

Personnel Appeals Board



Annual Report
2014

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BIOGRAPHIES OF BOARD MEMBERS

JOHN L. BRAXTON was appointed to the Board in February 2011. Mr. Braxton was elected Vice Chair of the Board in July 2012 and became the Chair in September 2013. Mr. Braxton is a Senior Judge of the Court of Common Pleas of Philadelphia County. He has been a member of the Pennsylvania Bar for over 40 years, and has an accomplished career of public service in law, business, and financial administration. Mr. Braxton has developed expertise in commercial and economic development within heavily-regulated industries including banking and insurance. He also has built a record of success in directing long-term strategic business planning and managing executive-level responsibilities in both the private and public sectors. Mr. Braxton served as Chair of the Board of Berean Federal Savings Bank from 1999 to 2003. He also served as Chair of the Bank's Investment Committee. In addition, Mr. Braxton served as Chair of the Audit Committee of Intellisource Group, Inc., which is a publicly held corporation. From 1991-1996, Mr. Braxton served as Chair of the Board of the Philadelphia Commercial Development Corporation. From 1975-1978, he served as a member of the Pennsylvania Minority Business Development Authority. Mr. Braxton earned his undergraduate degree from Penn State University as well as a commission as a Second Lieutenant in the U.S. Army. Once he completed his military service, Mr. Braxton went on to earn a law degree from Howard University School of Law. He retired in 1995, but was recalled to serve on the

Court of Common Pleas of Delaware, Bucks and Montgomery Counties in Pennsylvania.

WILLIAM E. PERSINA was appointed to the Personnel Appeals Board in June 2011. Mr. Persina became the Vice Chair of the Board in September 2013. Mr. Persina is a labor arbitrator specializing in public sector labor and employment law issues. In addition to his service with the Personnel Appeals Board, Mr. Persina is also a Presiding Member on the Foreign Service Grievance Board, which arbitrates grievances involving labor and employment law issues for Foreign Service employees. He also serves as the Chairman of the District of Columbia Office of Employee Appeals, which decides adverse personnel action appeals of District government employees, and is a former member of the District of Columbia Police and Fire Retirement Board. Prior to beginning his arbitration practice Mr. Persina was in private law practice, providing representation and consulting services to federal agencies and unions in the areas of employment and labor law before such administrative agencies as the Merit Systems Protection Board, the Federal Labor Relations Authority (FLRA), and the U.S. Equal Employment Opportunity Commission. Before entering private practice, Mr. Persina served as senior litigation counsel and Solicitor for the FLRA, in a career spanning almost 27 years with that agency. While in the Solicitor's Office, Mr. Persina represented the FLRA in federal courts, including the Supreme Court of the United States. He also gave legal advice to the FLRA's presidential appointees. Mr. Persina received his law degree, with honors, from the National Law Center of the George Washington University, in 1972. He received his

undergraduate degree from the School of Industrial and Labor Relations, Cornell University, in 1968. Mr. Persina is admitted to practice in the District of Columbia.

ROBERT F. HERMANN was appointed to the Personnel Appeals Board in January 2012. Mr. Hermann became the Vice Chair in October 2014. Mr. Hermann has practiced law for 40 years, focusing on labor and employment law in both the public and private sectors. He has worked as a neutral, as an advocate for management and as an advocate for employees in all areas of employment law. Since 1991 he has been a partner in the Westfield, New Jersey firm of Hermann & Bateman. From 1988 to 1991 he was in private practice in New York City. From 1975 to 1988, Mr. Hermann handled employment law matters as an attorney with the Office of the Chief Counsel, Internal Revenue Service. From 1978 to 1988, he was Assistant Regional Counsel for the Internal Revenue Service's North Atlantic Region, based in New York City. Mr. Hermann began his career in Washington, D.C. in 1973 as an attorney with the Federal Labor Relations Council, the predecessor to the Federal Labor Relations Authority. Mr. Hermann is a 1970 graduate of Cornell University's School of Industrial and Labor Relations and a 1973 graduate of the Cornell Law School. He is a member of the New York and New Jersey state Bars, the U.S. Supreme Court Bar, and the bars of other federal courts.

DAVID P. CLARK was appointed to the Personnel Appeals Board in April 2014. Mr. Clark received his law degree from the American University Washington College of Law in 1997 and received a M.A. from the American University School of International Service that same year. Mr. Clark is currently an Adjunct Professor at the American University Washington College of Law. He began his career as an attorney-adviser to Presidential appointees for the Federal Labor Relations Authority. In 2001, he established his Alternative Dispute Resolution practice, where he provides arbitration, mediation, facilitation, and training services to companies, federal agencies, labor unions, and private individuals. As a mediator, Mr. Clark has presided over hundreds of workplace disputes involving employees and management. As an arbitrator, he presides over collective bargaining and other employment matters, as referred among others by the American Arbitration Association and the Federal Mediation and Conciliation Service. Mr. Clark is a member of the state bar associations of New York, New Jersey, and the District of Columbia, and the Commonwealth of Virginia has certified him as a mediator.

