained in detail in the Guide to Practice Before the Personnel Appeals Board (Guide to Practice);\(^\text{10}\) a brief summary follows.

An employee, a group of employees,\(^\text{11}\) a labor organization, or an applicant for employment at GAO may file a Petition with the Board seeking review of an Agency action or inaction that adversely affected them. Such a Petition 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 covered labor-management relations issue; (4) an action involving prohibited discrimination;\(^\text{12}\) (5) a prohibited political activity; and (6) any other personnel

\(^{\text{10}}\) The Guide to Practice is available on the PAB’s website: [https://pab.gao.gov](https://pab.gao.gov).

\(^{\text{11}}\) The Board can hear and decide cases filed by a group of petitioners as well as actions filed on behalf of a class.

\(^{\text{12}}\) The complete procedures for filing a discrimination complaint with the Agency may be found in GAO Order 2713.2, Discrimination Complaint Resolution Process (Dec. 9, 2009) (hereafter GAO Order 2713.2). At GAO, the discrimination complaint process begins when the employee consults with a civil rights counselor in the Agency’s Office of Opportunity and Inclusiveness (O&I).

Such contact must occur within 45 calendar days of the alleged incident. If the matter cannot be resolved, the employee may file a formal written complaint with O&I within 15 days of receipt from the counselor of notice of the right to file a complaint. The Director of O&I can either accept or dismiss the complaint. (See GAO Order 2713.2, ch. 3, ¶4, for reasons why a complaint may be dismissed).

If the complaint is accepted, it is investigated and a report of the investigation is submitted to the Director of O&I. If the complaint cannot be resolved through negotiation with GAO management, the Director submits a recommended decision to the Comptroller General who issues a final Agency decision.
issues that the Comptroller General, by regulation, determines that the Board should hear.

In addition to its litigation activity, the Board is authorized to conduct representation proceedings at GAO, including determining appropriate bargaining units of GAO employees, conducting elections to determine whether employees in any such units wish to select a labor organization to represent them in collective bargaining, and certifying an organization so selected as the designated exclusive bargaining representative. The Board also plays a role in resolving impasses in collective bargaining, as well as in resolving certain negotiability issues.

Section 1: Filing with the PAB Office of General Counsel

At GAO, an employee, group of employees, or an applicant for a job may file a charge with the PAB Office of General Counsel to initiate the Board process. The PAB/OGC has the authority to investigate charges, and to represent employees where

An individual may seek relief from the PAB by filing a charge with the PAB Office of General Counsel within 30 days of receipt of GAO’s final decision or dismissal of the complaint in whole or in part (GAO Order 2713.2, ch. 6, ¶4), or by filing a civil action in the appropriate federal district court. An individual may also bring their case forward to the PAB when more than 120 days have elapsed since the complaint was filed with O&I and GAO has not issued a final decision.

The PAB’s review is de novo, which means that the PAB will review all the facts and issues and render a decision independent of the final Agency decision, if there is one.


15 See https://pab.gao.gov under the link to Charges/Filing.
the General Counsel finds reasonable grounds to believe the charge regarding alleged violations of the law over which the Board has jurisdiction.

A charge that does not involve discrimination may be filed with the PAB/OGC within 30 calendar days after the effective date of the underlying personnel action or within 30 calendar days after the charging party knew or should have known of the action.

An individual may file a charge involving alleged discrimination with the PAB/OGC either within 30 calendar days after receipt of the Agency’s rejection of the complaint in whole or in part, within 30 calendar days after receipt of the Agency’s final decision, or when more than 120 days have elapsed since the complaint was filed and GAO has not issued a final decision.¹⁶

Once an individual charge is filed with the PAB/OGC, the charging party is advised of his/her rights and informed of the Board’s mediation program.¹⁷ The PAB/OGC then conducts an independent investigation of the matters raised in the charge to determine whether there are reasonable grounds to believe that the employee’s rights under the GAOPA have been violated. This process may include obtaining documents and taking oral statements from persons with knowledge of the circumstances that are involved in the allegations.

