

OFFICE OF THE STATE AUDITOR

DIANA DIZOGLIO

Official Audit Report – Issued October 30, 2024

Department of Labor Relations

For the period July 1, 2020 through June 30, 2022



OFFICE OF THE STATE AUDITOR

DIANA DIZOGLIO

October 30, 2024

Philip Roberts, Executive Director
Department of Labor Relations
Lafayette City Center
2 Avenue de Lafayette
Boston, MA 02111

Dear Mr. Roberts:

I am pleased to provide to you the results of the enclosed performance audit of the Department of Labor Relations. As is typically the case, this report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2020 through June 30, 2022. As you know, my audit team discussed the contents of this report with agency managers. This report reflects those comments.

I appreciate you and all your efforts at the Department of Labor Relations. The cooperation and assistance provided to my staff during the audit went a long way toward a smooth process. Thank you for encouraging and making available your team. I am available to discuss this audit if you or your team have any questions.

Best regards,



Diana DiZoglio
Auditor of the Commonwealth

cc: Lauren Jones, Secretary of the Executive Office of Labor and Workforce Development

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LIST OF ABBREVIATIONS

ARB	grievance arbitration
DLR	Department of Labor Relations
EOTSS	Executive Office of Technology Services and Security
GM	grievance mediation
NPF	non–police/firefighter interest mediation
PF	police/firefighter interest mediation
RPE	representation petition and election
UCP	unit clarification petition
ULP	unfair labor practice
WMA	written majority authorization petition

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Department of Labor Relations (DLR) for the period July 1, 2020 through June 30, 2022.

The purpose of our audit was to determine the following:

- whether DLR met its case stage timeline goals for closed cases in accordance with the DLR Case Processing Goals document;
- whether DLR submitted its annual reports to the Legislature as required by Section 9U of Chapter 23 of the General Laws; and
- whether DLR ensured that its employees completed cybersecurity awareness training in accordance with Sections 6.2.3 and 6.2.4 of the Executive Office of Technology Services and Security's Information Security Risk Management Standard IS.010.

Below is a summary of our finding, the effect of the finding, and recommendations, with links to each page listed.

Finding 1 Page 10	DLR did not meet all of its case stage timeline goals.
Effect	If DLR does not process cases in a timely manner, labor issues impacting the public sector may be prolonged, potentially resulting in a less stable, productive, and cooperative work environment.
Recommendations Page 11	<ol style="list-style-type: none">1. DLR should ensure that its policies and procedures outline how to effectively monitor case stage timeline goals and provide solutions to expedite cases that do not meet case state timeline goals.2. DLR should introduce universal formatting to its case management database to ensure data consistency, which will help DLR meet its case stage timeline goals, even during periods of high employee turnover.

OVERVIEW OF AUDITED ENTITY

The Department of Labor Relations (DLR) was established in November 2007, pursuant to Chapter 145 of the Acts of 2007. This legislation merged two former agencies: the Labor Relations Commission and the Board of Conciliation and Arbitration. Section 90 of Chapter 23 of the Massachusetts General Laws established DLR within, but not subject to the jurisdiction of, the Executive Office of Labor and Workforce Development. The Governor appoints a director to DLR who serves as its lead administrator and whose duties are outlined in Sections 9R(c) and (d) of Chapter 23 of the General Laws.

DLR's main administrative office is at the Lafayette City Center, 2 Avenue de Lafayette, in Boston. DLR's field offices are at 436 Dwight Street in Springfield and 100 Front Street in Worcester. As of June 30, 2022, DLR had 28 employees.

DLR states the following on its website:

We serve public sector employers, employees, and unions. We carry out our objectives by:

- Investigating, mediating, adjudicating, and litigating public sector unfair labor practice cases*
- Defining appropriate bargaining units and conducting elections in which public employees may choose whether and which employee organization they want to represent them in collective bargaining*
- Providing mediation, fact-finding, and arbitration services to assist public employers and employee representatives in resolving labor disputes and contract negotiations*
- Enforcing special collective bargaining laws related to municipal police and firefighters through the Joint Labor Management Committee.*

Types of Cases Processed

DLR processes several different types of cases and sets case stage timeline goals for each type. DLR included the following descriptions of each case type in its fiscal year 2022 annual report.

Unfair Labor Practice Cases

According to DLR's fiscal year 2022 annual report, most of DLR's cases are unfair labor practice (ULP) cases. The annual report states,

[ULP cases] may include various allegations, including, for example, allegations that an employer discriminated or retaliated against an employee because the employee had engaged in activities protected by law; allegations that an employer or employee organization failed to bargain in good faith; or allegations that an employee organization failed to properly represent a member of the bargaining unit.

Representation Cases

There are three different types of representation cases, which are described below.