SUSAN R. WINFIELD was appointed to the Personnel Appeals Board in August 2010. She became Vice Chair of the Board in September 2011 and Chair in July 2012. Her term as Chair ended in September 2013. Ms. Winfield is a graduate of the University of Pennsylvania and Boston College Law School. Ms. Winfield began her career as an Associate Attorney with a private law firm in Boston, Massachusetts. She began her government career as a staff attorney in the Criminal Division at the Department of Justice and later became an Assistant

U.S. Attorney in the Office of the United States Attorney in Washington, D.C. In 1984, she was appointed to be an Associate Judge of the District of Columbia Superior Court where she served in the Civil, Criminal and Family Divisions. She retired from the court in 2005 and currently serves occasionally as a Senior Judge. In addition, Ms. Winfield serves as a private mediator and arbitrator. She is also serving as a member at the Foreign Service Grievance Board and as a Hearing Officer at the Office of Compliance. Since 1984, Ms. Winfield has held and served in many other roles, *e.g.*, adjunct professor, lecturer, consultant, mentor and trainer. She is a member of the District of Columbia and Massachusetts Bars.

PERSONNEL APPEALS BOARD

John L. Braxton*	Chair
William E. Persina	Vice Chair
Robert F. Hermann	Member
David Clark**	Member
Susan R. Winfield	Member
Beth L. Don	Executive Director
Vanessa H. Gallagher	Director, EEO Oversight
Susan P. Inzeo	Solicitor
Sue S. Farley	Senior Staff Attorney
Patricia V. Reardon-King	Clerk of the Board
Stuart Melnick	General Counsel
Frank J. Mack	Senior Trial Attorney
Brian Nuterangelo	Senior Trial Attorney
Darian C. Jackson	Paralegal Specialist

*John Braxton served as Chair and William Persina as Vice Chair until October 2014.

**David Clark joined the Board in April 2014.

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, and unfair labor practices involving employees of the U.S. 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

¹ 31 U.S.C. §731 *et seq.*

² In July 2004, the Agency's name changed from the General Accounting Office to the Government Accountability Office. Pub.L. No. 108-271 (Jul. 7, 2004).

³ 31 U.S.C. §732(f)(2)(A).

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 Personnel Appeals Board 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 EEO impact of GAO's actions and/or inactions. See, *supra*, n. 3.

Employment 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 for the appointment of 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 new members 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 matters.

Applicants are expected to have expertise or litigation experience in the area of federal personnel law, demonstrated ability to arbitrate or adjudicate complex

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, EEOC enforces the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §621 *et seq.*, the Americans with Disabilities Act (ADA), 42 U.S.C. §12101 *et seq.*, and the Genetic Information Nondiscrimination Act (GINA), 42 U.S.C. §§2000ff *et seq.* The Personnel Appeals Board 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 Personnel Appeals Board also has the authority to certify collective bargaining representatives and to adjudicate unfair labor practices. 4 C.F.R. §§28.110-28.124.

⁷ The OSC investigates and prosecutes allegations of thirteen prohibited personnel practices, with an emphasis on protecting federal whistleblowers. 5 U.S.C. §§1214, 2302(b). The Board's General Counsel investigates and prosecutes allegations of prohibited personnel practices. 4 C.F.R. §28.12.

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 member of the Employee Advisory Council (EAC) and one representative 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 can choose to make an appointment to the Board after considering the recommended candidates. The Board members elect their own Chair and Vice Chair. Board members can only be removed by their colleagues.

