SEVENTY THIRD

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

2008

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[1] Chairman Robert J. Battista's term expired on December 16, 2007. Members Dennis P. Walsh and Peter N. Kirsanow served under recess appointments by President Bush: Walsh from January 17, 2006 to December 31, 2007; Kirsanow from January 14, 2006 to December 31, 2007.
[2] Designated Chairman by President Bush on March 19, 2008, and served as Chairman until January 19, 2009.
[3] Designated Chairman by President Obama on January 20, 2009.

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C. April 24, 2009

SIR: I submit the Seventy-Third Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 2008.

Respectfully submitted,
WILMA B. LIEBMAN, *Chairman*

THE PRESIDENT OF THE UNITED STATES
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
Washington, D.C.

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I
Operations in Fiscal Year 2008

A. Summary

The National Labor Relations Board, an independent Federal agency, initiates no cases: it acts only on those cases brought before it. All proceedings originate from filings by the major segment of the public covered by the National Labor Relations Act—employees, labor unions, and private employers who are engaged in interstate commerce. During fiscal year 2008, 25,890 cases were received by the Board.

The public filed 22,497 charges alleging that employers or labor organizations committed unfair labor practices prohibited by the statute, adversely affecting employees. During this period, the NLRB also received 3,393 representation petitions, including 3,158 petitions to conduct secret-ballot elections in which workers in appropriate groups select or reject unions to represent them in collective bargaining with their employers as well as 91 petitions for elections in which workers voted on whether to rescind existing union-security agreements. The NLRB also received 14 petitions to amend the certification of existing collective-bargaining representatives and 130 petitions to clarify existing collective-bargaining units.

After the initial influx of charges and petitions, the flow narrows because the great majority of the newly filed cases are resolved in NLRB's national network of field offices by dismissals, withdrawals, agreements, and settlements.

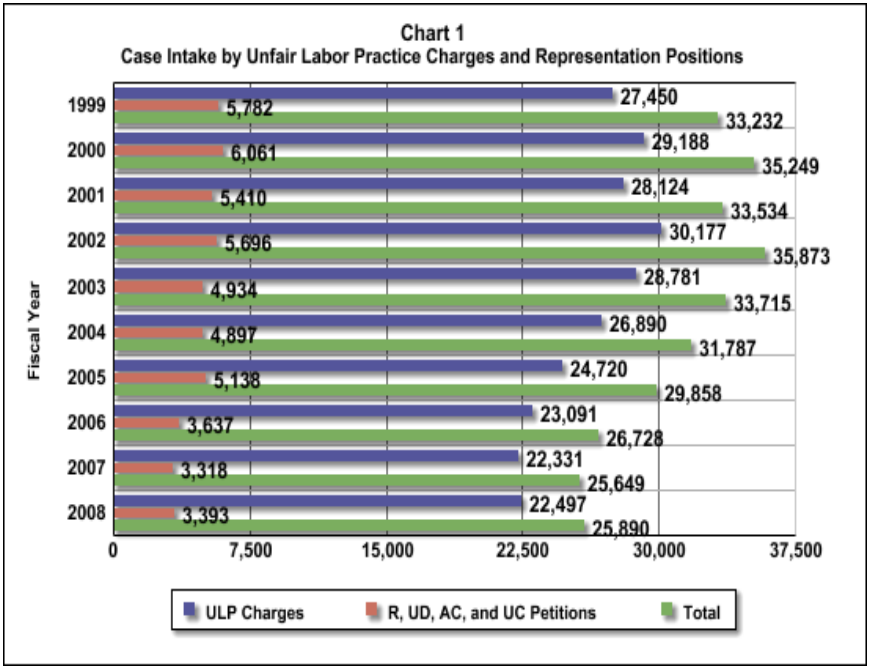
During fiscal year 2008, the five-member Board was composed of Chairman Robert J. Battista and Members Wilma B. Liebman, Peter C. Schaumber, Peter N. Kirsanow, and Dennis P. Walsh. Chairman Battista's term expired on December 16, 2007. The recess appointments of Members Walsh and Kirsanow ended when Congress adjourned on December 31, 2007. President Bush designated Member Schaumber as Chairman on March 19, 2008. Ronald Meisburg served as General Counsel.

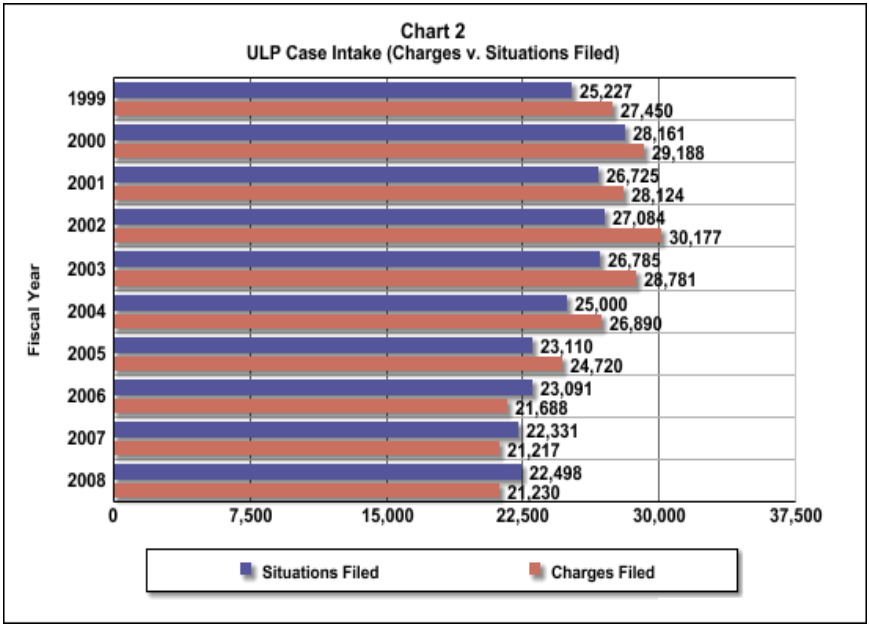
Statistical highlights of NLRB's casehandling activities in fiscal 2008 include:

- The NLRB conducted 1,931 conclusive representation elections among some 137,812 employee voters, with workers choosing labor unions as their bargaining agents in 60 percent of the elections.
- Although the Agency closed 26,845 cases, 12,213 cases were pending in all stages of processing at the end of the fiscal year. The closings included 23,391 cases involving unfair labor

practice charges and 3,217 cases affecting employee representation and 237 related cases.

- Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations, numbered 8,379.
- The amount of $68,104,783 in reimbursement to employees illegally discharged or otherwise discriminated against in violation of their organizational rights was obtained by the NLRB from employers and unions. This total was for lost earnings, fees, dues, and fines. The NLRB obtained 1,839 offers of job reinstatements, with 1,478 acceptances.
- Acting on the results of professional staff investigations, which produced a reasonable cause to believe unfair labor practices had been committed, Regional Offices of the NLRB issued 1,108 complaints, setting the cases for hearing.
- NLRB's corps of administrative law judges issued 217 decisions, of which 29 were noncompliant election objection cases.





NLRB Administration

The National Labor Relations Board is an independent Federal agency created in 1935 by Congress to administer the basic law governing relations between labor unions and business enterprises engaged in interstate commerce. This statute, the National Labor Relations Act, came into being at a time when labor disputes could and did threaten the Nation's economy.

Declared constitutional by the Supreme Court in 1937, the Act was substantially amended in 1947, 1959, and 1974, each amendment increasing the scope of the NLRB's regulatory powers.

The purpose of the Nation's primary labor relations law is to serve the public interest by reducing interruptions in commerce caused by industrial strife. It seeks to do this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The overall job of the NLRB is to achieve this goal through administration, interpretation, and enforcement of the Act.

In its statutory assignment, the NLRB has two principal functions: (1) to determine and implement, through secret-ballot elections, the free democratic choice by employees as to whether they wish to be represented by a union in dealing with their employers and, if so, by

which union; and (2) to prevent and remedy unlawful acts, called unfair labor practices, by either employers or unions or both.

The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which are filed in the NLRB's Regional, Subregional, and Resident Offices, which numbered 51 during fiscal year 2008.

The Act's unfair labor practice provisions place certain restrictions on actions of employers and labor organizations in their relations with employees, as well as with each other. Its election provisions provide mechanics for conducting and certifying results of representation elections to determine collective-bargaining wishes of employees, including balloting to determine whether a union shall continue to have the right to make a union-shop contract with an employer.

In handling unfair labor practices and election petitions, the NLRB is concerned with the adjustment of labor disputes either by way of settlements or through its quasi-judicial proceedings, or by way of secret-ballot employee elections.

The NLRB has no independent statutory power of enforcement of its decisions and orders. It may, however, seek enforcement in the U.S. courts of appeals, and parties to its cases also may seek judicial review.

NLRB authority is divided by law and by delegation. The five-member Board primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel, who, like each Member of the Board, is appointed by the President, is responsible for the issuance and prosecution of formal complaints in cases leading to Board decision, and has general supervision of the NLRB's nationwide network of offices.

For the conduct of its formal hearings in unfair labor practice cases, the NLRB employs administrative law judges who hear and decide cases. Administrative law judges' decisions may be appealed to the Board by the filing of exceptions. If no exceptions are taken, the administrative law judges' orders become orders of the Board.

All cases coming to the NLRB begin their processing in the Regional Offices. Regional Directors, in addition to processing unfair labor practice cases in the initial stages, also have the authority to investigate representation petitions, to determine units of employees appropriate for collective-bargaining purposes, to conduct elections, and to pass on objections to conduct of elections. There are provisions for appeal of representation and election questions to the Board.

B. Operational Highlights

1. Unfair Labor Practices

Charges that business firms, labor organizations, or both have committed unfair labor practices are filed with the National Labor Relations Board at its field offices nationwide by employees, unions, and employers. These cases provide a major segment of the NLRB workload.

Following their filing, charges are investigated by the Regional professional staff to determine whether there is reasonable cause to believe that the Act has been violated. If such cause is not found, the Regional Director dismisses the charge or it is withdrawn by the charging party. If the charge has merit, the Regional Director seeks voluntary settlement or adjustment by the parties to the case to remedy the apparent violation; however, if settlement efforts fail, the case goes to hearing before an NLRB administrative law judge and, lacking settlement at later stages, on to decision by the five-member Board.

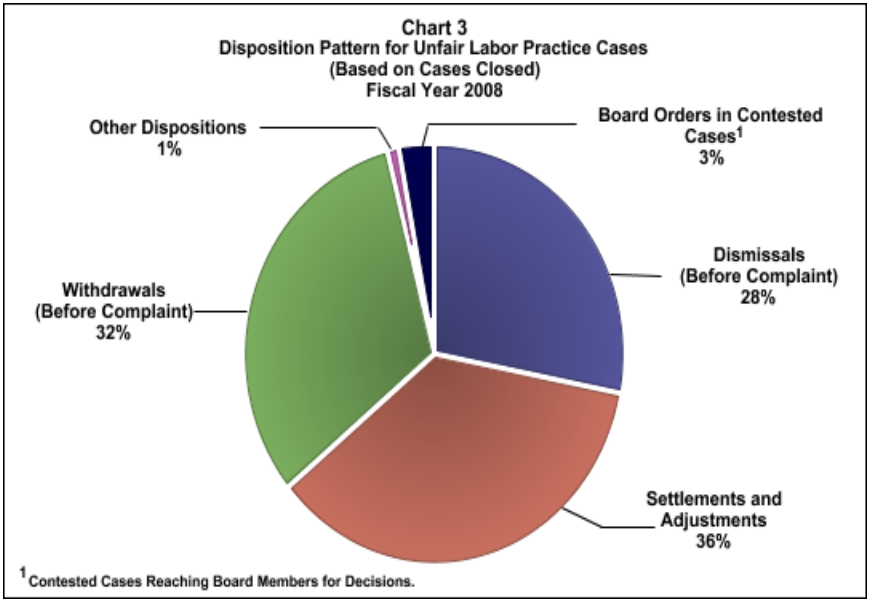
In fiscal year 2008, 22,497 unfair labor practice charges were filed with the NLRB. Alleged violations of the Act by employers were filed in 16,179 cases. Charges against unions in fiscal year 2008 numbered 6,210. There were 63 charges of violation of Section 8(e) of the Act, which bans hot-cargo agreements.

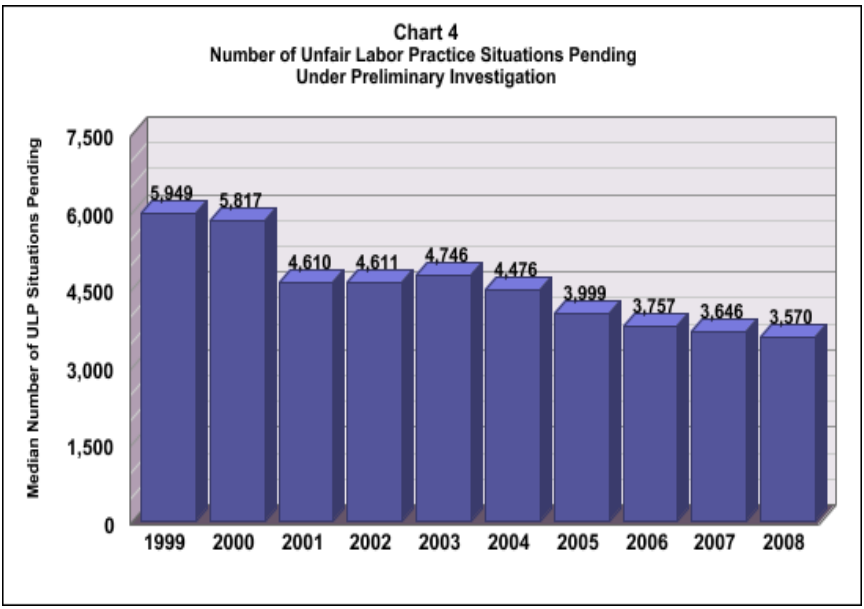
The majority of all charges against employers involved refusal to bargain. There were 8,121 such charges in 50.2 percent of total charges that employers committed violations.

Alleged illegal discharge or other discrimination against employees was the second largest category of allegations against employers, comprising 6,523 charges, in about 40.3 percent of the total charges.

Of charges against unions, the majority (5,355) alleged illegal restraint and coercion of employees, about 86.2 percent. There were 363 charges against unions for illegal secondary boycotts and jurisdictional disputes. There were 455 charges (about 7.3 percent) of illegal union discrimination against employees. There were 54 charges that unions picketed illegally for recognition or for organizational purposes.

In charges filed against employers, unions led with about 72.4 percent of the total. Unions filed 11,792 charges and individuals and employers filed 4,487.



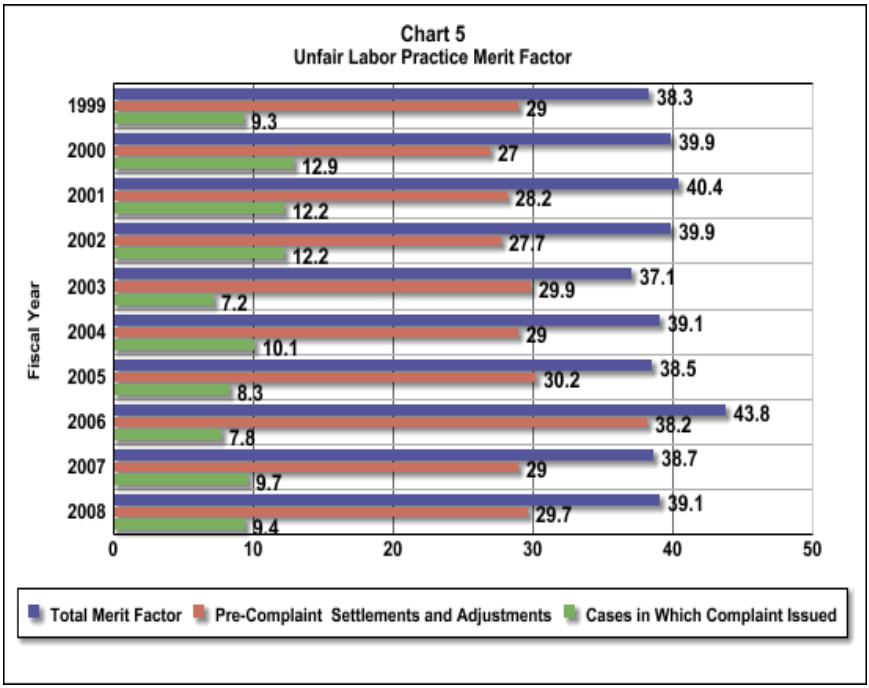


Concerning charges against unions, 5,154 were filed by individuals, or 82.8 percent of the total of 5,992. Employers filed 441 and other unions filed the 90 remaining charges.

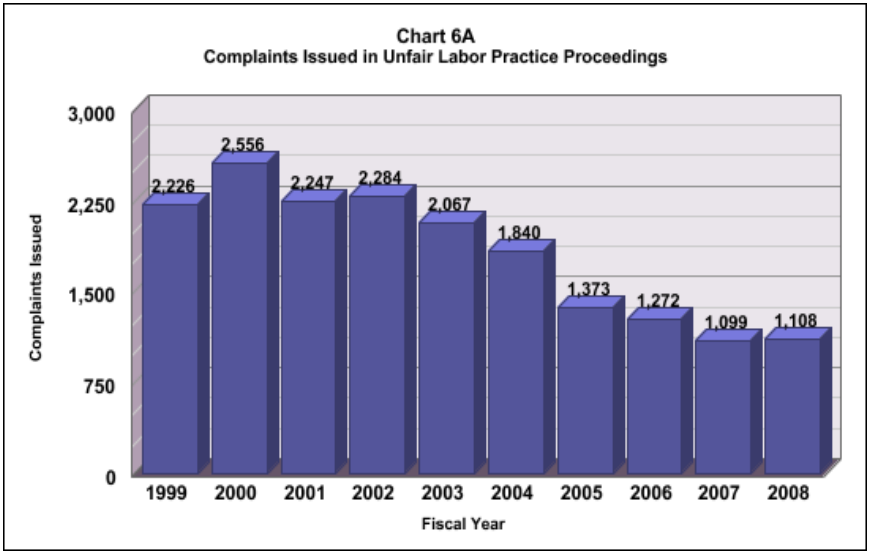
In fiscal year 2008, 23,383 unfair labor practice cases were closed. Some 96 percent were closed by NLRB Regional Offices. During the fiscal year, 35.8 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 32.1 percent were withdrawn before complaint, and 27.9 percent were administratively dismissed.

In evaluation of the Regional workload, the number of unfair labor practice charges found to have merit is important—the higher the merit factor the more litigation required. In fiscal year 2008, 39.1 percent of the unfair labor practice cases were found to have merit.

When the Regional Offices determine that charges alleging unfair labor practices have merit, attempts at voluntary resolution are stressed—to improve labor-management relations and to reduce NLRB litigation and related casehandling. Settlement efforts have been successful to a substantial degree. In fiscal year 2008, precomplaint settlements and adjustments were achieved in 6,928 cases, or 29.7 percent of the charges.

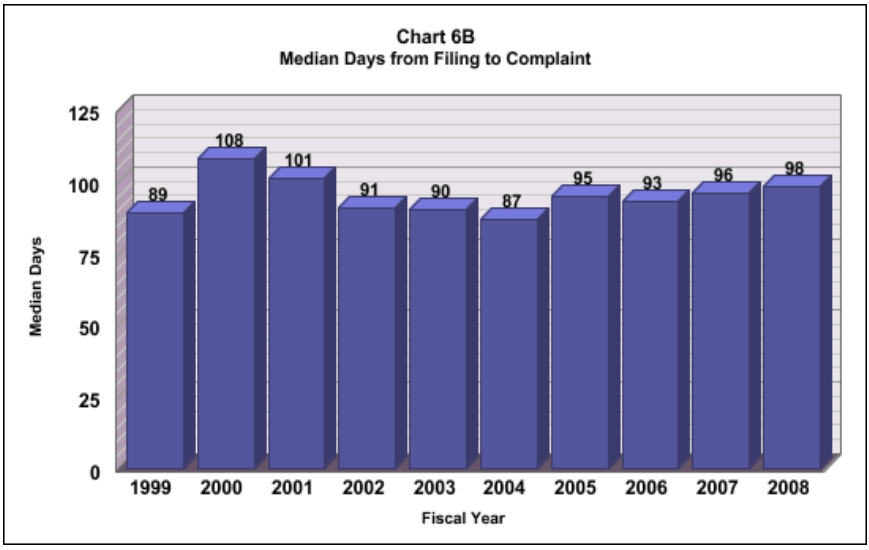


Cases of merit not settled by the Regional Offices produce formal complaints, issued on behalf of the General Counsel. This action schedules hearings before administrative law judges. During 2008, 1,108 complaints were issued.

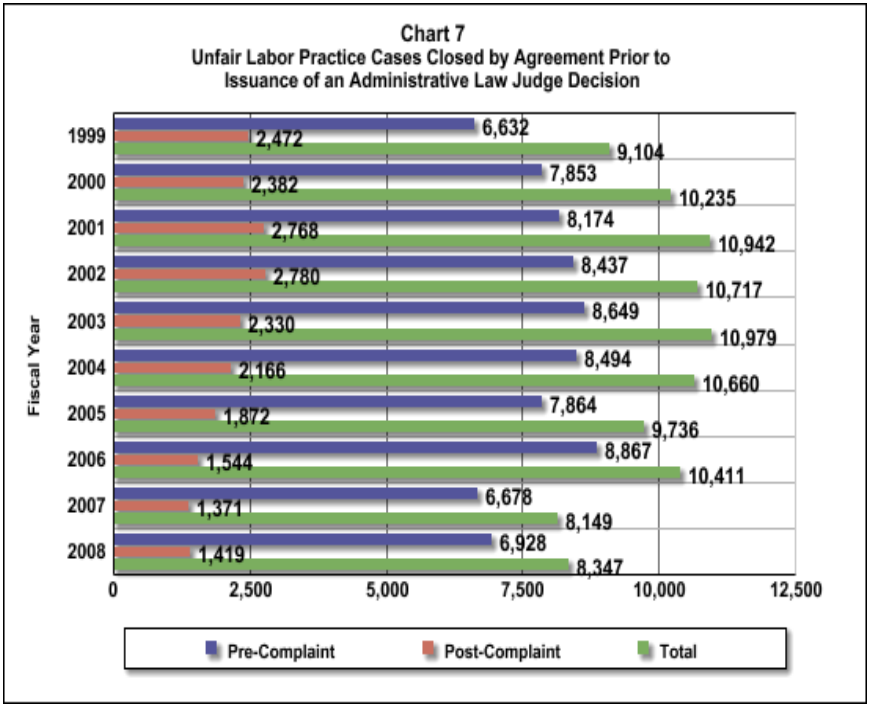


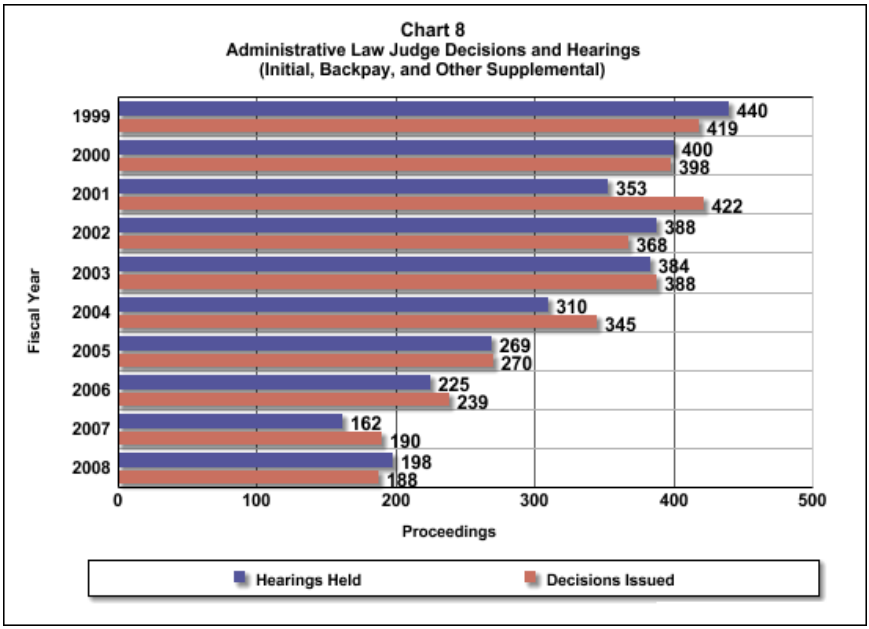
Of complaints issued, 86 percent were against employers and 14 percent against unions.

NLRB Regional Offices processed cases from filing of charges to issuance of complaints in a median of 98 days. The 96 days included 15 days in which parties had the opportunity to adjust charges and remedy violations without resorting to formal NLRB processes.



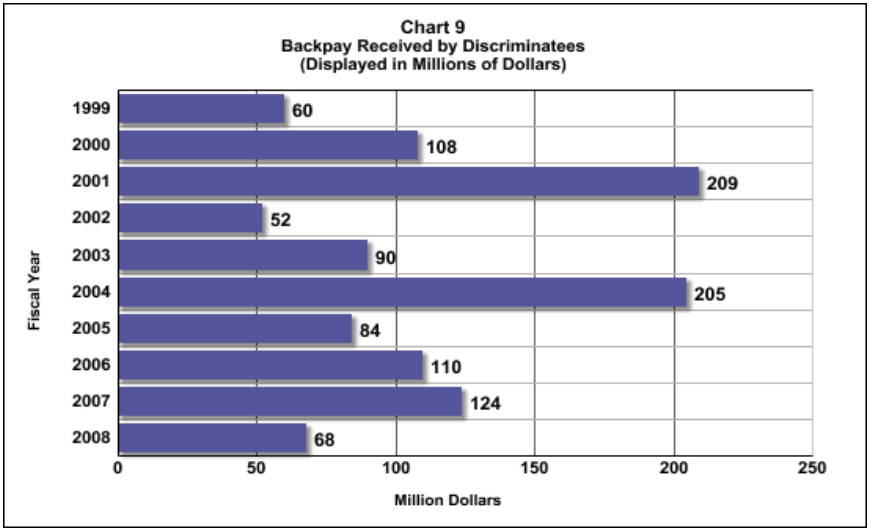
Additional settlements occur before, during, and after hearings before administrative law judges. The judges issued 188 decisions in 359 cases during 2008. They conducted 185 initial hearings, and 13 additional hearings in supplemental matters.





By filing exceptions to judges' findings and recommended rulings, parties may bring unfair labor practice cases to the Board for final NLRB decision.

In fiscal year 2008, the Board issued 241 decisions in unfair labor practice cases contested as to the law or the facts—186 initial decisions, 14 backpay decisions, 6 determinations in jurisdictional work dispute cases, and 35 decisions on supplemental matters. Of the 191 initial decision cases, 157 involved charges filed against employers and 14 had union respondents.



For the year, the NLRB awarded backpay of $64,899,747. Reimbursement for unlawfully exacted fees, dues, and fines added about another $3,205,036. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees, offset by earnings elsewhere after the discrimination. About 1,839 employees were offered reinstatement, and 80 percent accepted.

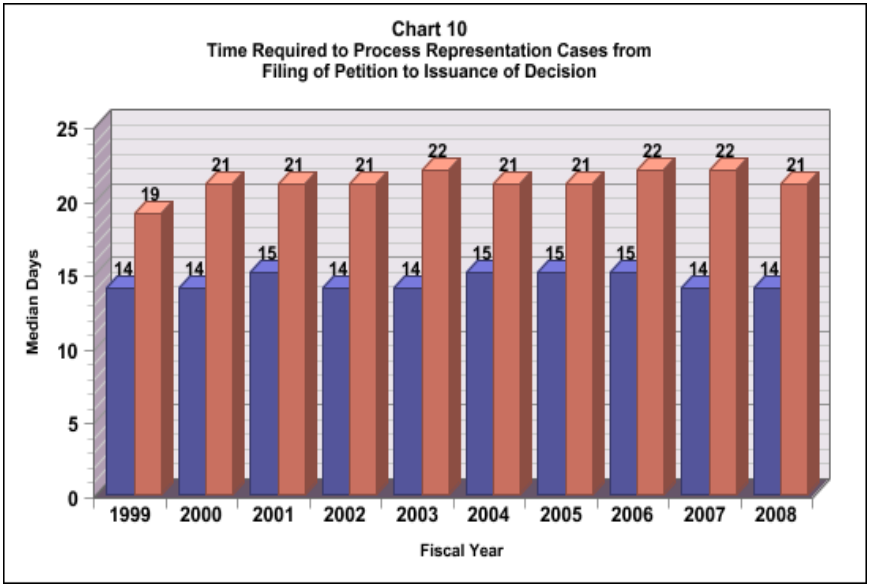
At the end of fiscal 2008, there were 11,297 unfair labor practice cases being processed at all stages by the NLRB.

2. Representation Cases

The NLRB received 3,393 representation and related case petitions in fiscal 2008. The 2008 total consisted of 2,556 petitions that the NLRB conducted secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 602 petitions to decertify existing bargaining agents; 91 deauthorization petitions for referendums on rescinding a union's authority to enter into union-shop contracts; and 162 petitions for unit clarification to determine whether certain classifications of employees should be included in or excluded from existing bargaining units. Additionally, 6 amendment of certification petitions were filed.

During the year, 3,217 representation and related cases were closed. Cases closed included 2,588 collective-bargaining election petitions; 629 decertification election petitions; 88 requests for deauthorization polls; and 135 petitions for unit clarification and 14 petitions for amendment of certification.

The overwhelming majority of elections conducted by the NLRB resulted from some form of agreement by the parties on when, where, and among whom the voting should occur. Such agreements are encouraged by the Agency. In 4.2 percent of representation cases closed by elections, balloting was ordered by NLRB Regional Directors following hearing on points in issue. There were 89 cases where the Board directed an election after transfer of a case from the Regional Office. There were no cases that resulted in expedited elections pursuant to the Act's 8(b)(7)(C) provisions pertaining to picketing.



3. Elections

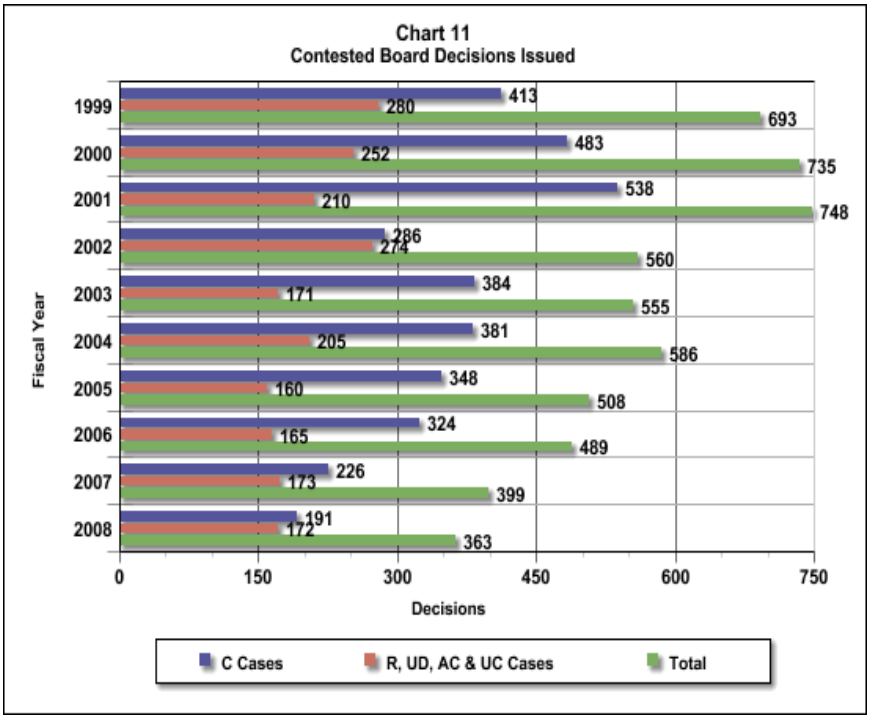
The NLRB conducted 1,931 conclusive representation elections in cases closed in fiscal 2008. Of 137,812 employees eligible to vote, 108,838 cast ballots, virtually 8 of every 10 eligible.

Unions won 1,159 representation elections, or 60 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 85,247 workers.

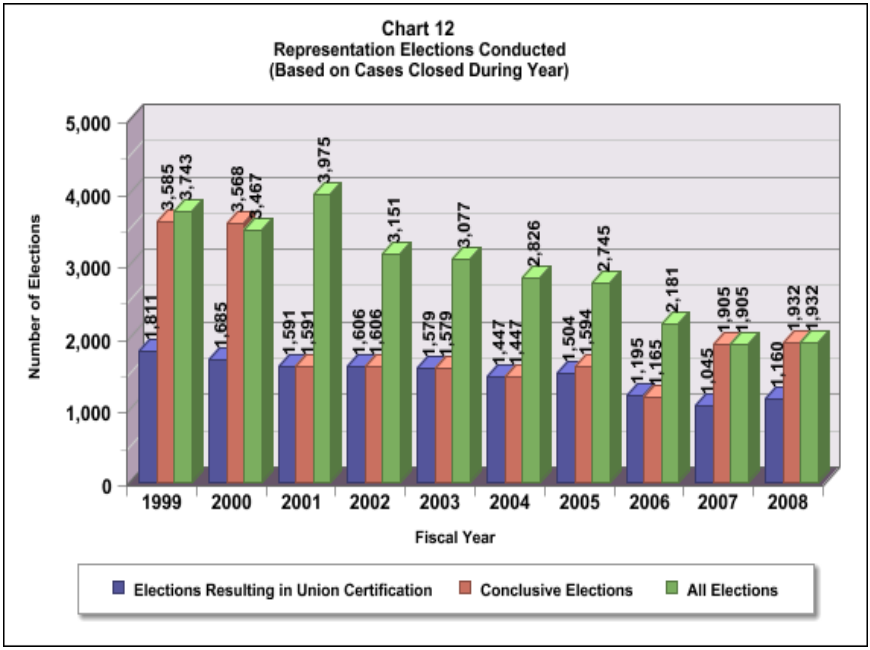
The representation elections were in two categories—the 1,635 collective-bargaining elections in which workers chose or voted down labor organizations as their bargaining agents, plus the 296 decertification elections determining whether incumbent unions would continue to represent employees.