Following the investigation, and if no settlement occurs, the PAB/OGC issues a Right to Petition Letter notifying the charging party that the investigation has been

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¹⁶ See supra, at 7 n.12.

¹⁷ Information about the Board’s mediation program can be found on the PAB website at https://pab.gao.gov.
completed and that he/she has the right to file a Petition with the Board seeking a review of the Agency action or inaction. The PAB/OGC also issues to the charging party alone a confidential Statement of Investigation that includes the results of the investigation and the PAB/OGC’s conclusions with regard to the legal and factual issues.

If the General Counsel concludes that reasonable grounds exist to believe that a violation of the law has occurred, the General Counsel will offer to represent the charging party in an evidentiary hearing before the Board at no expense to the employee. If the offer of representation is accepted, the PAB/OGC assumes responsibility for the entire case even if the employee has retained private counsel.

If the PAB General Counsel concludes that there are no reasonable grounds to support a claim, the charging party retains the right to file a Petition with the Board and request an evidentiary hearing. A Petitioner may represent him/herself or retain private counsel, if he or she chooses, before the Board.

Section 2: The Board Case Process

A Petition must be filed with the Board within 30 calendar days after service of the Right to Petition Letter from the PAB/OGC. Alternatively, if 180 days have elapsed from the filing of a charge with the PAB/OGC and no Right to Petition Letter has been issued by the General Counsel, the employee may “opt out” of the investigation and file a Petition with the Board. An employee who chooses that route foregoes the opportunity to have the General Counsel present his/her case to the Board.
Upon receipt of a Petition, either a single Board member will be appointed to hear and decide the case or the Board will hear the case *en banc* (by all Board members). The Petition to the Board is not a challenge to or review of the conclusions of the PAB/OGC, but a fresh consideration of the Petitioner’s claims. The Board does not have access to the investigative work and conclusions of the PAB/OGC; the administrative judge may not know whether the PAB/OGC found reasonable grounds to believe a violation existed in a given case.\(^\text{18}\)

A Board member’s decision is final unless: 1) the Board member grants a party’s motion to reconsider; 2) the Board, on its own motion, decides to review the initial decision; or 3) a party timely appeals to the Board for full Board review. Final decisions of the Board, with few exceptions, may be appealed to the U.S. Court of Appeals for the Federal Circuit.

The following chart describes the Board process from the time a charge is filed through the completion of all adjudication.

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\(^\text{18}\) If a Petition is filed *pro se* or Petitioner is represented by outside counsel, the Board has no information regarding why the PAB/OGC is not representing Petitioner. However, if Petitioner is represented by the PAB/OGC, presumably under the regulations the General Counsel has determined that there is/are reasonable ground(s) for representation. In any event, Petitioner’s representation is not a factor in the Board’s final decision.
Figure 2: Board Process Illustrated

- Charge filed with PAB/OGC → Investigation by PAB/OGC → Right to Petition Letter
  - If no Petition Filed → Termination of case

- Petition filed with Clerk of the Board → GAO responds to Petition → Discovery → Prehearing matters and motions practice (including prehearing brief, if required) → Hearing → Post hearing briefs (if required)
  - If denied

- Dispositive Motion
  - If granted → Initial Decision by Presiding Member
    - If no review by full Board
      - Final decision
  - If no further Appeal
    - Final decision

- Appeal for review by full Board (optional) → Response to appeal and briefs → Possible oral argument → Full Board decision → Appeal to U.S. Court of Appeals for the Federal Circuit (optional)
Section 3: PAB Office of General Counsel Authority

a. PAB/OGC Investigative Authority

As discussed above, the PAB/OGC is authorized to conduct independent investigations into matters raised and presented in charges filed by GAO employees or applicants for employment. This investigative authority represents the vast majority of investigations conducted by the PAB/OGC. In addition to investigations generated by individual or class charges, the PAB/OGC may initiate its own investigations, otherwise known as “corrective actions.”

