



FEDERAL LABOR RELATIONS AUTHORITY

OFFICE OF ADMINISTRATIVE LAW JUDGE - FLRA HEARINGS

Civilian Personnel Management System

DELRS 2007

St. Louis, MO

May 14, 2007

Charles R. Center

Chief Administrative Law Judge



OVERVIEW

- **OALJ Function**
- **OALJ Performance**
- **OALJ ULP Hearings**
- **Recent Cases**



OALJ FUNCTION

➤ WHERE OALJ FITS AT THE FLRA

➤ AUTHORITY

➤ 3 Presidential Appointees

➤ Chairman and 2 members

➤ No more than 2 from the same political party

➤ Office of Administrative Law Judges

➤ 4 ALJs

➤ Chief Judge – Washington, DC

➤ 2 Judges in Washington, DC

➤ 1 Judge in Dallas, TX

➤ Settlement Officer and Office Administrator

➤ General Counsel

➤ Deputy General Counsel

➤ 7 Regional Directors

➤ Regional Attorneys



OALJ FUNCTION

➤ **AUTHORITY**

- **DALE CABANISS, CHAIRMAN**
- **WAYNE C. BEYER, MEMBER**
- **CAROL W. POPE, MEMBER**

➤ **GENERAL COUNSEL**

- **COLLEEN DUFFY KIKO**



OALJ FUNCTION

➤ WHAT WE DO

- **Unfair Labor Practice Hearings**
 - 5 CFR 2423.20
 - Primary Function OALJ Performs for FLRA
- **Attorney Fee Hearings under EAJA**
 - 5 CFR 2430.7
- **Ex Parte Communication Hearings**
 - 5 CFR 2414.9



OALJ FUNCTION

➤ WE DO NOT DO

- **Conduct Representation Hearings**
 - 5 CFR 2422.18
- **Arbitration Cases**
 - 5 CFR 2425
- **Negotiability Cases**
 - **Federal Service Impasses Panel Decisions**
 - 5 USC 7119
 - 5 CFR 2424



OALJ FUNCTION

➤ GENERAL COUNSEL/REGIONAL DIRECTORS

- Receives ULP Charge
- Conduct Investigation
- Decide to Issue or Not Issue a Complaint



➤ OFFICE OF ADMINISTRATIVE LAW JUDGES

- Conducts a ULP Hearing
- Issues a Recommended Decision



➤ AUTHORITY

- Adopts the Recommended Decision if no exceptions are filed
- Reviews any Exceptions/Cross-Exceptions Filed and issues their own decision



➤ FINAL DECISION SUBJECT TO COURT REVIEW



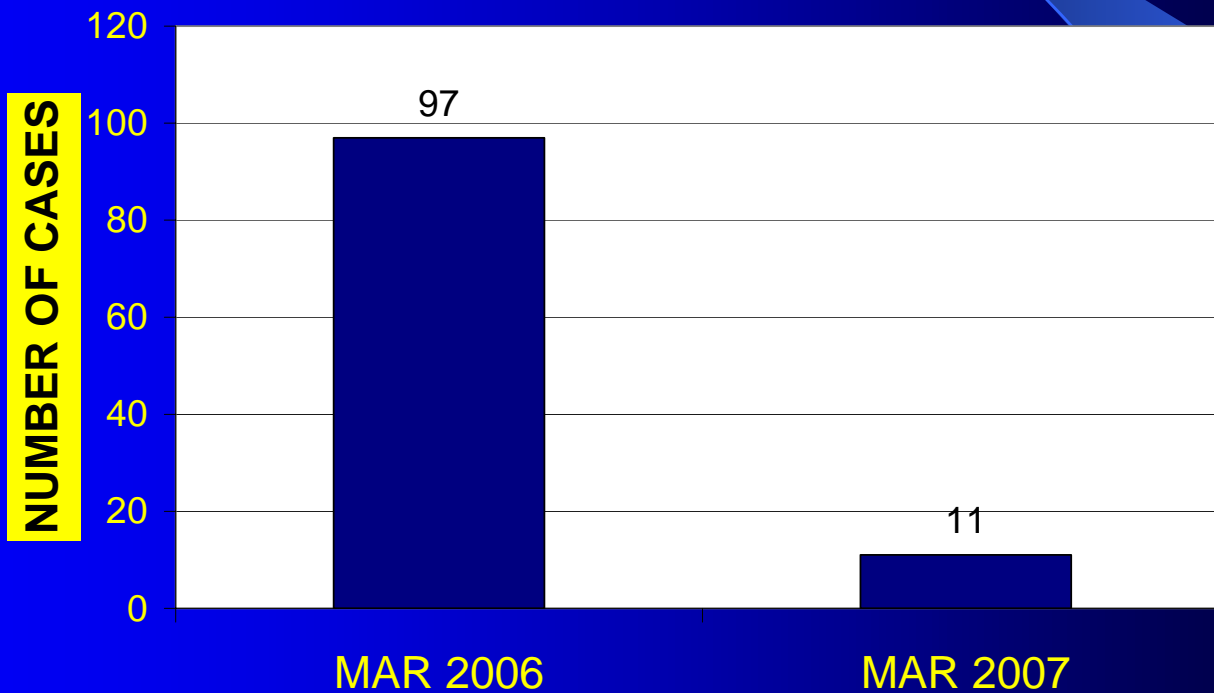
HOW ARE WE DOING?