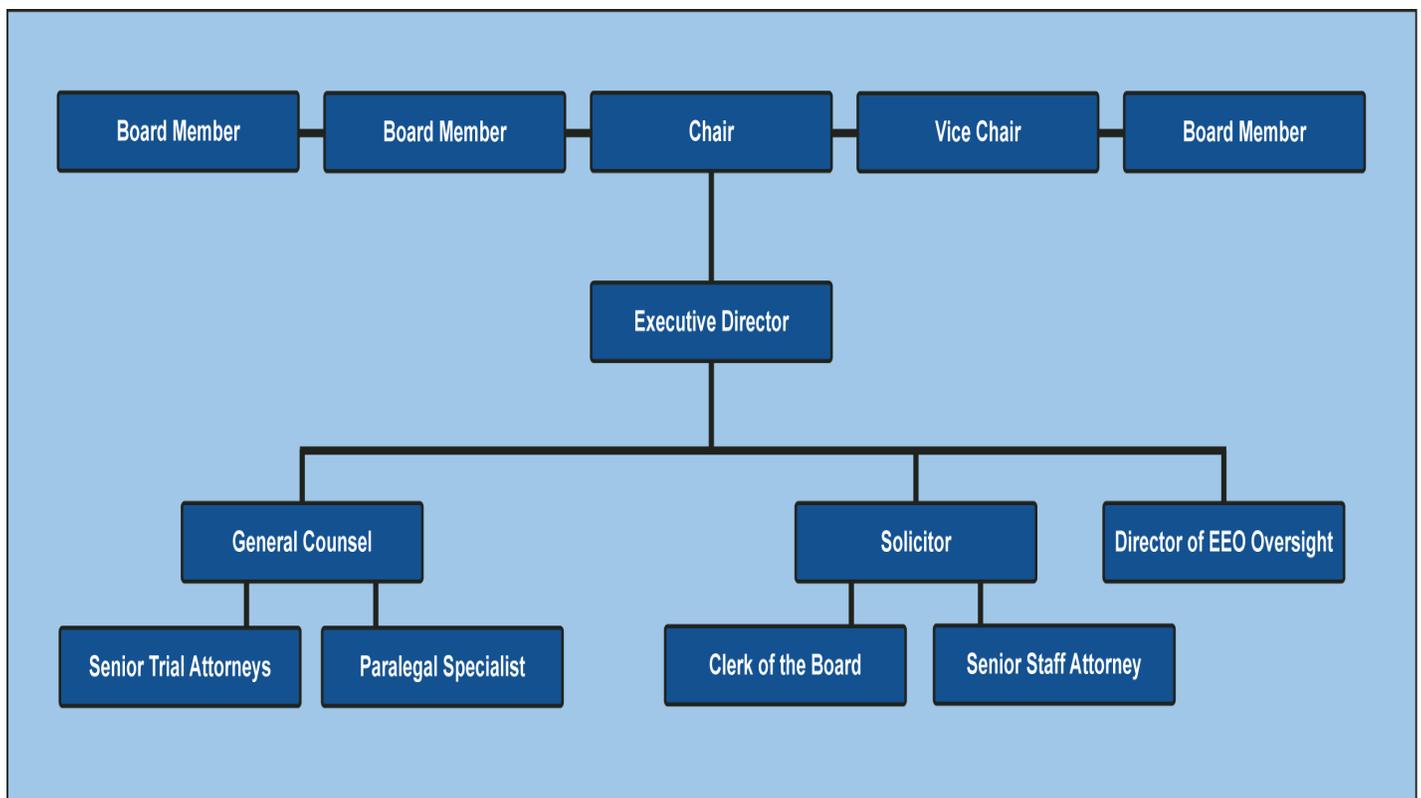
Section 2: Board Staff

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 employment opportunity practices and procedures at GAO and issues evaluative reports that contain the Board's

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 (Union). GAO Order 2300.4, "Personnel Appeals Board Vacancies" ¶7 (11/04/09).

findings, conclusions, and recommendations to the Agency.⁹ 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 filed with the Office and, if there are reasonable grounds to believe that a violation of law has occurred, offers to represent the employee or applicant for employment in litigation before the Board. Figure 1 below shows the current organizational make-up of the Personnel Appeals Board.

Figure 1: PAB Organizational Chart



⁹ 31 U.S.C. §732(f)(2)(A); see 4 C.F.R. §§28.91 and 28.92. The Board’s EEO Oversight reports can be found at the PAB’s website: www.pab.gao.gov.

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)*;¹⁰ a brief summary follows.

An employee, a group of employees,¹¹ a labor organization, or an applicant for employment at GAO may file a Petition with the Board seeking review of 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 relations issue; (4) an action involving prohibited discrimination;¹² (5) prohibited political

¹⁰ The *Guide to Practice* is available at the PAB's website: www.pab.gao.gov.

¹¹ The Board can hear and decide individual Petitions as well as class actions.

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.

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 part (GAO Order 2713.2, ch. 6, ¶4), or by filing a civil action in the appropriate federal district court.

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.

activity; and (6) any other personnel 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.¹³ The Board also plays a role in resolving impasses in collective bargaining, as well as in resolving certain negotiability issues.¹⁴

Section 1: Filing with 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.¹⁵ The PAB/OGC has the authority to investigate charges and to represent employees where 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

¹³ The Board's *Guide to Labor-Management Relations Practice* is available at www.pab.gao.gov.

¹⁴ See GAO Order 2711.1, "Labor-Management Relations," ¶14 (Apr. 27, 2001); 4 C.F.R. §§28.110-28.124.

¹⁵ See www.pab.gao.gov, under the link to Charges/Filing.

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 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.

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.¹⁶ 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, PAB/OGC issues a Right to Petition Letter notifying the charging party that the investigation has been 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.

¹⁶ Information about the Board's mediation program can be found on the website at www.pab.gao.gov.

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: Case Activity Before the Board

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 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.