The General Counsel may initiate an investigation when information comes to his or her attention suggesting that a prohibited personnel practice has occurred, is occurring, or will occur, regardless of whether a charge has been filed. Under this procedure, if an individual brings an allegation to the attention of the PAB/OGC, that individual may remain anonymous.

If, during the informational investigation, it is determined that there are sufficient grounds to believe that a violation of the law has occurred or is about to occur, the PAB/OGC will contact the Agency with its findings and recommendation. If the recommendation is not followed within a reasonable period, the PAB/OGC may petition the Board to order corrective action.

b. PAB/GC Stay Requests

The PAB/GC may request that the Board issue an ex parte temporary stay, not to exceed 30 calendar days, of any proposed personnel action that, in the PAB/GC’s

\[19\] 4 C.F.R. § 28.131.
judgment, may constitute a prohibited personnel practice.\textsuperscript{20} If the request for an \textit{ex parte} stay is granted, the General Counsel may later request either a further temporary stay or a permanent stay of the proposed action. A further temporary stay may be granted if the Board member designated by the Chair, or the Board \textit{en banc}, determines that, under all of the circumstances, the interests of justice would be served by providing more time for the PAB/GC to pursue the investigation.\textsuperscript{21} In considering a request for a permanent stay, the Board balances the evidence as to whether the proposed personnel action arises out of a prohibited personnel practice against the nature and gravity of any harm that could flow to each side from granting or denying the stay. The Board may grant or deny the requested stay based upon the pleadings, require further briefing and/or oral argument, or conduct an evidentiary hearing on the request for further stay.

c. Disciplinary Proceedings

The PAB General Counsel is authorized to initiate a disciplinary action against an employee when it is determined, after an investigation, that such action is warranted. In such cases, the PAB/GC will provide a written complaint of the determination and facts to the employee and the Board.\textsuperscript{22} The authority to propose disciplinary action includes action for engaging in prohibited political activity.

\textsuperscript{20} The Board’s stay authority does not extend to any reduction in force action. 31 U.S.C. § 753(b).

\textsuperscript{21} 4 C.F.R. § 28.133(d).

\textsuperscript{22} 4 C.F.R. § 28.132.
If, after a hearing, the Board decides discipline is warranted and punishment is appropriate, the Board may order removal, reduction in grade, debarment from GAO employment, reprimand, or an assessment of civil penalty not to exceed $1,000. Judicial review of the Board’s final order may be obtained in the U.S. Court of Appeals for the Federal Circuit.

d. Labor-Management Relations

Through the Board’s regulations and GAO Order 2711.1 (Labor-Management Relations), the PAB/OGC is authorized to play a major role in the process when a labor organization, an employee or group of employees, or GAO files a representation petition. The General Counsel reviews the representation petition and coordinates with the parties before preparing a report for the Board, which may recommend approval of appropriate agreements reached during consultation with the parties, dismissal of the petition as being without merit, or issuance of a notice of hearing to dispose of unresolved issues raised in the petition. In addition, the PAB/OGC is responsible for investigating unfair labor practice charges filed with the Board.
CHAPTER 3: ACTIVITY OF THE PAB – 2020

Section 1: Labor-Management Relations

The GAO Employees Organization, IFPTE Local 1921 (Union) had one labor-management relations matter before the Board in 2020 pending from the previous year. In August 2019, the Union filed a Petition alleging that the Agency engaged in an unfair labor practice (ULP) when it refused to negotiate over negotiable proposals concerning changes to its transit benefits program in violation of statute and a March 7, 2019 PAB Order on negotiability. The Union filed various motions during 2019 as a result of the Agency’s insistence that this matter was not within the Board’s jurisdiction, including a Motion for Default Judgment and a Motion for Sanctions. The Board issued an Order to Show Cause to the Agency to explain why the Motion for Default Judgment should not be granted because of the Agency’s failure to file a formal response to the Motion. In lieu of a response to the Order, the Agency submitted a letter stating that it would not be filing a response with the Board.