- **BETTER**
- **Upcoming slides compare**
 - **Status as of March in FY2006**
 - **Status as of March in FY2007**
- **OALJ CAN CONTINUE TO IMPROVE**
- **WHY IT IS IMPORTANT**



OALJ PERFORMANCE

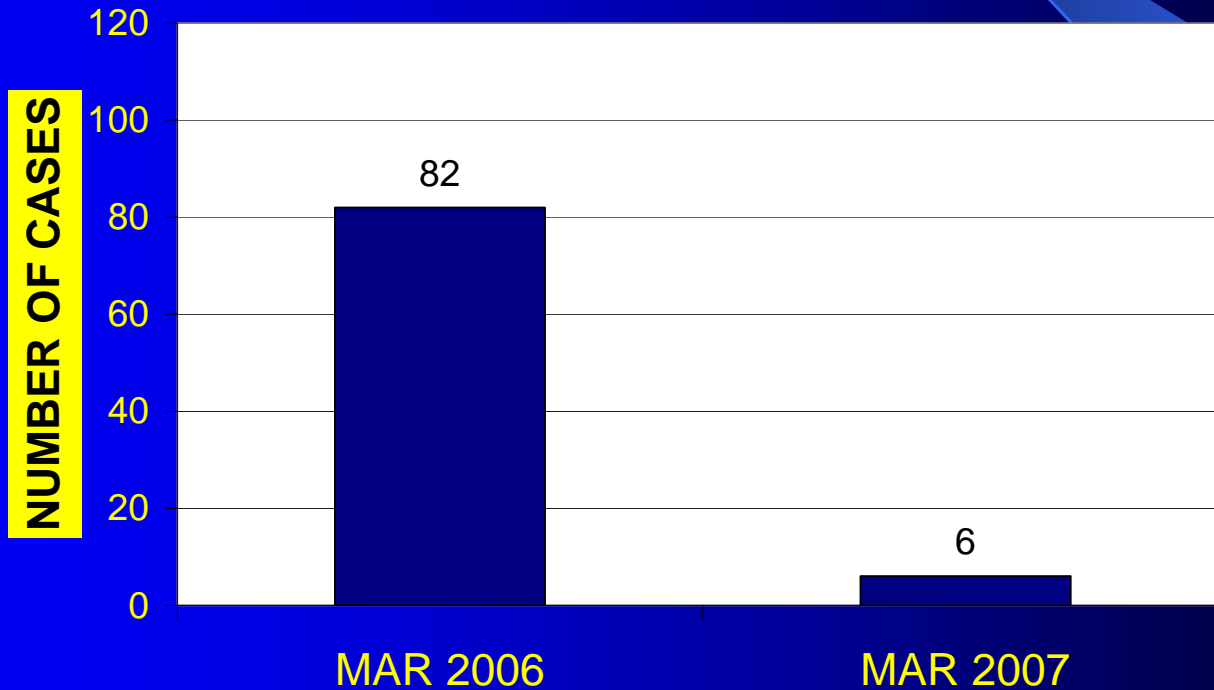
TOTAL CASES PENDING





OALJ PERFORMANCE

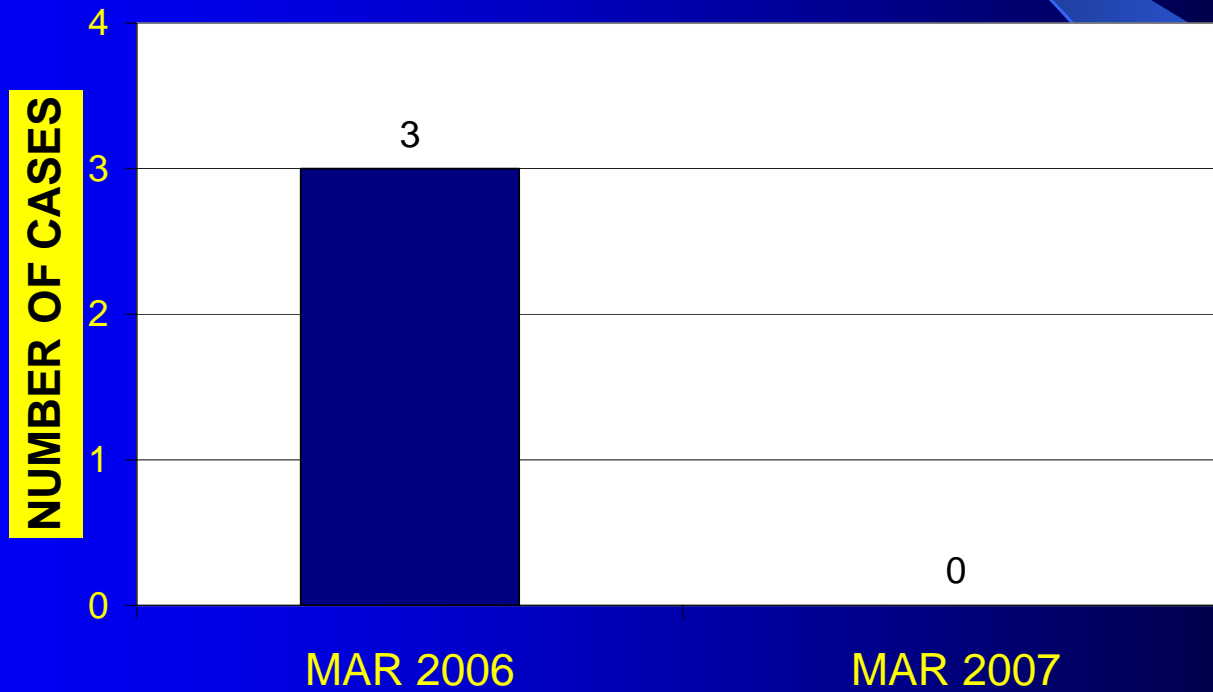
TOTAL CASES PENDING HEARING





OALJ PERFORMANCE

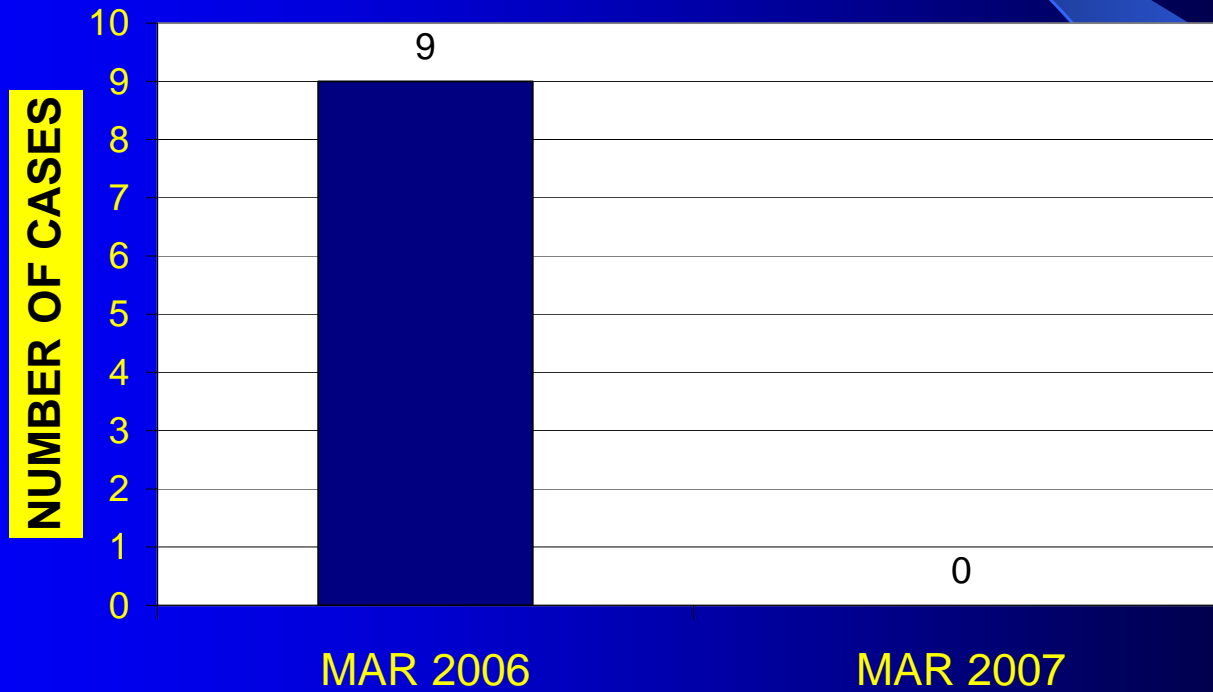