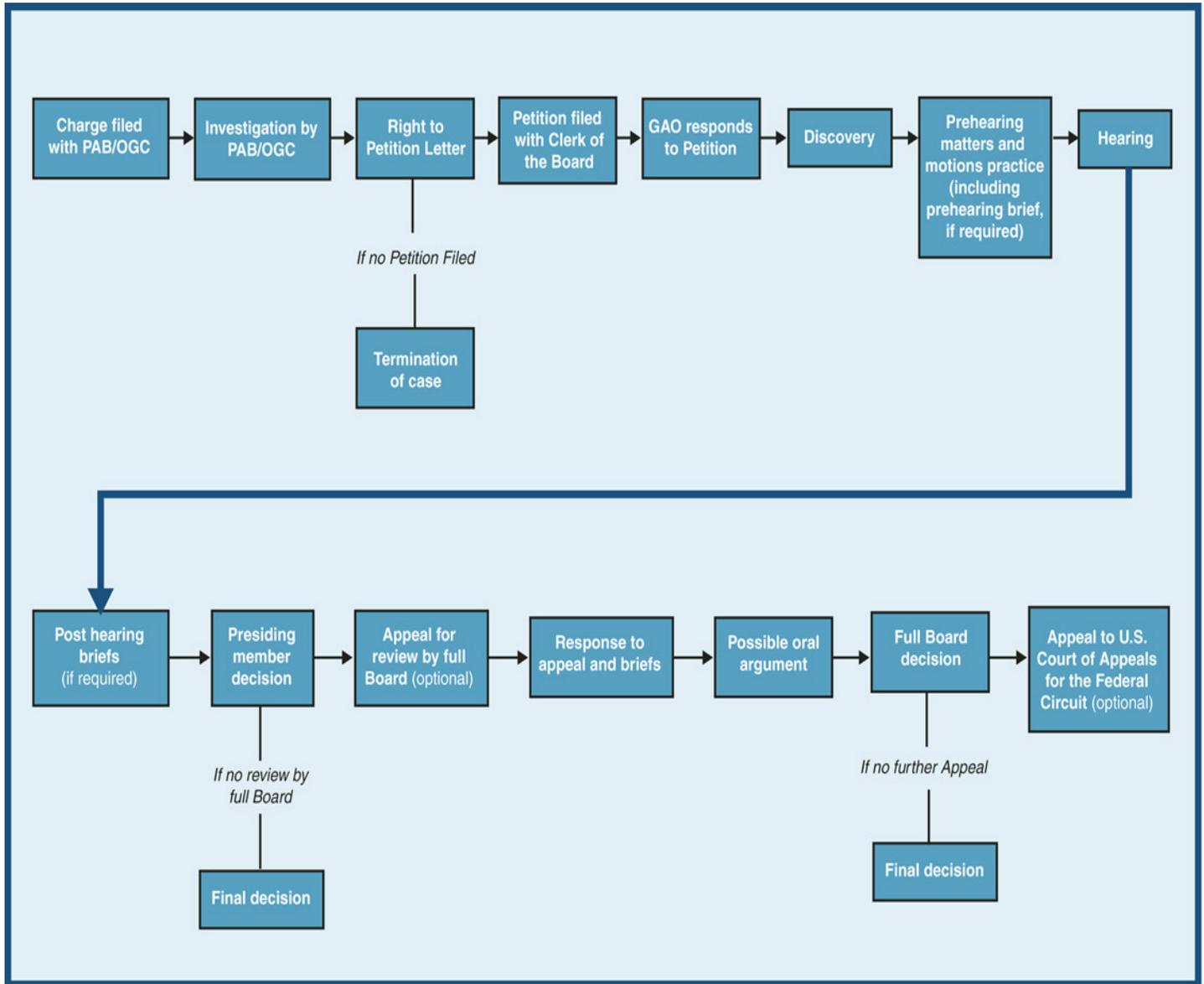
Upon receipt of a Petition, either a single Board member will be appointed to hear and decide the case or the Board will hear the case *en banc* (by all Board members). The Petition to the Board is not a challenge to or review of the conclusions of the PAB/OGC, but a fresh consideration of the Petitioner’s claims.

The Board does not have access to the investigative work and conclusions of the PAB/OGC; the administrative judge does not know whether the PAB/OGC found reasonable grounds to believe a violation existed in a given case.

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.

Figure 2: Board Process Illustrated



Section 3: Other PAB Office of General Counsel Authority

a. PAB/OGC Investigative Authority

As discussed above, the PAB Office of General Counsel 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 PAB/OGC. In addition to investigations generated by individual or class charges, PAB/OGC may initiate its own investigations, otherwise known as “corrective actions.”¹⁷ 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 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, PAB/OGC will contact the Agency with its findings and recommendation. If the recommendation is not followed within a reasonable period, PAB/OGC may petition the Board to order corrective action.

¹⁷ 4 C.F.R. §28.131.

b. PAB/OGC Stay Requests

The General Counsel 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 General Counsel's judgment, may constitute a prohibited personnel practice.¹⁸ If the request for an *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, or Board *en banc*, determines that, under all of the circumstances, the interests of justice would be served by providing more time for PAB/OGC to pursue the investigation.¹⁹ 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 denial of 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 summary

¹⁸ The Board's stay authority does not extend to any reduction in force action. 31 U.S.C. §753(b).