There were 1,782 select-or-reject-bargaining-rights (one union on ballot) elections, of which unions won 1,037, or 56.2 percent. In these elections, 73,454 workers voted to have unions as their agents, while 50,816 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 124,270 workers. In NLRB elections the majority decides the representational status for the entire unit.

There were 140 multiunion elections, in which two or more labor organizations were on the ballot, as well as a choice for no representation. Employees voted to continue or to commence representation by one of the unions in 114 elections, or 81.4 percent.



In deauthorization polls, labor organizations lost the right to make union-shop agreements in 18 referendums, or 36 percent, while they maintained the right in the other 32 polls which covered 3,468 employees.



4. Decisions Issued

a. The Board

Dealing effectively with the remaining cases reaching it from nationwide filings after dismissals, settlements, and adjustments in earlier processing stages, the Board handed down 500 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared to the 592 decisions rendered during fiscal year 2007.

A breakdown of Board decisions follows:

Total Board decisions **500**

Contested decisions **330**

Unfair labor practice decisions 241
Initial (includes those based on
stipulated record) 186
Supplemental 35
Backpay 14
Determinations in jurisdictional disputes ... 6

Representation decisions 88

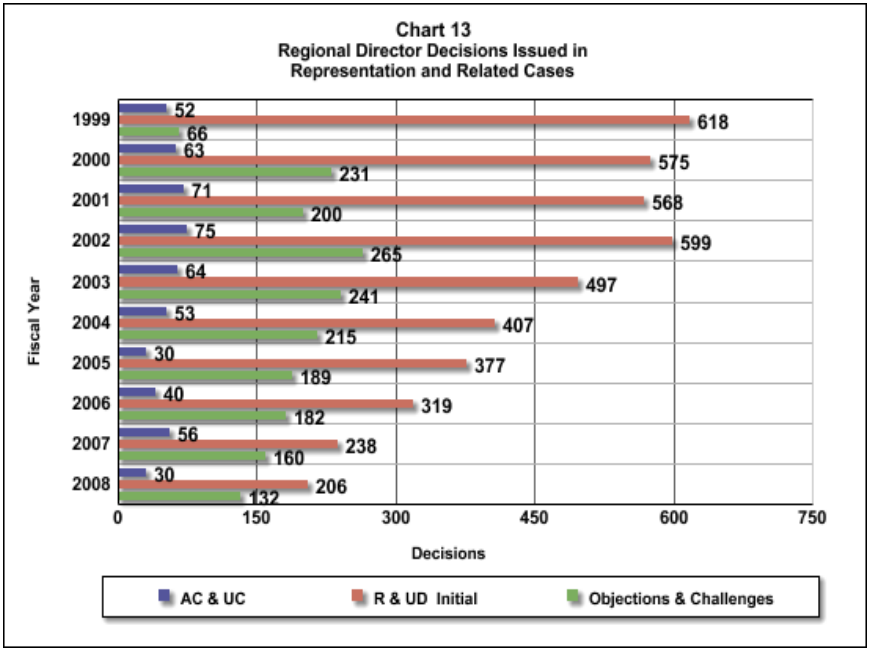
After transfer by Regional Directors
for initial decisions 3
After review of Regional Director
decisions 10
On objections and/or challenges..... 75
Other decisions 1
Clarification of bargaining unit 1
Amendment to certification 0
Union-deauthorization 0
Noncontested decisions **170**
Unfair labor practice 75
Representation 94
Other 1

The majority (71 percent) of Board decisions resulted from cases contested by the parties as to the facts and/or application of the law.

In fiscal 2008, about 4.5 percent of all meritorious charges and 51.1 percent of all cases in which a hearing was conducted reached the Board for decision. Generally, unfair labor practice cases take about twice the time to process than representation cases.

b. Regional Directors

NLRB Regional Directors issued 242 decisions in fiscal 2008.



c. Administrative Law Judges

Administrative law judges issued 217 decisions and conducted 198 hearings in unfair labor practice cases and issued 28 decisions in post-election proceedings.

5. Court Litigation

a. Appellate Courts

In fiscal year 2008, 68 cases involving the NLRB were decided by the United States courts of appeals compared to 79 in fiscal year 2007. Of these, 97.1 percent were won by NLRB in whole or in part compared to 75.9 percent in fiscal year 2007; 2.9 percent were remanded entirely compared to 11.4 percent in fiscal year 2007; and no cases were entire losses compared to 8.9 percent in fiscal year 2007.

b. The Supreme Court

In fiscal 2008, the Supreme Court did not decide any Board cases. The Board did not participate as amicus in any cases in fiscal 2008.

c. Contempt Actions

In fiscal 2008, 333 cases were formally referred to the Contempt Litigation and Compliance Branch for consideration of contempt or other compliance actions.[1] Fifteen civil contempt or equivalent proceedings and 18 ancillary proceedings were instituted in Federal District Courts or Bankruptcy Courts. Fourteen civil contempt or equivalent adjudications were awarded in favor of the Board as well as 24 other substantive orders in ancillary proceedings. There were 5 cases in which the court directed compliance without adjudication; and there was one case in which the court discontinued the proceeding at the CLCB's request.

d. Miscellaneous Litigation

There were 13 additional cases involving miscellaneous litigation decided by appellate, district, and bankruptcy courts. The NLRB's position was upheld in 9 cases.

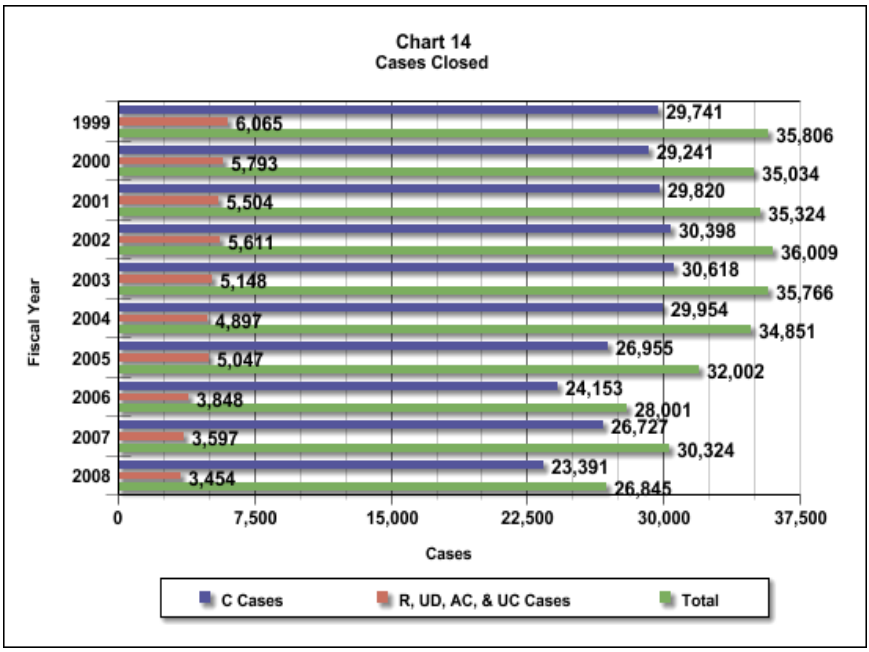
e. Injunction Activity

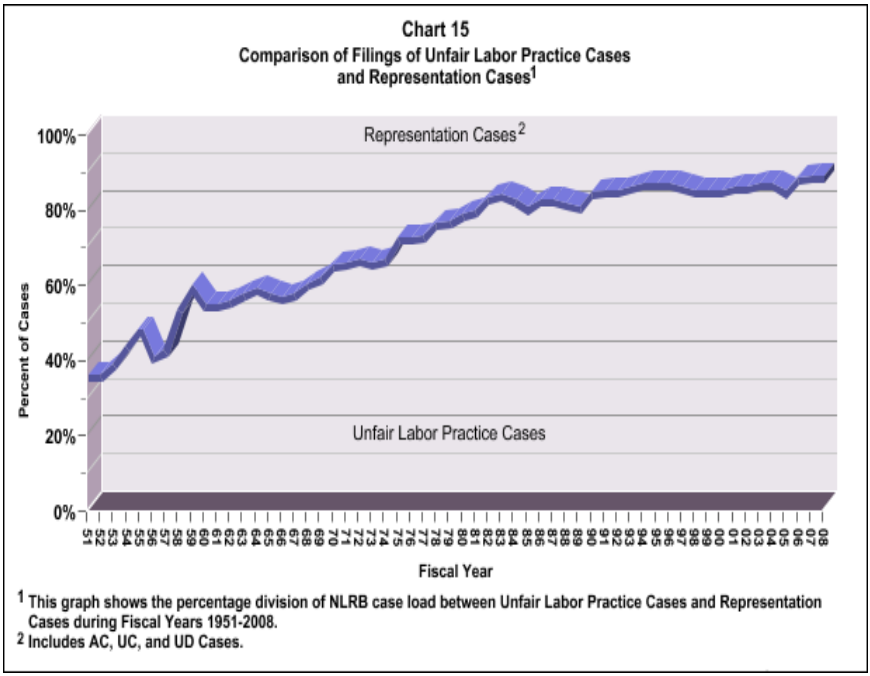
The NLRB sought injunctions pursuant to Sections 10(j) and 10(l) in 24 petitions filed with the U.S. district courts. Injunctions were granted in 10, or 71.4 percent, of the 14 cases litigated to final order.

NLRB injunction activity in district courts in 2008:

[1] In 206 other cases, advice and/or assistance was solicited and provided to the Regions or other Agency personnel and the cases returned for further administrative processing.

Granted 10
Denied 4
Withdrawn 2
Settled or placed on court's inactive lists 5
Awaiting action at end of fiscal year 2





C. Decisional Highlights

This fiscal year was unusual, insofar as the Board operated with only two members for most of the year. The two-member Board (Chairman Schaumber and Member Liebman) determined to decide cases applying existing law, rather than to decide novel legal questions or reconsider precedent. Chapter II on "Board Procedure," Chapter III on "Representation Proceedings," and Chapter IV on "Unfair Labor Practices" discuss some of the more significant decisions of the Board during the report period. The following summarizes briefly some of the decisions that practitioners might find of particular interest.

1. Supervisory Status

The Board, in *Barstow Community Hospital*,[2] reviewed the administrative law judge's supplemental decision following the Board's remand for further consideration in light of its decisions in *Oakwood*

[2] 352 NLRB 1052 (Chairman Schaumber and Member Liebman).

Healthcare, Inc.,[3] *Croft Metals, Inc.*,[4] and *Golden Crest Healthcare Center*.[5] The Board found that the Respondent did not establish that registered nurse Lois Sanders was a statutory supervisor when acting as relief clinical coordinator because the record evidence did not show that relief clinical coordinators responsibly direct or that they exercise independent judgment in assigning work. The Board reasoned that the employer did not meet its burden of proving that relief clinical coordinators exercised independent judgment in assigning nursing staff because it failed to provide any examples or details of circumstances showing that a relief clinical coordinator, in assigning nursing staff, actually "weighs the individualized condition and needs of a patient against the skills or special training of available nursing personnel." *Oakwood Healthcare*, supra at 693.

2. Official Election Ballot Disclaimer Language

In *Foster Poultry Farms*,[6] the Board found that the Employer failed to comply with the requirements of *Ryder Memorial Hospital*,[7] by distributing and posting copies of a campaign leaflet in English and Spanish containing an altered sample ballot only in English. In *Ryder*, the Board revised its official ballot to include a disclaimer stating that the Board does not endorse any choice in the election and that any markings on sample ballots were not made by the Board. The Board further required that altered sample ballots distributed by parties to an election contain the prescribed disclaimer. The Employer's altered sample ballot was not an actual reproduction of the Board's official sample ballot included in the notice of election and did not include the Board's complete disclaimer language, which was provided on the official sample ballot in English, Spanish, and Laotian. Therefore, the Board found the Employer's conduct objectionable and set aside the election.

3. Overbroad Confidentiality Provisions

In *NLS Group*,[8] the Board concluded that the Respondent violated Section 8(a)(1) of the Act by maintaining an overbroad confidentiality provision in its employment contracts. Specifically, the Board found that the confidentiality provision—which provided, in pertinent part, that an employee's disclosure of his terms of employment to other parties could constitute grounds for dismissal—was unlawfully overbroad because employees reasonably would construe it as prohibiting discussions of

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[3] 348 NLRB 686 (2006).
[4] 348 NLRB 717 (2006).
[5] 348 NLRB 727 (2006).
[6] 352 NLRB 1147 (Chairman Schaumber and Member Liebman).
[7] 351 NLRB 214 (2007).
[8] 352 NLRB 744 (Chairman Schaumber and Member Liebman).

terms and conditions of employment with union representatives, activity protected by Section 7 of the Act.

Further, relying on Board precedent establishing that an employer's imposition of discipline pursuant to an unlawfully overbroad rule is necessarily unlawful, the Board additionally concluded that the Respondent violated Section 8(a)(1) by terminating employee Jamison Dupuy for discussing terms of his employment with a client, i.e., breaching the above-described confidentiality provision. Chairman Schaumber noted, however, that he "questions the theory that an employer's imposition of discipline pursuant to an unlawfully overbroad rule is necessarily unlawful."

4. Backpay Period for "Salts"

In *Fluor Daniel*,[9] the Board, in an earlier proceeding, found that the Respondent unlawfully refused to hire certain union-affiliated applicants, and ordered the Respondent to provide instatement and backpay to the discriminatees.[10] In the compliance proceeding, the administrative law judge specified that those remedies would be subject to the limitations established in *Oil Capitol Sheet Metal, Inc*.[11] The General Counsel, the Charging Parties, and the Intervenor filed requests with the Board for special permission to appeal this ruling, as well as the administrative law judge's rulings that the discriminatees were "salts"[12] within the meaning of *Oil Capitol*, and that it was the General Counsel's burden to establish both the length of time the discriminatees would likely have remained at their jobs and that they would have joined the Respondent's preferential database. The Board granted the requests for special permission to appeal and denied the appeals on the merits, finding that the judge did not abuse his discretion by ruling that *Oil Capitol* applies to the proceedings and that the discriminatees at issue were salts.

For institutional reasons, Member Liebman concurred in the denial of the appeals. Member Liebman also stated her view that, if retroactive application of *Oil Capitol* ultimately has a demonstrably adverse effect on backpay, the General Counsel and the Charging Party would be free to pursue the manifest injustice issue. Further, Member Liebman noted her view that *Dean General Contractors*[13] is the law of the case and, therefore, should preclude the Board from applying *Oil Capitol*

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[9] 353 NLRB No. 15 (Chairman Schaumber and Member Liebman).
[10] 333 NLRB 427 (2001), enfd. 332 F.3d 961 (6th Cir. 2003).
[11] 349 NLRB 1348 (2007).
[12] The Board defined "salts" as "those individuals, paid or unpaid, who apply for work with a nonunion employer in furtherance of a salting campaign" to organize employees or to precipitate employer unfair labor practices. 349 NLRB at 1348 fn. 5.
[13] 285 NLRB 573 (1987).

retroactively, but she nonetheless applied the majority decision in *Fluor Daniel*[14] as controlling Board precedent on the law of the case issue.

D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 2008, are as follows:

Personnel compensation	$159,300,894
Personnel benefits	37,643,717
Benefits for former personnel	20,000
Travel and transportation of persons	2,164,769
Transportation of things	191,056
Rent, communications, and utilities	34,648,794
Printing and reproduction	292,480
Other services	14,663,594
Supplies and materials	1,231,001
Equipment	1,115,553
Insurance claims and indemnities	48,713
Total obligations and expenditures[15]	$251,320,571

The NLRB's assets were approximately $38 million as of September 30, 2008. The Fund Balance with Treasury, which was $25 million, represents the NLRB's largest asset. The Fund Balance consists of unspent appropriated and unappropriated funds from the past 6 fiscal years and includes backpay settlement funds. The NLRB has one unusual account, Backpay Settlements Due to Others. These are backpay funds that are owed to discriminatees by employers due to the filing of ULP charges with the NLRB. The source of these funds is either the original employer or a bankruptcy court disposition. During the time it takes the Agency to locate discriminatees, these funds are sometimes invested in U.S. Treasury market-based securities.

The NLRB's appropriation is used to resolve Representation Cases or ULP Charges filed by employees, employers, unions, and union members. Of the $261 million net cost of operations in FY 2008, 16 percent was used to resolve Representation Cases and 84 percent was used to resolve ULP Charges.

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[14] 351 NLRB 103 (2007).

[15] Includes $41,015 for reimbursables from MSPB (ALJ),
$19,512 for reimbursables from IRS (ALJ),
$31,616 for reimbursables from EEOC (ALJ),
$7,645 for reimbursables from GSA Metro Service Division (Fitness Center), and
$2,975 for reimbursables from EPA (Fitness Center).

For FY 2008, the NLRB had available budgetary resources of $256 million, the majority of which were derived from new budget authority. This represents a $1 million decrease from FY 2007, when available budgetary resources were $257 million. In both FY 2007 and FY 2008, the status of budgetary resources showed obligations of over $252 million, or 98 percent of funds available in each year. Total outlays for FY 2008 were $250 million, which is a $3 million decrease from FY 2007.

Of the budget appropriation received by the NLRB, approximately 90 percent of the payments goes toward employees' salaries and benefits, space rent, and building security. The remaining 10 percent is utilized for expenses integral to the Agency's casehandling mission, such as casehandling travel; transcripts in cases requiring a hearing; interpreter services, reflective of a growing community of non-English speaking workers; travel; witness fees; and information technology.

II
NLRB Jurisdiction

The Board's jurisdiction under the Act, regarding both representation proceedings and unfair labor practices, extends to all enterprises whose operations "affect" interstate or foreign commerce.[1] However, Congress and the courts[2] have recognized the Board's discretion to limit the exercise of its broad statutory jurisdiction to enterprises whose effect on commerce is, in the Board's opinion, substantial. That discretion is subject only to the statutory limitation[3] that jurisdiction may not be declined when it would have been asserted under the Board's self-imposed jurisdictional standards prevailing on August 1, 1959.[4] Accordingly, before the Board takes cognizance of a case, it must first be established that it has legal or statutory jurisdiction, i.e., that the business operations involved "affect" commerce within the meaning of the Act. It must also appear that the business operations meet the Board's applicable jurisdictional standards.[5]

Political Subdivision

In *Charter School Administration Services*,[6] the Board found that the Employer, a private, for-profit corporation, was not a political subdivision of the State of Michigan and, therefore, not exempt from the Board's jurisdiction. The Employer had a contract to operate and

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[1] See Secs. 9(c) and 10(a) of the Act and also the definitions of "commerce" and "affecting commerce" set forth in Sec. 2(6) and (7), respectively. Under Sec. 2(2) the term "employer" does "not include the United States or any wholly owned Government corporation, any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer) . . . ." The exclusion of nonprofit hospitals from the definition of employer was deleted by the health care amendments to the Act (Pub. L. 93–360, 88 Stat. 395, effective Aug. 25, 1974). Nonprofit hospitals, as well as convalescent hospitals, health maintenance organizations, health clinics, nursing homes, extended care facilities, and other institutions "devoted to the care of sick, infirm, or aged person[s]," are now included in the definition of "health care institutions" under Sec. 2(14) of the Act. "Agricultural laborers" and others excluded from the term "employee" as defined by Sec. 2(3) of the Act are discussed, inter alia, at 29 NLRB Ann. Rep. 52–55 (1964), and 31 NLRB Ann. Rep. 36 (1966).

[2] See 25 NLRB Ann. Rep. 18 (1960).

[3] See Sec. 14(c)(1) of the Act.

[4] These self-imposed standards are primarily expressed in terms of the gross dollar volume of the business in question: 23 NLRB Ann. Rep. 18 (1958). See also *Floridan Hotel of Tampa,* 124 NLRB 261 (1959), for hotel and motel standards.

[5] Although a mere showing that the Board's gross dollar volume standards are met is ordinarily insufficient to establish legal or statutory jurisdiction, no further proof of legal or statutory jurisdiction is necessary when it is shown that the Board's "outflow-inflow" standards are met. 25 NLRB Ann. Rep. 19–20 (1960). But see *Sioux Valley Empire Electric Assn.,* 122 NLRB 92 (1958), concerning the treatment of local public utilities.

[6] 353 NLRB No. 35 (Chairman Schaumber and Member Liebman).

manage the Academy of Waterford, a public charter school. The Employer managed the educational program, managed the financial aspects of the Academy's operations, and hired and paid all personnel who worked at the Academy. Following the test set out in *NLRB v. Natural Gas Utility District of Hawkins County*,[7] the Board examined the operations of the Employer and found that the members of the Employer's board of directors are appointed and removed by the corporation's shareholders and not by any public officials.

The Board further found no indication that any director or corporate officer had "direct personal accountability to public officials or the general electorate." The Board concluded that because the Employer was not administered by individuals who are responsible to public officials or the general electorate, the Employer was not a political subdivision of the State of Michigan and was not exempt from the Board's jurisdiction on that basis. The Board further found that the Employer meets the statutory definition of "employer" because the Employer controls some matters pertaining to the employment relationship of the petitioned-for teachers and counselors who work at the Academy of Waterford. The Employer has the sole authority to hire, fire, assign, discipline and pay the petitioned-for employees. The Board concluded that as the Employer is an employer within the meaning of the Act and meets the Board's monetary jurisdictional standards, the Board should assert jurisdiction over the Employer. The Board reversed the Regional Director and reinstated the petition seeking an election among teachers and counselors employed by the Employer who work at the Academy.

[7] 402 U.S. 600 (1971).

III
Representation Proceedings

The Act requires that an employer bargain with the representative designated by a majority of its employees in a unit appropriate for collective bargaining. But it does not require that the representative be designated by any particular procedure as long as the representative is clearly the choice of a majority of the employees. As one method for employees to select a majority representative, the Act authorizes the Board to conduct representation elections. The Board may conduct such an election after a petition has been filed by or on behalf of a group of employees or by an employer confronted with a claim for recognition from an individual or a labor organization.

Incident to its authority to conduct elections, the Board has the power to determine the unit of employees appropriate for collective bargaining and to formally certify a collective-bargaining representative on the basis of the results of the election. Once certified by the Board, the bargaining agent is the exclusive representative of all employees in the appropriate unit for collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment.

The Act also empowers the Board to conduct elections to decertify incumbent bargaining agents that have been previously certified or that are currently recognized by the employer. Decertification petitions may be filed by employees, by individuals other than management representatives, or by labor organizations acting on behalf of employees.

A. Bars to an Election

Contract Bar

In *Coca-Cola Enterprises*,[1] the Board reversed the Regional Director's finding that a memorandum of understanding (MOU) between the Union and the Employer constituted a bar to a decertification petition. The Board found, contrary to the Regional Director, that the MOU, which dealt with certain terms and conditions covering only a minority of the unit employees, did not constitute an extension of the parties' long-term contract, and thus did not have bar quality. Specifically, the Board found that, under *Southwestern Portland Cement*

[1] 352 NLRB 1044 (Chairman Schaumber and Member Liebman).

Co.,[2] the MOU was neither intended to be a new agreement embodying new terms and conditions nor did it incorporate by reference the terms of the long-term agreement. Additionally, the Board found that the MOU was not a written amendment that expressly reaffirmed the original agreement and that it failed to evidence the parties' clear intention to be bound for the specified period of the long-term agreement.

B. Unit Issues

Supervisory Status

The Board, in *Barstow Community Hospital*,[3] reviewed the administrative law judge's supplemental decision following the Board's remand for further consideration in light of its decisions in *Oakwood Healthcare, Inc.*,[4] *Croft Metals, Inc.*,[5] and *Golden Crest Healthcare Center*.[6] The Board found that the Respondent did not establish that registered nurse Lois Sanders was a statutory supervisor when acting as relief clinical coordinator because the record evidence did not show that relief clinical coordinators responsibly direct employees or that they exercise independent judgment in assigning work. The Board reasoned that the employer did not meet its burden of proving that relief clinical coordinators were held accountable for their direction of others. The Board further found that the employer did not meet its burden of proving that relief clinical coordinators exercised independent judgment in assigning nursing staff because it failed to provide any examples or details of circumstances showing that a relief clinical coordinator, in assigning nursing staff, actually "weighs the individualized condition and needs of a patient against the skills or special training of available nursing personnel." *Oakwood Healthcare*, supra at 693. Because the employer did not establish that when filling in as a relief clinical coordinator Sanders exercised sufficient independent judgment to qualify her as a statutory supervisor, the Board found it unnecessary to pass on the judge's further finding that Sanders' relief clinical coordinator assignments were not a sufficiently "regular and substantial" portion of her work time for her to be considered a supervisor.

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[2] 126 NLRB 931 (1960).
[3] 352 NLRB 1052 (Chairman Schaumber and Member Liebman).
[4] 348 NLRB 686 (2006).
[5] 348 NLRB 717 (2006).
[6] 348 NLRB 727 (2006).

C. Election Objections

An election will be set aside and a new election directed if the election campaign was accompanied by conduct which the Board finds created an atmosphere of confusion or fear of reprisals, or which interfered with the employees' exercise of their freedom of choice of a representative as guaranteed by the Act. In evaluating the interference resulting from specific conduct, the Board does not attempt to assess its actual effect on the employees, but rather concerns itself with whether it is reasonable to conclude that the conduct tended to prevent the free expression of the employees' choice. In making this evaluation, the Board treats each case on its facts, taking an ad hoc rather than a per se approach to resolution of the issues.

Electioneering is permissible under the Act. However, the Board may invalidate the result of a representation election if the campaign tactics adopted by a party tend to exert a coercive impact. In other words, the employer or the union may attempt to influence the votes of the employees; they may not, however, engage in coercive conduct that deprives the voters of their freedom of choice.

During an election campaign, the employer or the union might employ many forms of conduct in an attempt to influence the votes of the employees. In some election campaigns, the parties threaten the employees with reprisals; cajole them with the promise of benefits; or solicit their support through misrepresentations of law or fact.

1. Official Election Ballot Disclaimer Language

In *Foster Poultry Farms*,[7] the Board found that the Employer failed to comply with the requirements of *Ryder Memorial Hospital*,[8] by distributing and posting copies of a campaign leaflet in English and Spanish containing an altered sample ballot only in English. In *Ryder*, the Board revised its official ballot to include a disclaimer stating that the Board does not endorse any choice in the election and that any markings on sample ballots were not made by the Board. The Board further required that altered sample ballots distributed by parties to an election contain the prescribed disclaimer. The Employer's altered sample ballot was not an actual reproduction of the Board's official sample ballot included in the notice of election and did not include the Board's complete disclaimer language, which was provided on the official sample ballot in English, Spanish, and Laotian. Therefore, the Board found the Employer's conduct objectionable and set aside the election.

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[7] 352 NLRB 1147 (Chairman Schaumber and Member Liebman).
[8] 351 NLRB 214 (2007).

2. Objections to Conduct of Board Agent

In *Fresenius USA Mfg., Inc.*,[9] the Board, reversing the administrative law judge, found that the cumulative effect of the Board agent's conduct raised a reasonable doubt as to the fairness and validity of the election and, thus set aside the election. The Board noted that "election procedures are designed to ensure both parties an opportunity to monitor the conduct of the election, ballot count, and determinative challenge procedure."[10] The Board agent, however, prevented the Employer from verifying the accuracy of his ballot count and interpretation of voter intent. Additionally, the agent's conduct after the ballot count in taking the ballots home without securing them against any tampering, mishandling, or damage prevented the Board from saying with confidence that ballots remained in the identical condition as during the count. Finally, the Board found that the agent's two mistakes in ballot identification cast further doubt on the fairness and validity of the election.

3. Alleged Threat of Job Loss

In *Levy Co.*,[11] the Board, contrary to the hearing officer, overruled the Union's election objections, finding that the employer did not threaten replacement employees with the loss of their jobs, or link the security of their jobs to the results of the decertification election. When the Union went on strike against the Employer in August 2005, the Employer continued its operations using supervisors and replacement employees who were offered permanent employment in March 2006. Pursuant to the Stipulated Election Agreement, both replacement employees and striking employees were permitted to vote in the decertification election that was scheduled for October 27, 2006. In several negotiating sessions before the election, the Union proposed that the Employer return all former employees (strikers) to work. In answer to the Employer's queries as to how many strikers would return to work, the Union's representative stated that, to the best of his knowledge, "probably 30 to 40 employees" or "around 50 percent" of the strikers had found other work, and "that he was not sure they would be back."

The Employer discussed the decertification election with employees on several occasions prior to the election. The Employer's representatives urged the employees to vote against the Union and told them they could possibly lose their jobs, that part of the Union's negotiating strategy was to "get rid of replacement workers" and "let all

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[9] 352 NLRB 679 (Chairman Schaumber and Member Liebman).
[10] *Paprikas Fono*, 273 NLRB 1326, 1328 (1984).
[11] 351 NLRB 1237 (Members Schaumber, Kirsanow, and Walsh).

the strikers have their jobs back," that the election outcome "will determine the future of the Employer's business and your job at Levy," that the Union had proposed that the Employer put all strikers back to work, and that if the Union were voted out, the Employer "will no longer be required to negotiate with Local 150 (strikers will not be able to take your jobs)."

The hearing officer recommended that the Board find that the Employer's preelection statements constituted objectionable conduct. Contrary to the hearing officer, the Board concluded that the Employer was not compelled to tell employees that the Union did not expect all strikers to return to work, finding that the Union's comments that some strikers might not return to work constituted a "guess" or estimate that was not part of the Union's formal bargaining proposal that sought the return of all striking employees. The Board found that the Employer's comments were consistent with the Union's bargaining proposals, and that the Employer lawfully discussed with employees the possible consequences, both positive and negative, that could ensue if the Union's bargaining proposals were accepted. The Board emphasized that the Employer's discussions with employees were devoid of threats or promises, and, in fact, the Employer stressed to its employees that they were permanent and that the Employer wished to retain them as its work force. The Board concluded, accordingly, that the Employer had not engaged in objectionable conduct and that the ballots cast by replacement employees in the decertification election should be opened and counted.

D. Unit Clarification

In *Goddard Riverside Community Center*,[12] the Board reversed the Regional Director's finding that a unit clarification petition, seeking to exclude the team leader classification from the unit, could not be processed because that classification (now alleged to be supervisory) existed at the time of the parties' 1990 Stipulated Election Agreement and had been included in the unit since that time. Relying primarily on *Premier Living Center*,[13] the Regional Director found that the parties had the opportunity to litigate the issue of the team leaders' inclusion in the unit during the 1990 representation proceeding, but did not do so. The Regional Director therefore concluded that the parties should not be afforded the opportunity to litigate this issue in a subsequent unit clarification proceeding. Additionally, the Regional Director found no exception to the Board's relitigation rule because there was no evidence

[12] 351 NLRB 1234 (Members Liebman, Kirsanow, and Walsh).
[13] 331 NLRB 123 (2000).

that the duties and responsibilities of the team leaders had changed since the unit was certified in 1990.

Reversing the Regional Director, the Board found that *Premier Living Center* did not specifically address the question presented here: whether parties are precluded from litigating the disputed employees' supervisory status where they did not specifically stipulate to the status of those particular employees. Instead, the Board found that *Washington Post Co.*[14] provided the correct standard for determining whether the UC petition may be processed in this case. That case specifically held that when presented with an appropriate petition, the Board is required to exclude positions from a unit where the inclusion of those positions would violate the basic principles of the Act. Because the disputed positions in this case were alleged to be supervisory and thus their inclusion in the unit would have violated statutory principles, the Board only needed to consider whether the petition was filed at an appropriate time. Based on the record testimony, the Board found that it was.

Accordingly, the Board found that the processing of the UC petition was not precluded by the relitigation rule set forth in *Premier Living Center* because the parties did not specifically address the status of the disputed team leaders in the prior representation proceeding. The petition was therefore reinstated, and the case remanded to the Regional Director for further processing.

[14] 254 NLRB 968 (1981).

IV
Unfair Labor Practices

The Board is empowered under Section 10(c) of the Act to prevent any person from engaging in any unfair labor practice (listed in Sec. 8) affecting commerce. In general, Section 8 prohibits an employer or a union or their agents from engaging in certain specified types of activity that Congress has designated as unfair labor practices. The Board, however, may not act to prevent or remedy such activities until an unfair labor practice charge has been filed with it. Such charges may be filed by an employer, an employee, a labor organization, or any other person irrespective of any interest he or she might have in the matter. They are filed with the Regional Office of the Board in the area where the alleged unfair labor practice occurred.

This chapter deals with noteworthy decisions of the Board during fiscal year 2008.

A. Employer Interference with Employee Rights

Section 8(a)(1) of the Act forbids an employer "to interfere with, restrain, or coerce" employees in the exercise of their rights as guaranteed by Section 7 to engage in or refrain from engaging in collective-bargaining and self-organizational activities. Violations of this general prohibition may be a derivation or byproduct of any of the types of conduct specifically identified in paragraphs (2) through (5) of Section 8(a), or may consist of any other employer conduct that independently tends to interfere with, restrain, or coerce employees in exercising their statutory rights. This section treats only decisions involving activities that constitute such independent violations of Section 8(a)(1).

1. Protected Employee Activities

In *Alton H. Piester, LLC,*[1] the Board reversed the administrative law judge's dismissal of the allegations that the Respondent violated Section 8(a)(1) of the Act when: (1) its owner told employees that if they did not like the Respondent's new billing practice, which affected their rate of compensation, they could "clean out their trucks and move to another job"; (2) its secretary, in the presence of the owner, told an employee that if he was unhappy working for the Respondent he should "clean out his truck"; and (3) it discharged an employee because he engaged in protected concerted activity. The discharged employee's actions, which included repeating an earlier protected concerted complaint and voicing

[1] 353 NLRB No. 33 (Chairman Schaumber and Member Liebman).

an individualized request, were found to be continuations of the earlier protected concerted activity. In finding the 8(a)(1) discharge, the Board relied on both *Wright Line*,[2] and *Atlantic Steel/Felix Industries*,[3] analyses.

In *Tampa Tribune*,[4] the Board concluded, contrary to the administrative law judge, that the Respondent violated Section 8(a)(1) of the Act by discharging employee Gregg McMillen for referring to Respondent's vice president of operations, Bill Barker, as a "stupid f—ing moron" in the course of McMillen's protected concerted discussion of ongoing contract negotiations and responding to Barker's own statements about negotiations.