CASES OVER 350 DAYS WITHOUT HEARING





OALJ PERFORMANCE

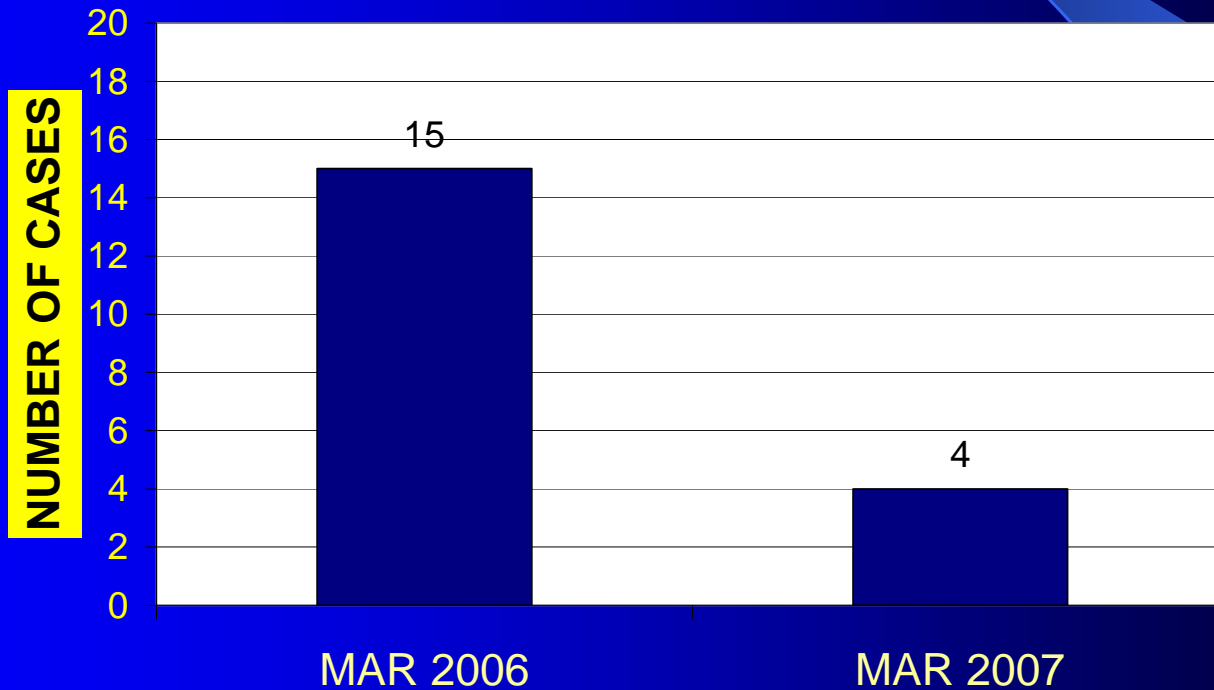
TOTAL CASES OVER 350 DAYS





OALJ PERFORMANCE

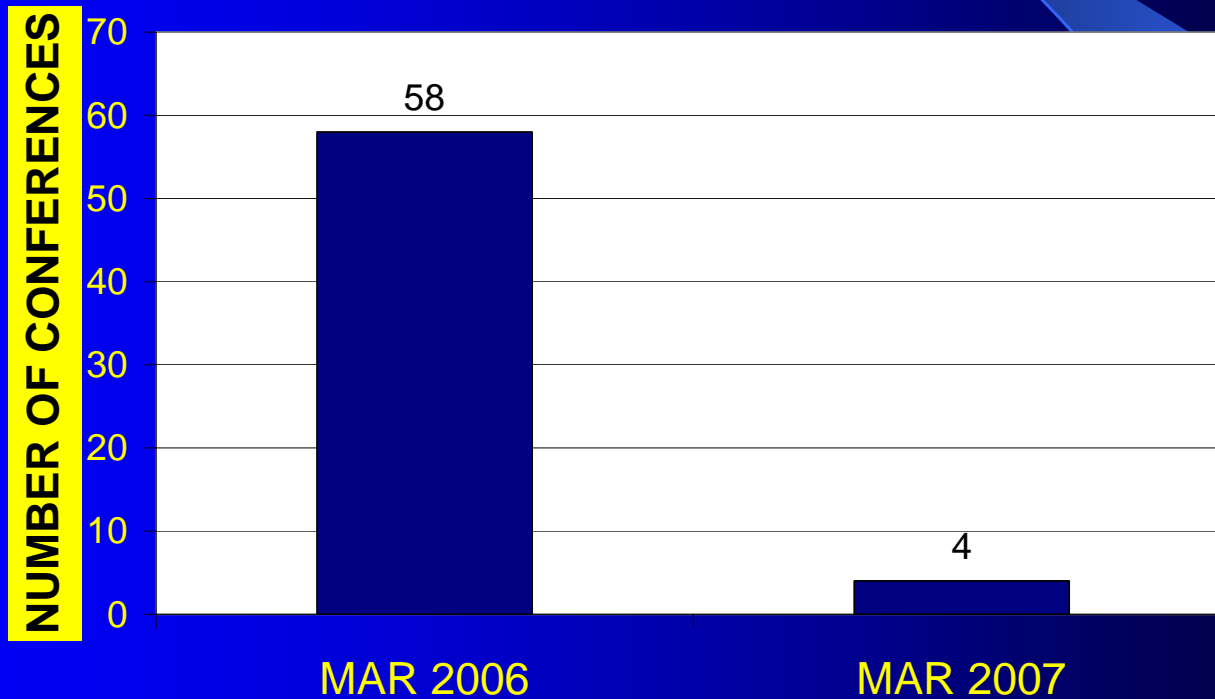
ALJ DECISIONS PENDING POST HEARING





OALJ PERFORMANCE

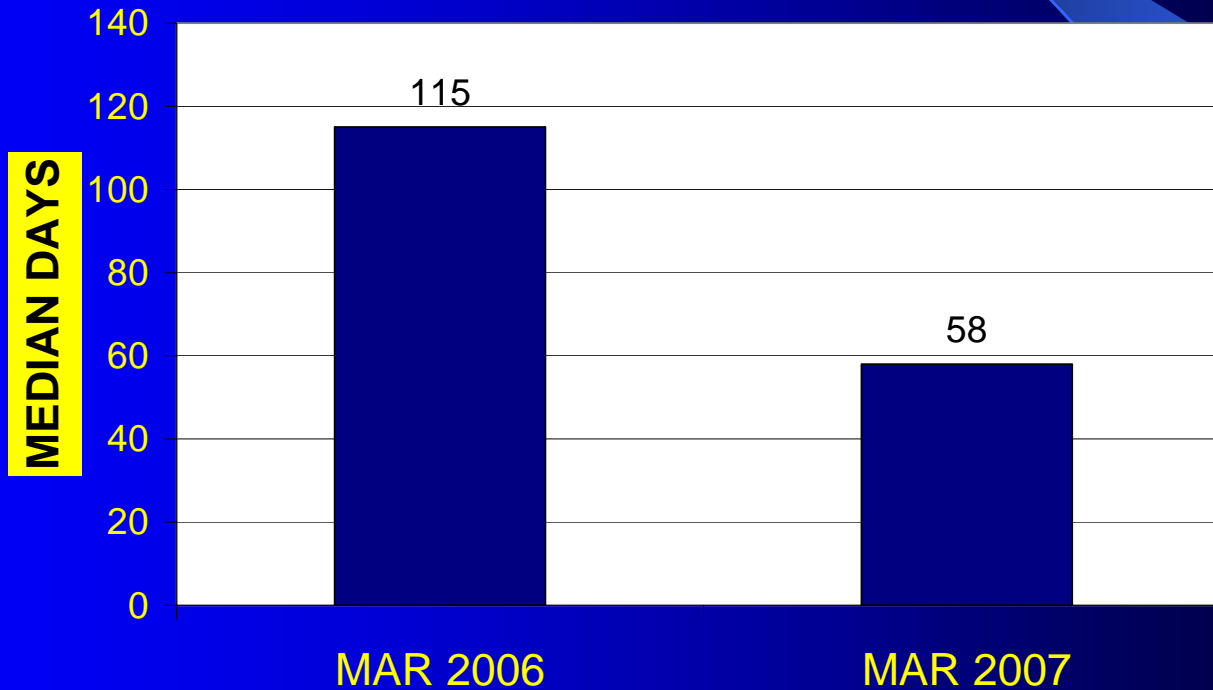
SETTLEMENT CONFERENCES PENDING





OALJ PERFORMANCE

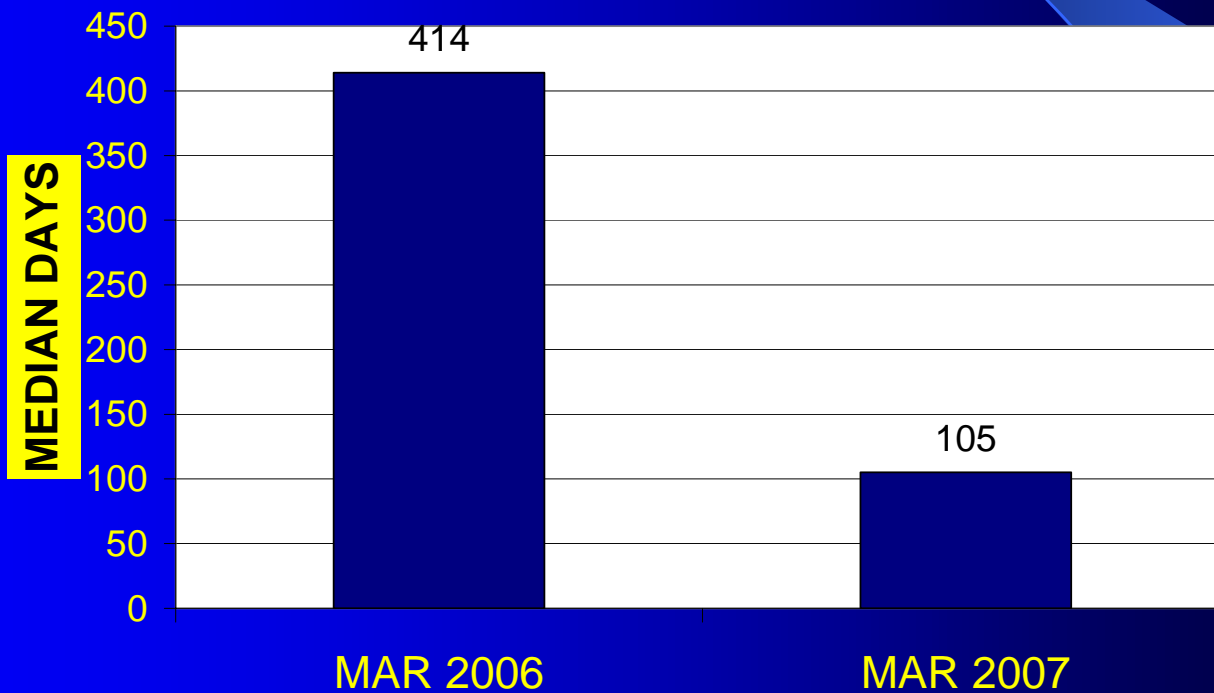
COMPLAINT TO HEARING





OALJ PERFORMANCE