¹⁹ 4 C.F.R. §28.133(d).

of the determination and facts to the employee and the Board.²⁰ The authority to propose disciplinary action includes action for engaging in prohibited political activity.

After a hearing, the Board decides whether discipline is warranted and what 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 United States Court of Appeals for the Federal Circuit.

d. Labor-Management Relations

Through the Board's regulations, 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 of 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 Office of General Counsel is responsible for investigating unfair labor practice charges filed with the Board.

²⁰ *Id.* at §28.132.

CHAPTER 3: ACTIVITY OF THE PAB – 2014

Section 1: Labor-Management Relations

There were no labor-management relations matters before the Board in 2014. However, the Board did receive an inquiry from the Union regarding a unit clarification. The Board provided the Union with information and guidance on the Board procedures for filing with the PAB Office of General Counsel.

Section 2: Employment Case Activity

a. Petitions Before the Board

The Board had three (3) Petitions before it in 2014, including one matter pending from a previous year. The Board issued two employment decisions in 2014. The other matter before the Board was still pending at the close of 2014.

Summary of Cases

In one case, still pending before the Board at the end of 2014, a former employee of GAO claimed she was subjected to a long-term pattern of retaliation and a retaliatory hostile environment based on her having engaged in protected activity. She further alleged that in 2003, the Agency forced her to retire in retaliation for her having engaged in protected activity. Beginning in 1993 and 1994, she had raised with an Agency official a claim that GAO was violating the Equal Pay Act, *inter alia*, by paying her male counterparts more to perform work at the same level. She alleged that shortly after raising these issues, she was subjected to a hostile work environment based on her gender and retaliation

including being prevented from competing for promotions. Discovery in this matter was extended repeatedly, in part because the personnel actions were remote in time and many of the individuals involved in the case were no longer employed at GAO. In July 2013, a decision was issued on the Agency's Motion for Summary Judgment. The Administrative Judge (AJ) found that the allegations raised by the Petitioner were not retaliatory and granted the Agency's Motion for Summary Judgment in full. The Petitioner filed an appeal with the full Board. Appeal briefs were filed and at the close of 2014 the case was still pending before the full Board.

During 2014, the PAB/OGC filed one of only a few cases in the Board's history in which an applicant for employment brought a case regarding the selection process for employment with the Government Accountability Office (GAO). The Petitioner applied for the position through the competitive selection process for an Administrative Professional Support Staff position of a Videographer in GAO's Office of Public Affairs (OPA) in June of 2013. The vacancy announcement required the candidates to meet two (2) selective placement factors to receive further consideration. The Human Capitol Office (HCO) made a minimum qualification determination and more than ten (10) candidates met the minimum requirement. As a result, HCO resorted to a "crediting plan" to evaluate the candidates and created a Best Qualified (BQ) list and ranked the candidates in numerical order. Petitioner was not selected for the position and claimed that GAO did not follow GAO Order 2335.6, Competitive Selection Plan for Administrative Professional and Support Staff (APSS Hiring

Order) when evaluating and making a selection for the position, in violation of the APSS Hiring Order and 5 U.S.C. § 2302(b)(12). On September 30, 2014, the Petitioner requested that the case be withdrawn. The case was dismissed with prejudice by the Administrative Judge on October 1, 2014.

In another case filed by PAB/OGC, Petitioner claimed that GAO committed prohibited personnel practices under 5 U.S.C. §§2302(b)(8) and (b)(12). Petitioner alleges that the Agency engaged in whistleblower retaliation by conducting an investigation into his conduct regarding the safeguarding of material and the accuracy of information he provided, and by issuing him a memorandum of counseling. Petitioner claims that these actions were taken in retaliation after he sent an e-mail to his supervisor concerning an alleged violation of law, rule or regulation under 5 U.S.C. §2302(b)(8). He claims that the e-mail constituted a “protected disclosure.” The Agency filed a Motion to Dismiss the Petition on the basis that it was untimely and because it failed to state a claim upon which relief could be granted. In particular, the Agency argued that Petitioner’s e-mail was not a “protected disclosure,” and that neither the investigation into Petitioner’s conduct, nor the manner in which the investigation was conducted, were personnel actions.

The Administrative Judge issued a decision granting the Motion in part, and denying it in part. The AJ granted the Agency’s Motion to Dismiss, without prejudice, regarding the manner in which the investigation was conducted because the manner in which it was conducted did not significantly change Petitioner’s working conditions and thus, was not a personnel action. The AJ

denied the Agency's Motion because there was insufficient evidence to determine whether the Petition was timely filed, and insufficient evidence to determine whether the actual investigation was a personnel action covered under 5 U.S.C. §2302(b)(8). Finally, the Motion to dismiss was denied because the AJ found that there was sufficient evidence to show that Petitioner's e-mail constituted a "protected disclosure" under 5 U.S.C. §2302(b)(8). The case was scheduled to proceed with discovery at the end of 2014.

b. Stay Requests

The Board did not receive any *Ex Parte* Requests for Initial Stay during 2014. One stay request granted at the end of 2013 continued in effect through January 17, 2014.