McMillen's remark, which was heard only by Supervisors Glenn Lerro and Joel Bridges, was provoked by letters from Barker. During contract negotiations, Barker had sent unit employees a series of letters, describing the negotiations from the Respondent's viewpoint and blaming the Union for delays in reaching a contract. Barker's antiunion letters had angered many employees and had caused about 25 employees, including McMillen, to sign a group letter to Barker, criticizing their working conditions, blaming the Respondent's management for the lack of negotiating progress, and expressing support for the Union's contract proposal. A few days later, upon hearing from a coworker that Barker had sent another letter, McMillen told Lerro and Bridges: "I hope that [stupid] f—ing [moron] doesn't send me another letter. I'm pretty stressed, and if there is another letter you might not see me. I might be out on stress." During this conversation, McMillen also criticized the slow pace of negotiations and the Respondent's wage proposal. Neither supervisor criticized McMillen for the remark or suggested that discipline was appropriate, but McMillen was discharged because of it 6 days later.

The Board agreed with the judge that McMillen's profane reference to Barker occurred in the course of concerted activity. Although McMillen's criticism of Barker's letters on that occasion was not expressly authorized by or in the presence of other unit employees, McMillen's comments were a logical outgrowth of the prior collective and concerted activity in which he was already engaged, including the group response to Barker's letters. In assessing whether McMillen nonetheless lost the Act's protection because of the opprobrious nature of

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[2] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 445 U.S. 989 (1982).
[3] 245 NLRB 814 (1979), 331 NLRB 144, 144–146 (2000), enf. denied on other grounds and remanded 251 F.3d 1051 (D.C. Cir. 2001).
[4] 351 NLRB 1324 (Members Liebman, Kirsanow, and Walsh).

his outburst, the Board applied *Atlantic Steel*,[5] which requires balancing four factors: (1) the place of the discussion; (2) the subject matter of the discussion; (3) the nature of the employee's outburst; and (4) whether the outburst was provoked by an employer's unfair labor practice. Like the judge, the Board concluded that the first two factors weighed in favor of finding McMillen's outburst protected, while the final factor weighed slightly against protection, because Barker's letters, which provoked the outburst, were not unlawful.

Contrary to the judge, however, the Board found that the nature of McMillen's outburst weighed only moderately against his retaining the Act's protection. Significantly, his remark was not directed at Barker (i.e., not to his face) and involved no confrontational aspects; McMillen made the remark only once; he apologized to Lerro for the comment spontaneously and without knowing that any discipline was contemplated; and though disrespectful, the remark was not insubordinate with regard to work assignments or Barker's managerial authority. The Board distinguished cases relied on by the Respondent, which involved more severe employee conduct. Finally, the Board observed that neither Barker's high-level position nor his status as the Respondent's chief negotiator and disseminator of its views shielded him from employees' responses. Concluding, contrary to the judge, that the factors favoring McMillen's retention of the Act's protection outweighed the factors favoring loss of protection, the Board found his discharge unlawful and ordered standard remedies, including McMillen's reinstatement.

2. Overbroad Confidentiality Provisions

In *NLS Group*,[6] the Board reversed the administrative law judge's decision dismissing the complaint. The Board concluded that the Respondent violated Section 8(a)(1) of the Act by maintaining an overbroad confidentiality provision in its employment contracts. Specifically, the Board found that the confidentiality provision—which provided, in pertinent part, that an employee's disclosure of his terms of employment to other parties could constitute grounds for dismissal—was unlawfully overbroad because employees reasonably would construe it as prohibiting discussions of terms and conditions of employment with union representatives, activity protected by Section 7 of the Act.

Further, relying on Board precedent establishing that an employer's imposition of discipline pursuant to an unlawfully overbroad rule is necessarily unlawful, the Board additionally concluded that the

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[5] 245 NLRB 814 (1979).
[6] 352 NLRB 744 (Chairman Schaumber and Member Liebman).

Respondent violated Section 8(a)(1) by terminating employee Jamison Dupuy for discussing terms of his employment with a client, i.e., breaching the above-described confidentiality provision. Chairman Schaumber noted, however, that he "questions the theory that an employer's imposition of discipline pursuant to an unlawfully overbroad rule is necessarily unlawful."

B. Employer Bargaining Obligation

An employer and the representative of its employees, as designated or selected by a majority of employees in an appropriate unit pursuant to Section 9(a), have a mutual obligation to bargain in good faith about wages, hours, and other terms and conditions of employment. An employer or labor organization, respectively, violates Section 8(a)(5) or Section 8(b)(3) of the Act if it does not fulfill its bargaining obligation.

1. Withdrawal of Recognition

In *SFO Good-Nite Inn*,[7] the Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(1) of the Act by soliciting employees to sign a union disaffection petition, and by threatening employees with discharge or loss of benefits, and by promising benefits, in order to coerce employees to sign the petition. The Board also affirmed the judge's findings that the Respondent violated Section 8(a)(3) and (1) by discharging two employees in order to discourage union activities and union membership, and that it violated Section 8(a)(5) and (1) by withdrawing recognition from and refusing to bargain with the Union.

As to the withdrawal of recognition, the Board found, inter alia, that, under *Hearst Corp*.,[8] the Respondent's contention that the petition was not tainted by its unfair labor practices because there was no evidence that the employees who signed it knew of the unlawful conduct was unavailing. Member Schaumber acknowledged that *Hearst Corp*. was extant Board law and applied it for the purpose of deciding this case. He stated his own view that even unfair labor practices such as those in this case might not taint a petition if there was affirmative evidence that a majority of unit employees both signed the petition and were unaffected by the unlawful conduct (there was no such showing in this case).

The Board found it unnecessary to pass on the judge's finding that the petition was tainted under the standards set forth in *Master Slack Corp*.,[9] or on his finding that the collective-bargaining agreement was a bar to the Respondent's withdrawal of recognition. In regard to the latter

[7] 352 NLRB 268 (Members Liebman and Schaumber).
[8] 281 NLRB 764 (1986), affd. mem. 837 F.2d 1088 (5th Cir. 1988).
[9] 271 NLRB 78, 84 (1984).

finding, Member Liebman, who dissented in *Shaw's Supermarkets, Inc.*,[10] agreed that it was unnecessary to address the issues presented in *Shaw's* for the purpose of deciding this case.

2. Duty to Provide Requested Information

In *Legal Services of Northern California*,[11] the Board found that the Respondent violated Section 8(a)(5) of the Act by refusing to provide the Union with a requested copy of a separation agreement between the Respondent and employee Kimberley Dovey.

The administrative law judge rejected the Respondent's argument that the separation agreement was a confidential document on the grounds that the agreement's confidentiality provision was binding only on Dovey, and not the Respondent. However, the judge concluded that the Respondent did not violate the Act by refusing to produce the separation agreement, finding that the separation agreement's sole purpose was to settle a potential tort claim between Dovey and the Respondent.

The Board agreed with the judge's rejection of the Respondent's confidentiality defense, but reversed the judge, finding instead that the Respondent violated the Act by refusing to provide the Union with a copy of the separation agreement. The Board acknowledged that certain agreements between employees and employers are outside of the purview of a union's representational role, such as private tort settlements. The Board found, however, that the separation agreement was not solely a private agreement between Dovey and the Respondent because it also served as a waiver of Dovey's rights under the collective-bargaining agreement. The Board concluded that the separation agreement was relevant to the Union's role of collective-bargaining representative and that the Respondent violated Section 8(a)(5) by refusing to provide it.

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[10] 350 NLRB 585 (2007).

[11] 352 NLRB 474 (Chairman Schaumber and Member Liebman).

3. Mandatory Subjects of Bargaining

In *Port Printing*,[12] the Board reversed the judge's finding that the Respondent violated Section 8(a)(5) by failing to bargain with the Union over its decision to lay off employees. In doing so, the Board, relying on *Bottom Line Enterprises*[13] and *RBE Electronics of S.D.*,[14] found that Hurricane Rita and the resulting damage amounted to an economic exigency that necessitated the closing of the facility and resulted in the forced layoff. Accordingly, the Board majority found that the Respondent was excused from bargaining over the layoff decision.

The Board adopted, however, the judge's other findings of violations, concluding that the exigency created by the hurricane did not excuse the Respondent's failure to bargain over the effects of its layoff decision or the decision to use nonunit personnel to perform unit work and the effects of that decision.

Member Schaumber dissented in part. He agreed with the majority that the economic exigency created by the hurricane excused the Respondent's failure to bargain over the layoff decision, but stated that he would find that the exigency also excused the Respondent's failure to bargain over the post-hurricane decision to use nonunit personnel to perform unit work. Member Schaumber also stated that he would find that the Respondent's failure to bargain over the effects of the above decisions was not unlawful because the Union waived its right to bargain over these matters.

4. Unilateral Change that is not Material, Substantial, or Significant

In *Whitesell*,[15] the Board reversed the judge's finding that the Respondent violated Section 8(a)(5) by implementing a new attendance policy. The Board found that the alleged 10-point system for evaluating attendance was not a new Respondent policy, but represented merely one supervisor's informal, personal notations regarding attendance, and thus did not rise to the level of a substantial and material change to the Respondent's attendance policy over which the Respondent was required to bargain.

5. Employer's Declaration of Impasse

In *Wilshire Plaza Hotel*,[16] the Board affirmed, on modified grounds, the administrative law judge's findings that the Respondent's unfair

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[12] 351 NLRB 1269 (Members Kirsanow and Walsh; Member Schaumber dissenting in part).
[13] 302 NLRB 373 (1991), enfd. 15 F.3d 1087 (9th Cir. 1994).
[14] 320 NLRB 80 (1995).
[15] 352 NLRB 1196 (Chairman Schaumber and Member Liebman).
[16] 353 NLRB No. 29 (Chairman Schaumber and Member Liebman).

labor practices precluded lawful impasse in the parties' contract negotiations and, therefore, the Respondent's unilateral implementation of parts of its final contract offer violated Section 8(a)(5) of the Act.

The judge found that the Respondent's numerous, unremedied unfair labor practices were "so extensive and pervasive as to make it practically impossible for the parties to have engaged in good-faith negotiations leading to impasse." However, the Board found that "it is well-established that 'not all unremedied unfair labor practices committed . . . will lead to the conclusion that impasse was declared improperly' . . . Only 'serious unremedied unfair labor practices that affect the negotiations' will taint the asserted impasse'."[17] Accordingly, in affirming the judge's findings, the Board relied on only two of the undisputed unfair labor practices committed by the Respondent that adversely affected the negotiations: the Respondent's failure to contribute to the Union's Health and Welfare Fund, and its failure to furnish to the Union the requested detailed cost calculations for the Respondent's economic proposals on core bargaining issues. Member Liebman found it unnecessary to pass on whether the Respondent's other unfair labor practices were sufficiently serious to affect the negotiations.

Although the Respondent did not except to the judge's findings that it failed to comply with several provisions of the collective-bargaining agreement, the Respondent excepted to his finding that it had repudiated the agreement. The Board affirmed the judge's finding of general contract repudiation but found no need to pass on whether this violation precluded impasse. The Board also did not rely on the judge's discussion of *Republic Die & Tool Co.*,[18] related to contract repudiation.

The Respondent and General Counsel excepted to the judge's failure to analyze the parties' bargaining conduct under the multifactor test of *Taft Broadcasting Co.*,[19] to decide whether a bargaining impasse existed. The Board found no need to examine other aspects of the negotiations as the two unfair labor practices precluded the possibility of finding a lawful impasse.

C. Remedial Order Provisions

1. *Gissel* Bargaining Order

In *ADB Utility*,[20] the Board adopted the administrative law judge's findings that the Respondent committed multiple violations of Section 8(a)(1) and (3) following the Union's efforts to organize employees in

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[17] *Dynatron/Bondo Corp.*, 333 NLRB 750, 752 (2001).
[18] 343 NLRB 683 (2004).
[19] 163 NLRB 475, 478 (1967), enfd. 395 F.2d 622 (D.C. Cir. 1968).
[20] 353 NLRB No. 21 (Chairman Schaumber and Member Liebman).

early 2003. The Board also adopted the judge's finding that a *Gissel* bargaining order was necessary and warranted under *NLRB v. Gissel Packing Co.*,[21] in light of the egregiousness and pervasiveness of the Respondent's unlawful activity.

The Board affirmed the judge's findings that the Respondent committed multiple violations of Section 8(a)(1), which included impliedly threatening employees with job loss, futility, and closure, soliciting union supporters to quit their employment, impliedly threatening discipline for wearing union pins, impliedly threatening reduction or loss of their bonus, threatening loss of insurance and retirement plan, threatening to subcontract more work, interrogating employees about their union activities and threatening unspecified reprisals because of their union activities, and creating an impression of surveillance. The Respondent had not excepted to any of these findings. In addition, the Board affirmed the judge's findings that the Respondent repeatedly violated Section 8(a)(3) and (1) by discharging 13 union supporters.

Finally, the Board affirmed the judge's finding that a category I *Gissel* bargaining order was warranted in light of the Respondent's extensive record of unlawful conduct. In doing so, the Board relied on the Respondent's numerous, widely communicated threats of plant closure and job loss, its unlawful discharge of 22 percent of the bargaining unit, its fabrication of evidence against union supporters, the involvement of the Respondent's general manager, and its pervasive wrongdoing in violation of Section 8(a)(1).

The Board rejected the Respondent's contentions that a *Gissel* bargaining order would be inappropriate due to turnover in management and the bargaining unit since the close of the hearing. Affirming the judge's findings, the Board found that turnover after the Respondent's commission of the unfair labor practices does not militate against a bargaining order. The Board also rejected the Respondent's argument that a bargaining order is no longer a viable remedy based on the passage of time since the violations were committed. Rather, the Board found that here, the passage of time would not dissipate the coercive effects of the Respondent's unlawful coercive conduct. In doing so, the Board stated that "although almost 5 years have elapsed since the commission of the last of the Respondent's unfair labor practices, the length of time the case has been with the Board is consistent with the ordinary course of litigation." The Board emphasized that the case was not fully briefed to the Board until late 2007. The Board also stated that the Respondent was

[21] 395 U.S. 575 (1969).

at least partially responsible for the delay in this case based on its shifting posture on the supervisory status issue.

2. Backpay Period for "Salts"

In *Fluor Daniel*,[22] the Board, in an earlier proceeding, found that the Respondent unlawfully refused to hire certain union-affiliated applicants, and ordered the Respondent to provide instatement and backpay to the discriminatees.[23] In the compliance proceeding, the administrative law judge specified that those remedies would be subject to the limitations established in *Oil Capitol Sheet Metal, Inc.*[24] The General Counsel, the Charging Parties, and the Intervenor filed requests with the Board for special permission to appeal this ruling, as well as the administrative law judge's rulings that the discriminatees were "salts" within the meaning of *Oil Capitol*, and that it was the General Counsel's burden to establish both the length of time the discriminatees would likely have remained at their jobs and that they would have joined the Respondent's preferential database.

The Board granted the requests for special permission to appeal and denied the appeals on the merits, finding that the judge did not abuse his discretion by ruling that *Oil Capitol* applies to the proceedings and that the discriminatees at issue were salts. With regard to the judge's rulings concerning the General Counsel's burden of proof, the Board denied the appeals but noted that factual findings made in the underlying proceeding—that the discriminatees had "agreed to accept employment if offered, and to stay until laid off," and that the Respondent used a preferential database of former employees in staffing new projects—may not be relitigated in the compliance proceeding. The Board left to compliance whether these findings are sufficient to satisfy the General Counsel's burden of proof under *Oil Capitol*.

For institutional reasons, Member Liebman concurred in the denial of the appeals. She noted that denying the appeals avoids delay in the disposition of the case. Member Liebman also stated her view that, if retroactive application of *Oil Capitol* ultimately has a demonstrably adverse effect on backpay, the General Counsel and the Charging Party would be free to pursue the manifest injustice issue. Further, Member Liebman noted her view that *Dean General Contractors*[25] is the law of the case and, therefore, should preclude the Board from applying *Oil Capitol* retroactively, but she nonetheless applied the majority decision

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[22] 353 NLRB No. 15 (Chairman Schaumber and Member Liebman).
[23] 333 NLRB 427 (2001), enfd. 332 F.3d 961 (6th Cir. 2003).
[24] 349 NLRB 1348 (2007).
[25] 285 NLRB 573 (1987).

in *Fluor Daniel*[26] as controlling Board precedent on the law of the case issue.

3. Reimbursement of Litigation Expenses

In *Sunshine Piping*,[27] the Board majority reversed the judge's award of litigation costs to the General Counsel based on the Respondent's "bad faith." The Board considered exceptions both to the administrative law judge's initial decision and her supplemental decision upon a reopened record. In her initial decision (*Sunshine II*), the judge found that the Respondent violated Section 8(a)(1), (3), and (4) of the Act by discriminatorily issuing performance-based disciplinary warnings to an employee, but did not violate the Act by disciplining, suspending, and terminating him under a new attendance policy. The judge dismissed allegations that the Respondent violated Section 8(a)(1) by threatening the employee that the Respondent no longer wanted him employed and by failing to take action to stop other employees from harassing him.

Shortly before the judge issued her initial decision, a former employee, who had testified for the Respondent in the initial hearing, came forward and claimed that the Respondent had altered attendance records to hide its disparate treatment of the alleged discriminatee. The judge granted the General Counsel's motion to reopen the record, and having considered the newly discovered evidence, amended her decision to find that the Respondent also violated Section 8(a)(1), (3), and (4) by disciplining and terminating the employee for his attendance violations (*Sunshine III*). The judge further found that the Respondent's alteration of documents justified an award of litigation costs associated with *Sunshine III* to the General Counsel under the bad-faith exception to the American Rule.

The Board, 3–0, adopted the judge's findings and conclusions as to the substantive allegations of the amended complaint. Contrary to the judge's decision, however, the Board, 2–1 (Member Liebman dissenting), reversed the judge's award of litigation costs. The Board found that, for the purpose of deciding whether the employee's attendance-related discipline and discharge violated the Act, Respondent's alteration of documents negated its ability to meet its *Wright Line* rebuttal burden. But for the purpose of deciding whether Respondent was guilty of bad faith in presenting a defense based on altered attendance records in *Sunshine II*, so as to justify fee-shifting, the majority found the fact that the alterations were amenable to conflicting explanations to be significant, and said that they could not conclude that

[26] 351 NLRB 103 (2007).
[27] 351 NLRB 1379 (Members Schaumber and Kirsanow; Member Liebman dissenting in part).

the Respondent's defense was entirely without color and wantonly asserted.

4. Piercing the Corporate Veil

In *A. J. Mechanical*,[28] the Board, on remand from the U.S. Court of Appeals for the District of Columbia Circuit, reversed its Supplemental Decision and Order and, applying the test set forth in *White Oak Coal Co.*,[29] pierced the corporate veil of A. J. Mechanical, Inc. and imposed personal liability for backpay on the now-defunct corporation's president and his wife.

Under *White Oak Coal*, the Board will pierce the corporate veil when: (1) there is such unity of interest, and lack of respect given to the separate identity of the corporation by its shareholders, that the personalities and assets of the corporation and the individuals are indistinct; and (2) adherence to the corporate form would sanction a fraud, promote injustice, or lead to an evasion of legal obligations.

In the underlying Supplemental Decision and Order (345 NLRB 295 (2005)), the Board reversed the administrative law judge's determination that *A. J. Mechanical's* former president and co-owner, William A. (Arnold) Greene, and his wife, Cynthia Greene, should be held jointly and severally liable for backpay along with the corporation. Assuming without finding that the first prong of *White Oak Coal* had been met, the Board determined that the evidence was insufficient to establish that the second prong had been met. The court of appeals disagreed. In *Carpenters & Millrights Local 2471 v. NLRB*,[30] the court summarily enforced the judgment against the corporation, but vacated the Board's decision refusing to pierce the corporate veil. Finding that the Board's analysis neither provided sufficient evidence to substantiate its conclusion nor accounted for significant countervailing evidence, the court remanded the proceeding to the Board.

After the remand, applying prong one of *White Oak Coal* to the evidence for the first time, the Board determined that throughout its existence, the principals of A. J. Mechanical disregarded corporate formalities and structure with respect to decisionmaking, recordkeeping, and accounting. The Board additionally found that the Greenes routinely commingled personal and corporate assets and property. Accordingly, the Board found sufficient unity of interest and lack of respect for the separate identity of the corporation to conclude that the first prong of *White Oak Coal* was satisfied.

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[28] 352 NLRB 874 (Chairman Schaumber and Member Liebman).
[29] 318 NLRB 732 (1995).
[30] 481 F.3d 804 (D.C. Cir. 2007).

Accepting the court's decision as law of the case with respect to the evidence previously relied upon relating to prong two, the Board determined that the remaining record evidence also supports the conclusion that adherence to the corporate form would unjustly result in the evasion of A. J. Mechanical's backpay obligations. Arnold Greene's role as owner, officer, and director, coupled with his day-to-day business involvement and diversion of corporate assets to his personal benefit, demonstrates his individual participation in the inequity. Cynthia Greene's writing checks payable to her husband on the corporate account, which amounts were thereafter placed in their joint account as a shared asset, demonstrates that she was more than merely a passive recipient of benefits but rather an active participant in the dissipation of corporate assets. Accordingly, the Board determined that the second prong of *White Oak Coal* had been satisfied with respect to both Arnold and Cynthia Greene and held both individually liable for A. J. Mechanical's outstanding backpay obligations.

V

Supreme Court Litigation

During fiscal year 2008, the Supreme Court decided, on the merits, no cases involving the Board as a party. It decided one case in which the Board participated as amicus curiae. The Court denied six private party petitions for certiorari in Board cases, and granted none.

In *Chamber of Commerce v. Brown*,[1] the Supreme Court held that the NLRA preempted a California statute prohibiting recipients of state grants and program funds from using those funds "to assist, promote, or deter union organizing." Reversing an en banc decision of the Ninth Circuit upholding the California statute, the Supreme Court held that the California statute was preempted under the *Machinists* preemption doctrine[2] because it regulated conduct—noncoercive employer speech—that Congress intended to be unregulated. The Court did not decide whether the California statute would also be preempted under the *Garmon* preemption doctrine.[3]

The Court found that California enacted the statute in its capacity as a regulator rather than a market participant, because the statute furthered a labor policy—restricting employer speech about unionization—not a proprietary interest that all state funds be spent solely for the purposes of the relevant grant or program. The Court further found that the California statute regulates noncoercive speech because the restriction on the use of state funds is coupled with compliance costs and litigation risks that impermissibly pressure employers either to forgo their NLRA speech rights or else refuse to receive state funds.

The Court rejected the argument that the Board's regulation of noncoercive speech that is prejudicial to a fair election precludes finding *Machinists* preemption, holding that the Board's regulatory authority under Section 9 of the NLRA to police a narrow zone of speech to ensure a fair election does not extend to the broader category of noncoercive speech regulated by the California statute. The Court also rejected the argument that Congress did not intend to preempt the California statute because Congress has imposed similar restrictions in three Federal statutes, holding that those few isolated restrictions were not intended to alter Federal labor policy expressed in the NLRA.

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[1] 128 S.Ct. 2408 (2008), revg. 463 F.3d 1076 (9th Cir. 2006) (en banc).

[2] *Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132 (1976).

[3] *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959). The preemption principle enunciated in *Garmon* is that states may not regulate "activity that the NLRA protects, prohibits, or arguably protects or prohibits." *Wisconsin Dept. of Indus. v. Gould Inc.*, 475 U.S. 282, 286 (1986).

Dissenting, Justice Breyer, joined by Justice Ginsburg, concluded that the California spending limitations did not amount to impermissible regulation that interfered with the congressional policy encouraging free debate between unions and employers. In Justice Breyer's view, the limitations imposed by the California statute did not undercut that policy because employers remained free to spend their own money on union issues, and because Congress has enacted statutes with the same restrictions on the use of Federal money. Justice Breyer would have remanded the case for the lower courts to consider whether the compliance provisions of the California statute, as a practical matter, would unreasonably discourage employers from spending nonstate funds in union campaigns.

VI
Enforcement Litigation

A. Duty to Bargain

Section 8(a)(5) and (d) of the Act obligate an employer to bargain with the representative chosen by a majority of its employees. The presumption that, once chosen, a union retains its majority status is irrebuttable during the term of a collective-bargaining agreement and rebuttable upon the agreement's expiration.[1] Since its 2001 decision in *Levitz Furniture Co.*,[2] the Board has held that an employer may lawfully withdraw recognition from an incumbent union, and defeat the rebuttable presumption of majority support, only by showing that the union *actually* lacked majority support at the time recognition was withdrawn. Several decisions this year involved application of the *Levitz* test.

In *Highlands Regional Medical Center v. NLRB*,[3] the District of Columbia Circuit affirmed the Board's finding that the employer failed to prove actual loss of majority support at the time it withdrew recognition.[4] The decertification petition, on which the employer relied exclusively, contained the signature of an employee whom the employer knew had rejoined the union by the time it withdrew recognition. As the employer stipulated, without that signature the petition did not demonstrate the views of a majority of the unit employees.[5] Thus, as the court explained, "[u]nder *Levitz*, absent other 'objective evidence' in [its] possession at the time of withdrawal, . . . [the employer's] stipulation and its knowledge that [the employee] had joined the union dispose of this case."[6] The court also approved the Board's refusal to accept the hearing testimony of several unit employees that they opposed union representation, because the employer "had no knowledge of that corroborating evidence on the day it withdrew recognition."[7] On the "crucial date" when it withdrew recognition, the employer "had only unsubstantiated hearsay assertions that other employees opposed the union, which 'certainly do not establish the fact of disfavor with the degree of reliability ordinarily demanded in legal proceedings.'"[8]

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[1] See *Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 781, 785–787 (1996).
[2] See *Levitz Furniture Co. of the Pacific*, 333 NLRB 717, 720 (2001).
[3] 508 F.3d 28 (D.C. Cir.).
[4] 508 F.3d at 29.
[5] 508 F.3d at 32.
[6] Id.
[7] Id.
[8] Id. (quoting *Allentown Mack Sales & Serv. v. NLRB*, 522 U.S. 359, 369 (1998)).

In *Parkwood Developmental Center, Inc. v. NLRB*,[9] the District of Columbia Circuit upheld the Board's finding that the employer unlawfully withdrew recognition upon expiration of the collective-bargaining agreement. A decertification petition signed by a majority of unit employees, upon which the employer relied, had been negated, prior to the withdrawal of recognition, by a subsequent petition it had received signed by a majority of unit employees declaring their desire for union representation and revoking the previous decertification petition. The court found that the Board properly measured employee support on the date the withdrawal took effect, not the earlier date when the employer announced its intent to withdraw recognition.[10] By that later date, the court explained, the subsequent petition had "restored the presumption of majority support enjoyed by every union during the life of its [collective-bargaining agreement], up to three years,"[11] and the employer could not prove actual loss of majority support as *Levitz* requires.

In a similar case, *NLRB v. HQM of Bayside, LLC*,[12] the Fourth Circuit, "applying [its] deferential standard of review,"[13] affirmed the Board's conclusion that the employer failed to show "an actual loss of majority support '*at the time [it] withdrew recognition.*'"[14] On the date the employer withdrew recognition in a unit of between 58 and 61 employees, it had received competing employee petitions—one containing 31 valid signatures indicating that a majority no longer wanted union representation and a subsequent one containing 28 valid signatures indicating those employees wanted continued union representation. Twelve employees had signed both petitions. The Board found that the employer failed to prove an actual majority of unit employees had rejected union representation because 12 of the 31 valid signatures on the antiunion petition had effectively been nullified by subsequent signatures on the prounion petition. "Finding no fault with the Board's arithmetic,"[15] the court agreed, "because many of the signatories evidenced a change of heart, or, at the very least, an incompatible position, by also signing the Union's petition before [the employer] withdrew recognition."[16]

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[9] 521 F.3d 404 (D.C. Cir.)
[10] Id. at 409.
[11] Id.
[12] 518 F.3d 256 (4th Cir.).
[13] Id. at 261.
[14] Id. (quoting *Levitz Furniture*, 333 NLRB 717, 725 (2001)).
[15] 518 F.3d at 261.
[16] Id.

In *NLRB v. B. A. Mullican Lumber & Mfg. Co.*,[17] however, the Fourth Circuit, applying *Levitz*, rejected the Board's finding that the employer violated Section 8(a)(5) by withdrawing recognition, and held that the employer met its burden to advance "substantial objective evidence . . . sufficient to demonstrate that, more likely than not, the [unit] employees no longer support the [u]nion."[18] The court placed particular emphasis on a letter the employer received from an employee who had filed a decertification petition with the Board, which stated that 114 of 220 employees had signed slips signifying they no longer wanted union representation and that those signatures had been filed with the Board.[19] The court determined, contrary to the Board, that the employer had properly relied upon the letter, which was objective evidence "external to the employer's own (subjective) impressions." The court refused to discount as hearsay the letter's representation that the petition was supported by a majority of the unit employees, noting that the General Counsel had not objected to the letter as hearsay and indeed had moved its admission into evidence. In addition, the Court faulted the General Counsel for failing to present any evidence or argument contradicting the employer's evidence of actual loss of majority support.[20]

B. Protected Concerted Activity

Section 8(a)(1) of the Act makes it unlawful for an employer to interfere with an employee's Section 7 right "to engage in . . . concerted activities for the purpose of collective bargaining or other mutual aid or protection." In *Five Star Transportation, Inc. v. NLRB*,[21] the First Circuit upheld the Board's finding[22] that an employer, who had been awarded a bus services contract by the local school district, unlawfully refused to hire and consider for hire several school bus drivers employed by the current contractor because they had sent critical letters to the school district in an effort to dissuade it from implementing the contract with the employer. Rejecting the employer's claim that the letter-writing campaign was not protected concerted activity, the court agreed with the Board that the "letters . . . were reasonably necessary to carry out [the bus drivers'] lawful aim of safeguarding their then-current employment conditions."[23] Moreover, the letters did not lose the Act's protection as disloyal because, in response to the "reasonably perceived threat [to their

[17] 535 F.3d 271 (4th Cir.).
[18] 535 F.3d at 273.
[19] 535 F.3d at 275.
[20] 535 F.3d at 279–280.
[21] 522 F.3d 46 (1st Cir.).
[22] 349 NLRB 42 (2007).
[23] 522 F.3d at 54.

working conditions], the drivers' letter-writing campaign was narrowly tailored to effectuate the drivers' aims: the drivers' letters were addressed solely to the [school district], not the public at large; the letters only requested that the award of the contract be reconsidered or rebid to preserve the drivers' then-current pay and work conditions; and the [bus drivers'] letters" concerned primarily working conditions and avoided needlessly tarnishing the employer's image.[24]

In *Auto Workers v. NLRB (Ogihara America Corp.)*,[25] the Sixth Circuit upheld the Board's finding that the employer lawfully discharged an employee for falsely designating a coworker as the sender of a package containing an otherwise anonymous letter complaining to management about the conduct of a supervisor.[26] While recognizing several strands in the development of the Board's legal analysis,[27] the court concluded that "the determinative question is whether an employee's conduct is sufficiently 'egregious' to cause him to lose protection of the Act."[28] On the specific question presented, the court observed that "[a]bsent good faith, deliberate falsifications may lose the protection of the Act if the circumstances suggest that the falsification was sufficiently egregious."[29] On the facts, the court agreed with the Board that the employee lost the Act's protection because his falsehood was intended to implicate another individual in protected activity that the employee feared would provoke employer reprisals, and because the falsehood was not arguably necessary to preserve the letter writers' complaints to management about the supervisor.[30]

In *Jolliff v. NLRB (TNT Logistics of North America, Inc.)*,[31] the Sixth Circuit granted the petition for review filed by two employees whom the Board found were lawfully discharged for sending a letter to management and the employer's largest customer that contained maliciously false statements accusing the employer of asking employees to "fix" their logbooks.[32] The court held "that the logbooks statement was sufficiently factual in nature to be capable of a defamatory meaning"[33] and was not shown to be true,[34] but remanded the case to the Board because its finding of "actual malice" was not supported by

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[24] Id. at 54.
[25] 514 F.3d 574 (6th Cir.).
[26] *Ogihara America Corp.*, 347 NLRB 110 (2006).
[27] 514 F.3d at 582–584.
[28] Id. at 584.
[29] Id.
[30] Id. at 584–585.
[31] 513 F.3d 600 (6th Cir.).
[32] *TNT Logistics of North America, Inc.*, 347 NLRB 568 (2006).
[33] 513 F.3d at 612–613.
[34] Id. at 614.

substantial evidence.[35] In the court's view, the Board not only gave too little weight to credited testimony that the sender did not know the information was false, but also "seemed to base its holding of actual malice on its underlying finding of fact that the statement was false," making the unwarranted inference that "because the statement was false, the statement was made with knowledge of its falsity."[36]

C. Undocumented Workers Are Statutory Employees

Section 2(3) of the Act defines the "term 'employee' [as] any employee" with certain express exclusions not including undocumented workers. In *Agri Processor Co. v. NLRB*,[37] a divided panel of the District of Columbia Circuit, in agreement with the Board, rejected the employer's claim that it lawfully refused to bargain with the Board-certified union because, after the Board-conducted election, it learned that most of the workers who had voted allegedly were aliens unauthorized to work in the United States.[38] The court agreed with the Board that the statutory definition of "employee,"[39] as interpreted by the Supreme Court in *Sure-Tan, Inc. v. NLRB*,[40] includes undocumented aliens,[41] and that nothing in the subsequently enacted Immigration Reform and Control Act of 1986 (IRCA) compels a contrary result.[42] As the court explained, "there is absolutely no evidence that in passing IRCA Congress intended to repeal the NLRA to the extent its definition of 'employee' includes undocumented aliens. Thus, the NLRA's plain language, as applied by the Supreme Court in *Sure-Tan*, continues to control after IRCA, as the Seventh, Ninth, and Eleventh Circuits have all held [in agreement with the Board]. . . . No circuit court has reached a contrary conclusion."[43]

Judge Kavanaugh dissented, concluding that IRCA changed the legal landscape, rendering *Sure-Tan* inapposite.[44] Instead, he would have held "that an illegal immigrant worker is not an 'employee' under the NLRA for the simple reason that, ever since 1986, an illegal immigrant worker is not a lawful 'employee' in the United States."[45]

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[35] Id. at 614–617.
[36] Id. at 615.
[37] 514 F.3d 1 (D.C. Cir.).
[38] Id. at 3–8.
[39] Sec. 2(3) of the Act.
[40] 467 U.S. 883 (1984).
[41] 514 F.3d at 3–4.
[42] Id. at 4–8.
[43] Id. at 5.
[44] 514 F.3d at 12.
[45] 514 F.3d at 10.