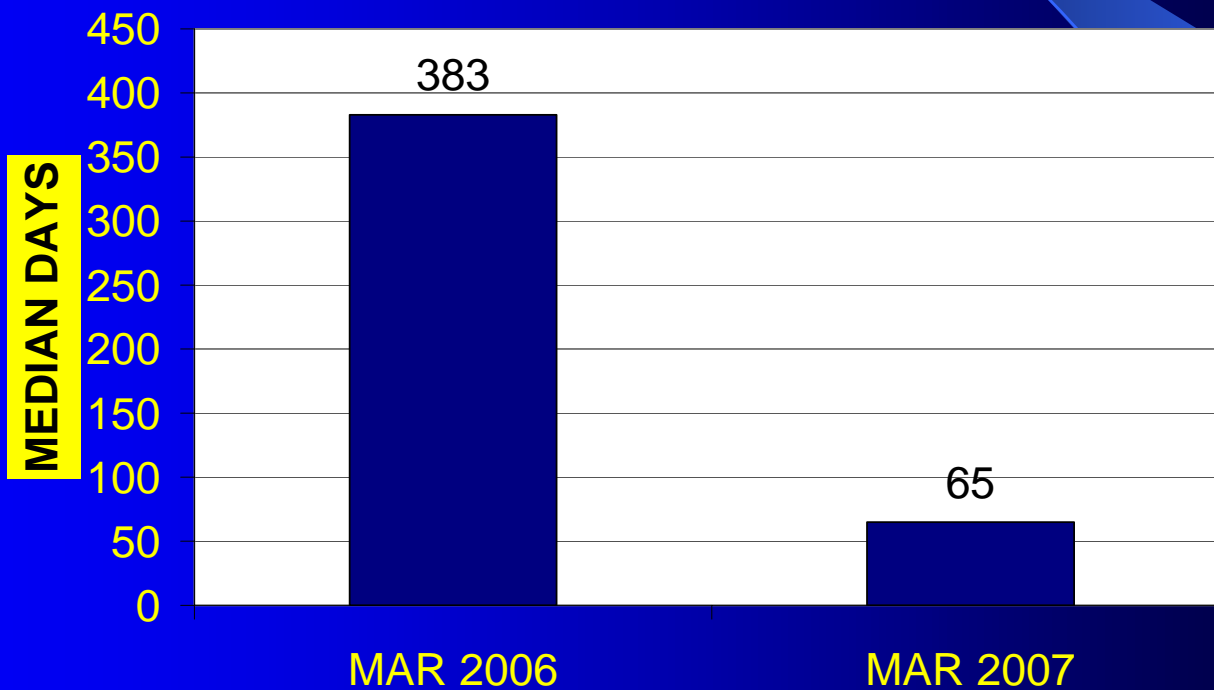
HEARING TO DECISION





OALJ PERFORMANCE

BRIEF TO DECISION





OALJ ULP HEARINGS

- **UNFAIR LABOR PRACTICE HEARINGS**
 - **Set hearing date when Complaint is issued by the GC**
 - **Initial date within 60 days**
 - **Goal is to hold hearing within 90 days**
 - **Answer Due within 20 days**
 - **Failure to file answer could result in Summary Judgment**
 - **Settlement Conference**