- **Representation petition and election cases**—According to DLR’s fiscal year 2022 annual report, these case types relate to how “DLR conducts secret ballot elections for employees to determine whether they wish to be represented by a union.”
- **Written majority authorization petition cases**—According to DLR’s fiscal year 2022 annual report, these case types relate to the following situation:

The Card Check Law (Chapter 120 of the Acts of 2007) provides that the DLR "shall certify to the parties, in writing, and the employer shall recognize as the exclusive representative for the purposes of collective bargaining of all the employees in the bargaining unit, a labor organization which has received a written majority authorization. . . ." A union that provides the DLR (or a designated neutral) with proof of majority support (50% + 1) of an appropriate bargaining unit will be certified by the DLR as that bargaining unit's exclusive bargaining representative without an election. The DLR-issued regulations provide respondents with the right to file objections and challenges prior to a certification. Since the Card Check Law requires certification within 30 days, the DLR works with the parties to expedite all written majority authorization petitions.

- **Unit clarification petition cases**—According to DLR’s fiscal year 2022 annual report, these case types relate to how “a party to an existing bargaining relationship may file a petition with the DLR seeking to clarify or amend an existing bargaining unit or a DLR certification.”

Labor Dispute Mediation Cases

According to DLR’s fiscal year 2022 annual report, another case type that DLR handles involves “labor dispute mediation in both the public and the private sectors,” which it further sorts into one of the following classifications:

- a. Interest Mediation: Interest mediation is contract negotiation mediation. The DLR provides mediators to assist parties from the public and private sectors who are involved in such disputes. The DLR’s jurisdiction extends to all public sector labor contract disputes, though contract disputes involving municipal police and firefighters are mediated through the procedures and rules adopted by the [Joint Labor Management Committee]. . . .*

- b. Mediation of Prohibited Practice Charges: The formal mediation of prohibited practices charges is an important feature of the reorganization statute (Chapter 145 of the Acts of 2007). The DLR affords the parties numerous opportunities, both formal and informal, to avail themselves of the DLR's mediation services. . . .*
- c. Grievance Mediation: The DLR provides mediation services to parties who desire to mediate grievances arising out of the collective bargaining agreement. The DLR offers grievance mediation to all parties who file for grievance arbitration.*

Grievance Arbitration Cases

DLR's fiscal year 2022 annual report states,

The DLR provides grievance arbitration services that are utilized by all sectors of the Commonwealth's labor relations community. . . . Arbitration petitions [originate] from a variety of employer and employee representatives involving state, county, and municipal governments, including police departments, fire departments, public works departments, and school departments.

Case Stage Timeline Goals

Over the course of each case's life cycle, several events (which include, but are not limited to, filing a case, starting an investigation, or scheduling a hearing) occur. DLR sets case stage timeline goals for key events in each case. DLR lists these case stage timeline goals in its DLR Case Processing Goals document. These case stage timeline goals vary, depending on the case type (i.e., ULP, representation, meditation, or arbitration) and the corresponding event.

DLR measures its actual case/event timelines against its case stage timeline goals by taking the following two steps:

- First, DLR calculates the actual number of days it took to complete a specific case/event type. This process involves identifying both a starting event and a concluding event. The number of days between the two events represents the number of days it took DLR to complete the specific case/event type. DLR then compares the actual number of days to the number of days in the corresponding case stage timeline goal.
- Second, DLR calculates the percentages of case stage timeline goals that it met for each case and event type. DLR aims to meet the majority of its case stage timeline goals for all case and event types (this majority being anywhere from 60% to 80% as listed in the DLR Case Processing Goals document, depending on the case/event in question).

See Appendix A for more information regarding DLR's case stage timeline goals.

Annual Reports

According to Section 9U of Chapter 23 of the General Laws, DLR must file an annual report with the Legislature. The law specifically states,

The division shall, within 120 days of the close of each fiscal year, make a detailed report in writing to the general court, including without limitation: the number and types of cases filed with the division, including elections, and the disposition of all such cases; statistics regarding the number of decisions it has rendered and unresolved cases.

DLR prepares its annual reports with input from its employees, which includes the Executive Office of Labor and Workforce Development's chief of staff. DLR forwards the draft annual report to a manager at the Office of the Governor, who edits the draft then sends it back to DLR. After DLR reviews the updates and makes any necessary changes, it then forwards the annual report draft to DLR's director for approval. The Executive Office of Labor and Workforce Development's director of legislative affairs submits the annual report to the Legislature no later than October 28, which is 120 days after the end of the state's fiscal year (June 30).

Cybersecurity Awareness Training

The Executive Office of Technology Services and Security (EOTSS) has established policies and procedures that apply to all Commonwealth agencies within the executive branch. EOTSS recommends, but does not require, non-executive branch agencies to follow these policies and procedures. Section 6.2 of EOTSS's Information Security Risk Management Standard IS.010 states,

The objective of the Commonwealth information security training is to educate users on their responsibility to help protect the confidentiality, availability and integrity of the Commonwealth's information assets. Commonwealth Offices and Agencies must ensure that all personnel are trained on all relevant rules and regulations for cybersecurity.