D. Successor's Failure to Hire

While a new employer is not obligated to hire its predecessor's employees, it may not lawfully avoid a successor's bargaining obligation by pursuing a hiring policy that is designed to keep its predecessor's employees in the minority; to the contrary, Section 8(a)(3) and (1) of the Act makes it an unfair labor practice to refuse to hire employees for that unlawful reason. In *Planned Building Services,*[46] the Board clarified that the additional elements added to the General Counsel's burden in refusal-to-hire cases under *FES*[47] are inapplicable in cases where it is alleged that a successor employer has discriminated against the employees of a predecessor. In a successorship context, as in *Wright Line,*[48] the General Counsel need only show that union animus was a motivating factor in the refusal to hire.

In *W&M Properties of Connecticut, Inc. v. NLRB,*[49] the District of Columbia Circuit endorsed the Board's application of its *Planned Building Services* clarification. In finding that the Board "provid[ed] a reasoned justification for its departure from [the *FES*] precedent," the court observed that *Planned Building Services* essentially "treat[s] the decision not to hire a predecessor's employee as it would a firing," and that "elimination of the *FES* burden in the successorship context promotes efficiency by removing an extraneous analytical step."[50] It then concluded that substantial evidence supported the Board's finding "that protected union conduct was a motivating factor in [the employer's] decisionmaking process, and that it failed to establish an affirmative defense under *Wright Line* and *Planned Building*."[51]

E. Piercing the Corporate Veil

In *NLRB v. Bolivar-Tees, Inc.,*[52] the Eighth Circuit enforced the Board's order providing backpay for five discriminatees and piercing the corporate veil to hold the employer's owner personally liable for the backpay.[53] Relying on the factors set forth by the Board in *White Oak Coal Co.,*[54] the court concluded that "substantial evidence supports the Board's finding that [the owner] and [the four single employer corporations he controlled] failed to maintain their separate identities,"[55]

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[46] 347 NLRB 670 (2006).
[47] *FES*, 331 NLRB 9 (2000).
[48] *Wright Line*, 251 NLRB 1083 (1980).
[49] 514 F.3d 1341 (D.C. Cir.).
[50] Id.
[51] Id. at 1349.
[52] 551 F.3d 722 (8th Cir.).
[53] Id. at 724.
[54] 318 NLRB 732, 734–735 (1995).
[55] 551 F.3d at 729.

and "that adherence to the corporate fiction would sanction a fraud and lead to the evasion of a legal obligation."[56] The court held that substantial evidence supported the Board's finding that the owner "fraudulently removed [corporate] assets to avoid [the corporate wrongdoer's] legal obligations to the five discriminatees."[57]

F. At-Will Employment Status of Permanent Striker Replacements

An employer may not refuse to reinstate an economic striker upon his unconditional offer to return to work absent a legitimate and substantial business justification for doing so.[58] One such well-recognized justification is the hiring of "permanent" striker replacements.[59] In *United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union v. NLRB*,[60] the Seventh Circuit affirmed the Board's dismissal of allegations that the employer unlawfully refused to reinstate strikers because it had hired only temporary, not permanent, replacements.[61] In so doing, the court affirmed the Board's decision to overrule *Target Rock Corp.*,[62] to the extent that it suggested that at-will employment is inconsistent with or detracts from an otherwise valid showing of permanent replacement status. The court rejected the union's argument that the Supreme Court's decision in *Belknap v. Hale*,[63] which held that the Act did not preempt state-court lawsuits by replacements for breach of a promise of "permanent" employment, precludes a finding that replacements are "permanent" under the Act where the replacements have not entered into enforceable contracts of employment under State law. Instead, as the court explained, "the Board consistently has allowed employers to hire permanent employees while concomitantly imposing certain conditions on their retention [such as at-will employment], so long as there is a mutual understanding that the employer's desire to reinstate a striker will not cause the replacement employee's discharge."[64] On the facts presented, the court found that "the Board reasonably concluded that [the employer] had a mutual understanding of permanence with the

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[56] Id. at 731.
[57] Id.
[58] *NLRB v. Fleetwood Trailer Co.*, 389 U.S. 375, 378 (1967).
[59] Id. at 379.
[60] 544 F.3d 841 (7th Cir.).
[61] *Jones Plastic & Engineering Co.*, 351 NLRB 61 (2007).
[62] 324 NLRB 373 (1997).
[63] 463 U.S. 491 (1983).
[64] 544 F.3d at 855.

replacement employees, despite the replacements' otherwise at-will status."[65]

[65] Id. at 860.

VII
Injunction Litigation

A. Injunction Litigation Under Section 10(j)

Section 10(j) of the Act empowers the Board, in its discretion, to petition a U.S. district court for appropriate, temporary injunctive relief or restraining order in aid of an unfair labor practice proceeding. Section 10(j) proceedings can be initiated after issuance of an unfair labor practice complaint under Section 10(b) of the Act against any employer or labor organization.[1] Any injunction issued under Section 10(j) lasts until final disposition of the unfair labor practice case by the Board.

In Fiscal 2008, the Board filed in district courts a total of 18 petitions for temporary injunctive relief under Section 10(j). All of these petitions were filed against employers. Three cases authorized in a prior fiscal year were also pending in district court at the beginning of the fiscal year. Of these 21 cases, 5 were settled or adjusted prior to court action. One case was withdrawn prior to a court decision as moot due to the issuance of a Board order, and another case was withdrawn from the district court because of changed circumstances. District courts granted injunctions in 10 cases, granted partial injunctions in 2 cases, and denied injunctions in 3 cases. Two cases remained pending in district court at the end of the fiscal year.

Of the 15 cases litigated to decision in Fiscal 2008, 3 cases involved employer withdrawals of recognition from incumbent unions. Three cases involved successor employers' refusal to recognize and bargain with the incumbent union that had represented the employees of the predecessor employer. Three cases this fiscal year involved employer conduct designed to undermine the status of incumbent unions. Similarly, other cases involved employer misconduct during bargaining negotiations and subcontracting of an operation to avoid a bargaining obligation. Two cases involved the discharges of union activists during organizing campaigns. Finally, one case involved the recognition of a minority union, and another case involved the discharge of employees who engaged in protected, concerted activity.

One significant case during this period involved the reinstatement of employees discharged for engaging in protected, concerted activity. In *Mattina v. Saigon Grill Restaurant,*[2] a restaurant discharged all of its 28 delivery employees and shut down its delivery service in response to the

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[1] See, e.g., *Ahearn v. Jackson Hospital Corp.*, 351 F.3d 226 (6th Cir. 2003), which was discussed in the Fiscal 2004 Annual Report; *Bloedorn v. Francisco Foods, Inc.*, 276 F.3d 270 (7th Cir. 2001).
[2] Case 08-CIV-3332 (S.D.N.Y.).

employees' discussions about suing the employer for alleged violations of minimum wage and hour laws. The employer promised employees raises and threatened discharge if they did not sign documents relating to wage claims. When the employees refused to sign without a chance to read the documents, the employer terminated the delivery service. The district court approved a consent judgment and order that provided for the reestablishment of the employer's delivery service, the reinstatement of certain-named employees, and the conditional reinstatement of other employees. At the end of the fiscal year, civil contempt proceedings were pending in the district court, alleging that the employer had failed to comply with the terms of the consent injunction by failing to reinstate several discriminatees and failing to reinstate other discriminatees to their prior work schedules.

The Board obtained the interim reinstatement of another large group of discriminatees in *Muffley v. Massey Energy Co.*[3] In that case, a successor employer discriminatorily refused to hire 85 employees who worked for the predecessor coal mine operator and refused to bargain with the Union. As an initial matter, the court concluded that, to avoid the absence of a Board quorum, in December 2008, the Board had properly delegated authority to the General Counsel to initiate 10(j) injunctive proceedings in this case.[4] The employer conceded, and the district court found, that there was reasonable cause to believe that the employer was a successor of the predecessor and that the Employer violated the Act by refusing to recognize and bargain with the union and by implementing unilateral changes to its unit employees' terms and conditions of employment. The court concluded that the employer's discrimination against predecessor employees threatened irreparable harm to the collective-bargaining process and to employee statutory rights. The court relied on evidence that many of the discriminatees were nearing retirement age and that some had accepted employment requiring substantially longer commutes while awaiting resolution of the unfair labor practice litigation. Accordingly, the court concluded that injunctive relief requiring the employer to offer interim employment to the 85 discriminatees was "just and proper." The court rejected the employer's argument that the passage of time since the discrimination occurred in 2004–2005 precluded interim reinstatement, concluding that, absent an injunction, the Board will not be able to repair the damage to the collective-bargaining process. However, the court concluded that an interim bargaining order and an order requiring rescission of unilateral

[3] 2008 WL 4103881, 184 LRRM 3302 (S.D.W.Va. 2008).
[4] 547 F. Supp. 2d 536 (S.D.W.Va. 2008).

changes would not be just and proper. The case is pending appeal in the Fourth Circuit.

Another significant case decided during the fiscal year involved an employer's unlawful conduct during bargaining for a successor collective-bargaining agreement in a 100-person hotel unit. In *Wilshire Plaza Hotel*,[5] the employer made numerous unilateral changes during bargaining, including ceasing contractual contributions to health insurance and retirement funds, and then declared impasse despite continuing to reach tentative agreements with the union. The employer also failed to provide the union with requested, relevant information for bargaining. The employer implemented its final offer, including large wage cuts and reductions in other benefits; it then held meetings with unit employees at which the employer promised increased benefits if employees renounced the union. The district court concluded that there was probable success in proving the merits of the unfair labor practice charges, and that, under the Ninth Circuit test for applying traditional equitable criteria in the 10(j) context, irreparable injury was therefore presumed. The court granted the injunction in light of the strong public interest in ensuring that the alleged unfair labor practices would not be successful, including a bargaining order and interim rescission of any or all unilateral changes, upon the union's request.

In *Muffley v. APL Logistics Management Warehouse Services*,[6] the employer withdrew recognition from the union representing approximately 58 warehouse employees on the day after the collective-bargaining agreement expired, relying on a disaffection petition signed by 29 unit employees. The union immediately informed the employer that it had collected 36 signatures on a more recent prounion petition, including 12 signatures of employees who had signed the earlier petition. The court concluded that there was reasonable cause to believe that the employer unlawfully withdrew recognition without evidence of an actual loss of majority support at the time of the withdrawal. In so doing, the court rejected the employer's arguments that the Board's legal theory was novel or otherwise flawed. The court determined that an interim bargaining order was necessary to restore the status quo and to protect the Board's remedial authority.

Finally, during this fiscal year, one appellate court affirmed a decision involving an employer that undermined an incumbent union during the parties' negotiations for a first collective-bargaining agreement by making unilateral changes in terms and conditions of employment of 30

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[5] Case No. CV-08-1118-SVW (C.D. Ca.).

[6] 2008 WL 54455, 183 LRRM 2964 (W.D. Ky. 2008).

drivers and plant operators. In *Lineback v. Spurlino Materials, LLC*,[7] the employer, which operates a concrete company, discriminated against prounion employees when assigning work at a large stadium construction project at which wages and benefits were substantially higher than those provided by the employer at other construction sites. The employer also refused to bargain with the union concerning terms and conditions of employment at the stadium project that were not covered by the project labor agreement in effect at that site. The court concluded that the Board was likely to succeed in establishing that the employer violated the Act. It also concluded that the violations were causing irreparable harm to the employees' efforts to be represented by the union, as shown by decreased attendance at union meetings and employee expressions of fear of discrimination. According to the court, the employer would not be harmed by an injunction requiring it to obey the Act, and the public interest in ensuring that the unfair labor practices will not succeed supported issuance of the injunction. The court rejected the employer's arguments that a future backpay remedy would provide an adequate remedy at law, and that the completion of the stadium project rendered injunctive relief unnecessary, in view of the potential for continuing discrimination against the employees.

B. Injunction Litigation Under Section 10(1)

Section 10(l) imposes a mandatory duty on the Board to petition for "appropriate injunctive relief" against a labor organization or its agent charged with a violation of Section 8(b)(4)(A), (B), and (C),[8] or Section 8(b)(7),[9] and against an employer or union charged with a violation of Section 8(e),[10] whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and a complaint should issue."[11] In cases arising under Section 8(b)(7), however, a district court injunction may not be sought if a charge under Section

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[7] 546 F.3d 491 (7th Cir. 2008).

[8] Sec. 8(b)(4)(A), (B), and (C), as enacted by the Labor Management Relations Act of 1947, prohibited certain types of secondary strikes and boycotts, strikes to compel employers or self-employed persons to join labor or employer organizations, and strikes against Board certifications of bargaining representatives. These provisions were enlarged by the 1959 amendments of the Act (Title VII of Labor-Management Reporting and Disclosure Act) to prohibit not only strikes and the inducement of work stoppages for these objects but also to proscribe threats, coercion, and restraint addressed to employers for these objects, and to prohibit conduct of this nature where an object was to compel an employer to enter into a "hot cargo" agreement declared unlawful in another section of the Act, Sec. 8(e).

[9] Sec. 8(b)(7), incorporated in the Act by the 1959 amendments, makes organizational or recognitional picketing under certain circumstances an unfair labor practice.

[10] Sec. 8(e), also incorporated in the Act by the 1959 amendments, makes hot cargo agreements unlawful and unenforceable, with certain exceptions for the construction and garment industries.

[11] See generally *Pye v. Teamsters Local 122*, 61 F.3d 1013 (1st Cir. 1995); *Kinney v. Operating Engineers Local 150*, 994 F.2d 1271 (7th Cir. 1993).

8(a)(2) of the Act has been filed alleging that the employer had dominated or interfered with the formation or administration of a labor organization and, after investigation, there is "reasonable cause to believe such charge is true and that a complaint should issue." Section 10(l) also provides that its provisions shall be applicable, "where such relief is appropriate," to threats or other coercive conduct in support of jurisdictional disputes under Section 8(b)(4)(D) of the Act.[12] In addition, under Section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the employer, upon a showing that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate injunctive relief is granted. Such ex parte relief, however, may not extend beyond 5 days.

In this report period, the Board filed 3 petitions for injunctions under Section 10(l). Of the total caseload, comprised of this number together with no cases pending at the beginning of the period, one injunction was granted, one was denied, and one petition was withdrawn. No Section 10(l) petitions were pending court action at the close of the report year. During this period, the injunction issued involved secondary boycott action proscribed by Section 8(b)(4)(B).

The case in which an injunction was denied also involved secondary picketing activity by labor organizations.

[12] Sec. 8(b)(4)(D) was enacted as part of the Labor Management Relations Act of 1947.

VIII
Contempt Litigation and Compliance Branch

During fiscal year 2008, the Contempt Litigation and Compliance Branch (CLCB) provided a range of services, including advice, training, and assistance to Regions as well as conducting Federal court litigation, including contempt proceedings, actions under the Federal Debt Collection Procedures Act of 1990 (FDCPA) and bankruptcy actions. A total of 277 cases were referred to CLCB during the fiscal year for advice and/or assistance, or for consideration of contempt proceedings or other appropriate action to achieve compliance with the Act. Of this total, 135 cases were formal submissions respecting contempt or other compliance actions; in 142 other cases, advice and/or assistance was solicited and provided to the Regions or other Agency personnel and the cases returned for further administrative processing. CLCB also conducted 79 asset/entity database investigations to assist Regions in their compliance efforts, a task over and above the 277 referrals to CLCB referenced above. In addition, over 250 hours were devoted by CLCB staff to training Regional and other Agency personnel and members of the private sector bar on contempt and compliance issues.

Of the 135 contempt or other formal submissions, voluntary compliance was achieved in 48 cases during the fiscal year, without the necessity of filing a contempt petition or other initiating papers, and 32 other cases settled after the filing of a formal pleading in court but before trial. In 46 other cases, it was determined that contempt or other proceedings were not warranted.

In cases deemed to have merit, 12 civil contempt or equivalent proceedings were instituted, including one in which body attachment was sought. A number of ancillary compliance proceedings were also instituted by CLCB in FY 2008, including two proceedings to obtain subpoena enforcement orders; seven proceedings to obtain postjudgment writs of garnishment; one proceeding to obtain a prejudgment writ of garnishment; four proceedings to obtain turnover orders for garnished funds; and two proceedings to obtain prejudgment protective restraining orders. CLCB instituted six proceedings in bankruptcy courts, including three motions to take Section 2004 examinations; one proceeding objecting to a Chapter 13 Plan; one adversary proceeding objecting to the discharge of the debtor; and one motion seeking an order compelling payment pursuant to a confirmed Chapter 11 plan.

Fifteen civil contempt or equivalent adjudications were awarded in favor of the Board in FY 2008, including one assessing fines and three

issuing writs of body attachment. During FY 2008, CLCB also successfully obtained three protective restraining orders; six post-judgment writs of garnishment; one prejudgment writ of garnishment; eight turnover orders for garnished funds; and four subpoena enforcement orders from district courts. In bankruptcy courts, CLCB obtained three orders to permit 2004 examinations, and one order requiring payment by the debtor pursuant to a confirmed Chapter 11 plan.

During the fiscal year, CLCB collected $13,000 in fines and $5,443,592 in backpay or other compensatory damages, while recouping $6096 in court costs and attorneys' fees incurred in contempt litigation.

There were a number of noteworthy cases decided in FY 2008. In *Black's Railroad*, CLCB obtained an FDCPA postjudgment writ of garnishment, resulting in the collection of the full amount of backpay owed plus a 10-percent statutory surcharge, based upon Respondent's failure to comply with a bankruptcy court order confirming the Respondent-Debtor's plan of reorganization, which required periodic payments to be made to the Board. This is believed to be the first instance in which a district court has treated a bankruptcy court order as the equivalent of a "money judgment" for purposes of applying the FDCPA.

In *Advanced Architectural* CLCB, working in coordination with attorneys from the Region, the Appellate Court Branch, the Injunction Litigation Branch, and the Special Litigation Branch, participated in a multifaceted effort to prevent dissipation of assets by a particularly difficult Respondent. To date, the Ninth Circuit has entered a variety of protective orders and contempt orders against Respondent and its officers, and one order permitting the Board to enter upon and seize business records for inspection. During fiscal year 2008, in excess of $220,000 was frozen or turned over to the Board to protect backpay claims in connection with this case.

Other recalcitrant respondents have also been subjected to court sanction orders during the fiscal year, including *Gimrock* (award of costs and attorneys' fees for failure to attend a deposition to which deponent had been subpoenaed); *James E. Steele* (body attachment ordered for failure to obey subpoena enforcement order); and *Messina* (body attachment and fines for failure to obey subpoena enforcement order).

IX
Special Litigation

The Board participates in a number of cases that fall outside the normal process of statutory enforcement and review. The following represent the most significant cases decided this year.

A. Litigation Concerning Board and Court Jurisdiction

In *Ashley v. NLRB,*[1] by unpublished per curiam opinion, the United States Court of Appeals for the Fourth Circuit affirmed a district court dismissal of a lawsuit challenging the conduct of a Board representation proceeding. Plaintiffs, employees of Thomas Built Buses, Inc. (TBB), brought an action against the Board in Federal district court, alleging that their Fifth Amendment procedural due process rights were violated when the Board certified the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) as exclusive bargaining representative while refusing to entertain plaintiffs' objections of alleged unlawful assistance by TBB to the UAW.

In affirming the district court's dismissal, the Fourth Circuit reasoned that although plaintiffs could have filed separate unfair labor practice charges against TBB or the UAW regarding the alleged pre-election misconduct, plaintiffs had chosen not to do so. Instead, the plaintiffs asked the court to declare that the Board's Section 9 representation election violated their constitutional rights for failing in the Section 9 proceeding to provide the same recourse that had been available but ignored by plaintiffs under Section 10 to investigate and remedy alleged unlawful behavior. Citing precedent from several other circuits, the court reasoned that a plaintiff may not bypass a seemingly adequate administrative process and then complain in Federal court of that process's constitutional inadequacy. The court concluded that even assuming that plaintiffs had suffered the deprivation of a constitutionally-protected liberty or property interest, which was not at all clear, plaintiffs' failure to avail themselves of their right to file a charge complaining of TBB's asserted unlawful assistance to the UAW meant that plaintiffs failed to state a due process claim.

In *Lexington Health Care Center v. 1199 SEIU United Healthcare Workers East,*[2] Lexington Health sought to partially vacate or modify an arbitration award won by SEIU regarding the discharge of one of its members. Lexington Health argued that its lawful withdrawal of

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[1] 255 Fed. Appx. 707, 2007 WL 4115948 (per curiam) (4th Cir. 2007).
[2] No. 07cv11790-NG (D. Mass. 2008).

recognition of SEIU, on the same date as the expiration of the collective-bargaining agreement, rendered improper both the arbitrator's subsequent reinstatement of the discharged employee, and the backpay award for any time beyond contract expiration and recognition withdrawal. SEIU responded that neither the contract's expiration nor the withdrawal of recognition affected the arbitrator's ability to award a complete remedy for the employer's pre-expiration breach, including full backpay and reinstatement. Because there was simultaneously pending before the Board a charge filed by SEIU alleging that the same withdrawal of recognition violated the NLRA, the Board filed a motion to intervene in the district court suit. The Board requested that if the court should determine that it needed to reach the withdrawal of recognition issue, it should stay consideration of the case and await the Board's determination.

The district court found that the Board readily satisfied the requirements for intervention as of right. In addition, the court noted that both the union and employer had conceded that if the lawfulness of the withdrawal of recognition was determinative, the case should be stayed pending the Board's determination of that issue. The court further found that it could not avoid the representation issue. Although the court agreed with SEIU that the expiration of the contract did not necessarily render the award unenforceable, in this case the arbitrator had failed to address the expiration of the contract. Because of this failure, the court found that the award was enforceable only through the date of the award. After that date, the award would depend upon the lawfulness of the withdrawal of recognition. If the Board found the withdrawal to be lawful, the employer's duty to employ the discharged employee (and thus backpay) could continue only to the date of the award, and therefore enforcing any reinstatement or backpay beyond that date would not be appropriate. By contrast, if the Board were to find that the withdrawal was unlawful, then the court's final decision could be different. Accordingly, the court stayed the case pending determination by the Board.[3]

In *Advanced Architectural Metals, Inc. v. Overstreet*,[4] the district court of Nevada held that it lacked jurisdiction to enjoin the Board's scheduled unfair labor practice hearing. The plaintiffs had filed a complaint for injunctive relief, and moved for a temporary restraining order and preliminary injunction seeking to halt an unfair labor practice proceeding on the basis of alleged prosecutorial misconduct. In granting

[3] Subsequent to entry of this stay order, SEIU and Lexington Health settled their dispute and stipulated to dismissal.

[4] No. 208-CV-0209-LDG-PAL, 2008 WL 583683 (D. Nev. 2008).

the Board's motion to dismiss the complaint, the district court explained that "[w]ith very limited exceptions not applicable in this case, Congress has vested exclusive jurisdiction in the courts of appeal to review 'all questions of the jurisdiction of the Board and the regularity of its proceedings, [and] all questions of constitutional right or statutory authority.'"[5] Accordingly, the court concluded that district courts do not have subject-matter jurisdiction to enjoin NLRB unfair labor practice proceedings. Adding that the holding of a Board administrative hearing does not amount to irreparable injury upon a party required to participate, the court found that in this case, the plaintiffs neither alleged nor demonstrated a risk of irreparable injury entitling them to injunctive relief. Thus, the court denied the plaintiffs' motion for injunctive relief and granted the Board's motion to dismiss the complaint.

B. Freedom of Information Act Litigation

In *Zarcon, Inc. v. NLRB*,[6] the United States District Court for the Western District of Missouri denied plaintiffs' motion for an award of attorneys fees and expenses under the Freedom of Information Act (FOIA),[7] relating to their costs associated with obtaining a requested document. The Board disclosed the document during the course of the litigation pursuant to a settlement agreement. The district court held that under *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources*,[8] the plaintiffs are not eligible for fees and expenses because they did not "substantially prevail" under the FOIA. Plaintiffs failed to satisfy the *Buckhannon* threshold for fee eligibility because the disclosure was not made pursuant to a court order, even though the district court had approved the settlement agreement. The court further held that *Buckhannon* applies to FOIA cases, an issue which had been resolved by other circuits but which has yet to be reached by the Eighth Circuit, and that the Open Government Act of 2007,[9] did not render *Buckhannon* inapplicable. The court explained that the Open Government Act does not contain any evidence that the amendment overturning *Buckhannon* in FOIA cases was intended to be applied retroactively, and the court refused to apply it to the instant case because the statute was not enacted until after the Board disclosed the document, entered into the settlement agreement, and plaintiffs incurred the claimed fees and expenses. The district court

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[5] Id. at *1 (quoting *AMERCO v. NLRB*, 458 F.3d 883, 887 (9th Cir. 2006)).
[6] No. 06-3161, 2008 WL 4960224 (W.D. Mo. 2008).
[7] 5 U.S.C. § 552(a)(4)(E).
[8] 532 U.S. 598 (2001).
[9] Pub. L. No. 110-175, 121 Stat. 2524 (2007).

denied plaintiffs' subsequent motion for reconsideration. Plaintiffs appealed the case to the Eighth Circuit Court of Appeals, which appeal remains pending.

C. Litigation Under Section 10(k) of the Act

In *IAM v. NLRB*,[10] the United States Court of Appeals for the Ninth Circuit affirmed a Board Decision and Order quashing a notice of hearing under Section 10(k) of the Act.[11] Petitioner SSA Terminals, LLC (SSA) had filed a charge against Petitioner International Association of Machinists & Aerospace Workers, District Lodge 190, Local No. 1414 (IAM), alleging that IAM had violated Section 8(b)(4)(D) of the Act when it threatened economic action over the plugging, unplugging, and monitoring of refrigerated containers (reefer work) at the Howard Terminal in the Port of Oakland in Oakland, California. After a hearing was held pursuant to Section 10(k) before a Board hearing officer, the Board determined that the facts did not warrant the Board making a work assignment award under Section 10(k). Based on the evidence presented at hearing, the Board agreed with ILWU that only ILWU-represented longshoremen performed reefer work for SSA at the Howard Terminal in the past and that the dispute over the Howard Terminal reefer work only began when SSA assigned that work to IAM-represented Machinists in breach of ILWU's contracts with SSA. Accordingly, the Board reasoned that the dispute was not appropriate for resolution under Section 10(k) because it was not a true jurisdictional dispute between IAM and ILWU, but rather, a work preservation dispute between SSA and ILWU.

On consolidated petitions for review filed by SSA and IAM, the Ninth Circuit affirmed the Board's Decision and Order, holding that substantial evidence supported the Board's finding that ILWU had exclusively performed reefer work at the Howard Terminal, and that the Board was not arbitrary and capricious in concluding that the dispute was a work preservation dispute and not a true jurisdictional dispute required to be resolved under Section 10(k).

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[10] 253 Fed. Appx. 625, 2007 WL 3226184 (9th Cir. 2007).
[11] *SSA Terminals, LLC*, 344 NLRB 1018 (2005).

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APPENDIX

GLOSSARY OF TERMS USED IN STATISTICAL TABLES

The definitions of terms contained in this glossary are not intended for general application but are specifically directed toward increasing comprehension of the statistical tables that follow. Thus the definitions are keyed directly to the terms used in such tables.

Adjusted Cases

Cases are closed as "adjusted" when an informal settlement agreement is executed and compliance with its terms is secured. (See "Informal Agreement," this glossary.) In some instances, a written agreement is not secured but appropriate remedial action is taken so as to render further proceeding unnecessary. A central element in an "adjusted" case is the agreement of the parties to settle differences without recourse to litigation.

Advisory Opinion Cases

See "Other Cases—AO" under "Types of Cases."

Agreement of Parties

See "Informal Agreement" and "Formal Agreement," this glossary. The term "agreement" includes both types.

Amendment of Certification Cases

See "Other Cases—AC" under "Types of Cases."

Backpay

Amounts of money paid or to be paid employees as reimbursement for wages lost because they were discriminatorily discharged or unlawfully denied employment, plus interest on such money. Also included is payment for bonuses, vacations, other fringe benefits, etc., lost because of the discriminatory acts, as well as interest thereon. All moneys noted in table 4 have been reported as paid or owing in cases closed during the fiscal year. (Installment payments may protract some payments beyond this year and some payments may have actually been made at times considerably in advance of the date a case was closed; i.e., in a prior fiscal year.)

Backpay Hearing

A supplementary hearing to receive evidence and testimony as to the amount of backpay due discriminatees under a prior Board or court decree.

Backpay Specification

The formal document, a "pleading," which is served on the parties when the Regional Director and the respondent are unable to agree as to the amounts of backpay due discriminatees pursuant to a Board order or court decree requiring payment of such backpay. It sets forth in detail the amount held by the Regional Director to be owing each discriminatee and the method of computation employed. The specification is accompanied by a notice of hearing setting a date for a backpay hearing.

Case

A "case" is the general term used in referring to a charge or petition filed with the Board. Each case is numbered and carries a letter designation indicating the type of case. See "Types of Cases."

Certification

A certification of the results of an election is issued by the Regional Director or the Board. If a union has been designated as the exclusive bargaining representative by a majority of the employees, a certification of representative is issued. If no union has received a majority vote, a certification of results of election is issued.

Challenges

The parties to an NLRB election are entitled to challenge any voter. At the election site, the challenged ballots are segregated and not counted when other ballots are tallied. Most frequently, the tally of unchallenged ballots determines the election and the challenged ballots are insufficient in number to affect the results of the election. The challenges in such a case are never resolved, and the certification is based on the tally of (unchallenged) ballots.

When challenged ballots are determinative of the result, a determination as to whether or not they are to be counted rests with the Regional Director in the first instance, subject to possible appeal to the Board. Often, however, the "determinative" challenges are resolved informally by the parties by mutual agreement. No record is kept of nondeterminative challenges or determinative challenges which are resolved by agreement prior to issuance of the first tally of ballots.

Charge

A document filed by an employee, an employer, a union, or an individual alleging that an unfair labor practice has been committed. See "C Case" under "Types of Cases."

Complaint

The document which initiates "formal" proceedings in an unfair labor practice case. It is issued by the Regional Director when he or she concludes on the basis of a completed investigation that any of the allegations contained in the charge have merit and adjustment or settlement has not been achieved by the parties. The complaint sets forth all allegations and information necessary to bring a case to hearing before an administrative law judge pursuant to due process of law. The complaint contains a notice of hearing, specifying the time and place of hearing.

Election, Runoff

An election conducted by the Regional Director after an initial election, having three or more choices on the ballot, has turned out to be inconclusive (none of the choices receiving a majority of the valid votes cast). The Regional Director conducts the runoff election between the choices on the original ballot which received the highest and the next highest number of votes.

Election, Stipulated

An election held by the Regional Director pursuant to an agreement signed by all the parties concerned. The agreement provides for the waiving of hearing and the establishment of the appropriate unit by mutual consent. Postelection rulings are made by the Board.

Eligible Voters

Employees within an appropriate bargaining unit who were employed as of a fixed date prior to an election, or are otherwise qualified to vote under the Board's eligibility rules.

Fees, Dues, and Fines

The collection by a union or an employer of dues, fines, and referral fees from employees may be found to be an unfair labor practice under Section 8(b)(1)(A) or (2) or 8(a)(1) and (2) or (3), where, for instance such moneys were collected pursuant to an illegal hiring hall arrangement, or an invalid or unlawfully applied union-security agreement; where dues were deducted from employees' pay without their authorization; or, in the cases of fines, where such fines restrained or coerced employees in the exercise of their rights. The remedy for such unfair labor practices usually requires the reimbursement of such moneys to the employees.

Fines

See "Fees, Dues, and Fines."

Formal Action

Formal actions may be documents issued or proceedings conducted when the voluntary agreement of all parties regarding the disposition of all issues in a case cannot be obtained, and where dismissal of the charge or petition is not warranted. Formal actions, are, further, those in which the decision-making authority of the Board (the Regional Director in representation cases), as provided in Sections 9 and 10 of the Act, must be exercised in order to achieve the disposition of a case or the resolution of any issue raised in a case. Thus, formal action takes place when a Board decision and consent order is issued pursuant to a stipulation, even though the stipulation constitutes a voluntary agreement.

Formal Agreement (in unfair labor practice cases)

A written agreement between the Board and the other parties to a case in which hearing is waived and the specific terms of a Board order agreed upon. The agreement may also provide for the entry of a consent court decree enforcing the Board order.

Compliance

The carrying out of remedial action as agreed upon by the parties in writing (see "Formal Agreement," "Informal Agreement"); as recommended by the administrative law judge in the decision; as ordered by the Board in its decision and order; or decreed by the court.

Dismissed Cases

Cases may be dismissed at any stage. They are dismissed informally when, following investigation, the Regional Director concludes that there has been no violation of the law, that there is insufficient evidence to support further action, or for a variety of other reasons. Before the charge is dismissed, however, the charging party is given the opportunity to withdraw the charge by the administrative law judge, by the Board, or by the courts through their refusal to enforce orders of the Board.

Dues

See "Fees, Dues, and Fines."

Election, Consent

An election conducted by the Regional Director pursuant to an agreement signed by all parties concerned. The agreement provides for the waiving of a hearing, the establishment of the appropriate unit by mutual consent, and the final determination of all postelection issues by the Regional Director.

Election, Directed

Board-Directed

An election conducted by the Regional Director pursuant to a decision and direction of election by the Board. Postelection rulings are made by the Regional Director or by the Board.

Regional Director-Directed

An election conducted by the Regional Director pursuant to a decision and direction of election issued by the Regional Director after a hearing. Postelection rulings are made by the Regional Director or by the Board.

Election, Expedited

An election conducted by the Regional Director pursuant to a petition filed within 30 days of the commencement of picketing in a situation in which a meritorious 8(b)(7)(C) charge has been filed. The election is conducted under priority conditions and without a hearing unless the Regional Director believes the proceeding raises questions which cannot be decided without a hearing.

Postelection rulings on objections and/or challenges are made by the Regional Director and are final and binding unless the Board grants an appeal on application by one of the parties.

Election, Rerun

An election held after an initial election has been set aside either by the Regional Director or by the Board.