 - **Any party may request and it is optional**
 - **Prehearing Disclosures – 14 days prior to hearing**
 - **Theory of the case, witnesses, documents**
 - **Failure could result in adverse evidentiary rulings**
 - **Prehearing Conference – 7 days prior to hearing**
 - **Discuss and resolve preliminary issues**



OALJ ULP HEARINGS

- **ULP HEARING - 5 CFR 2423.30-34**
 - **Conducted IAW the APA**
 - **Open to the public**
 - **Location convenient for the parties**
 - **Rules of Evidence are not strictly followed**
 - **Witnesses sequestered upon motion**
 - **Admit all documents at the start**
 - **Opening Statements**
 - **GC Case in Chief**
 - **Respondent Defense**
 - **Rebuttal**
 - **Closing Argument reserved for Briefs**



OALJ ULP HEARINGS

- **ULP HEARING - 5 CFR 2423.30-34**
 - **Post Hearing Briefs**
 - No later than 30 days after hearing
 - Come prepared to order your transcript at the hearing
 - **Recommended Decision**
 - Goal is 60 Days from Briefs
 - **Exceptions filed with the Authority**
 - Due 25 days after service
 - Oppositions/Cross Exceptions due within 20 days
 - No reply briefs without prior permission
 - Exceptions not made are waived
 - **No Exceptions Filed**
 - Recommended Decision becomes the Decision of the Authority without precedential significance