To ensure that employees are clear on their responsibilities, EOTSS's policies require that all employees in state executive branch agencies complete a cybersecurity awareness course every year. All newly hired employees must complete an initial security awareness training course within 30 days after their orientation.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Department of Labor Relations (DLR) for the period July 1, 2020 through June 30, 2022.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. Did DLR meet its case stage timeline goals for closed cases in accordance with the DLR Case Processing Goals document?	No; see Finding <u>1</u>
2. Did DLR submit its annual reports to the Legislature as required by Section 9U of Chapter 23 of the General Laws?	Yes
3. Did DLR ensure that its employees completed cybersecurity awareness training in accordance with Sections 6.2.3 and 6.2.4 of the Executive Office of Technology Services and Security's (EOTSS's) Information Security Risk Management Standard IS.010?	Yes

To accomplish our audit objectives, we gained an understanding of the aspects of DLR's internal control environment relevant to our objectives by reviewing applicable policies and procedures and by interviewing DLR management.

To obtain sufficient, appropriate evidence to address our audit objectives, we performed the procedures described below.

Case Stage Timeline Goals

To determine whether DLR met its case stage timeline goals for closed cases in accordance with the DLR Case Processing Goals document, we took the following actions. We gathered the following information regarding closed cases, all of which originated from DLR's case management database:

- one Microsoft Excel spreadsheet of all 1,163 cases that were closed during the audit period (which we downloaded directly from the case management database) and
- one Microsoft Excel spreadsheet of all 48,075 unique events that related to the 1,163 cases that were closed during the audit period (which DLR provided to us).

We then took these two spreadsheets and merged them to create a list of 9,251 combined case/event data points for cases closed during the audit period.

For each of the 1,163 cases closed during the audit period, we identified a unique starting event and a unique concluding event using the list of 9,251 combined closed case/event data points. Then, we compared these events to 23 of the case stage timeline goals¹ from the DLR Case Processing Goals document by taking the following actions (based on the two steps from this document):

- First, we calculated the actual number of days between each corresponding starting event and concluding event and compared these actual numbers to the number of days allowed according to the DLR Case Processing Goals document.
- Second, we calculated the actual percentages for the combined closed case/event data points that met the corresponding case stage timeline goals and compared these actual percentages to the corresponding case stage timeline goal percentages documented in the DLR Case Processing Goals document.

See Finding 1 for information regarding issues we identified with DLR meeting its case stage timeline goals.

Annual Reports

To determine whether DLR submitted its annual reports to the Legislature as required by Section 9U of Chapter 23 of the General Laws, we took the following actions. We requested, and DLR provided us with, copies of the annual reports DLR filed for each fiscal year within the audit period. We requested, and DLR provided us with, copies of emails related to the submissions of these annual reports to the Legislature.

1. We only tested 23 of the case state timeline goals listed in the DLR Case Processing Goals document because some of the possible goals were not represented by cases that were closed during the audit period.

We then inspected these emails for the dates they were sent to determine whether DLR submitted the annual reports to the Legislature within 120 days of the close of the fiscal years.

We noted no exceptions in our testing; therefore, we concluded that DLR submitted its annual reports to the Legislature during the audit period.

Cybersecurity Awareness Training

To determine whether DLR ensured that its employees completed cybersecurity awareness training in accordance with Sections 6.2.3 and 6.2.4 of EOTSS's Information Security Risk Management Standard IS.010, we took the following actions.

We requested, and DLR provided us with, a list of all employees who were active during the audit period. This list of DLR employees contained all 32 employees, which included 28 active for the whole audit period and 4 terminated who were active during a portion of the audit period. For all 32 employees, we reviewed cybersecurity awareness training records that we obtained from DLR employees and Executive Office of Labor and Workforce Development management. These records came from the two cybersecurity awareness training platforms that DLR used during the audit period. We also inspected completion transcripts and reminder emails from both cybersecurity awareness training platforms to determine whether each employee completed cybersecurity awareness training in a timely manner.

We noted no exceptions in our testing; therefore, we concluded that DLR ensured that its employees completed cybersecurity awareness training during the audit period.

Data Reliability Assessment

Case Management Database

To determine the reliability of the information in the case management database, we tested certain information system controls (e.g., account management, security training, personnel screening, user identification and authentication, session locks, and unsuccessful login attempts). To test the accuracy of the Microsoft Excel spreadsheet of the 1,163 cases that were closed during the audit period, we selected a judgmental sample² of 20 closed cases from the list and compared its information (e.g., the

2. Auditors use judgmental sampling to select items for audit testing when a population is very small, the population items are not similar enough, or there are specific items in the population that the auditors want to review. Auditors use their knowledge and judgment to select the most appropriate sample. For example, an auditor might select items from areas of

case charging party,³ the case number,⁴ the case starting date, and the case closing date) to the information in source documents that were scanned and stored in the case management database.

To test the completeness of the data we received from DLR's case management database, we selected a judgmental sample of 20 source documents (e.g., emails and settlement agreements) from DLR's case management database and traced the information in these documents back to the information (e.g., the case charging party, the case number, the case starting date, and the case closing date) recorded in the Microsoft Excel spreadsheet of 1,163 closed cases.