Consequently, the full Personnel Appeals Board, by Decision and Order dated November 26, 2019, determined that the matter was within its jurisdiction pursuant to the GAOPA and GAO Order 2711.1 (Labor-Management Relations), and granted the Motions for Default Judgment and Sanctions. The Board directed the parties to schedule a meeting for the purpose of negotiating the Union’s proposals and directed the Agency to post a Notice to all employees that it had committed a ULP by failing to negotiate on provisions found negotiable by the PAB; to pay attorney fees to the Union;
and to file a Statement of Compliance with the Board. The Board also ordered that any agreement reached regarding the payment of transit benefits be made retroactive to September 2019.

The Agency’s required public notice to employees was posted beginning at the close of 2019. On January 23, 2020, the Agency filed the required Statement of Compliance with the Board, reciting the actions it had taken and the efforts to date to meet and reach agreement with the Union. Early in 2020, the Union filed a Motion for Attorney Fees. The Agency then filed an Unopposed Motion to Stay Consideration of the Application for Attorney Fees, which was granted. The Union filed a Notice of Resolution and Withdrawal of Application for Attorney Fees. After review of the Notice, the Administrative Judge issued an order dismissing the application for attorney fees. No further action was taken on this matter in 2020.

Section 2: Employment Case Activity

Summary of Cases

In addition to the ULP matter discussed above, there were four employment cases before the Board in 2020. Three cases involved Petitions before the Board. Two of those Petitions were pending from the previous calendar year and a summary of these cases follows. The Board received one Ex Parte Request for Stay which is discussed below in Chapter 3, Section 2(b).
a. **Petitions Before the Board**

The first Petition pending from the previous calendar year was filed on November 26, 2019. In this case, Petitioner claimed the Agency committed a prohibited personnel practice in violation of 5 U.S.C. § 2302(b)(12). Petitioner claimed the Agency violated GAO Order 2713.2 (Discrimination Complaint Resolution Process) when the GAO Office of Opportunity and Inclusiveness (O&I) unilaterally held its investigation of Petitioner’s disability complaint in abeyance, so that the charge process in a separate constructive discharge matter filed by Petitioner could be completed by the PAB/OGC before O&I conducted its investigation. Petitioner further claimed that O&I modified GAO Order 2713.2 without observing the required notification and comment period. In lieu of a Response, the Agency filed a Motion to Dismiss the Petition on the basis that it believed Petitioner failed to allege the necessary elements of the claim under 5 U.S.C. § 2302(b)(12). On January 10, 2020, Petitioner filed a Withdrawal of Petition and the Administrative Judge issued an Order dismissing the Petition.

The second Petition pending from the previous year was filed on December 10, 2019. Petitioner alleged that the Agency violated the Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213, when it failed to provide Petitioner with a reasonable accommodation to address his difficulties working in the GAO headquarters building as a result of his medical condition. In December 2019, a Motion to Extend the Deadlines in this case was filed and granted.

During the first half of 2020, the Administrative Judge granted several motions to extend deadlines and stay discovery. In June, the PAB/OGC filed a Motion to Withdraw as Counsel. Petitioner was given an opportunity to respond to the Motion; however, he
did not timely do so. The Administrative Judge therefore issued an Order granting the PAB/OGC’s Motion to Withdraw as Counsel on July 9, 2020. The PAB/OGC thereafter filed a Notice of Withdrawal of Appearance on July 10, 2020.

The Agency filed additional discovery-related motions with the Board. The Board ordered Petitioner to provide responses to the Agency. While Petitioner, now pro se, initially responded to the requests, he ultimately did not provide the required supplemental responses to the Agency as ordered by the Board. After repeated attempts to contact Petitioner, the Administrative Judge issued an Order to Show Cause why the case should not be dismissed for failure to prosecute on November 9, 2020, pursuant to 4 C.F.R. § 28.24(b). Petitioner did not respond to this Order and the case was dismissed with prejudice on November 23, 2020.