OALJ ULP HEARINGS





OALJ ULP HEARINGS

- **HAVE YOUR HORSE TRAINED, FIT AND READY TO RUN**





OALJ ULP HEARINGS

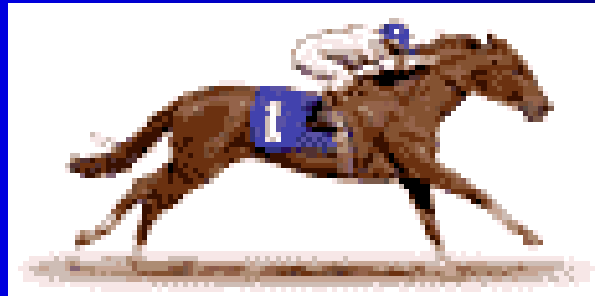
➤ **SADDLE THE HORSE YOU ARE GOING TO RIDE**





OALJ ULP HEARINGS

- **MINIMIZE YOUR WEAKNESSES BY EXPOSING AND BOLSTERING**





OALJ ULP HEARINGS

➤ KNOW THE RULES OF THE RACE





OALJ ULP HEARINGS

➤ **DO NOT CROSS UNLESS YOU GAIN GROUND**





OALJ ULP HEARINGS

- **MANY OF THE HORSES GO BACK TO THE SAME STABLE**





OALJ ULP HEARINGS

- **FILE AN OBJECTION ONLY WHEN IT REALLY MATTERS**





OALJ ULP HEARINGS

➤ AVOID MATCH RACES





OALJ ULP HEARINGS

➤ **THERE IS ALWAYS ANOTHER RACE**





RECENT CASES

- **NTEU, et al., v. Chertoff, et al.,**
 - **371 U.S. App. D.C. 463; 452 F.3d 839 (D.C. Circuit 2006)**
 - **DC Court of Appeals review of the DHS Final Rule implementing its Human Resource Management System (HRMS)**
 - **Final Rule failed to ensure employees could bargain collectively and illegally limited bargaining over fundamental working conditions**
 - **DHS exceeded its authority by illegally conscripting the FLRA into the HRMS**



RECENT CASES

- **AFGE, Local 2924 v. FLRA, 470 F.3d 375 (D.C. Cir. 2006), reviewing 60 FLRA 895 (2005)**
 - **The court overturned the Authority's decision that termination of an employee who tested positive for marijuana was not an unfair labor practice because in so doing, the Air Force clearly and patently breached or repudiated an unambiguous contract provision providing for rehabilitation.**
 - **Authority relied upon extrinsic statements regarding the bargaining of the provision that contradicted the plain language.**
 - **The ALJ's recommended decision found a ULP.**



RECENT CASES

- **NTEU v. FLRA, 371 U.S. App. D.C. 417; 452 F. 3d 793 (D.C. Cir. 2006), reviewing 60 FLRA 572**
 - **Court determined the “covered by” was a question of law and not an interpretation of the agreement. Thus, the Authority did not have to defer to the arbitrator’s interpretation.**
 - **The Authority properly decided de novo what the agreement covered and the conclusion that the Union’s mid-term leave swapping proposal was covered by the contract was eminently reasonable, if not compelled when the contract called for leave disputes to be resolved using seniority.**



RECENT CASES

- **NTEU v. FLRA, 372 U.S. App. D.C. 34; 453 F.3d 506 (D.C. Cir. 2006), reviewing 60 FLRA 922**
 - **Court concluded that the FLRA's determination that Customs had, in its national agreement, effectively revoked its consent to bargain locally over rotation and regular days off was reasonable given the expansive language in the revised policy.**



RECENT CASES

- **AFGE v. FLRA, 454 F.3d 1101 (D.C. Cir. 2006), reviewing 60 FLRA 791**
 - **Court upheld FLRA's decision that ULP was not committed in a failure to provide information case because the requests were not sufficient enough to allow agency to make a reasoned judgment as to whether disclosure of the information was required.**
 - **Court also indicated that the Authority's holding that failure to state a particularized need for all parts of a multipart request permitted denial of the request in its entirety contradicted the plain language of the Statute.**



RECENT CASES

- **NAAE v. FLRA, 473 F.3d 983 (9th Cir. 2006), reviewing FLRA No. WA-RP-04-0067**
 - **Court concluded that an order from the FLRA concluding that federal agricultural inspectors stationed at US borders and ports were not “professional employees” was a component of an appropriate bargaining unit determination and judicial review was precluded.**



FEDERAL LABOR RELATIONS AUTHORITY

QUESTIONS?

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FEDERAL LABOR RELATIONS AUTHORITY

FLRA PROVIDES TRAINING ON THE FSLMR STATUTE

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