To test the reliability of the list of 9,251 combined case/event data points for cases closed during the audit period, we selected a judgmental sample of 20 events from the list, and compared the information corresponding to them (e.g., the case number, the event starting date, and the event closing date) to source documents (e.g., emails and case notes), doing so by accessing the DLR case management database directly. Furthermore, we judgmentally selected 20 source documents and traced the information in them (e.g., the case number, the case starting date, and the case closing date) to the information in the list of 9,251 combined case/event data points.

Cybersecurity Awareness Training

To determine the reliability of the cybersecurity awareness training records, we verified that the list of all 32 employees who were active during the audit period was complete and accurate by tracing the names on this list to the timesheets for all employees who were active for two weeks (that we judgmentally selected) out of each year of the audit period. We also reviewed System and Organization Control reports⁵ for both of the cybersecurity awareness training platforms that DLR used during the audit period and ensured that an independent contractor performed information system control tests (e.g., security management, access control, configuration management, segregation of duties, and contingency planning) on the platforms.

Based on the results of the data reliability assessment procedures described above, we determined that the information obtained was sufficiently reliable for the purposes of our audit.

high risk. The results of testing using judgmental sampling cannot be used to make conclusions or projections about entire populations; however, they can be used to identify specific issues, risks, or weaknesses.

3. The charging party is the name of the entity that filed the claim.

4. The case number is a unique identifier that DLR assigns to each case for identification purposes.

5. A System and Organization Control report is a report on controls about a service organization's systems relevant to security, availability, processing integrity, confidentiality, or privacy issued by an independent contractor.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Department of Labor Relations did not meet all of its case stage timeline goals.

The Department of Labor Relations (DLR) did not meet all of its case stage timeline goals. Our testing revealed that DLR did not meet 9 (39%) out of 23 of its case stage timeline goals.

The table below highlights the results of the case stage timeline goals that failed our testing for the following case types:

- unfair labor practice (ULP) cases;
- representation cases specifically concerning representation petition and election (RPE) cases;
- representation cases specifically concerning written majority authorization petition (WMA) cases; and
- labor dispute mediation cases specifically concerning police/firefighter interest mediation (PF) cases.

See Appendix B for a table that summarizes the results of the case stage timeline goals that both passed and failed our testing.

Case Type	Case Stage*	Case Stage Timeline Goal
ULP	3. Investigation Ripe for Decision to Issuance of Probable Cause Determination—Level 1	80% within 40 Days COVID-19 Target—45 days
ULP	4. Investigation Ripe for Decision to Issuance of Probable Cause Determination—Level 2	80% within 50 Days
ULP	5. Issuance of Complaint to 1st Day of Hearing—Level 1	70% within 210 Days
RPE	1. Filing of the Petition to the Election Being Held	80% within 120 Days
RPE	2. Filing of the Petition to Consent Election Agreement	70% within 60 Days
RPE	3. Consent Election Agreement to Election	80% within 60 Days
RPE	5. Briefs Filed to Hearing Officer—Draft Decision	60% within 60 Days
WMA	2. Investigator Assigned to Certification	80% within 30 Days
PF	1. Filing of the Petition to the First Mediation Session	60% within 60 Days

* While DLR calls these case type descriptions, we have labeled them case stages to differentiate between these and the case types as defined in “Types of Cases Processed” in the Overview section of this report.

If DLR does not process cases in a timely manner, labor issues impacting the public sector may be prolonged, potentially resulting in a less stable, productive, and cooperative work environment.

Authoritative Guidance

In response to our prior audit recommendations (No. 2019-0231-3S), DLR created a document titled DLR Case Processing Goals (see Appendix A), which specified the following:

- the maximum number of days DLR should take to complete each of 23 unique case stage timeline goals and
- the percentage goals that DLR should meet regarding staying under the maximum number of days for each case stage timeline.

Reasons for Issue

DLR did not have adequate policies and procedures that outlined how to effectively monitor case stage timeline goals or that provided solutions to expedite cases that did not meet case stage timeline goals. Also, we found that there were several instances where an event recorded in a case file in DLR's case management database did not match the terminology that was supposed to be recorded, according to the DLR Case Processing Goals document. When we informed DLR officials about this issue, they said this was because the case management database does not have a universal format for recorded information. Instead, employees must enter the information manually, which leads to consistency issues. This issue was especially prevalent when calculating the time between events.

DLR's director told us that, during the audit period, various staffing changes resulted in an increased amount of time to complete cases.

Recommendations

1. DLR should ensure that its policies and procedures outline how to effectively monitor case stage timeline goals and provide solutions to expedite cases that do not meet case state timeline goals.
2. DLR should introduce universal formatting to its case management database to ensure data consistency, which will help DLR meet its case stage timeline goals, even during periods of high employee turnover.