Informal Agreement (in unfair labor practice cases)

A written agreement entered into between the party charged with committing an unfair labor practice, the Regional Director, and (in most cases) the charging party requiring the charged party to take certain specific remedial action as a basis for the closing of the case. Cases closed in this manner are included in “adjusted” cases.

Injunction Petitions

Petitions filed by the Board with respective U.S. district courts for injunctive relief under Section 10(j) or Section 10(e) of the Act pending hearing and adjudication of unfair labor practice charges before the Board. Also, petitions filed with the U.S. court of appeals under Section 10(e) of the Act.

Jurisdictional Disputes

Controversies between unions or groupings of employees as to which employees will perform specific work. Cases involving jurisdictional disputes are received by the Board through the filing of charges alleging a violation of Section 8(b)(4)(D). They are initially processed under Section 10(k) of the Act which is concerned with the determination of the jurisdictional dispute itself rather than with a finding as to whether an unfair labor practice has been committed. Therefore, the failure of a party to comply with the Board’s determination of dispute is the basis for the issuance of an unfair labor

practice complaint and the processing of the case through usual unfair labor practice procedures.

Objections

Any party to an election may file objections alleging that either the conduct of the election or the conduct of a party to the election failed to meet the Board's standards. An election will be set aside if eligible employee-voters have not been given an adequate opportunity to cast their ballots, in secrecy and without hindrance from fear or other interference with the expression of their free choice.

Petition

See "Representation Cases." Also see "Other Cases—AC, UC, and UD" under "Types of Cases."

Proceeding

One or more cases included in a single litigated action. A "proceeding" may be a combination of C and R cases consolidated for the purpose of hearing.

Representation Cases

This term applies to cases bearing the alphabetical designations RC, RM, or RD. (See "R Cases" under "Types of Cases," this glossary, for specific definitions of these terms.) All three types of cases are included in the term "representation" which deals generally with the problem of which union, if any, shall represent employees in negotiations with their employer. The cases are initiated by the filing of a petition by a union, an employer, or a group of employees.

Representation Election

An election by secret ballot conducted by the Board among the employees in an appropriate collective-bargaining unit to determine whether the employees wish to be represented by a particular labor organization for purposes of collective bargaining. The tables herein reflect only final elections which result in the issuance of a certification of representative if a union is chosen, or a certification of results if the majority has voted for "no union."

Situation

One or more unfair labor practice cases involving the same factual situation. These cases are processed as a single unit of work. A situation may include one or more CA cases, a combination of CA and CB cases, or combination of other types of C cases. It does not include representation cases.

Types of Cases

General:

> Letter designations are given to all cases depending upon the subsection of the Act allegedly violated or otherwise describing the general nature of each case. Each of the letter designations appearing below is descriptive of the case it is associated with.

C Cases (unfair labor practice cases)

A case number which contains the first letter designation C, in combination with another letter, i.e., CA, CB, etc., indicates that it involves a charge that an unfair labor practice has been committed in violation of one or more subsections of Section 8.

CA:

A charge that an employer has committed unfair labor practices in violation of Section 8(a)(1), (2), (3), (4), or (5), or any combination thereof.

CB:

A charge that a labor organization has committed unfair labor practices in violation of Section 8(b)(1), (2), (3), (5), or (6), or any combination thereof.

CC:

A charge that a labor organization has committed unfair labor practices in violation of Section 8(b)(4)(i) and/or (A), (B), or (C), or any combination thereof.

CD:

A charge that a labor organization has committed an unfair labor practice in violation of Section 8(b)(4)(i) or (ii)(D). Preliminary actions under Section 10(k) for the determination of jurisdictional disputes are processed as CD cases. (See “Jurisdictional Disputes” in this glossary.)

CE:

A charge that either a labor organization or an employer, or both jointly, have committed an unfair labor practice in violation of Section 8(e).

CG:

A charge that a labor organization has committed unfair labor practices in violation of Section 8(g).

CP:

A charge that a labor organization has committed unfair labor practices in violation of Section 8(b)(7)(A), (B), or (C), or any combination thereof.

R Cases (representation cases)

A case number which contains the first letter designation R, in combination with another letter, i.e., RC, RD, RM, indicates that it is a petition for investigation and determination of a question concerning representation of employees, filed under Section 9(c) of the Act.

RC:

A petition filed by a labor organization or an employee alleging that a question concerning representation has arisen and seeking an election for determination of a collective-bargaining representative.

RD:

A petition filed by employees alleging that the union previously certified or currently recognized by the employer as their collective-bargaining representative no longer represents a majority of the employees in the appropriate unit and seeking an election to determine this.

RM:

A petition filed by an employer alleging that a question concerning representation has arisen and seeking an election for the determination of a collective-bargaining representative.

Other Cases

AC:

(Amendment of Certification cases): A petition filed by a labor organization or an employer for amendment of an existing certification to reflect changed circumstances, such as changes in the name or affiliation of the labor organization involved or in the name or location of the employer involved.

AO:

(Advisory Opinion cases): As distinguished from the other types of cases described above, which are filed in and processed by Regional Offices of the Board, AO or "advisory opinion" cases are filed directly with the Board in Washington and seek a determination as to whether the Board would or would not assert jurisdiction, in any given situation on the basis of its current standards over the party or parties to a proceeding pending before a state or territorial agency or a court. (See subpart H of the Board's Rules and Regulations, Series 8, as amended.)

UC:

(Unit Clarification cases): A petition filed by a labor organization or an employer seeking a determination as to whether certain classification of employees should or should not be included within a presently existing bargaining unit.

UD:

(Union Deauthorization case): A petition filed by employees pursuant to Section 9(e)(1) requesting that the Board conduct a referendum to determine whether a union's authority to enter into a union-shop contract should be rescinded.

UD Cases

See "Other Cases—UD" under "Types of Cases."

Unfair Labor Practice Cases

See "C Cases" under "Types of Cases."

Union Deauthorization Cases

See "Other Cases—UD" under "Types of Cases."

Union-Shop Agreement

An agreement between an employer and a labor organization which requires membership in the union as a condition of employment on or after the 30th day following (1) the beginning of such employment or (2) the effective date of the agreement, whichever is the later.

Unit, Appropriate Bargaining

A grouping of employees in a plant, firm, or industry recognized by the employer, agreed upon by the parties to a case, or designated by the Board or its Regional Director, as appropriate for the purposes of collective bargaining.

Valid Vote

A secret ballot on which the choice of the voter is clearly shown.

Withdrawn Cases

Cases are closed as “withdrawn” when the charging party or petitioner, for whatever reasons, requests withdrawal or the charge of the petition and such request is approved.

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Editor's Note: The information contained in the Annual Report tables is chiefly derived from the NLRB's case-tracking database. Notes have been inserted to identify minor inconsistencies between tables caused by differences in coding. Questions or comments about the Annual Report should be directed to the NLRB Division of Information, Washington, D.C.

Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 2008[1]

	Total[2]	Identification of filing party				
		AFL–CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
	All Cases					
Pending October 1, 2007	13,168	4,544	3,475	444	4,042	663
Received fiscal 2008	25,890	7,058	6,620	761	10,251	1,200
On docket fiscal 2008	39,058	11,602	10,095	1,205	14,293	1,863
Closed fiscal 2008	26,845	7,545	6,952	744	10,413	1,191
Pending September 30, 2008	12,213	4,057	3,143	461	3,880	672
	Unfair labor practice cases[3]					
Pending October 1, 2007	12,191	4,268	3,160	387	3,793	583
Received fiscal 2008	22,497	5,990	5,312	597	9,566	1,032
On docket fiscal 2008	34,688	10,258	8,472	984	13,359	1,615
Closed fiscal 2008	23,391	6,505	5,621	558	9,702	1,005
Pending September 30, 2008	11,297	3,753	2,851	426	3,657	610
	Representation cases[4]					
Pending October 1, 2007	864	251	296	51	220	46
Received fiscal 2008	3,158	1,007	1,277	144	591	139
On docket fiscal 2008	4,022	1,258	1,573	195	811	185
Closed fiscal 2008	3,217	979	1,296	163	620	159
Pending September 30, 2008	805	279	277	32	191	26
	Union-shop deauthorization cases					
Pending October 1, 2007	29	--	--	--	29	--
Received fiscal 2008	91	--	--	--	91	--
On docket fiscal 2008	120	--	--	--	120	--
Closed fiscal 2008	88	--	--	--	88	--
Pending September 30, 2008	32	--	--	--	32	--
	Amendment of certification cases					
Pending October 1, 2007	4	0	4	0	0	0
Received fiscal 2008	14	4	3	7	0	0
On docket fiscal 2008	18	4	7	7	0	0
Closed fiscal 2008	14	3	4	7	0	0
Pending September 30, 2008	4	1	3	0	0	0
	Unit clarification cases					
Pending October 1, 2007	80	25	15	6	0	34
Received fiscal 2008	130	57	28	13	3	29
On docket fiscal 2008	210	82	43	19	3	63
Closed fiscal 2008	135	58	31	16	3	27
Pending September 30, 2008	75	24	12	3	0	36

[1] See Glossary of terms for definitions. Advisory Opinion (AO) cases not included. See Table 22.
[2] Totals for cases pending Oct. 1, 2007 in the Table 1 series, differ from last year's annual report. Revised totals result from postreport adjustments to last year's "on docket" and/or "closed figures." Totals in Tables 5–10 are within 1–3 percent of the totals in Table 1.
[3] See Table 1A for totals by types of cases.
[4] See Table 1B for totals by types of cases.

Table 1A.—Unfair Labor Practice Cases Received, Closed, and Pending, Fiscal Year 2008[1]

	Total	Identification of filing party				
		AFL–CIO unions	Other national unions	Other local unions	Individuals	Employers
	CA Cases					
Pending October 1, 2007.....	9,975	4,255	3,131	376	2,185	28
Received fiscal 2008.....	16,179	5,941	5,265	586	4,363	24
On docket fiscal 2008.....	26,154	10,196	8,396	962	6,548	52
Closed fiscal 2008.....	17,081	6,461	5,567	542	4,476	35
Pending September 30, 2008.....	9,073	3,735	2,829	420	2,072	17
	CB Cases					
Pending October 1, 2007.....	1,835	10	21	9	1,588	207
Received fiscal 2008.....	5,670	36	33	6	5,154	441
On docket fiscal 2008.....	7,505	46	54	15	6,742	648
Closed fiscal 2008.....	5,751	32	34	10	5,182	493
Pending September 30, 2008.....	1,754	14	20	5	1,560	155
	CC Cases					
Pending October 1, 2007.....	284	0	7	0	12	265
Received fiscal 2008.....	361	4	7	2	31	317
On docket fiscal 2008.....	645	4	14	2	43	582
Closed fiscal 2008.....	322	3	14	1	28	276
Pending September 30, 2008.....	323	1	0	1	15	306
	CD Cases					
Pending October 1, 2007.....	30	3	0	0	4	23
Received fiscal 2008.....	127	8	4	2	10	103
On docket fiscal 2008.....	157	11	4	2	14	126
Closed fiscal 2008.....	120	8	3	2	9	98
Pending September 30, 2008.....	37	3	1	0	5	28
	CE Cases					
Pending October 1, 2007.....	30	0	1	2	1	26
Received fiscal 2008.....	63	1	1	1	2	58
On docket fiscal 2008.....	93	1	2	3	3	84
Closed fiscal 2008.....	37	1	2	3	2	29
Pending September 30, 2008.....	56	0	0	0	1	55
	CG Cases					
Pending October 1, 2007.....	10	0	0	0	1	9
Received fiscal 2008.....	43	0	0	0	2	41
On docket fiscal 2008.....	53	0	0	0	3	50
Closed fiscal 2008.....	35	0	0	0	2	33
Pending September 30, 2008.....	18	0	0	0	1	17
	CP Cases					
Pending October 1, 2007.....	27	0	0	0	2	25
Received fiscal 2008.....	54	0	2	0	4	48
On docket fiscal 2008.....	81	0	2	0	6	73
Closed fiscal 2008.....	45	0	1	0	3	41
Pending September 30, 2008.....	36	0	1	0	3	32

[1] See Glossary of terms for definitions.

Table 2.–Types of Unfair Labor Practices Alleged, Fiscal Year 2008—Page 1 of 2

	Number of cases showing specific allegations	Percent of total cases
Subsections of Sec. 8(a): Total cases	16,179	100.0
8(a)(1)	2,643	16.3
8(a)(1)(2)	121	0.7
8(a)(1)(3)	4,747	29.3
8(a)(1)(4)	128	0.8
8(a)(1)(5)	6,643	41.1
8(a)(1)(2)(3)	69	0.4
8(a)(1)(2)(5)	104	0.6
8(a)(1)(3)(4)	341	2.1
8(a)(1)(3)(5)	1,217	7.5
8(a)(1)(4)(5)	14	0.1
8(a)(1)(2)(3)(4)	9	0.1
8(a)(1)(2)(3)(5)	48	0.3
8(a)(1)(2)(4)(5)	3	0
8(a)(1)(3)(4)(5)	80	0.5
8(a)(1)(2)(3)(4)(5)	12	0.1
Recapitulation[1]		
8(a)(1)	16,179	100.0
8(a)(2)	366	2.3
8(a)(3)	6,523	40.3
8(a)(4)	587	3.6
8(a)(5)	8,121	50.2
B. Charges filed against unions under Section 8(b)		
Subsections of Sec. 8(b): Total cases	6,210	100.0
8(b)(1)	4,864	78.3
8(b)(2)	33	0.5
8(b)(3)	268	4.3
8(b)(4)	487	7.8
8(b)(5)	3	0
8(b)(6)	1	0
8(b)(7)	54	0.9
8(b)(1)(2)	400	6.4
8(b)(1)(3)	70	1.1
8(b)(1)(5)	2	0
8(b)(2)(3)	4	0.1
8(b)(3)(5)	1	0
8(b)(3)(6)	4	0.1
8(b)(1)(2)(3)	16	0.3
8(b)(1)(2)(5)	1	0
8(b)(1)(3)(6)	1	0
8(b)(1)(2)(3)(5)(6)	1	0
Recapitulation[1]		
8(b)(1)	5,355	86.2
8(b)(2)	455	7.3
8(b)(3)	365	5.9

Table 2.–Types of Unfair Labor Practices Alleged, Fiscal Year 2008—Page 2 of 2

	Number of cases showing specific allegations	Percent of total cases
8(b)(4)	511	8.2
8(b)(5)	8	0.1
8(b)(6)	7	0.1
8(b)(7)	54	0.9
B1. Analysis of Section 8(b)(4)		
Total cases 8(b)(4)	487	100.0
8(b)(4)(A)	58	11.9
8(b)(4)(B)	269	55.2
8(b)(4)(C)	10	2.1
8(b)(4)(D)	126	25.9
8(b)(4)(A)(B)	21	4.3
8(b)(4)(B)(C)	3	0.6
Recapitulation[1]		
8(b)(4)(A)	79	16.2
8(b)(4)(B)	293	60.2
8(b)(4)(C)	13	2.7
8(b)(4)(D)	126	25.9
B2. Analysis of Section 8(b)(7)		
Total cases 8(b)(7)	54	100.0
8(b)(7)(A)	12	22.2
8(b)(7)(B)	6	11.1
8(b)(7)(C)	36	66.7
Recapitulation[1]		
8(b)(7)(A)	12	22.2
8(b)(7)(B)	6	11.1
8(b)(7)(C)	36	66.7
C. Charges filed under Section 8(e)		
Total cases 8(e)	63	100.0
Against unions alone	48	76.2
Against employers alone	7	11.1
Against both	8	12.7
D. Charges filed under Section 8(g)		
Total cases 8(g)	43	100.0

[1] A single case may include allegations of violations of more than one subsection of the Act. Therefore, the total of the various allegations is greater than the total number of cases.

Table 3A.—Formal Actions Taken in Unfair Labor Practice Cases, Fiscal Year 2008[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case											
		Total formal actions taken	CA	CB	CC	CD		CE	CG	CP	CA combined with CB	C combined with representation cases	Other C combinations
						Jurisdictional disputes	Unfair labor practices						
10(k) notices of hearing	35	27	--	--	--	27	--	--	--	--	--	--	--
Complaints issued	1,701	1,108	953	104	9	--	2	1	0	4	14	16	5
Backpay specifications issued	75	35	31	3	0	--	0	0	0	0	0	1	0
Hearings completed, total	350	198	169	17	1	0	1	1	0	0	2	7	0
Initial ULP hearings	326	185	156	17	1	0	1	1	0	0	2	7	0
Backpay hearings	0	0	0	0	0	0	0	0	0	0	0	0	0
Other hearings	24	13	13	0	0	0	0	0	0	0	0	0	0
Decisions by administrative law judges, total	359	188	150	21	1	0	2	1	0	0	4	9	0
Initial ULP decisions	327	169	135	19	0	0	2	1	0	0	3	9	0
Backpay decisions	2	1	1	0	0	0	0	0	0	0	0	0	0
Supplemental decisions	30	18	14	2	1	0	0	0	0	0	1	0	0
Decisions and orders by the Board, total	742	316	259	23	4	6	0	2	0	2	4	11	5
Upon consent of parties:													
Initial decisions	77	19	11	1	1	0	0	0	0	1	0	0	5
Supplemental decisions	4	2	2	0	0	0	0	0	0	0	0	0	0
Adopting administrative law judges' decisions (no exceptions filed):													
Initial ULP decisions	92	49	41	5	0	0	0	1	0	1	0	1	0
Backpay decisions	7	4	4	0	0	0	0	0	0	0	0	0	0
Supplemental decisions	1	1	0	0	1	0	0	0	0	0	0	0	0
Contested:													
Initial ULP decisions	410	191	157	14	2	6	0	1	0	0	4	7	0
Decisions based on stipulated record	1	1	1	0	0	0	0	0	0	0	0	0	0
Supplemental ULP decisions	87	35	30	3	0	0	0	0	0	0	0	2	0
Backpay decisions	63	14	13	0	0	0	0	0	0	0	0	1	0

[1] See Glossary of terms for definitions.

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 2008[1]

Types of formal actions taken	Formal actions taken by type of case					
	Cases in which formal actions taken[2]	Total formal actions taken[3]	RC	RM	RD	UD
Hearings completed, total	324	307	248	5	54	3
Initial hearings	226	214	174	3	37	3
Hearings on objections and/or challenges	98	93	74	2	17	0
Decisions issued, total						
By Regional Director	216	206	169	4	33	10
Elections directed	181	172	148	3	21	9
Dismissals on record	35	34	21	1	12	1
By Board	10	10	7	0	3	0
Transferred by Regional Director for initial Decision	3	3	3	0	0	0
Elections directed	0	0	0	0	0	0
Dismissals on record	3	3	3	0	0	0
Other	0	0	0	0	0	0
Review of Regional Directors' decisions:						
Requests for review received	119	112	79	10	23	2
Withdrawn before request ruled upon	6	6	6	0	0	2
Board Action on request ruled upon, total	89	84	59	8	17	1
Granted	5	5	4	1	0	0
Denied	80	75	54	7	14	1
Remanded	4	4	1	0	3	0
Withdrawn after request granted, before Board review	3	2	0	2	0	0
Board decision after review, total	7	7	4	0	3	0
Regional Directors' decisions:						
Affirmed	1	1	1	0	0	0
Modified	0	0	0	0	0	0
Reversed	6	6	3	0	3	0
Outcome:						
Election directed	6	6	3	0	3	0
Dismissals on record	1	1	1	0	0	0
Other	0	0	0	0	0	0
Decisions on Objections and/or challenges, total						
By Regional Directors	145	132	112	4	16	3
By Admininstrative Law Judges	33	28	23	0	5	1
By Board	180	172	140	3	29	1
In stipulated elections	158	150	120	2	28	1
No exceptions to Regional Directors' reports	90	86	67	1	18	1
Exception to Regional Directors' reports	68	64	53	1	10	0
In directed elections (after transfer by Regional Director)	19	19	17	1	1	0
No exceptions to RDs/HOs Reports	8	8	7	0	1	0
Exceptions to RDs/HOs Reports	11	11	10	1	0	0
Review of Regional Directors' supplemental decisions:						
Request for review received	8	7	6	0	1	0
Withdrawn before request ruled upon	1	1	1	0	0	0
Board action on request ruled upon, total	12	11	8	0	3	0
Granted	2	2	2	0	0	0
Denied	10	9	6	0	3	0
Remanded	0	0	0	0	0	0
Withdrawn after request granted, before Board review	0	0	0	0	0	0
Board Decision after review, total	3	3	3	0	0	0
Regional Directors' decisions:						
Affirmed	3	3	3	0	0	0
Modified	0	0	0	0	0	0
Reversed	0	0	0	0	0	0

[1] See Glossary of terms for definitions.
[2] Total includes petitions consolidated into one decision.
[3] Case counts for UD not included.

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 2008[1]

Types of formal action taken	Cases in which formal actions taken	Formal actions taken by type of case[2]	
		AC	**UC**
Hearings completed	28	0	26
Decisions issued after hearing			
By Regional Directors	36	3	27
By Board	1	0	1
Transferred by Regional Directors for initial decision	0	0	0
Review of Regional Directors' decisions:			
Requests for reviews received	8	0	8
Withdrawn before request ruled upon	2	0	8
Board action on request ruled upon, total	4	0	4
Granted	0	0	0
Denied	4	0	4
Remanded	0	0	0
Withdrawn after request granted, before Board review	0	0	0
Board decision after review, total	1	0	1
Regional Directors' decisions:			
Affirmed	0	0	0
Modified	0	0	0
Reversed	1	0	1

[1] See Glossary of terms for definitions.
[2] While columns at left counts "cases," these two columns reflect "situations," i.e., one or more unfair labor practice cases involving the same factual situation.

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 2008[1]—Page 1 of 2

Action taken	Total all	Remedial action taken by–											
		Employer						Union					
		Total	Pursuant to–					Total	Pursuant to–				
			Agreement of parties		Recommen-dation of administra-tive law judge	Order of–			Agreement of parties		Recommen-dation of administra-tive law judge	Order of–	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
A. By number of cases involved	9,385[2]	--	--	--	--	--	--	--	--	--	--	--	--
Notice posted	1,624	1,391	1,115	8	50	93	125	233	203	1	8	6	15
Recognition or other assistance withdrawn	20	20	18	0	0	2	0	--	--	--	--	--	--
Employer–dominated union disestablished	6	6	5	0	0	1	0	--	--	--	--	--	--
Employees offered reinstatement	810	810	696	6	15	38	55	--	--	--	--	--	--
Employees placed on preferential hiring list	16	16	14	0	0	1	1	--	--	--	--	--	--
Hiring hall rights restored	8	--	--	--	--	--	--	8	7	0	0	0	1
Objections to employment withdrawn	5	--	--	--	--	--	--	5	3	0	0	0	2
Picketing ended	43	--	--	--	--	--	--	43	39	1	0	0	3
Work stoppage ended	7	--	--	--	--	--	--	7	7	0	0	0	0
Collective bargaining begun	2,326	2,187	2,081	5	17	36	48	139	138	0	0	1	0
Backpay distributed	1,550	1,513	1,361	7	25	50	70	37	30	0	2	3	2
Reimbursement of fees, dues, and fines	155	100	95	0	1	2	2	55	53	0	0	1	1
Other conditions of employment improved	0	0	0	0	0	0	0	0	0	0	0	0	0
Other remedies	0	0	0	0	0	0	0	0	0	0	0	0	0
B. By number of employees affected:													
Employees offered reinstatement, total	1,839	1,839	1,559	70	20	51	139	--	--	--	--	--	--
Accepted	1,478	1,478	1,355	15	9	20	79	--	--	--	--	--	--

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 2008[1]—Page 2 of 2

Action taken	Total all	Remedial action taken by–												
		Employer						Union						
		Total	Pursuant to–					Total	Pursuant to–					
			Agreement of parties		Recommen-dation of administra-tive law judge	Order of–			Agreement of parties		Recommen-dation of administra-tive law judge	Order of–		
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court	
Declined	361	361	204	55	11	31	60	--	--	--	--	--	--	--
Employees placed on preferential hiring list	50	50	48	0	0	1	1	--	--	--	--	--	--	--
Hiring hall rights restored	12	--	--	--	--	--	--	12	8	0	0	0	0	4
Objections to employment withdrawn	1,345	--	--	--	--	--	--	1,345	3	0	0	0	0	1,342
Employees receiving backpay:														
From either employer or union	17,596	17,204	14,652	76	417	386	1,673	392	302	0	4	79	7	
From both employer and union	58	58	44	0	0	0	14	0	0	0	0	0	0	
Employees reimbursed for fees, dues, and fines:														
From either employer or union	3,659	2,531	2,485	0	0	19	27	1,128	729	0	0	399	0	
From both employer and union	3,950	202	200	0	0	1	1	3,748	3,690	0	0	0	58	
C. By amounts of monetary recovery, total	68,104,783	65,121,316	36,758,118	1,487,888	2,021,448	4,033,941	20,819,921	2,983,467	2,276,026	0	75,065	418,186	214,190	
Backpay (includes all monetary payments except fees, dues, and fines)	64,899,747	64,275,163	36,304,574	1,487,888	1,857,948	3,980,906	20,643,847	624,584	217,189	0	75,065	149,830	182,500	
Reimbursement of fees, dues,and fines	3,205,036	846,153	453,544	0	163,500	53,035	176,074	2,358,883	2,058,837	0	0	268,356	31,690	

[1] See Glossary of terms for definitions. Data in this table are based on unfair labor practice cases that were closed during Fiscal Year 2008, after the company and/or union had satisfied all remedial action requirements.
[2] A single case usually results in more than one remedial action, therefore, the total number of actions exceeds the number of cases involved.

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2008[1]—Page 1 of 5

Industrial Group[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Crop Production	19	15	13	2	0	0	0	0	0	4	2	0	2	0	0	0
Animal Production	23	17	14	3	0	0	0	0	0	6	4	0	2	0	0	0
Forestry and Logging	1	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0
Fishing, Hunting and Trapping	5	5	3	2	0	0	0	0	0	0	0	0	0	0	0	0
Support Activities for Agriculture and Forestry	10	8	8	0	0	0	0	0	0	2	0	0	2	0	0	0
Agriculture, Forestry, Fishing, and Hunting	58	45	38	7	0	0	0	0	0	13	7	0	6	0	0	0
Oil and Gas Extraction	32	22	19	3	0	0	0	0	0	9	5	0	4	0	0	1
Mining (except Oil and Gas)	163	137	116	17	3	0	0	0	1	25	17	2	6	0	0	1
Support Activities for Mining	32	27	23	4	0	0	0	0	0	5	4	1	0	0	0	0
Mining, Quarrying, and Oil and Gas Extraction	227	186	158	24	3	0	0	0	1	39	26	3	10	0	0	2
Utilities	475	376	294	78	2	2	0	0	0	90	78	0	12	0	0	9
Construction of Buildings	400	371	177	82	80	19	2	2	9	29	25	2	2	0	0	0
Heavy and Civil Engineering Construction	207	184	98	39	22	5	18	0	2	22	17	1	4	0	0	1
Specialty Trade Contractors	1,682	1,460	920	328	94	78	27	1	12	216	173	16	27	2	0	4
Construction	2,289	2,015	1,195	449	196	102	47	3	23	267	215	19	33	2	0	5
Food Manufacturing	737	669	445	221	2	0	0	0	1	60	45	1	14	1	1	6
Beverage and Tobacco Product Manufacturing	183	159	125	32	1	1	0	0	0	23	17	0	6	0	0	1
Textile Mills	29	26	23	3	0	0	0	0	0	3	1	1	1	0	0	0
Textile Product Mills	18	16	14	2	0	0	0	0	0	2	2	0	0	0	0	0
Apparel Manufacturing	45	37	30	6	1	0	0	0	0	8	7	1	0	0	0	0
Leather and Allied Product Manufacturing	11	9	8	1	0	0	0	0	0	2	2	0	0	0	0	0
31-Manufacturing	1,023	916	645	265	4	1	0	0	1	98	74	3	21	1	1	7
Wood Product Manufacturing	128	109	88	20	0	0	0	0	1	18	8	5	5	0	0	1
Paper Manufacturing	355	332	258	74	0	0	0	0	0	23	17	1	5	0	0	0
Printing and Related Support Activities	116	104	81	20	3	0	0	0	0	12	9	1	2	0	0	0
Petroleum and Coal Products Manufacturing	80	71	51	15	3	0	1	0	1	9	8	0	1	0	0	0
Chemical Manufacturing	313	264	229	33	2	0	0	0	0	45	32	1	12	2	1	1
Plastics and Rubber Products Manufacturing	241	223	107	116	0	0	0	0	0	17	11	1	5	1	0	0
Nonmetallic Mineral Product Manufacturing	284	247	175	58	9	4	1	0	0	37	24	0	13	0	0	0
32-Manufacturing	1,517	1,350	989	336	17	4	2	0	2	161	109	9	43	3	1	2

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2008[1]—Page 2 of 5

Industrial Group[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Primary Metal Manufacturing	596	546	419	121	1	0	1	0	4	48	32	1	15	2	0	0
Fabricated Metal Product Manufacturing	290	258	202	53	1	0	1	0	1	28	19	2	7	3	1	0
Machinery Manufacturing	290	257	183	73	1	0	0	0	0	29	20	1	8	1	0	3
Computer and Electronic Product Manufacturing	41	37	30	7	0	0	0	0	0	4	4	0	0	0	0	0
Electrical Equipment, Appliance, and Component Manufacturing	179	151	117	34	0	0	0	0	0	22	15	2	5	3	0	3
Transportation Equipment Manufacturing	903	843	537	303	2	1	0	0	0	54	37	3	14	4	1	1
Furniture and Related Product Manufacturing	75	65	47	17	1	0	0	0	0	9	6	1	2	0	0	1
Miscellaneous Manufacturing	252	218	161	54	1	2	0	0	0	31	20	0	11	3	0	0
33-Manufacturing	2,626	2,375	1,696	662	7	3	2	0	5	225	153	10	62	16	2	8
Merchant Wholesalers, Durable Goods	210	179	138	35	5	0	0	0	1	29	25	1	3	2	0	0
Merchant Wholesalers, Nondurable Goods	320	251	193	56	0	0	2	0	0	67	52	2	13	2	0	0
Wholesale Electronic Markets and Agents and Brokers	6	4	3	1	0	0	0	0	0	2	1	0	1	0	0	0
Wholesale Trade	536	434	334	92	5	0	2	0	1	98	78	3	17	4	0	0
Motor Vehicle and Parts Dealers	220	168	147	17	3	1	0	0	0	47	36	2	9	2	0	3
Furniture and Home Furnishings Stores	23	21	18	3	0	0	0	0	0	2	1	1	0	0	0	0
Electronics and Appliance Stores	12	11	7	4	0	0	0	0	0	1	1	0	0	0	0	0
Building Material and Garden Equipment and Supplies Dealers	42	37	32	5	0	0	0	0	0	4	2	0	2	0	0	1
Food and Beverage Stores	527	464	321	138	1	0	0	0	4	58	41	4	13	1	0	4
Health and Personal Care Stores	78	59	42	17	0	0	0	0	0	18	13	1	4	0	0	1
Gasoline Stations	12	8	7	1	0	0	0	0	0	4	3	0	1	0	0	0
Clothing and Clothing Accessories Stores	35	27	20	5	2	0	0	0	0	8	7	0	1	0	0	0
44-Retail Trade	949	795	594	190	6	1	0	0	4	142	104	8	30	3	0	9
Sporting Goods, Hobby, Book, and Music Stores	5	3	2	1	0	0	0	0	0	2	2	0	0	0	0	0
General Merchandise Stores	90	71	46	25	0	0	0	0	0	18	14	0	4	1	0	0
Miscellaneous Store Retailers	29	24	21	3	0	0	0	0	0	5	4	0	1	0	0	0
Nonstore Retailers	25	22	18	4	0	0	0	0	0	3	2	0	1	0	0	0
45-Retail Trade	149	120	87	33	0	0	0	0	0	28	22	0	6	1	0	0
Air Transportation	35	21	15	6	0	0	0	0	0	13	11	0	2	1	0	0

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2008[1]—Page 3 of 5

Industrial Group[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Rail Transportation	34	28	22	5	1	0	0	0	0	6	6	0	0	0	0	0
Water Transportation	153	151	59	88	4	0	0	0	0	2	1	1	0	0	0	0
Truck Transportation	668	572	419	146	4	0	2	0	1	95	71	3	21	1	0	0
Transit and Ground Passenger Transportation	842	629	500	128	1	0	0	0	0	204	185	1	18	5	1	3
Pipeline Transportation	16	11	10	1	0	0	0	0	0	5	5	0	0	0	0	0
Scenic and Sightseeing Transportation	11	8	8	0	0	0	0	0	0	3	3	0	0	0	0	0
Support Activities for Transportation	275	217	133	81	1	0	1	0	1	56	50	0	6	1	0	1
48-Transportation and Warehousing	2,034	1,637	1,166	455	11	0	3	0	2	384	332	5	47	8	1	4
Postal Service	3,053	3051	2,224	827	0	0	0	0	0	2	0	0	2	0	0	0
Couriers and Messengers	272	255	140	115	0	0	0	0	0	17	11	0	6	0	0	0
Warehousing and Storage	337	264	197	64	3	0	0	0	0	69	54	0	15	3	0	1
49-Transportation and Warehousing	3,662	3,570	2,561	1,006	3	0	0	0	0	88	65	0	23	3	0	1
Publishing Industries (except Internet)	190	173	125	43	5	0	0	0	0	11	10	0	1	1	0	5
Motion Picture and Sound Recording Industries	77	72	38	25	6	0	3	0	0	5	5	0	0	0	0	0
Broadcasting (except Internet)	109	89	80	9	0	0	0	0	0	19	14	0	5	1	0	0
Telecommunications	592	549	403	144	1	1	0	0	0	34	22	1	11	4	0	5
Data Processing, Hosting, and Related Services	6	6	4	2	0	0	0	0	0	0	0	0	0	0	0	0
Other Information Services	52	36	27	9	0	0	0	0	0	16	13	0	3	0	0	0
Information	1,026	925	677	232	12	1	3	0	0	85	64	1	20	6	0	10
Monetary Authorities–Central Bank	33	27	23	2	2	0	0	0	0	5	4	0	1	0	0	1
Credit Intermediation and Related Activities	31	21	16	2	2	0	1	0	0	8	2	0	6	1	0	1
Securities, Commodity Contracts, and Other Financial Investments and Related Activities	7	7	6	0	1	0	0	0	0	0	0	0	0	0	0	0
Insurance Carriers and Related Activities	29	27	19	8	0	0	0	0	0	2	2	0	0	0	0	0
Funds, Trusts, and Other Financial Vehicles	12	12	8	4	0	0	0	0	0	0	0	0	0	0	0	0
Finance and Insurance	112	94	72	16	5	0	1	0	0	15	8	0	7	1	0	2
Real Estate	162	140	78	45	11	1	1	0	4	22	18	3	1	0	0	0
Rental and Leasing Services	128	99	84	12	2	1	0	0	0	29	23	0	6	0	0	0
Real Estate and Rental and Leasing	290	239	162	57	13	2	1	0	4	51	41	3	7	0	0	0
Professional, Scientific, and Technical Services	217	170	135	29	4	2	0	0	0	44	35	2	7	1	1	1
Management of Companies and Enterprises	34	26	19	6	0	0	0	0	1	8	7	0	1	0	0	0

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2008[1]—Page 4 of 5

Industrial Group[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Administrative and Support Services	1,981	1,689	1,173	476	34	0	1	0	5	278	241	2	35	8	0	6
Waste Management and Remediation Services	340	266	189	72	2	2	0	0	1	72	57	0	15	0	0	2
Administrative and Support and Waste Management and Remediation Services	2,321	1,955	1,362	548	36	2	1	0	6	350	298	2	50	8	0	8
Educational Services	247	197	157	39	1	0	0	0	0	40	29	1	10	2	0	8
Ambulatory Health Care Services	385	310	250	52	4	2	0	2	0	69	57	2	10	1	0	5
Hospitals	1,417	1,188	921	246	5	0	0	16	0	194	114	43	37	5	7	23
Nursing and Residential Care Facilities	1,296	1,050	847	173	8	0	0	22	0	235	168	14	53	6	0	5
Social Assistance	242	185	158	27	0	0	0	0	0	47	37	0	10	4	1	5
Health Care and Social Assistance	3,340	2,733	2,176	498	17	2	0	40	0	545	376	59	110	16	8	38
Performing Arts, Spectator Sports, and Related Industries	157	134	65	65	4	0	0	0	0	21	21	0	0	0	0	2
Museums, Historical Sites, and Similar Institutions	27	23	20	3	0	0	0	0	0	3	1	0	2	0	0	1
Amusement, Gambling, and Recreation Industries	295	266	171	92	3	0	0	0	0	27	26	0	1	2	0	0
Arts, Entertainment, and Recreation	479	423	256	160	7	0	0	0	0	51	48	0	3	2	0	3
Accommodation	647	582	407	164	7	2	0	0	2	64	45	4	15	1	0	0
Food Services and Drinking Places	457	393	313	79	0	0	1	0	0	56	30	2	24	2	0	6
Accommodation and Food Services	1,104	975	720	243	7	2	1	0	2	120	75	6	39	3	0	6
Repair and Maintenance	285	220	165	54	0	1	0	0	0	62	53	0	9	2	0	1
Personal and Laundry Services	299	256	199	57	0	0	0	0	0	39	28	3	8	3	0	1
Religious, Grantmaking, Civic, Professional, and Similar Organizations	375	320	210	104	4	2	0	0	0	51	39	1	11	1	0	3
Private Households	5	3	3	0	0	0	0	0	0	2	1	0	1	0	0	0
Other Services (except Public Administration)	964	799	577	215	4	3	0	0	0	154	121	4	29	6	0	5
Executive, Legislative, and Other General Government Support	29	24	19	5	0	0	0	0	0	5	5	0	0	0	0	0
Justice, Public Order, and Safety Activities	98	51	39	10	0	0	0	0	2	42	36	0	6	4	0	1
Administration of Human Resource Programs	9	4	4	0	0	0	0	0	0	5	4	1	0	0	0	0
Administration of Environmental Quality Programs	3	2	1	1	0	0	0	0	0	1	1	0	0	0	0	0

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2008—Page 5 of 5

Industrial Group	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Administration of Housing Programs, Urban Planning, and Community Development	4	3	3	0	0	0	0	0	0	1	1	0	0	0	0	0
Administration of Economic Programs	17	16	11	5	0	0	0	0	0	1	1	0	0	0	0	0
Space Research and Technology	3	2	2	0	0	0	0	0	0	1	1	0	0	0	0	0
National Security and International Affairs	13	12	10	2	0	0	0	0	0	1	1	0	0	0	0	0
Public Administration	176	114	89	23	0	0	0	0	2	57	50	1	6	4	0	1
Total, all industrial groups	25,855	22,469	16,159	5,663	360	127	63	43	54	3,153	2,415	139	599	90	14	129

[1] See Glossary of terms for definitions.
[2] Source: Standard Industrial Classification, Statistical Policy Division, Office of Management and Budget, Washington, D.C., 1972.