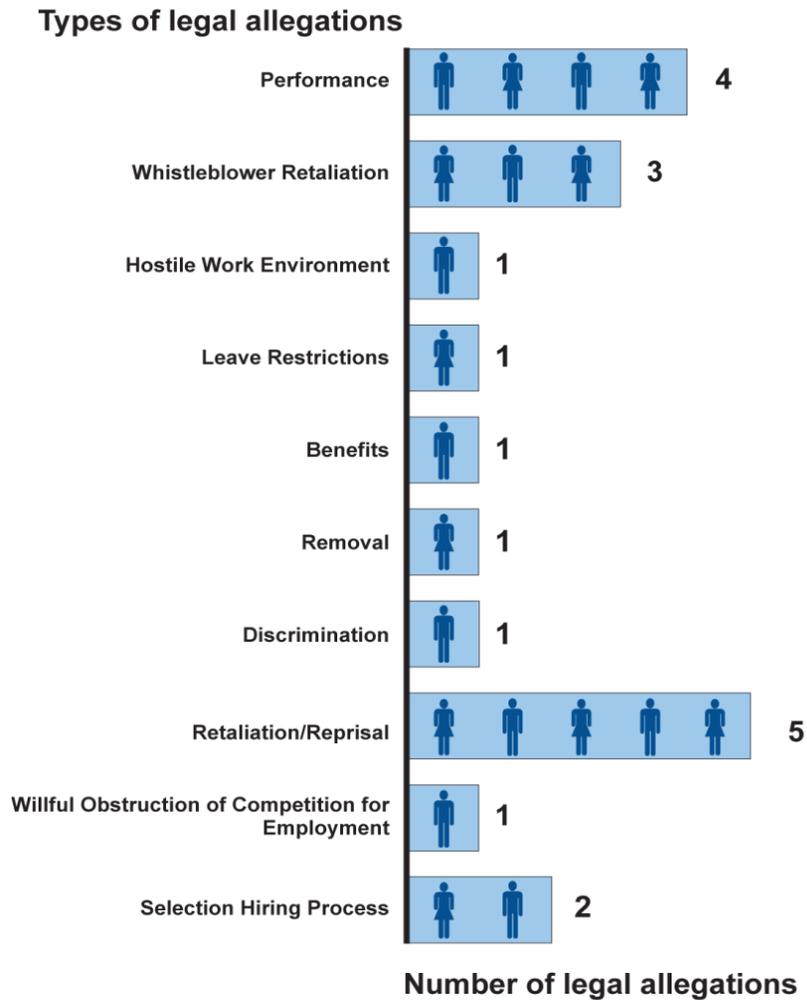
Section 3: PAB Office of General Counsel Activity

a. Case Activity

(1) Charges

There were sixteen new charges filed with PAB/OGC from January 1, 2014 through December 31, 2014. Figure 3 shows the breakdown of the different legal allegations presented in charges filed with that office.

Figure 3: Legal Allegations Presented In Charges



Source: PAB/OGC.

During 2014, PAB/OGC had a total of thirty open charges on its investigative case docket. It closed nineteen of the charges during the year, leaving eleven open cases at the end of 2014. PAB/OGC settled four cases in 2014.