Auditee's Response

In response to the recommendations contained in the 2019 [Office of the State Auditor (OSA)] report (No. 2019-0231-3S), DLR developed case processing time targets for all types of cases processed. While DLR strives to achieve this target in every case, it is understood there will

inevitably be cases where circumstances outside of DLR's control will prevent achieving time targets. The goal reflects the percent of cases where the DLR expects to meet the time target as well as the percent of cases where it expects that circumstance outside of DLR's control will prevent it from meeting those time targets. The information below reflects those circumstances.

In addition to time targets, DLR also decided to track certain case processing times with the understanding these are not performance goals.

DLR also provided the responses below about case stages that did not meet the case stage timeline goal, as noted in the table in Finding 1.

Regarding ULP 3 case stages not meeting the case stage timeline goal, DLR stated the following:

Management agrees with the finding, based on the case processing goals that were formally in place at the time of the audit. We note, however, that in [fiscal year] 2021, it was decided that the time targets for new employees would be changed. During the audit period, four Counsel II Hearing Officers left DLR and their positions were backfilled by entry-level Counsel I Investigators. In November 2020, DLR modified its Performance Standard for new Counsel I Investigators to reflect that it would not be appropriate to expect them to meet the 45-day time target for issuance of probable cause determinations until they gained experience. This change to the case processing goals was conveyed to the affected staff but was not formally captured in the DLR Case Processing Goals at that time. The new Performance Standard for Counsel I Investigators in their first year of practice is as follows:

*Investigate prohibited practice charges and issue resulting probable cause determinations within 45 days of the investigation or in the event that a party has permission to submit additional information after the investigation, within 45 days of the closing of the record. **The timeframe for issuance of probable cause determinations will be 90 days for the first six months after assignment of investigation duties and 75 days for the next six months after assignment of investigation duties.** If for any given reason that goal is unrealistic (due to complexity, other case priorities or current backlog), work together with the Director or designee to establish a reasonable goal.*

Of the four cases identified as "Failed," two were processed by new employees and in each instance, these two cases both met the adjusted Performance Standard. Adjusting for the change in time targets for new employees established in [fiscal year] 2021, this goal would have been met.

Management intends to formally modify its case processing goals to reflect these adjusted Performance Standards.

Regarding ULP 4 case stages not meeting the case stage timeline goal, DLR stated the following:

See above regarding change in time targets for newly hired investigators.

Of the 39 cases identified as "Failed," 19 of those were processed by new employees and of these, 10 cases met the adjusted new employee targets and 9 failed the adjusted targets. Adjusting for

the change in time targets for new employees established in [fiscal year] 2021, this goal would have been met.

Management intends to formally modify its case processing goals to reflect these adjusted Performance Standards.

Regarding ULP 5 case stages not meeting the case stage timeline goal, DLR stated the following:

Management agrees with this finding, however, as noted in Appendix A of the Audit, this metric is not considered a performance target and is not included in the staff's Employee Performance Review System (EPRS). As discussed above, during the audit period, four of DLR's twelve Hearing Officers left and their positions were filled by employees at the Counsel I Investigator level. Counsel I Investigators typically do not conduct hearings for at least their first year with DLR.

Training the new Hearing Officers, while at the same time having lost a third of our Hearing Officers, made it difficult to schedule hearings within the tracked time period while maintaining appropriate caseloads for the remaining Hearing Officers.

Regarding RPE 1 case stages not meeting the case stage timeline goal, DLR stated the following:

In an election case, the parties have a right, under [Massachusetts General Law] Chapter 150E, to a hearing before [DLR's Commonwealth Employment Relations Board (CERB)] concerning the composition of the bargaining unit and other details concerning the election unless they agree otherwise. Thus, the election cannot be held until either (1) the parties agree to key aspects of the election through a Consent Election Agreement, or (2) the CERB conducts a hearing and issues an order setting forth the details of the election.

Of the 11 cases identified as "Failed," one case . . . involved extensive litigation and a hearing before the CERB on a complex and novel issue. Six of the cases involved the parties' own delays in reaching a Consent Election Agreement. Consent Election Agreements must be agreed upon by all parties to the case—and agreement is often outside the control of DLR. Because of the rules governing the sequence and timing of elections, filing the petition alone cannot be the only thing considered when reviewing related timing.

Management intends to utilize the reporting capabilities of the new case management system to encourage staff to be more diligent in pursuing Consent Election Agreements in a timely fashion.

Regarding RPE 2 case stages not meeting the case stage timeline goal, DLR stated the following:

Because a Consent Election Agreement must be agreed upon by all of the parties to the case, the ability to reach an agreement is often outside the control of DLR employee assigned to the case. Absent a Consent Election Agreement, the dispute must go to a hearing before the CERB and after briefs have been filed, the CERB will issue a decision resolving the disputed issue. This process will inevitably take far longer than the 60-day time target for reaching a Consent Election Agreement and thus it is typically preferable to continue to pursue an agreement between the parties rather than shift to the CERB hearing process. In addition, in one of the cases identified as

"Failed," . . . issues concerning a blocking ULP charge had to be litigated before the CERB before a Consent Election Agreement could be entered into.