The first new Petition filed with the Board in 2020 was filed by a pro se Petitioner on April 20, 2020. In that filing, Petitioner claimed the Agency committed a prohibited personnel practice in violation of 5 U.S.C. § 2302(b) and GAO Order 2771.1 (Administrative Grievance Procedure) when it did not accept his expedited grievance complaint. Instead of filing a response to the Petition, the Agency filed a Motion to Stay Discovery and a Motion to Dismiss. Petitioner requested an extension of time to respond to the Motions filed by the Agency. The Administrative Judge granted the extension and stayed the discovery period until a decision on the Motion to Dismiss was issued. When Petitioner failed to file a timely response to the Motion to Dismiss, the Administrative Judge issued an Order to Show Cause requesting Petitioner to explain why he did not respond. Petitioner did not respond to the Order to Show Cause. As a result of Petitioner’s continued failure to respond, the Administrative Judge issued an
Order of Dismissal on July 7, 2020, and dismissed the case with prejudice for failure to prosecute. No further action was taken in this case.

b. Stay Requests

One Ex Parte Request for Stay was filed with the Board in 2020 by the PAB/GC pursuant to 4 C.F.R. § 28.133(a). On July 13, 2020, the PAB/GC filed an ex parte request to stay the termination of an employee who received a Notice of Termination from the Agency on July 9, 2020. The Notice advised that the employee’s employment would be terminated effective July 15, 2020, because his work performance did not meet acceptable standards. The employee alleged that the termination constituted a prohibited personnel practice, because he was discriminated against based on his sex and retaliated against because he participated in protected activity. In particular, the employee alleged that he was discriminated against for using administrative leave for child care responsibilities which were allowable under GAO’s Workplace Flexibilities for COVID-19. The Administrative Judge granted a thirty (30) day initial stay of his termination through August 13, 2020. Prior to the expiration of the initial stay, the PAB/GC filed a Motion to Extend the Stay through September 11, 2020, to allow time to complete the investigation. The Agency did not oppose this Motion. In accordance with 4 C.F.R. § 28.133(b)(1), the Administrative Judge issued an Order granting the Motion to Extend the Stay for an additional 30 days. No further action was taken on this matter.
Section 3: PAB Office of General Counsel Activity

a. Case Activity

(1) Charges

From January 1, 2020, through December 31, 2020, ten charges were filed with the Personnel Appeals Board Office of General Counsel. Those charges involved twenty-three (23) different allegations. Figure 3 below illustrates a breakdown of the different allegations presented in the charges filed with the PAB/OGC.

Figure 3: Legal Allegations Presented in Charges
During 2020, the PAB/OGC had a total of twenty-two (22) open cases, including investigation and litigation matters, on its case docket. The PAB/OGC closed a total of fourteen (14) cases by the end of the year, including eleven (11) investigations and three (3) litigation matters. At the close of 2020, eight open cases remained on the PAB/OGC docket. During the course of the year, the PAB/OGC participated in settlement or helped facilitate settlement between the parties at the investigative stage in three cases.

(2)  Litigation

The PAB/OGC participated in a total of three cases before the Board in 2020. Two of the cases were Petitions filed with the Board. The first Petition involved allegations of removal/constructive discharge and the second involved allegations of disability discrimination. The third case was a request for an *Ex Parte* Stay of an employee’s termination from employment.

The PAB/OGC had two pending corrective action matters on its case docket in 2020. The first corrective action had been initiated to determine if certain promotions on one of GAO’s mission teams violated 5 U.S.C. § 2302(b)(12). The investigation was closed in February 2020. The second corrective action investigation involved allegations of a prohibited personnel practice in a hiring decision on one of the mission teams. This investigation was closed in February 2020 without any request for GAO to take corrective action.
b. Other Activity

In October 2020, the PAB/OGC staff gave a presentation at the Union assembly meeting providing an overview of the PAB/OGC’s role and how it addresses complaints of discrimination and prohibited personnel practices. The PAB/OGC did not comment on any proposed GAO Orders or legislation during 2020.