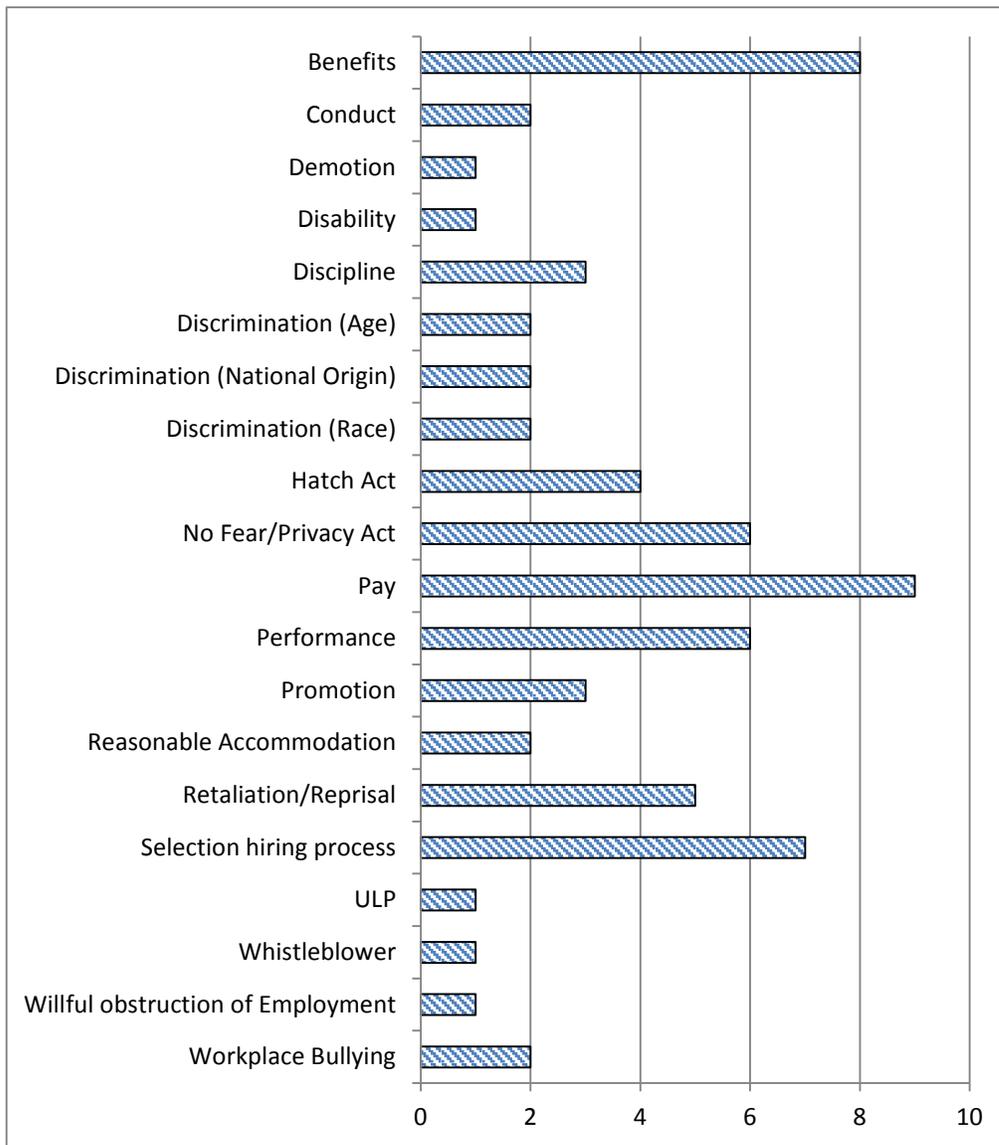
(2) Litigation

PAB/OGC participated in four cases before the Board including one *Ex Parte* Request for Initial Stay continued from 2013. Most of the GAO investigations conducted by the PAB Office of General Counsel were initiated by charges filed by employees. During calendar year 2014, the PAB/OGC initiated two corrective action investigations. In addition, there were no disciplinary or corrective actions initiated by the General Counsel office in 2014.

b. Other Activity and Employee Contacts

In addition to its investigative and prosecutorial authority, the PAB/OGC also provides information or informal advice to GAO employees about their personnel and equal employment opportunity rights. This is accomplished by responding to informational inquiries received either by phone, e-mail or through an in-person meeting. The General Counsel's office fielded seventy-four (74) informational inquiries during 2014. The types of inquiries and the number by type are shown below.

Figure 4: Number of Inquiries by Legal Issues



Source: PAB/OGC

Section 4: Office of EEO Oversight Activity

The GAO Personnel Act of 1980 directs the Personnel Appeals Board to oversee equal employment opportunity at GAO through review and evaluation of GAO's procedures, policies, and practices.²¹ To fulfill this mandate, the Board's Office of EEO Oversight to assists the Board in conducting studies of selected issues and preparing evaluative reports. The reports contain the Board's findings and conclusions, as well as recommendations to the Agency.²²

In 2014, the Office of EEO Oversight continued the Board's work on studies of: (1) age in the GAO workforce, and (2) GAO's procedures, policies, and practices as they relate to the Americans with Disabilities Act, as amended by the Americans with Disabilities Act Amendments Act of 2008. The Office also began work on a potential study to review the agency's implementation of Title II of the Genetic Information Nondiscrimination Act of 2008.

²¹ 31 U.S.C. § 732(f)(2)(A); See applicable regulations at 4 C.F.R. §§ 28.91, 28.92.

²² The Board's oversight reports can be found at www.pab.gao.gov under the link to EEO Oversight.

Section 5: Special Projects

a. Mediation Program

The Board's mediation program²³ 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 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.

b. Website Developments

The website²⁴ continues to be a valuable resource for information about the PAB. The Annual Report and EEO Oversight Reports are available exclusively on the website. The PAB website also allows individuals to research decisions by search terms within the decision. The website is updated regularly to include announcements as well as new decisions.