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 2008[1]—Page 1 of 3

Division and State[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Illinois	1,387	1,157	804	270	36	34	4	0	9	204	153	6	45	12	1	13
Indiana	684	609	472	95	35	0	0	1	6	70	58	0	12	3	0	2
Michigan	1,413	1,273	868	391	9	4	0	0	1	128	84	4	40	1	0	11
Ohio	1,437	1,244	854	312	43	0	33	2	0	182	81	62	39	6	1	4
Wisconsin	459	386	288	96	1	0	0	0	1	68	41	9	18	1	0	4
East North Central	5,380	4,669	3,286	1,164	124	38	37	3	17	652	417	81	154	23	2	34
Alabama	457	424	267	157	0	0	0	0	0	33	29	1	3	0	0	0
Kentucky	445	402	317	79	2	0	0	4	0	33	21	0	12	2	7	1
Mississippi	145	124	96	28	0	0	0	0	0	19	18	0	1	0	0	2
Tennessee	341	309	229	79	1	0	0	0	0	32	25	2	5	0	0	0
East South Central	1,388	1,259	909	343	3	0	0	4	0	117	93	3	21	2	7	3
Puerto Rico	310	274	210	64	0	0	0	0	0	29	26	0	3	2	0	5
U.S. Minor Outlying Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virgin Islands	34	25	23	2	0	0	0	0	0	8	8	0	0	1	0	0
Island Areas	344	299	233	66	0	0	0	0	0	37	34	0	3	3	0	5
New Jersey	1,252	1,077	667	366	23	20	1	0	0	165	146	2	17	4	0	6
New York	2,926	2,487	1,532	840	54	30	8	2	21	411	342	6	63	13	1	14
Pennsylvania	1,379	1,189	860	289	22	11	4	2	1	172	135	1	36	5	0	13
Middle Atlantic	5,557	4,753	3,059	1,495	99	61	13	4	22	748	623	9	116	22	1	33
Arizona	302	270	222	44	3	0	0	1	0	31	23	0	8	0	0	1
Colorado	368	332	254	78	0	0	0	0	0	34	28	1	5	0	0	2
Idaho	45	39	32	6	1	0	0	0	0	6	4	0	2	0	0	0
Montana	71	47	36	10	1	0	0	0	0	17	12	2	3	3	0	4
New Mexico	139	124	108	16	0	0	0	0	0	15	12	0	3	0	0	0
Nevada	406	363	247	103	12	0	0	1	0	43	30	5	8	0	0	0
Utah	64	58	45	12	1	0	0	0	0	6	5	0	1	0	0	0

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 2008[1]—Page 2 of 3

Division and State[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Wyoming	23	17	16	1	0	0	0	0	0	6	3	0	3	0	0	0
Mountain	1,418	1,250	960	270	18	0	0	2	0	158	117	8	33	3	0	7
Connecticut	425	358	296	57	2	0	3	0	0	63	59	0	4	1	0	3
Massachusetts	715	623	527	88	7	0	0	1	0	80	71	1	8	2	0	10
Maine	112	106	96	9	0	0	0	1	0	6	5	0	1	0	0	0
New Hampshire	65	43	42	1	0	0	0	0	0	20	17	0	3	0	0	2
Rhode Island	92	74	54	14	4	2	0	0	0	18	15	1	2	0	0	0
Vermont	37	29	24	5	0	0	0	0	0	7	7	0	0	0	0	1
New England	1,446	1,233	1,039	174	13	2	3	2	0	194	174	2	18	3	0	16
Alaska	71	42	33	7	2	0	0	0	0	28	22	0	6	0	0	1
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	3,087	2,741	1,894	753	46	15	4	19	10	319	247	11	61	17	1	9
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	2	0	0	0	0	0	0	0	0	2	2	0	0	0	0	0
Hawaii	294	266	206	58	2	0	0	0	0	26	20	1	5	2	0	0
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Oregon	249	209	163	40	6	0	0	0	0	39	30	1	8	1	0	0
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	681	555	423	102	17	6	4	1	2	118	97	0	21	3	0	5
Pacific	4,384	3,813	2,719	960	73	21	8	20	12	532	418	13	101	23	1	15
District Of Columbia	207	170	99	71	0	0	0	0	0	36	30	0	6	0	0	1
Delaware	53	32	26	5	1	0	0	0	0	21	19	0	2	0	0	0
Florida	722	631	474	155	2	0	0	0	0	90	65	3	22	0	1	0
Georgia	425	371	269	97	4	0	0	0	1	54	42	2	10	0	0	0
Maryland	367	309	243	65	1	0	0	0	0	57	54	0	3	0	0	1
North Carolina	353	325	237	88	0	0	0	0	0	26	13	1	12	0	0	2

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 2008[1]—Page 3 of 3

Division and State[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
South Carolina	113	101	73	28	0	0	0	0	0	12	11	0	1	0	0	0
Virginia	572	529	439	90	0	0	0	0	0	39	31	2	6	3	1	0
West Virginia	253	236	196	31	3	1	1	4	0	16	14	0	2	1	0	0
South Atlantic	3,065	2,704	2,056	630	11	1	1	4	1	351	279	8	64	4	2	4
Iowa	130	101	88	13	0	0	0	0	0	28	23	0	5	0	0	1
Kansas	130	107	81	25	1	0	0	0	0	23	17	1	5	0	0	0
Minnesota	397	324	259	58	6	0	1	0	0	69	44	1	24	0	0	4
Missouri	629	541	429	97	7	3	0	4	1	78	54	7	17	6	0	4
North Dakota	19	12	10	2	0	0	0	0	0	7	7	0	0	0	0	0
Nebraska	47	32	29	2	1	0	0	0	0	15	14	0	1	0	0	0
South Dakota	16	11	10	1	0	0	0	0	0	5	3	0	2	0	0	0
West North Central	1,368	1,128	906	198	15	3	1	4	1	225	162	9	54	6	0	9
Arkansas	127	109	79	30	0	0	0	0	0	18	10	2	6	0	0	0
Louisiana	323	299	199	100	0	0	0	0	0	21	14	1	6	0	1	2
Oklahoma	132	109	77	31	1	0	0	0	0	22	15	0	7	1	0	0
Texas	934	854	643	205	4	1	0	0	1	79	60	2	17	0	0	1
West South Central	1,516	1,371	998	366	5	1	0	0	1	140	99	5	36	1	1	3
Total, all States and areas	25,866	22,479	16,165	5,666	361	127	63	43	54	3,154	2,416	138	600	90	14	129

[1] See Glossary of terms for definitions.
[2] The States are grouped according to the method used by the Bureau of Census, U.S. Department of Commerce.

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 2008[1]—Page 1 of 2

Standard Federal Regions[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Connecticut	425	358	296	57	2	0	3	0	0	63	59	0	4	1	0	3
Massachusetts	715	623	527	88	7	0	0	1	0	80	71	1	8	2	0	10
Maine	112	106	96	9	0	0	0	1	0	6	5	0	1	0	0	0
New Hampshire	65	43	42	1	0	0	0	0	0	20	17	0	3	0	0	2
Rhode Island	92	74	54	14	4	2	0	0	0	18	15	1	2	0	0	0
Vermont	37	29	24	5	0	0	0	0	0	7	7	0	0	0	0	1
Region I	1,446	1,233	1,039	174	13	2	3	2	0	194	174	2	18	3	0	16
Delaware	53	32	26	5	1	0	0	0	0	21	19	0	2	0	0	0
New Jersey	1,252	1,077	667	366	23	20	1	0	0	165	146	2	17	4	0	6
New York	2,926	2,487	1,532	840	54	30	8	2	21	411	342	6	63	13	1	14
Puerto Rico	310	274	210	64	0	0	0	0	0	29	26	0	3	2	0	5
Virgin Islands	34	25	23	2	0	0	0	0	0	8	8	0	0	1	0	0
Region II	4,575	3,895	2,458	1,277	78	50	9	2	21	634	541	8	85	20	1	25
District of Columbia	207	170	99	71	0	0	0	0	0	36	30	0	6	0	0	1
Maryland	367	309	243	65	1	0	0	0	0	57	54	0	3	0	0	1
Pennsylvania	1,379	1,189	860	289	22	11	4	2	1	172	135	1	36	5	0	13
Virginia	572	529	439	90	0	0	0	0	0	39	31	2	6	3	1	0
West Virginia	253	236	196	31	3	1	1	4	0	16	14	0	2	1	0	0
Region III	2,778	2,433	1,837	546	26	12	5	6	1	320	264	3	53	9	1	15
Alabama	457	424	267	157	0	0	0	0	0	33	29	1	3	0	0	0
Florida	722	631	474	155	2	0	0	0	0	90	65	3	22	0	1	0
Georgia	425	371	269	97	4	0	0	0	1	54	42	2	10	0	0	0
Kentucky	445	402	317	79	2	0	0	4	0	33	21	0	12	2	7	1
Mississippi	145	124	96	28	0	0	0	0	0	19	18	0	1	0	0	2
North Carolina	353	325	237	88	0	0	0	0	0	26	13	1	12	0	0	2
South Carolina	113	101	73	28	0	0	0	0	0	12	11	0	1	0	0	0
Tennessee	341	309	229	79	1	0	0	0	0	32	25	2	5	0	0	0
Region IV	3,001	2,687	1,962	711	9	0	0	4	1	299	224	9	66	2	8	5
Illinois	1,387	1,157	804	270	36	34	4	0	9	204	153	6	45	12	1	13
Indiana	684	609	472	95	35	0	0	1	6	70	58	0	12	3	0	2
Michigan	1,413	1,273	868	391	9	4	0	0	1	128	84	4	40	1	0	11
Minnesota	397	324	259	58	6	0	1	0	0	69	44	1	24	0	0	4
Ohio	1,437	1,244	854	312	43	0	33	2	0	182	81	62	39	6	1	4
Wisconsin	459	386	288	96	1	0	0	0	1	68	41	9	18	1	0	4
Region V	5,777	4,993	3,545	1,222	130	38	38	3	17	721	461	82	178	23	2	38
Arkansas	127	109	79	30	0	0	0	0	0	18	10	2	6	0	0	0

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 2008[1]—Page 2 of 2

Standard Federal Regions[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Louisiana	323	299	199	100	0	0	0	0	0	21	14	1	6	0	1	2
New Mexico	139	124	108	16	0	0	0	0	0	15	12	0	3	0	0	0
Oklahoma	132	109	77	31	1	0	0	0	0	22	15	0	7	1	0	0
Texas	934	854	643	205	4	1	0	0	1	79	60	2	17	0	0	1
Region VI	1,655	1,495	1,106	382	5	1	0	0	1	155	111	5	39	1	1	3
Iowa	130	101	88	13	0	0	0	0	0	28	23	0	5	0	0	1
Kansas	130	107	81	25	1	0	0	0	0	23	17	1	5	0	0	0
Missouri	629	541	429	97	7	3	0	4	1	78	54	7	17	6	0	4
Nebraska	47	32	29	2	1	0	0	0	0	15	14	0	1	0	0	0
Region VII	936	781	627	137	9	3	0	4	1	144	108	8	28	6	0	5
Colorado	368	332	254	78	0	0	0	0	0	34	28	1	5	0	0	2
Montana	71	47	36	10	1	0	0	0	0	17	12	2	3	3	0	4
North Dakota	19	12	10	2	0	0	0	0	0	7	7	0	0	0	0	0
South Dakota	16	11	10	1	0	0	0	0	0	5	3	0	2	0	0	0
Utah	64	58	45	12	1	0	0	0	0	6	5	0	1	0	0	0
Wyoming	23	17	16	1	0	0	0	0	0	6	3	0	3	0	0	0
Region VIII	561	477	371	104	2	0	0	0	0	75	58	3	14	3	0	6
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Arizona	302	270	222	44	3	0	0	1	0	31	23	0	8	0	0	1
California	3,087	2,741	1,894	753	46	15	4	19	10	319	247	11	61	17	1	9
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	2	0	0	0	0	0	0	0	0	2	2	0	0	0	0	0
Hawaii	294	266	206	58	2	0	0	0	0	26	20	1	5	2	0	0
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Nevada	406	363	247	103	12	0	0	1	0	43	30	5	8	0	0	0
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
U.S. Minor Outlying Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Region IX	4,091	3,640	2,569	958	63	15	4	21	10	421	322	17	82	19	1	10
Alaska	71	42	33	7	2	0	0	0	0	28	22	0	6	0	0	1
Idaho	45	39	32	6	1	0	0	0	0	6	4	0	2	0	0	0
Oregon	249	209	163	40	6	0	0	0	0	39	30	1	8	1	0	0
Washington	681	555	423	102	17	6	4	1	2	118	97	0	21	3	0	5
Region X	1,046	845	651	155	26	6	4	1	2	191	153	1	37	4	0	6
Total, all States and areas	25,866	22,479	16,165	5,666	361	127	63	43	54	3,154	2,416	138	600	90	14	129

[1] See Glossary of terms for definitions.
[2] The States are grouped according to the method used by the Bureau of Census, U.S. Department of Commerce.

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 2008[1]—Page 1 of 2

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases[2]		CE cases		CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Total number of cases closed	23,308	100.0	--	17,001	100.0	5,749	100.0	322	100.0	118	100.0	37	100.0	35	100.0	46	100.0
Agreement of the parties	8,379	35.9	100.0	7,203	42.4	1,015	17.7	105	32.6	11	9.3	11	29.7	14	40.0	20	43.5
Informal settlement	8,347	35.8	99.6	7,173	42.2	1,014	17.6	104	32.3	11	9.3	11	29.7	14	40.0	20	43.5
Before issuance of complaint	6,928	29.7	82.7	5,898	34.7	883	15.4	94	29.2	11	9.3	10	27.0	14	40.0	18	39.1
After issuance of complaint, before opening of hearing	1,361	5.8	16.2	1,218	7.2	130	2.3	10	3.1	0	0.0	1	2.7	0	0.0	2	4.3
After hearing opened, before issuance of administrative law judge's decision	58	0.2	0.7	57	0.3	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Formal settlement	32	0.1	0.4	30	0.2	1	0.0	1	0.3	0	0.0	0	0.0	0	0.0	0	0.0
Before opening of hearing	7	0.0	0.1	5	0.0	1	0.0	1	0.3	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated decision	5	0.0	0.1	3	0.0	1	0.0	1	0.3	0	0.0	0	0.0	0	0.0	0	0.0
Consent decree	2	0.0	0.0	2	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After hearing opened	25	0.1	0.3	25	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated decision	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Consent decree	25	0.1	0.3	25	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Compliance with	740	3.2	100.0	652	3.8	53	0.9	30	9.3	0	0.0	2	5.4	0	0.0	3	6.5
Administrative law judge's decision	1	0.0	0.1	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Board decision	456	2.0	61.6	426	2.5	26	0.5	1	0.3	0	0.0	2	5.4	0	0.0	1	2.2
Adopting administrative law judge's decision (no exceptions filed)	125	0.5	16.9	105	0.6	18	0.3	0	0.0	0	0.0	1	2.7	0	0.0	1	2.2
Contested	331	1.4	44.7	321	1.9	8	0.1	1	0.3	0	0.0	1	2.7	0	0.0	0	0.0
Circuit court of appeals decree	279	1.2	37.7	221	1.3	27	0.5	29	9.0	0	0.0	0	0.0	0	0.0	2	4.3
Supreme Court action	4	0.0	0.5	4	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Withdrawal	7,553	32.4	100.0	5,361	31.5	1,971	34.3	146	45.3	21	17.8	17	45.9	20	57.1	17	37.0
Before issuance of complaint	7,487	32.1	99.1	5,302	31.2	1,964	34.2	146	45.3	21	17.8	17	45.9	20	57.1	17	37.0

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 2008[1]—Page 2 of 2

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases[2]		CE cases		CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
After issuance of complaint, before opening of hearing	53	0.2	0.7	50	0.3	3	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After hearing opened, before administrative law judge's decision	3	0.0	0.0	2	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After administrative law judge's decision, before Board decision	6	0.0	0.1	4	0.0	2	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After Board or court decision	4	0.0	0.1	3	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Dismissal	6,509	27.9	100.0	3,735	22.0	2,706	47.1	41	12.7	13	11.0	7	18.9	1	2.9	6	13.0
Before issuance of complaint	6,451	27.7	99.1	3,683	21.7	2,702	47.0	39	12.1	13	11.0	7	18.9	1	2.9	6	13.0
After issuance of complaint, before opening of hearing	28	0.1	0.4	24	0.1	3	0.1	1	0.3	0	0.0	0	0.0	0	0.0	0	0.0
After hearing opened, before administrative law judge's decision	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By administrative law judge's decision	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By Board decision	28	0.1	0.4	27	0.2	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Adopting administrative law judge's decision (no exceptions filed)	13	0.1	0.2	13	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Contested	15	0.1	0.2	14	0.1	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By circuit court of appeals decree	2	0.0	0.0	1	0.0	0	0.0	1	0.3	0	0.0	0	0.0	0	0.0	0	0.0
By Supreme Court action	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
10(k) actions (see Table 7A for details of dispositions)	73	0.3	--	0	0.0	0	0.0	0	0.0	73	61.9	0	0.0	0	0.0	0	0.0
Otherwise (compliance with order of administrative law judge or Board not achieved—firm went out of business)	54	0.2	--	50	0.3	4	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

[1] See Table 8 for summary of disposition of stage. See Glossary of terms for definitions.
[2] CD cases closed in this stage are processed as jurisdictional disputes under Sec. 10(k) of the Act. See Table 7A.

Table 7A.—Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 2008[1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	73	100.0
Agreement of the parties-informal settlement	38	52.1
Before 10(k) notice	24	32.9
After 10(k) notice, before opening of 10(k) hearing	12	16.4
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	2	2.7
After Board decision and determination of dispute	0	0.0
Compliance with Board decision and determination of dispute	2	2.7
Withdrawal	26	35.6
Before 10(k) notice	24	32.9
After 10(k) notice, before opening of 10(k) hearing	1	1.4
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	1	1.4
After Board decision and determination of dispute	0	0.0
Dismissal	7	9.6
Before 10(k) notice	5	6.8
After 10(k) notice, before opening of 10(k) hearing	2	2.7
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	0.0
By Board decision and determination of dispute	0	0.0

[1] See Glossary of terms for definitions.

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 2008[1]

Stage of disposition	All C cases		CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed
Total number of cases closed	23,383	100.0	17,074	100.0	5,749	100.0	322	100.0	120	100.0	37	100.0	35	100.0	46	100.0
Before issuance of complaint	20,928	89.5	14,891	87.2	5,550	96.5	279	86.6	98	81.7	34	91.9	35	100.0	41	89.1
After issuance of complaint, before opening of hearing	1,476	6.3	1,310	7.7	136	2.4	11	3.4	16	13.3	1	2.7	0	0.0	2	4.3
After hearing opened, before issuance of administrative law judge's decision	82	0.4	77	0.5	2	0.0	0	0.0	3	2.5	0	0.0	0	0.0	0	0.0
After administrative law judge's decision, before issuance of Board decision	14	0.1	12	0.1	2	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After Board order adopting administrative law judge's decision in absence of exceptions	154	0.7	131	0.8	20	0.3	0	0.0	1	0.8	1	2.7	0	0.0	1	2.2
After Board decision, before circuit court decree	382	1.6	367	2.1	11	0.2	2	0.6	1	0.8	1	2.7	0	0.0	0	0.0
After circuit court decree, before Supreme Court action	341	1.5	280	1.6	28	0.5	30	9.3	1	0.8	0	0.0	0	0.0	2	4.3
After Supreme Court action	6	0.0	6	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

[1] See Glossary of terms for definitions.

Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 2008[1]

Stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	3,211	100.0	2,425	100.0	158	100.0	628	100.0	88	100.0
Before issuance of notice of hearing	457	14.2	224	9.2	85	53.8	148	23.6	49	55.7
After issuance of notice, before close of hearing	2,400	74.7	1,920	79.2	58	36.7	422	67.2	32	36.4
After hearing closed, before issuance of decision	40	1.2	31	1.3	1	0.6	8	1.3	0	0.0
After issuance of Regional Director's decision	193	6.0	153	6.3	7	4.4	33	5.3	6	6.8
After issuance of Board decision[2]	121	3.8	97	4.0	7	4.4	17	2.7	1	1.1

[1] See Glossary of terms for definitions.
[2] Cases closed after Board decision includes all cases where the Board has granted review in a preelection case, or exceptions have been filed in a postelection proceeding.

Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 2008[1]

Method and stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total, all	3,166	100.0	2,388	100.0	158	100.0	620	100.0	84	100.0
Certification issued, total	1,877	59.3	1,560	65.3	26	16.5	291	46.9	46	54.8
After:										
Consent election	75	2.4	65	2.7	6	3.8	4	0.6	3	3.6
Before notice of hearing	13	0.4	8	0.3	5	3.2	0	0.0	3	3.6
After notice of hearing, before hearing closed	61	1.9	56	2.3	1	0.6	4	0.6	0	0.0
After hearing closed, before decision	1	0.0	1	0.0	0	0.0	0	0.0	0	0.0
Stipulated election	1,579	49.9	1,312	54.9	15	9.5	252	40.6	35	41.7
Before notice of hearing	170	5.4	127	5.3	4	2.5	39	6.3	20	23.8
After notice of hearing, before hearing closed	1,392	44.0	1,170	49.0	11	7.0	211	34.0	15	17.9
After hearing closed, before decision	17	0.5	15	0.6	0	0.0	2	0.3	0	0.0
Expedited election	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed election	134	4.2	112	4.7	2	1.3	20	3.2	7	8.3
Board-directed election	89	2.8	71	3.0	3	1.9	15	2.4	1	1.2
By withdrawal, total	1,157	36.5	782	32.7	101	63.9	274	44.2	33	39.3
Before notice of hearing	249	7.9	87	3.6	69	43.7	93	15.0	20	23.8
After notice of hearing, before hearing closed	845	26.7	645	27.0	29	18.4	171	27.6	11	13.1
After hearing closed, before decision	19	0.6	13	0.5	1	0.6	5	0.8	0	0.0
After Regional Director's decision and direction of election	28	0.9	22	0.9	2	1.3	4	0.6	2	2.4
After Board decision and direction of election	16	0.5	15	0.6	0	0.0	1	0.2	0	0.0
By dismissal, total	132	4.2	46	1.9	31	19.6	55	8.9	5	6.0
Before notice of hearing	25	0.8	2	0.1	7	4.4	16	2.6	3	3.6
After notice of hearing, before hearing closed	64	2.0	16	0.7	17	10.8	31	5.0	2	2.4
After hearing closed, before decision	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By Regional Director's decision	27	0.9	17	0.7	3	1.9	7	1.1	0	0.0
By Board decision	16	0.5	11	0.5	4	2.5	1	0.2	0	0.0

[1] See Glossary of terms for definitions.

Table 10A.—Analysis of Methods of Disposition of Amendment of Certification And Unit Clarification Cases Closed, Fiscal Year 2008[1]

	AC	UC
Total, all	14	135
Certification amended or unit clarified	10	8
Before hearing	10	3
By Regional Director's decision	10	3
By Board decision	0	0
After hearing	0	5
By Regional Director's decision	0	5
By Board decision	0	0
Dismissed	1	21
Before hearing	1	11
By Regional Director's decision	1	11
By Board decision	0	0
After hearing	0	10
By Regional Director's decision	0	7
By Board decision	0	3
Withdrawn	3	106
Before hearing	3	101
After hearing	0	5

[1] See Glossary of terms for definitions.

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 2008[1]

Type of case	Type of election					
	Total	Consent	Stipulated	Board-directed	Regional Director-directed[2]	Expedited elections under 8(b)(7)(C)
All types, total:						
Elections	1,955	76	1,643	0	236	0
Eligible voters	141,421	4,918	105,255	0	31,248	0
Valid votes	110,663	3,618	85,493	0	21,552	0
RC cases:						
Elections	1,585	63	1,333	0	189	0
Eligible voters	110,234	3,285	80,167	0	26,782	0
Valid votes	85,858	2,524	64,744	0	18,590	0
RM cases:						
Elections	26	6	15	0	5	0
Eligible voters	2,331	896	873	0	562	0
Valid votes	1,639	514	699	0	426	0
RD cases:						
Elections	296	4	258	0	34	0
Eligible voters	24,122	218	21,728	0	2,176	0
Valid votes	20,025	200	18,162	0	1,663	0
UD cases:						
Elections	48	3	37	0	8	--
Eligible voters	4,734	519	2,487	0	1,728	--
Valid votes	3,141	380	1,888	0	873	--

[1] See Glossary of terms for definitions.
[2] Cases where election is held pursuant to a decision and direction by the Board.

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 2008[1]

Type of Election	All R Elections				RC Elections				RM Elections				RD Elections			
	Elections Conducted				Elections Conducted				Elections Conducted				Elections Conducted			
	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification
All representation elections.....	2,012	59	48	1,905	1,681	57	41	1,583	26	0	0	26	305	2	7	296
Rerun required.....	--	--	40	--	--	--	33	--	--	--	0	--	--	--	7	--
Runoff required.....	--	--	8	--	--	--	8	--	--	--	0	--	--	--	0	--
Consent elections.....	74	0	1	73	64	0	1	63	6	0	0	6	4	0	0	4
Rerun required.....	--	--	1	--	--	--	1	--	--	--	0	--	--	--	0	--
Runoff required.....	--	--	0	--	--	--	0	--	--	--	0	--	--	--	0	--
Stipulated elections.....	1,668	38	27	1,603	1,390	37	23	1,330	15	0	0	15	263	1	4	258
Rerun required.....	--	--	23	--	--	--	19	--	--	--	0	--	--	--	4	--
Runoff required.....	--	--	4	--	--	--	4	--	--	--	0	--	--	--	0	--
Regional Director–directed.....	270	21	20	229	227	20	17	190	5	0	0	5	38	1	3	34
Rerun required.....	--	--	16	--	--	--	13	--	--	--	0	--	--	--	3	--
Runoff required.....	--	--	4	--	--	--	4	--	--	--	0	--	--	--	0	--
Board–directed.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Rerun required.....	--	--	0	--	--	--	--	--	--	--	--	--	--	--	--	--
Runoff required.....	--	--	0	--	--	--	--	--	--	--	--	--	--	--	--	--
Expedited–Sec. 8(b)(7)(C).....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Rerun required.....	--	--	0	--	--	--	--	--	--	--	--	--	--	--	--	--
Runoff required.....	--	--	0	--	--	--	--	--	--	--	--	--	--	--	--	--

[1] The total of representation elections resulting in certification excludes election held in UD cases which are included in the total in Table 11.

Table 11B.—Representation Elections in Which Objections and/or Determinative Challenges Were Ruled On in Cases Closed, Fiscal Year 2008[1]

Type of election/case	Total elections	Objections only		Challenges only		Objections and challenges		Total objections		Total challenges[2]	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
All representation elections	2,020	82	4.1	20	1.0	8	0.4	90	4.5	28	1.4
By type of cases:											
In RC cases	1,688	67	4.0	18	1.1	8	0.5	75	4.4	26	1.5
In RM cases	26	1	3.8	0	0.0	0	0.0	1	3.8	0	0.0
In RD cases	306	14	4.6	2	0.7	0	0.0	14	4.6	2	0.7
By type of election:											
Consent elections	74	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated elections	1,676	21	1.3	9	0.5	5	0.3	26	1.6	14	0.8
Expedited elections	0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections	270	61	22.6	11	4.1	3	1.1	64	23.7	14	5.2
Board-directed elections	0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

[1] Number of elections in which objections were ruled on, regardless of number of allegations in each election.
[2] Number of elections in which challenges were ruled on, regardless of individual ballots challenged in each election.

Table 11C.—Objections Filed in Representation Cases Closed, by Party Filing, Fiscal Year 2008[1]

Type of election/case	Total		By employer		By union		By both parties[2]	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	147	100.0	56	38.1	89	60.5	2	1.4
By type of case:								
RC cases	122	100.0	47	38.5	73	59.8	2	1.6
RM cases	2	100.0	1	50.0	1	50.0	0	0.0
RD cases	23	100.0	8	34.8	15	65.2	0	0.0
By type of election:								
Consent elections	3	100.0	0	0.0	3	100.0	0	0.0
Stipulated elections	69	100.0	16	23.2	52	75.4	1	1.4
Expedited elections	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections	75	100.0	40	53.3	34	45.3	1	1.3
Board-directed elections	0	0.0	0	0.0	0	0.0	0	0.0

[1] See Glossary of terms for definitions.
[2] Objections filed by more than one party in the same cases are counted as one.

Table 11D.—Disposition of Objections in Representation Cases Closed, Fiscal Year 2008[1]

Type of election/case	Objections filed	Objections withdrawn	Objections ruled upon	Overruled		Sustained	
				Number	Percent of total ruled upon	Number	Percent of total ruled upon
All representation elections	147	57	90	83	92.2	7	7.8
By type of case:							
RC cases	122	47	75	69	92.0	6	8.0
RM cases	2	1	1	1	100.0	0	0.0
RD cases	23	9	14	13	92.9	1	7.1
By type of election:							
Consent elections	3	3	0	0	0.0	0	0.0
Stipulated elections	69	43	26	24	92.3	2	7.7
Expedited elections	0	0	0	0	0.0	0	0.0
Regional Director-directed elections	75	11	64	59	92.2	5	7.8
Board-directed elections	0	0	0	0	0.0	0	0.0

[1] See Glossary of terms for definitions.