Management intends to utilize the reporting capabilities of the new case management system to encourage staff to be more diligent in pursuing Consent Election Agreements in a timely fashion.

Regarding RPE 3 case stages not meeting the case stage timeline goal, DLR stated the following:

During the audit period, which included the COVID-19 pandemic, DLR conducted all elections by mail ballot, as opposed to holding elections in person. When conducting elections by mail ballot, meeting the time targets between the Consent Election Agreement and the election was a challenge because time must be allowed for the ballots to be received by the voter, filled out, and returned to DLR. In addition, in at least one case, . . . the mailing of the ballots was delayed after the Consent Election Agreement was reached because the Respondent failed to provide the required list of eligible voters and their mailing addresses, in a timely fashion, after staff sent reminders.

Management intends to utilize the reporting capabilities of the new case management system to encourage staff to schedule the elections in a timely fashion.

Regarding RPE 5 case stages not meeting the case stage timeline goal, DLR stated the following:

In one of the only two cases identified as "Failed," . . . the Hearing Officer's draft decision was untimely due to the extraordinary complexity of the case, involving a novel procedural question and extensive litigation over a complex issue.

Regarding WMA 2 case stages not meeting the case stage timeline goal, DLR stated the following:

Of the ten WMA cases identified as "Failed," five involved employees working in the cannabis cultivation industry, which are cases that present new and unique challenges. DLR does not generally have jurisdiction over private sector employees, they come under the jurisdiction of the National Labor Relations Board (NLRB). However, agricultural employees are exempted by statute from NLRB jurisdiction and instead, DLR has jurisdiction over them. Most companies that are involved in cannabis cultivation have both agricultural and non-agricultural employees and so, when a case involving the cannabis cultivation industry is filed with DLR, the first step is to determine which employees are agricultural, over whom DLR has jurisdiction, and which are not (and therefore subject to NLRB jurisdiction). This process involves challenges and counterchallenges to the employee lists and can cause the time to certification to extend beyond the 30-day target.

Management intends to utilize the reporting capabilities of the new case management system for staff to more effectively track and comply with time targets.

Regarding Joint Labor Management Committee (JLMC) 1 case stages (which are referred to as PF cases in this report) not meeting the case stage timeline goal, DLR stated the following:

Historically, the JLMC has conducted all of its mediation sessions in person. With the onset of the COVID-19 pandemic, all mediations were conducted by video conference and many parties,

unaccustomed to this mode of mediation, wished to have the mediation postponed in hopes the pandemic would abate, and in-person mediation could resume. As a result, and often at the request of the parties, initial mediation sessions occurred outside the time target.

[OSA] arrived at their figures by measuring, in the Time Matters case-tracking system, the number of days between event code "Case Filed" and event code "Mediation Conducted." Management's review of the data tested by SAO identified many cases where JLMC staff failed to input the first instance of the "Mediation Conducted" in the case tracking system.

Management reached this conclusion because subsequent events in the case tracking system could only have been entered if the initial mediation session had taken place. Assuming that the initial mediation sessions took place as scheduled (which, as explained above, is a logical and appropriate assumption), JLMC would have achieved an 85% success rate which is well above the goal of 60%. If the initial mediation session did not take place as scheduled, it was because one or both of the parties requested postponement.

In the new case management system, on the day after the initial mediation session was scheduled to occur, staff will be required to enter whether the mediation took place.

Regarding Recommendation 1 in this audit report, DLR stated the following:

DLR's current legal case management system is 13 years old and has reached the end of its life cycle. The current system does not allow either staff or supervisors to monitor compliance with case processing targets in real time. DLR has been working with [the Executive Office of Technology Services and Security] over the past two years to design and implement a new legal case management system that will allow real-time monitoring of case processing targets. The new system, which is in the final stages of testing, is expected to go live on August 27, 2024, and certain functionality described above, such as reports and reminders, will be available in November 2024. The new system will provide staff with real-time information regarding the cases assigned to them and compliance with time targets. The new system will also include robust audit functionality, allowing supervisors and managers to make queries and generate related reports on various metrics including individual staff compliance and more broadly department-wide compliance with goals.

Policies and procedures to utilize the enhanced monitoring and reporting capabilities of the new case management system will be developed by December 2024.

Regarding Recommendation 2 in this audit report, DLR stated the following:

The new legal case management system, discussed above, is designed with universal formatting of case processing events to ensure data consistency. The new system will go live on August 27, 2024, and certain functionality described above, such as reports and reminders, will be available in November 2024.

Auditor's Reply

In its response, DLR stated that it revised its case stage timeline goals in fiscal year 2021 to give newly hired investigators additional time to complete case stages. Additionally, DLR's response stated that the results of this audit would have been different if we had used the updated case stage timeline goals. While fiscal year 2021 was in the audit period, DLR did not communicate these revised timeline goals to us while we conducted this audit, nor was it documented in the DLR Case Processing Goals document that DLR provided to us at the start of the audit. DLR's response stated that it intends to update this document with the revised performance standards for meeting its goals. We agree that this will be important so DLR management and its staff members fully understand the case stage timeline goals.