The PAB/OGC regularly provides information or informal advice to GAO employees about their personnel, labor, and equal employment opportunity rights. This is accomplished by responding to informational inquiries received by phone, email, or through an in-person meeting. The General Counsel’s office fielded 34 informational inquiries during 2020. The types of inquiries and the number by type are shown below in Figure 4.
Figure 4: Types of Inquiries

- Non-selection: 18%
- Hostile work environment: 6%
- Hatch Act: 6%
- Failure to represent: 3%
- Harassment: 3%
- Discrimination – sex: 3%
- Discrimination – race: 3%
- Discrimination – gender identity: 3%
- Discrimination – disability: 3%
- Discrimination – age: 6%
- Discipline: 6%
- Whistleblower: 6%
- Request for presentation: 3%
- Removal: 9%
- Reasonable accommodation: 3%
- Procedures for filing a Petition: 3%
- Performance of a manager: 3%
- O&I: 3%
- Performance of a manager: 3%
- Request for presentation: 3%
- Unprofessional conduct of a manager: 6%
- Sexual assault: 3%
- Waiver for outside business: 3%
- Total: 34
Section 4: Office of EEO Oversight Activity

The GAOPA authorizes the Personnel Appeals Board to oversee equal employment opportunity at GAO through review and evaluation of GAO’s procedures, policies, and practices. To fulfill this mission, the Board established an Office of EEO Oversight to assist it in conducting studies of selected issues and preparing evaluative reports that contain its findings and conclusions, as well as its recommendations to the Agency.

In 2020, the Board began a new cycle of formulating potential EEO Oversight topics that may be studied over the next several years. The Board currently has several potential study topics under consideration.

Section 5: Administrative and Outreach Activity

a. Mediation Program

The Board’s mediation program was established to provide employees, applicants, and the Agency another avenue for handling disputes. The parties that participate in mediation are given the option to meet separately and/or jointly with a mediator, i.e., a skilled neutral trained to assist them in resolving their disputes. The

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24 The Board’s oversight reports can be found at https://pab.gao.gov under the link to EEO Oversight.

25 See the Board’s Practice Guide to Mediation of Disputes at the Personnel Appeals Board. The mediation guidelines can also be found on the PAB’s website at https://pab.gao.gov.
mediator is a facilitator who has no power or role to impose a specific resolution. Parties to the mediation explore and discuss alternatives to continuing their dispute, including the goal of reaching a voluntary, mutually satisfactory resolution. Further information about the mediation program can be found on the Board’s website. The Board received no mediation requests during 2020.

b. Website Developments

The Board’s website continues to be a valuable resource for information about the PAB. The website allows individuals to research Board decisions by search terms within a decision. The PAB’s Annual Report and EEO Oversight Reports are available exclusively on the website. The website also includes information regarding the procedures for filing documents with the Board, and filing charges with the PAB Office of General Counsel. The website is updated regularly to include announcements as well as new decisions.

The Board tracks usage of the website for informational purposes only; it does not gather personal data in doing so. The data in the chart below capture the usage of the PAB website for 2020.

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26 The website can be found at https://pab.gao.gov.
**Figure 5: Number of Website Visits**

<table>
<thead>
<tr>
<th>Web page:</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>HOMEPAGE</td>
<td>DECISIONS</td>
<td>REGULATIONS</td>
<td>ABOUT</td>
</tr>
<tr>
<td></td>
<td>3,547</td>
<td>1,156</td>
<td>491</td>
<td>313</td>
</tr>
</tbody>
</table>

**c. Other Activity**

With Board operations pivoting to full-time telework for more than three quarters of 2020 because of the COVID-19 pandemic, Board staff developed administrative and organizational projects designed to facilitate internal research and referencing of Board history moving forward.