Table 11E.—Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 2008[1]

Type of election/case	Total rerun elections		Union certified		No Union chosen		Outcome of original election reversed	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	25	100.0	7	28.0	18	72.0	6	24.0
By type of case:								
RC cases	22	100.0	6	27.3	16	72.7	5	22.7
RM cases	0	0.0	0	0.0	0	0.0	0	0.0
RD cases	3	100.0	1	33.3	2	66.7	1	33.3
By type of election:								
Consent elections	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated elections	17	100.0	4	23.5	13	76.5	3	17.6
Expedited elections	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections	8	100.0	3	37.5	5	62.5	3	37.5
Board-directed elections	0	0.0	0	0.0	0	0.0	0	0.0

[1] Includes only final rerun elections, i.e., those resulting in certification. See Glossary of terms for definitions.

Table 12.—Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 2008[1]

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote)					Valid votes cast			
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	In polls				Total	Percent of total eligible	Cast for deauthorization	
							Resulting in deauthorization		Resulting in continued authorization					
		Number	Percent of total	Number	Percent of total		Number	Percent of total	Number	Percent of total			Number	Percent of total eligible
Total	50	18	36.0	32	64.0	4,882	1,414	29.0	3,468	71.0	3,263	66.8	988	20.2
AFL–CIO unions	14	5	35.7	9	64.3	1,392	197	14.2	1,195	85.8	1,126	80.9	164	11.8
Other national unions	34	13	38.2	21	61.8	3,091	1,217	39.4	1,874	60.6	1,878	60.8	824	26.7
Other local unions	2	0.0	0.0	2	100.0	399	0	0.0	399	100.0	259	64.9	0	0.0

[1] Sec. 8(a)(3) of the Act requires that to revoke a union-shop agreement a majority of the employees eligible to vote must vote in favor of deauthorization.

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2008[1]—Page 1 of 3

Participating unions	Total elections[2]	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL–CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by			
										AFL–CIO unions	Other national unions	Other local unions	
A. All representation elections													
AFL–CIO	698	57.7	403	403	--	--	295	48,226	28,059	28,059	--	--	20,167
Other local unions	87	63.2	55	--	--	55	32	7,039	4,213	--	--	4,213	2,826
Other national unions	997	58.1	579	--	579	--	418	69,005	41,182	--	41,182	--	27,823
1-union elections	1,782	58.2	1,037	403	579	55	745	124,270	73,454	28,059	41,182	4,213	50,816
AFL–CIO v. AFL–CIO	24	66.7	16	16	--	--	8	935	514	514	--	--	421
AFL–CIO v. Local	11	81.8	9	4	--	5	2	2,103	1,934	1,376	--	558	169
AFL–CIO v. National	30	83.3	25	14	11	--	5	4,340	3,761	1,720	2,041	--	579
Local v. Local	2	100.0	2	--	--	2	0	64	64	--	--	64	0
National v. Local	29	93.1	27	--	17	10	2	2,393	2,324	--	1,501	823	69
National v. National	44	79.5	35	--	35	--	9	2,938	2,650	--	2,650	--	288
2-union elections	140	81.4	114	34	63	17	26	12,773	11,247	3,610	6,192	1,445	1,526
AFL–CIO v. AFL–CIO v. Local v. Local	4	100.0	4	2	--	2	0	16	16	8	--	8	0
National v. Local v. Local	2	100.0	2	--	0	2	0	93	93	--	0	93	0
National v. National v. Local	1	100.0	1	--	1	0	0	321	321	--	321	0	0
National v. National v. National	1	100.0	1	--	1	--	0	116	116	--	116	--	0
National v. National v. National v. National	1	0.0	0	--	0	--	1	223	0	--	0	--	223
3 (or more)-union elections	9	88.9	8	2	2	4	1	769	546	8	437	101	223
Total representation elections	1,931	60.0	1,159	439	644	76	772	137,812	85,247	31,677	47,811	5,759	52,565
B. Elections in RC cases													
AFL–CIO	571	62.2	355	355	--	--	216	34,355	18,979	18,979	--	--	15,376
Other local unions	77	67.5	52	--	--	52	25	6,860	4,150	--	--	4,150	2,710

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2008[1]—Page 2 of 3

Participating unions	Total elections[2]	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL–CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by			
										AFL–CIO unions	Other national unions	Other local unions	
Other national unions	822	61.2	503	--	503	--	319	57,077	33,901	--	33,901	--	23,176
1-union elections	1,470	61.9	910	355	503	52	560	98,292	57,030	18,979	33,901	4,150	41,262
National v. National	41	78.0	32	--	32	--	9	2,806	2,518	--	2,518	--	288
National v. Local	26	92.3	24	--	15	9	2	2,186	2,117	--	1,348	769	69
Local v. Local	2	100.0	2	--	--	2	0	64	64	--	--	64	0
AFL–CIO v. AFL–CIO	23	69.6	16	16	--	--	7	933	514	514	--	--	419
AFL–CIO v. Local	10	80.0	8	3	--	5	2	1,643	1,474	916	--	558	169
AFL–CIO v. National	29	82.8	24	13	11	--	5	4,320	3,741	1,700	2,041	--	579
2-union elections	131	80.9	106	32	58	16	25	11,952	10,428	3,130	5,907	1,391	1,524
National v. National v. Local	1	100.0	1	--	1	0	0	321	321	--	321	0	0
National v. National v. National	1	100.0	1	--	1	--	0	116	116	--	116	--	0
National v. National v. National v. National	1	0.0	0	--	0	--	1	223	0	--	0	--	223
National v. Local v. Local	2	100.0	2	--	0	2	0	93	93	--	0	93	0
AFL–CIO v. AFL–CIO v. Local v. Local	4	100.0	4	2	--	2	0	16	16	8	--	8	0
3 (or more)-union elections	9	88.9	8	2	2	4	1	769	546	8	437	101	223
Total RC elections	1,610	63.6	1,024	389	563	72	586	111,013	68,004	22,117	40,245	5,642	43,009
C. Elections in RM cases													
Other national unions	16	31.3	5	--	5	--	11	1,541	742	--	742	--	799
AFL–CIO	9	11.1	1	1	--	--	8	773	102	102	--	--	671
1-union elections	25	24.0	6	1	5	0	19	2,314	844	102	742	0	1,470
Total RM elections	25	24.0	6	1	5	0	19	2,314	844	102	742	0	1,470

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2008[1]—Page 3 of 3

Participating unions	Total elections[2]	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL–CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by			
										AFL–CIO unions	Other national unions	Other local unions	
D. Elections in RD cases													
AFL–CIO	118	39.8	47	47	--	--	71	13,098	8,978	8,978	--	--	4,120
Other national unions	159	44.7	71	--	71	--	88	10,387	6,539	--	6,539	--	3,848
Other local unions	10	30.0	3	--	--	3	7	179	63	--	--	63	116
1-union elections	287	42.2	121	47	71	3	166	23,664	15,580	8,978	6,539	63	8,084
National v. National	3	100.0	3	--	3	--	0	132	132	--	132	--	0
National v. Local	3	100.0	3	--	2	1	0	207	207	--	153	54	0
AFL–CIO v. AFL–CIO	1	0.0	0	0	--	--	1	2	0	0	--	--	2
AFL–CIO v. National	1	100.0	1	1	0	--	0	20	20	20	0	--	0
AFL–CIO v. Local	1	100.0	1	1	--	0	0	460	460	460	--	0	0
2-union elections	9	88.9	8	2	5	1	1	821	819	480	285	54	2
Total RD elections	296	43.6	129	49	76	4	167	24,485	16,399	9,458	6,824	117	8,086

[1] See Glossary of terms for definitions.
[2] Includes each unit in which a choice regarding collective-bargaining agent was made, for example, there may have been more than one selection in a single case, or several cases may have been involved.

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 2008[1]—Page 1 of 2

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost				
		Votes for unions				Total votes for no union	Votes for unions				Total votes for no union
		Total	AFL–CIO unions	Other national unions	Other local unions		Total	AFL–CIO unions	Other national unions	Other local unions	
A. All representation elections											
AFL–CIO	40,878	15,438	15,438	--	--	7,677	6,073	6,073	--	--	11,690
Other local unions	5,200	2,077	--	--	2,077	1,082	457	--	--	457	1,584
Other national unions	52,539	22,039	--	22,039	--	7,631	8,021	--	8,021	--	14,848
1-union elections	98,617	39,554	15,438	22,039	2,077	16,390	14,551	6,073	8,021	457	28,122
AFL–CIO v. AFL–CIO	868	348	348	--	--	61	240	240	--	--	219
AFL–CIO v. Local	1,437	1,210	653	--	557	100	61	28	--	33	66
AFL–CIO v. National	3,622	2,993	1,769	1,224	--	130	241	215	26	--	258
Local v. Local	60	59	--	--	59	1	0	--	--	0	0
National v. Local	1,467	1,376	--	843	533	33	28	--	4	24	30
National v. National	2,073	1,698	--	1,698	--	126	128	--	128	--	121
2-union elections	9,527	7,684	2,770	3,765	1,149	451	698	483	158	57	694
AFL–CIO v. AFL–CIO v. Local v. Local	16	16	8	--	8	0	0	0	--	0	0
National v. Local v. Local	43	43	--	6	37	0	0	--	0	0	0
National v. National v. Local	184	180	--	173	7	4	0	--	0	0	0
National v. National v. National	78	78	--	78	--	0	0	--	0	--	0
National v. National v. National v. National	373	0	--	0	--	0	208	--	208	--	165
3 (or more)-union elections	694	317	8	257	52	4	208	0	208	0	165
Total representation elections	108,838	47,555	18,216	26,061	3,278	16,845	15,457	6,556	8,387	514	28,981
B. Elections in RC cases											
AFL–CIO	29,296	10,603	10,603	--	--	5,066	4,530	4,530	--	--	9,097
Other local unions	5,039	2,032	--	--	2,032	1,070	431	--	--	431	1,506
Other national unions	42,810	18,058	--	18,058	--	5,652	6,686	--	6,686	--	12,414
1-union elections	77,145	30,693	10,603	18,058	2,032	11,788	11,647	4,530	6,686	431	23,017
National v. National	1,982	1,630	--	1,630	--	103	128	--	128	--	121
National v. Local	1,348	1,267	--	780	487	23	28	--	4	24	30
Local v. Local	60	59	0	0	59	1	0	--	--	--	--
AFL–CIO v. AFL–CIO	865	348	348	--	--	61	238	238	--	--	218
AFL–CIO v. Local	1,186	967	476	--	491	92	61	28	--	33	66

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 2008[1]—Page 2 of 2

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost				
		Votes for unions				Total votes for no union	Votes for unions				Total votes for no union
		Total	AFL–CIO unions	Other national unions	Other local unions		Total	AFL–CIO unions	Other national unions	Other local unions	
AFL–CIO v. National	3,602	2,974	1,756	1,218	--	129	241	215	26	--	258
2-union elections	9,043	7,245	2,580	3,628	1,037	409	696	481	158	57	693
National v. National v. Local	184	180	0	173	7	4	0	--	--	--	--
National v. National v. National	78	78	0	78	0	0	0	--	--	--	--
National v. National v. National v. National	373	0	--	--	--	--	208	0	208	0	165
National v. Local v. Local	43	43	0	6	37	0	0	--	--	--	--
AFL–CIO v. AFL–CIO v. Local v. Local	16	16	8	0	8	0	0	--	--	--	--
3 (or more)-union elections	694	317	8	257	52	4	208	0	208	0	165
Total RC elections	86,882	38,255	13,191	21,943	3,121	12,201	12,551	5,011	7052	488	23,875
C. Elections in RM cases											
Other national unions	1,020	317	--	317	--	197	166	--	166	--	340
AFL–CIO	667	54	54	--	--	43	165	165	--	--	405
1-union elections	1,687	371	54	317	0	240	331	165	166	0	745
Total RM elections	1,687	371	54	317	0	240	331	165	166	0	745
D. Elections in RD cases											
AFL–CIO	10,915	4,781	4,781	--	--	2,568	1,378	1,378	--	--	2,188
Other national unions	8,709	3,664	--	3,664	--	1,782	1,169	--	1169	--	2,094
Other local unions	161	45	--	--	45	12	26	--	--	26	78
1-union elections	19,785	8,490	4,781	3,664	45	4,362	2,573	1,378	1169	26	4,360
National v. National	91	68	0	68	0	23	0	--	--	--	--
National v. Local	119	109	0	63	46	10	0	--	--	--	--
AFL–CIO v. AFL–CIO	3	0	--	--	--	--	2	2	0	0	1
AFL–CIO v. National	20	19	13	6	0	1	0	--	--	--	--
AFL–CIO v. Local	251	243	177	0	66	8	0	--	--	--	--
2-union elections	484	439	190	137	112	42	2	2	0	0	1
Total RD elections	20,269	8,929	4,971	3,801	157	4,404	2,575	1,380	1169	26	4,361

[1] See Glossary of terms for definitions.

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2008—Page 1 of 3

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Illinois	144	84	32	51	1	60	6,472	5,506	3,291	1,387	1,878	26	2,215	3,793
Indiana	46	27	15	12	0	19	3,254	2,189	1,139	772	367	0	1,050	2,327
Michigan	70	41	18	21	2	29	3,781	3,093	1,746	720	989	37	1,347	2,003
Ohio	92	46	17	28	1	46	5,616	4,724	2,449	798	1,400	251	2,275	2,484
Wisconsin	43	23	13	10	0	20	1,230	1,043	597	308	247	42	446	655
East North Central	395	221	95	122	4	174	20,353	16,555	9,222	3,985	4,881	356	7,333	11,262
Alabama	17	13	8	5	0	4	1,242	1,028	664	346	318	0	364	935
Kentucky	18	10	4	6	0	8	1,103	980	465	319	146	0	515	494
Mississippi	9	5	4	1	0	4	674	671	407	307	100	0	264	428
Tennessee	18	8	3	5	0	10	1,823	1,552	710	557	153	0	842	409
East South Central	62	36	19	17	0	26	4,842	4,231	2,246	1,529	717	0	1,985	2,266
Puerto Rico	31	19	4	6	9	12	1,825	1,404	802	58	95	649	602	1,363
U.S. Minor Outlying Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virgin Islands	6	3	0	0	3	3	396	250	104	10	0	94	146	238
Island Areas	37	22	4	6	12	15	2,221	1,654	906	68	95	743	748	1,601
New Jersey	118	71	25	42	4	47	12,254	7,091	4,960	1,722	3,167	71	2,131	10,621
New York	251	151	34	100	17	100	16,242	11,895	7,623	2,075	4,943	605	4,272	10,865
Pennsylvania	111	50	20	29	1	61	6,474	5,945	2,891	1,053	1,828	10	3,054	2,485
Middle Atlantic	480	272	79	171	22	208	34,970	24,931	15,474	4,850	9,938	686	9,457	23,971
Arizona	19	15	9	4	2	4	2,513	1,941	1,068	736	81	251	873	1,266
Colorado	17	5	1	4	0	12	1,618	1,497	793	536	257	0	704	626
Idaho	2	2	2	0	0	0	361	328	178	178	0	0	150	361
Montana	12	7	3	3	1	5	369	294	182	102	61	19	112	322
Nevada	17	11	4	6	1	6	3,154	2,809	1,619	699	668	252	1,190	2,163
New Mexico	16	12	7	5	0	4	1,441	1,199	685	506	174	5	514	1,141
Utah	4	3	2	1	0	1	281	271	135	121	14	0	136	133
Wyoming	2	0	0	0	0	2	10	9	2	0	2	0	7	0
Mountain	89	55	28	23	4	34	9,747	8,348	4,662	2,878	1,257	527	3,686	6,012
Connecticut	52	35	9	25	1	17	5,618	4,593	2,788	1,542	1,153	93	1,805	4,614

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2008—Page 2 of 3

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Maine	5	4	2	2	0	1	452	408	242	46	196	0	166	439
Massachusetts	43	30	12	15	3	13	1,491	1,195	715	332	355	28	480	933
New Hampshire	9	7	1	6	0	2	542	459	301	56	243	2	158	470
Rhode Island	11	6	1	5	0	5	557	476	227	59	168	0	249	310
Vermont	4	2	0	2	0	2	380	339	176	0	176	0	163	194
New England	124	84	25	55	4	40	9,040	7,470	4,449	2,035	2,291	123	3,021	6,960
Alaska	13	11	6	4	1	2	281	245	182	50	121	11	63	255
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	195	127	43	77	7	68	17,944	15,034	8,525	2,618	5,470	437	6,509	12,396
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	1	1	1	0	0	0	2	2	2	2	0	0	0	2
Hawaii	17	10	5	5	0	7	754	592	290	216	74	0	302	491
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Oregon	29	19	2	17	0	10	2,195	1,719	1,133	154	979	0	586	1,548
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	72	49	12	34	3	23	4,088	3,219	1,842	270	1,397	175	1,377	2,186
Pacific	327	217	69	137	11	110	25,264	20,811	11,974	3,310	8,041	623	8,837	16,878
Delaware	12	8	7	1	0	4	501	412	121	32	64	25	291	74
District of Columbia	21	18	2	11	5	3	893	503	407	21	253	133	96	829
Florida	49	33	8	23	2	16	4,233	3,053	1,701	405	1,181	115	1,352	3,035
Georgia	20	11	5	6	0	9	1,123	879	524	212	312	0	355	700
Maryland	40	33	12	14	7	7	3,670	2,453	1,500	762	586	152	953	2,264
North Carolina	18	14	6	7	1	4	3,005	2,528	1,364	1,089	243	32	1,164	2,138
South Carolina	6	5	2	3	0	1	509	426	325	180	145	0	101	482
Virginia	12	6	5	0	1	6	625	535	235	209	10	16	300	210
West Virginia	11	8	7	1	0	3	233	208	126	86	40	0	82	141
South Atlantic	189	136	54	66	16	53	14,792	10,997	6,303	2,996	2,834	473	4,694	9,873
Iowa	26	7	3	4	0	19	1,386	1,256	422	122	300	0	834	110
Kansas	17	10	8	2	0	7	1,371	1,288	730	378	294	58	558	753

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2008—Page 3 of 3

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Minnesota	48	26	15	10	1	22	2,333	1,956	1,075	517	511	47	881	1,442
Missouri	48	21	13	7	1	27	3,425	2,840	1,669	536	1,099	34	1,171	2,043
Nebraska	10	6	2	4	0	4	1,068	881	573	9	564	0	308	794
North Dakota	6	5	4	1	0	1	226	200	134	86	48	0	66	141
South Dakota	1	1	1	0	0	0	14	10	10	10	0	0	0	14
West North Central	156	76	46	28	2	80	9,823	8,431	4,613	1,658	2,816	139	3,818	5,297
Arkansas	10	6	2	4	0	4	915	832	507	33	474	0	325	525
Louisiana	12	6	2	4	0	6	352	302	144	60	73	11	158	164
Oklahoma	8	4	2	2	0	4	283	239	139	73	66	0	100	162
Texas	47	27	12	14	1	20	2,952	2,408	1,240	394	727	119	1,168	1,348
West South Central	77	43	18	24	1	34	4,502	3,781	2,030	560	1,340	130	1,751	2,199
Total, all States and areas	1,936	1,162	437	649	76	774	135,554	107,209	61,879	23,869	34,210	3,800	45,330	86,319

[1] The States are grouped according to the method used by the Bureau of Census, U.S. Department of Commerce.

Table 15B.—Geographic Distribution of Collective-Bargaining Elections[1] Held in Cases Closed, Fiscal Year 2008—Page 1 of 3

Division and State[2]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Illinois	121	79	31	47	1	42	5,314	4,559	2,781	1,068	1,687	26	1,778	3,185
Indiana	33	22	12	10	0	11	2,027	1,207	691	375	316	0	516	1,686
Michigan	53	34	15	17	2	19	2,937	2,405	1,376	485	854	37	1,029	1,546
Ohio	77	39	14	24	1	38	4,884	4,108	2,142	631	1,260	251	1,966	1,983
Wisconsin	28	18	11	7	0	10	749	641	392	180	175	37	249	488
East North Central	312	192	83	105	4	120	15,911	12,920	7,382	2,739	4,292	351	5,538	8,888
Alabama	16	13	8	5	0	3	1,174	964	637	346	291	0	327	935
Kentucky	11	6	3	3	0	5	654	578	233	138	95	0	345	254
Mississippi	8	5	4	1	0	3	577	586	372	272	100	0	214	428
Tennessee	12	7	2	5	0	5	721	663	309	189	120	0	354	185
East South Central	47	31	17	14	0	16	3,126	2,791	1,551	945	606	0	1,240	1,802
Puerto Rico	30	18	4	5	9	12	1,794	1,373	781	58	74	649	592	1,332
U.S. Minor Outlying Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virgin Islands	6	3	0	0	3	3	396	250	104	10	0	94	146	238
Island Areas	36	21	4	5	12	15	2,190	1,623	885	68	74	743	738	1,570
New Jersey	112	68	23	42	3	44	12,101	6,948	4,894	1,670	3,164	60	2,054	10,520
New York	231	144	31	97	16	87	14,520	10,591	6,703	1,349	4,782	572	3,888	9,347
Pennsylvania	95	46	19	26	1	49	5,945	5,477	2,665	1,010	1,645	10	2,812	2,226
Middle Atlantic	438	258	73	165	20	180	32,566	23,016	14,262	4,029	9,591	642	8,754	22,093
Arizona	14	13	8	3	2	1	1,980	1,633	798	546	67	185	835	783
Colorado	14	5	1	4	0	9	982	900	513	256	257	0	387	626
Idaho	2	2	2	0	0	0	361	328	178	178	0	0	150	361
Montana	8	6	3	2	1	2	288	235	154	102	33	19	81	273
Nevada	14	9	4	4	1	5	3,051	2,650	1,558	679	627	252	1,092	2,145
New Mexico	15	11	7	4	0	4	1,286	1,065	579	506	68	5	486	986
Utah	4	3	2	1	0	1	281	271	135	121	14	0	136	133
Wyoming	1	0	0	0	0	1	2	1	0	0	0	0	1	0
Mountain	72	49	27	18	4	23	8,231	7,083	3,915	2,388	1,066	461	3,168	5,307
Connecticut	46	31	7	23	1	15	5,254	4,322	2,634	1,502	1,039	93	1,688	4,270
Maine	4	3	1	2	0	1	439	397	235	39	196	0	162	439

Table 15B.—Geographic Distribution of Collective-Bargaining Elections[1] Held in Cases Closed, Fiscal Year 2008—Page 2 of 3

Division and State[2]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Massachusetts	39	27	11	13	3	12	1,351	1,094	640	312	300	28	454	801
New Hampshire	7	6	0	6	0	1	455	397	255	12	243	0	142	388
Rhode Island	9	4	1	3	0	5	326	275	108	59	49	0	167	79
Vermont	4	2	0	2	0	2	380	339	176	0	176	0	163	194
New England	109	73	20	49	4	36	8,205	6,824	4,048	1,924	2,003	121	2,776	6,171
Alaska	12	10	6	3	1	2	268	232	172	50	111	11	60	242
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	160	103	36	61	6	57	14,750	12,272	6,777	2,221	4,138	418	5,495	9,653
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	1	1	1	0	0	0	2	2	2	2	0	0	0	2
Hawaii	15	10	5	5	0	5	619	488	258	187	71	0	230	491
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Oregon	25	18	2	16	0	7	1,843	1,406	1,000	123	877	0	406	1,467
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	59	44	11	30	3	15	2,645	2,088	1,276	233	868	175	812	1,750
Pacific	272	186	61	115	10	86	20,127	16,488	9,485	2,816	6,065	604	7,003	13,605
Delaware	11	7	6	1	0	4	494	407	117	28	64	25	290	67
District of Columbia	19	16	1	10	5	3	792	456	368	12	227	129	88	728
Florida	41	30	8	20	2	11	3,782	2,653	1,526	383	1,028	115	1,127	2,829
Georgia	18	10	5	5	0	8	992	784	498	212	286	0	286	658
Maryland	38	32	12	13	7	6	3,530	2,337	1,444	762	530	152	893	2,184
North Carolina	13	9	4	5	0	4	1,253	1,105	410	238	172	0	695	386
South Carolina	5	4	1	3	0	1	368	305	223	78	145	0	82	341
Virginia	11	6	5	0	1	5	606	520	233	209	10	14	287	210
West Virginia	8	7	6	1	0	1	146	131	96	69	27	0	35	111
South Atlantic	164	121	48	58	15	43	11,963	8,698	4,915	1,991	2,489	435	3,783	7,514
Iowa	21	7	3	4	0	14	1,309	1,187	411	122	289	0	776	110
Kansas	15	9	7	2	0	6	1,201	1,125	652	311	283	58	473	628
Minnesota	35	19	14	4	1	16	1,537	1,283	707	438	222	47	576	856

Table 15B.—Geographic Distribution of Collective-Bargaining Elections[1] Held in Cases Closed, Fiscal Year 2008—Page 3 of 3

Division and State[2]	Total elec-tions	Number of elections in which representation rights were won by unions				Number of elections in which no representa-tive was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing represent-ation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Missouri	38	18	11	6	1	20	1,864	1,565	781	273	474	34	784	837
Nebraska	9	5	2	3	0	4	937	757	498	9	489	0	259	663
North Dakota	6	5	4	1	0	1	226	200	134	86	48	0	66	141
South Dakota	1	1	1	0	0	0	14	10	10	10	0	0	0	14
West North Central	125	64	42	20	2	61	7,088	6,127	3,193	1,249	1,805	139	2,934	3,249
Arkansas	6	3	1	2	0	3	756	653	393	19	374	0	260	400
Louisiana	9	5	1	4	0	4	234	193	92	17	73	2	101	84
Oklahoma	6	3	1	2	0	3	251	207	124	58	66	0	83	136
Texas	40	25	11	13	1	15	2,680	2,178	1,159	348	692	119	1,019	1,310
West South Central	61	36	14	21	1	25	3,921	3,231	1,768	442	1,205	121	1,463	1,930
Total, all States and areas	1,636	1,031	389	570	72	605	113,328	88,801	51,404	18,591	29,196	3,617	37,397	72,129

[1] Does not include decertification (RD) elections.
[2] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2008—Page 1 of 3

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other National unions	Other local unions		
Illinois	23	5	1	4	0	18	1,158	947	510	319	191	0	437	608
Indiana	13	5	3	2	0	8	1,227	982	448	397	51	0	534	641
Michigan	17	7	3	4	0	10	844	688	370	235	135	0	318	457
Ohio	15	7	3	4	0	8	732	616	307	167	140	0	309	501
Wisconsin	15	5	2	3	0	10	481	402	205	128	72	5	197	167
East North Central	83	29	12	17	0	54	4,442	3,635	1,840	1,246	589	5	1,795	2,374
Alabama	1	0	0	0	0	1	68	64	27	0	27	0	37	0
Kentucky	7	4	1	3	0	3	449	402	232	181	51	0	170	240
Mississippi	1	0	0	0	0	1	97	85	35	35	0	0	50	0
Tennessee	6	1	1	0	0	5	1,102	889	401	368	33	0	488	224
East South Central	15	5	2	3	0	10	1,716	1,440	695	584	111	0	745	464
Puerto Rico	1	1	0	1	0	0	31	31	21	0	21	0	10	31
U.S. Minor Outlying Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virgin Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Island Areas	1	1	0	1	0	0	31	31	21	0	21	0	10	31
New Jersey	6	3	2	0	1	3	153	143	66	52	3	11	77	101
New York	20	7	3	3	1	13	1,722	1,304	920	726	161	33	384	1,518
Pennsylvania	16	4	1	3	0	12	529	468	226	43	183	0	242	259
Middle Atlantic	42	14	6	6	2	28	2,404	1,915	1,212	821	347	44	703	1,878
Arizona	5	2	1	1	0	3	533	308	270	190	14	66	38	483
Colorado	3	0	0	0	0	3	636	597	280	280	0	0	317	0
Idaho	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Montana	4	1	0	1	0	3	81	59	28	0	28	0	31	49
Nevada	3	2	0	2	0	1	103	159	61	20	41	0	98	18
New Mexico	1	1	0	1	0	0	155	134	106	0	106	0	28	155
Utah	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Wyoming	1	0	0	0	0	1	8	8	2	0	2	0	6	0
Mountain	17	6	1	5	0	11	1,516	1,265	747	490	191	66	518	705
Connecticut	6	4	2	2	0	2	364	271	154	40	114	0	117	344

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2008—Page 2 of 3

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other National unions	Other local unions		
Maine	1	1	1	0	0	0	13	11	7	7	0	0	4	0
Massachusetts	4	3	1	2	0	1	140	101	75	20	55	0	26	132
New Hampshire	2	1	1	0	0	1	87	62	46	44	0	2	16	82
Rhode Island	2	2	0	2	0	0	231	201	119	0	119	0	82	231
Vermont	0	0	0	0	0	0	0	0	0	0	0	0	0	0
New England	15	11	5	6	0	4	835	646	401	111	288	2	245	789
Alaska	1	1	0	1	0	0	13	13	10	0	10	0	3	13
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	35	24	7	16	1	11	3,194	2,762	1,748	397	1,332	19	1,014	2,743
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii	2	0	0	0	0	2	135	104	32	29	3	0	72	0
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Oregon	4	1	0	1	0	3	352	313	133	31	102	0	180	81
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	13	5	1	4	0	8	1,443	1,131	566	37	529	0	565	436
Pacific	55	31	8	22	1	24	5,137	4,323	2,489	494	1,976	19	1,834	3,273
Delaware	1	1	1	0	0	0	7	5	4	4	0	0	1	7
District of Columbia	2	2	1	1	0	0	101	47	39	9	26	4	8	101
Florida	8	3	0	3	0	5	451	400	175	22	153	0	225	206
Georgia	2	1	0	1	0	1	131	95	26	0	26	0	69	42
Maryland	2	1	0	1	0	1	140	116	56	0	56	0	60	80
North Carolina	5	5	2	2	1	0	1,752	1,423	954	851	71	32	469	1,752
South Carolina	1	1	1	0	0	0	141	121	102	102	0	0	19	141
Virginia	1	0	0	0	0	1	19	15	2	0	0	2	13	0
West Virginia	3	1	1	0	0	2	87	77	30	17	13	0	47	30
South Atlantic	25	15	6	8	1	10	2,829	2,299	1,388	1,005	345	38	911	2,359
Iowa	5	0	0	0	0	5	77	69	11	0	11	0	58	0

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2008—Page 3 of 3

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other National unions	Other local unions		
Kansas	2	1	1	0	0	1	170	163	78	67	11	0	85	125
Minnesota	13	7	1	6	0	6	796	673	368	79	289	0	305	586
Missouri	10	3	2	1	0	7	1,561	1,275	888	263	625	0	387	1,206
Nebraska	1	1	0	1	0	0	131	124	75	0	75	0	49	131
North Dakota	0	0	0	0	0	0	0	0	0	0	0	0	0	0
South Dakota	0	0	0	0	0	0	0	0	0	0	0	0	0	0
West North Central	31	12	4	8	0	19	2,735	2,304	1,420	409	1,011	0	884	2,048
Arkansas	4	3	1	2	0	1	159	179	114	14	100	0	65	125
Louisiana	3	1	1	0	0	2	118	109	52	43	0	9	57	80
Oklahoma	2	1	1	0	0	1	32	32	15	15	0	0	17	26
Texas	7	2	1	1	0	5	272	230	81	46	35	0	149	38
West South Central	16	7	4	3	0	9	581	550	262	118	135	9	288	269
Total, all States and areas	300	131	48	79	4	169	22,226	18,408	10,475	5,278	5,014	183	7,933	14,190

[1] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2008—Page 1 of 5

Industrial Group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Animal Production	6	1	0	1	0	5	399	366	130	8	122	0	236	15
Forestry and Logging	1	0	0	0	0	1	18	18	2	2	0	0	16	0
Support Activities for Agriculture and Forestry	1	1	0	1	0	0	22	21	15	0	15	0	6	22
Agriculture, Forestry, Fishing, and Hunting	8	2	0	2	0	6	439	405	147	10	137	0	258	37
Oil and Gas Extraction	8	4	1	3	0	4	142	144	68	29	39	0	76	53
Mining (except Oil and Gas)	13	5	2	3	0	8	1,496	1,382	451	398	53	0	931	243
Support Activities for Mining	4	3	1	1	1	1	315	254	193	108	74	11	61	302
Mining, Quarrying, and Oil and Gas Extraction	25	12	4	7	1	13	1,953	1,780	712	535	166	11	1,068	598
Utilities	47	27	25	2	0	20	2,116	2,004	1,091	975	116	0	913	1,527
Construction of Buildings	17	11	4	5	2	6	894	624	474	346	82	46	150	695
Heavy and Civil Engineering Construction	18	8	3	5	0	10	437	299	104	59	45	0	195	208
Specialty Trade Contractors	122	75	48	25	2	47	8,495	3,397	2,370	872	1,475	23	1,027	7,393
Construction	157	94	55	35	4	63	9,826	4,320	2,948	1,277	1,602	69	1,372	8,296
Food Manufacturing	38	14	3	10	1	24	4,000	3,569	1,611	243	1,174	194	1,958	1,539
Beverage and Tobacco Product Manufacturing	16	9	2	6	1	7	715	674	375	33	304	38	299	434
Textile Mills	1	0	0	0	0	1	13	12	5	0	5	0	7	0
Textile Product Mills	2	1	0	1	0	1	318	286	170	0	170	0	116	304
Apparel Manufacturing	7	4	0	4	0	3	960	871	425	0	425	0	446	361
Leather and Allied Product Manufacturing	2	1	1	0	0	1	325	294	116	116	0	0	178	124
31-Manufacturing	66	29	6	21	2	37	6,331	5,706	2,702	392	2,078	232	3,004	2,762
Wood Product Manufacturing	5	2	2	0	0	3	197	179	88	68	20	0	91	136
Paper Manufacturing	10	5	2	3	0	5	568	528	296	178	118	0	232	186
Printing and Related Support Activities	10	5	2	3	0	5	325	269	111	49	62	0	158	118