In its response, DLR also stated that this audit measured whether DLR met case stage timeline goals for case types that DLR "did not consider a performance target." These are noted in [Appendix A](#) as case types it will "track" rather than "target." While we conducted this audit, it was our understanding that timelines for case types noted as "track" were still a requirement of DLR if these case types contained a corresponding case stage timeline goal, but that these were at a lower risk of not meeting the timeline requirement. Therefore, we included them in our audit to determine if DLR met case stage timeline goals for all case types marked as "track" and "target." We recommend that DLR revise its Case Processing Goals document to clarify the distinction between case types that will be categorized as "track" and "target" so that DLR management and staff members understand the case stage timeline goals of the agency.

Based on its response, DLR is taking measures to address our concerns in this area. Our office looks forward to our post-audit review alongside DLR, where we intend to further review the revisions in DLR's Case Processing Goals document.

APPENDIX A

The Department of Labor Relations (DLR) uses its DLR Case Processing Goals document to track its progress for different case types, case stages, and events.

As previously stated in the “Case Stage Timeline Goals” section of this report, DLR measures its actual case/event timelines against its case stage timeline goals by taking the following two steps:

- First, DLR calculates the actual number of days it took to complete a specific case/event type.
- Second, DLR calculates the percentages of case stage timeline goals that it met for each case and event type.

An example of these two steps is as follows: For an unfair labor practice case, the first case stage is labeled as “Filing of the Charge to Investigation—Level 1.” The starting event for this case stage is labeled as “Case Filed” and the concluding event is labeled as “Investigation Scheduled.” The DLR Case Processing Goals document states that the number of days between these two events must not exceed 120 days. DLR’s percentage goal for this case stage is for at least 75% of all of these case stages to meet the 120-day case stage timeline goal.

Also, each case type is either listed as “Track,” which indicates that DLR does not measure the goals associated with this case type on a regular basis because it stated that, historically, it usually meets those goals, or “Target,” which indicates that DLR does measure the goals associated with this case type on a regular basis.

The following tables, which include information that comes directly from the DLR Case Processing Goals document, further illustrate DLR’s case stage timelines goals.

Unfair Labor Practice Cases

Case Stage	Track/Target	Case Stage Timeline Goal
1. Filing of the Charge to Investigation—Level 1	Track	75% within 120 Days
	Track	Number of Postponements Average Duration of Postponement
2. Filing of the Charge to Investigation—Level 2	Track	75% within 150 Days
	Track	Number of Postponements Average Duration of Postponement
3. Investigation Ripe for Decision to Issuance of Probable Cause Determination—Level 1	Target	80% within 40 Days
4. Investigation Ripe for Decision to Issuance of Probable Cause Determination—Level 2	Target	80% within 50 Days
5. Issuance of Complaint to 1st Day of Hearing—Level 1	Track	70% within 210 Days
	Track	Number of Postponements Average Duration of Postponement
6. Issuance of Complaint to 1st Day of Hearing—Level 2	Track	70% within 400 Days
	Track	Number of Postponements Average Duration of Postponement
7. Hearing Ripe for Decision to Issuance of Hearing Officer Decision—Level 1	Target	80% within 240 Days
8. Hearing Ripe for Decision to Issuance of Hearing Officer Decision—Level 2	Target	80% within 240 Days
9a. Probable Cause Appeal—Full Dismissal—Ripe for Decision to Issuance of [Commonwealth Employment Relations Board] Decision	Target	75% within 160 Days
9b. Probable Cause Appeal—Partial Dismissal	Target	80% Prior to Prehearing Conference
10. Hearing Officer Appeal Ripe for [Commonwealth Employment Relations Board] Decision to Issuance of [Commonwealth Employment Relations Board] Decision	Target	75% within 240 Days

Representation Cases: Representation Petition and Election Cases

Case Stage	Track/Target	Case Stage Timeline Goal
1. Filing of the Petition to the Election Being Held	Target	80% within 120 Days
2. Filing of the Petition to Consent Election Agreement	Target	70% within 60 Days
3. Consent Election Agreement to Election	Target	80% within 60 Days
4. Election Held [for Issuance of Certified Results]	Target	80% within 10 Days
5. Briefs Filed to Hearing Officer—Draft Decision	Target	60% within 60 Days
6. Hearing Officer Draft Decision to [Commonwealth Employment Relations Board] Decision Issued	Target	60% within 60 Days

Representation Cases: Written Majority Authorization Petition Cases

Case Stage	Track/Target	Case Stage Timeline Goal
1. Filing of the Petition to Investigator Assigned	Target	80% within 8 Days
2. Investigator Assigned to Certification	Target	80% within 30 Days

Representation Cases: Unit Clarification Petition Cases

Case Stage	Track/Target	Case Stage Timeline Goal
1. Case Ripe for Decision to Issuance of Decision	Target	60% within 120 Days

Labor Dispute Mediation Cases: Non–Police/Firefighter Interest Mediation Cases

Case Stage	Track/Target	Case Stage Timeline Goal
1. Filing of the Petition to the First Mediation Session	Target	60% within 60 Days
2. Filing of the Petition to Tentative Agreement	*	*

* These cells are intentionally blank, as they came to us blank in the original DLR Case Processing Goals document.