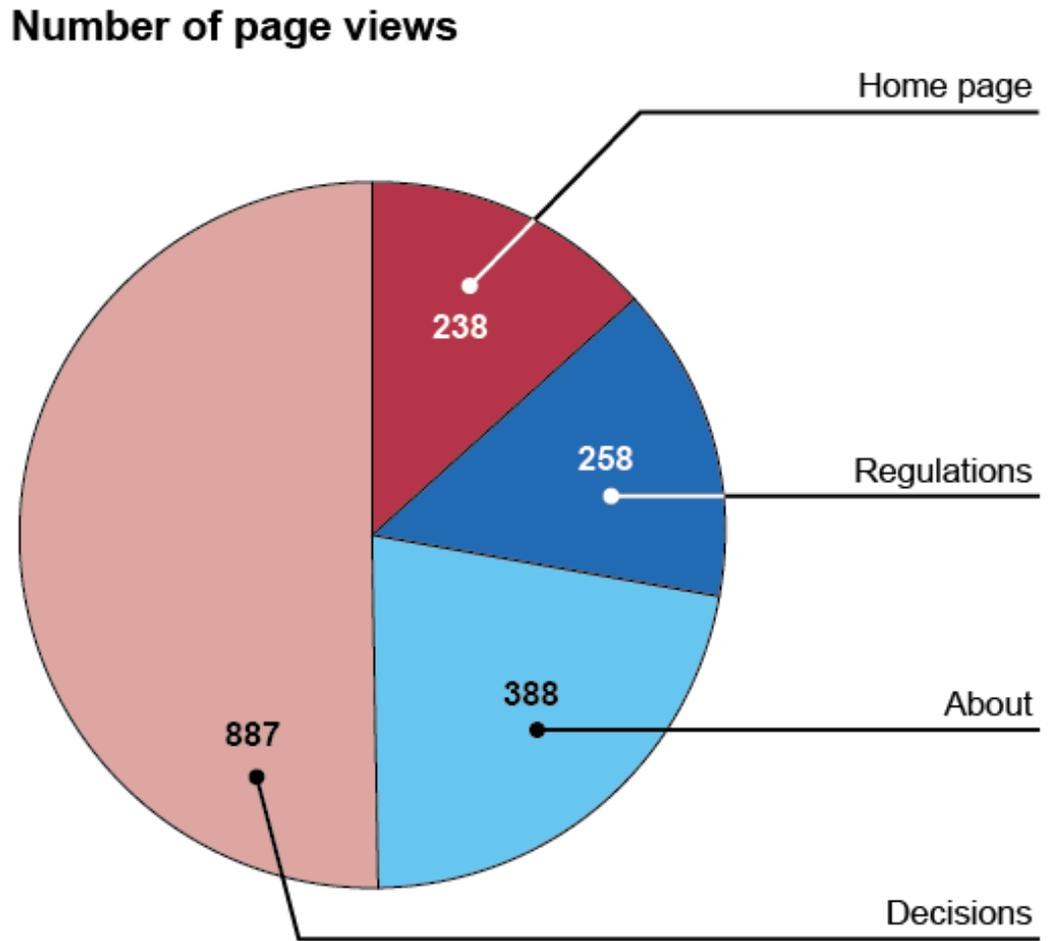
Since 2013, the Board has been tracking the number of visitors to its website. With help from GAO's Information Systems and Technology Services and using Google Analytics, the Board can see a pattern of usage on the website

²³ 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 www.pab.gao.gov.

²⁴ The website can be found at www.pab.gao.gov.

over time. While gathering this information, no personal data is collected when tracking visits. The information provided in the chart below shows the use of the Board's website in 2014.

Figure 5: Number of views of PAB website



Source: Google Analytics.

c. Other Activities

Diversity Month Program

In June 2014, the Board participated in the GAO Employee Organizations Diversity Month Program. This year's Diversity Month theme was "Many Voices." The Board was invited to participate in the Employee Organizations Hallway Fair held on June 12, 2014. The Diversity Month Program was designed to provide employees with hands on access to individual employee groups to assist and guide employees through various processes within GAO. PAB is focused on providing assistance, guidance and resolution of matters on behalf of the employees at GAO. The Employee Organizations Hallway Fair provided employees an opportunity to inquire and obtain information on the areas of coverage that fall under the Board's jurisdiction. The Board provided informational pamphlets explaining its process, and detailing who and what is covered by the PAB. In addition, representatives from the Board staff were available to answer questions and explain the Board's role and procedures.

50th Anniversary of Title VII of the Civil Rights Act of 1964

During the month of July 2014, the Board paid tribute to the 50th Anniversary of Title VII of the Civil Rights Act of 1964, which prohibited discrimination in the workplace. The Board prepared a timeline display, on the first floor of the Headquarters building, highlighting special moments leading up to the signing of the Civil Rights Act. The display also included historical photos

and copies of benchmark court cases, and notable quotes and was available from July through September.

Constitution Day

On September 17, 2014, GAO's Office of General Counsel sponsored a mid-day event in recognition of Constitution Day. The General Counsel's Office called on employees to volunteer and extended that invitation to the PAB staff to take part in the Constitution Day event. The PAB General Counsel and Clerk of the Board participated in reading sections of the Constitution along with other GAO volunteers.