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2008—Page 2 of 5

Industrial Group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Petroleum and Coal Products Manufacturing	9	3	2	0	1	6	465	350	160	92	31	37	190	235
Chemical Manufacturing	37	17	10	7	0	20	2,927	2,561	952	488	414	50	1,609	822
Plastics and Rubber Products Manufacturing	10	3	2	1	0	7	1,346	1,189	521	344	177	0	668	516
Nonmetallic Mineral Product Manufacturing	28	10	4	6	0	18	1,235	1,285	589	209	371	9	696	282
32-Manufacturing	109	45	24	20	1	64	7,063	6,361	2,717	1,428	1,193	96	3,644	2,295
Primary Metal Manufacturing	28	9	6	2	1	19	2,099	1,813	1,023	900	87	36	790	940
Fabricated Metal Product Manufacturing	18	10	6	4	0	8	1,116	948	469	184	248	37	479	427
Machinery Manufacturing	17	6	4	2	0	11	1,933	1,832	1,393	800	593	0	439	1,509
Computer and Electronic Product Manufacturing	2	1	1	0	0	1	34	31	11	11	0	0	20	6
Electrical Equipment, Appliance, and Component Manufacturing	16	8	4	4	0	8	954	1,054	561	207	354	0	493	357
Transportation Equipment Manufacturing	42	20	16	2	2	22	8,978	7,730	3,944	3,615	315	14	3,786	5,664
Furniture and Related Product Manufacturing	3	0	0	0	0	3	103	98	18	0	18	0	80	0
Miscellaneous Manufacturing	19	8	3	5	0	11	853	718	441	173	254	14	277	528
33-Manufacturing	145	62	40	19	3	83	16,070	14,224	7,860	5,890	1,869	101	6,364	9,431
Merchant Wholesalers, Durable Goods	17	8	5	3	0	9	276	244	128	36	92	0	116	175
Merchant Wholesalers, Nondurable Goods	36	15	4	11	0	21	1,831	1,659	823	322	501	0	836	847
Wholesale Electronic Markets and Agents and Brokers	2	0	0	0	0	2	60	38	7	0	7	0	31	0
Wholesale Trade	55	23	9	14	0	32	2,167	1,941	958	358	600	0	983	1,022
Motor Vehicle and Parts Dealers	27	10	7	3	0	17	972	935	443	401	42	0	492	156
Electronics and Appliance Stores	1	1	0	1	0	0	152	140	77	0	77	0	63	152
Building Material and Garden Equipment and Supplies Dealers	5	3	2	1	0	2	118	102	58	13	45	0	44	94
Food and Beverage Stores	27	13	1	12	0	14	1,211	969	365	83	278	4	604	285

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2008—Page 3 of 5

Industrial Group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Health and Personal Care Stores	9	5	2	3	0	4	336	208	122	73	49	0	86	293
Gasoline Stations	2	0	0	0	0	2	9	9	0	0	0	0	9	0
Clothing and Clothing Accessories Stores	2	0	0	0	0	2	86	79	20	0	20	0	59	0
44-Retail Trade	73	32	12	20	0	41	2,884	2,442	1,085	570	511	4	1,357	980
Sporting Goods, Hobby, Book, and Music Stores	2	1	1	0	0	1	5	7	5	3	2	0	2	3
General Merchandise Stores	11	7	2	5	0	4	2,026	1,404	530	390	140	0	874	805
Miscellaneous Store Retailers	5	3	0	3	0	2	43	36	32	3	29	0	4	40
Nonstore Retailers	2	1	1	0	0	1	76	69	28	3	25	0	41	7
45-Retail Trade	20	12	4	8	0	8	2,150	1,516	595	399	196	0	921	855
Air Transportation	11	7	3	2	2	4	1,281	1,125	574	510	46	18	551	143
Rail Transportation	3	1	0	1	0	2	20	30	11	6	5	0	19	2
Water Transportation	1	0	0	0	0	1	10	9	2	2	0	0	7	0
Truck Transportation	66	41	9	32	0	25	3,174	2,845	1,317	287	1,030	0	1,528	1,118
Transit and Ground Passenger Transportation	150	117	36	79	2	33	15,689	12,334	8,916	2,270	6,444	202	3,418	13,352
Pipeline Transportation	2	2	1	0	1	0	49	42	33	22	0	11	9	49
Scenic and Sightseeing Transportation	2	2	1	1	0	0	90	63	49	44	5	0	14	90
Support Activities for Transportation	38	22	8	14	0	16	1,737	1,584	838	325	513	0	746	770
48-Transportation and Warehousing	273	192	58	129	5	81	22,050	18,032	11,740	3,466	8,043	231	6,292	15,524
Couriers and Messengers	11	10	2	8	0	1	896	706	452	17	377	58	254	597
Warehousing and Storage	49	13	2	11	0	36	2,416	2,229	905	85	801	19	1,324	348
49-Transportation and Warehousing	60	23	4	19	0	37	3,312	2,935	1,357	102	1,178	77	1,578	945
Publishing Industries (except Internet)	7	3	2	1	0	4	516	468	188	179	9	0	280	272
Motion Picture and Sound Recording Industries	3	2	2	0	0	1	122	108	38	38	0	0	70	19
Broadcasting (except Internet)	12	6	6	0	0	6	450	406	215	213	2	0	191	236
Telecommunications	25	9	8	1	0	16	912	883	460	378	82	0	423	466
Other Information Services	8	6	4	2	0	2	274	210	174	43	130	1	36	271

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2008—Page 4 of 5

Industrial Group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Information	55	26	22	4	0	29	2,274	2,075	1,075	851	223	1	1,000	1,264
Monetary Authorities– Central Bank	3	1	1	0	0	2	94	84	43	35	8	0	41	6
Credit Intermediation and Related Activities	1	1	1	0	0	0	47	46	29	29	0	0	17	47
Insurance Carriers and Related Activities	1	1	0	1	0	0	5	4	4	0	4	0	0	5
Finance and Insurance	5	3	2	1	0	2	146	134	76	64	12	0	58	58
Real Estate	12	10	3	6	1	2	102	94	75	21	24	30	19	97
Rental and Leasing Services	20	12	8	4	0	8	342	281	136	50	86	0	145	137
Real Estate and Rental and Leasing	32	22	11	10	1	10	444	375	211	71	110	30	164	234
Professional, Scientific, and Technical Services	16	10	8	1	1	6	365	282	142	122	12	8	140	219
Management of Companies and Enterprises	4	4	3	1	0	0	19	9	9	8	1	0	0	19
Administrative and Support Services	167	129	28	87	14	38	8,991	6,465	4,376	1,018	2,773	585	2,089	6,413
Waste Management and Remediation Services	46	25	8	17	0	21	1,322	1,219	614	166	379	69	605	583
Administrative and Support and Waste Management and Remediation Services	213	154	36	104	14	59	10,313	7,684	4,990	1,184	3,152	654	2,694	6,996
Educational Services	22	19	8	9	2	3	1,397	997	703	261	359	83	294	1,295
Ambulatory Health Care Services	56	24	2	15	7	32	5,109	3,655	1,801	203	1,455	143	1,854	1,931
Hospitals	106	84	17	57	10	22	13,668	10,857	6,881	1,028	4,728	1,125	3,976	11,548
Nursing and Residential Care Facilities	164	110	14	91	5	54	10,881	8,332	5,215	553	4,583	79	3,117	7,546
Social Assistance	29	21	13	7	1	8	2,883	1,861	1,282	726	434	122	579	2,671
Health Care and Social Assistance	355	239	46	170	23	116	32,541	24,705	15,179	2,510	11,200	1,469	9,526	23,696
Performing Arts, Spectator Sports, and Related Industries	11	9	6	2	1	2	605	542	309	129	19	161	233	528
Museums, Historical Sites, and Similar Institutions	2	2	1	1	0	0	15	15	9	2	7	0	6	15

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2008—Page 5 of 5

Industrial Group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Amusement, Gambling, and Recreation Industries	21	14	9	5	0	7	5,691	4,826	2,866	2,598	268	0	1,960	4,793
Arts, Entertainment, and Recreation	34	25	16	8	1	9	6,311	5,383	3,184	2,729	294	161	2,199	5,336
Accommodation	34	17	8	5	4	17	2,603	2,164	1,148	797	201	150	1,016	1,623
Food Services and Drinking Places	26	12	3	8	1	14	936	791	353	42	296	15	438	405
Accommodation and Food Services	60	29	11	13	5	31	3,539	2,955	1,501	839	497	165	1,454	2,028
Repair and Maintenance	40	25	19	6	0	15	886	785	401	318	79	4	384	386
Personal and Laundry Services	17	11	2	9	0	6	672	588	357	48	258	51	231	443
Religious, Grantmaking, Civic, Professional, and Similar Organizations	22	17	8	6	3	5	657	483	259	143	74	42	224	457
Other Services (except Public Administration)	79	53	29	21	3	26	2,215	1,856	1,017	509	411	97	839	1,286
Executive, Legislative, and Other General Government Support	2	2	1	1	0	0	19	17	14	2	12	0	3	19
Justice, Public Order, and Safety Activities	30	29	3	16	10	1	1,911	927	784	16	563	205	143	1,704
Administration of Human Resource Programs	3	2	1	1	0	1	69	60	39	8	31	0	21	52
Administration of Economic Programs	1	1	0	1	0	0	10	0	0	0	0	0	0	10
National Security and International Affairs	1	1	0	1	0	0	100	45	38	0	38	0	7	100
Public Administration	37	35	5	20	10	2	2,109	1,049	875	26	644	205	174	1,885
Total, all industrial groups	1,950	1,172	438	658	76	778	138,034	109,170	62,874	24,576	34,604	3,694	46,296	88,588

[1] Source: Standard Classification, Statistical Policy Division, Office of Management and Budget, Washington, D.C.

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 2008[1]—Page 1 of 2

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by						Elections in which no representative was chosen	
					AFL–CIO unions		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent by size class
	A. Certification elections (RC and RM)											
Total RC and RM elections	111,966	1,630	100.0	--	376	100.0	578	100.0	71	100.0	605	100.0
Under 10	2,238	358	22.0	22.0	135	35.9	117	20.2	10	14.1	96	15.9
10 to 19	4,955	321	19.7	41.7	71	18.9	112	19.4	10	14.1	128	21.2
20 to 29	4,502	189	11.6	53.3	40	10.6	65	11.2	8	11.3	76	12.6
30 to 39	5,220	139	8.5	61.8	27	7.2	54	9.3	12	16.9	46	7.6
40 to 49	3,909	84	5.2	66.9	14	3.7	34	5.9	6	8.5	30	5.0
50 to 59	3,905	66	4.0	71.0	14	3.7	19	3.3	2	2.8	31	5.1
60 to 69	4,573	65	4.0	75.0	8	2.1	24	4.2	3	4.2	30	5.0
70 to 79	3,595	47	2.9	77.9	9	2.4	20	3.5	3	4.2	15	2.5
80 to 89	4,651	54	3.3	81.2	6	1.6	21	3.6	4	5.6	23	3.8
90 to 99	3,692	40	2.5	83.6	10	2.7	13	2.2	0	0.0	17	2.8
100 to 109	3,307	33	2.0	85.6	4	1.1	17	2.9	0	0.0	12	2.0
110 to 119	3,162	28	1.7	87.4	4	1.1	8	1.4	2	2.8	14	2.3
120 to 129	1,751	17	1.0	88.4	6	1.6	7	1.2	0	0.0	4	0.7
130 to 139	2,312	16	1.0	89.4	1	0.3	4	0.7	1	1.4	10	1.7
140 to 149	1,441	10	0.6	90.0	3	0.8	2	0.3	0	0.0	5	0.8
150 to 159	2,567	15	0.9	90.9	2	0.5	7	1.2	0	0.0	6	1.0
160 to 169	1,924	12	0.7	91.7	3	0.8	6	1.0	0	0.0	3	0.5
170 to 179	1,108	6	0.4	92.0	0	0.0	3	0.5	1	1.4	2	0.3
180 to 189	2,624	14	0.9	92.9	1	0.3	6	1.0	0	0.0	7	1.2
190 to 199	794	4	0.2	93.1	0	0.0	1	0.2	0	0.0	3	0.5
200 to 299	12,835	54	3.3	96.4	7	1.9	20	3.5	5	7.0	22	3.6
300 to 399	6,495	19	1.2	97.6	4	1.1	6	1.0	3	4.2	6	1.0
400 to 499	3,917	10	0.6	98.2	1	0.3	2	0.3	1	1.4	6	1.0
500 to 599	6,002	11	0.7	98.9	3	0.8	5	0.9	0	0.0	3	0.5
600 to 799	5,742	9	0.6	99.4	1	0.3	0	0.0	0	0.0	8	1.3
800 to 999	2,922	3	0.2	99.6	0	0.0	2	0.3	0	0.0	1	0.2
1,000 to 1,999	4,629	4	0.2	99.9	1	0.3	2	0.3	0	0.0	1	0.2

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 2008[1]—Page 2 of 2

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by						Elections in which no representative was chosen	
					AFL–CIO unions		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent by size class
2,000 to 2,999	0	0	0.0	99.9	0	0.0	0	0.0	0	0.0	0	0.0
3,000 to 9,999	7,194	2	0.1	100.0	1	0.3	1	0.2	0	0.0	0	0.0
Over 9,999	0	0	0.0	100.0	0	0.0	0	0.0	0	0.0	0	0.0
	B. Decertification elections (RD)											
Total RD elections	23,511	296	100.0	--	48	100.0	75	100.0	4	100.0	169	100.0
Under 10	302	50	16.9	16.9	2	4.2	2	2.7	0	0.0	46	27.2
10 to 19	855	55	18.6	35.5	3	6.3	16	21.3	1	25.0	35	20.7
20 to 29	637	26	8.8	44.3	5	10.4	6	8.0	2	50.0	13	7.7
30 to 39	1,132	31	10.5	54.7	8	16.7	8	10.7	0	0.0	15	8.9
40 to 49	697	16	5.4	60.1	2	4.2	7	9.3	0	0.0	7	4.1
50 to 59	854	19	6.4	66.6	4	8.3	5	6.7	1	25.0	9	5.3
60 to 69	381	6	2.0	68.6	0	0.0	2	2.7	0	0.0	4	2.4
70 to 79	891	13	4.4	73.0	3	6.3	4	5.3	0	0.0	6	3.6
80 to 89	1,031	12	4.1	77.0	2	4.2	6	8.0	0	0.0	4	2.4
90 to 99	980	11	3.7	80.7	1	2.1	2	2.7	0	0.0	8	4.7
100 to 109	831	8	2.7	83.4	0	0.0	4	5.3	0	0.0	4	2.4
110 to 119	545	5	1.7	85.1	1	2.1	0	0.0	0	0.0	4	2.4
120 to 129	495	5	1.7	86.8	1	2.1	2	2.7	0	0.0	2	1.2
130 to 139	525	4	1.4	88.2	3	6.3	0	0.0	0	0.0	1	0.6
140 to 149	398	3	1.0	89.2	1	2.1	1	1.3	0	0.0	1	0.6
150 to 159	303	2	0.7	89.9	1	2.1	1	1.3	0	0.0	0	0.0
160 to 169	499	3	1.0	90.9	1	2.1	1	1.3	0	0.0	1	0.6
170 to 199	878	5	1.7	92.6	0	0.0	3	4.0	0	0.0	2	1.2
200 to 299	2,076	9	3.0	95.6	3	6.3	4	5.3	0	0.0	2	1.2
300 to 499	2,468	6	2.0	97.6	4	8.3	0	0.0	0	0.0	2	1.2
500 to 799	1,061	2	0.7	98.3	0	0.0	0	0.0	0	0.0	2	1.2
800 and Over	5,672	5	1.7	100.0	3	6.3	1	1.3	0	0.0	1	0.6

[1] See Glossary of terms for definitions.

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 2008[1]

Size of establishment (number of employees)	Total number of situations	Total		Type of situations																	
		Percent of all situations	Cumulative percent of all situations	CA		CB		CC		CD		CE		CG		CP		CA–CB combinations		Other C combinations	
				Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
Totals	21,172	100.0	--	15,042	100.0	5,360	100.0	290	100.0	99	100.0	58	100.0	40	100.0	53	100.0	198	100.0	32	100.0
Under 10	1,481	7.0	7.0	1,053	7.0	333	6.2	39	13.4	26	26.3	9	15.5	1	2.5	6	11.3	12	6.1	2	6.3
10-19	1,661	7.8	14.8	1,189	7.9	342	6.4	59	20.3	18	18.2	20	34.5	0	0.0	13	24.5	12	6.1	8	25.0
20-29	1,603	7.6	22.4	1,198	8.0	310	5.8	48	16.6	12	12.1	17	29.3	1	2.5	2	3.8	13	6.6	2	6.3
30-39	713	3.4	25.8	542	3.6	148	2.8	9	3.1	5	5.1	0	0.0	0	0.0	1	1.9	7	3.5	1	3.1
40-49	648	3.1	28.8	490	3.3	139	2.6	13	4.5	0	0.0	0	0.0	0	0.0	2	3.8	1	0.5	3	9.4
50-59	1,710	8.1	36.9	1,171	7.8	450	8.4	45	15.5	14	14.1	4	6.9	0	0.0	9	17.0	15	7.6	2	6.3
60-69	468	2.2	39.1	354	2.4	102	1.9	2	0.7	3	3.0	0	0.0	0	0.0	1	1.9	5	2.5	1	3.1
70-79	550	2.6	41.7	419	2.8	116	2.2	7	2.4	0	0.0	1	1.7	1	2.5	2	3.8	4	2.0	0	0.0
80-89	326	1.5	43.3	264	1.8	57	1.1	2	0.7	0	0.0	0	0.0	0	0.0	0	0.0	3	1.5	0	0.0
90-99	240	1.1	44.4	202	1.3	30	0.6	3	1.0	0	0.0	0	0.0	1	2.5	1	1.9	3	1.5	0	0.0
100-109	2,142	10.1	54.5	1,391	9.2	680	12.7	19	6.6	8	8.1	2	3.4	10	25.0	2	3.8	26	13.1	4	12.5
110-119	157	0.7	55.3	133	0.9	22	0.4	0	0.0	0	0.0	0	0.0	0	0.0	2	3.8	0	0.0	0	0.0
120-129	319	1.5	56.8	251	1.7	65	1.2	2	0.7	0	0.0	0	0.0	0	0.0	0	0.0	1	0.5	0	0.0
130-139	138	0.7	57.4	112	0.7	24	0.4	1	0.3	0	0.0	0	0.0	0	0.0	0	0.0	1	0.5	0	0.0
140-149	128	0.6	58.0	95	0.6	30	0.6	2	0.7	0	0.0	0	0.0	1	2.5	0	0.0	0	0.0	0	0.0
150-159	507	2.4	60.4	389	2.6	109	2.0	2	0.7	2	2.0	1	1.7	1	2.5	0	0.0	2	1.0	1	3.1
160-169	116	0.5	61.0	84	0.6	31	0.6	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	0.5	0	0.0
170-179	107	0.5	61.5	89	0.6	14	0.3	0	0.0	1	1.0	0	0.0	0	0.0	0	0.0	3	1.5	0	0.0
180-189	127	0.6	62.1	102	0.7	23	0.4	2	0.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
190-199	46	0.2	62.3	37	0.2	9	0.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
200-299	1,597	7.5	69.8	1,149	7.6	423	7.9	8	2.8	4	4.0	0	0.0	5	12.5	0	0.0	8	4.0	0	0.0
300-399	939	4.4	74.3	665	4.4	258	4.8	1	0.3	1	1.0	0	0.0	0	0.0	1	1.9	12	6.1	1	3.1
400-499	634	3.0	77.3	423	2.8	197	3.7	4	1.4	1	1.0	0	0.0	0	0.0	0	0.0	8	4.0	1	3.1
500-599	1,025	4.8	82.1	610	4.1	395	7.4	4	1.4	1	1.0	0	0.0	0	0.0	1	1.9	14	7.1	0	0.0
600-699	289	1.4	83.5	215	1.4	70	1.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	3	1.5	1	3.1
700-799	260	1.2	84.7	185	1.2	72	1.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	3	1.5	0	0.0
800-899	193	0.9	85.6	146	1.0	45	0.8	1	0.3	0	0.0	0	0.0	0	0.0	0	0.0	1	0.5	0	0.0
900-999	119	0.6	86.2	88	0.6	30	0.6	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	0.5	0	0.0
1,000-1,999	1,470	6.9	93.1	991	6.6	447	8.3	6	2.1	2	2.0	1	1.7	3	7.5	1	1.9	16	8.1	3	9.4
2,000-2,999	450	2.1	95.2	296	2.0	134	2.5	2	0.7	0	0.0	0	0.0	1	2.5	9	17.0	8	4.0	0	0.0
3,000-3,999	236	1.1	96.3	154	1.0	77	1.4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	5	2.5	0	0.0
4,000-4,999	113	0.5	96.9	61	0.4	40	0.7	0	0.0	0	0.0	0	0.0	11	27.5	0	0.0	0	0.0	1	3.1
5,000-9,999	255	1.2	98.1	194	1.3	51	1.0	3	1.0	0	0.0	0	0.0	4	10.0	0	0.0	3	1.5	0	0.0
Over 9,999	405	1.9	100.0	300	2.0	87	1.6	6	2.1	1	1.0	3	5.2	0	0.0	0	0.0	7	3.5	1	3.1

[1] See Glossary of terms for definitions.

Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 2008 and Cumulative Totals, Fiscal Years 1936 to 2008

	Fiscal Year 2008									July 5, 1936 to Sept. 30, 2008	
	Number of proceedings[1]					Percentages					
	Total	vs. employers only	vs. unions only	vs. both employers and unions	Board dismissal[2]	vs. employers only	vs. unions only	vs. both employers and unions	Board dismissal[2]	Number	Percent
Proceedings decided by U.S. Courts of Appeals and other courts								--	--	--	--
On proceedings for review and/or enforcement	72	58	8	0	6	80.6	11.1	--	8.3	12,046	100.0
Board orders affirmed in full	58	47	5	0	6	81.1	8.6	--	10.3	8,002	66.4
Board orders affirmed with modification	4	4	0	0	0	100.0	0.0	--	0.0	1,564	13.0
Remanded to the Board	3	2	1	0	0	66.7	33.3	--	0.0	603	5.0
Board orders partially affirmed and partially remanded	2	1	1	0	0	50.0	50.0	--	0.0	273	2.3
Board orders set aside	5	4	1	0	0	80.0	20.0	--	0.0	1,604	13.3
On petitions for contempt	12	11	1	0	0	91.7	8.3	--	--	--	--
Ancillary proceedings in district courts and/or bankruptcy courts	23	23	0	0	0	100.0	0.0	--	--	--	--
Total Court Orders	41	39	2	0	0	95.1	4.9	--	--	--	--
Compliance after filing of petition, before court order	25	24	1	0	0	96.0	4.0	--	--	--	--
Court orders holding respondent in contempt	9	9	0	0	0	100.0	0.0	--	--	--	--
Court orders denying petition or discontinuing proceedings at CLCB request	3	3	0	0	0	100.0	0.0	--	--	--	--
Court orders directing compliance without contempt adjudication	4	3	1	0	0	75.0	25.0	--	--	--	--
Proceedings decided by U.S. Supreme Court[3]	0	0	0	0	0	--	--	--	--	259	100.0
Board orders affirmed in full	0	0	0	0	0	--	--	--	--	155	59.8
Board orders affirmed with modification	0	0	0	0	0	--	--	--	--	18	6.9
Board orders set aside	0	0	0	0	0	--	--	--	--	46	17.8
Remanded to the Board	0	0	0	0	0	--	--	--	--	20	7.7
Remanded to Court of Appeals	0	0	0	0	0	--	--	--	--	17	6.5
Board's request for remand or modification of enforcement order denied	0	0	0	0	0	--	--	--	--	1	0.4
Contempt cases remanded to Court of Appeals	0	0	0	0	0	--	--	--	--	1	0.4
Contempt cases enforced	0	0	0	0	0	--	--	--	--	1	0.4

[1] "Proceedings" are comparable to "cases" reported in annual reports prior to fiscal 1964. This term more accurately describes the data inasmuch as a single "proceeding" often includes more than one "case." See Glossary of terms for definitions.
[2] A proceeding in which the Board had entered an order dismissing the complaint and the charging party appealed such dismissal in the courts of appeals.
[3] The Board appeared as "amicus curiae" in 1 case.

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 2008, Compared With 5-Year Cumulative Totals, 2003 Through 2008[1]

Circuit courts of appeals (headquarters)	Total fiscal year 2008	Total fiscal years 2003–2007	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal Year 2008		Cumulative fiscal years 2003–2007		Fiscal Year 2008		Cumulative fiscal years 2003–2007		Fiscal Year 2008		Cumulative fiscal years 2003–2007		Fiscal Year 2008		Cumulative fiscal years 2003–2007		Fiscal Year 2008		Cumulative fiscal years 2003–2007	
			Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num ber	Per-cent
Total all circuits	72	402	58	80.5	311	77.4	4	5.6	25	6.2	3	4.2	23	5.7	2	2.8	16	4.0	5	6.9	27	6.7
Boston, MA……..	1	12	1	100.0	11	91.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	8.3	0	0.0	0	0.0
New York, NY….	8	19	6	75.0	15	78.9	0	0.0	1	5.3	0	0.0	2	10.5	1	12.5	0	0.0	1	12.5	1	5.3
Philadelphia, PA..	2	21	2	100.0	18	85.6	0	0.0	1	4.8	0	0.0	1	4.8	0	0.0	0	0.0	0	0.0	1	4.8
Richmond, VA….	7	35	5	71.4	26	74.3	1	14.3	2	5.7	0	0.0	2	5.7	0	0.0	3	8.6	1	14.3	2	5.7
New Orleans, LA.	4	26	3	75.0	21	80.8	1	25.0	3	11.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	7.7
Cincinnati, OH…..	5	67	3	60.0	56	83.5	0	0.0	5	7.5	2	40.0	1	1.5	0	0.0	2	3.0	0	0.0	3	4.5
Chicago, IL……...	3	31	3	100.0	24	77.4	0	0.0	1	3.2	0	0.0	2	6.5	0	0.0	3	9.7	0	0.0	1	3.2
St. Louis, MO…...	2	20	2	100.0	16	80.0	0	0.0	3	15.0	0	0.0	0	0.0	0	0.0	1	5.0	0	0.0	0	0.0
San Francisco, CA	14	25	10	71.5	19	76.0	1	7.1	0	0.0	1	7.1	2	8.0	0	0.0	1	4.0	2	14.3	3	12.0
Denver, CO…..…	1	16	1	100.0	14	87.4	0	0.0	1	6.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	6.3
Atlanta, GA..……	3	16	3	100.0	14	87.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	12.5
Washington, DC...	22	114	19	86.5	77	67.5	1	4.5	8	7.0	0	0.0	13	11.4	1	4.5	5	4.4	1	4.5	11	9.7

[1] Percentages are computed horizontally by current fiscal year and total fiscal years.

Table 20.—Injunction Litigation Under Sections 10(e), 10(j), and 10(l), Fiscal Year 2008

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions				Pending in Appellate Court Sept. 30, 2008
		Pending in Appellate Court Oct. 01, 2007	Filed in Appellate Court fiscal year 2008		Granted	Denied	Settled	Withdrawn	
Under Sec. 10(e) total	0	0	0	0	0	0	0	0	0

	Total pro-ceedings	Injunction proceedings		Total dispositions	Disposition of injunctions				Pending in District Court Sept. 30, 2008
		Pending in District Court Oct. 01, 2007	Filed in District Court fiscal year 2008[1]		Granted	Denied	Settled	Withdrawn	
Under Sec. 10(j) total	21	3	18	18	9	3	5	1	2
8(a)(1)	1	0	1	1	1	0	0	0	0
8(a)(1)(3)	7	1	7	6	2	1	1	1	1
8(a)(1)(3)(4)(5)	1	0	1	0	0	0	0	0	1
8(a)(1)(3)(5)	6	1	0	7	5	1	2	0	0
8(a)(1)(5)	3	1	2	3	0	1	2	0	0
8(a)(2)(3)	1	0	1	1	1	0	0	0	0
Under Sec. 10(l) total	3	0	3	3	1	1	0	1	0
8(b)(4)(B)	3	0	3	3	10	1	0	1	0

[1] Totals for cases identified in this table as pending on October 1, 2006, differ from the FY 2007 Annual Report due to postreport adjustments to last year's "on docket" and/or "closed figures."

Table 21.—Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decision Issued in Fiscal Year 2008

Type of Litigation	Number of Proceedings														
	Total—All Courts			In Courts of Appeals			In District Courts			In Bankruptcy Courts			In State Courts		
	Court Determination			Court Determination			Court Determination			Court Determination			Court Determination		
	No. Dec.	Uphold. Board Position	Contrary to Board Position	No. Dec.	Uphold. Board Position	Contrary to Board Position	No. Dec.	Uphold. Board Position	Contrary to Board Position	No. Dec.	Uphold. Board Position	Contrary to Board Position	No. Dec.	Uphold. Board Position	Contrary to Board Position
TOTALS—ALL TYPES	18	18	0	9	9	0	5	5	0	3	3	0	1	1	0
NLRB-initiated actions or interventions	2	2	0	1	1	0	1	1	0	0	0	0	0	0	0
To enforce NLRB subpoenas	1	1	0	1	1	0	0	0	0	0	0	0	0	0	0
To intervene	1	1	0	0	0	0	1	1	0	0	0	0	0	0	0
Action by other parties	16	16	0	8	8	0	4	4	0	3	3	0	1	1	0
To review:	3	3	0	3	3	0	0	0	0	0	0	0	0	0	0
Subject matter jurisdiction	1	1	0	1	1	0	0	0	0	0	0	0	0	0	0
Prosecutorial discretion	1	1	0	1	1	0	0	0	0	0	0	0	0	0	0
Nonfinal/representation orders	1	1	0	1	1	0	0	0	0	0	0	0	0	0	0
To restrain NLRB from:	4	4	0	1	1	0	1	1	0	1	1	0	1	1	0
Proceeding in unfair labor practice case	4	4	0	1	1	0	1	1	0	1	1	0	1	1	0
To compel NLRB to:	6	6	0	3	3	0	3	3	0	0	0	0	0	0	0
Issue complaint	4	4	0	3	3	0	1	1	0	0	0	0	0	0	0
Provide docs under FOIA	2	2	0	0	0	0	2	2	0	0	0	0	0	0	0
Other	3	3	0	1	1	0	0	0	0	2	2	0	0	0	0
Obj. to Board's proof of claim	2	2	0	0	0	0	0	0	0	2	2	0	0	0	0
Appeal of Board's 10(k) Order	1	1	0	1	1	0	0	0	0	0	0	0	0	0	0

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 2008[1]

	Total	Number of Cases			
		Identification of Petitioner			
		Employer	Union	Courts	State Board
Pending October 1, 2007	0	0	0	0	0
Received fiscal 2008	0	0	0	0	0
On docket fiscal 2008	0	0	0	0	0
Closed fiscal 2008	0	0	0	0	0
Pending September 30, 2008	0	0	0	0	0

[1] See Glossary of terms for definitions.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 2008[1]

Action Taken	Total Cases Closed
Total Cases	0
Board would assert jurisdiction	0
Board would not assert jurisdiction	0
Unresolved because of insufficient evidence submitted	0
Dismissed	0
Withdrawn	0
Denied	0

[1] See Glossary of terms for definitions.

Table 23.—Time Elapsed for Major Case Processing Stages Completed, Fiscal Year 2008; and Age of Cases Pending Decision, September 30, 2008

	Stage	Median days
I.	Unfair labor practice cases:	
	A. Major stages completed	
	1. Filing of charge to issuance of complaint	98
	2. Complaint to close of hearing	143
	3. Close of hearing to administrative law judge's decision	70
	4. Receipt of briefs or submissions to issuance of administrative law judge's decision	29
	5. Administrative law judge's decision to issuance of Board decision	269
	6. Originating document to Board decision	178
	7. Assignment to Board decision	124
	8. Filing of charge to issuance of Board decision	559
	B. Age of cases pending administrative law judge's decision, September 30, 2008	
	1. From filing of charge	335
	2. From close of hearing	63
	C. Age of cases pending Board decision, September 30, 2008	
	1. From filing of charge	1,028
	2. From originating document	346
	3. From assignment	244
II.	Representation cases:	
	A. Major stages completed	
	1. Filing of petition to notice of hearing issued	1
	2. Notice of hearing to close of hearing	14
	3. Close of hearing to Regional Director's decision issued	21
	4. Close of pre-election hearing to Board's decision issued[1]	227
	5. Close of post-election hearing to Board's decision issued	165
	6. Filing of petition to-	
	a. Board decision issued	251
	b. Regional Director's decision issued	39
	7. Originating document to Board decision	113
	8. Assignment to Board's decision	71
	B. Age of cases pending Board decision, September 30, 2008	
	1. From filing of petition	484
	2. From originating document	217
	3. From assignment	152
	C. Age of cases pending Regional Director's decision, September 30, 2008	105

[1] This median does not include cases in which the Board denied requests for review.

Table 24.—NLRB Activity Under the Equal Access to Justice Act, Fiscal Year 2008

Action taken	Cases/ Amount
I. Applications for fees and expenses filed with the Board under 5 U.S.C. § 504 during this fiscal year:	
A. Number of applications filed:……	0
B. Decisions in EAJA cases ruled on by the Board during this fiscal year (includes ALJ awards adopted by the Board, and settlements):	
Granting fees:……	0
Denying fees:……	2
C. Amount of fees and expenses in cases listed in B, above:	
Claimed:……	$225,793
Recovered:……	0
II. Petitions for Review of Board Orders denying fees under 5 U.S.C. § 504:	
A. Awards granting fees (includes settlements):……..……	0
B. Awards denying fees:……..……..	0
C. Amount of fees and expenses recovered pursuant to court award or settlement (includes fees recovered in cases in which court finds merit to claim but remands to Board for determination of fee amount):……...	0
III. Applications for fees and expenses before Circuit Courts of Appeals under 28 U.S.C. § 2412:	
A. Awards granting fees (includes settlements):……..……	2 (settled/not awarded)[1]
B. Awards denying fees:……..…….	0
C. Amount of fees and expenses recovered:……..	$41,000
IV. Applications for fees and expenses before District Courts under 28 U.S.C. § 2412:	
A. Awards granting fees (includes settlements):……...……	0
B. Awards denying fees:……..……	0
C. Amount of fees and expenses recovered:……..……	0

[1] Special Litigation had two EAJA claims in Fiscal Year 2008:
(1) *John Joliff, et al. v. NLRB*, 6th Cir. No. 06-2434, Board Case 08–CA–33664.
(2) *Pirlott (Sherry & David) v. NLRB*, DC Cir. No. 07-1025, Board Case 30–CB–03077.
Joliff, § 2412, 6th Cir.—Claimed: $33,417.34, NLRB paid: $28,000.00.
Pirlott, § 2412, DC Cir.—Claimed: $16,306.06, NLRB paid: $13,000.00.