Labor Dispute Mediation Cases: Police/Firefighter Interest Mediation Cases

Case Stage	Track/Target	Case Stage Timeline Goal
1. Filing of the Petition to the First Mediation Session	Target	60% within 60 Days
2. Filing of the Petition to Tentative Agreement	Track	Days to Closing

Labor Dispute Mediation Cases: Grievance Mediation Cases

Case Stage	Track/Target	Case Stage Timeline Goal
1. Filing of the Petition to the First Mediation Session	Target	60% within 60 Days
2. First Mediation Session to Closing	Track	Days to Closing

Grievance Arbitration Cases

Case Stage	Track/Target	Case Stage Timeline Goal
1. Arbitration Ripe for Decision to Issuance of Decision	Target	75% within 150 Days [COVID-19] Target—275 Days

APPENDIX B

For reference, the following are case types and the acronyms used to represent them:

- unfair labor practice (ULP) cases;
- representation cases specifically concerning representation petition and election (RPE) cases;
- representation cases specifically concerning written majority authorization petition (WMA) cases;
- representation cases specifically concerning unit clarification petition (UCP) cases;
- labor dispute mediation cases specifically concerning non-police/firefighter interest mediation (NPF) cases;
- labor dispute mediation cases specifically concerning police/firefighter interest mediation (PF) cases;
- labor dispute mediation cases specifically concerning grievance mediation (GM) cases; and
- grievance arbitration (ARB) cases.

The table below summarizes the results of the case stage timeline goals that both passed and failed our testing for the following case types.

Case Type	Case Stage*	Case Stage Timeline Goal	Pass/Fail
ULP	1. Filing of the Charge to Investigation—Level 1	75% within 120 Days	Pass
ULP	2. Filing of the Charge to Investigation—Level 2	75% within 150 Days	Pass
ULP	3. Investigation Ripe for Decision to Issuance of Probable Cause Determination—Level 1	80% within 40 Days COVID-19 Target—45 days	Fail
ULP	4. Investigation Ripe for Decision to Issuance of Probable Cause Determination—Level 2	80% within 50 Days	Fail
ULP	5. Issuance of Complaint to 1st Day of Hearing—Level 1	70% within 210 Days	Fail
ULP	6. Issuance of Complaint to 1st Day of Hearing—Level 2	70% within 400 Days	Pass
ULP	7. Hearing Ripe for Decision to Issuance of Hearing Officer Decision—Level 1	80% within 240 Days COVID-19 Target—365 Days	Pass
ULP	8. Hearing Ripe for Decision to Issuance of Hearing Officer Decision—Level 2	80% within 240 Days COVID-19 Target—365 Days	Pass
ULP	9a. Probable Cause Appeal—Full Dismissal—Ripe for Decision to Issuance of [Commonwealth Employment Relations Board] Decision	75% within 160 Days	Pass

Case Type	Case Stage*	Case Stage Timeline Goal	Pass/Fail
ULP	9b. Probable Cause Appeal—Partial Dismissal	80% Prior to Prehearing Conference	Pass
ULP	10. Hearing Officer Appeal Ripe for [Commonwealth Employment Relations Board] Decision to Issuance of [Commonwealth Employment Relations Board] Decision	75% within 240 Days	Pass
RPE	1. Filing of the Petition to the Election Being Held	80% within 120 Days	Fail
RPE	2. Filing of the Petition to Consent Election Agreement	70% within 60 Days	Fail
RPE	3. Consent Election Agreement to Election	80% within 60 Days	Fail
RPE	4. Election Held [for Issuance of Certified Results]	80% within 10 Days	Pass
RPE	5. Briefs Filed to Hearing Officer—Draft Decision	60% within 60 Days	Fail
WMA	1. Filing of the Petition to Investigator Assigned	80% within 8 Days	Pass
WMA	2. Investigator Assigned to Certification	80% within 30 Days	Fail
UCP	1. Case Ripe for Decision to Issuance of Decision	60% within 120 Days	Pass
NPF	1. Filing of the Petition to the First Mediation Session	60% within 60 Days	Pass
PF	1. Filing of the Petition to the First Mediation Session	60% within 60 Days	Fail
GM	1. Filing of the Petition to the First Mediation Session	60% within 60 Days	Pass
ARB	1. Arbitration Ripe for Decision to Issuance of Decision	75% within 150 Days COVID-19 Target—275 Days	Pass

* While DLR calls these case type descriptions, we have labeled them case stages to differentiate between these and the case types as defined in “Types of Cases Processed” in the Overview section of this report.